

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

Case no: CC29/2013
Date heard: 28/7/2016
Date delivered: 23/8/2016

In the matter between:

MFUNDO REUBEN GOCINI

Applicant

vs

THE STATE

Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

TSHIKI J:

[1] On the 1st March 2016, the applicant and other accused were convicted of the following offences:

[1.1] conspiracy to commit murder;

[1.2] murder of *Mlungisi Michael Gwana*;

and *Mr Francis Msomi* (accused no 5) was found guilty of being an accessory after the fact of murder of the first deceased *Mlungisi Michael Gwana*.

[2] Accused no 2, who is the applicant in the current proceedings was found guilty of conspiracy to commit murder and murder. The applicant was implicated to the offence by the evidence of, *inter alia*, *Luvuyo Kenneth Kulumani* who told the Court that he was approached by accused no 1 and the applicant who was accused no 2 in the trial proceedings.

[3] During cross-examination of the witness *Mr Kulumani*, a state witness, *Mr Skepe* for the applicant, introduced a defence of alibi which in my view did not assist his client's case. *Nomathamsanqa*, a witness whose evidence was also reliable told the Court that the applicant (accused no 2) and *Nceba* (accused no 1) were given the money by accused no 5, the policeman who was also found guilty of being an accessory after the fact of murder of the first deceased.

[4] According to *Nceba's* mother, *Nomathamsanqa Mirriam Swartbooi* knows the applicant and that the applicant is *Nceba's* friend. *Nceba* and applicant (accused no 1 and 2) gave *Nceba's* mother a sum of R13 000.00 for safe keeping. On the accepted evidence in this case, the money in issue was as a result of the proceeds of the monies that were taken from the deceased's estate after the deceased was murdered by applicant and his friends.

[5] The evidence of *Mr Alfred Erasmus* also corroborated the other evidence that on the 22nd November 2011, the applicant could not have been at his work on the 22nd November 2011. I, therefore, accepted the evidence of *Mr Alfred Erasmus* which corroborated the other evidence already led by the state. Therefore, this Court had rejected the evidence of the applicant because it was unreliable.

[6] I am mindful of the discrepancies in the evidence of *Mr Kulumani*. His evidence cannot be rejected *in toto*. In so far as the presence of the applicant in the vehicle this Court accepts his version. That version confirms that the applicant was in the company of the people who were in the vehicle of *Mr Kulumani* with a view to murder the deceased in this case which according to the evidence they did.

[7] In the result, I am of the view that there are no reasonable prospects of success in the application by the applicant herein.

[8] Therefore, the application for leave to appeal is hereby refused.

P.W. TSHIKI
JUDGE OF THE HIGH COURT

For the applicant : **Adv E Skepe**
Instructed by : **Legal Aid Board South Africa**
PORT ELIZABETH

For the respondent : **Adv M Sandan**
Instructed by : **National Director of Public Prosecutions**
PORT ELIZABETH