

SOUTH AFRICA / JUDGMENT

Ramasilo v S (CAP 26/2024 ; CA 27/2024) [2024] ZANWHC 317 (19 December 2024)

[2024] ZANWHC 317**COURT**

North West High Court, Mafikeng

BEFORE

A H Petersen, A Reddy

CASE / FILE NUMBER

CAP 26/2024 ; CA 27/2024

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH****WEST DIVISION, MAHIKENG****HIGH****COURT REFERENCE NUMBERS: CAP 26/2024****CA****27/2024****MAGISTRATES'****PETITION NUMBERS: 08/2018****09/2018****MAGISTRATE'S****CASE NUMBERS: RC4/21/2024****RC4/102/2012****Reportable:**

NO

Circulate to Judges: NO

Circulate to Magistrates:

NO

Circulate to Regional

Magistrates: NO

In

the petitions of:

CAP
26/2024
RAMASILO
JACOB RAMASILO
Petitioner
AND
THE
STATE
and
PULE
JACOB
MALEBATSO
Petitioner

CORAM:

PETERSEN J et REDDY J
DATE
OF JUDGMENT: 19 DECEMBER 2024
ORDER

1.

The petition against sentence under case number CAP 26/2024 (Ramasilo Jacob Ramasilo) is dismissed on the basis that there are no reasonable prospects of success on appeal.

2.

The petition against conviction under case number CA 27/2024 (Pule Jacob Malebatso) is dismissed on the basis that there are no reasonable prospects of success on appeal. The petition against sentence is granted.

3.

A copy of this judgment must be brought to the attention of Provincial Head of the Office of the Chief Justice, North West for investigation and appropriate action against Ms Lesogo Tsejwane and Messrs Lesego Sepeko and Tshepo Sebatso; and for referral to the South African Police Services for criminal investigation.

4.

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 for investigation and appropriate action.

5.

A copy of this judgment must also be brought to the attention of the Judge President for his attention.

6.

A copy of the judgment must be forwarded to Legal Aid South Africa and the Office of the Director

of Public Prosecutions, North West, to facilitate the expeditious prosecution of the appeal of the petitioner Mr Pule Jacob Malebatso.

JUDGMENT

PETERSEN J

- [1] The two petitions relevant to this judgment were allocated by the Deputy Judge President to two panels of Judges on 4 December 2024. The petition bearing case number CAP 26/2024 was allocated to Judge Reddy and Acting Judge Masike; and CA 27/2024 was allocated to Judge Petersen and Acting Judge Morei.
- [2] Upon perusal of the petitions, Judges Petersen and Reddy of own accord and individually discovered anomalies in the petitions. Judge Petersen observed that the High Court Case Number on the “Covering Sheet for Appeal Cases” had been altered to the present case number. It was glaringly apparent that the original case number bore the year 2018. The original record and copies of the papers transmitted by the Clerk of Court, Klerksdorp to the Registrar on 7 May 2018, as evident on the “Covering Sheet for Appeal Cases” further confirmed that the High Court case number had been altered. The date stamp of Clerk of the Criminal Section at the High Court further raised suspicion as it was dated 26 November 2024, a period of more than 6 years and 7 months from 7 May 2018.
- [3] Judge Reddy, in turn, observed that the date stamp of Clerk of the Criminal Section at the High Court dated 26 November 2024, contradicted the date stamp of the Clerk of the Court, Klerksdorp on the papers, which date stamp bore the date 4 May 2018.
- [4] Judges Petersen and Reddy individually commissioned the Chief Registrar Mr Itumeleng Selebogo to investigate the reason for the inordinate delay in transmitting the petitions from his Office for consideration by the Judge President, within the purview of section 309C of the Criminal Procedure Act 51 of 1977 (‘CPA’). No response was forthcoming. The matter was escalated to Judge President Hendricks who tasked Mrs Pearl Ntono, the Registrar in charge of the Criminal Section at the High Court to investigate.
- [5] Mrs Ntono subsequently provided the following report to the Judge President on 10 December 2024:

“The above two (2) matters refers. On the 09th day of December 2024 It was brought to my attention that the above two petition matters were received by our office in 2018, in

particular were received by Miss Lesego Tsejwane who will be hereinafter referred to as the Clerk, she holds a position as a clerk

in or our criminal section. The honourable Judge President R Hendricks then asked me to conduct an enquiry and consult with the

said clerk to hear from her as to what her explanation is in relation to the aforesaid.

This morning the 10th day of December 2024 a consultation took place between myself and the clerk, wherein she was called in to conduct such enquiry, the first question that was asked to her was if she is familiar with the two cases and that if she was the clerk who received the cases and opened the files in 2018 and she answered by saying that she was the one who attended the cases. She was then asked to explain what happened thereafter, that is after she received and opened the two petition matters, she then answered by saying that

when she received the petition cases, she opened the files, allocated case numbers of Criminal appeal (CA) and not Criminal petition (CAP) and further to doing that she then registered the cases in the wrong register in particular she registered the cases in the Criminal Appeal(CA) register and not the Criminal Petition (CAP)register.

She was then asked what was her explanation to that, she answered by saying that she does not how that happened or why she registered the cases in the wrong registers and did not realise that she had entered the two matters on the wrong registers.

The 2nd question to the clerk was that seeing that the cases are 2018 matters, why are the files only attended to in 2024 and where never attended to and have since been abandoned in 2018. There was no reply to that. The 3rd question to the clerk was that she recently registered the cases as if they are new cases and as if they have only been received recently in 2024, she even allocated the matters a new case number and changed them from appearing as the cases of the year 2018, cancelled where it was written 2018 and on top of the year wrote and changed it to 2024, and then registered them in the petition register (CAP) register. The clerk then confirmed that she indeed changed the case numbers and the year.

She was the asked if she had any explanation to the latter, and if she consulted a senior regarding that, and or could she have been advised by anyone to do what she did, she then said that she was advised by her two colleagues Mr Lesego Sepeko as well as Mr Tshepo Sebapatso that she should change the year and the case number to 2024 and not 2018.

Mr Sepeko today was not available for questioning, and Mr Tshepo Sebapatso was then called in for questioning, in particular he was asked if he has ever advised the clerk to change the case number and he denied that, and added further to say that he has previously

advised the clerk to do so however it was in a different matter and not the two petition matters in question.”

[6] On 10 December 2024 at 16h23, an email addressed to me with Judge Reddy carbon copied (‘cc’), was received from the Secretary of the Judge President. It reads as follows:

“Good day Honourable Judge Petersen

At the instance of the Honourable Judge President RD Hendricks, your query with regard to the aforementioned petitions refers.

Kindly find attached hereto a report from the Registrar Mrs. P Ntono, the contents of which is self-explanatory. Both petitioners were already released on parole during 2022.

Kindly attend to these petitions as a matter of extreme urgency, alternatively ask Reddy J, as the duty judge during this recess period, to attend to it.

Thank you.”

- [7] On 11 December 2024, pursuant to the request of the Judge President, I commissioned my secretary to arrange with the court manager to have the petition files brought to me at the Klerksdorp Circuit where I was attending to a part-heard criminal trial, during the administrative recess of the High Court. The files were duly received on even date and Judge Reddy appraised that I would attend to the penning of a judgment in the matter, which I would request him to consider and counter sign, if in agreement.
- [8] To appreciate the inordinate delay brought about by the administrative bungling in the Office of the Registrar, it is apposite to have regard to the history of the respective petitions.
- [9] The petitioner in matter CAP 26/2024 (Ramasilo Jacob Ramasilo), duly represented, pleaded not guilty to a charge of murder read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997, on 10 September 2014. On 11 November 2014, he was found guilty as charged; and on even date sentenced to fifteen (15) years imprisonment and declared unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.
- [10] On 18 July 2017, nearly three (3) years following the imposition of sentence, the petitioner, duly represented by Legal Aid South Africa (LASA), noted an application for leave to appeal against sentence, accompanied by an application for condonation for the late noting of the said application. On 9 October 2017, the application for condonation for the late noting of the application for leave to appeal was granted, but the application for leave to appeal refused by the learned Regional Magistrate.
- [11] On 23 October 2017, the petitioner delivered to the clerk of court, Klerksdorp an application for leave to appeal pursuant to the provisions of section 309C of CPA. The original record and copies of the matter were transmitted by the clerk of court, Klerksdorp to the Registrar of this Honourable Court on 4 May 2018.
- [12] A copy of the Criminal Appeal Register kept by the Office of the Registrar, reveals the following. Under the year 2017, but inexplicably dated 11 May 2018, the clerk in the Office of the Registrar, Ms Lesego Tsejwane, entered the matter under Criminal Appeal Number CA 37/2017. The recording of the petition in the Criminal Appeal Register remains unanswered by Ms Tsejwane.

- [13] It is clear from the Criminal Appeal Register that from 11 May 2018 to 24 November 2024, the petition received no attention in the Office of the Registrar, which is a serious indictment on that Office. The Criminal Appeal Register further reveals that there has clearly been no administrative oversight over the register, which would in all probability have averted the present travesty of justice.
- [14] On 26 November 2024, the matter of the petitioner was entered in the Criminal Petition Register by Ms Tsejwane, and the date stamp with even date was appended to the papers.
- [15] The petitioner in matter CA 27/2024 (Pule Jacob Malebatso), duly represented, pleaded not guilty to a charge of murder read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997, on 20 August 2012. On 15 October 2012, he was found guilty as charged; and on even date sentenced to eighteen (18) years imprisonment and declared unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.
- [16] On 29 October 2014, more than two years after the imposition of sentence, the petitioner completed a notice of application for leave to appeal to the Gauteng Division Pretoria. The Gauteng Division at that stage still had jurisdiction over Klerksdorp Magistrates Court. Nothing appears to have come of that application which bears no date stamp.
- [17] On 18 July 2017, nearly five (5) years following the imposition of sentence, the petitioner, now duly represented by LASA, noted an application for leave to appeal against conviction and sentence. The application was accompanied by an application for condonation for the late noting of the application for leave to appeal. On 10 October 2017, the application for condonation for the late noting of the application for leave to appeal was granted, but the application for leave to appeal against conviction and sentence refused by the learned Regional Magistrate.
- [18] On 23 October 2017, the petitioner delivered to the clerk of court, Klerksdorp an application for leave to appeal pursuant to the provisions of section 309C of the CPA. The original record and copies of the matter were transmitted by the clerk of court, Klerksdorp to the Registrar of this Honourable Court on 07 May 2018.
- [19] The petition of Pule Jacob Malebatso, was not recorded in the Criminal Appeal Register or the Criminal Petition Register. The only entry relevant to this petition is in the Criminal Appeal Register for 2024, under the present CA number. It again remains inexplicable why Ms Tsejwane recorded the matter in the Criminal Appeal Register and not the Criminal Petition Register. According to the report filed by Mrs Ntono, Ms Tsejwane admitted that the handwriting on the Covering Sheet for Appeal Cases was her handwriting. The CA case number has been altered by Ms Tsejwane using a black pen. Notwithstanding such alteration, it is clear that the case had a CA number allocated in 2018, albeit that it was not entered in any register.
- [20] As with the petition of Ramasilo Jacob Ramasilo, it is clear that at least from May 2018 to 24 November 2024, the petition received no attention in the Office of the Registrar.

- [21] On 26 November 2024, the matter of the petitioner was entered in the Criminal Appeal Register and not the Criminal Petition Register by Ms Tsejwane.
- [22] The conduct of the Chief Registrar and the officials in his Office must be castigated in the strongest possible terms. Accountability is the hallmark of any efficient administrative process. This assumes a higher standard and greater duty of care when the administrative component is seized with a constitutionally enshrined right in the form of the timeous processing of appeals, reviews and petitions. A nonchalant attitude by the identified role players cannot be condoned. It cannot be business as usual.
- [23] In *S v P.M (Review) (02/2023)* [2023] ZANWHC 184 (5 October 2023), this Court had to censure the conduct of the clerk of court, Klerksdorp for failing to comply with her duties as clearly delineated in the Justice Codified Instructions Code: Clerks of the Criminal Court and Child Justice (“Code: Clerk of Courts”), issued by the Branch: Court Services of the Department of Justice and Constitutional Development. Chapter 12 of the Code: Clerk of Courts is instructive on the duties of the clerk of court in respect of reviews and petitions are equally applicable. The conduct of the Office of the Registrar aside for a moment, it is again with a sense of supererogation that I note that the clerk of court also failed to follow up with the Office of the Registrar on the delay with the present petitions.
- [24] The absence of any oversight, administrative or otherwise, is exacerbated by the following events. In 2018, the geographical jurisdiction of the North West High Court was amended to include, inter alia, the Klerksdorp Magistrates Court. Resultantly, backlog appeal matters were inherited. To ameliorate this, the Judge President commissioned two Special Criminal Appeal Projects. The first was at the end of the fourth term in 2023; and the second at the end of the second term of 2024. These petitions emanate from the bottleneck which arose in 2018 with the transition of the Klerksdorp Magistrates Court to the jurisdiction of the North West High Court.
- [25] Notwithstanding the two Special Criminal Appeal Projects, these petitions surreptitiously emerged to be considered only on 24 November
2024. It is mindboggling how these petitions were not identified for consideration between the hiatus of the two Special Criminal Appeal Projects. The inescapable conclusion points to a dereliction of duty at various levels in the Office of the Chief Registrar.
- [26] In its April 2021 version of the Minimum Standards for Batho Pele, the Department of Public Service and Administration, re-affirmed that:

‘MINIMUM STANDARDS FOR BATHO PELE

1.

Introduction

1.1 Minimum standards for Batho Pele are essential for service delivery improvement as it gives public service departments guidance on what is expected of them when delivering public services. Professionalism, consultation, value for money and respect for service users are uppermost in public service delivery.

1.2 The Minimum Standards for Batho Pele listed in 2.3 are in keeping with the transformational agenda of the White Paper on Transforming Public Service Delivery of 1997 (Batho Pele policy), and the basic values and principles for public administration as outlined in section 195 (1)(a-i) of the South African constitution (Act 108 of 1996).

1.3 The Minimum Standards for Batho Pele is an important milestone towards realising government's vision of 'putting people first'.

2. Minimum Standards for Batho Pele

2.1 Purpose:

- To support departments with the delivery of public services in line with the basic values and principles for public administration as outlined in section 195 (1)(ai) of the constitution (Act 108 of 1996), and the service delivery transformational agenda of the Batho Pele policy (1997).

2.2 Functions:

- Minimum standards for Batho Pele will ensure that public services are rendered in a specific, effective and efficient manner.

- Minimum standards for Batho Pele allows departments to identify context specific developmental areas and make the appropriate

modifications.

- Minimum standards for Batho Pele will ensure that service delivery are monitored effectively, and in a manner which promotes the basic values and principles for public administration as outlined in chapter 10 of the constitution.

- The minimum standards for Batho Pele in conjunction with the Operations Management Framework (OMF) will generate behavioural and systemic changes that are essential for continuous service delivery improvement.

2.3 Minimum standards for Batho Pele:

For each of the eight (8) Batho Pele principles identified in the Batho Pele policy (1997), a corresponding minimum standard has been developed. These minimum standards are as follows:

Consultation.

Service Standards.

Access.

Courtesy.

Information.

Openness and Transparency Service.

Redress.

Value for Money.”

[27] In accordance with the principles of Bato Phele, adopted by the Public Service and which has been extant since 1997, the Court Administration Unit of the Office of the Chief Justice led by the Director: Case Management, approved the Standard Operating Procedure (SOP) for processing and finalising of criminal petitions on 13 July 2017. The SOP commenced on 1 August 2017 and was due for review on 31 March 2019. The objective of the SOP was to standardize and create a uniform approach to the way in which criminal petitions were to be processed by the Registrar of the High Court. The principles which underscore the SOP were to include value for money, service excellence and transparency and honesty. The procedure and responsibility for criminal petitions were listed as follows:

1. The criminal trial is finalized at the Magistrate's Court.
2. The accused person files an application for leave to appeal in terms of s309b of the CPA.
3. The application is refused by Magistrate's Court.
4. The accused petitions the High Court in terms of sec. 309C of the CPA.
5. The clerk of the Magistrate Court transmits the copies of the record to the High Court.
6. The Registrar of the High Court opens a court file, issues a petition number and registers the petition on the petitions registry book.
7. The copies are forwarded to the office of the DPP.
8. The office of the DPP forwards the petition set down date for the petition hearing.
9. The hearing is presided over by 2 Judges in chambers.
10. The Registrar prepares the files and sends it to the Judges for reading.
11. The petition hearing is conducted.
12. The Judges' secretary endorses the court file with the petition order.
13. The order is typed, checked and signed by the Registrar and the outcome is endorsed in petitions registry book.

14. If the petition is upheld, the Registrar prepares the J1 (warrant of liberation), and obtains the Judge's signature on J1 and transmits it to DCS for the release of the petitioner.
 15. If the petition is dismissed/refused, the petitioner may apply to Supreme Court of Appeal.
 16. Outcome of petition is captured in the register.
 17. The data collection tool is updated, verified by Registrar & submitted to statistical officer.
- [28] Accountability and authority in respect of the SOP vests with the Chief Registrar and Registrars. All officials in Court Administration and Chief Registrars were consulted in the compilation of the SOP. The SOP requires that all officials in the Office of the Registrar and OCJ officials are required to know the SOP. Contingencies for the SOP were identified, in terms of which it was accepted that non-compliance with the SOP would compromise the support given to the Judiciary in the performance of their judicial functions; and if the SOP could for any reason not be followed that the Provincial Head in the Division was to be informed. A SOP implementation plan was devised in terms of which the following timelines were identified: a circular was to be issued to all courts during August 2017; training workshops were to be conducted in the Divisions during December 2018 (sic 2017), with refresher training to be conducted every six (6) months from the date of implementation of the SOP.
- [29] There can therefore reasonably, be no excuse for the conduct of the officials in the Office of the Registrar. There can also reasonably be no excuse on the part of the Chief Registrar and any of the Registrars assigned to the Criminal Section for their dereliction of duty in respect of the two petitions under discussion, or the failure to exercise proper oversight over the Criminal Appeal and Criminal Petition Registers and processes and procedures identified in the SOP.
- [30] The right to a fair trial encompasses the right of an accused to exercise his rights evinced in section 309C of the petition.
- [31] It has been established by Mrs Ntono that both petitioners were released on parole during 2022. The inordinate delay brought about by the conduct of the officials in the Office of the Registrar, which includes the Chief Registrar, and any Registrars assigned to that Office from around 11 May 2018 to date, has undoubtedly rendered the right of the two petitioners illusory. It has further rendered the petition process nugatory and is tantamount to defeating the ends of justice.
- [32] The right which the petitioners sought to assert, whether clothed with prospects of success or not, has technically been rendered moot. Notwithstanding this unacceptable status of the petitions, the petitions must be considered. The papers in both petitions have been considered. In respect of CAP 26/2024 (Ramasilo Jacob Ramasilo) where the petition is only against sentence, it is our considered view that notwithstanding, the delay occasioned by the Office of the Registrar, that even if this petition was considered in 2018, there are no prospects of success on appeal. The application or leave to appeal against sentence

accordingly stands to be refused.

[33] In respect of CA 27/2024 (Pule Jacob Malebatso) where the petition is against conviction and sentence, it is our considered view that notwithstanding, the delay occasioned by the Office of the Registrar, that even if this petition was considered in 2018, there are no reasonable prospects of success against conviction. On sentence, however, the regional magistrates imposed a sentence of eighteen (18) years imprisonment, which is three

(3) years more than the mandated sentence of fifteen (15) years imprisonment. Whilst he correctly in our view, found no substantial and compelling circumstances to deviate from the mandated sentence of fifteen (15) years imprisonment, he committed a serious misdirection in imposing eighteen (18) years imprisonment, within the band of the maximum term of up to twenty (20) years imprisonment. In this regard, he failed to provide any reasons in his judgment on sentence for imposing a sentence incrementally higher than the mandated minimum sentence. In *S v Mathebula* 2012

(1) SACR 374 (SCA) Bosielo JA stated as follows at [10]):

‘A regional magistrate has the discretion to impose a sentence exceeding the minimum sentence prescribed by the Act with an additional five years as provided for in the proviso to s 51(2). Such a discretion must, however, be exercised judicially and on reasonable grounds. Where a regional magistrate intends to depart from the prescribed minimum sentence, it is proper and fair that the regional magistrate gives reasons for such a departure. Absent any such reasons, the conclusion becomes inescapable that such a decision is arbitrary or that the sentencing discretion was not exercised judicially. It is not proper for an appeal court to have to speculate about the reasons which motivated the regional magistrate to impose a sentence higher than the minimum sentence prescribed. Such an approach cannot be countenanced as it is subversive to the principles of openness, transparency, accountability and fairness. It is trite that judicial officers can only account for their decisions in court through their judgments. It is through judgments which contain reasons that judicial officers speak to the public. Their reasons are therefore the substance of their judicial actions.’

(my emphasis)

[34] Justice would still be served, notwithstanding the release of the petitioner Pule Jacob Malebatso, by granting leave to appeal against sentence.

[35] The conduct of the officials in the Office of the Registrar prima facie constitutes serious misconduct which merits investigation and disciplinary action. The conduct of Ms Lesego Tsejwane coupled with her implicating her colleagues Messrs Lesego Sepeko and Tshepo Sebatso, is tantamount to defeating the ends of justice. To this end, it appears that they sought to cover up the fact that the petitions were not dealt with in accordance with justice, brought about by their actions in delaying same for more than 6 years. This may constitute criminal conduct.

[36] We therefore propose that the conduct of Ms Lesego Tsejwane, Messrs Lesego Sepeko and Tshepo Sebapatso be referred to the Provincial Head of the Office of the Chief Justice for investigation and appropriate action; and referral of the matter to the South African Police Services for criminal investigation. 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 for investigation and appropriate action.

Order

[37] Consequently, the following order is made:

1. The petition against sentence under case number CAP 26/2024 (Ramasilo Jacob Ramasilo) is dismissed on the basis that there are no reasonable prospects of success on appeal.
2. The petition against conviction under case number CA 27/2024 (Pule Jacob Malebatso) is dismissed on the basis that there are no reasonable prospects of success on appeal. The petition against sentence is granted.
3. A copy of this judgment must be brought to the attention of Provincial Head of the Office of the Chief Justice, North West for investigation and appropriate action against Ms Lesego Tsejwane and Messrs Lesego Sepeko and Tshepo Sebapatso; and for referral to the South African Police Services for criminal investigation.
4. 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 for investigation and appropriate action.
5. A copy of this judgment must also be brought to the attention of the Judge President for his attention.
6. A copy of the judgment must be forwarded to Legal Aid South Africa and the Office of the Director of Public Prosecutions, North West, to facilitate the expeditious prosecution of the appeal of the petitioner Mr Pule Jacob Malebatso.

A H PETERSEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

I agree.

A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2024/317.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/ramasilo-v-s-unknown-topic-anwhc-2024>

Prepared on 10 October 2026 · Esheria