REPUBLIC OF SOUTH AFRICA

IN THE GAUTENG HIGH COURT
(LOCAL DIVISION JOHANNESBURG)

CASE NO: A268/2014

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

9 FEBRUARY 2015 **FHD VAN OOSTEN**

In the matter between

LEVY OUPA TUGE **APPELLANT**

And

THE STATE **RESPONDENT**

J U D G M E N T

VAN OOSTEN J:

[1] The appellant was convicted in the Regional Court sitting in Protea, Soweto of robbery with aggravating circumstances arising out of a hi-jacking incident. He was sentenced to 15 years' imprisonment. The appeal is directed against sentence only and is with leave of the court a quo.

[2] The hi-jacking incident occurred on 22 April 2012, in the early morning. The complainant, who was 66 years old, was in his Mercedes Benz vehicle, at home intending to go somewhere. He had just started the vehicle in the garage when the appellant opened the door on the driver's side and started assaulting him with a firearm. He was struck in the ribs and on the head. The appellant in addition was

armed with a jungle knife with which he stabbed the complainant in the waist. He furthermore hit him with fists and pulled the complainant out of the vehicle. The appellant's cohort came around the vehicle and joined him in kicking the complainant who had removed the keys from the vehicle and was lying on the floor. The appellant searched the complainant and took his wrist watch, cell phone, bank card, bracelet, necklace and all the money he had in his possession, which was R150. They got into the vehicle, disengaged the gears and free wheeled it forward where it collided with a wall of the house as the steering was locked. The appellant and his cohort fled the scene and neighbours and family members shortly thereafter arrived to assist the complainant. The complainant sustained broken ribs and open wounds on left hand, above the left eye, on the hip and on the inside of his mouth. He was treated at hospital and discharged.

[3] The appellant and his cohort were no strangers to the complainant: he had worked with the appellant's brother for a very long time. The appellant raised an alibi which was rightly rejected as false by the Regional Magistrate.

[4] In the consideration of an appropriate sentence the Regional Magistrate reasoned that the circumstances of this case justified a sentence of 18 years' imprisonment which was 'the normal sentence' that he would have imposed. In view however, of the appellant's age (he was 62 years old at the time of sentencing), the absence of previous convictions and a period of 14 months awaiting trial in custody, a lesser sentence of 15 years' imprisonment was imposed.

[5] It does not bear repetition that hi-jacking of vehicles often accompanied with violence, as in this case, is rife. The crime the appellant has been convicted of is extremely serious. The appellant was armed with a firearm and a knife, he acted in cohort with another and subjected the complainant to the humiliation of serious and gratuitous violence. The appellant's greed was not satisfied until after he had robbed the complainant of his personal items. In *S v Khambule* 2001(1) SA 501 (SCA)**,** the following was said concerning sentence in hi-jacking cases:

'The commission of this offence had become so common, especially in and around our large cities, that innocent men and women used the roads with great fear and anxiety. The brutal acts of robbers caused enormous damage to our country and cast a dark shadow over the

confidence of a community in policing, prosecution and administration of justice. An indication of the seriousness with which the Legislature viewed this sort of conduct appeared from the fact that a minimum sentence of 15 years' imprisonment for robbery with aggravating circumstances and for robbery of a motor vehicle was prescribed in s 51(1) read together with Part 11 of Schedule 2 of the Criminal Law Amendment Act 105 of1997, even for a first offender....'

[6] It is trite that sentencing remains pre-eminently within the discretion of the sentencing court. In *Mokela v The State* 2012 (1) SACR 431 (SCA) para 9, Bosielo JA put it thus:

'This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served. The limited circumstances under which an appeal court can interfere with the sentence imposed by a sentencing court have been distilled and set out in many judgments of this Court. See *S v Pieters* 1987 (3) SA 717 (A) at 727F-H; *S v Malgas* 2001 (1) SACR 469 (SCA) para 12; *Director of Public Prosecutions v Mngoma* 2010 (1) SACR 427 (SCA) para 11; and *S v Le Roux & others* 2010 (2) SACR 11 (SCA) at 26b-d.'

[7] I am unable to find any misdirections in the sentence imposed. In my view, the aggravating factors far outweigh the mitigating factors. When the nature of the crime committed, personal circumstances of the appellants, interest of society and the mitigating and aggravating circumstances are taken into account, I am of the view that a period of 15 years' imprisonment is fair in the circumstances and proportionate to the offence the appellant has been convicted of.

[8] In the result the appeal is dismissed.

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FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

I agree.

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K SATCHWELL
JUDGE OF THE HIGH COURT

COUNSEL FOR THE APPELLANT	***ADV M BOTHA***
COUNSEL FOR THE RESPONDENT	***ADV JG WASSERMAN***
DATE OF HEARING	***9 FEBRUARY 2015***
DATE OF JUDGMENT	***9 FEBRUARY 2015***