

SOUTH AFRICA / JUDGMENT

## Lephotho v S (10/2013) [2020] ZAFSHC 197 (28 October 2020)

[2020] ZAFSHC 197

COURT

Free State High Court, Bloemfontein

BEFORE

M. A. Mathebula

CASE / FILE NUMBER

10/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case

No.: 10/2013

In

the application for leave  
to appeal between:

MORENA  
SIMON  
LEPHOTHO Applicant  
and  
THE  
STATE Respondent

### JUDGMENT

BY: MATHEBULA, J

HEARD ON: 04 SEPTEMBER 2020

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII

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- [1] The applicant together with three other people were charged with a plethora of offences before Moloi, J sitting on circuit at

Harrismith. He was sentenced to undergo a term of life imprisonment and thirty six years. The learned judge ordered that the sentences of five years and one year pertaining to count 4 and 5 run respectively concurrently with that of life imprisonment. Nothing was said about sentences on the other counts nor reasons stated why they should not run concurrently with the sentence on count three. It appears that the application for leave to appeal is pursued primarily on this narrow point of law.

- [2] Before dealing with the merits of the application, there is a preliminary issue of condonation. This matter comes before me in the eighth year since the learned judge handed down sentence. Mr Hoffman who appeared for the State submitted that he does not oppose the application for condonation for late filing of the appeal.

- [3] It appears that after the finalisation of the matter, the applicant lodged a complaint against the learned judge which served before the Judicial Conduct Committee. The latter body dismissed his complaint. A substantial period of time elapsed before his attorneys of record could be instructed and bring counsel to argue the matter before court. The main reason advanced is the lack of funds. Given the exceptional circumstances surrounding the matter and the prospects of success of that narrow point as stated above, the condonation for late filing of the appeal is granted.

- [4] This brings me to the issue on hand. The submission made by Mr Mlotshwa deals with the issue that the learned judge did not order the sentences as stated above to run concurrently with the one of life imprisonment. The issues as I understand the submission is not that the sentence imposed are too excessive that they induce a sense of shock. The nub of the application is that by not ordering that the sentences run concurrently the applicant will serve a long sentence without ever being eligible for parole. There is some merit in the argument persuasive to the extent that there are prospects of success. It is on these grounds that the applicant is granted leave to appeal on that point.

- [5] I make the following order:-

5.1 The applicant is granted leave to appeal against sentence only to the full bench of this division.

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M. A. MATHEBULA, J

On behalf of Applicant: Adv. C. S. Mlotshwa

Instructed by: Blair Attorneys

BLOEMFONTEIN

On behalf of the Respondent: Adv. R. Hoffman

Instructed by: Department of Public Prosecution

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Prepared on 10 October 2026 · Esheria