



Commission for Gender Equality
A society free from gender oppression and inequality

25 April 2024

Media Statement

To: All Media Houses

COMMISSION FOR GENDER EQUALITY WELCOMES SUPREME COURT OF APPEAL'S RULING IN THE RAPE CASE AGAINST MR COKO

The Commission for Gender Equality (CGE) welcomes the Supreme Court of Appeal's (SCA) decision to uphold the State's appeal against the High Court's acquittal of Mr. Coko on a charge of rape. The CGE joined the appeal case as amicus curiae. Mr. Coko was accused of raping a 21-year-old woman, TS, who had repeatedly expressed her desire to preserve her virginity and not engage in penetrative intercourse.

Despite assurances from Mr. Coko that he respected her wishes, he proceeded to sexually penetrate her without her consent, causing her distress and pain. The Regional Court found the State's evidence compelling and convicted Mr. Coko of rape. He appealed his conviction to the High Court and the High Court ruled that his conviction was unsustainable based on the evidence presented. The High Court further found that the Regional Court made significant errors in understanding the concept of consent in sexual penetration cases. The High Court however found that consent can be given explicitly or implied through conduct.

The High Court postulated that the complainant was an active participant due to her lack of objection to various actions before the sexual penetration, such as kissing, undressing, and oral sex, and concluded that force or coercion was not used by the accused. The State appealed to the SCA, and yesterday the SCA ruled that consent must be given consciously and voluntarily, either explicitly or implicitly by individuals with the mental capacity to understand the nature of the act.



Commission for Gender Equality
A society free from gender oppression and inequality

The SCA highlighted that consent to specific acts of sexual penetration is necessary, and withdrawal of consent during the act is valid. The court also concluded that the accused intentionally engaged in penetrative sexual intercourse without consent despite assurances that he would not do so.

In its submission, the CGE referred the Court to foreign judicial precedent in interpreting sexual assault and in finding that “an act” referred to in section 3 of the Criminal Law (Sexual Offences and Related Matters Act) Amendment Act 32 of 2007 does not mean more than one act. Furthermore, the Court indicated that such interpretation would undermine the purpose of the legislation.

“The Supreme Court of Appeal’s decision to set aside Mr. Coko’s acquittal and uphold his conviction is a monumental step in the nation’s fight against the scourge of rape. A 21-year-old woman was raped, and the Commission was disturbed by sentiments expressed in the High Court’s judgment implying that she was an active participant in her own rape due to her lack of objection. We hope that the SCA judgment will provide clarity on the matter of consent in respect of sexual intercourse. We are equally relieved that the SCA has set the High Court ruling aside and we are looking forward to the consideration of the High Court on whether the sentence of 7 years imprisonment that was imposed by the Regional Court is appropriate in the matter.” said the Commission for Gender Equality’s Chairperson, Adv Nthabiseng Sepanya-Mogale.

The Commission welcomes the judgment as it reaffirms the rights of women and children to dignity and physical integrity.

Contact Person: Javu Baloyi (Spokesperson)

Email: Javu@cge.org.za

Cell: 083 579 3306