



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

- |     |                                       |
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| (1) | REPORTABLE: Yes / No                  |
| (2) | OF INTEREST TO OTHER JUDGES: Yes / No |
| (3) | REVISED.                              |

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DATE

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SIGNATURE

Appeal Case No. A559/2015

In the matter between:

**ALFRED ALLIE KOMANA**

**Appellant**

and

**THE STATE**

**Respondent**

**Summary: Sentence – appeal by the appellant against an order fixing a non-parole period of 40 years’ imprisonment – crimes committed before the promulgation of s 276B of the Criminal Procedure Act 51 of 1977 – appeal upheld – order was incorrectly made and set aside.**

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## JUDGMENT

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### **MEYER J (PRINSLOO and LOUW concurring)**

[1] The appellant, Mr Alfred Allie Komana, and two co-accused were arraigned before the Local Circuit Division for the Northern Circuit District of the High Court (Els J), each on one count of murder and one count of robbery with aggravating circumstances as defined in s 1 of the Criminal Procedure Act 51 of 1977 (the CPA). The offences were committed on 16 November 1999 at Huggelheim in the district of Pietersburg. On 9 February 2001 the High Court found the appellant, together with his two co-accused guilty on both counts. The trial judge sentenced the appellant to imprisonment for life pursuant to his conviction of murder and to 18 years' imprisonment pursuant to his conviction of robbery with aggravating circumstances. The trial judge fixed a period of at least 40 years during which the appellant shall not be placed on parole. Identical sentences were imposed upon the appellant's two co-accused. The trial judge dismissed the appellants' application for leave to appeal on both convictions and sentences. The appellants then successfully petitioned the Supreme Court of Appeal for special leave to appeal against the sentence of the full court. The SCA limited the leave to appeal to the order relating to parole.

[2] The victim, Mr Russel Glen Jooste, was assaulted and tied up in the cottage at the Huggelheim Guest House where he resided on 16 November 1999. He was robbed of certain of his possessions. He died as a result of the attack. His cause of death was 'BLUNT FORCE INJURIES TO THE HEAD'.

[3] Section 276B(1) of the Criminal Procedure Act 51 of 1977 (the CPA) Act provides that '[i]f a court sentences a person convicted of an offence to imprisonment for a period of two years or longer, the court may as part of the sentence, fix a period during which the person shall not be placed on parole.' Such period, in terms of that sub-section, is '. . . the non-parole-period, and may not exceed two thirds of the term of imprisonment imposed or 25 years, whichever is the shorter.' This provision was inserted into the CPA by s 22 of the Parole and Correctional Supervision Amendment Act 87 of 1997, which was promulgated on 12 December 1997 but only put into operation on 1 October 2004. Relevant provisions of the Correctional Services Act 111 of 1998 (the CSA) have also been amended to take account of such an order by a sentencing court. As was held in *Stander v The State* 2012 (1) SACR 537 (SCA) paras 7-8, prior to s 276B of the CPA a decision about parole remained exclusively within the domain of the Department of Correctional Services as an executive function and courts have persistently recognised the need for that to be so.

[4] The Supreme Court of Appeal in *Mchunu v The State* (825/2012) ZASCA 126, para 5, held as follows:

'As has been emphasised in *R v Mazibuko*, it is an ancient, well established principle of our common law that the liability for a penalty arises when the crime is committed and not when a person is either convicted or sentenced. An increase in penalty (which the fixing of a non-parole period is) will, therefore, ordinarily not operate retrospectively in circumstances where that additional burden did not apply at the time when the offence was committed. This principle was reaffirmed in *R v Sillas* and *S v Mpetha*. The crimes in question were committed before the coming into operation of s 276B of the Act. There are no special circumstances, recognised in our law, which would permit a departure from the general principle that sets its face against the retrospective operation of a penalty.'

(Footnotes omitted.)

[5] The offences in question were committed before the coming into operation of s 276B of the CPA. The order of the court below fixing a period of time before the appellants may be released on parole was therefore incorrectly made.

[6] The following order is made:

(a) The appeal is upheld.

(b) The order of the court below fixing a period of time to be served before the appellant may be released on parole is set aside.

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**WRC PRINSLOO**  
**JUDGE OF THE HIGH COURT**

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**PA MEYER**  
**JUDGE OF THE HIGH COURT**

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**JW LOUW**  
**JUDGE OF THE HIGH COURT**

Date of hearing: 22 April 2016  
Date of judgment: April 2016  
Appellant's counsel: LA van Wyk  
Instructed by: Legal Aid SA, Pretoria  
Respondent's counsel: P Vorster  
Instructed by: Director of Public Prosecutions, Pretoria