

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



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

Case No: K/S 4/2023

In the matter between:

WILLIAM MONGALE

Applicant

and

THE STATE

Respondent

Heard: Determined on the papers
 Delivered on: 14/03/2025
 Summary: Application for leave to appeal against his conviction on
 count 2 of murder.

ORDER

(a) Application for leave to appeal is dismissed.

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO ADJP

- [1] The accused seeks leave to appeal against his conviction to the Full Court of this Division having been convicted on 02 May 2024 of murder read with s 51(2) of Act 105 of 1997 with *dolus directus* as the form of intent. The respondent is opposing the application.
- [2] The following are the grounds upon which the accused relies to substantiate his application claiming that the Court erred:
- 2.1 in admitting the evidence of the two minor witnesses, aged 15 and 16, who testified through an intermediary, not sworn in as an interpreter.
 - 2.2 in dismissing the applicant's application in terms of s 186 of the Criminal Procedure Act, 51 of 1977 for the Court to call Mr Mosioa Pheke Shomoleile as a witness whose evidence was essential for the just decision of the case.
 - 2.3 in finding that the applicant had stabbed the deceased.
 - 2.4 in not attaching due weight to the contradictions and improbabilities in the State's case.
 - 2.5 in not attaching due weight to the evidence of Dr Kanaomang who stated that the blade of the murder weapon should have been between 5 and 10cm long and the evidence of the witnesses was that the total length of the applicant's knife was 6cm.
 - 2.6 by not finding the applicant's version to be reasonably possibly true but finding that the State had proved its case beyond a reasonable doubt.
- [3] The law is settled in terms of the threshold to be met for the applicant to succeed in an application for leave to appeal. The accused must not only

satisfy the court that there are reasonable prospects of success but there must, in addition, be some compelling reason why the appeal should be heard. See *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*¹. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future disputes.

- [4] Was the evidence of the said two minor children admissible? The Probation Officer, Ms Wilma Roux, wrote in her report and confirmed it in court that due to their ages, emotional well-being and the fact that they will be unfamiliar with the legal jargon of the court, it will be in their best interests to testify through a Setswana speaking intermediary.

- [5] The impression created by the defence is that Ms Louw, a duly sworn in intermediary, rendered the interpreting service to the two minor witnesses. This is an incorrect impression. Ms Louw was specifically asked by the Court to speak to the child witness at its level. Mr Thomane, a senior interpreter allocated for this case, still had the responsibility of interpreting the entire proceedings. There was nothing confusing because Mr Thomane continued with the interpretation from inception until the end of the proceedings. The submission made on behalf of the applicant is merely to raise a technical point with the hope that it will exculpate the applicant. However, the two minor children were direct eyewitnesses in the commission of the murder. This attack on the role of the intermediary was challenged even during the proceedings and a ruling in that regard was made. I find the attack to be without merit. See paras 42 and 43 of the main judgment.

- [5] The refusal by the court to call Mosioa Pheke Shomoleile was not a mistake. Counsel was at liberty to call whichever witness it wished to

¹Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA) para 2

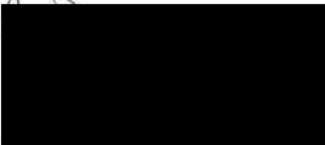
call. Counsel cannot dictate to the court which witnesses to call as a court witness. This is exactly what the defence was imposing on the court. It was made very clear during the proceedings that the defence could call the witness if it so wished. Raising this ground as a ground of appeal is unmeritorious.

- [6] The defence challenged what it termed contradictions and improbabilities in the witnesses' evidence and had urged the court to acquit the accused. See paras 44 and 45 of the judgment. The alleged contradictions were not material and were dealt with in the judgment. I also found that there was further adequate corroboration in material respects for them.
- [7] Dr Kanaomang's evidence was dealt with at paras 7 – 10, and 50 of the judgment. He refuted the claim that a nail clipper could have caused the fatal wound on the deceased. The state witnesses testified to a knife which they saw the applicant unclasp with his teeth. I must emphasise, a point also addressed in the judgment, that the witnesses, including the doctor, only estimated the length of the knife which did not serve as an exhibit. What is more relevant is that they saw the applicant not only unclasp it but also stabbing the deceased with it. I found the evidence of the state witnesses, including the two minor children, to have been credible.
- [8] The assessment of the applicant's version against the backdrop of the evidence in its entirety led me to the conclusion that it was farfetched. See paras 46 to 56 of the judgment. The State had indeed proved its case beyond reasonable doubt.

[9] Regard being had to the papers filed, and having carefully and dispassionately considered the application for leave to appeal in order to determine whether there are reasonable prospects that another court would come to a different finding than this court had reached, I have not found any. There are, in my view, no cognisable prospects of success nor compelling reasons that warrant the attention of the Full Court of this Division, nor are there any compelling reasons to entertain this appeal. I am therefore satisfied that there are no reasonable prospects of a successful appeal. In the result, the application for leave to appeal to the Full Court must fail.

[10] In the result, the following order is made:

The application for leave to appeal is dismissed.


MC MAMOSEBO
ACTING DEPUTY JUDGE-PRESIDENT
THE HIGH COURT, NORTHERN CAPE DIVISION

For the Applicant
Instructed by:

Mr. H Steynberg
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For the Respondent:
Instructed by:

Adv. S.K Weyers-Gericke
The Director Public Prosecutions