



CONSTITUTIONAL COURT OF SOUTH AFRICA

Agolle Abdi Jimmale and Another v The State

CCT 223/15

Date of judgment: 30 August 2016

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today, the Constitutional Court handed down judgment in an application for the Court to set aside a non-parole order issued by the High Court of South Africa, Limpopo Local Division, Thohoyandou.

On 12 June 2012, the applicants were convicted of murder. A custodial term of 25 years was imposed on each accused. The High Court further ordered that the applicants would be eligible for parole only after 20 years. Leave to appeal against the conviction and sentence was dismissed by the High Court on 15 June 2012 and so was the petition to the Supreme Court of Appeal on 22 September 2014.

On 18 November 2015, the applicants sought leave to appeal to this Court against the conviction and sentence. They also asked for the non-parole order (that is, an order by the High Court that a person sentenced not be considered for parole before a stated portion of the sentence has been served) to be set aside. In an order dated 17 February 2016, the Constitutional Court dismissed the application for leave to appeal against the conviction and sentence. What remained for determination was whether the non-parole order as part of the sentence imposed by the trial court should be set aside.

In a unanimous judgment by Nkabinde J, the Court held that the non-parole order should be set aside. It found that the High Court materially misdirected itself by imposing the 20 year non-parole-period without first establishing the exceptional circumstances necessary for making that order. Furthermore, the Court held that the High Court did not invite parties to make submissions in that regard, which it should have done. That being so, the Court held that in terms of section 73(6)(a) of the Correctional Services Act, the

applicants will be required to serve at least half their sentence before being eligible for parole.