



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE 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.

Gumbi v The State (414/2017) [2018] ZASCA 125 (26 September 2018)

Today the Supreme Court of Appeal (SCA) handed down a unanimous judgment upholding an appeal against the judgment and order of the Gauteng Division of the High Court, Pretoria.

The appellants were indicted on a multiplicity of charges before Webster J in the high court. Unfortunately, the judge took ill before passing a verdict on any of the charges thereby leaving his final conclusions unpronounced. The matter commenced *de novo* before Potterill J, who conceived that section 215 of the Criminal Procedure Act 51 of 1977 found application in the circumstances of the case. Potterill J received into evidence the record of the proceedings before Webster J. No other evidence was led before Potterill J. The appellants were convicted on three counts of murder, two of robbery with aggravating circumstances, two of attempted murder and one of malicious injury to property.

On appeal, the issue for determination was whether section 215 read with section 214 could be invoked to counter the problem the prosecution faced in finalizing this matter. The SCA held that Potterill J had misconceived the position. The SCA reasoned that section 215 requires that the trial be of the same person upon the same charge, therefore, the section can only find application to a situation where the prior proceedings amount to a nullity and, in consequence, new proceedings are instituted. It was thus for the prosecution to decide whether proceedings should be instituted in respect of the same offences on the original indictment, amended if necessary, or upon any other charge. Thereafter, the charges had to be put to the appellants who, in turn, had to plead to the charges. This was not done. The requirements of section 214 were also not adhered to and the enquiry postulated by the section was not undertaken by the judge. There was also no ruling by the

judge in respect of the admissibility of the evidence of each witness or what factors weighed in the exercise of her discretion. The SCA concluded that it was manifest that convictions resulting from proceedings conducted in this way cannot stand. It accordingly set aside the convictions and sentences. It added that it was for the prosecution to decide whether the appellants should be re-indicted.