

SOUTH AFRICA / JUDGMENT

Phalatse v S (CC 52/99) [2009] ZANWHC 21 (3 September 2009) [2009] ZANWHC 21

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks

CASE / FILE NUMBER

CC 52/99

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IN THE NORTH WEST HIGH COURT,
MAFIKENG
CASE NO: CC
52/99

In the matter between: SOLOMON
PHALATSE
Applicant
and
THE STATE
Respondent
APPLICATION FOR LEAVE TO APPEAL
DATE OF HEARING : 14
AUGUST 2009
DATE OF JUDGMENT : 03
SEPTEMBER 2009
COUNSEL FOR THE APPLICANT : MR
STEENKAMP
COUNSEL FOR THE RESPONDENT : ADV
MOGOENG

JUDGMENT

HENDRICKS J

[A] Introduction:-

- [1] This is an application for leave to appeal either to the Full Bench of this division or the Supreme Court of Appeal (SCA) – though it is not indicated in the Notice of Application for Leave to Appeal to which court leave to appeal is sought – against the conviction and sentence imposed on the Applicant by Nkabinde AJ (as she then was) on 23 June 1999.
- [2] Coupled with this application for leave to appeal is also an application for condonation for the late filing of the notice of application for leave to appeal and the late filing of the heads of argument on behalf of the Applicant.
- [3] It is incumbent upon an Applicant in an application of this nature to prove the existence of reasonable prospects of success on appeal. Put differently, the Applicant must show that a reasonable possibility exist that another court, sitting as a court of appeal, may come to a different decision on the facts than the decision that the trial court had arrived at.

[B] Ad Notice of Application for Leave to Appeal and application for condonation:-

- [4] Though the Notice of Application for Leave to Appeal is vague and embarrassing and does not conform with the standard required in terms of the Rules of this Court, the relevant case law and practice manual and are to say the least bad in law, Mrs Mogoeng (on behalf of the State) agreed that it should be condoned in the interest of justice.
- [5] Though this practice of non-compliance should be discouraged and not easily condoned, I allowed Mr Steenkamp (on behalf of the Applicant) to proceed and argue the merits of the application for leave to appeal. This should be regarded as an exception and not as the rule. I particularly allowed it in view of the order I intend to make in the interest of justice.
- [6] As far as condonation for the late filing of the application for leave to appeal and the late filing of heads of argument on behalf of the Applicant is concerned, I wish to remark that the delay in excess of ten (10) years (June 1999 to August 2009) is indeed inordinately long. However, it is clear from the letters written by the Applicant to various institutions including the President of the Supreme Court of Appeal (SCA), that the Applicant as a layman was all along desirous to prosecute his appeal. Although much criticism can be leveled against the application and its lack of detail, I am prepared – once again in the interest of justice – to also grant the necessary condonation in this regard. Again, it should be emphasized that this should be regarded as the exception rather than the rule.

[C] Ad Conviction:-

[7] It was contended by Mr Steenkamp that the State did not succeed in proving beyond reasonable doubt that the Applicant had the necessary intention to shoot and kill the deceased. According to him, the undisputed evidence tendered by the Applicant should have been accepted by the trial court. I respectfully disagree. I had the opportunity to read and study the record of proceedings in the trial court – including the judgment on the merits – and I am of the view that the learned trial Judge cannot be faulted. No other court, acting reasonable would come to a different decision on the facts than what the trial court had arrived at as far as the conviction is concerned. The application for leave to appeal against conviction should therefore fail.

[D] Ad Sentence:-

[8] Mrs Mogoeng on behalf of the Respondent (State) conceded that a reasonable possibility exist that another court may come to a different decision

as to what an appropriate sentence will be having regard to the circumstances of this case and relevant sentencing factors. I am of the view that this concession was indeed well made.

[9] In view of the order that I intend making, I need not go into much detail. The application for leave to appeal against the sentence should therefore succeed.

[E] Order:-

[10] Consequently, I make the following order:-

[i] The late filing of the application for leave to appeal and the late filing of the Applicant's heads of argument are condoned.

[ii] Condonation is granted insofar as the Notice of Application for Leave to Appeal does not strictly conform with the Rules of Court and the law.

[iii] Leave to appeal to either the Full Bench of this division or the Supreme Court of Appeal (SCA) against the conviction is refused.

[iv] Leave to appeal to the Full Bench of this division against the sentence imposed is granted.

R D HENDRICKS

JUDGE OF THE HIGH COURT

ATTORNEYS FOR THE APPLICANT: ANDRÉ STEENKAMP ATTORNEYS

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Prepared on 11 October 2026 · Esheria