



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

Case No: K/S 21A/2020

In the matter between:

EMMANUEL CHIDI OKAFOR

Applicant

And

THE STATE

Respondent

In re:

THE STATE

And

EMMANUEL CHIDI OKAFOR

Accused

Coram: Lever J

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JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

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LEVER J:

1. This is an application for leave to appeal where I convicted the applicant on two counts, namely: Housebreaking with intent to murder and murder read with the provisions of section 51(1) of Act 105 of 1997; and attempted murder. I acquitted the applicant in respect of the charge relating to offences under the asylum legislation and alternative charges under the immigration legislation.
2. In respect of the murder conviction, I sentenced the applicant to a sentence of life imprisonment. In respect of the attempted murder conviction, I sentenced the applicant to ten (10) years imprisonment. I also ordered that the sentence in respect of the attempted murder conviction was to run concurrently with the life sentence imposed in respect of the murder conviction.
3. The applicant seeks leave to appeal in respect of both convictions and both sentences.
4. The grounds of appeal are set out in a notice issued and dated the 25 March 2025.
5. The substantive grounds of appeal in respect of both convictions reads as follows:
  - “1. That the Honourable Court failed to take into account that, in view of the State’s failure to call Abigail, a State witness, to give testimony there was a reasonable possibility that the accused’s version of self-defence as against the deceased couldn’t be excluded.

(See par. 12.6 of the Heads of Argument of defence Counsel, (par. 12.8 of State's Heads.)

2. Abigail was, under the circumstances, a very important witness because she was present in the house (and even on the bed) where the incident happened.
3. Abigail could have told the court how it came about that accused and Ryno van Wyk (complainant on count 2) got into a fight.
4. Abigail would have been a much more 'independent' witness in comparison with Ryno van Wyk, who was the complainant on count 2.
5. Even if she told the court she couldn't (in view of her state of intoxication) tell the court what happened, the court would be in a better situation to evaluate the events of that night."

6. The substantive grounds for leave to appeal on both sentences are set out as follows:

- "1. It is submitted that a sentence of life imprisonment (on count 1) and 10 years imprisonment (on count 2) are very much harsh unto the accused.
2. It is submitted that compelling and substantial circumstances can be any factor which allows the court to deviate from the prescribed minimum sentences. In this case such factors can be (and therefore had been) the clean record of no previous convictions for violent offences of the accused, as well as the 'unhappiness' amongst the deceased and the accused that led to the incident. Provocation seemed to play a very big part in the actions of the accused that evening."

7. Leave to appeal is regulated by section 17 (1) of the Superior Courts Act<sup>1</sup>. The said section reads as follows:

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<sup>1</sup> Act 10 of 2013.

“17(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 chance of success; or  
(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration; ...”

8. On the face of it, the wording of the said section, of the Superior Courts Act as quoted above, indicates that the requirement for granting leave to appeal is thus more stringent than was previously required. This is in fact what Bertelsman J held in the case of *MONT CHEVAUX TRUST v TINA GOOSEN AND OTHERS*<sup>2</sup>. Bertelsman J held that the test now is not whether another court might come to a different conclusion but in using the word “would” in the said section of the Superior Court Act, the test now is that there is a measure of certainty that another court will reach a different conclusion to the court of first instance.

9. Having regard to the change from ‘could’ to ‘would’ brought about by section 17(1)(a)(i) of the Act there existed some differing approaches on how ‘reasonable prospects of success’ would be determined. Such controversy as might have existed appears to have been settled in the case of *RAMAKATSA*

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<sup>2</sup> 2014 JDR 2325 (LCC).



& OTHERS v AFRICAN NATIONAL CONGRESS & ANOTHER<sup>3</sup>, where

Dlodlo JA set out the position as follows:

“...The test for reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”<sup>4</sup> (references omitted)

10. The test as set out in Ramakatsa’s case seems to confirm the approach of the SCA prior to the change in wording brought about by the section 17 of the Superior Courts Act in the case of S v Smith, which pre-dates the Superior Courts Act, where Plasket AJA set out the position as follows:

“[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and 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 for 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.”<sup>5</sup> (references omitted)

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<sup>3</sup> RAMAKATSA & OTHERS v AFRICAN NATIONAL CONGRESS & ANOTHER (Case No: 724/2019)[2021] ZASCA 31 (31 March 2021).

<sup>4</sup> Ramakatsa case above., para [10].

<sup>5</sup> S v Smith 2012 (1) SACR 567 (SCA) at para [7].

11. In fact, the SCA in Ramakatsa's case refers directly to the judgment of Plasket AJA in Smith's case. So, the change in the wording brought about by section 17 of the Superior Courts Act seems to have left the test to be applied largely unaffected.

12. If I understand Mr Schreuder's submissions correctly his main point of concern is that the State did not call the witness Abigail and that such witness was not made available to the applicant for consultation after the State closed its case.

13. To keep everything in its proper context, it must be remembered that the accused tried to establish that he acted in self-defence (private defence) in infliction of the wound on Ryno van Wyk, the complainant in the attempted murder charge. The accused claimed no knowledge of the murder of the deceased, Stefano Nico Visagie in the trial proceedings. However, the grounds of appeal quoted above seem to extend the self-defence to the deceased Stefano Nico Visagie as well.

14. However, the accused destroyed his own version by not challenging the evidence of Marius van Wyk, who testified that the accused performed a ritual in his presence and told him directly that after the females left the shack of his neighbour he would kill Ryno van Wyk, referred to as Hoppie and his

companion being the deceased. These were the people, amongst the occupants of Ryno van Wyk's shack, the accused went after on the available evidence.

15.The accused also destroyed his own case by giving three different and mutually destructive versions as to how the confrontation started. I have dealt with these aspects comprehensively in my judgment from page 18 line 12 of the transcribed judgment to page 22 line 13 of the transcribed judgment.

16.In these circumstances, it is simply not possible to sustain the defence of self-defence. Due to the manner accused conducted his case and on all of the available evidence assessed holistically Abigail could not have been able to help the applicant establish the defence of self-defence. Further, the statement of Abigail was made available to the defence and the defence had other options to ensure her evidence was placed before the court if it was required.

17.Accordingly, on this ground put forward as a ground for leave to appeal I cannot justifiably reach the conclusion that another court could reasonably and realistically come to a different conclusion. In these circumstances, leave to appeal must be refused.

18.In respect of both sentences, Mr Schreuder conceded in his submissions that there was no misdirection in respect of both sentences passed. In these circumstances, there is no prospect that another court would reasonably and



realistically come to a different conclusion. In these circumstances leave to appeal in respect of the sentences imposed must be refused.

19. The applicant did not rely on section 17(1)(ii) and I could in any event not find that there was any compelling reason why either on the conviction or the sentences why the matter should proceed on appeal.

In the circumstances, the following order is made:

1. The application for leave to appeal is dismissed.



Lawrence Lever  
Judge  
Northern Cape Division, Kimberley

#### **REPRESENTATION:**

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|-------------------|-----------------------------------------------------------------------|
| Applicant:        | Adv JJ Schreuder oio Legal Aid SA, Kimberley                          |
| Respondent:       | Adv JJD Rosenberg oio The Director of Public Prosecutions, Kimberley. |
| Date of Judgment: | 22 August 2025                                                        |