

SOUTH AFRICA / JUDGMENT

Fortuin v S (A500/2006) [2008] ZAWCHC 217 (6 June 2008)

[2008] ZAWCHC 217**COURT**

Western Cape High Court, Cape Town

BEFORE

Moosa, Mlonzi

CASE / FILE NUMBER

A500/2006

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(CAPE****OF GOOD HOPE PROVINCIAL DIVISION)****CASE****NO: A500/2006****DATE: 6****JUNE 2008**In the matter
between:**BURTON**
FORTUIN Applicant**AND**
THE
STATE Respondent**JUDGMENT**

(Application for Leave to Appeal)

MOOSA. J:

This is an application for leave to appeal to the Supreme Court of Appeal against a decision of this Court to dismiss the appeal against the conviction of applicant in the Regional Court.

The applicant was convicted in the Regional Court on a charge of rape and sentenced to nine years imprisonment. The applicant denied any wrong doing, the application for leave to appeal is opposed by the respondent namely, the State. The grounds of appeal are set out in the notice of application for leave to appeal dated 21 May 2007,

Although there are five grounds of appeal, as set out in the notice of application for leave to appeal, Advocate Marais, who appeared for the applicant, informed the Court that he is essentially concentrating on two grounds; they are the first ground

namely, that the Honourable Court of Appeal misdirected itself by not finding that the learned magistrate erred in dismissing the

application by the applicant's attorney for the recall of the applicant; and the fifth ground, namely, that the Honourable Court of Appeal erred in not sufficiently taking into account that according to Dr Trope some of the injuries that the complainant professed to have sustained could have been faked, and that some of the injuries the complainant testified about were not seen and noted by Trope.

Now it is settled law for the applicant to succeed with his leave to appeal he must satisfy this Court that he has reasonable prospects of success on appeal. In this regard see *R v Nqubane and Others* 1948 AD 185 at 186/7 and *S v Ackermann en n Ander* 1973(1) SA 765(A) 767 g-h. This consideration applies to both the question of law and fact. In this regard see *R v Koswavo* 1949(3) SA 761(A).

This Court has dealt fully, in its judgment, with all the issues which have been raised in the grounds of appeal and also more particularly,

with the grounds as contained in 1 and 5 on which the applicant is concentrating. There is, therefore, no reason for me to repeat the rationale of this Court in coming to its conclusion in respect of those grounds. We have also heard the submissions by both applicant's and respondent's counsel in connection with this application.

After careful consideration, I have not been persuaded that there are reasonable prospects of success on appeal to the Supreme Court of Appeal, either on the question of law or fact. In the premises I am of the view that the APPLICATION FOR LEAVE TO APPEAL TO THE SUPREME COURT OF APPEAL SHOULD BE DISMISSED, and it is so ordered.

MOOSA, J

I agree,

MLONZI, AJ

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