

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

 17/02/2017

CASE NUMBER: A905/2014B

17/2/2017

In the matter between:

THE DIRECTOR OF PUBLIC PROSECUTIONS:

APPELLANT

GAUTENG (Pretoria)

And

BUTI WILLIAM MTSHALI

RESPONDENT

JUDGMENT

KUBUSHI, J

[1] The respondent, Buti William Mtshali, was on 4 December 2012 convicted in the Regional Court for the Regional Division of Limpopo, held at Mokerong in Mokopane, of two counts, namely count 1 rape and count 2 attempted murder. He was on the same day sentenced to five years imprisonment suspended for a period of five years on the count of rape and payment of a fine of R2 000 or twelve months imprisonment on the count of attempted murder.

[2] The appellant applied in terms of s 310A of the Criminal Procedure Act 55 of 1977 for leave to appeal the sentence imposed by the trial court. The application for leave to appeal was heard and granted by De Vos J in chambers on 20 June 2016. Leave to appeal was granted to the Gauteng Division of the High Court of South Africa, Pretoria (the Gauteng Division). The appellant is now before us appealing the sentence only.

[3] On the other hand, there are two further matters, filed by the respondent, pending in the Limpopo Division of the High Court of South Africa, Polokwane (the Limpopo Division), namely, the respondent's application for the review of the proceedings whereby he was found guilty of rape and attempted murder; and the respondent's petition to the Judge President of the Limpopo Division for leave to appeal the conviction and condonation.

[4] In opposition to the appellant's grounds of appeal the respondent has raised various points *in limine*, in particular the submission that it would be in the interest of justice that all matters concerning the merits (including any further appeals) must first be finalised before the matter of sentence can be addressed. In argument before us his counsel drove the point that these three matters should be heard all at the same time by the Limpopo Division as such the appeal before us should be removed to that Division where it will be heard and finalised together with the two other matters pending there.

[5] In its heads of argument the appellant concedes that it would be financially prudent for the appellant if the review and appeal are heard on the same day by the same court. However, in argument before us, the appellant's counsel was adamant that it was not in the interest of justice that the appeal before us not be heard today as it will be prejudicial to the respondent, the complainant in this matter and the society. Actually, according to counsel, it is not necessary that the three matters be heard and finalised together since the respondent's case does not depend on the other two matters for it to be heard. She argued vehemently for us to proceed with the appeal application before us.

[6] The appellant's counsel further contents that should we make a finding that the three matters be heard and determined by the same court, the appropriate court to finalise the matters is the Gauteng Division because it has jurisdiction. The two matters in the Limpopo Division are the ones to be removed to the Gauteng Division, so she argued.

[7] Section 27 (1) (b) (ii) of the Superior Courts Act 10 of 2013 (the Act) stipulates that if any proceedings have been instituted in a Division, and it appears to the court that such proceedings would be more conveniently or more appropriately heard or determined by another Division, that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division.

[8] The approach of this court is that it is in the interest of justice for the three matters, that is, the appeal on sentence, the appeal on conviction and the review application, be heard and determined by the same court. It is, therefore, my view that the appropriate court to hear these matters is the Limpopo Division. This is so because it will be financially convenient for the complainant that the matter be heard in that Division. It is also appropriate and convenient because two of the matters are already before that court. This I say mindful of the

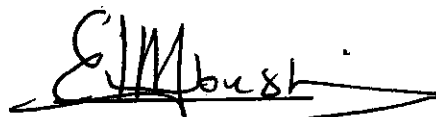
appellant's argument that the respondent's review application and petition are not yet finalised and that a long time has elapsed since judgment was granted in this matter. However, the two matters in the Limpopo Division have already been launched and the complainant is also resident within that Division. It is prudent that the matter be moved there.

[9] Without having to decide on the issue of jurisdiction, my view is that s 27 (1) (b) (ii) of the Act empowers this court to remove the proceedings to the Limpopo Division. I am therefore making an order in terms of the section to remove the appeal before us to the Limpopo Division.

[10] In the circumstances I make the following order:

10.1 The appeal is removed from the roll.

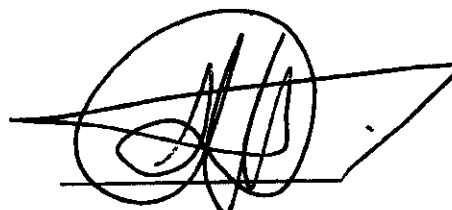
10.2 The proceedings are removed from the Gauteng Division of the High Court of South Africa, Pretoria to the Limpopo Division of the High Court of South Africa, Polokwane.



E. M. KUBUSHI,

JUDGE OF THE HIGH COURT

I concur



D. MAKHOSA,

ACTING JUDGE OF THE HIGH COURT

Appendants:

On behalf of the appellant:

Adv: J. CRONJE

Instructed by:

DIRECTOR OF PUBLIC PROSECUTIONS

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On behalf of the respondent:

MR: H.L. KLEYNVELD

Instructed by:

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