

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : A150/2011

In the matter between:-

MTHANDEKI KLEINBOOI NKOMO

Appellant

versus

THE STATE

Respondent

CORAM:

KRUGER *et* MOLEMELA, JJ

JUDGMENT BY:

KRUGER, J

HEARD ON:

24 OCTOBER 2011

DELIVERED ON:

24 OCTOBER 2011

[1] The accused applies for leave to appeal against our judgment of 5 September 2011 dismissing his application to lead further evidence and his appeal.

[2] The application to lead further evidence was made under section 22 of the Supreme Court Act 59 of 1959. The accused could not employ section 316(5) of Act 5 of 1977

because such application can only be brought together with an application for leave to appeal directed at the presiding officer at the trial, and the envisaged evidence was not to hand at that stage, but was only received later.

[3] On the merits the complainant was a single witness on the allegations relating to the charge and she did not report the incident immediately.

[4] We are of the view that there are reasonable prospects that another court can come to a different conclusion, both on the merits and the request that the matter be remitted to the regional court for the hearing of further evidence.

ORDER

The accused is granted leave to appeal to the Supreme Court of Appeal against the whole of our judgment of 5 September 2011 including our dismissal of the appeal and appellant's request that the matter be remitted to the regional court for the hearing of further evidence.

A. KRUGER

I agree

M.B. MOLEMELA

On behalf of appellant:

Adv J I Nel
Instructed by:
Azar Havenga Attorneys
BLOEMFONTEIN

On behalf of the respondent:

Adv S Giorgi
Instructed by:
Director Public Prosecutions
BLOEMFONTEIN

/sp/wm