



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Macinezela v The State (550/2017) [2018] ZASCA 32 (26 March 2018)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the Eastern Cape Local Division, Mthatha. The central issue on appeal concerned the admissibility of the evidence of an allegedly mentally unstable complainant.

The appellant was charged with having raped the complainant, to whom he was related, on more than one occasion. Prior to the commencement of the trial, the prosecutor asked that the charge sheet be amended to reflect that the complainant was 'not mentally stable'. The amendment was effected, and the trial proceeded. Although the magistrate made no express credibility findings in relation to those who testified, it is evident that he accepted the allegations regarding the complainant's mental status. However, he failed to hold an inquiry into whether the complainant understood the difference between truth and falsehood, given her alleged mental condition. On appeal, the high court confirmed the magistrate's finding that the complainant was 'mentally retarded' and confirmed the magistrate's finding in respect of conviction and sentence.

The SCA held that the appeal raised the question whether the proper procedure was followed when it became apparent that the complainant might not understand the nature and import of the oath or affirmation as provided for in s164 of the Criminal Procedure Act 51 of 1977 (CPA). It found that this issue was regrettably not identified by the magistrate, the prosecutor and the defence. The SCA affirmed the general rule that before a witness testifies in a criminal trial, in appropriate circumstances, an inquiry must be held into whether he or she

understands the nature and import of the oath or affirmation as provided in ss 162(1) and 163 of the CPA. Where a witness is found not to understand the nature and import of the oath or affirmation due to mental incapacity, an inquiry must be held in terms of s 164 of the CPA into whether he or she understands the difference between truth and falsehood. The SCA concluded that in the present matter, the magistrate's failure to hold an inquiry into whether the mentally ill complainant understood the difference between truth and falsehood rendered her evidence inadmissible.