



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### **MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 31 October 2018  
**STATUS** Immediate

***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.***

#### *Kekana v The State (37/2018) [2018] ZASCA 148*

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Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant and set aside the sentences imposed by the court a quo on counts 1, 2, 3 and 4 and substituted those sentences with a sentence of life imprisonment on each of those counts. The SCA confirmed the sentence of 2 years' imprisonment imposed on count 5.

The sole issue in the appeal was whether the sentence imposed by the trial court was appropriate in the circumstances. Related to that was the nature and effect of the appellant's plea in terms of s 51(2) of the Criminal Law Amendment Act 105 of 1997 (the CLAA).

The appellant murdered his four children by slitting their throats with a knife. He was subsequently indicted on four counts of murder and one count of assault with intent to do grievous bodily harm. The latter count (count 5) concerned an assault on his wife, the mother of those children on 21 June 2015. The State averred that the murders were pre-planned. As a result, the formulation of the indictment was such that the murder counts were to be read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 (the CLAA).

The appellant pleaded guilty to all five counts, and submitted a written statement in terms of s 112(2) of the CPA, which the State accepted. However, in paragraph 8 of the written statement the appellant stated that he pleaded guilty to the murder counts in terms of s 51(2) of the CLAA.

He was convicted on the basis of his guilty plea in terms of s 112(2) of the CPA and was sentenced to 20 years' imprisonment on each of the murder counts, and to two years' imprisonment on the count of assault with intent to do grievous bodily harm. Ten years of each sentence on counts 2, 3 and 4 were ordered to run concurrently with the sentence on count 1. The effective sentence was thus 52 years' imprisonment.

The appellant appealed to the full court against the sentence imposed for the murder counts, which appeal was unsuccessful. The SCA granted the appellant special leave to appeal. Subsequently a notice was issued to the parties informing them that this court was considering exercising its power in terms of s 322(6) of the CPA. The section permitted the court of appeal to impose a punishment more severe than that imposed by a lower court

On appeal, the SCA held that as a general proposition, where the minimum sentences provided for in the CLAA were applicable, an accused was not entitled to pre-determine or pre-empt his or her sentence by referring, without more, to s 51(2). If he or she wished for that sub-section to apply, and for the resultant lesser sentence to be considered, he or she must had to set out the facts from which such conclusion could be premised. Without such facts, the court was not restricted to a lesser sentence merely because the accused had made reference to s 51(2). To accept otherwise would lead to absurd consequences.

The SCA held further that there was premeditation on the part of the appellant when he killed his children. It was therefore difficult to accept that an unexplained, unsubstantiated and a fleeting reference to s 51(2) in a guilty-plea embodied in the s 112(2) statement, should render the court impotent to consider life imprisonment as a competent sentence in terms of s 51(1) of the CLAA. The court stated that, that would amount to placing form over substance.

The SCA found, in addition, that where an accused was charged with an offence subject to or read with s 51(1) of the CLAA, and he or she wished that, for purpose of sentence, s 51(2), instead of s 51(1), should be applicable, he or she had to place facts before the court, why that should be the position. This was irrespective of whether he pleaded guilty or not guilty. The trial court was therefore entitled to consider life imprisonment as a sentencing option, irrespective of the State's acceptance of an unsubstantiated plea in terms of s 51(2).

The SCA imposed a sentence of life imprisonment on each of the murder counts as the only appropriate sentence in the circumstances.