

SOUTH AFRICA / JUDGMENT

Mhlabeni v S (CC106/2003) [2018] ZANWHC 30 (15 February 2018)

[2018] ZANWHC 30

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

CC106/2003

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IN THE NORTH WEST HIGH COURT, MAHIKENG

CASE NO: CC106/2003

In the matter between:

BONGINKOSI MHLABENI Applicant

and

THE STATE Respondent

DATE OF HEARING: 09 FEBRUARY 2018

DATE OF JUDGMENT: 15 FEBRUARY 2018

COUNSEL FOR APPLICANT: MR. MADIBA

COUNSEL FOR THE RESPONDENTS: ADV. MOKONE

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

HENDRICKS J

Introduction

- [1] This is an application for leave to appeal to the Full Bench of this division against sentence. The applicant was convicted on various charges including murder and sentenced to life imprisonment by Nkabinde J. on 04th September 2003. An application is also made for condonation for the late prosecution of the application for leave to appeal. Although

there is an inordinately long delay in prosecuting the application for leave to appeal and furthermore an explanation which is lacking in detail, this Court is incline to grant the requisite condonation because there are reasonable prospects of success on appeal.

- [2] In terms of the notice of appeal, the application for leave to appeal is premised mainly on the fact that the trial court erred in not finding that there are substantial and compelling circumstances present in this case which warrants a deviation from imposing life imprisonment as a sentence. Furthermore, that the sentence of life imprisonment is shockingly severe and excessive and that the seriousness of the offence was over-emphasized. In his heads of argument it is contended by the applicant, as an accused person, that he was also not appraised of the provisions of the Criminal Law Amendment Act 105 of 1997, the commonly called minimum sentence act / legislation.
- [3] The Supreme Court of Appeal (SCA) has stated that an accused person should be informed about the minimum sentence legislation and the possible effect thereof before the trial commence. The indictment is silent on the applicable minimum sentence legislation. So too, is it not recorded that the trial court informed that the applicant at the commencement of his trial that in the event that he is convicted of murder, he may be imprisoned for life. This, in my view, is a fatal irregularity.
- [4] The trial court concluded that there are no substantial and compelling circumstances present in this case. Having perused the

record, I am of the view that another court may well conclude differently. Therefore, I am of the view that there are indeed reasonable prospects of success on appeal. Leave to appeal should therefore be granted to the Full Bench of this division against sentence.

Order:

- [5] Consequently, the following order is made:
- (i) Condonation for the late noting and prosecution of the application for leave to appeal is granted.
- (ii) Leave to appeal is granted to the Full Bench of this division against sentence.

R D HENDRICKS

JUDGE OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG.

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