



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NUMBER: CC23/2025

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

M. MALANGENI

.....
21 August 2026

In the matter between:

THIMOTHY BHEKI ZWANE

APPLICANT

and

THE STATE

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties and their legal representatives by email transmission. The date and time for the hand-down of the judgment is deemed to be **21 August 2026 at 10h00.**

JUDGMENT

MALANGENI AJ

[1] On 27 July 2026, the Applicant pleaded guilty in terms of section 112(2) of the Criminal Procedure Act 51 of 1977 (“the Act”) to the following counts:

- 1.1 Murder in terms of the provisions of section 51(1) (g) of the Criminal Law Amendment Act 105 of 1997 (“the CLAA”) read with section 1 of the Domestic Violence Act 116 of 1998;
- 1.2 Unlawful possession of a firearm; and
- 1.3 Unlawful possession of ammunition.

[2] On 29 July 2026, the Applicant was sentenced as follows:

- 2.1 For count 1– life imprisonment;
- 2.2 For count 2 – three years imprisonment;
- 2.3 For count 3 – 12 months imprisonment;
- 2.4 Sentences on counts 2 and 3 were ordered to run concurrently with the sentence imposed for that of count 1.

[3] The application before Court is for leave to appeal against sentence of life imprisonment in terms of count 1 of the charge. The grounds of appeal are that:

- 3.1 the court erred in finding that life imprisonment was proportionate;
- 3.2 the court erred by failing to properly assess substantial and compelling circumstances cumulatively;
- 3.3 the court erred in underemphasising the guilty plea, remorse, and cooperation;
- 3.4 the court erred in underemphasising diminished moral blameworthiness;
- 3.5 the court erred in treating intoxication as neutral or aggravating only;
- 3.6 the court erred in failing to give proper weight to the absence of premeditation;

- 3.7 the court erred in underemphasising first-offender status and rehabilitative prospects;
- 3.8 the court erred in underemphasising pre-sentence incarceration;
- 3.9 the court erred by overemphasising retribution and deterrence;
- 3.10 the court erred in failing to distinguish this case from the most serious category of murder.

[4] The Applicant filed written heads of argument whereas the Respondent made oral submissions. Both parties referred this Court to different authorities that assisted this Court in making an informed decision. In the main, the Applicant submits that there are reasonable prospects that another court would find that the sentence of life imprisonment is disproportionate, unjust and not the only appropriate sentence in the circumstances of this matter. It was further submitted that another court may find that substantial and compelling circumstances existed which justified a departure from the prescribed sentence of life imprisonment. In opposing the application, the Respondent’s counsel argued that the trial court did not misdirect itself and that it correctly applied the law to the facts.

[5] An application for leave to appeal is governed by section 17(1) (a) of the Superior Courts Act 10 of 2013. This section provides that leave to appeal may only be given where the judge or judges concerned are of the opinion that—

- (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[6] The Supreme Court of Appeal (“the SCA”) in *MEC for Health, Eastern Cape v Mkhitha*¹ emphasized the essential requirements of leave to appeal as follows:

“[16] Once again it is necessary to say that leave to appeal, especially to this court, must not be granted unless there truly is a reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act 10 of 2013 makes it clear that leave to appeal may only be given where the judge concerned is of the

¹ *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016) at paras 16–17. The footnotes of the text are omitted, and the emphasis of the Court has been retained.

opinion that the appeal *would* have a reasonable prospect of success; or there is some other compelling reason why it should be heard.

[17] An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic 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.”

[7] In an application of this nature, the test is whether there are reasonable prospects of success and that another court might come to a different conclusion. In the oft quoted *S v Smith*² the SCA took care to lay down this principle, in stating:

“[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 prospects 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 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 prospects of success on appeal.”

[8] The test in question was supported by Schippers JA in *Four Wheel Drive Accessory Distributors CC v Rattan NO*³ when he said that leave to appeal should only be granted where there exists “a sound, rational basis for the conclusion that there are prospects of success on appeal.”

[9] When I imposed this type of sentence, I considered the traditional factors of punishment as articulated in the *locus classicus* *S v Zinn*⁴, I further considered the interests of the victims being the son of the deceased and her family (the victim impacts reports). My judgment on sentence detailed the reasons or grounds that led to the sentence I imposed. I correctly applied the relevant law dealing with section 51 (1) of the CLAA to the facts of the case. I took into

² *S v Smith* 2012(1) SACR 567 (SCA) at para 7.

³ *Four Wheel Drive Accessory Distributors CC v Rattan NO* (1048/17) [2018] ZASCA 124; 2019 (3) SA 451 (SCA) (26 September 2018) at para 34

⁴ *S v Zinn* 1969 (2) SA 537 (A) at para 539H-540C read together with 540G.

consideration all the factors raised as grounds of appeal which were, to mention a few: time spent into custody, personal circumstances, state of health, intoxication, and moral blameworthiness. What has been raised by the Applicant as grounds of appeal are flimsy or—not solid grounds. The application for leave to appeal lacks prospects of success. Furthermore, I am not convinced that another court would arrive at a different conclusion to the one reached by this Court. I am of the view that the application for leave to appeal must fail.

The order

[10] I, therefore, issue the following order:

1. The application for leave to appeal is accordingly refused.



M. MALANGENI

Acting Judge of the High Court
Mpumalanga Division, Mbombela

Appearances:

For Applicant:

Adv. M. J. Du Plessis
Instructed by Coert Jordan Inc.

For Respondent:

Adv. F. E. Tsotetsi
Instructed by DPP's Office

Heard:

13 August 2026

Judgment:

21 August 2026