

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG.**

Case Number: SS018/2025

|                         |                                                                                     |
|-------------------------|-------------------------------------------------------------------------------------|
| (1)                     | REPORTABLE: <del>YES</del> / NO                                                     |
| (2)                     | OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO                                     |
| (3)                     | REVISED: NO                                                                         |
| <b>25 February 2026</b> |  |
| DATE                    | SIGNATURE                                                                           |

**MAPHOSA, PHILLIP**

First Applicant

**MAYAMBO, JOAO**

Second Applicant

**SITHOLE, MOSES**

Third Applicant

And

**STATE**

**Respondent**

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**JUDGMENT**

*Leave to Appeal*

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**NOKO J**

[1] The applicants filed an application for leave to appeal their convictions and the sentences imposed on them. They were found guilty of two counts of murder read with the provisions of section 51(1) of the Criminal Law Amendment Act<sup>1</sup> (“CLAA”), and contravention of the Immigration Act<sup>2</sup> on 18 December 2025. The judgment on sentence was delivered on 19 January 2026, and they were each sentenced to life imprisonment for each count of murder and 2 years imprisonment for the contravention of the Immigration Act.

[2] The applicants contend that I erred in respect of the conviction and sentence on several grounds. Whilst I considered all grounds advanced, I would, for this judgment, pay close attention to those grounds highlighted during the address. First, the applicants contend that I erred in concluding that the cell phone belonging to the late Siwedi, which was found in the possession of accused 1, suggests that it was taken from the deceased during or after the accused murdered her. The version of accused 3 is that the cell phone was given to him a day before her death to remain in contact with the late Siwedi whilst accused 3 was at home in Tembisa. Accused 3 gave the phone to accused 1 to return it to the late Siwedi, as accused 3 would no longer be going back to work but would be visiting his mother at his home in Mozambique.

[3] Secondly, I erred in admitting the evidence relating to the chain of custody, which evidence was not tendered in accordance with the provisions of section 212(8)(a)(ii) (aa) of the Criminal Procedure Act,<sup>3</sup> which required that a person who delivered the exhibits should be identified. This contention is fortified, Mr. Khunou, acting for the applicants, argued, by what was stated by Bam AJ in *S v Sithole*.<sup>4</sup>

[4] Thirdly, the confession by accused 3 was not properly taken and therefore not admissible, as he stated that he did not understand Shangaan (also referred to as Tsonga in the Republic of South Africa) and did not understand what Lt Col. Rikhotso said. In addition, the confession states that one person was murdered, whereas the charges relate to

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<sup>1</sup> 105 of 1997.

<sup>2</sup> 13 of 2002.

<sup>3</sup> 51 of 1977.

<sup>4</sup> *Sithole v S* 2013 (1) SACR 298 (GNP).

the murder of two individuals, and the said confession further refers to Makausi Informal Settlement, whereas the murder occurred in Rasta Informal Settlement.

[5] Fourthly, the evidence that accused 1, who was in handcuffs and leg cuffs, could have climbed onto the roof of the shack to retrieve the black plastic bag containing sneakers and a lumber jacket is implausible. The version of the accused was that they were handcuffed after the arrest in Palm ridge even before the entourage proceeded to accused 3's home in Tembisa. In contrast, the evidence of Ms Mpofu and Sgt Boshielo is that the accused were only handcuffed when they were driving back to Primrose from Tembisa, and this evidence is inconsistent with the truth as set out by the accused, Mr Khunou contended.

[6] Concerning sentencing, Mr Khunou submitted that *Malgas*<sup>5</sup> read with *Vilakazi*<sup>6</sup> are instructive and should have influenced the court to consider imposing 15 years sentence instead of life imprisonment. The submission is predicated on the argument that the chances of the accused reoffending were minimal, and they are still young, hence they would be easily rehabilitated. In the premises, life imprisonment would not be appropriate, Mr Khunou submitted.

[7] Ms Deoraj, on the other hand, submitted that the arguments advanced by the applicants do not assail the judgment both on conviction and sentence. She contended that there is no basis to take umbrage with the evidence that indeed the cell phone found on accused 1 belonged to the deceased. In addition, the evidence regarding the taking of the confession from accused 3 was above board. The evidence regarding the chain of custody was not challenged during the trial, and the counsel and the accused contended that the defence opted to accept the statements submitted in respect of the chain of custody except for the statement by W/O Selepe, as Captain Ngobeni was called to clarify the evidence.

[8] In addition, Ms Deoraj continued, it is trite that a witness may not remember everything which transpired with military precision. There will always be room for

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<sup>5</sup> *S v Malgas* (117/2000) [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (SCA) (19 March 2001).

<sup>6</sup> *S v Vilakazi* (576/07) [2008] ZASCA 87; [2008] 4 All SA 396 (SCA); 2009 (1) SACR 552 (SCA); 2012 (6) SA 353 (SCA) (3 September 2008).

mistakes. To this end, the evidence tendered by Ms Mpofu is not tarnished by the mistake she made in not mentioning in her statement the confessions by the accused 1 and 2.

[9] Concerning sentencing, Ms Deoraj submitted that her submission that the sentence should run consecutively would have been justified, but she does accept that sentencing is within the repository of the judge and to this end does not quarrel with the fact that I ordered that the sentences should run concurrently, even though she thinks it is lenient. In conclusion, there are no merits in the application for leave to appeal, and the same should be dismissed.

[10] It is trite that where an application for leave to appeal is instituted, the applicant must demonstrate, *inter alia*, that the appeal has a reasonable prospect of success or that the adjudication of the appeal would be precedent-setting, or that there is some compelling reason why it should be heard. It is further trite<sup>7</sup> that the Superior Courts Act<sup>8</sup> has introduced a higher threshold to be met in applications for leave to appeal, and the usage of the word ‘*would*’ requires the applicant to demonstrate that another court would certainly come to a different conclusion.

[11] The mere possibility of success, an arguable case or one that is not hopeless is not enough.<sup>9</sup> There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.<sup>10</sup>

[12] I have considered the reasons underpinning the grounds for leave to appeal and I am not persuaded that another court would conclude that, on the conspectus of the evidence I considered, the outcome I arrived at was not apt. The points raised by the applicants were raised at the close of the trial on merits and sentence and have been repeated. I find no basis to repeat the reasons I set out in the judgment as to why the applicants’ arguments were

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<sup>7</sup> See *Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2325 (LCC). *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016), *Acting National Director of Public Prosecutions and Others v Democratic Alliance: In Re Democratic Alliance v Acting Director of Public Prosecutions and Others* (19577/09) [2016] ZAGPPHC 489 (24 June 2016).

<sup>8</sup> 10 of 2013.

<sup>9</sup> *MEC for Health, Eastern Cape v Mkhitha* (1221/2015) [2016] ZASCA 176 (25 November 2016) at para 17.

<sup>10</sup> *Smith v S* (475/10) [2011] ZASCA 15; 2012 (1) SACR 527 (SCA) (15 March 2011).

unsustainable. To this end, I find that there is no basis upon which another court would upset my findings.

*Conclusion*

[13] The applicants have failed to meet the threshold, and I am not persuaded that the appeal has reasonable prospects of success, nor that another court would come to a different conclusion nor that there is a compelling reason. For these reasons, the application for leave to appeal is bound to fail.

*Order*

[14] In the premises, I grant the following order:

*The application for leave to appeal is dismissed.*



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**M V Noko**  
Judge of the High Court

DISCLAIMER: This judgment was prepared and authored by Judge Noko and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it on Case Lines. The date for hand-down is deemed to be 25 February 2026.

Date of hearing: 20 February 2026

Date of judgment: 25 February 2026

*Appearances:*

For the Applicants:

Khunou M.A., instructed by Legal  
Aid Board, South Africa.

For the State:

Deoraj A., on behalf of the DPP, Jhb.