

SOUTH AFRICA / JUDGMENT

S v Lumka (CC52/2018) [2020] ZAGPPHC 229 (27 January 2020)

[2020] ZAGPPHC 229**COURT**

North Gauteng High Court, Pretoria

BEFORE

Bam

CASE / FILE NUMBER

CC52/2018

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**IN THE HIGH
COURT OF SOUTH AFRICA
GAUTENG
DIVISION, PRETORIA**

CASE NO: CC52/2018

DATE: 2020 .01. 27
In
the matter between
STATE
Plaintiff
and
S
LUMKA
Defendant

JUDGMENT

BAM, J: The accused in this matter is being arraigned on five charges including a charge of murder and one of attempted murder. The allegation in the indictment state that these crimes were allegedly committed in 2008.

This matter was on the role on several occasions and it was postponed for pre-trial purposes and correspondence between the parties.

At this point in time the accused , represented by three counsel, applied for a postponement on the following basis;

Firstly, that he is entitled to investigate the issue of the CCTV recording of the murder scene and the attempted murder.

These recordings were apparently recorded at the time, if understood it correctly, the murder and the attempted murder was committed.

My concern is that the accused will not be confronted with evidence in that regard. According to the state they are not going to make use of this CCTV recording. In other words, it is worthless to the state as evidence.

On the other hand, Mr Combrink submitted that they can prove, after having investigated this, on the probabilities, that it was not the accused that was involved in the alleged murder and attempted murder.

Mr Fourie submitted that the state will produce, if I understood him, evidence proving that the accused was indeed involved. The allegation in the charge sheet, in the indictment, is that the accused conspired with somebody else to commit the murder s.

The second ground is that the state failed to investigate the alibi of the accused. The accused by way of his legal representative informed the state that he was not present at the time these crimes were committed, that he was somewhere else. The state did not investigate the alibi evidence.

Mr Combrink submitted that this alibi evidence or the lack thereof, or the failure or the lack of state to investigate it, still have to connect the accused, if I understood him correctly, with the CCTV recordings of the murder scene that according to Mr Combrink will probably prove that the accused was not present.

Concerning the first ground - in view thereof that the state is not going to rely on the CCTV evidence - I must conclude that what Mr Combrink has said pertaining to the possible investigation thereof, is based on some sort of speculation.

It may be that the state will be able to produce evidence in that regard about the identification of the accused but surely the defence will have the opportunity to cross-examine the witnesses and then perhaps rely on the fact that the state did not make use of the CCTV evidence to prove that it was indeed the accused.

Regarding the alibi issue, I am not satisfied that it is of any substance. The state is not obliged to assist the accused in his defence. The grounds relied on by the accused, in my view, do not justify it to be in the interests of justice to postpone this matter. I am of the opinion that the accused will not be prejudiced at all.

The application for postponement is dismissed.

BAM, J

JUDGE OF THE HIGH COURT

DATE: 27/1/2020

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