

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: SS73/10

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
01/09/2025	
DATE	MAHALELO MB

In the matter between:

TEBOGO RASEKOAI

APPLICANT

And

THE STATE

RESPONDENT

JUDGMENT – LEAVE TO APPEAL

MAHALELO J

- [1] This is an application for leave to appeal against the whole of my judgment and order on sentence only. The applicant was arraigned before me on charges of rape and murder of an eight-year-old girl. On 30 August 2011, he was convicted

of both charges and sentenced to life imprisonment on each count.

[2] On 20 August 2025, the applicant filed an application for leave to appeal, which sets out the various grounds of appeal. The applicant filed its notice of appeal late and applied for condonation. The State opposes the application. I have considered the explanation provided by the applicant for the delay, and grant condonation.

[3] The grounds of appeal, as set out in the notice of appeal, are as follows:

1. The court made an error in concluding that the applicant was not truly remorseful for his actions because he disclosed to the court the motive for his actions.
2. The court misdirected itself in finding that there were no substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed minimum sentence.
3. The applicant's personal circumstances, namely that he: is 30 years old, was 28 years old at the time of the offence, is a first offender and has 2 minor children aged 3 and 9 years old respectively, was the sole breadwinner for his children, grew up with a single parent as his father died when he was young, has a grade 11 education and was self-employed as a musician, had spent over a year in custody awaiting the finalization of his trial, coupled with the fact that he was genuinely remorseful for his actions. These factors viewed cumulatively constituted substantial and comprehensive circumstances justifying the imposition of a lesser sentence than the prescribed minimum sentence.

[4] The application for leave to appeal is opposed by the State. Both parties filed written submissions and argued the application in court.

- [5] Leave to appeal may be granted where a judge/s is of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard, such as the interests of justice. In the matter of *Caratco (Pty) Limited v Independent Advisory (Pty) Limited*¹ it was pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reasons would include an important point of law or an issue of public importance that will have an effect on future disputes in our courts. The court also emphasised that the merits remain vitally important and are often decisive.
- [5] The test laid down in Section 17 of the Superior Court Act² is now a subjective one and no longer an objective test. There must be a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.³ The court held in the case of *The Mont Chevaux Trust v Tina Goosen & 18 Others* that:

"It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion, see Van Heerden v Comwright & Others 1985 (2) SA 342 (T) at 343H. the use of the word "would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against."

- [6] I do not intend to deal with the issue of the grounds of appeal separately. The applicant has not raised grounds other than those raised during the hearing of the matter, which matters were addressed in the judgment. In my view, after careful consideration of the applicant's stated grounds for leave to appeal and the submissions, there is nothing that persuades me that an appeal would have

¹ 2020 (5) SA 35 (SCA)

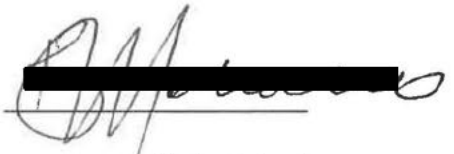
² 10 of 2013

³ *The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others* 2014 JDR 2325 at para [6]

reasonable prospects of success. There are no other compelling reasons why the appeal should be heard.

[7] In the premises, the following order is granted:

1. The application for leave to appeal sentence is dismissed.


Mahalelo J

Judge of the High Court of South Africa,

Gauteng Division, Johannesburg

Appearances

For applicant: Adv Guarneri

Instructed by: Legal aid South Africa, JHB

For the Respondent: Adv V.E Mbaduli

Instructed by: Director of Public Prosecutions, Gauteng

Date of Hearing: 28 August 2025

Judgment Date: 01 September 2025