



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: SS001/2019

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED:
	
DATE	

In the matter between:

MAOANA MACDONALD

Applicant

and

THE STATE

Respondent

LEAVE TO APPEAL - JUDGMENT

MOGALE AJ

INTRODUCTION

[1] This is an application for leave to appeal against this court's judgment on the conviction and sentence granted on 26 June 2020 and 17 January 2021, respectively.

[2] The applicant filed notice of the application for condonation on 10 June 2021, stating the reasons for the delay. The applicant seeks condonation for the late filing of the application.

[3] Considering the applicant's explanation for the delay and the state's refusal to oppose the application, granting condonation would be in the interest of justice. Therefore, the application for condonation was granted.

[4] The application is brought in terms of section 17(1)(a) and (ii), to wit, that the appeal would have a reasonable prospect of success and/or there are some compelling reasons why the appeal should be heard.

AD CONVICTION

[5] The applicant raised several grounds for appeal, arguing that the court erred in fact and/or in law in making the following findings:

6.1. That the state proved the guilt of the appellant beyond a reasonable doubt;

6.2. That there are no improbabilities in the state's version.

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6.3. That the state witnesses gave evidence in a satisfactory manner.

6.4. The evidence of the state witnesses can be criticized on the matter of detail only, whereas the evidence was contradictory in material respect.

6.5. The minor differences between the appellant's evidence and the defence witnesses were sufficient to reject the appellant's evidence.

[7]. In convicting the appellant, the court erred in failing to:

7.6. Properly analyses or evaluates the evidence of the state witnesses.

7.7. Properly considers the improbabilities inherent in the state version

[8] In convicting the appellant, the court further erred in the following aspect:

8.8. Rejecting the appellant's evidence as being not reasonably possibly true.

8.9. Accepting the evidence of the state witnesses and rejecting that of the appellant.

8.10. Holding against the appellant contradictions between his evidence and the facts put to witnesses in cross-examination.

8.11. Holding against the appellant matters that are not put to witnesses.

8.12. Giving importance to minor discrepancies between the defence witnesses.

[9]. **AD SENTENCE**

An effective term for a life sentence is strikingly inappropriate in that it:

9.13. It is out of proportion to the totality of the accepted facts in mitigation.

9.14. In effect, it disregarded the period spent by the appellant in custody awaiting trial.

9.15. The court erred by not considering that the appellant had no previous conviction

9.15.1. There was absence of planning

9.15.2. The age and personal circumstances of the appellant.

9.15.3 The rehabilitation element.

9.15.4 The mitigation factors inherent in the facts found proved.

9.16. The court further erred in over-emphasizing the following factors:

9.16.1. The seriousness of the offence.

9.16.2. The interest of the society

9.16.3. The prevalence of the offence.

9.16.4. The deterrent effect of the sentence

9.16.5. The retributive element of sentencing.

[10] Both parties submitted written heads of arguments wherein the following was submitted:

[11] The applicant argued that there are reasonable prospects of success on appeal against the conviction, and another court will find a different finding. It was further contended that the court erred by not considering the applicant's circumstance, the time spent in custody awaiting trial, as substantial and compelling circumstances for deviation from the Minimum Sentencing Act. The court was requested that the applicant be granted leave to appeal against both the conviction and sentence.

[12] The respondent responded that the state proved beyond a reasonable doubt that the applicant was the one who committed the offences and correctly convicted him. The court evaluated all factors and correctly imposed a prescribed sentence. They further argued that there are no prospects of success in the application, and no other court can come to a different conclusion.

[13] The issue to be determined by this court is whether there is a reasonable prospect that the appeal would succeed in terms of s17 of the Superior Courts Act 10 of 2013("the Act").

[14] The application for leave to appeal is regulated by s 17(1)(a) (i) and (ii) of the Act, which states that:

- (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-
- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there are some other compelling reasons why the appeal should be heard, including conflicting judgments on the matter under consideration.

[15] Our courts have consistently applied the test on whether leave to appeal should be granted. The liberal approach to granting leave by courts is discouraged as inconsistent with s17 of the Act. For instance, in *Mothule Inc Attorneys v The Law Society of the Northern Provinces and Another*¹, the Supreme Court of Appeal stated as follows regarding the trial court's liberal approach to granting leave to appeal

"It is important to mention my dissatisfaction with the court a quo's granting of leave to appeal to this court. The test is whether there are any reasonable prospects of success in an appeal. It is not whether a litigant has an arguable case or mere possibility of success."

[16] In *Mount Chevaux Trust v Goosen*², the court explains the test as follows:

"The principle to be adopted in applications for leave to appeal has been codified in section 17(1) of the Superior Courts Act 10 of 2013 ('the new Act') and is, inter alia, 'whether the appeal would have a reasonable prospect of success. Bertelsmann J, in The Mont Chevaux Trust (IT 2012/28) v Tina Goosen & 18 Others LCC14R/2014, (an unreported judgment of this Court delivered on 3 November 2014) in considering whether leave to appeal ought to be granted in that matter, held that the threshold for granting leave to appeal had been raised in the new Act. Bertelsmann J found that using the word 'would' in the new Act indicated a measure of certainty that another Court would differ from the Court whose judgment is sought to be appealed against. Consequently, the bar set in the previous test, which required a reasonable prospect that another Court might come to a different conclusion', has been raised by the new Act, and this, then, is the test to be applied in this matter."

[17] In considering issues raised for the application of the appeal on conviction, I am of the view that the applicant would not succeed in the appeal. The evidence by the state was overwhelming, and the respondent version was not reasonably possibly true. His evidence was a bare denial even after overwhelming evidence was tendered.

[18] The deceased was executed brutally at her home after showing the appellant kindness as he used to stay and work at her place. If the appellant felt provoked by how she used to speak to him, he had an opportunity to be free from the environment as his duties were discharged that week.

¹ 9213/160 [2017] ZASCA 17 (22 MARCH 2017)

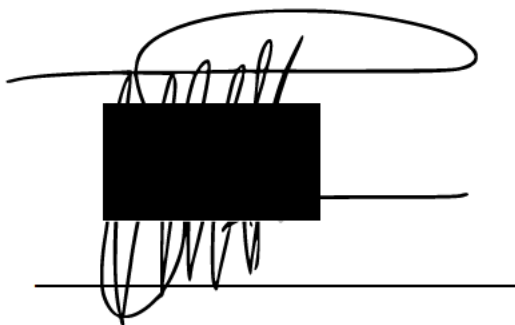
² 2014 JDR 2325 (LCC)

[19] All relevant factors were considered before imposing a sentence, and the applicant failed to prove substantial and compelling circumstances for the court to deviate. As a result, I find no compelling reasons why the appeal should be heard, as there is no reasonable prospect of success.

ORDER

[20] In the premises, the following order is made:

- a. The applicant's application for leave to appeal is refused.

A handwritten signature in black ink is written over a solid black rectangular redaction box. The signature consists of a series of loops and strokes, with a long horizontal line extending to the left from the top of the signature.

K MOGALE,

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Electronically submitted.

Delivered: This judgment was prepared and authored by the judges whose names are reflected and is handed down electronically by circulation to the parties/their legal representatives by email and uploaded to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 14 November 2024

Date of hearing: The matter was heard in an open court. The matter may be determined accordingly. The matter was set down for a court date on 14 November 2024.

Date of Judgment: 15 November 2024

APPEARANCES

Applicant council: Advocate R Greyling

Instructed by: Legal Aid South Africa

Respondent: Advocate H Z Zwane

Instructed by: Director of Public Prosecutions