

SOUTH AFRICA / JUDGMENT

Ndlovu v S (A128/2020) [2021] ZAGPJHC 357 (31 May 2021)

[2021] ZAGPJHC 357

COURT

South Gauteng High Court, Johannesburg

BEFORE

Siwendu, Nichols

CASE / FILE NUMBER

A128/2020

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: A128/2020

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED.

NO

DATE:

31 May 2021

In

the matter between: GERALD
 NDLOVU
 Appellant
 And
 THE
 STATE
 Respondent

JUDGMENT

SIWENDU J (NICHOLS AJ concurring)

Introduction

- [1] The appellant is a 44-year-old naturalised Zimbabwean and a qualified bookkeeper. He is employed as a Portfolio Manager with S[....] P[....] Investments (the ‘company’) located in Bez Valley, Johannesburg. He manages certain properties as well as payments by tenants on behalf of property owners. At the time of his trial, he had been in the employ of the company for 11 years.
- [2] On 13 November 2017, he was arraigned in the Johannesburg Regional Court on a single count of murder read with s 51(1) of the Criminal Law Amendment Act 105 of 1997. It was alleged that on 11 November 2017, he acted in common purpose with others and unlawfully and intentionally killed Ikechuku Edmond Manoke (the ‘deceased’).
- [3] The appellant pleaded not guilty to the charge, but was convicted on 29 January 2020. On 30 June 2020, the trial court sentenced him to a 15-year term of imprisonment imposed in terms of s 51(2) of the Criminal Law Amendment Act.
- [1] Section 309C(2) of the CPA provides:
- (a) If any application—
- (i) for condonation;
- (ii) for further evidence; or
- (iii) for leave to appeal,
- is refused by a lower court, the accused may by petition apply to the Judge President of the High Court having jurisdiction to grant any one or more of the applications in question.
- (b) ...
- [2] Section 220 of the CPA provides: 'An accused or his or her legal adviser or the prosecutor may in criminal proceedings admit any fact placed in issue at such proceedings and any such admission shall be sufficient proof of such fact.'

- [3] DT Zefferdt et al Essential Evidence 2 ed (2020) at 326 (footnotes omitted).
- [4] S v Mafaladiso en Andere 2003
- (1) SACR 583 (SCA).
- [5] S v Mkohle 1990
- (1) SACR 95 (A) at 98F-G. See also S v Bruiners en 'n Ander 1998
- (2) SACR 432 (SE) at 435A-B.
- [6] Nzimande v S
- [2017] ZAKZPHC 33 para 10.
- [7] S v Chabalala 2003 (1) SACR 134 (SCA) para 15.
- [8] Motor Vehicle Accident Assurance Fund v Kenny 1984 (4) SA 432 (ECD) at 436H-437B.
- [9] S v Aswegen 2001 (2) SACR 1997 (SCA).
- [10] S v Janse van Rensburg and Another 2009 (2) SACR 216 (C); [2008] ZAWCHC 40 para 8. Also see S v Saban 'n Ander 1992 (1) SACR 199 (A) regarding contradictory versions.
- [11] S v Doorewaard and Another 2021 (1) SACR 235 (SCA); [2020] ZASCA 155 para 22.
- [12] S v Phallo and Others 1999 (2) SACR 558 (SCA) para 10.
- [13] R v Mlambo 1957 (4) SA 727 (A) at 738A-C.
- [14] S v Pillay 1977 (4) SA 531 (A) at 535E-F.
- [15] S v Zinn 1969 (2) SA 537 (A) at 535G.

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