

REPUBLIC OF SOUTH AFRICA



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

Case Number: SS 48/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
07/02/2025	
DATE	SIGNATURE

In the matter between:

MAKGOTLO, SOPHY REFILWE

APPLICANT 1

RIHLAMPFU, JULIA

APPLICANT 2

and

THE STATE

RESPONDENT

JUDGMENT (APPLICATION FOR LEAVE TO APPEAL)

BRITZ, AJ

[1] On 1 October 2024 I convicted the two applicants (then accused 1 and 2 respectively) of:

1. Count 1: - Murder read with the provisions of s51(1) of the Criminal Law Amendment Act, 105 of 1997 ('the CLAA');

2. Count 2 – Robbery with aggravating circumstances, read with the provisions of s51(2) of the CLAA; and
3. Count 3 – Attempted Theft.

On 3 October 2024 I sentenced the applicants as follows:

1. Count 1: - Life imprisonment;
2. Count 2 – Fifteen (15) years imprisonment; and
3. Count 3 – Six (6) months imprisonment.

The applicants, represented by the same legal representatives they had during the trial, now seek leave from this Court to appeal all these convictions and sentences. Applicant 2 further seeks condonation for the late noting of her application. Although the applications for leave to appeal are fiercely opposed by the respondent, the application for condonation is not opposed. Bearing the latter in mind I will, in the interests of justice and a speedy outcome, grant the application for condonation.

- [2] Leave to appeal is governed by section 17(1)(a) of the Superior Courts Act¹ which came into operation on 23 August 2013. The section provides that leave to appeal may only be given where the judge is of the opinion that the appeal would have a reasonable prospect of success, or where there is some other compelling reason why the matter should be heard.
- [3] After much debate in various judgments as to whether the test for leave to appeal had become more onerous since the codification thereof in s17 of the Superior Courts Act, the Supreme Court of Appeal set out the manner in which these applications should be considered in *Ramakatsa and Others v African National Congress and Another*². In *Ramakatsa* the SCA re-affirmed its earlier finding in *S v Smith*³ where it held the following:

¹ Act 10 of 2013

² *Ramakatsa and Others v African National Congress and Another* (724/2019) [2021] ZASCA 31 (31 March 2021)

³ *S v Smith* 2012 (1) SACR 567 (SCA)

'What the test for reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that the Court of Appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this Court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of success. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

- [4] Based on the afore-going I therefore consider this application on the ground that leave should be granted if a reasonable prospect of success is shown, or if there are some other compelling reasons for the appeal to be heard.
- [5] Only counsel for the 1st applicant and counsel for the respondent filed heads of argument. There were no papers filed on behalf of the 2nd applicant and her application was heard on a viva voce basis only.
- [6] The grounds for appeal raised by the applicants are in essence the same and are based on alleged misdirections by this Court as to some of the facts as well as the application of the law. It is alleged that the Court misdirected itself by finding that 'items' were used in bringing about the death of the deceased in stead of just one item; that the accused had ample time to reflect and desist with what they were doing; that the 1st applicant was at the deceased's residence with the purpose to render sex work only; that the photographs taken of the scene corroborated the version of the 1st applicant by depicting a used condom in the deceased's bedroom, to which the Court never referred to in its judgment; that the Court never made any finding as to 1st applicant's version that she was injured as a result of an altercation between her and the deceased; and that the accused contradicted each other.
- [7] In addition to the alleged misdirections with regards to the facts, it was also alleged that the Court misdirected itself with regards to the law. On this aspect it was alleged that the Court misdirected itself by finding that the murder was

premeditated or planned; that the State did not have to establish all the elements of the offence; that the Court failed to explain the doctrine of common purpose to the accused; that the Court did not deal with each and every prerequisite for common purpose in its judgment; and that the Court failed to adhere to the principles of sentence by not considering the circumstances of the crimes and by placing too much weight on the status and personal circumstances of the deceased and his family.

- [8] For purposes of completeness I state again that the application for leave to appeal was opposed by the respondent on the merits thereof. The respondent alleged that the Court did not misdirect itself in respect of any fact or the application of the law. The respondent argued that the convictions and sentences were sound in law and that the application should therefore be dismissed.
- [9] Having read the papers filed and heard the legal representatives for all the parties, and having considered the arguments advanced in this application I do not deem it necessary to deal with each alleged misdirection on its own or in any great detail. I have dealt in the judgment with the charges faced by the accused and their responses thereto. Neither of the accused raised any defence. They both attacked the State's case on the basis of a bare denial of any wrong-doing. At the end of the trial the Court was left with three versions as to what happened in the deceased's house. The two accused gave contradictory and mutually irreconcilable versions as to what happened. The State could only produce circumstantial evidence from which the Court had to draw inferences. Considering all the strengths and weaknesses in the versions placed before me, I concluded that the State's version had to triumph over that of the accused. I gave full reasons in my judgment for reaching this conclusion. With regards to the application of the law to the facts I provided authority in the form of caselaw which is binding on me. Similarly, I gave comprehensive reasons, with references to authority, for the sentences I imposed on the accused. After considering my judgments on the merits and sentences in light of the grounds of appeal raised by the applicants, I am not convinced that either of the applicants have shown a real prospect of success on appeal. It therefore stands to reason that the applications before me should be dismissed.

[10] For the above reasons I make the following orders:

1. Condonation is granted to the 2nd applicant for the late noting of her application for leave to appeal.
2. The applications for leave to appeal in respect of both applicants are dismissed.

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W J BRITZ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearances:

For the State: Adv E Moseki – DPP Johannesburg

For Applicant 1: Adv S Shongwe – Legal Aid Johannesburg (Judicare)

For Applicant 2: Ms Y Britz – Legal Aid Johannesburg

Date of hearing: 15 November 2024

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via *e-mail*, *by being uploaded to CaseLines* and *by release to SAFLII*.
The date and time for hand-down is deemed to be 10h00 on 07 February 2025.