

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 129/2007

In the matter between:-

MICHAEL DLOMO

Applikant

and

THE STATE

Respondent

JUDGMENT BY: MUSI, JP

DELIVERED ON: 8 DECEMBER 2011

- [1] This is an application for leave to appeal against sentence only. The application was brought out of time and accordingly the applicant applied for condonation simultaneously with the instant application. The reason for the delay is that the applicant needed legal assistance for which he needed funds. When his family could not raise funds he approached Legal Aid SA but by the time they allocated a lawyer to him the period within which the application should have been brought, had expired. Given that the applicant is in jail I consider his explanation to be reasonable and I would accordingly grant condonation.

[2] The judge who convicted and sentenced the applicant (Beckley J) has since retired and unavailable and the matter was accordingly referred to me. I adopted a rather unusual procedure, where I directed that heads of argument be filed dealing with the only issue that needs to be canvassed at this stage, namely, whether there are reasonable prospects of success on appeal. I indicated that once the heads have been filed by all the parties I would deal with the matter in chambers and provide the parties with a written decision. I referred the parties to the judgment in **LAW SOCIETY, THE NORTHERN PROVINCES v MOGAMI AND OTHERS** 2010 (1) SA 186 (SCA), para 3. I indicated that if any of the parties was not happy with this procedure they should say so but none objected and the heads of argument were duly filed as requested.

[3] The applicant was charged with the murder of his wife, Nunu Maria Motloun, committed on 17 February 2007 in Deneysville. He pleaded guilty and was duly convicted as charged. He was sentenced to 18 (eighteen) years imprisonment.

[4] It is trite that sentence is a matter within the discretion of the trial court and that a court of appeal will only interfere therewith if the sentence is shockingly inappropriate or it is vitiated by misdirection or irregularity. The only ground of appeal advanced on behalf of the applicant is that the trial court overemphasised the seriousness of the offence and did not take sufficient account of the mitigating factors. However, a perusal of the judgment of Beckley J on sentence demonstrates that he considered all the factors relative to sentence. Given the nature and gravity of the offence and the brutality with which it was committed, it can hardly be said that the sentence imposed is shockingly inappropriate. I conclude that there are no reasonable prospects of success on appeal.

[5] The application is dismissed.

H.M. MUSI, JP

On behalf of the applicant: Attorney K. Pretorius
Instructed by:
Legal Aid SA
BLOEMFONTEIN

On behalf of the respondent: Adv. R. Hoffman
Instructed by:
The Director: Public Prosecutions
BLOEMFONTEIN

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