

SOUTH AFRICA / JUDGMENT

Mokonyane v S (A808/13) [2014] ZAGPPHC 185 (1 April 2014)

[2014] ZAGPPHC 185

COURT

North Gauteng High Court, Pretoria

BEFORE

Dewrance, Matojane

CASE / FILE NUMBER

A808/13

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG, PRETORIA)

CASE NO: A808/13

DATE: 01 APRIL 2014

In the matter between:

SABATHA MOKONYANE.....Appellant

And

THE STATE.....Respondent

J U D G M E N T

DEWRANCE AJ

[1] This is an appeal against the sentence handed down by the Regional Court of Gauteng held at Benoni ("the Court a quo"). The appellant was charged together with another with the murder of one Xolani Bethuel Nkosi. The Court a quo imposed a sentence of 15 years in terms of the provisions of section 51(2)(a)(i) of Act 105 of 1997. This is the minimum sentence applicable to a person found guilty of a charge of which the appellant has been found guilty of.

[2] Before I deal with the merits of the appeal, there is a preliminary issue that needs to be dealt with. The appellant seeks condonation for the late filing of its heads of argument. The reasons advanced on behalf of the appellant, in its heads of argument, are that the appellant is not responsible for the late filing of the heads of argument for the following reasons: the

appellant is in custody serving his sentence and was not aware that the time within which to file his heads of argument had expired; the office of the Legal Aid, Pretoria ("Legal Aid") received the notice of appeal on 20 December 2013; the office of the Legal Aid was partially closed during that period; the Director of Public Prosecutions and the Legal Aid South Africa cannot authorise the late filing of heads of argument; the heads were filed after a special arrangement between the office of the Director of Public Prosecutions and the Legal Aid South Africa; the office of Legal Aid South Africa did not have a mandate to represent the appellant when it received the notice of appeal; the necessary arrangements were made to get proper instructions from the appellant; the power of attorney was only received on 26 January 2014; and the file could not be sent to outside practitioners due to time constraints.

- [3] I find that the reasons for the late filing of the heads of argument are sufficient and accordingly condonation is granted.
- [4] The State was represented by Advocate Moetaesi. He indicated that the State had not filed its heads of argument as a result of an administrative bungle in the offices of the Director of Public Prosecutions. He was not aware that the matter was allocated to him and only realised the morning of the appeal, i.e. 31 March 2013, that the matter had been allocated to him. However, he was ready to proceed with argument. Appellant's legal practitioner did not object to the matter proceeding in the absence of the State's heads of argument. We, accordingly, granted leave that the matter may proceed in the absence of the heads of argument being filed.
- [5] In light of the submissions by the appellant's counsel, I do not deem it necessary to repeat the facts which led to the appeal.
- [6] In this Court, the appellant's counsel only advanced one reason why the appeal should succeed. He submitted that the sole reason why the Court a quo imposed the minimum sentence was because the appellant is an illegal immigrant from Lesotho. The grounds of appeal advanced in the appellant's heads of argument were abandoned.
- [7] The appellant, in his heads of argument, correctly concedes that a court of appeal may not and will not interfere with a sentence unless it is convinced that the Court a quo exercised its discretion improperly or unreasonably; or whether the sentence induces a sense of shock or is startlingly inappropriate (see *State v Pieters* 1987 (3) SA 717 (A)).
- [8] It is not correct that the sole reason the Court a quo considered in imposing the minimum sentence is the fact that the appellant is an illegal immigrant. In imposing the minimum sentence, the Court a quo found the choice of weapon used by the appellant to murder the deceased particularly aggravating. It is common cause that the appellant used a homemade spear. The Court a quo further found that there was no reason for the use of the weapon as the altercation was already over at that stage. The Court a quo further found it particularly aggravating that the deceased was already seriously injured by accused number two when the appellant decided to impale the deceased with his spear.

- [9] After being confronted with the learned magistrate's reasoning by us, the appellant's counsel indicated that he could take not take his argument any further.
- [10] We have considered the argument advanced by the appellant's counsel and find that the Court a quo did not exercise its discretion in an improper or unreasonable manner nor does the sentence induce a sense of shock. It is also not startlingly inappropriate. There exist no compelling reasons to deviate from the minimum sentence imposed by the Court a quo.
- [11] Accordingly, the appeal is dismissed.

DEWRANCE, AJ

MATOJANE, J

JUDGES OF THE NORTH & SOUTH GAUTENG HIGH COURTS, PRETORIA

Representation for the appellant:

Counsel Adv Motlapeng

Instructed by: Legal Aid Pretoria

Representation for respondent

Counsel Adv Moetaesi

Instructed by Director of Public Prosecutions, Pretoria

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Prepared on 9 October 2026 · Esheria