



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES / NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 53/18

In the matter between:

JUAN PIETER SONNENBERG

Applicant

and

THE STATE

Respondent

CORAM: MOLITSOANE, J

HEARD: 20 SEPTEMBER 2019

JUDGMENT BY MOLITSOANE, J

DELIVERED: 26 SEPTEMBER 2019

- [1] The applicant seeks leave to appeal to the Full Court of this division, alternatively, the Supreme Court of Appeal the whole of my judgment on both the conviction and sentences imposed. The applicant was convicted on three counts of murder and one count of contravention of s90 of the Firearms Control Act 60 of 2000-

possession of ammunition. He was sentenced to life imprisonment on each count of murder and three years' imprisonment on the ammunition charge. Although the applicant seeks leave to appeal the whole of my judgment, the grounds of this application for leave to appeal are confined to the attack on the convictions of murder. The submission by Counsel for the Applicant were likewise confined to the murder charges.

[2] In terms of the provisions of s17(1) of the Superior Court's Act 10 of 2013 leave to appeal may only be granted if the judge concerned is of the opinion that :

1. The appeal would have a reasonable prospects of success or if there is some compelling reason why leave should be granted;
2. The decision sought on appeal does not fall within the ambit of s16(2)(a) of the Act;
3. Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[3] In **Smith v S**¹ the court dealt with the question of what constitutes reasonable prospects of success as follows:

"[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts on the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial Court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those 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 cannot be categorized as hopeless. There

¹ 2012(1) SACR 567(SCA) par [7].

must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”

- [1] In **MEC for Health, Eastern Cape v Mkhitha and Another** (1221/2015[2015] ZASCA 176(25 November 2016) the court held as follows:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospects of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”

- [4] The applicant essentially asserts that this court erred in coming to the conclusion based on circumstantial evidence that the three deceased found on his farm, known as Diamant, were in their life time killed by him.
- [5] The circumstantial evidence, inter alia, upon which this court based its conviction may conveniently be summarised as follows: The three deceased men (the deceased) were residents of the town of Christiana. The applicant resided at Hertzogville, a town near Christiana. On the day that the deceased were last seen in Christiana the deceased had visited his deceased girlfriend’s mother at Christiana. When the applicant left the house of his deceased girlfriend’s mother the deceased together with other

three male persons boarded his bakkie. The applicant was the driver. The three other male persons alighted the bakkie of the applicant in the town of Christiana and his car, with the deceased still on it, were last seen driving towards the direction of residence of the applicant at Herzogville. The deceased were last seen alive on that day and were reported missing the next day.

[6] The police began to investigate the disappearance of the deceased almost immediately they were reported missing. During the investigation they also questioned the applicant about the disappearance of the deceased. The applicant intimated to the police that he was never at Christiana and had never seen the deceased on the day of their disappearance.

[7] The remains of the deceased were discovered about a month later buried in shallow graves on the farm of the applicant where he also resided. The deceased were shot on the head and their bodies crushed. The deceased were clearly murdered according to the expert testimony led.

[8] The applicant chose not to put any version to any of the witnesses. He chose not to dispute any statement to any of the witnesses for the state including the fact that he was on the day of the disappearance of the deceased at Christiana and that the deceased boarded his bakkie. The cross examination was confined to trying to elicit differences in the observations by the state witnesses. The cross examination also centred on possible speculations about how the deceased could have been brought to the farm of the applicant.

[9] Against this background it has to be borne in mind that the deceased were last seen on the bakkie of the applicant when it

travelled *towards the direction of the farm of the applicant*. There is no evidence before court that the deceased did indeed arrive on the said farm or whether they alighted along the way. The remains were also discovered about a month later. I am of the considered view that on these two points alone, another court may find that the necessary nexus tying the applicant to the murders may not exist. For this reason, I am of the view that another court may come to a different finding to the one this court arrived at and consequently I find that the applicant has prospects of success on appeal on the merits.

- [10] The applicant was 61 years of age at the time of his sentencing. He also had a medical condition which required medical attention. He was a first time offender. The murders committed were, however, gruesome and heinous. In view of the advanced age and health condition of the applicant I am of the view that another court may find that they constitute substantial and compelling circumstances which should have warranted this court to have deviated from imposing the minimum sentences of life imprisonment. In view of the fact that no grounds of appeal were set out in respect of contravention of section 90 of Act 60 of 2000 I am unable to grant leave to appeal that conviction and sentence. I make the following orders:

[11] **ORDER**

1. The applicant is granted leave to appeal the convictions and sentences on three counts of murder to the Full Court of this Division;

2. The applicant is denied leave to appeal the conviction and sentence on a charge of contravention of s90 of the Firearms Control Act, 60 of 2000.

P.E. MOLITSOANE, J

On behalf of the Applicant:

Adv. J.M. Rust
Instructed by:
Haarhoffs Inc
Kimberley

On behalf of the Respondents:

Adv.J.M. de Nysschen
Instructed by:
Deputy Director of Public Prosecutions
BLOEMFONTEIN