

**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

Case No.: A94/2015

In the matter between:

**THULANI MKHIZE AND ANOTHER**

Appellant

and

**THE STATE**

Respondent

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**CORAM:**

MOLOI, J et MOHALE, AJ

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**HEARD ON:**

12 OCTOBER 2015

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**DELIVERED ON:**

13 OCTOBER 2015

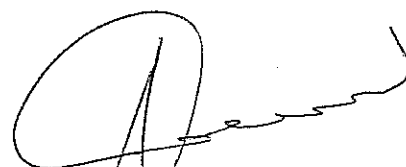
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**MOLOI, J**

[1] The two appellants appeal the sentences imposed for various convictions of *Robbery with Aggravating Circumstances, Attempted Robbery with Aggravating Circumstances and a series of Offences under the Firearms Control Act No. 60 of 2000*. The appellants were each sentenced to minimum prescribed sentences in terms of *section 51 of Act 105 of 1997* but the trial court ordered that the sentences run concurrently with the effect that each appellant would serve Twenty Five (25) years imprisonment. The trial court granted the appellants leave to appeal the sentences.

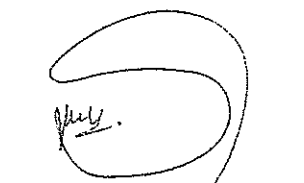
- [2] At the time of sentencing the appellants were already serving lengthy sentences for similar offences. The first appellant was serving 28 years imprisonment and the second appellant 15 years imprisonment. The effect of the trial court's sentences is that the first appellant would serve a total of 53 years imprisonment and the second appellant 40 years imprisonment.
- [3] The court of appeal can only interfere with the sentencing discretion of the trial court in limited circumstances. In this case even Mr Bontes for the prosecution conceded that the imposed sentences were shockingly inappropriate: *Zondo v S*, (627/12) [2012] ZASCA 51 of 28 March 2013 at paragraph 9.
- [4] Both Messrs Bontes for the prosecution and Mr Reyneke for the appellant submitted that the trial court should have taken into account the sentences already being served in determining appropriate sentences to impose as provided in section 280 (2) of the *Criminal Procedure Act No 51 of 1977* and *Mokheseng v S* (A247/2011) ZAFS HC 103 handed down on 31 May 2012). Both argued that the latter sentences should consequently be tempered with. We agree.
- [5] Consequently the following orders are made:
- 5.1 The appeal succeeds in part.

- 5.2 The sentence of twenty Five (25) years imprisonment in respect of each appellant is set aside.
- 5.3 The sentence in respect of the first appellant is Twenty Five (25) years imprisonment of which Thirteen (13) years imprisonment is ordered to run concurrently with the twenty Eight (28) years imprisonment previously imposed and the sentence in respect of the Second appellant is altered to read Fifteen (15) years imprisonment of which Ten (10) years imprisonment is ordered to run concurrently with the sentence of Twenty Eight (28) years imprisonment previously imposed.
- 5.4 The above sentences are pre-dated to 27 May 2013.



K. J. MOLOI, J

I concur.



MOHALE, AJ

On behalf of the Appellant: **Adv. REYNEKE**  
Instructed by:  
**Bloemfontein Justice Centre**  
**BLOEMFONTEIN**

On behalf of Respondent: **Adv BONTES**  
Instructed by:  
**Director of Public Prosecutions**  
**BLOEMFONTEIN**