



**THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable / Not Reportable

Case no: CC08/2020

In the matter between:

THE STATE

and

SINETHEMBA MAKALENI

Accused 1

ANGA ANGANDA MABEJANE

Accused 2

LONWABO COSA

Accused 3

SIYANDA NDZENDZE

Accused 4

Coram: Honourable Justice HM Slingers

Heard: 16 February 2026

Delivered: 23 February 2026

**Neutral citation: The State versus Sinethemba Makaleni & 3 others
CC08/2020 [2026] ZAWCHC ... (23 February 2026)**

This judgement is delivered electronically by circulation to the parties' legal representatives' email addresses and will be deemed to have been delivered on 23 February 2026.

ORDER

The applications for leave to appeal are refused.

JUDGMENT

- [1] This is an application for leave to appeal brought by accused 1 and 3 against their convictions handed down on 15 August 2025 and their sentences handed down on 22 January 2026.¹ Accused 1, Mr. Makaleni seeks leave to appeal to the Full Bench while accused 3, Mr. Cosa seeks leave to appeal to the Supreme Court of Appeal.
- [2] In respect of the application for leave to appeal against his conviction, Mr. Makaleni's legal representative averred that the court erred in accepting the evidence presented by the state and in finding that the accused acted in furthering a common purpose. In respect of the application for leave to appeal against Mr. Makaleni's sentence, his legal representative argued that another court could come to a different conclusion. The application did not identify any material mis-directions committed by the court in arriving at the sentences imposed.
- [3] In respect of his application for leave to appeal against his conviction, Mr. Cosa's legal representative submitted that another court could come to a different conclusion after evaluating the evidence. However, the application

¹ Accused 4, Mr. Ndzenze elected not to appeal against his conviction or sentence.

for leave to appeal did not identify any material errors or mis-directions by the court. In respect of the application for leave to appeal against the sentences imposed on Mr. Cosa, it was argued that there was a possibility that another court may deviate from the implementation of the prescribed minimum sentences. However, the application for leave to appeal identified no material mis-directions or material errors committed by the court in arriving at the sentences imposed.

[4] Furthermore, it was not averred that the sentences imposed on Mr. Makaleni and Mr. Cosa were unjust or shockingly disproportionate.

[5] Although not specifically stated, it is apparent from the grounds set out in the applications for leave to appeal as well as the arguments presented in support thereof that they are brought in terms of section 17(1)(a)(i) of the Superior Courts Act which provides that leave to appeal may only be granted where the judge or judges concerned are of the opinion that there are reasonable prospects of success.

[6] In *S v Smith*² the Supreme Court of Appeal stated:

‘[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 of success on appeal and that those prospect 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

² 2012 (1) SACR (SCA) at para 7

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 prospect of success on appeal.'

[7] The prerequisite requirement of reasonable prospects of success must be considered within the context of the test for the granting of leave to appeal intrinsic in the use of the word 'would' in section 17(1)(a)(i) which requires a measure of certainty.³

[8] In MEC Health, Eastern Cape v Mkhita⁴ the court reaffirmed the test to be met before leave to appeal should be granted and went on to state that:

'An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realist 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 a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.'

[9] In the present application, both applicants have relied on a possibility of success, on an arguable case. However, as stated above, this is insufficient to satisfy the requirements of section 17(1)(a)(i) of the Superior Courts Act.

[10] In respect of the application for leave to appeal against the sentences imposed, it is trite that the trial court is best placed to impose a sentence and that sentencing falls primarily within its discretion which is not easily interfered with. As stated in *S v Bogaard*⁵:

³ *Mont Chevaux Trust v Goosen* 2014 JDR 2325 (LCC)

⁴ (1221/15) [2016] ZASCA 176 (25 November 2016)

⁵ 2013 (1) SACR 1 (CC) at para [41]

'Ordinarily, sentencing is within the discretion of the trial court. An appellate court's power to interfere with sentences imposed by courts below is circumscribed. It can only do so where there has been an irregularity that results in a failure of justice; the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it. A court of appeal can also impose a different sentence when it sets aside a conviction in relation to one charge and convicts the accused of another.'

[11] In the present matter there are no allegations of any irregularities committed by the court which resulted in a failure of justice; of any misdirection which would vitiate the sentences imposed; or that the sentences imposed are so shockingly disproportionate that no reasonable court could have imposed it.

[12] Therefore, it cannot be found that there are reasonable prospects that another court would deviate from the implementation of the prescribed minimum sentences or impose a lesser sentence.

[13] In the circumstances, the applications for leave to appeal by accused 1, Mr. Makaleni and accused 3, Mr. Cosa against both their convictions and sentences are refused. Accordingly, I make the following order:

The applications for leave to appeal are refused.

HM SLINGERS
Judge of the High Court

Appearances:

Counsel for the State:	Ms. R Uys
Counsel for Accused 1:	Mr. O Arend
Counsel for Accused 2:	Mr. S Bandeker
Counsel for Accused 3:	Mr. M Delbrook Jones
Counsel for Accused 4:	Mr. S Bandeker