



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case no:CA4/2023

RC Case No: RC61/19

In the matter between:

MALOPE WILLIAM TSHILO

Applicant

and

THE STATE

Respondent

Coram:

Hendricks JP et Wessels AJ

Date of hearing:

27 February 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to

SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 9 March 2026.

Summary: Criminal Procedure — Appeal — Application for leave to appeal against a judgment of the Full Bench of the High Court sitting as a court of appeal — High Court having dismissed an appeal from the Regional Court — Applicant seeking leave from the High Court to appeal that decision to the Full Court of the same Division — Jurisdiction of the High Court — In terms of section 16(1)(b) of the Superior Courts Act 10 of 2013, an appeal against a decision of a Division given on appeal to it lies only to the Supreme Court of Appeal upon special leave being granted by that Court — High Court *functus officio* once appellate judgment delivered — High Court lacking jurisdiction to entertain the application — Application dismissed.

JUDGMENT

Wessels AJ

Introduction

[1] This is an application for leave to appeal brought by the applicant against the judgment and order of this Court delivered on 5 December 2024. Sitting as a court of appeal, this Court, differently constituted, dismissed the applicant's appeal against his conviction and sentence.

[2] The applicant was charged and convicted in the Atamelang Regional Court on one count of murder. Following the conviction, the Regional Court sentenced the Applicant to life imprisonment.

[3] The Applicant subsequently appealed to this Division against both conviction and sentence. On 5 December 2024, a full bench of this Court (comprising Mfenyana J and Motsatsi AJ) dismissed the appeal, thereby confirming the conviction of murder and the sentence of life imprisonment.

Application for leave to appeal

[4] In the present application, the Applicant seeks leave from this Court to appeal that decision to a full Court of this Division. The grounds for the application for leave to appeal are varied and substantial, including contentions that the court erred in its application of the doctrine of common purpose and failed to consider material discrepancies in the state witnesses' evidence. Regarding the sentence, the applicant maintains that his advanced age of 72 years and his status as a first offender, should have been weighed as substantial and compelling circumstances justifying a departure from the prescribed minimum sentence of life imprisonment.

Jurisdiction

[5] Before this Court can consider the merits of the application, a preliminary jurisdictional issue must be resolved. The crisp issue is whether a full bench of a high court has the jurisdiction to hear an application for leave to appeal against its own judgment where it sat as a court of appeal.

[6] The hierarchy of appeals is governed by s 16 of the Superior Courts Act¹ ('SC Act'). Section 16(1)(b) of the SC Act provides that an appeal against a decision of a division given on appeal to it, lies to the Supreme Court of Appeal only with the special leave of the Supreme Court of Appeal ('SCA').

[7] Section 315(1)(a) of the Criminal Procedure Act² 51 of 1977 ('CPA') provides:

'In respect of appeals and questions of law reserved in connection with criminal cases heard by a High Court, the court of appeal shall be the Supreme Court of Appeal, except in so far as subsections (2) and (3) otherwise provides.'

[8] Section 315(5)(a) of the CPA defines '*court of appeal*' as follows:

'means, in relation to an appeal which in terms of subsection (3) is heard or is to be heard by a full court, the full court concerned, and in relation to any other appeal, the Supreme Court of Appeal.'

[9] Section 315(3) of the CPA provides that an appeal which is to be heard by a full court in terms of a direction under section 315(2)(a) shall be heard by the full court of the provincial division concerned. Section 315(2)(a) applies only where an application for leave to appeal in a criminal case heard by a single judge of a High Court is granted, and the court or judge granting the application directs that a full court hear the appeal.

[10] Section 16 of the SC Act provides a comprehensive framework for appeals. Section 16(1)(b) is of particular relevance, and it reads as follows:

¹ Superior Courts Act 10 of 2013.

² Criminal Procedure Act 51 of 1977.

‘(1) Subject to section 15(1), the Constitution and any other law—

(a)...

(b) an appeal against **any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal.**’ (own emphasis)

[11] In *Van Wyk v S, Galela v S*³ the SCA clarified the position as follows:

‘The jurisdiction of this Court to hear appeals from the High Court whether as a court of first instance, or on appeal is derived from this section (section 16(1)(a) and (b) and 19 of the Act). Whereas under section 20(4) of the SC Act, the special leave of this Court was only required in respect of an application from a decision of the Full Court (three judges) given on appeal to it, **the special leave of this Court is now also required where leave to appeal is sought in respect of a decision of two judges, given on appeal to it.**’ (own emphasis)

[12] The applicant’s appeal served before the full bench of this Court, although differently constituted, which considered it and delivered a judgment. It follows that this Court is *functus officio*. This Court does not possess the requisite jurisdiction to grant leave to appeal a full court of this Division against an appeal judgment. The application is therefore procedurally defective and stands to be dismissed.

Order

[13] Resultantly, the following order is made:

³ *Van Wyk v S, Galela v S* (20273/2014, 20448/2014) [2014] ZASCA 152; [2014] 4All SA 708 (SCA); 2015 (1) SACR 584 (SCA) (29 September 2014) para 19.

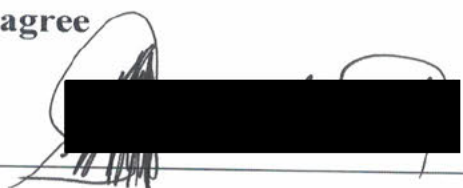
The application for leave to appeal is dismissed.



M WESSELS

**ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

I agree



RD HENDRICKS

**JUDGE PRESIDENT OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG**

Appearances

Counsel for applicant

:Mr GA Mokaa

Instructed by

:GA Mokaa Attorneys

:Mahikeng

Counsel for the respondent

:Adv NB Goloda

Instructed by

:Director of Public Prosecutions

:Mahikeng