

SOUTH AFRICA / JUDGMENT

Mosia and Another v S (23/2019) [2021] ZAFSHC 69 (24 March 2021)

[2021] ZAFSHC 69

COURT

Free State High Court, Bloemfontein

BEFORE

Mathebula

CASE / FILE NUMBER

23/2019

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No.: 23/2019

In the matter between:

LEFOSO MAKENA MOSIA

1st Applicant

ERIC DUMISANE NDLOVU

2nd Applicant

and

THE STATE

Respondent

CORAM:

MATHEBULA J

HEARD ON: 12 JANUARY 2021

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 24 MARCH 2021. The date and time for hand-down is deemed to be 24 MARCH 2021 at 12:00

[1] Before me are applications for leave to appeal on behalf of both applicants' number one

- (1) and two (2). The first applicant still represented by Mr Peter van der Merwe. He is aggrieved against both his conviction and sentence. Mr P Mashishi on behalf of the second applicant confirmed that leave to appeal is now sought against conviction only and abandons such application against sentence.
- [2] Section 316(4)(a) of the Criminal Procedure Act 51 of 1977 states that every application for leave to appeal must set forth clearly and specifically the grounds upon which the accused desires to appeal. This means that the grounds relied upon by the applicant(s) must be clear and unambiguous with clearly defined scope. It is of no particular use if the grounds are so wide that they encompass every conceivable point that can be taken no matter how irrelevant or narrow it is to have any positive bearing on the appeal itself.
- [3] This is the difficulty encountered in this application with the grounds of appeal on behalf of the first applicant (accused number one). The added conundrum is that they are not reduced to writing in a notice of appeal. One gets the impression that it is simply an application to get a second hearing without the legal basis why such a request must be granted. The issues of identity and alibi which were raised during the trial as a basis of the defence are all adequately addressed in the comprehensive judgement delivered in this matter. There is no possibility, no matter how small, that Salela could have wrongly identified the first applicant. Prior to that fatal night he knew him for several years and they have been in the company of each other many times. Even on that day they spent a fair amount of time in the company of each other from the moment they met at Reitz Park suburb before fleeing from the scene of crime. Clearly he saw him as the only person who possessed the firearm and released the first shot. The legal principles applied to the facts are clearly explained in the judgement.
- [4] The grounds on behalf of the second applicant are a repeat and regurgitation of the submissions advanced at the trial. Overall they are simply a remonstrations with the findings made in the judgement. The grounds attacks the minor issues and conveniently avoids the critical findings made against the second applicant.
- [5] Prior to their encounter on the fateful day, the second applicant was well known to Salela as to who he was and what he did for a living. The name Baezane was also the name mentioned to Marumo by Molawa. The

conclusion

is that this is the name that he was known with to everyone. The chronological events at the cemetery are well documented which dispels the contrived alibi. Strangely in the notice of appeal on paragraph 13 it is denied that the second applicant raised the defence of alibi. The record will show it was his defence to the extent that he was contemplating calling a witness who was going to testify that he was at his business premises at the material time of the meeting at the cemetery. The second

applicant was represented by a senior counsel duly instructed by an attorney. No objection was raised against any prejudicial

evidence tendered against him. In any event, the evidence referred to, is not the only piece of evidence on which the

conviction sits on. It is only part of the mosaic of evidence which when assessed in totality renders the conviction of the second applicant appropriate. This ground like others raised in this matter are entirely without merit.

[6] In conclusion, it has always been accepted that the relevant question was whether there was a reasonable prospect of appeal. The benchmark is now that the judge concerned may grant the leave to appeal if he/she is of the opinion that the appeal would have a reasonable prospect of success.[1] I do not deal with other requirements because they are irrelevant for the purpose of this judgement. Undoubtedly the bar has been raised a bit higher which requires some kind of cogent reasons. I have dealt with how the papers and oral submissions lacks clarity, raises irrelevant issues and do not provide compelling reason(s) why this application for leave to appeal must be granted.

[7] I make the following order:-

7.1 The applications for leave to appeal are dismissed.

M. A. MATHEBULA, J

On behalf of Applicant 1:

Mr P. van der Merwe

Instructed by:

Legal Aid

BLOEMFONTEIN

On behalf of Applicant 2:

Mr P Mashishi

Instructed by:

Bokwa Attorneys

On behalf of the respondent: Adv. A. Simpson

Instructed by:

Department of Public Prosecution

[1] Section 17(1) of Act 10 of 2013

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Prepared on 10 October 2026 · Esheria