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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA JUDGMENT

Not Reportable

Case no:1136/2022

In the matter between:

DANIEL LEKEKA

APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *Lekeka v The State* (1136/2022) [2025] ZASCA 182 (1 December 2025)

Coram: MBATHA, KATHREE-SETILOANE and KEIGHTLEY JJA

Heard: Disposed of without an oral hearing in terms of s 19(a) of the Superior Courts Act 10 of 2013.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal

website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 1 December 2025.

Summary: Criminal Law – s 17(2)(f) of Superior Courts Act 10 of 2013 – application for reconsideration of a decision refusing special leave to appeal – no exceptional circumstances to warrant reconsideration of decision – application struck from the roll.

ORDER

On application for reconsideration: referred in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013:

The application for reconsideration of the decision refusing special leave to appeal against conviction and sentence is struck from the roll.

JUDGMENT

Kathree-Setiloane JA (Mbatha and Keightley JJA concurring):

[1] This is the reconsideration of a decision, by two judges of this Court, refusing an application for special leave to appeal against the order of the Gauteng Division of the High Court, Johannesburg, Victor and Masipa JJ and Grobler AJ sitting as a court of appeal (the full court). The full court dismissed an appeal against the conviction and sentence of Mr Daniel Lekeka (Mr Lekeka) by the same division (per Lamont J) sitting as the court of first instance (the high court).

[2] Mr Lekeka was charged with two counts of murder read with s 51(1) of the Criminal Law Amendment Act 105 of 1997 (the Act) and one count of robbery with aggravating circumstances read with s 51(2) of the Act. The high court convicted Mr Lekeka on all three counts and sentenced him as follows: Count 1: life imprisonment; Count 2: life imprisonment; Count 3: ten years' imprisonment. The high court ordered that all the sentences run concurrently.

[3] Mr Lekeka applied to the high court for leave to appeal his conviction and sentence. On 6 December 2007, the high court granted him leave to appeal to the full court. On 30 April 2010, the full court dismissed the appeal and confirmed Mr Lekeka's conviction and sentence. He then applied to this Court for special leave to appeal against the dismissal of his appeal by the full court. On 4 February 2017, Willis JA and Coppin AJA refused the application for special leave to appeal against conviction and sentence. Mr Lekeka applied to the President of this Court, in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Superior Courts Act), for a reconsideration of that decision. On 27 February 2023, the application for reconsideration was referred to this Court for oral argument in terms of s 17(2)(d) of the Superior Courts Act. The parties, however, requested that the matter be disposed of without an oral hearing in terms of s 19(a) of the Superior Courts Act.

Facts

[4] Mr Lekaka was convicted for the murder and robbery of Ms Pamela May Leslie (Ms Leslie) and Mr Thomas Leach (Mr Leach). They will be referred to collectively as 'the deceased'. Mr Lekaka murdered the deceased on 14 September 2006, in their home at 5[...] M[...] Street, Suidoord, Johannesburg (the property). He also robbed them, using force, of a white Opel Monza motor vehicle, with registration PV[...] (the Monza), that was parked in yard of the property. Mr Leach had bought the Monza three days before he was killed. Tia, a large and vicious Doberman (the dog), lived on the property with the deceased.

[5] The deceased employed Mr Kenneth Moyo (Mr Moyo) as their gardener who worked at their home every Wednesday and Thursday. They also employed a domestic worker, Ms Elizabeth Mofokeng (Ms Mofokeng). She worked at their home every Tuesday. Mr Leach operated a motor mechanic business from the

garage on the property. He bought, reconditioned, and sold Opel vehicles. From time to time, Mr Leach was assisted by Mr Lekeka in the business. Mr Lekeka was a spray painter.

[6] The property was enclosed by a fence and a gate. The gate was locked at all times. Anyone wishing to access the property had to press a bell at the entrance gate. The sound of the bell would incite the dog to run to the gate and bark aggressively. He would calm down on being instructed by either of the deceased. Once the dog was calm, either of them would unlock the gate and allow entry.

[7] There were vehicles parked in the yard of the property, including a caravan and a Toyota Skyline. On Tuesday, 12 September 2006, the Monza was also parked there. It was seen by Mr Paul Bridge (Mr Bridge) who arrived to treat Ms Leslie at 08h30 that morning. Mr Bridge was a friend of the deceased and a holistic healer. He treated Ms Leslie every Tuesday and Thursday. Mr Bridge noticed that there was no bumper on the front of the Monza. He saw it lying on the back seat of the Monza. On asking about the bumper, Mr Leach informed Mr Bridge that he was stripping the Monza to start work on it.

[8] On the morning of Tuesday, 12 September 2006, Ms Mofokeng came to work. On entering the yard, she walked past the Monza and noticed a yellow paint mark on its left rear door.

[9] On Wednesday, 13 September 2006, Mr Moyo came to work. He also saw the Monza in the yard. Its bonnet was open and Mr Leach was washing the engine. Mr Moyo also saw a yellow paint mark on the Monza.

[10] On Thursday, 14 September 2006, at about 06h45, Ms Leslie was seen by a neighbour, Ms Yvonne Mentz, walking on the road outside the property. This was the last time she was seen alive. Mr Moyo arrived at the house at approximately 07h55 that morning. He rang the bell. No one answered. He assumed that the deceased were away at a funeral and waited for them. At about 12h00, Ms Helen Williams arrived to meet Ms Leslie. She rang the bell, but no-one answered. She became concerned and called the police.

[11] On their arrival, one of the policemen, Constable Barend Jacobus Putter, accessed the property by scaling the wall. He found Ms Leslie's body in the bedroom. The dog was also there. He could not access the bedroom until the dog had been restrained. He found Mr Leach's body in the garage. The gate keys were missing. Between six to ten bottles of wine were also missing from the wine rack. However, the safe was not tampered with and other valuables, such as a cell phone and firearms, were not taken. The house and garage were neither ransacked nor rummaged through. They were in a neat and tidy state. There were also no signs of a struggle in the immediate vicinity of the deceased bodies. The entrance gate was locked and showed no signs of damage or forcible entry. The Monza was not on the property.

[12] On Monday, 11 September 2006, Mr Lekeka had accompanied Mr Leach on his trip to Heidelberg in the Skyline to meet Mr Neil Joubert (Mr Joubert), the seller of the Monza. Mr Leach informed Mr Joubert that he was buying the Monza for a family member. Once the sale price had been agreed to and paid to him, Mr Joubert handed over the Monza, together with its key and registration/licence papers, to Mr Leach. Mr Lekeka drove the Monza and Mr Leach drove the Skyline. Enroute to the house, the Monza's carburettor malfunctioned. They stopped and

Mr Leach made adjustments to it. Mr Lekeka then drove the Monza to the property. On arrival, he parked the Monza on the property.

[13] Each of the deceased suffered a ‘very hard blow’ to the head and their necks were slit. Mr Leach was found with a cheesecloth in his mouth, and his hands and feet were bound with a telephone cord. Despite the brutality of their injuries, there were no signs of a struggle.

[14] The first time that Mr Lekeka was seen driving the Monza was on Thursday, 14 September 2006. His girlfriend, Ms Mapule Somase, saw the Monza when he drove it to his communal dwelling on that day. On arrest, he was found in possession of three documents that Mr Joubert had handed to Mr Leach on Monday, 11 September 2006. Of these, only one (Exhibit F) related to the Monza. This was the change of ownership form for the Monza. The engine number and VIN number on that form corresponded with the Natis records of the Monza.

[15] There was no direct evidence linking the applicant to the murder and robbery of the deceased. The high court convicted the applicant on circumstantial evidence. It concluded, through the process of inferential reasoning from the proved facts, that the Monza had been on the property of the deceased until Thursday, 14 September 2006; the day that their bodies were discovered. The high court rejected Mr Lekeka’s version, that he had not left the Monza at the house of the deceased on Monday, 11 September 2006, but had driven it to 29 Bertha Street, where he parked it. Mr Lekeka lived at 29 Bertha Street. The high court found the testimony of Mr Bridge, Ms Mofokeng and Mr Moyo, all of whom had placed the Monza at the house of the deceased over the period 11-13 September 2006, to be impeccable. It found the testimony of Mr Lekeka’s landlord and a resident of

2[...] B[...] Street, that the Monza was not at 2[...] B[...] Street over this period, equally impeccable. It said that:

‘The latter witnesses certainly had no chance to prepare their evidence. They were really surprise witnesses which the State became obliged to call, once the place of storage was changed from 2[..] B[...] Street to 3[...] B[...] Street. Their evidence was clear and satisfactory in all material respects. They had no reason to fabricate their evidence. There are further points of corroboration. How could the employees of the deceased have seen the yellow mark on the Monza unless it was there at the deceaseds’ home? If the vehicle was gone, they [would have] had no opportunity to see this mark. On [Mr Lekeka’s] version, once the vehicle left on the Monday with him, it never returned to the deceaseds’ place of residence. Further corroboration is to be found in the fact that no one saw [Mr Lekeka] with the Monza until Thursday. That was the time [Mr Lekeka] produced it to his girlfriend at Centurion. That was the time that he commenced driving it and was seen by others to be driving it. It appears to me to be established beyond reasonable doubt that the Monza was on the deceaseds’ property over the period Monday to Thursday. . . .’

[16] The high court concluded that the undamaged gate indicated that the intruder either had the deceaseds’ permission to enter the property or had managed to control the dog, since it was unlikely that anyone could have scaled the wall without provoking a reaction from the dog. It found that:

- (a) because the deceased would normally grant Mr Lekeka access to the property, Mr Lekeka was the only person with a reasonable opportunity to enter and commit the crimes in question;
- (b) Mr Lekeka would have known how to subdue the dog and where to find the gate keys to exit the property; and
- (c) no one other than Mr Lekeka had access to the property or motive to murder the deceased.

As indicated, the full court dismissed the appeal against Mr Lekeka’s conviction and sentence.

Exceptional circumstances

[17] In *Motsoeneng v South African Broadcasting Corporation Soc Ltd and Others*,¹ this Court held that the court to which the decision refusing leave to appeal is referred for reconsideration, is required, as a threshold question, to determine whether there are exceptional circumstances that warrant a referral for reconsideration.² More recently, in *Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena (Bidvest)*,³ this Court endorsed this by holding that the court to which the referral is made is ‘to be the ultimate arbiter as to whether the jurisdictional fact for the exercise of the power exists’.⁴ Since then, a minority judgment of the Constitutional Court, in *Godloza and Another v S*,⁵ has found these judgments to be wrong. Although this minority judgment is persuasive authority, as a panel of three judges of this Court, we remain bound by the *Motsoeneng* and *Bidvest* judgments of this Court.

[18] In *Liesching and Others v The State*,⁶ the Constitutional Court held that exceptional circumstances, as envisaged in s 17(2)(f) of the Superior Courts Act, are circumstances which give rise to a probability of grave individual injustice, or the administration of justice might be brought into disrepute if the decision refusing leave to appeal is not reconsidered.⁷ This formulation has been adopted by the legislature in the amendment to s 17(2)(f), which came into effect on 3 April 2024.

¹ *Motsoeneng v South African Broadcasting Corporation Soc Ltd and Others* [2024] ZASCA 80; 2025 (4) SA 122 (SCA).

² *Ibid* para 14.

³ *Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena (Bidvest)* [2025] ZASCA 23; 2025 (3) SA 362 (SCA).

⁴ *Ibid* para 13.

⁵ *Godloza and Another v S* [2025] ZACC 24.

⁶ *Liesching and Others v The State* [2018] ZACC 25; 2019 (4) SA 219 (CC); 2018 (11) BCLR 1349 (CC); 2019 (1) SACR 178 (CC) (*Liesching*).

⁷ *Ibid* para 138.

Since this matter was referred for reconsideration on 27 February 2023, the old formulation of s 17(2)(f) applies.

[19] For this Court to reconsider the decision refusing the application for special leave to appeal Mr Lekeka's conviction and sentence, he must demonstrate that there are exceptional circumstances that warrant its reconsideration. Mr Lekeka's grounds for reconsideration are the following:

(a) His conviction was based solely on circumstantial evidence, with no direct or real evidence to corroborate it. The high court over emphasised the circumstantial evidence to convict him, despite improbabilities in the inferences drawn.

(b) The high court failed to recognise that he had no motive to rob and murder the deceased as there was no bad blood between them. And, in spite of needing money at the time, their safe was not tampered with.

(c) These errors of the high court, resulted in the infringement of, amongst others, his right to a fair trial in terms of s 35(3) of the Constitution.

(d) His alibi defense that he was in Centurion at the time of the commission of the crimes in question was not proven wrong by the State. Hence, the high court erred in concluding that he was capable of travelling between Centurion and the house of the deceased in 45 minutes, when that journey would have taken three hours using public transport. It was thus 'practically impossible' for him to have made that journey.

(e) A Vodacom printout of his calls corroborated his denial of a phone call to his girlfriend in which, according to her testimony, he had instructed her to tell the court that he did not drink wine but only beer. The high court erred in finding that he did not contest the printout.

(f) As a result of the inadequacy of direct evidence for his conviction, and the improbabilities in the high court's inferential reasoning, his legal representative had

a duty to apply for his acquittal in terms of s 174 of the Criminal Procedure Act 51 of 1977. He, however, failed to do so.

(g) His legal representative made a ‘fatal concession’ by allowing the trial to proceed despite the proven improbability of his travel time, which should have led to an acquittal.

(h) His landlord misled the court with evidence of a paint stain at the property that he rented from him. The high court, prosecutor, and his legal representative verified this at an inspection in *loco* of that property. This was, however, not disclosed at the trial, and his counsel restrained him from doing so.

(i) The conduct of the judge who presided over his trial in the high court led to a total failure of justice, as he proceeded with the prosecution despite the ‘absence of minimum evidence’, thereby arbitrarily depriving him of his constitutional rights to freedom and dignity. The judicial officer’s conduct was ‘so irregular’ that it rendered the ‘administration of justice nugatory’.

[20] None of these grounds constitute exceptional circumstances, as contemplated in s 17(2)(f) of the Superior Courts Act, that would warrant a reconsideration of the decision refusing leave to appeal. The errors which the high court is said to have made ultimately turn on the evaluation of the evidence and findings of fact and law. They have been raised before in Mr Lekeka’s appeal to the full court, and in his application for special leave to appeal, which was refused by two judges of this Court. He invokes the infringement of his right to a fair trial as a means of elevating his grounds for reconsideration, yet as indicated, they deal with matters that were previously raised by him.

[21] If he was denied a fair trial, as contended, due to the improper conduct of his legal representative, the prosecutor, and the presiding judge in the high court, then

he should have raised this before the full court and in his application for special leave to appeal to this Court. Yet he omitted to do so. Furthermore, central to his complaint of inadequate legal representation is that his legal representative in the trial, failed to carry out his instruction to place on record the outcome of the inspection in *loco*. This should have been placed in issue in the high court. At the inception of the trial, the high court made it clear to Mr Lekeka that:

‘. . . I want . . . to tell him [Mr Lekeka] that he must listen closely to the evidence and things which happen in this Court. If he is dissatisfied with anything that is said by his counsel on his behalf or there are things with which he disagrees, then he can put up his hand. If he puts up his hand I will let his counsel come to speak to him. And that is his chance to say that things which are happening in this court are wrong. He must not come later and tell me that they are wrong. Does he understand properly? . . .’

Moreover, the record reveals that Mr Lekeka’s legal representative took instructions from him through-out the trial. If, as contended by Mr Lekeka, he was prevented by his legal representative (or the judge) from raising this issue in the high court, then he should have done so on appeal to the full court, or in his application for special leave to appeal to this Court. The purpose of a s 17(2)(f) application is not to provide another opportunity to raise appeal grounds that have already been considered, nor to present the same grounds disguised as new ones. Nor is it its purpose to introduce issues that are merely afterthoughts, that should have been raised before the high court, the full court, or in the application for special leave to appeal to this Court.

[22] In addition, Mr Lekeka argues in his heads of argument, that the evidence of a witness for the defence, namely Mr Buhlungu is missing from the record, and that both the high court and the full court failed to consider this evidence in arriving at their respective decisions. The additional record which was filed, as part of the reconsideration application, does not contain a transcript of Mr Buhlungu’s

evidence. It also does not contain the evidence of Captain Wiseman Siphungu, when he was recalled to testify. Neither does it contain the evidence of Mr Lekeka himself.

[23] An incomplete record of the trial proceedings does not automatically lead to the setting aside of a conviction and sentence. An order to this effect will only be made where a valid and enforceable right of appeal is frustrated by a lost or incomplete record that cannot be reconstructed. A court of appeal is entitled to consider the adequacy of a record and whether the right of an appellant will be frustrated by an incomplete record. However, as was held by this Court in *S v Chabedi*,⁸ although the record of a trial must be adequate to properly consider the appeal, it need not be a perfect recording of every single thing that was said at the trial.

[24] It is, however, not competent for this Court, in an application for reconsideration, to consider the adequacy of the appeal record. That falls within the remit of the court which is ultimately seized with the appeal. However, for the purposes of an application for reconsideration, the relevant question is this: Would the applicant suffer a grave injustice or would the administration of justice be brought into disrepute, if the refusal to grant leave to appeal is not reconsidered – in circumstances where the courts below did not take into account the evidence of a defence witness because it was missing from the record?

[25] Crucially, on this score, in this case it is undisputed that both the high court and, in particular, the full court had access to the complete record of the

⁸ *S v Chabedi* 2005 (1) SACR 415 (SCA) para 5.

proceedings when making their respective decisions. Consequently, the question does not arise. However, even if the record had been incomplete as contended for, no grave injustice has been established. There is no evidence presented to this Court which demonstrates how the incomplete record would have resulted in an unfair appeal. Nor is it clear the extent to which the missing parts of the record were used in support of the findings by the high court and the full court. Additionally, there is inadequate information regarding the steps that were taken to reconstruct the record for purposes of the full court appeal.

[26] For these reasons, I conclude that Mr Lekeka has failed, to meet the heightened threshold, to demonstrate exceptional circumstances. In the circumstances, the application for reconsideration of the decision refusing the application for special leave to appeal against conviction and sentence falls to be struck from the roll.

[27] In the result, the following order is made:

The application for reconsideration of the decision refusing special leave to appeal against conviction and sentence is struck from the roll.

F KATHREE-SETILOANE
JUDGE OF APPEAL

Appearances

For the applicant: M P Milubi

Instructed by: Legal Aid, Johannesburg
Legal Aid, Bloemfontein

For the respondent: J Joubert SC

Instructed by: National Prosecuting Authority, Pretoria
National Prosecuting Authority, Bloemfontein