

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



Case number: CC103/2011

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED

In the matter between:

MAKOBÉ, JOHN NARE

**APPLICANT
(ACCUSED NO 2 IN THE COURT A QUO)**

And

THE STATE

RESPONDENT

APPLICATION FOR LEAVE TO APPEAL

BASSON J,

[1] This is an application for leave to appeal lodged by the applicant (accused no 2 in the court *a quo*) against his conviction and sentence. Webster, J presided over the matter in the court *a quo*.

[2] Accused no 1 and 2 (the present applicant) were charged with the following four accounts:

Count 1: Housebreaking with the intent to rob and robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977.

Count 2: Murder read with the provisions of section 51(1) of Act 105 of 1997.

Count 3: Contravention of section 3 of Act 60 of 2000, that is the unlawful possession of a firearm, without being the holder of a licence to possess such firearm.

Count 4: Contravention of section 90 of Act 60 of 2000, that is unlawful possession of ammunition without being the holder of a licensed firearm, capable of firing such ammunition.

[3] This case emanated from an incident on the night of 10-11 February 2011 when two intruders entered a house and shot and killed the deceased. During the robbery various items were also stolen. After summarising the facts, the court *a quo* tied accused no 1 to the crime scene by virtue of his palm print that was lifted from the scene of the crime. The court was satisfied that accused no 1 was positively linked to the crime scene. Two pieces of evidence linked accused no 2 to the scene of the crime. The first was a cellular phone that was allegedly sold by him for R500.00 and the second was a firearm that was found to have fired one of the bullets that were found in the deceased's house. The court evaluated the evidence in totality and concluded that it had no hesitation in rejecting the versions presented by the two accused to the court as being totally untrue.

[4] Both accused were found guilty on all counts. On 18 January 2013 the court imposed in respect of count 1 imprisonment of 20 years; count 2 life imprisonment; count 3 imprisonment of 10 years; and count 4 imprisonment of 5 years. The sentences on counts 1, 3 and 4 were ordered to run concurrently with the sentence on count 2.

[5] Accused no 1 applied for leave to appeal in 2014 and on 15 March 2014, Webster, J refused leave to appeal. Accused no 1 unsuccessfully petitioned to the SCA.

[6] The applicant (accused no 2) now, after six years, claims that the court *a quo* erred in finding him guilty beyond reasonable doubt. He also now claims that the court erred in the imposition of sentence and that there exist compelling and substantial circumstances justifying a lesser sentence.

[7] The delay in this application for leave to appeal is extraordinary and there is no explanation before the court for this delay. The application for leave to appeal should therefore be dismissed on this basis alone. However, even if condonation was to be granted, the application for leave to appeal is dismissed on the grounds that there are no reasonable prospects of success and there is no other compelling reason why the appeal should be heard. The court *a quo* thoroughly evaluated all the evidence and the considerations that should be taken into account in imposing an appropriate sentence.

Order

[8] The application for leave to appeal against conviction and sentence is dismissed.

A.C. BASSON

JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email. The date for hand-down is deemed

to be 15 April 2021.

Case number : CC103/2011

Matter heard on : 14 April 2021 via MS Teams

For the Applicant : Adv M Moloi

Instructed by : Legal Aid of South Africa

For the Respondent/State : Adv K Mashile

Instructed by : Director of Public Prosecutions

Date of Judgment : 15 April 2021