THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case No: 996/2021

In the matter between:

RAYMOND DANIEL DE VILLIERS **Appellant**

and

THE STATE **Respondent**

Neutral Citation: *Raymond Daniel de Villiers v The State* (996/2021) [2023] ZASCA 83 (31 May 2023)

Coram: ZONDI, MOLEMELA and MOTHLE JJA and NHLANGULELA and SIWENDU AJJA

Heard: 6 March 2023

Delivered: 31 May 2023

Summary: Criminal Law and Procedure – compensation order – whether a court of appeal could impose an order of compensation in terms of s 300 of the Criminal Procedure Act 51 of 1977 – whether in consideration of an appeal a court may widen the limited grounds of leave to appeal.

ORDER

On appeal from: Free State Division of the High Court, Bloemfontein (Nekosie AJ with Mbhele and Daniso JJ concurring, sitting as a full court of appeal):

1. The appeal succeeds.

2. The order of the Full Court of the Free State Division of the High Court dated 8 February 2021 on appeal against sentence, is set aside and substituted by the following:

> '(a) The sentence imposed by the Regional Court, Bloemfontein on the appellant on 29 November 2011 is set aside and the matter is remitted to the Regional Court, Bloemfontein for sentencing afresh.
>
> (b) The further evidence presented by the appellant and the State and admitted by the Full Court, shall serve before the regional court in consideration of the sentence.'

JUDGMENT

Mothle JA (Zondi JA and Nhlangulela and Siwendu AJJA concurring):

[1] This is an appeal against the order by the full court of the Free State Division of the High Court, Bloemfontein, (the full court), dated 8 February 2021. The full court, in considering an appeal against a sentence imposed by the regional court, Bloemfontein (regional court), dismissed the appeal which confirmed the custodial sentence, and ordered the appellant to pay to the complainant an amount of R900 000 (nine hundred thousand rand) within 30 days of the order (the compensation order). The full court purported to grant the compensation order in terms of s 300 of the Criminal Procedure Act 51 of 1977 (CPA). The crisp issue that falls to be determined in this appeal is

whether the full court acted correctly in granting the compensation order.

[2] The factual background is briefly that the appellant, Mr Raymond Daniel de Villiers (the appellant), an accountant on 25 May 2005, received an amount of R950 000 from a long-standing client, the complainant, Mrs Wiese, to invest on her behalf. Mrs Wiese is a widow to Mr PJ Wiese, a farmer who had recently passed on, and the R950 000 in issue were proceeds from the deceased's estate. The appellant failed to invest the money as instructed and, instead used it for his speculative business ventures. He failed to pay the amount to Mrs Wiese on demand and the latter laid a charge of theft against him.

[3] The appellant was arraigned before the regional court on a charge of fraud, and in the alternative, theft of R950 000. On 11 August 2011 the appellant pleaded guilty to the alternative charge of theft in terms of s 112 of the CPA and was convicted accordingly. The following evidence on sentence, and material to the determination of this appeal, appears from the trial record of proceedings in the regional court. First, prior to the commencement of the trial, the appellant, through his legal representatives, proposed to enter into a plea and sentence agreement (plea bargaining) with the prosecution, in terms of s 105A of the CPA. The prosecution rejected the proposal and it fell through. Second, testifying during sentencing proceedings following the appellant's conviction, Mrs Wiese expressed a desire to be paid back the amount that had been stolen from her.

[4] On 29 November 2011, the regional court imposed a sentence of seven years' imprisonment, of which three years were suspended for three years on condition that the appellant is not convicted of theft, fraud, attempted theft or fraud or any offence whereby dishonesty is an element of the crime, committed during the period of suspension. The appellant launched an application for leave to appeal both the conviction and sentence, which application was refused by the regional court. On 11 January 2012, he turned to the high court on petition for leave to appeal. On 14 September 2012, the appellant's petition for leave to appeal against his conviction and sentence

was also refused by the high court, before Daffue J and Snellenburg AJ. The high court further refused his application for extension of bail pending further appeal proceedings. The appellant was incarcerated for a short period.

[5] The appellant then approached this Court on petition, simultaneously launching a review application regarding his conviction. On 7 January 2013 the petition served before Nugent JA and Mhlantla JA, who granted the appellant leave to appeal, only against sentence, to the full court. With the appeal to the full court held in abeyance, the review application was heard and dismissed by this Court on 24 March 2016 and thereafter by the Constitutional Court on 16 August 2016. Four years later, on 9 November 2020, the full court heard the appeal against the sentence. The appellant requested the full court to consider a change in his personal circumstances and delivered an application to present further evidence, which the full court granted.[1]

[6] The further evidence, brought nine years after his conviction and sentence in the regional court, presented the following changed circumstances, as recorded in para 14 of the full court judgment:

> '14.1 The appellant is now 60 years old.
>
> 14.2 He presently resides at 4[…] K[…] K[…] Road, Bayswater, Bloemfontein which is situated above his work premises at Sebenza Accountants (Pty) Limited where he is an accountant in association with the said Sebenza Accountants.
>
> 14.3 He has not been charged with and/or convicted of any further offences since his conviction in 2011.
>
> 14.4 He is economically active, and a law-abiding citizen post his sentence.

[1] See *Rail Commuters Action Group and Others v Transnet Ltd T/A Metrorail and Others* 2005 (2) SA 359 (CC) para 41- 43.

14.5 Through his practise he supports approximately 23 households and presently serves approximately 800 clients.

14.6 The appellant declares himself a devoted Christian who decided to use and apply his professional skills to uplift and make a positive contribution to society by providing professional advice to young aspiring and upcoming entrepreneurs free of charge for a period ranging between 6 and 18 months, feeding schemes in under privileged communities and advise to elderly persons on how to invest their savings.

14.7 He has saved R1 000 000.00 which is held in trust that can be paid in restitution to the plaintiff [the complainant].'

[7] The State did not oppose the appellant's application to adduce further evidence on appeal. It also presented evidence in the form of an affidavit, deposed to by a Senior State Advocate, attached to the Specialised Commercial Crime Unit, Bloemfontein, [in] which it asked the full court to consider in dealing with the appellant's request to present further evidence. In the affidavit, the State, dealing with the history of the litigation in this matter, concluded in paras 25 – 27 thus:

'Although it is true that personal circumstances of an accused person may change over a period of time the manner in which the appellant's exercised his rights led to this delay. His conduct in this post sentence course of action cannot [not] be ignored. His dishonest attempt in this application to convince you of his remorse and regret is not evident from his conduct post sentence.

Logic then dictates that my concession in the trial court that there were compelling and substantial circumstances justifying an imposition of a lesser sentence than the minimum sentence cannot be applicable [be] anymore because of the actions and factors emanating post sentence as described above.

Since the sword of Iustitia (Lady Justice) is a double-edged sword that cuts both ways and the appellant is asking in effect this Court to consider sentence afresh this court might well allow further evidence as prayed for by the

> appellant and in addition also admit the contents of this statement along the same lines as prayed for by the appellant and call upon the Appellant to give reasons why the sentence imposed should not be increased.'

[8] On 8 February 2021, Nekosie AJ, with Mbhele and Daniso JJ concurring, delivered the full court judgment, wherein the appeal was dismissed, and the custodial sentence imposed by the regional court confirmed. Both orders appeared in paras 1 and 2 of the full court order respectively. The full court further added paras 3 and 4 to its order, which read thus:

> '3. In terms of section 300(1) of the Criminal Procedure Act 51 of 1977 the appellant is ordered to pay to Amanda Wiese, the complainant in this matter, the amount of R900 000.00 (nine hundred thousand rand) within thirty (30) days of this order.
>
> 4. The order in 3 above shall have the effect of a civil judgment as provided for in section 300(3)*(b)*. The registrar is directed to bring this judgment to the attention of the registrar, Regional Court, Bloemfontein.'

[9] The appellant, aggrieved by the judgment and order of the full court, once again approached this Court on petition, seeking special leave to appeal against the order of the full court. This Court, per Wallis JA and Carelse AJA on 6 May 2021, granted the appellant special leave to appeal to this Court, limiting the leave to appeal to paras 3 and 4 of the order of the full court. It is thus with the special leave of this Court that the appeal against paras 3 and 4 of the order is before us. I turn to deal with the question whether the compensation order in terms of s 300 of the CPA was appropriately made.

[10] Ordinarily when a person who has suffered an injury or loss, desires to be compensated for such injury or loss, that person would institute civil proceedings in a civil court for relief. When that injury or loss arises out of the commission of a crime, and criminal prosecution ensues, that person may, on application to the criminal court conducting the trial, be awarded

compensation for the damage or loss. That would occur after the conviction of the person responsible for such loss or damage. The award for compensation could be made either in terms of s 297 of the CPA, where such award is made as a condition of a suspended sentence or in terms of s 300 of the CPA, where the amount would be payable.

[11] In *Stow v Regional Magistrate, Port Elizabeth*,[2] the appeal court compared and contrasted ss 297 and 300 of the CPA, which both provide for compensation to be awarded by the criminal court, albeit under different circumstances. The appeal court wrote:

> 'I do not agree that the different consequences flowing from compensation as a condition of suspension and compensation in terms of s 300 result in discrimination. Compensation as a condition of suspension is an integral part of the sentence which has its purpose as described in *Tshondeni* supra. It is a flexible condition which can be adapted to a person's means and the length of time it will take to make full restitution. Its imposition is subject to the safeguards mentioned above. Section 300 on the other hand is a convenient means of recovering a debt without having to institute a civil action. The order will be made for the full amount determined as compensation for the damage or loss and would be executable for the full amount. Section 300 can only be utilised if the victim or the state, applies for such an order. The victim can renounce the order, which impacts on the effectiveness of the order, whereas compensation as a condition of suspension remains the prerogative of the court and will serve a more meaningful purpose in the sentencing process. Section 300 is therefore only available in restricted circumstances and lacks the flexibility which can be used in shaping a suitable sentence. If it was the only means of ordering compensation, a valuable sentencing option would be lost.'

[12] Section 300(1) of the CPA provides:

---

[2] *Stow v Regional Magistrate, Port Elizabeth* [2017] ZAECGHC 12; [2017] (2) SACR 96; 2017 (2) SACR 96 (ECG) para 64.

> '(1) Where a person is convicted by a superior court, a regional court or a magistrate's court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instruction of the injured person, forthwith award the injured person compensation for such damage or loss: Provided that –
>
> (a) a regional court or magistrate court shall not make such award if the compensation applied for exceeds the amount determined by the Minister from time to time by notice in the *Gazette* in respect of the respective courts.'

[13] First, on a proper construction of s 300(1) of the CPA, only the court that *convicted a person*, referred to as '*the court in question'* may award compensation under the provisions of s 300 of the CPA. In this case it is the regional court. The request made by counsel for the appellant that the full court should not refer the matter back to the trial court, for the purpose of imposing a compensation order in terms of s 300 of the Act, was bad in law and the full court erred in acceding to it. The full court, as a court of appeal, is not the court that convicted the appellant and thus it lacked the authority or jurisdiction to award a compensation under s 300 of the CPA.

[14] Second, and related to the first issue in the preceding paragraph, in terms of s 300 of the CPA, the compensation order is triggered '*upon the application of the injured person or of the prosecutor acting on the instruction of the injured person.'* The full court did not have an application in terms of s 300 of the CPA made to it either by Mrs Wiese or by the prosecutor on her instruction. The application for compensation award is an essential pre-requisite to trigger a consideration of compensation in terms of s 300 of the CPA. The full court, therefore, erred in considering and awarding compensation in terms of s 300 of the CPA, without an application before it.

[15] Third, it was only after hearing argument and the proceedings had been adjourned, that the full court informed the legal representatives of the appellant and the State, that it was considering a possible increase of the

sentence. It invited the parties to submit supplementary heads of argument. In extending that invitation to the parties, the full court did not give notice that it was considering invoking s 300 of the CPA. The appellant submitted the heads of argument without specifically dealing with submissions on s 300 of the CPA.[3] The appellant was thus prejudiced in that he was not granted a proper notice and hearing before the full court invoked the compensation order in terms of s 300 of the CPA. Section 300 of the CPA, envisages an inquiry to be held to determine whether it is possible to make the award. All parties before the court must be provided an opportunity to participate in the proceedings.

[16] Based on the findings by this Court in the preceding three paragraphs, it suffices to conclude that the full court erred in awarding compensation in paras 3 and 4 of its order. Counsel for the State conceded, only on the narrow basis that the full court erred in regard to awarding a compensation in terms of s 300 of the CPA. This concession was correctly made. Therefore, the full court's award of compensation in terms of s 300 of the CPA as stated in paras 3 and 4 of its judgment, cannot stand, and it falls to be set aside.

[17] The further evidence by the appellant and the State, admitted by the full court, was not available to the regional court during the sentence proceedings. The setting aside of paras 3 and 4 of the full court order, leaves that evidence still intact and available for consideration. The only court competent to consider that evidence and impose an appropriate sentence would, in this instance, be the trial court. Consequently, this Court is at large to remit the matter to the regional court to determine the sentence afresh. In *S v Sion*[4] (*Sion*) the high court wrote:

> 'Where the complainant had merely expressed, in the course of his evidence, a desire to be compensated, the Court on review remitted the case to the

[3] *S v Van Rensburg* 1974 (2) SA 243 (T) at 244H-245A; *S v Baadjies* 1977 (3) SA 61 (E) at 63A-B.
[4] *S v Sion* 1975 (2) SA 184 (NKA).

> magistrate to enable the complainant to make a proper application for compensation should he so desire; alternatively, to enable the magistrate to impose a compensatory fine.'[5]

[18] Therefore, in remitting the matter back to the trial court for the purpose of considering the issue of sentence afresh, it will be necessary for the trial court to re-consider not only the evidence that was presented before it at the time when it passed the original sentence, but should include the further evidence as well. Inexorably, a reason for the widening of the terms of this appeal beyond those that were contemplated in paras 3 and 4 of the full court order, has emerged. In a situation that is similar to the present one, it was stated appositely by this court in *R v Mpompotshe and Another*, [6]as follows:

> 'In any event it would always be open to this Court, if not prevented by the legal requirements as to finality discussed in *R v Sibande,* 1948 (3) SA 1 (AD), and *R v Maharaj* (Appellate Division 8th September 1958), to condone the delay and grant leave to appeal on wider grounds than those allowed by the trial Judge. This appeal was therefore dealt with on the basis that leave to appeal had been granted generally.'

[19] The principle stated above was followed in *S v Safatsa and Others*[7] (*Safatsa*) thus:

> 'This Court will not necessarily consider itself bound by the grounds upon which leave has been granted.' What has emerged as a difference in approach is that in *Safatsa,* this Court went on to state as follows: '…*A formal petition for leave to appeal on wider grounds is not an indispensable prerequisite*, since the matter is before the Court whose members would be conversant with the record, but the remarks I have quoted show that the Court will certainly decline to hear argument on an additional ground of appeal if there is no reasonable prospect of success in respect of it…' This

---

[5] Ibid at 185.
[6] *R v Mpompotshe and Another* 1958 (4) SA 471 (A) at 473E.
[7] *S v Safatsa and Others* 1988 (1) SA 868 (A) at 877A-G.

> approach should be contrasted with that in *Douglas v Douglas*[8] (*Douglas*) where this Court again, after accepting the principle that it will not necessarily consider itself bound by the terms of the order granting leave to appeal, held: 'Although leave to appeal on a ground refused by the court which granted leave to appeal to this Court *should, generally speaking, be requested by way of petition*, which would normally be considered by the court hearing the appeal, the required *leave can also be sought by way of application when the appeal is heard*. In such a case condonation for the delay in asking such leave should also be requested.' (Own emphasis.)

[20] In *Douglas,* this Court was dealing with the instance where additional grounds of appeal were raised and leave requested to have them considered. In such instance, it is necessary for an application to be made by the party seeking to rely on such new grounds, to have the limit on the grounds of appeal widened. In the present appeal, this Court is seized with different set of circumstances. The full court had accepted 'further evidence' submitted in mitigation and also in aggravation of sentence from the appellant and the State respectively, a considerable time after the appellant had been sentenced by the regional court. At the time this appeal was before this Court, approximately ten years had elapsed since the appellant was sentenced. As is apparent, the full court had no jurisdiction to make a compensatory award in terms of s 300 of the CPA, notwithstanding the receipt of the further evidence. Similarly, this Court has no such jurisdiction. The jurisdiction lies with the trial court, which in this instance is the regional court.

[21] I have had the pleasure of reading the judgment of my sister, Molemela JA (the concurring judgment). I however respectfully disagree with the conclusion in para 29 that, by not awarding compensation to the complainant, the regional court exercised its discretion unreasonably. If it is indeed so, that would constitute a misdirection, justifying intervention by the appeal court.

---

[8] *Douglas v Douglas* [1995] ZASCA 147; [1996] 2 All SA 1 (A).

However, it is a fact that there was no ground of appeal or argument placed before this Court, suggesting that the regional court unreasonably exercised its discretion on sentence. It is trite that in criminal trials, the primary purpose of determining sentence is to impose an appropriate punishment to the convicted person. Where the trial court in its discretion deems it appropriate to impose a custodial sentence, as it happened in this case, the question of compensation recedes, as it would be unrealistic to expect a person in custody to pay compensation as contemplated in s 297 of the CPA. The regional court was under no legal obligation to suspend the whole custodial sentence in order to award compensation. Such a decision would occur where the regional court in the exercise of its discretion, deems it so. In *S v Sadler*[9] this Court held that the appeal court should not erode the exercise of a sentencing discretion by the trial court, simply because it does not accord with what the appeal court would have imposed. It is not sufficient that the appeal court's own choice of sentence would have been appropriate. Therefore the remittal of this matter to the regional court need not be burdened by any view as to how this Court prefers to have the regional court exercise its discretion in imposing a sentence.

[22] The net effect of the finding by this Court, is that the entire order of the full court should be set aside, and the further evidence submitted by the appellant and the State as admitted by the full court, be remitted to the regional court for the determination of sentence afresh.

[23] In the result, I make the following order:

1. The appeal succeeds.

2. The order of the Full Court of the Free State Division of the High Court dated 8 February 2021 on appeal against sentence, is set aside and substituted by the following:

---

[9] *S v Sadler* 2000 (1) SACR 331 (SCA).

'(a) The sentence imposed by the Regional Court, Bloemfontein on the appellant on 29 November 2011 is set aside and the matter is remitted to the Regional Court, Bloemfontein for sentencing afresh.

(b) The further evidence presented by the appellant and the State and admitted by the full court, shall serve before the regional court in consideration of the sentence.'

SP MOTHLE
JUDGE OF APPEAL

Molemela JA

[24] I have had the pleasure of reading the judgment of my brother, Mothle JA (the first judgment) and agree with the outcome proposed therein. However, I follow a different reasoning in coming to the same outcome.

[25] As the facts and authorities have correctly been canvassed in the first judgment, there is no need for me to cover the same ground in this section of the judgment. The record of the proceedings in the regional court reveals that after the appellant's conviction, there was a discussion on the issue of the appellant offering to pay an amount of money to ameliorate the complainant's loss. The appellant indicated that he would be in a position to pay an amount of R209 302.65 to the complainant the next day, and offered to pay the balance in instalments.

[26] It is evident from the record that the complainant is a lay person and had made it clear, in response to questions from the defence counsel, that she was prepared to accept the appellant's offer of paying the lump sum indicated above, plus payment of the balance in instalments. From her responses to the prosecutor's questions, it was clear that the complainant was

even willing to accept an award of a lesser amount as compensation, given her dire financial situation. Although the complainant had uncovered the theft committed by the appellant in 2008, she had, at the time of the commencement of the trial, not instituted a civil action for the recovery of that money. In response to the trial court's questions regarding why she laid criminal charges as opposed to instituting a civil claim, if all she was interested in was to get her money back, she stated that she had not pursued a civil claim because she did not have enough money to do so. Notably, the trial court, in the course of sentencing the appellant, remarked that 'the complainant . . . testified in this court that she would want nothing more than to have her money back'.

[27] On the conspectus of the record, I am satisfied that the complainant repeatedly indicated her eagerness to receive a compensation award envisaged in s 300 of the CPA. From my point of view, the fact that the offer for the payment of the compensation was in the form of a down-payment of a lump sum, followed by payment of the balance in instalments and the complainant had accepted it on that basis did not detract from it being an offer for the payment of compensation within the contemplation of s 300 of the CPA.[10] I therefore accept that there was a proper *application* before the trial court within the contemplation of s 300 of the CPA. However, the appellant's counsel had made it clear that the appellant would not be able to pay off the outstanding balance in instalments if he was incarcerated. Notwithstanding this, I am of the view that the circumstances were such that some measure of restorative justice would have been achieved by a compensation award envisaged in s 297(1*)(a)(*i)*(aa)* of the CPA as the complainant's financial loss was as a direct result of the offence committed by the appellant. Thus, even if the regional court had held the view that the appellant was not in a position to pay the full amount of the loss (R950 000), and that it was therefore not an appropriate case in which to award compensation within the contemplation of

[10] In *S v Williams* [2016] ZAFSHC 20 para 3 –the court, on review, held that payment of compensation envisaged in s 300 of the CPA in monthly instalments is permissible.

s 300 of the CPA, nothing precluded it from ordering compensation in terms of s 297(1)*(a)*(i)*(aa)* of the CPA. In my opinion, the concerns of victims of crime need to be recognised in the sentencing process.

[28] In *Director of Public Prosecutions, North Gauteng v Thabethe*,[11] in the context of a sentence imposed in respect of a rape charge, this Court observed that a victim's voice deserves to be heard, given that the victim 'bears the real brunt of the offence committed against him.'[12] Although this Court cautioned that a victim's views are not decisive, it pointed out that it was only fair that the victim be heard regarding how the crime had affected him or her. In my opinion, the fact that an economic offence in respect of which a substantial amount of money was stolen from a complainant who had not only indicated to the court that she had no way of recouping her loss, but had specifically requested a compensation award, rendered this case an appropriate one for the granting of a compensation award.

[29] Even on an acceptance that the appellant was not, at the time of his conviction, able to pay the full amount representing the complainant's loss but only a part thereof, the fact remains that the judgment of the regional court does not indicate why it did not, in circumstances where it was clear that there was no other avenue open to the complainant to recoup her substantial financial loss from the appellant, at least consider ordering the appellant to pay the complainant the amount he had available as a condition for suspending part of the sentence as envisaged in s 297(1)*(a)*(i)*(aa)* of the CPA, as this was one of the options proposed by the prosecutor. Despite an indication that only an amount of R209 302.65 would be available to be transferred to the complainant's bank account the very next day, the trial court suspended part of the appellant's sentence without awarding the complainant any compensation. This leads me to conclude that insufficient regard was paid to the substantial loss that the complainant had suffered as a result of the

---

[11] *Director of Public Prosecutions v Thabethe* [2011] ZASCA 186; 2011 (2) SACR 567 (SCA).
[12] Ibid para 21

offence committed by the appellant, and to the complainant's dire financial position. While I accept that it was within the discretion of the regional court to determine an appropriate sentence, I am of the respectful view that its judgment does not demonstrate that it followed a victim-centred approach[13] which the circumstances of this case and interests of justice required. In failing to do so, it exercised its discretion unreasonably.[14] It is for that reason that I conclude that the full court correctly found that the sentence imposed by the regional court had to be tampered with.

[30] Despite the aforesaid conclusion, I am of the view that once it is accepted that the appellant was not, at the time of the trial, in a financial position to repay the full amount to the complainant, it was not open to the full court to make an award of compensation *in terms of s 300* of the CPA, on appeal. The full court, being a court of appeal, simply lacked the power to do so. This is because on a proper construction of s 300(1) of the CPA, only the regional court, as the court that convicted the appellant, could have awarded compensation that would have the effect of a civil judgment as stipulated in that provision. Both parties are of the view that the full court erred in issuing the compensation order set out in paragraphs 3 and 4 of its order. For the reasons I have set out above, I agree with their submission.

[31] Since the appeal before us was limited to whether the full court could award compensation on appeal, the appellant urged this Court to confine its interference on appeal to the setting aside of paragraphs 3 and 4 of its order. This submission fails to take into consideration that further evidence was admitted on appeal by the full court, and its ruling in relation to the admission of further evidence has not been attacked on appeal. In this regard, it must be

---

[13] Compare *S v Matyityi* 2011 (1) SACR 40 (SCA) paras 16-17. However, in this matter, the rights of victims to participate during sentencing were emphasised in circumstances where there was an absence of any information about the victims of rape and murder. It was in that context that this Court urged for an increased involvement of victims in the sentencing process.

[14] See *S v Pillay* 1977(4) SA 531 (A) at 538A-B.

borne in mind that the admission of further evidence on appeal was at the instance of the appellant, with no opposition from the State.

[32] The full court rightly granted the order for the admission of further evidence, given the delays caused by the application for leave to appeal and the application for review, respectively, resulting in a period of some nine years elapsing before the hearing of the appeal. Thus, there were exceptional circumstances that warranted the admission of this evidence.[15] It is for this reason that I am of the view that, to only grant an order setting aside paragraphs 3 and 4 of the full court's order would serve to perpetuate the injustice occasioned by the trial court's failure to pay due regard to the complainant's express wish to be awarded compensation. That being the case, I, too, am of the view that these limited grounds of appeal ought to be widened,[16] so that sentence can be considered afresh.

[33] As explained earlier, this matter has been pending before the courts for approximately a decade. Under different circumstances, it would have been desirable for this Court to bring this matter to a close without remitting it back to the regional court.[17] This, it could do by replacing the full court's order with an order setting aside the regional court's sentence. Cognisant of the flexibility granted by s 297 of the CPA, it could, in replacing the sentence imposed by the regional court, suspend part of the sentence on condition that the appellant pays compensation to the complainant within the contemplation of s 297(1)*(a)*(i)*(aa)*. That said, a noteworthy consideration in this matter is that, save for submissions pertaining to the setting aside of the compensation award, both counsel made no submissions to us regarding any other aspect of sentencing. This is probably because they did not anticipate that the grounds of appeal could be widened. Under these circumstances, the only appropriate order that can best serve the interests of justice is to remit the matter to the regional court for a fresh consideration of all aspects relevant to

[15] *S v Rapholo* 2022 (1) SACR 447 (SCA).
[16] See *S v Safatsa and Others*, note 8 above.
[17] *S v M* [2007] ZACC 18; 2008 (3) SA 232 (CC; 2007 (12) BCLR 1312 para 50.

sentencing, including additional evidence to the effect that the appellant is now able to pay the full amount of the complainant's loss as compensation within the contemplation of s 300 of the CPA. For all the reasons set out in the preceding paragraphs, I agree with the order proposed in the first judgment.

MB MOLEMELA
JUDGE OF APPEAL

APPEARANCES:

For appellant:	D.F Dorfling SC
Instructed by:	Du Plessis & Associates
	C/o Martins Attorneys, Bloemfontein
For respondent:	J.B. K Swanepoel
Instructed by:	Office of the Director Public Prosecution
	Bloemfontein