



IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY

Case No: K/S 16/17

In the matter between:

MZWANDILE MAJOSI

Applicant

And

The State

Respondent

Coram: Lever J

JUDGMENT

Lever J:

1. This is an application for leave to appeal. The applicant in this matter faced three charges in the court *a quo*. Firstly, a charge of robbery with aggravating circumstances as read with the minimum sentence provisions of the Criminal Law Amendment Act¹ (CLAA also colloquially

¹ Act 105 of 1997.

known as the minimum sentencing Act) . Secondly, murder also read with the minimum sentencing provisions of the CLAA. Thirdly, certain charges under the Drugs and Drugs Trafficking Act².

2. The applicant pleaded guilty and was found guilty on charge 3 being the charges related to drugs. The applicant pleaded not guilty to the charges relating to the robbery with aggravating circumstances and the murder charge.
3. The applicant was found guilty on both the charge of robbery with aggravating circumstances and the murder charge. He was sentenced to fifteen years and life imprisonment respectively. On the drugs related conviction, the applicant was sentenced to one year imprisonment. The sentences on count 1 and count 3 were to run concurrently with the life sentence imposed on count 2. The applicant was declared unfit to possess a firearm.
4. The applicant seeks leave to appeal against the conviction and sentences imposed in respect of the robbery with aggravating circumstances charge as well as the murder charge.
5. The grounds of appeal as set out in the Notice of Application for Leave to Appeal are set out in respect of the convictions: "That there exists a

² Act 140 of 1992.

reasonable possibility that another court on appeal may come to a different conclusion on the evidence presented." In respect of the sentences imposed the grounds of appeal relied upon read as follows: "That there exists a reasonable possibility that another court on appeal may find that there are substantial and compelling circumstances present which would justify the imposition of a lesser sentence than that of life imprisonment."

6. The first thing to note about the grounds of appeal, both in respect of the convictions and the sentencing, is that they are broad and general. No specified mis-directions or errors are referred to in either the case of the convictions or the sentences imposed.
7. The evidence upon which the applicant was convicted is comprehensively dealt with in the judgment. I will not repeat my judgment. However, I will summarise the salient points to the extent that it is necessary to deal with this application for leave to appeal.
8. The State presented three types of evidence that implicated the applicant. The first category of evidence adduced by the State were certain statements the applicant made to three different persons who were known to him. The second category of evidence was the fact that certain of the deceased's belongings were found in the possession of the applicant shortly after the body of the deceased was discovered. The third category of evidence includes DNA evidence which corroborates the

version of one of the persons to whom certain admissions were made by the applicant.

9. The first person to whom admissions were made was a certain Mr Plaatjies. The applicant took Mr Plaatjies to a point in the veld where he said that he had robbed and stabbed a person the night before. He also told Mr Plaatjies that the person was "hardegat" and fought back to the extent that he broke a knife in the process and had to use a second knife he carried, to finish the job. Mr Plaatjies took the Investigating Officer to the spot pointed out to him by the applicant.
10. Mr Plaatjies' evidence is supported and corroborated by the following facts: the deceased's body was found in that general area; a broken knife was found at the spot pointed out by Mr Plaatjies; there was blood at the spot pointed out by Mr Plaatjies; a sample of this blood was taken and sent away for DNA testing; the DNA results confirmed that such blood came from the deceased; the applicant had a wound on his hand, which was not adequately explained.
11. Then applicant's life partner who had two children with the applicant testified. The life partner of the applicant whose name is Lerato Betty Louw testified that the applicant had informed her that he had fought with the deceased. Ms Louw impressed the court as a forthright and honest witness. Her evidence dovetails with that of Mr Plaatjies and provides support and corroboration for his evidence.

12. Then a Ms Williams gave evidence that she and the applicant had struck up a conversation on the night that the deceased was killed. That the applicant had taken her cell phone number. The following morning at 6 am applicant contacted her and came to see her at her flat. Ms Williams testified that she noticed a fresh wound on the applicant. It was a fresh cut on his right hand between the thumb and the index finger. Ms Williams testified that he informed her that he received that wound whilst trying to protect the deceased and that after he was wounded, he ran away. This evidence places the applicant on the scene when the deceased was attacked.
13. The applicant in his evidence merely denied this and contended Ms Williams was lying. Ms Williams had no reason to lie. She had just met the applicant and the deceased some hours before. She had no axe to grind with either of them. Her evidence was not undermined in any material respect.
14. The next category of evidence were the personal items of the deceased found in the applicant's possession shortly after the death of the deceased. These items included a medical aid membership card, the deceased's shoes, the deceased's cell phone; an SAPS investigation diary and certain store cards of the deceased. The applicant's explanation that the deceased had given him these items was not convincing. The deceased was a policeman he was a member of the GEMS medical aid scheme. This medical aid membership card is not

something that one would simply give away. Similarly, the deceased's shoes are such a personal item that if given away there would be some context or background to the fact that shoes would be given to another person. The applicant could not provide this context or background. The evidence before the court showed that the deceased's body was barefoot when it was discovered.

15. The wound to his right hand was explained by applicant to have been inflicted by a fall during a soccer match. At odds with the explanation given to Ms Williams. Also, applicant was given a postponement and other assistance to place before the court evidence to support his version. Despite being afforded the opportunity to secure this evidence, it was never forthcoming. As pointed out in the judgment no onus was placed on the applicant it is only mentioned to show that applicant was given a fair opportunity to place before the court evidence that might support his version.
16. The final category of evidence placed before the court was the DNA evidence already referred to above. Nothing more needs to be said about it.
17. All the evidence placed before the court knits together to form a picture. Taking account of all the evidence placed before the court and viewing such evidence holistically, I cannot come to any other conclusion than that the applicant robbed and murdered the deceased.

18. Having considered the evidence again I cannot conclude that there is a reasonable possibility that another court would come to a different conclusion.
19. Similarly in respect of the sentences imposed on the robbery and murder convictions, I cannot find substantial and compelling reasons to depart from the prescribed minimum sentence. Nor can I find after reconsidering the evidence placed before the court that another court would reasonably come to a different conclusion.
20. In respect of both the convictions and sentences I must accordingly refuse leave to appeal.
21. Both the applicant and the respondent requested me to decide this application on the papers before the court. After having read the Heads of Argument filed on behalf of the respective parties and after having read the record I have acceded to this request.

Accordingly, the following order is made:

- 1) The application for leave to appeal in respect of both the convictions and the sentences is refused.



Lawrence Lever
Judge
Northern Cape Division, Kimberley

REPRESENTATION:

Applicant: Adv A Van Tonder and Mr H Steynberg oio
Legal Aid SA, Kimberley

Respondents: Adv K Ilanga and J Rosenberg oio The
Director of Public Prosecutions, Kimberley.

Date of Judgment: 07 June 2024