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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

High Court Case No: **P34/2025**

Regional Court Case No: **RC2/17/2023**

(1) **Reportable: NO**

(2) **OF INTEREST TO OTHER JUDGES: NO**

(3) **REVISED:**

SIGNATURE

DATE: 26 August 2025

In the matter between:

OYAMA MENDU

Applicant

And

THE STATE

Respondent

These judgment prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties I their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be August 2025.

SHORT REASONS

RETIEF J

INTRODUCTION

[1] On the 17 November 2023 at the Reginal Magistrates Court in Springs, before the learned Magistrate, Mr J.D, Herman [Court a quo], the applicant was found guilty of the 3 (three) charges put to him, namely that he on the 20 February 2023 at Pollak Park, Springs robbed Ms L R Nkosi [Ms Nkosi] and Ms N Ncanana (Ms Ncanana) with aggravating circumstances as intended in terms of section 1 of Act 51 of 1977 [robbery] and that he kidnapped Ms Ncanana [the charges].

[2] The applicant 9 February 2024 was sentenced to 15 years in respect of each count of robbery (count 1 and 3) and for 5 years for the kidnapping (count 2), and the sentences of counts 2 and 3 were to run concurrently with count 1. The applicant applied to the Court a *quo* for leave to appeal his conviction but, such leave was refused. He now petitions this Court seeking leave to appeal his conviction.

GROUND OF APPEAL

[3] The nub of the applicant's petition to this Court is that the State, absent physical evidence, failed to prove its case beyond a reasonable doubt in that the State's case was solely based on the testimony of four eye-witnesses who positively identified the applicant as being the perpetrator of the robberies and the kidnapping, and that the cautionary rule applied to two of them. The cautionary rule application in that, the one eye-witness, B[...] N[...], was a 12 year old boy [the minor] and the other Ms Ncanana, a complainant was a single witness.

[4] It is common cause that the State only relied on the identification of the applicant to prove its case as there was no physical evidence, no fingerprints, only the stolen motor vehicle was recovered, no DNA and no firearm was retrieved. However, each case must be considered on its own merits and is case specific for that very reason. This case was considered by the court on that basis. The specific circumstances of this case concern the perpetration of the crimes at 2 (two) different crime scenes, involving eye-witnesses who, save for the minor, were not mere spectators but with whom, the applicant conversed with whilst he was in

close proximity to them. The first crime was committed at the home of the Nkosi family where the applicant robbed Ms Nkosi of cash, her cell phone and her 2013 Opel Corsa [vehicle] at gun point [crime 1]. The applicant then fled from the scene of the Nkosi home in Ms Nkosi's vehicle only to then kidnapped Ms Ncanana and to take took to her home where he robbed her television and two cell phones, at gun point [crime 2]. Ms Nkosi found her abandoned vehicle in the driveway of Ms Ncanana's house.

[5] Against this backdrop this Court re-considered the reliability of identification evidence presented by the State upon which the Court *a quo* relied and which it reconsidered when the application for leave was argued before it. This Court is reminded that: "*Facial characteristics are a more reliable and enduring source of identification than variable features such as hairstyle or clothing...*".¹ According to the testimony of all the eye-witnesses, the applicant did not wear a face mask at the time both crimes were perpetrated. The applicant's facial characteristics were therefore visible to all the eye-witnesses and, especially to Ms Ncanana, who was able to observe him over a longer period of time whilst he too, openly conversed with her.² Furthermore, the minor testified to the fact that that he recognised the applicant, he was Lion's father. Lion, was a fellow student who travelled to school with the minor in "lift club". Ms Ncanana also recognised the applicant. She testified to the fact that she had personally seen him in the neighbourhood together with his brother.

[6] Over and above this, all the eye-witnesses testimony regarding the applicant's variable identification features at the time, his clothes (faded pink polar neck with black jeans}, his hairstyle and that the fact that was chubby, remained consistent. Notwithstanding the fact that such variable features by their very nature change any change, as in this case, all the eye witnesses positively identified the applicant in the witness box at the date of the hearing. this includes the minor.

¹ **S v Charzen** (344/05) [2006] ZASCA 147 at par 14.

² **S v Mthethwa** 1972 (3) SA 766 (A) in which Holmes JA spoke to a number of factors when testing the reliability of an eye-witnesses observation. A number of the factors was eyesight, the proximity of the witness, his opportunity for observation and the extent of his prior knowledge of the accused.

[7] Over and above what has been mentioned, the applicant's most reliable facial characteristic and most distinguishing feature was his gold teeth which all the eye-witnesses observed and testified to. Irrespective of any inconsistency arising from the number of such gold teeth, all of eye-witnesses, testified to the fact that he had gold teeth. It was never put them that the applicant did not have gold teeth nor, that they could not have been in a position to observe his gold teeth. Although the applicant did not testify. The record shows that during the Court A *quo* questioning of the applicant his gold teeth were observed.

[8] The high watermark of the applicant's application speaks to the reliance of the evidence due to certain inconsistencies present in the testimony of the eye-witnesses relating to his variable features. In this way the applicant places weight on the matter of S v Dewani.³ However, the Court *a quo* correctly placed weight on the factors as set out in S v Mthethwa.⁴

[9] The applicant *did* not testify, he closed his case without calling any other witness to testify to facts which, may have required an answer.

[10] Considering all the application, this Court is not inclined to grant leave and as such, the application must fail.

[11] The following order:

1. Leave to appeal against the conviction is refused.

L.A. RETIE

Judge of the High Court

Gauteng Division

I agree

³ 2014 WCH 18 at par 188.

⁴ See footnote 2.

J.G. RAUTENBACH

Acting Judge of the High Court

Gauteng Division