

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

Case number: CC39/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

SIGNATURE

DATE: 28/07/2023

In the matter between:

CORNE DE BEER

1ST Applicant

RICHARD BOTHA

2ND Applicant

WAYNE VAN DER WALT

3RD Applicant

Versus

THE STATE

Respondent

JUDGMENT

MOSOPA J

1. This is an application for leave to appeal against both conviction and sentence in terms of section 316(1) of Act 51 of 1977, alternatively in terms of section 17(1) (a)-(c) of the Superior Court Act 10 of 2013, to either the Superior Court of Appeal or to the Full Court of this Division.

2. On the 8 July 2022 I convicted all the applicants of charges levelled against them with the exception of count 2, in which I convicted them of a count of theft instead of robbery charge, that was levelled against them. After such convictions the

third Applicant terminated the services of Adv Rakobela and the new practitioner was then appointed on his behalf, Mr Botha. In order to familiarize himself with the matter, Mr Botha had to be furnished with the transcribed records, the process which I would say now took long to finalize. Eventually on the 13 April 2023 I then sentenced all applicants to sentences of life imprisonment on the murder charge and 4 years sentence, for fraud charges, 2 years and 3 years sentences for theft charges.

3. The applicants aggrieved by such conviction and sentences seek leave to appeal such. I must also note that this matter was postponed several times as the applicants were not brought to court despite being properly requisitioned.

4. Section 316(1)(a) of Act 51 of 1997 provides that;

"[316] - (1)(a) subject to section 84 of the Child Justice Act 2003 any accused convicted of any offence by a high court may apply to that court for leave to appeal against such conviction or against any resultant sentence or order."

5. Section 17 of the Superior Court Act 10 of 2013 ("SC Act") governs leave to appeal against a decision of a judge and provides that:

"17(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that;

(a) (i) the appeal would have reasonable prospect of success, or

(ii) there are some other compelling reasons why the appeal should be heard including conflicting judgement on the matter under consideration."

6. From the arguments presented on behalf of the applicants, it is apparent that the applicants are of the view that there are prospects of success on appeal and that another court can come to a different conclusion from the one reached by this court.

7. The court in the matter of **S v Smith 2012 (1) SACR 567(SCA)** at 570 par 7, when dealing with the concept of a "reasonable prospect of success" stated that;

"(7) What the test of reasonable prospects of success postulates is a dispassionate decision based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of trial court on proper grounds that he has prospects of success on appeal and that the prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case can not be categorized as hopeless. There must, in other words be a sound, rational basis for the conclusion that there are other prospects of success on appeal."

8. Finally in the matter of **Mount Cheavault Trust** (IT 2012/28) v **Tina Goom LLC** 14R/2014, when dealing with the concept stated that the wording of this subsection (making reference to 17(1)(a)(i) of ("SC Act") raised the bar of the test that now has to be applied to the merits of the proposed appeal before leave should be granted.

9. All the applicants provided their grounds for the application, and I need not repeat them in this judgement.

MERITS

10. In their notices for leave to appeal the applicants directed this court to where they are of the view that this court erred. Mr Burger on behalf of the first Applicant also brought a challenge to the findings, I made in a trial within a trial relating to search and seizure of certain items that were of relevance to this matter. I gave a detailed judgement which supports my findings and that I stand by such judgement.

11. A challenge was also brought against the application of this court of the doctrine of common purpose, in that I wrongly convicted the second applicant based on that doctrine. Also, on this aspect I gave a detailed account in my judgement as to why all the accused should be held liable on the doctrine of common purpose for the murder of the deceased. Mr Botha on behalf of the third applicant also contended that I erred, when finding at the verdict stage that the murder committed in this matter is premeditated. I also gave reasons for such a conviction in my judgement.

12. Based on the above, I find no rational basis for the conclusion that there are prospects of success on appeal in this matter and that no other court can come to a different conclusion than this court.

SENTENCE

13. It is trite that life imprisonment is an ultimate penalty that courts can impose. Trite is also a fact that, life imprisonment need not be imposed solely for the reason that it has been ordained by the legislature for specified crimes. As such, life imprisonment need not be imposed easily by the trial court.

14.1 fully gave my reasons why life imprisonment had to be imposed for the charge of murder. This murder was committed by a group of people acting in furtherance of common purpose. The deceased after being killed was moved away from scene and thrown at a place distant from the scene. The deceased's belongings including his vehicle were stolen by the applicants after the commission of such act. The applicants after the death of the deceased continued to fraudulently demand money from the relatives of the deceased and his bank details were used for fraudulent activities. It is my considered view that the circumstances of this matter do not warrant deviation from the imposition of life imprisonment.

15.1 am also of the view that no rational basis was established that there are prospects of success on appeal on sentences imposed and no other court can come to the conviction different from this court.

ORDER

16. In the result, the following order is made.

1. Application for leave to appeal against both conviction and sentence is hereby dismissed.

MJ MOSOPA
JUDGE OF THE HIGH

COURT, PRETORIA

Appearances:

For the 1ST applicant: Mr Burger

Instructed by: Kobus Burger Attorneys.

2nd Applicant Adv N Mazibuko

Instructed by: Legal Aid, South Africa

3rd Applicant Mr M Botha

Instructed by: Legal Aid, South Africa

Respondent: Adv N Maphalala

The Director of National Prosecution

Date of hearing: 28 July 2023

Date of judgment: 28 July 2023