



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable / Reportable

Case no: 60/2024

In the matter between

MOFIHLI PICKSON RAPABI

APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *Mofihli Pickson Rapabi v The State* (60/2024) [2025] ZAFSHC 197 (25 June 2025)

Coram: Chesiwe J

Heard: On the papers as per the directive with heads of argument filed on 03 March 2025 and 10 March 2025 respectively.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 25 June 2025.

Summary: Application for leave to appeal sought against conviction and sentence imposed by this Court – application is in terms of s 17 (1) of the Superior Courts Act 10 of

2013 - Ad Conviction – court erred in convicting on the basis of *dolus directus* – ad sentence – life imprisonment deemed harsh, disproportionate and induced a sense of shock – application opposed by the State – leave to appeal sought to be heard by the Full Court of the Free State Division of the High Court.

ORDER

The application for leave to appeal against conviction and sentence is dismissed.

JUDGMENT

Chesiwe J

[1] The applicant seeks leave appeal to the Full Bench of this Division against his conviction and sentence that I handed down on 21 February 2025 at Harrismith Circuit High Court. The Applicant was convicted for murder and attempted murder and sentence to life and 15 years that the sentences are to run concurrently. The application is opposed by the State.

[2] The Applicant filed his notice for leave to appeal on 03 March 2025. The application is in terms of Section 17 (1) of the Superior Courts Act ¹ (herein after referred to as the Act).

[3] Counsel were requested to file written heads of arguments with the matter to be considered on the papers.

[4] The grounds of this application for leave to appeal are listed in the application for and will not be repeated herein.

[5] The Applicant contends that he has good prospects of success on appeal. However, the State on the other hand contends that there was no misdirection on the part of the trial

¹ Act 10 of 2013.

court and that the sentence is not harsh and inappropriate, and that the application ought to be dismissed.

[6] In terms of the provisions of s17(1) of the Act ², leave to appeal may only be granted if the judge concerned is of the opinion that:

1. The appeal would have reasonable prospects of success or if there are some compelling reasons why leave should be granted;
2. The decision sought on appeal does not fall within the ambit of s 16(2)(a) of the Act;
3. Where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

[7] This court in an unreported case of Hans Seuntjie Matoto v Free State Gambling and Liquor Authority ³, said the following:

“There can be no doubt that the bar for granting leave to appeal has been raised. Previously, the test was whether there was a reasonable prospect that another court might come to a different conclusion. Now, the use of the word ‘would’ indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[8] In Smith v S ⁴, the court dealt with the question of what constitutes reasonable prospects of success as follows:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts on the law that a 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 succeeding. 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.”

² Act 10 of 2013.

³ 4629/2015 [2017] [ZAFSHC] 80 (8 June 2017).

⁴ 2012 (1) SACR 567 SCA par [17].

[9] In MEC for Health, Eastern Cape v Mkhitha and Another ⁵, the court held as follows:

"[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Court Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be sound, rational basis to conclude that there is a reasonable prospect of success on appeal."

[10] The Applicant on conviction relied on four grounds and on sentence he relied on seven grounds.

[11] As mentioned in the leave to appeal application, Applicant's assertion is that the appeal would have a reasonable prospect of success.

[12] Most of the grounds sought to be relied upon are essentially a rehash of the criminal case and these were fully dealt with in my judgment.

[13] Based on the submissions of the Applicant and those of the Respondent in their written heads of argument, indeed, the bar has been raised for granting leave to appeal against the judgment of a trial court. However, in my view I am inclined to agree with the submissions made by the Respondent.

[14] I am therefore of the considered view that the judgment dealt in detail, pertaining all the grounds. More is required than just a mere submission that there are prospects of success.

[15] In conclusion, the application is without merit and that the Applicant does not have reasonable prospects of success on appeal.

⁵ (1221/2015) [2016] ZASCA 176 (25 November 2016).

[16] I accordingly make the following order:

The application for leave to appeal against conviction and sentence is dismissed.

A handwritten signature in black ink is written over a solid black rectangular redaction box. The signature is cursive and appears to be 'CHESUWE J'. The box is positioned to the left of the signature, partially obscuring it.

CHESUWE J

Appearances

On behalf of the Applicant: P Mokoena
Instructed by: Legal Aid South Africa
BLOEMFONTEIN

On behalf of the Defendant: L Mkhabela
Instructed by: Director of Public Prosecutions
BLOEMFONTEIN