

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PALM RIDGE)

Case No: CC145/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE: 2 May 2025

SIGNATURE

In the matter between:

KITJA JOHN MATHE

APPLICANT

and

THE STATE

RESPONDENT

JUDGEMENT: APPLICATION LEAVE TO APPEAL

JOHNSON AJ.

1. The applicant was charged on counts of murder and defeating the ends of justice in the High Court in Pretoria. The matter served before Saridwala J and the applicant pleaded not guilty. After the hearing he was however found guilty on both counts on 21 June 2018.

2. A Psycho Social Report which forms part of the record, was compiled by a probation officer, who recommended that the applicant be sentenced to a term of imprisonment in terms of section 276(1)(b) of the Criminal Procedure Act 51/1977 (CPA).
3. He was thereafter sentenced for count 1, but not count 2.
4. The sentence was as follows:

"I accordingly and after very careful consideration make the following order:

1. That the accused is sentenced to life imprisonment in terms of section 51(1)(a) and (e) of the Criminal Procedure (sic) Amendment Act 105 of 1997;
2. He is also declared a dangerous criminal in terms of 286(1) (sic) of the Act 51 of 1977. In terms of section 286(1)(b) the accused is sentenced to undergo imprisonment for an indefinite period and it is directed that the accused shall be brought before this court on the expiration of a period of 25 years to enable this Court to reconsider the sentence as contemplated in terms of section 286(b)(2) (sic);
3. The registrar of this court is herewith directed to furnish the head of the prison to which the accused is sent with a copy of the Court's judgment;
4. The accused is found to be unsuitable to work with children and old aged people;
5. The accused is found to be unsuitable to hold a firearm;
6. The registrar of the court must in terms of section 221 (sic) of the Children's Act notify the Director General, Department of Social Development in writing of the findings of this court in terms of section 120(4) of the Children's Act, that the accused is unsuitable to work with children or old people for the Director to enter the name of the accused as contemplated in terms of section 120 of Part

2 in the register.

This is the order of the Court.”

5. Not satisfied with the sentence, the appellant is now applying for leave to appeal the sentence only. He mentions numerous grounds of appeal, but due to the view I take, it is only necessary to mention the first ground: “The sentence imposed on the applicant is strikingly disproportionate in that it is out of proportion to the accepted facts in mitigation.”
6. Saridwala J has since retired and not available to hear the application for leave to appeal. The application was subsequently referred to me by the Deputy Judge President.
7. I do not intend to consider the other grounds of appeal that I did not mention. I will only consider whether the sentence that was imposed, is a competent one or not, and whether there is a reasonable prospect of success.
8. Section 17 (1) (a) (i) of the Superior Courts Act 10 of 2013 determines that “*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.”
9. The test to be applied is now higher than what it used to be before the Act was amended. It is no longer whether another court may (might) come to a different decision than what the trial court arrived at. It is now whether another court, sitting as a court of appeal, would come to a different decision.
10. The learned trial judge purported to act in terms of section 286 of the CPA to declare the applicant a dangerous criminal. This is a mistake as this section refers to habitual criminals and not dangerous criminals. The correct section applicable to dangerous criminals, is section 286A. Subsection (2)(a) of section 286A

determines as follows: "If it appears to a court referred to in subsection (1) or if it is alleged before such court that the accused is a dangerous criminal, the court may after conviction direct that the matter be enquired into and be reported on in accordance with the provisions of subsection (3)." Subsection (2)(b) determines as follows: "Before the court commits an accused for an enquiry in terms of subsection (3), the court shall inform such accused of its intention and explain to him the provisions of this section and of section 286B as well as the gravity of those provisions. "

11. The learned trial judge failed to inform the applicant of the peremptory provisions mentioned in subsection (2)(b).
12. The applicant was further sentenced to two substantive periods of incarceration for one count of murder: once to life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997, and again to imprisonment for an indefinite period in terms of section 286B (1).
13. The applicant was never sentenced for his conviction on count 2.
14. After consideration I am of the view that the appeal against sentence has a reasonable prospect of success and leave to appeal against the sentence is granted to the Full Bench of the Gauteng Division, Pretoria.



Johnson AJ
Acting Judge of the High Court of South Africa.
2 May 2025