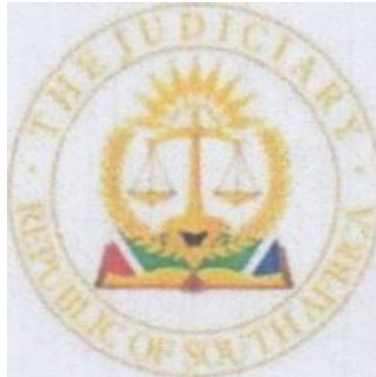


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG



Case number: A10/2023
Date of hearing: 17/02/2023
Date delivered: 03/03/2023

DELETE WHICHEVER IS NOT APPLICABLE
REPORTABLE: ~~YES~~/NO
OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
REVISED

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DATE

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SIGNATURE

In the matter between:

SETHOSA, PHENYO

APPELLANT

AND

THE STATE

RESPONDENT

Neutral Citation: *Sethosa Phenyo v The State* (Case No: A10/2023) [2023] ZAGPJHC 333 (3 March 2023)

JUDGMENT

KARAM AJ:

1. On 6 October 2022, the Appellant was convicted of rape in terms of Section 51(2) of the Criminal Law Amendment Act 105 of 1997, with which he had been charged.
2. On 24 November 2022 he was sentenced to 10 years imprisonment.
3. On the latter date, his application for leave to appeal his conviction and sentence was refused.
4. On the same date, his application for bail pending petition to the High Court for leave to appeal his conviction and sentence, was refused.
5. The current matter is the appeal against such refusal of bail.
6. Mr Du Plessis represented the Appellant and Ms Williams represented the State.
7. The matter was argued before this Court on 17 February 2023.
8. This Court does not intend to burden this judgment with the submissions made, by virtue of what is stated hereinbelow.
9. It is clear that at the date of this appeal the Appellant did not possess a clear right to appeal as the petition was still pending.

I had become aware that the determination of this petition was imminent.

(The petition in this matter had been allocated to myself and another Judge for determination, a day or 2 prior to this matter being argued.

I had returned same for re- allocation to another Judge, me being already seized with the appeal in this matter and the fact that it would thus be irregular for me to be seized with the petition.)

I further advised counsel that according to the practice in this Division, petitions are generally determined within a week after allocation.

10. Counsel for the Appellant proposed that the hearing of this appeal then be postponed for a short period, for the determination of the petition. Counsel for the State agreed.

It was envisaged that should the petition succeed, the Court would take into consideration the findings of the Court who dealt with the petition, and the Court would hear further argument.

This Court was of the view that it was in the interests of justice to agree to such proposal, and the matter was postponed until today.

11. I am in possession of a copy of the petition order, which petition was determined on 22 February 2023. The petition for leave to appeal was

refused in respect of both conviction and sentence. The Court has made copies of such Order for Counsel.

12.This Court has been informed that the attorneys for the Appellant have withdrawn the bail appeal by virtue of a notice dated 1 March 2023 and uploaded onto caselines on 2 March 2023. The Court finds it unprofessional and in bad taste that not even a representative of the firm of attorneys has appeared today, the agreed postponement date.

13.In the premises, an in light of the foregoing, the appeal against the refusal of bail is dismissed.

.....

KARAM AJ

JUDGE OF THE HIGH COURT

DATE OF HEARING: 17 FEBRUARY 2023

DATE OF JUDGMENT: 03 MARCH 2023

ATTORNEYS FOR THE APPELLANT: BDK ATTORNEYS

COUNSEL FOR APPELLANT: ADVOCATE DU PLESSIS

COUNSEL FOR THE RESPONDENT: ADVOCATE WILLIAMS