

SOUTH AFRICA / JUDGMENT

Mokoena v S (CA 43/2023) [2024] ZANWHC 135 (31 May 2024)

[2024] ZANWHC 135

COURT

North West High Court, Mafikeng

BEFORE

Mfenyana, Khan

CASE / FILE NUMBER

CA 43/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG

Case no: CA 43/2023

Reportable: YES
/ NO

Circulate to Judges: YES
/ NO
Circulate to

Magistrates: YES / NO
Circulate to Regional
Magistrates: YES / NO

In the matter between: DADA
FRANS MOKOENA
APPELLANT
and
THE
STATE
RESPONDENT
CORAM: Mfenyana J, Khan
AJ

Heard: This appeal was, by consent between the parties, disposed of without an oral hearing in terms of s 19(a) of the Superior Courts Act 10 of 2013.

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.

The date for the hand-down is deemed to be 31 May 2024.

ORDER

On appeal from: Regional Court Taung, North West Regional Division, (Regional Magistrate Zulu sitting

as court of first instance): (i) Condonation for the late noting and prosecution of the appeal is granted.

(ii) The appeal against conviction and sentence is dismissed.

JUDGMENT

KHAN AJ

Introduction

- [1] On the 2 June 2021, the appellant was convicted and sentenced to life imprisonment on a charge of contravening the provisions of sections 3 read with sections 1, 55, 56(1), 57, 58, 59, 60 and 61 of the Criminal Law Amendment Act (Sexual offences and related matters) 32 of 2007 read with Section 256, 257 and 261 of the Criminal Procedure Act 51 of 1977, the provisions of section 51(1) and Schedule 2 of the Criminal Law Amendment Act 105 of 1997, as amended, as well as Section 92(2) and 94 of the Criminal Procedure Act 51 of 1977, in that on or about 2015, the Appellant did unlawfully and intentionally commit an act of sexual penetration with PS by inserting his penis into her vagina and having sexual intercourse with her, without her consent.
- [2] The applicant exercises the right of automatic appeal to this Court under section 309(1)(a), read with section 309(1)(b), of the Criminal Procedure Act 51 of 1977 ("the CPA"). The appellant appeals both his conviction and sentence.

Condonation

- [3] It is apparent that the appellant did not comply with the time frames as set out in Rule 67(5A) (a)(i) of the Uniform Rules of Court. Consequently, an application for condonation was peremptory. The appellant failed to prosecute his appeal timeously and has filed an application for condonation for the late filing of the appeal

accompanied by an affidavit in support of the application. The application for condonation is unopposed. In *Uitenhage Transitional Local Council v South African Revenue Service*[i], the court held,

“condonation is not to be had merely for the asking, a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility. It must be obvious that, if the non-compliance is time-related then the date, duration and extent of any obstacle on which reliance is placed must be spelled out.”

[4] In *Grootboom v National Prosecuting Authority*[ii], the Constitutional Court stated that:

"It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default. "

[5] In *Mulaudzi v Old Mutual Life Assurance company (SA)* [iii] Ponnann JA re-affirmed the factors to be considered in respect of an application for condonation stated in *Melane v Santam Insurance Co. Ltd*:

"Factors which usually weigh with this court in considering an application for condonation include the degree of non-compliance, the explanation therefor, the importance of the case, a respondent's interest in the finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice."

[6] The appellant has provided a detailed explanation concerning his movements through the various Correctional Service Faculties which impeded the progress of his appeal. This delay is not due to fault on his part and was due to circumstances beyond his control. It is evident that he was hamstrung by his legal representatives and lack of resources. The appellant's explanation is accepted, and sufficient cause has been shown for condonation to be granted. Condonation for the late filing of the appeal is accordingly granted.

Grounds of appeal

[7] The grounds of appeal are set out in the notice appeal. The appellant alleges in respect of his conviction that the trial court misdirected itself firstly by finding that the state proved its case beyond reasonable doubt and secondly on a procedural basis, that the court failed to comply with the provisions of section 170(A) of the CPA, in particular section 170 (a)(v)(aa) and (cc) read with Government Gazette no R663, in that the record does not show whether the intermediary is registered with the South African Council for Educators Act 32 of 2000.

[8] Section 170(A) of the CPA deals with the appointment of Intermediaries and indicates:

“(1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness—

- (a) under the biological or mental age of eighteen years;
- (b) who suffers from a physical, psychological, mental or emotional condition; or
- (c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (act 13 of 2006) to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.”

[9] In terms of s170(A)(4), “the Minister may by notice in the Gazette determine the persons or the category or class of persons who are competent to be appointed as intermediaries.” In terms of Government Notice no R663 dated 14 July 2017, the Minister of Justice and Correctional Services, in terms of section 170A(4)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), determined the following categories or classes of persons to be competent to be appointed as intermediaries:

...

“ (a) (v)(4) (aa) *Educators as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996), who-*

- (aa) have obtained a minimum post Matriculation teacher's education qualification of three years at a recognised tertiary educational institution;
- (bb) have at least three years' experience in teaching; and
- (cc) are registered in terms of section 21 of the South African Council for Educators Act, 2000 (Act No. 31 of 2000), and include former or retired educators, who comply with paragraphs (aa) and (bb), and whose names have not been removed from the register in terms of section 23(1) of the South African Council for Educators Act, 2000.”

[10] In terms of section 170(A)(12)

- (a) Subject to subsection (13), before a person is appointed to perform the functions of an intermediary—
 - (i) in a magistrate's court for any district or for any regional division, the magistrate presiding over the proceedings; or
 - (ii) in a Superior Court, the judicial officer presiding over the proceedings, must enquire into the competence of the person to be appointed as an intermediary.
- (b) The enquiry contemplated in paragraph (a) must include, but is not limited to, the person's—
 - (i) fitness as a person to be an intermediary

- (ii) experience which has a bearing on the role and functions of an intermediary
- (iii) qualifications;
- (iv) knowledge which has a bearing on the role and functions of an intermediary;
- (v) language and communication proficiency; and
- (vi) ability to interact with a witness under the biological or mental age of eighteen years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006.”

[11] In *S v Boo* [iv] the court held:

"The court has to fulfil the requirements for the appointment of an intermediary as laid down by section 170(4) of the Criminal Procedure Act 51 of 1977. The record had to reflect that an application was made, the name of the intermediary, the profession or qualification of the intermediary, the period served in such class or category as established by the Minister, the fact that the oath or affirmation

was administered before testimony was led. Further the record should reflect that the intermediary undertook to convey correctly to the court information communicated to her by the witness before evidence is led. The appointment of an intermediary does not constitute a once off appointment to be used in every other case where such services are required. Every application has to be considered afresh."

[12] Further at paragraphs 27-29, the Court indicated that, "it is imperative that all of the above be considered with reference to the provisions of s170A(5)(a) and (b) of the CPA which follow below:

(5)(1) No oath, affirmation or admonition which has been administered through an intermediary in terms of section 165 shall be invalid and no evidence which has been presented through an intermediary shall be inadmissible solely on account of the fact that such intermediary was not competent to be appointed as an intermediary in terms of a regulation referred to in subsection (4)(a), at a time when such oath, affirmation or admonition was administered or such evidence was presented.

(2) If in any proceedings it appears to a court that an oath, affirmation or admonition was administered or that evidence has been presented through an intermediary who was appointed in good faith but, at the time of such appointment, was not qualified to be appointed as an intermediary in terms of a regulation referred to in subsection (4)(a), the court must make a finding as to the validity of that oath, affirmation or admonition or the admissibility of that evidence, as the case may be, with due regard to—

- (i) the reason why the intermediary concerned was not qualified to be appointed as an intermediary, and the likelihood that the reason concerned will affect the reliability of the evidence so presented adversely;

(ii) the mental stress or suffering which the witness, in respect of whom that intermediary was appointed, will be exposed to if that evidence is to be presented anew, whether by the witness in person or through another intermediary; and

(iii) the likelihood that real and substantial justice will be impaired if that evidence is admitted.”

Section 170A(5) is intended to safeguard the oath, affirmation or admonition administered through an incompetent intermediary or evidence led through an intermediary who was appointed in good faith but was not qualified to be appointed as an intermediary. In other words, s170A(5) empowers the Court, to consider the effect of the incompetence of an intermediary on the validity of the oath, affirmation or admonition administered through that intermediary and the admissibility of the evidence given through that intermediary with reference to the factors listed in s170A(5)(b)(iii), to determine whether real and substantial justice will be advanced or jeopardised by accepting or rejecting the oath, affirmation or admonition and the evidence. Factors listed in s170A(5)(b)(i) to (iii) are, therefore, only applicable and of relevance to a case where the oath or affirmation would have been administered to the incompetent or unqualified intermediary and where that intermediary would have actually been appointed, the only defect being that the intermediary in question does not meet any of the requirements for competence or appointment determined by the Minister as set out in the Gazettes referred to in paragraph 4 above.”

[13] The record indicates that Manamela was questioned as to his qualifications and experience. He testified that he obtained a teacher’s qualification in 1986 at Moretele College and practised as an educator for more than 10 years where he was involved with young children, further that he underwent advanced training as an intermediary for a period of one year in Mafikeng and has been an intermediary for 10 years within the province of North West in Taung. That he has never been found guilty of misconduct or been subjected to any disciplinary action or dismissed from his duties. The appellant did not object to Manamela’s appointment, questioned him or queried whether he was registered with any professional body.

[14] It is apparent from the record that Manamela was identified as the intermediary, an application was made for Manamela to be admitted as an intermediary, his qualifications and experience were interrogated and finally the oath or affirmation was administered before testimony was led.

[15] The complaint levelled at Manamela is that he is not registered in accordance with the Council of Educators Act, 32 of 2000. The record indicates that Manamela was an educator for 10 years, he would out of necessity have had to have been registered with the council in order to be able to practise as an educator. The record is silent as to whether Manamela’s name has been removed from the register in terms of s 21 of the South African Council for Educators Act but this is not the appellant’s contention.

- [16] Manamela meets the requirements of paragraphs (aa) and (bb) of Government Notice no R663, set out paragraph 9 *supra*. Whether or not he was registered with the council will not affect the reliability of the evidence given and this Court is of the view that there is no likelihood that real and substantial justice will be impaired if the evidence is admitted and that this shortcoming is not so prejudicial to the accused's case as to justify the setting aside of the conviction.
- [17] A proper consideration of the provisions of s170A(5) of the CPA must lead to the conclusion that the incompetence of Mr Manamela as alleged by the appellant, did not adversely affect the reliability of his evidence and that real and substantial justice would not be impaired if the evidence which was led through the admission of Manamela is accepted. The appeal against conviction must therefore, fail.
- [18] In respect of sentence the appellant contends that the trial court misdirected itself in not finding that his personal circumstances amount to substantial and compelling circumstances. In this regard, in the written submissions made on behalf of the appellant it is submitted that the fact that the appellant was 40 years, unmarried, with two minor children for whom he was responsible to pay maintenance and was gainfully employed, ought to have been considered to amount to substantial and compelling circumstances, by the court *a quo*, and is sufficient for the court *a quo* to deviate from the prescribed minimum sentence of life imprisonment. Thus, the appellant

contends the sentence of life imprisonment imposed by the court *a quo* is strikingly inappropriate, induces a sense of shock, and is inappropriate in the circumstances of the appellant.

Powers of the appeal court

- [19] It is trite that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and that he must be acquitted if it is reasonably possible that he might be innocent[v]. In *R v Difford*[vi], it was held, "it is equally clear that no onus rests on the accused to convince the Court of the truth of any explanation he gives. If he gives an explanation, even if that explanation be improbable, the court is not entitled to convict unless it is satisfied, not only that the explanation is improbable but that beyond any reasonable doubt it is false. If there is any reasonable possibility of his explanation being true, then he is entitled to his acquittal."
- [20] In *S v M*[vii] it was held that the court must look at the totality of evidence as a whole to make a determination regarding the guilt or not of an accused person and in *S v Chabalala*[viii] in assessing the evidence in a criminal trial, the court held that, the trial court must,

“weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the state to exclude any reasonable doubt about accused’s guilt.”

- [21] A court of appeal is not at liberty to interfere with the findings of fact and credibility of a trial court, unless they are vitiated by misdirection, or unless an examination of the record reveals that those findings are patently wrong. In *S v Monyane and Others*,^[ix] Ponnann JA stated the test as follows:

“This court’s powers to interfere on appeal with the findings of fact of a trial court are limited. ... In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong, S v Hadebe and Others^[x].

- [22] The court a quo imposed the prescribed sentence of life imprisonment. It is common cause that the provisions of s51 of the Criminal Law Amendment Act 105 of 1997 (“the CLAA”) is applicable. Section 51 of the CLAA provides:

“51. Discretionary minimum sentences for certain serious offences–

- (1) Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.
- (2) ...
- (3)
- (a) If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence. . .”

- [23] Part I of Schedule 2 of Act 105 of 1997 provides for offences including inter alia:

“Rape –

- (a).....
- (b) where the victim –
 - (i) is a girl under the age of 16 years;

This case, accordingly, falls squarely within s 51(1) read with Part I of Schedule 2 of Act 105 of 1997, as the court a quo correctly found.

- [24] The appellant alleges that the court a quo misdirected itself by imposing a sentence of life imprisonment, that such sentence is shockingly inappropriate in the circumstances and out of proportion to the totality of the accepted facts in mitigation, further that the trial court misdirected itself by failing to take into account that the appellant's cumulative personal circumstances are substantial and compelling circumstances.
- [25] It is trite that "a court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate court is at large. However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate".[xi]
- [26] In considering "substantial and compelling reasons", the Supreme Court of Appeal in *S v Malgas*[xii] stated that:

"Secondly, a court was required to spell out and enter on the record the circumstances which it considered justified a refusal to impose the specified sentence. As was observed in Flannery v Halifax Estate Agencies Ltd by the Court of Appeal, "a requirement to give reasons concentrates the mind, if it is fulfilled the resulting decision is much more likely to be soundly based --- than if it is not". Moreover, those circumstances had to be substantial and compelling. Whatever nuances of meaning may lurk in those words, their central thrust seems obvious. The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny.

Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances. Nor were marginal differences in the personal circumstances or degrees of participation of co-offenders which, but for the provisions, might have justified differentiating between them. But for the rest I can see no warrant for deducing that the legislature intended a court to exclude from consideration, ante omnia as it were, any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders.

The use of the epithets "substantial" and "compelling" cannot be interpreted as excluding even from consideration any of those factors. They are neither notionally nor linguistically appropriate to achieve that. What they are apt to convey, is that the ultimate cumulative impact of those circumstances must be such as to justify a departure. It is axiomatic in the normal process

of sentencing that, while each of a number of mitigating factors when viewed in isolation may have little persuasive force, their combined impact may be considerable. Parliament cannot have been ignorant of that. There is no indication in the language it has employed that it intended the enquiry into the possible existence of substantial and compelling circumstances justifying a departure, to proceed in a radically different way, namely, by eliminating at the very threshold of the enquiry one or more factors traditionally and rightly taken into consideration when assessing sentence. None of those factors have been singled out either expressly or impliedly for exclusion from consideration.

To the extent therefore that there are dicta in the previously decided cases that suggest that there are such factors which fall to be eliminated entirely either at the outset of the enquiry or at any subsequent stage (eg age or the absence of previous convictions), I consider them to be erroneous. Equally erroneous, so it seems to me, are truisms which suggest that for circumstances to qualify as substantial and compelling they must be “exceptional” in the sense of seldom encountered or rare. The frequency or infrequency of the existence of a set of circumstances is logically irrelevant to the question of whether or not they are substantial and compelling.

Some of the courts which have had to deal with the problem have resorted to the processes of thought employed and the concepts developed by the courts in considering appeals against sentence. In my view such an approach is problematical and likely to lead to error in giving effect to the intention of the legislature. The mental process in which courts engage when considering questions of sentence depends upon the task at hand. Subject of course to any limitations imposed by legislation or binding judicial precedent, a trial court will consider the particular circumstances of the case in the light of the well-known triad of factors relevant to sentence and impose what it considers to be a just and appropriate sentence.”

[27] In *S v Matyityi* [xiii] the Supreme Court of Appeal stated as follows:

“I turn now to the central issue in the appeal, namely whether, given the facts of this case, the trial court was correct in its

conclusion

that substantial and compelling circumstances as contemplated by that expression were indeed present. *S v Malgas* is where one must start. It, according to Navsa JA, is ‘not only a good starting point but the principles stated therein are enduring and uncomplicated’ (*DPP KZN v Ngcobo*). *Malgas*, which has since been followed in a long line of cases, set out how the minimum sentencing regime should be approached and in particular how the enquiry into substantial and compelling circumstances is to be conducted by a court. To paraphrase from *Malgas*: The fact that Parliament had enacted the minimum sentencing legislation was an indication that it was no longer ‘business as usual’. A court no longer had a clean slate to inscribe whatever sentence it thought fit for the specified crimes. It had to approach the question of sentencing conscious of the fact that the minimum sentence had been ordained as the sentence which ordinarily should

be imposed unless substantial and compelling circumstances were found to be present.”

[28] In *Maila v S*[xiv], the Supreme Court of Appeal stated that:

“Taking into account Jansen, Malgas, Matyityi, Vilakazi and a plethora of judgments which follow thereafter as well as regional and international protocols which bind South Africa to respond effectively to gender-based violence, courts should not shy away from imposing the ultimate sentence in appropriate circumstances, such as in this case. With the onslaught of rape on children, destroying their lives forever, it cannot be ‘business as usual’. Courts should, through consistent sentencing of offenders who commit gender-based violence against women and children, not retreat when duty calls to impose appropriate sentences, including prescribed minimum sentences. Reasons such as lack of physical injury, the inability of the perpetrator to control his sexual urges, the complainant (a child) was spared some of the horrors associated with oral rape, which amount to the acceptance of the real rape myth, the accused was drunk and fell asleep after the rape, the complainant accepted gifts (in this case, sweets) are an affront to what the victims of gender-based violence, in particular rape, endure short and long term. And perpetuate the abuse of women and children by courts. When the Legislature has dealt some of the misogynistic myths a blow, courts should not be seen to resuscitate them by deviating from the prescribed sentences based on personal preferences of what is substantial and compelling and what is not. This will curb, if not ultimately eradicate, gender-based violence against women and children and promote what Thomas Stoddard calls ‘culture shifting change’. The message must be clear and consistent that this onslaught will not be countenanced in any democratic society which prides itself with values of respect for the dignity and life of others, especially the most vulnerable in society: children. For these reasons, this Court is not at liberty to replace the sentence that the trial court imposed.”

[29] In *S v Jansen*[xv] the court stated it thus:

“Rape of a child is an appalling and perverse abuse of male power. It strikes a blow at the very core of our claim to be a civilised

society... The community is entitled to demand that those who perform such perverse acts of terror be adequately punished and that the punishment reflect the societal censure. It is utterly terrifying that we live in a society where children cannot play in the streets in any safety; where children are unable to grow up in the kind of climate which they should be able to demand in any decent society, namely in freedom and without fear. In short, our children must be able to develop their lives in an atmosphere which behoves any society which aspires to be an open and democratic one based on freedom, dignity and equality, the very touchstones of our Constitution.”

[30] The court a quo considered substantial and compelling circumstances as set out in various decisions including *S v Malgas* and *S v Vilakazi*[xvi], the interests of society, the nature and seriousness of the crime and the personal circumstances of the accused. The court indicated that, “society considers rape to be a very serious matter, indeed particularly as it is so prevalent in one in respect of which a proper measure of retribution is called for. This is because it constitutes a humiliating, degrading and brutal invasion, the privacy, the dignity

and the person of the victim” ”and concluded that it is, “the duty of the Court to ensure that people or society feel safe in their communities and thus restore the confidence in the criminal justice system. The restoration of confidence in the criminal justice system can only be achieved by imposing sentences that deter or prevent such acts of the accused, that the accused have been convicted of.

[31] This court is not persuaded that the Court a quo erred in imposing the sentence of life imprisonment or that this Court should deviate from the sentence so imposed by the Court a quo. The sentence is not disproportionate to the offence that the appellant committed and is justified in the circumstances.

Conclusion

[32] There was no misdirection on the part of the Court a quo on both conviction and sentence and the appeal accordingly stands to be dismissed.

Order

[33] In the result, the following order is made:

J L KHAN

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

I agree.

S MFENYANA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Appearances:

For the Appellant: R K Thuwe Instructed by: Legal Aid South Africa Mafikeng Justice Centre Borekelong House Telephone: 018 381 4582 Email address: Rhodest@legal-aid.co.za For the Respondent: Adv W P Ndhlovu Instructed by: Director of Public Prosecutions 2nd and 3rd Floor, Megacity East Gallery Sekame Street Mafikeng Telephone: 018 381 9060 Email address: WNdlovu@npa.gov.za Date reserved: 24 November 2023 Date of judgment: 31 May 2024

[i] 2004

(1) SA 292 (SCA) at para 6.

[ii] [2013] ZACC 37; 2014

(2) SA 68 (CC) at paragraph 23.

[iii] [2017] ZASCA 88; [2017] 3 All SA 520 (SCA); 2017

(6) SA 90 (SCA); 1962

(4) SA 531 (A) at 532 C-E.

[iv]2005

(1) SACR 599 (B)

[v] 1999 (2) 79 (W) at para 82

[vi] 1937 AD 370 at 381

[vii] 2006 (1) SACR 135 (SCA) at para 189.

[viii] 2003 (1) SACR 134 (SCA).

[ix]

(1) SACR 543 (SCA) at paragraph 15.

[x] 1997

(2) SACR 641 (SCA) at 645e – f,

[xi] (117/2000)

[2001] ZASCA 30; [2001] 3 All SA 220 (A) (19 March 2001) at para 12.

[xii] at paras 9-12.

[xiii] 695/09) [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) (30 September 2010) at para 11.

[xiv] (429/2022)

[2023] ZASCA 3 (23 January 2023) at paras 59-60.

[xv] 1999

(2) SACR 368 (C) at 378G-379B.

[xvi] 2009(1) SACR 552 (SCA).

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