

SOUTH AFRICA / JUDGMENT

Ngobese v S (SS030/2015) [2017] ZAGPJHC 152 (14 June 2017)

[2017] ZAGPJHC 152

COURT

South Gauteng High Court, Johannesburg

BEFORE

Twala

CASE / FILE NUMBER

SS030/2015

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS030/2015

Not reportable

Not of interest to other judges

Revised.

14/6/2017

In the matter between

NGOBESE, SIFISO QUINTON APPLICANT

AND

STATE RESPONDENT

JUDGMENT

TWALA J

1. Before me, is an application for leave to appeal both the conviction and sentence handed down by this Court against the applicant on the 18th May 2017.

2. It is common cause that the applicant was convicted in terms of Section 18(2) of the Riotous Assemblies Act 17 of 1956 (RAA) to wit, conspiracy to commit murder and was sentenced to a term of twenty two (22) years imprisonment, five (5) of which was suspended for a period of five years on condition that the applicant is not found guilty of conspiracy to commit murder or guilty of murder.

3. Section 17 of the Supreme Court Act, Act 10 of 2013 provides as follows:

Leave to Appeal

17. (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that:-
 - a) (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

- b)

4. Section 208 of the Criminal Procedure Act 51 of 1977 provides as follows:

“An accused may be convicted of any offence on the single evidence of any competent witness.”

5. Counsel for the applicant contended that the Court misdirected itself when evaluating the evidence of a single witness who contradicted himself in a number of issues. His evidence, it is contended by the defence, is not credible since it is fraught, with improbabilities and was not satisfactory in every material respect. Therefore another Court may come to a different conclusion in this regard.
6. I do not agree. I am satisfied that I applied my mind to principles of our law which have been laid down in a number of decisions with regard to the evaluation of evidence of a single witness. I am of the view that there are no prospects of another Court arriving at a different decision in this matter and therefore the application by the applicant for leave to appeal the conviction should fail.
7. Counsel for the applicant agreed with the court that the cases of *S v Smith* 2017 JDR 0560 (WCC) and *S v Libazi and Another* (424/2009) 2010 ZASCA 91 (1JUNE 2010) are distinguishable to the present case.
8. This case involves the conspiracy to murder a police officer in the execution of his duties. The Legislature found it necessary to promulgate legislation that prescribes a minimum sentence for any person convicted of the offence of murder of a police officer in the execution of his duties.
9. I am unable to agree with counsel for the applicant that this Court misdirected itself when it sentenced the applicant to an effective

term of seventeen years (17) imprisonment. I do not agree that the sentence is shockingly inappropriate in the circumstances of this case and therefore the application for leave to appeal the sentence should fail on this ground as well.

10. In the circumstances, I make the following order:

The application for leave to appeal is dismissed.

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

Date of hearing:

09 June 2017

Date of Judgment: 14 June 2017

For the State:

Advocate Khumalo

For the Defence:

Advocate Huysseman

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