

SOUTH AFRICA / JUDGMENT

Lukhele v S (CC55/14) [2016] ZAGPPHC 123 (23 March 2016)

[2016] ZAGPPHC 123

COURT

North Gauteng High Court, Pretoria

BEFORE

FHD Van Oosten

CASE / FILE NUMBER

CC55/14

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: CC 55/14

DATE:

23/3/2016

Not

reportable

Not

of interest to other judges

Revised

In

the matter between

JABULANI

JOSEPH LUKHELE

APPLICANT

and

THE

STATE RESPONDENT

JUDGMENT

(LEAVE TO APPEAL)

VAN OOSTEN J:

[1] This is an application for leave to appeal against a sentence of 15 years' imprisonment imposed in respect of murder and the contravention of the conditions of a protection order.

[2] In support of the contention that another court may reasonably impose a lesser sentence, counsel for the applicant once again made reference to the personal circumstances of the applicant and the fact that he had shown remorse in pleading guilty. I have duly considered all those factors as well as the seriousness of the crime of murder which was committed in the course of a tumultuous relationship between the applicant and the deceased.

[3] It is trite that sentencing remains pre-eminently within the discretion of the sentencing court. In *Mokela v The State* 2012

(1) SACR 431 (SCA) para [9], Bosiello JA put it thus:

'This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served. The limited circumstances under which an appeal court can interfere with the sentence imposed by a sentencing court have been distilled and set out in many judgments of this Court. See *S v Pieters* 1987

(3) SA 717 (A) at 727F-H; *S v Malgas* 2001

(1) SACR 469 (SCA) para 12; *Director of Public Prosecutions v Mngoma* 2010 (1) SACR 427 (SCA) para 11; and *S v Le Roux & others* 2010

(2) SACR 11 (SCA) at 26b-d.'

[4] This is a serious case of murder. By shooting and killing the deceased the applicant acted in a manner that is unacceptable in any civilised society that ought to be committed to the protection of the rights of all persons, including women. Intimate partner violence remains alarmingly prevalent as a serious social problem in our society and deterrent sentences are called for (see *Jimmy Sebone Seemela v The State* (20508/14)

[2015] ZASCA 41 (26 March 2015)).

[5] When viewed against the objective gravity of the offence (*S v Vilakazi* 2012 (6) SA 353 (SCA) para [58]) I am of the view that the sentence imposed is fair and proportionate to the offence the appellant has been convicted of.

[6] In my view no reasonable prospects of a successful appeal exists and it follows that leave to appeal ought to be refused.

[7] In the result leave to appeal is refused.

FHD VAN OOSTEN

JUDGE OF THE HIGH COURT

DATE OF HEARING 23

MARCH 2016

DATE OF JUDGMENT 23

MARCH 2016

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