
SOUTH AFRICA / JUDGMENT

Mohapi v Minister of Justice and Correctional Services and Others (M249/15) [2016] ZANWHC 5 (5 February 2016)

[2016] ZANWHC 5

COURT

North West High Court, Mafikeng

BEFORE

A A Landman

CASE / FILE NUMBER

M249/15

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IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST DIVISION, MAHIKENG)

CASE NO.: M249/15

In the matter between:

MOHAPI THABO

APPLICANT

and

THE MINISTER OF JUSTICE & CORRECTIONAL 1ST RESPONDENT

SERVICES

THE PRESIDING OFFICER, MOTLANG

MAFOKENG TLHABANE REGIONAL

MAGISTRATE'S COURT

2ND RESPONDENT

THE MANAGER

MAGISTRATE'S COURT

3RD RESPONDENT

THE CLERK OF THE CRIMINAL APPEALS

OFFICE MAFOKENG TLHABANE REGIONAL

MAGISTRATE'S COURT

4TH RESPONDENT

JUDGMENT;

Landman J:

- [1] The applicant, Mr Thabo Mohapi, has brought an urgent application seeking some relief against the respondents. I was unable to determine what the complaint was and the nature of the relief sought. Mr Mmolawa, who appeared for the first to fourth respondents, experienced the same difficulty.
- [2] However, on questioning Mr Mohapi, it became clear that he had been convicted in the Regional Magistrate's Court of two counts of robbery with aggravating circumstances, unlawful possession of a firearm and ammunition. Counts 1 and 2 were taken together for purposes of sentence and the applicant was sentenced to 15 years imprisonment. He was sentenced in respect of count 3 to 15 years imprisonment and 2 years imprisonment on count 4. The last-mentioned sentence was ordered to run concurrently with the sentence imposed on count 3.
- [3] On 7 June 2012 the applicant applied for leave to appeal against his conviction and sentences. The court heard his application on 24 August 2012 and refused leave to appeal against his conviction and sentence on counts 1 and 2 but granted leave to appeal against the conviction and sentences imposed in respect of counts 3 and 4.
- [4] The Rustenburg Justice Centre noted an appeal on 11 September 2012 against the conviction on counts 3 and 4 and against all the sentences. Prima facie this does not accord with the leave that was granted.
- [5] The appeal has not been heard as it appears, from an application filed on 8 July 2015, that the record is not in order. The application was for an order, inter alia, compelling the filing of a complete record or the reconstruction of the record. There is no indication why this application was not enrolled.
- [6] It now appears that the applicant requires substantially the same relief; not only for the appeal but also because he is desirous of petitioning the Judge President for leave to appeal against his conviction on counts 1 and 2 and the sentence imposed in respect of these counts.
- [7] The appeal should have been heard some time ago. I intend to issue an order which sets out a programme to ensure that the outstanding

issues are addressed expeditiously.

Order

[8] In the result I make the following order:

1. The record of the criminal proceeding involving the applicant under case number BR 160/10 shall be reconstructed to the extent that it is necessary and capable of reconstruction.
2. The Presiding Regional Court Magistrate, Mr Motiang, or, if he is not readily available, a magistrate that the Regional Court President, shall designate for this purpose, shall fix a date for a hearing, which shall not be later than 30 ordinary days from the date of this order, and cause the applicant, and invite his previous and current defence legal representative (if any), prosecutor, and interpreter to attend in open court in order to jointly undertake a reconstruction of the missing parts of the record, where this is feasible. The proceedings shall be recorded. The Magistrate shall invite those present to express their views whether each aspect of the reconstruction accords with their recollection of the evidence tendered at trial.
3. The Magistrate shall cause the applicant to be brought to court from the place of his detention, being the correctional facility known as Johannesburg Medium B, Meredale, to attend the reconstruction hearing.
4. It shall not be necessary to reconstruct the application for leave to appeal provided that an order be drafted which accords with the decision that the Magistrate made.
5. The clerk of the Regional Court shall ensure that the reconstructed record is transcribed within 21 ordinary days of the date of the reconstruction hearing.
6. On receipt of the transcribed record, the clerk of the regional court shall provide a copy of the record to the applicant.
7. Within 21 ordinary days of receipt of the transcribed record, the applicant shall prepare and file a petition and deliver a copy thereof to the Director of Public Prosecutions of the North West Province. The petition shall be addressed to the Judge President and seek condonation for the late filing of the petition and seek leave to appeal against his conviction on counts 1 and 2 and these sentence imposed on these counts.
8. On receipt of the court order (granting or refusing leave to appeal), the applicant shall amend his existing notice of motion appropriately and serve the notice of amendment on the Director of Public Prosecutions of the North West Province.
9. The Director of Public prosecutions of the North West Province and the registrar of this court, shall, subject to the directions of the Judge President, enroll the appeal for hearing as expeditiously as possible; and the registrar shall direct the applicant and the Director of Public Prosecutions of the North West Province when to file heads of argument.
10. The registrar shall cause the applicant to be brought to court on the day of the appeal hearing.

11. The registrar shall, as a priority, courier the records of the criminal proceeding concerning the applicant under case number BR 160/10, that are on file in this Division, to the clerk of the Regional Court Bafokeng.
12. The registrar shall furnish a copy of this judgment to the applicant by sending it to the Head of the correctional facility known as Johannesburg Medium B, Meredale.
13. The registrar shall furnish a copy of this order to:
 - 12.1 The president of the Regional Magistrate's Court (North West);
 - 12.2 The Presiding Regional Court Magistrate, Mr Motiang;
 - 12.3 The Director of Public Prosecutions (North West Province);
 - 12.4 The Head of the correctional facility known as Johannesburg Medium B, Meredale;
 - 12.5 The Rustenburg Justice Centre.

A A Landman

Judge of the High Court

APPEARANCES

Date of hearing:

3 February 2016

Date of

judgment:

5 February 2016

For the Applicant:

In person

For the Respondents: Adv Mmolawa instructed by State Attorneys

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mohapi-v-minister-of-justice-and-correctional-services-and-others-unknown-topic-anwhc-2016>

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