

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION - MAKHANDA)**

Case No: CC 31/2024

In the matter between:

SIYABULELA ANDRIES MANZANA

First Applicant

UNATHI TSHALI

Second Applicant

and

THE STATE

**JUDGMENT
(APPLICATION FOR LEAVE TO APPEAL)**

MOLONY AJ:

[1] The applicants in this matter have applied for leave to appeal against their sentences to a full bench of this division.

[2] It has been submitted that this court erred in not finding that substantial and compelling circumstances were present in regard to counts 3, 4 and 5. The grounds advanced were the following:

2.1 The relatively clean records of the applicants.

2.2 The fact that the applicants spent approximately 14 months in custody awaiting trial.

2.3 The applicants co-operated with the police and made full confessions, and although they initially pleaded not guilty, they ultimately admitted to all the allegations against them.

2.4 The remorse expressed by both applicants through their counsel.

2.5 The sentences imposed were disproportionate to the applicants' personal circumstances, the seriousness of the offence and the interests of society, and were thus unjust.

[3] In regard to counts 1, 2, 6 and 7 it was submitted that the sentences imposed were unduly harsh, and that this court erred in over-emphasising the seriousness of the offences, and the interests of society, and under-emphasising the personal circumstances of the applicants.

[4] The State, in opposing the application for leave to appeal, submitted *inter alia* the following:

4.1 That all relevant aspects had been carefully considered by the court in regard to the issue of substantial and compelling circumstances. Reference was made to the significant aggravating factors present in this matter.

4.2 That the sentences imposed in regard to counts 1 and 2 were appropriate, as the applicants planned the commission of the offences and broke into the property of their employer.

4.5 The court deviated from the applicable maximum sentences in regard to counts 6 and 7.

4.6 That the court applied an element of mercy by ordering that the sentences in regard to counts 1, 2, 4, 5, 6 and 7 should run concurrently with the sentence imposed in regard to count 3. Lesser sentences would be lenient and disproportionate to the offences.

4.7 That the application has no merit and there are no reasonable prospects of success on appeal, and, furthermore, there are no compelling reasons for granting the application for leave to appeal.

[5] The relevant test in regard to leave to appeal is whether or not the appeal would have reasonable prospects of success. In this regard see the guidance provided in *S v Smith* 2012 (1) SACR 567 (SCA) at paragraph 7.

[6] I am furthermore mindful that when considering an application for leave to appeal a court should adopt a holistic approach in evaluating the evidence before it, and have regard to the mosaic of proof as a whole.

[7] I have given careful consideration to the grounds of appeal advanced.

[8] These are grounds that were previously raised and considered and, given the circumstances of this particular matter, I am not persuaded that there are reasonable prospects of success on appeal in regard the sentence imposed.

[9] The application for leave to appeal to appeal in regard to the sentences imposed on both applicants is accordingly dismissed.

N MOLONY
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the State: Adv Mtsila *instructed by*
Deputy Director of Public Prosecutions
MAKHANDA

For the Accused: Adv Geldenhuys *instructed by*
Legal Aid South Africa
MAKHANDA

Heard on: 03 September 2024

Judgment delivered: 03 September 2024