

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEAL CASE NO: A75/2023

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
	27/05/2024
	DATE
	SIGNATURE

In the matter between:

KUNENE REUBEN LEBOHANG

APPELLANT

And

THE STATE

RESPONDENT

MABESELE J ET KUNY J

JUDGMENT

MABESELE J:

[1] The appellant was convicted of robbery with aggravating circumstances and sentenced to 15 years imprisonment. He appeals against sentence.

[2] The appellant raises two issues in this appeal. First, he contends that the order should have been made that the sentence of 15 years imprisonment imposed on him should run concurrently with the remaining portion of sentence of 15 years imprisonment which was imposed on him for the same offence mentioned in paragraph 1, which he committed in 2006. The appellant was out on parole when he committed the second offence. He had already served 12 years of 15 years imprisonment. His second argument is that the period of time that he had spent in prison, awaiting finalization of the trial, should have been considered as a strong mitigating factor which would have had a great impact on the sentence.

[3] Our courts have stated in numerous decisions that sentencing is a prerogative of the trial court. The appeal court can only interfere with the sentence imposed by the trial court if the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate.¹ The court in *S V Zinn* ² stated that where sentence is to be imposed on the accused regard must be had to the crime, the offender and the interests of society.

[4] The magistrate took into account the personal circumstances of the appellant which were placed on record. The appellant was 37 years old. He has six children from different women. The children reside with their mothers.

¹ See Director of Public Prosecutions, *Kwa Zulu-Natal V P*, 2006(1) SACR 243(SCA)
² 1969(2) SA 537(A) at 540(G)

The appellant spent one year and three months, awaiting the finalization of the matter.

[5] The magistrate was alive to the fact that, since the appellant has a previous conviction of robbery with aggravating circumstances for which he was sentenced to 15 years imprisonment, the appellant was supposed to have been sentenced to a period of 20 years imprisonment for committing the same offence, as prescribed by law³. The magistrate decided not to impose the said sentence on the appellant even though the magistrate correctly found no substantial and compelling factors which justified deviation from the prescribed minimum sentence.. For all these reasons, the appeal should be dismissed.

[6] Therefore, the following order is made:

1. The appeal against sentence is dismissed.

³ Part II of Schedule 2 of the Criminal Law Amendment Act makes provision for sentence to imprisonment for a period of 20 years for a second offender



M.M MABESELE

(Judge of the High Court Gauteng Local Division)

I agree



S.KUNY

(Judge of the High Court Gauteng Local Division)

Appearances

On behalf of the Appellant : Adv. Nhlazo

Instructed by : Legal Board Aid South Africa

On behalf of the Respondent : Adv. Zuma

Instructed by	: Director of Public Prosecutions
Date of Hearing	: 20 May 2024
Date of Judgment	: 27 May 2024