

SOUTH AFRICA / JUDGMENT

Mile v S (CC100/2018) [2025] ZAGPPHC 669 (26 June 2025)

[2025] ZAGPPHC 669

COURT

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

CC100/2018

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: CC100/2018

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES

DATE:

26/06/2025

In

the matter between: MOHELEPI
RAYMOND MILE
APPLICANT
V
THE
STATE
RESPONDENT

JUDGMENT

MOSOPA J

- [1] This is an application for leave to appeal only against sentence imposed by the trial court. The trial matter in which the applicant was convicted of the following counts, assault with intent to do grievous bodily harm and murder read with the provisions of section 51(1) of Act 105 of 1997, served before Broodryk A.J.
- [2] Sequel to such a conviction the applicant was sentenced as follows;
- 2.1. Assault with intent to do grievous bodily harm 5 years
- 2.2. Murder 20 years imprisonment, and effective imprisonment ordered was 25 years imprisonment. This is important to note that in all counts the complainant is M[...] S[...] M[...], who was married to the applicant.
- [3] This matter was allocated to me, by the Deputy Judge President for adjudication as it served before an Acting Judge who is currently not acting in such capacity at the current moment.
- [4] Applicant was convicted and sentenced on the 14 October 2019 for the offences he was charged with. Application for leave to appeal was filed out of time by the applicant on the 09 October 2024, accompanied by an application for condonation of the late filing. The state did not oppose such application and was accordingly granted when this matter was heard.
- [5] According to the indictment the first count of assault, was committed in August 2015 and the murder count was on the 10 December 2017, almost a period of 2 years and 4 months apart from each other.
- [6] The application for leave appeal is only limited to the aspect that, the trial judge erred in not ordering the sentences to run concurrently in terms of the provisions of section 280 (1) of Act 51 of 1977. For completeness' sake, the section makes the following provision;
- “(1) When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.”*

- [7] After hearing arguments in this matter, I ordered that the application for leave to appeal against sentence imposed is hereby refused and promised to provide reasons for such an order at a later stage.
- [8] In *S v Moswathupa* 2021 (1) SACR 259 (SCA) at 8, the court stated that;
- “Where multiple offences need to be punished, the court has to seek an appropriate sentence for all offences taken together. When dealing with multiple offences a court must not lose sight of the fact that the aggregate penalty must not be unduly severe.”*
- [9] In *S v Mokela* 2012 (1) SACR 431 (SCA) at 11, the court noted that an order that sentences run concurrently is called for where the evidence shows the relevant offences are “inextricably linked in terms of the locality, time, protagonists and, importantly, the fact that they were committed with one common intent.”
- [10] The other question which need to be considered when ordering cumulative or concurrent running of the sentence in the event of conviction of multiple offences is whether the charges arouse out of a single criminal enterprise.
- [11] The trial court when considering the concurrent running of the sentences, stated that;
- “I was asked by Mr Mokoena to blend my sentence with mercy and he asked that I let the sentence in respect of count 1 and 2 run concurrently.*
- As to the question of concurrency, I seriously considered it but decided in the end, and bearing in mind that there was two and a half years in the past between the two incidents, as well as the fact that the second count of murder was actually then the second incident of a very serious violence perpetrated on his wife, not to order any such sentence to run concurrently.”
- [12] The marriage relationship of the accused and the deceased is the one which can be labelled it as characterised by violence. The deceased would at times stand her ground and fight the applicant back. During the first incidence of assault, the deceased was injured to the sense that she lost movement of her fingers and was always wearing a hand guard as a result of that assault. The murder incident, it was also because of the fight the applicant had with the deceased and applicant used a pair of scissors to stab the applicant to her death.
- [13] It is clear from the above that the incidents were not committed with a common intent and did not arise out of a single criminal enterprise. There was a pause between the two incidents and are therefore not inextricably linked in terms of locality, time and protagonists.
- [14] In *S v Smith* 2012 (1) SACR 567 (SCA), Plasket AJA when dealing with what the test is, stated at paragraph 7, that;
- “[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.”

[15] In *Mount Chevaux Trust (IT 2012/28) V Tina Goosen and Others*, when dealing with the threshold in applications for leave to appeal, Bertelsmann J, stated that,

“[6] It is clear that the threshold for granting leave to appeal against judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come to a different conclusion...the use of the word “would” in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

[16] On the proper analysis of the grounds of appeal and contentions made on behalf of the applicant, I cannot find a sound, rational basis for the conclusion that there are prospects of success on appeal and the application ought to fail.

ORDER

[17] In the result the following order is made;

1. Application for leave to appeal against sentence is hereby refused.

M.J. MOSOPA

JUDGE OF THE HIGH COURT,

PRETORIA

APPEARANCES:

FOR THE APPELLANT : ADVOCATE AUGUSTYN

INSTRUCTED BY : LEGAL AID SOUTH AFRICA

FOR THE RESPONDENT : ADVOCATE KABINI

INSTRUCTED BY : DIRECTOR OF PUBLIC PROSECUTIONS

Date of Hearing: 09 June 2025

Date of Judgment: 26 June 2025

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Prepared on 9 October 2026 · Esheria