

SOUTH AFRICA / JUDGMENT

Mogabale v S (CA 44/2023 ; CAP 04/2025) [2025] ZANWHC 27 (23 January 2025)

[2025] ZANWHC 27**COURT**

North West High Court, Mafikeng

BEFORE

Petersen, Wessels

CASE / FILE NUMBER

CA 44/2023 ; CAP 04/2025

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH****WEST DIVISION, MAHIKENG****HIGH****COURT REFERENCE NUMBER: CA 44/2023****AMENDED****TO CAP 04/2025****MAGISTRATES'****PETITION NUMBER: 02/2022****MAGISTRATE'S****CASE NUMBER: SRC 102/2019****Reportable: YES****Circulate to Judges: YES****Circulate to Magistrates:**

NO

Circulate to Regional

Magistrates: NO

In

the petition of:

DAWID

DINTWA MOGABALE

Petitioner

AND

THE

STATE

CORAM:

PETERSEN J et WESSELS AJ

DATE

OF JUDGMENT: 23 JANUARY 2025

ORDER

1.

The petition against sentence is dismissed on the basis that there are no reasonable prospects of success on appeal.

2.

A copy of this judgment must be brought to the attention of Provincial Head of the Office of the Chief Justice, North West for investigation and appropriate action against Ms Lesego Tsejwane.

3.

The failure of the Chief Registrar and any Registrar connected to the Criminal Section of the North West High Court in ensuring proper oversight over the Criminal Section is re-emphasized and once again referred to the Provincial Head of the Office of the Chief Justice, North West for investigation and appropriate action.

JUDGMENT

PETERSEN J

[1] The petition relevant to this judgment was allocated by the Judge President to me and Acting Judge Wessels, on 22 January 2025.

[2] On 19 December 2024, judgment was delivered per myself and Judge Reddy in the petitions of Ramasilo and the State et Malebatso and the State (CAP 26/2024; CA 27/2024) where an analogous situation arose to the present petition. The same official in the Office of the Registrar,

Ms Lesego Tsejwane is implicated in the present matter.

[3] The petition was received by Ms Tsejwane on 27 September 2023 and allocated a case number ordinarily allocated to a criminal appeal, a so-called “CA” number, rather than a case number allocated to petitions, a so-called “CAP” number. It is inexplicable how this occurred as it appears clearly at page 120 of the record, that the petitioner was seeking leave to appeal in accordance with the provisions of section 309C of the Criminal Procedure Act 51 of 1977 (‘the CPA’), which provides for the Petition Procedure when leave to appeal is refused in the Magistrates’ Court. I hasten to add that it is also inexplicable why the petition, which was filed with the Clerk of Court, Klerksdorp on 18 October 2022, was only forwarded to the Registrar of this Honourable Court on 19 August 2023 and received as indicated above on 27

September 2023.

- [4] In engaging in an act of supererogation, following on the judgment of 19 December 2024, and with a sense of great unease at the number of other petitions which may lay accumulated as a stockpile in the Office of the Registrar, I proceed to set out the history of this matter to the stage of the petition from 18 October 2022 to date.
- [5] The petitioner pleaded guilty to a charge of attempted murder on 23 March 2021, duly convicted on his plea of guilty and on even date sentenced to twelve (12) years imprisonment and declared unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.
- [6] On 10 August 2022, nearly one and half years later, the petitioner, duly represented by Legal Aid South Africa (LASA), noted an application for leave to appeal against sentence, accompanied by an application for condonation for the late noting of the said application. On 20 September 2022, the application for condonation for the late noting of the application for leave to appeal was granted, but the application for leave to appeal refused by the learned Regional Magistrate.
- [7] On 18 October 2022, the petitioner delivered to the clerk of court, Klerksdorp an application for leave to appeal pursuant to the provisions of section 309C of CPA. As indicated above, the original record and copies of the matter were inexplicably transmitted by the clerk of court, Klerksdorp to the Registrar of this Honourable Court only on 19 August 2023. The late transmission of the petition by the clerk of court on its own is disconcerting and contrary to the tenets of section 309C of the CPA.
- [8] From 27 September 2023 until the allocation of the petition by the Judge President on 22 January 2025, the petition received no attention in the Office of the Registrar, which is a serious indictment on that Office. As observed in the judgment of 19 December 2024, there has clearly been no administrative oversight over the Appeal or Petition registers held by the Chief Registrar, which would in all probability have averted the present travesty of justice.
- [9] I reiterate what was said at paragraphs 22 to 30 of the judgment of 19 December 2024, which is quoted as a reminder:
- [22] The conduct of the Chief Registrar and the officials in his Office must be castigated in the strongest possible terms. Accountability is the hallmark of any efficient administrative process. This assumes a higher standard and greater duty of care when the administrative component is seized with a constitutionally enshrined right in the form of the timeous processing of appeals, reviews and petitions. A nonchalant attitude by the identified role players cannot be condoned. It cannot be business as usual.
- [23] In *S v P.M (Review)* (02/2023) [2023] ZANWHC 184 (5 October 2023), this Court had to censure the conduct of the clerk of court, Klerksdorp for failing to comply with her duties as clearly delineated in the Justice Codified Instructions Code: Clerks of the Criminal Court and Child Justice (“Code: Clerk of Courts”), issued by the Branch: Court Services of the Department of

Justice and Constitutional Development. Chapter 12 of the Code: Clerk of Courts is instructive on the duties of the clerk of court in respect of reviews and petitions are equally applicable. The conduct of the Office of the Registrar aside for a moment, it is again with a sense of supererogation that I note that the clerk of court also failed to follow up with the Office of the Registrar on the delay with the present petitions.

- [24] The absence of any oversight, administrative or otherwise, is exacerbated by the following events. In 2018, the geographical jurisdiction of the North West High Court was amended to include, inter alia, the Klerksdorp Magistrates Court. Resultantly, backlog appeal matters were inherited. To ameliorate this, the Judge President commissioned two Special Criminal Appeal Projects. The first was at the end of the fourth term in 2023; and the second at the end of the second term of 2024. These petitions emanate from the bottleneck which arose in 2018 with the transition of the Klerksdorp Magistrates Court to the jurisdiction of the North West High Court.
- [25] Notwithstanding the two Special Criminal Appeal Projects, these petitions surreptitiously emerged to be considered only on 24 November
2024. It is mindboggling how these petitions were not identified for consideration between the hiatus of the two Special Criminal Appeal Projects. The inescapable conclusion points to a dereliction of duty at various levels in the Office of the Chief Registrar.
- [26] In its April 2021 version of the Minimum Standards for Batho Pele, the Department of Public Service and Administration, re-affirmed that:

‘MINIMUM STANDARDS FOR BATHO PELE

1.

Introduction

1.1 Minimum standards for Batho Pele are essential for service delivery improvement as it gives public service departments guidance on what is expected of them when delivering public services. Professionalism, consultation, value for money and respect for service users are uppermost in public service delivery.

1.2 The Minimum Standards for Batho Pele listed in 2.3 are in keeping with the transformational agenda of the White Paper on Transforming Public Service Delivery of 1997 (Batho Pele policy), and the basic values and principles for public administration as outlined in section 195 (1)(a-i) of the South African constitution (Act 108 of 1996).

1.3 The Minimum Standards for Batho Pele is an important milestone towards realising government’s vision of ‘putting people first’.

2. Minimum Standards for Batho Pele

2.1 Purpose:

· To support departments with the delivery of public services in line with the basic values and principles for public administration as outlined in section 195 (1)(ai) of the constitution (Act 108 of 1996), and the service delivery transformational agenda of the Batho Pele policy (1997).

2.2 Functions:

· Minimum standards for Batho Pele will ensure that public services are rendered in a specific, effective and efficient manner.

· Minimum standards for Batho Pele allows departments to identify context specific developmental areas and make the appropriate modifications.

· Minimum standards for Batho Pele will ensure that service delivery are monitored effectively, and in a manner which promotes the basic values and principles for public administration as outlined in chapter 10 of the constitution.

· The minimum standards for Batho Pele in conjunction with the Operations Management Framework (OMF) will generate behavioural and systemic changes that are essential for continuous service delivery improvement.

2.3 Minimum standards for Batho Pele:

For each of the eight (8) Batho Pele principles identified in the Batho Pele policy (1997), a corresponding minimum standard has been developed. These minimum standards are as follows:

Consultation.

Service Standards.

Access.

Courtesy.

Information.

Openness and Transparency Service.

Redress.

Value for Money.”

[27] In accordance with the principles of Bato Phele, adopted by the Public Service and which has been extant since 1997, the Court Administration Unit of the Office of the Chief Justice led by the Director: Case Management, approved the Standard Operating Procedure (SOP) for processing and finalising of criminal petitions on 13 July

2017. The SOP commenced on 1 August 2017 and was due for review on 31 March 2019. The objective of the SOP was to standardize and create a uniform approach to the way in which criminal petitions were to be processed by the Registrar of the High Court. The principles which underscore the SOP were to include value for money, service excellence and transparency and honesty. The procedure and responsibility for criminal petitions were listed as follows:

1. The criminal trial is finalized at the Magistrate's Court.
2. The accused person files an application for leave to appeal in terms of s309b of the CPA.
3. The application is refused by Magistrate's Court.
4. The accused petitions the High Court in terms of sec. 309C of the CPA.
5. The clerk of the Magistrate Court transmits the copies of the record to the High Court.
6. The Registrar of the High Court opens a court file, issues a petition number and registers the petition on the petitions registry book.
7. The copies are forwarded to the office of the DPP.
8. The office of the DPP forwards the petition set down date for the petition hearing.
9. The hearing is presided over by 2 Judges in chambers.
10. The Registrar prepares the files and sends it to the Judges for reading.
11. The petition hearing is conducted.
12. The Judges' secretary endorses the court file with the petition order.
13. The order is typed, checked and signed by the Registrar and the outcome is endorsed in petitions registry book.
14. If the petition is upheld, the Registrar prepares the J1 (warrant of liberation), and obtains the Judge's signature on J1 and transmits it to DCS for the release of the petitioner.
15. If the petition is dismissed/refused, the petitioner may apply to Supreme Court of Appeal.
16. Outcome of petition is captured in the register.
17. The data collection tool is updated, verified by Registrar & submitted to statistical officer.

[28] Accountability and authority in respect of the SOP vests with the Chief Registrar and Registrars. All officials in Court Administration and Chief Registrars were consulted in the compilation of the SOP. The SOP requires that all officials in the Office of the Registrar and OCJ officials are required to know the SOP. Contingencies for the SOP were identified, in terms of which it was accepted that

non-compliance with the SOP would compromise the support given to the Judiciary in the performance of their judicial functions; and if the SOP could for any reason not be followed that the Provincial Head in the Division was to be informed. A SOP implementation plan was devised in terms of which the following timelines were identified: a circular was to be issued to all courts during August 2017; training workshops were to be conducted in the Divisions during December 2018 (sic 2017), with refresher training to be conducted every six (6) months from the date of implementation of the SOP.

[29] There can therefore reasonably, be no excuse for the conduct of the officials in the Office of the Registrar. There can also reasonably be no excuse on the part of the Chief Registrar and any of the Registrars assigned to the Criminal Section for their dereliction of duty in respect of the two petitions under discussion, or the failure to exercise proper oversight over the Criminal Appeal and Criminal Petition Registers and processes and procedures identified in the SOP.

[30] The right to a fair trial encompasses the right of an accused to exercise his rights evinced in section 309C of the petition.”

[10] The conduct of Ms Tsejwane and the Office of the Registrar has, in this petition, has the potential of rendering the petition process nugatory and is tantamount to defeating the ends of justice. The appeal process of which the petition procedure forms a part, whether or not the petitioner is clothed with prospects of success, was delayed first by the clerk of court, Klerksdorp by ten (10) months; and second by Ms Tsejwane by some sixteen (16) months or close on one and half years. One and half years in the life of an incarcerated person is not to be downplayed.

[11] Notwithstanding this unacceptable status of the petition, the petition must be considered. The petitioner is close on four (4) years into serving the sentence of twelve (12) years imprisonment. The complainant, a female, was stabbed numerous times by the petitioner. The attack was aggravated by the fact that the petitioner who was perturbed after an argument with the complainant, left to collect a knife in his room, returned to where the complainant was, stabbed her twice in the back and when she fell stabbed her twice in the back again. The only saving grace for the complainant was the intervention of her friend who prevented the petitioner from stabbing the complainant further, by pushing him out a door and locking the door and burglar gate to prevent his access to

the complainant. The petitioner in his plea of guilty unequivocally admitted to an intention to kill the complainant.

[12] We have considered the papers before us and our considered view is that there are no prospects of success on appeal against sentence on the conviction of attempted murder. The application or leave to appeal against sentence accordingly stands to be refused.

[13] I once again re-iterate the sentiments expressed in the judgment of 19 December 2024 that the conduct of the officials in the Office of the Registrar prima facie constitutes serious misconduct which merits investigation and disciplinary action. The conduct of Ms Lesego Tsejwane is tantamount to defeating the ends of justice.

[14] It is proposed once again that the conduct of Ms Lesego Tsejwane be referred to the Provincial Head of the Office of the Chief Justice for investigation and appropriate action. The failure of the Chief Registrar and any Registrar connected to the Criminal Section of the North West High Court in ensuring proper oversight over the Criminal Section is once again referred to the Provincial Head of the Office of the Chief Justice for investigation and appropriate action, as the unsatisfactory state of affairs highlighted in the judgment of 19 December 2024, now clearly appears more serious than previously envisaged.

Order

[15] Consequently, the following order is made:

A H PETERSEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

I agree.

M WESSELS

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

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