

SOUTH AFRICA / JUDGMENT

Msindo v S (CAP 09/2025 ; CA 74/2018) [2025] ZANWHC 30 (10 February 2025)

[2025] ZANWHC 30**COURT**

North West High Court, Mafikeng

BEFORE

A Reddy, T Masike

CASE / FILE NUMBER

CAP 09/2025

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Source record**SAFLII****Note:** Page**3 image is not available in html and rtf versions, please refer to the PDF attachment for images.****IN****THE HIGH COURT OF SOUTH AFRICA****NORTH****WEST DIVISION, MAHIKENG****HIGH****COURT REFERENCE NUMBERS: CAP 09/2025****(CA****74/2018)****REGIONAL****MAGISTRATE'S CASE NUMBER: SRC 24/2018****Reportable:**

YES / NO

Circulate

to Judges: YES / NO

Circulate

to Magistrates: YES / NO

Circulate

to Regional Magistrates: YES / NO

In

the petition of:

ABONGILE

MSINDO Accused/Petitioner

AND

THE

STATE

CORAM: REDDY J et MASIKE AJ
DATE

OF JUDGMENT: 10 FEBRUARY 2025
ORDER

1.

The petition under case number CAP 09/2025 (CA 74/2018) 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 Province for consideration and for referral by the Provincial Head of the Office of the Chief Justice.

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 also referred to the Provincial Head of the Office of the Chief Justice, North West Province for consideration of disciplinary action.

JUDGMENT

REDDY J (MASIKE AJ CONCURRING)

- [1] On 23 January 2025 at the directive of the Judge President this petition served before a panel of two Judges. At the heart of the petition was the discontentment by petitioner of the Regional Magistrate's decision to dismiss his application for leave to appeal against an effective custodial sentence of five years imprisonment.
- [2] At first blush several anomalies appeared. It would have been judicially unconscionable for same not be addressed, notwithstanding several judgements having been penned recently addressing with specificity identical irregularities. First, the covering sheet for appeal cases (J111) was used. Notably, this record of proceedings pertained to the petition procedure as ensconced in section 309C of the Criminal Procedure Act 51 of 1977 ('the CPA'). Second, the record of proceedings was initially recorded as CA 74/2018 which was subsequently amended to read CAP 09/2025, whilst the appeal number is recorded as Appeal No: 04/2018. It would have been an exercise in futility to have requested a report to address these irregularities given the posture of the responsible actors. A copy of the front of the J111 speaks volumes as can be seen below

- [3] It would be apposite to set the background of the relevant facts that underpin this petition. Three accused appeared before the Regional Court at Klerksdorp, charged with theft of copper cabling, alternatively a contravention of section 36 of the General law Amendment Act 62 of 1955. The petitioner was cited as the third accused.
- [4] On 27 February 2018, the accused duly represented pleaded guilty to theft. Mr Roman appearing for all the accused drafted statements ensconced in terms of the provisions of section 112(2) of the CPA. Following confirmation of the admissions contained therein by the accused and acceptance of same by the prosecution, the accused were convicted on the main count of theft.
- [5] On the same day, the accused were each sentenced to eight (8) years imprisonment, three (3) years of which were suspended for five (5) years on condition that the accused were not convicted of theft or any offence which is a competent verdict of the crime of theft, which is committed during the period of suspension. A singular ancillary order declaring all the accused unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000 followed. The incomplete record indicates that a formal application on behalf of the petitioner for leave to appeal against sentence was refused on 2 August 2018.
- [6] On 3 August 2018, the petitioner invoked the provisions of section 309C (1) of the CPA, contending that the Regional Magistrate erred in imposing a sentence of eight (8) years imprisonment (three (3) years of which was conditionally suspended). The petitioner contended the sentence was shockingly inappropriate. The basis for same was the following. The petitioner was a first offender. He was a callow youth of twenty-one (21) years of age, who pleaded guilty. Moreover, the petitioner was assaulted by the security personnel at the point of his arrest. Importantly, the petitioner had spent five (5) months as a pretrial detainee. Finally, the petitioner claimed that the Regional Magistrate erred in not considering other forms of punishment in the form of a suspended sentence, correctional supervision and/or a term of imprisonment in terms of section 276(1)(i) of the CPA.
- [7] On 6 August 2018 an officer of the administration component at the Stilfontein Magistrates' Court acknowledged receipt of this petition, by inscribing a signature and affixing an official stamp. On 28 August 2018 this record was received by the Office of the Registrar of the High Court Mahikeng. On 23 January 2025, this record was served before a panel of two Judges comprising of myself and Masike AJ. On 31 January 2025 the Klerksdorp Correctional Facility confirmed that the petitioner had been released on 26 May 2020.
- [8] Undoubtedly, there was an inordinate delay in this petition serving before a panel of Judges. Loosely calculated this petition was dormant at Office of the Registrar of the North West High Court for almost five and a half years or close to sixty five months. This is inexplicable and an indictment on the lack of administrative oversight on the part of the Office of the Chief Registrar.

- [9] The judgments of Petersen J in *Ramasilo Jacob Ramasilo & The State, Pule Jacob Malebatso & The State* HCC CAP 26/2024 & HCC 27/2024 (19 December 2024), *Dawid Dintwa Mogabale & The State* CA 44/2023 (Amended to CAP 04/2025) is apposite in this regard. The salient principles that form the core of administrative accountability and its correlation with the Minimum Standards for Batho Pele which are intertwined with the Standard Operating Procedure (SOP) for the processing and finalisation of criminal petitions have been set out in fine detail. It needs no restating.
- [10] I turn now to briefly underscore the petition process and its importance in the criminal justice system. The petition procedure as evinced in section 309C of the CPA finds unique application in the High Courts. It is irrefutable that same is subsumed within the tenets of the constitutional injunction of a fair trial. Within this paradigm an accused is seized with several rights by virtue of section 309C of CPA.
- [11] The foundational stone of section 309C of the CPA has its genesis in the High Court. If leave to appeal is refused by the Magistrate, an accused is afforded further redress by directing a petition to the relevant Judge President. This evinces that the record of proceedings will be sent to High Court. It is therefore crucial that the recipient of petitions must efficiently and effectively address same without any delay. A jettisoning of petition records as has been discovered in the Office of the Registrar, stifles further interlinking rights that an accused is entitled to exercise. The petition will be considered by two Judges in chambers as delegated by the Judge President. If the two Judges that form the panel are unable to agree, the petition must be considered by the Judge President in chambers or any other judge designated by the Judge President. The decision of the majority of the judges

considering the petition, shall then be deemed to be the decision of all three judges. Should the petition be refused, the decision

constitutes a judgment or order of the High Court and is appealable to the Supreme Court of Appeal. The petitioner can then apply for leave to appeal the decision to the Supreme Court of Appeal; and if such leave is refused, the petitioner can seek special leave (formerly known as petition), from the President of the Supreme Court of Appeal. See: *Khoasasa v S* [2002] 4 All SA 635 (SCA); *S v Khoasasa* 2003

(1) SACR 123 (SCA) at paragraphs [14] and [19]-22].

- [12] The petition process is set out with specificity to underscore the crucial cog that the administration component, which includes the Clerk of the Magistrates' Court and the Office of the Registrar, occupies in ensuring that the wheels of justice give credence to the rights of an accused within the purview of the petition process. Moreover, Chapter 10 of the Constitution of the Republic of South Africa provides as follows:

'Basic values and principles governing public administration 195(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) A high standard of professional ethics must be promoted and maintained.
 - (b) Efficient, economic and effective use of resources must be promoted.
 - (c) Public administration must be development-oriented.
 - (d) Services must be provided impartially, fairly, equitably and without bias.
 - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be accountable.
 - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
 - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
 - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (2) The above principles apply to—
- (a) administration in every sphere of government;
 - (b) organs of state; and
 - (c) public enterprises.
- (3) National legislation must ensure the promotion of the values and principles listed in subsection (1).
- (4) The appointment in public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.
- (5) Legislation regulating public administration may differentiate between different sectors, administrations or institutions.
- (6) The nature and functions of different sectors, administrations or institutions of public administration are relevant factors to be taken into account in legislation regulating public administration.'
- [13] It is concerning that this petition is simply placed before judges without any explanation being proffered for this unreasonable delay. These delays in the processing of petitions are not novel issues as alluded to in paragraph 8. The Office of the Chief Registrar must be held accountable.

[14] What remains is the petition itself. Notwithstanding the inordinate delay, a judicial pronouncement must be made. It is clear from the judgment of the Regional Magistrate that the triad as declared *S v Zinn* 1969 (2) SA 537 (A) was carefully evaluated. The seriousness of the offence together with the interests of society caused the personal circumstances of the petitioner to recede into the background. On a careful consideration of the papers before us it is our considered view that there are no prospects of success on appeal against sentence on the conviction of theft. It follows axiomatically that the application for leave to appeal against sentence accordingly stands to be refused.

Order

[15] Resultantly, the following order is made:

1. The petition under case number CAP 09/2025 (CA 74/2018) 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 Province for consideration and for referral by the Provincial Head of the Office of the Chief Justice.
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 also referred to the Provincial Head of the Office of the Chief Justice, North West Province for consideration of disciplinary action.

A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

I, agree

T MASIKE

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA, NORTH WEST DIVISION,

MAHIKENG

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Prepared on 9 October 2026 · Esheria