

SOUTH AFRICA / JUDGMENT

Sabata v S (SS085/2022; DPP Ref: 10/2/11/1;(2022/106)) [2023] ZAGPJHC 1459 (13 December 2023) [2023] ZAGPJHC 1459

COURT

South Gauteng High Court, Johannesburg

BEFORE

Ally

CASE / FILE NUMBER

SS085/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: SS085/2022

DPP

Ref: 10/2/11/1

(2022/106)

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES

(3)

REVISED: YES

DATE

13 DECEMBER 2023

In

the matter between:

MDI-ANE: GIDEON SABATA APPLICANT
and
THE
STATE RESPONDENT

JUDGEMENT

ON LEAVE TO APPEAL

ALLY AJ

[1] The Applicant, Mr Gideon Sabata Mdlane, was convicted by this Court on the following charges:

1.1. Count 1: Murder of G[....] M[....], an adult female person, read with the provisions of Section 51(1) of Act No 105 of 1997[1] and Part 1 of Schedule 2 of Act 105 of 1997 as amended by Section 15 of Act 12 of

2021;

1.2. Count 2: Murder of L[....] Y[....] M[....], a minor female child born on 30 January 2016, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997 as amended by Section 15 of Act 12 of 2021;

1.3. Count 3: Murder of K[....] Y[....] M[....], a minor female child born on 18 November 2020, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997 as amended by Section 15 of Act 12 of 2021; I .4. Count 4: Attempted murder of N[....] M[....], a minor female child born on 8 February 2019; and sentenced to a term of life imprisonment on counts 1, 2 and 3 and the sentences on counts 2, 3 and 4 were to run concurrently with count 1.

[2] The Applicant, Mr Mdlane has now applied for leave to appeal his sentence of life imprisonment in respect of counts 1, 2 and 3. The application is launched in terms of Section 316 of the Criminal Procedure Act 51 of 1977, as amended as read with Section 17 of the Superior Court's Act 10 of 2013. The Applicant has, however, filed his application for leave to appeal late and has thus applied for condonation for the late filing of his application for leave to appeal.

[3] It is trite that in an application for condonation an applicant must satisfy a Court [2]:

3.1. that there was no wilful disregard for the Rules of Court and in so doing provide a detailed explanation for the delay;

3.2. that there are reasonable prospects of success on the merits of the application for leave to appeal.

- [4] In this case, the State has no objection to the granting of condonation but qualifies this submission by indicating that the application has no prospects of success[3].
- [5] The Court is thus required to consider the prospects of success of the application for leave to appeal. In my view, the prospects of success and the merits of the main application are so interwoven that it will be in the interests of justice to grant condonation. It should be noted, however, that the granting of the application for condonation does not mean that there are prospects of success in the application for leave to appeal. This requirement in my view deserves further deliberation.
- [6] I do not intend repeating the grounds for leave to appeal as outlined by the Applicant which grounds are contained in the application for leave to appeal[4]
- [7] A further issue that needs highlighting is that an application for leave to appeal in terms of Section 316 of the Criminal Procedure Act[5] must be read with Section 17 of the Superior Court's Act[6] and it has become trite that the test for granting an application for leave to appeal has been heightened[7]. The Supreme Court of Appeal has stated the test to be as follows:

"What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal. "

- [8] The above test needs to be strictly applied and an application must only be granted in deserving cases.
- [9] The grounds mentioned by the applicant were considered and adjudicated upon during sentencing proceedings and I am of the view that another Court would not come to a different conclusion and accordingly there are no reasonable prospects of success in an appeal succeeding in this case nor are there any compelling reasons for granting this application.
- [10] Accordingly, the application for leave to appeal must fail.
- [11] The following Order will accordingly issue:
- (a). the application for leave to appeal by the Applicant against the sentence of life imprisonment in respect of Counts 1, 2 and 3 is hereby dismissed.

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Appearances:

For the State: Adv.

R. Barnard

DPP Johannesburg

For the Accused: Ms

S. Bovu

Legal Aid South Africa

[1] Criminal Law Amendment Act

[2] Melane v Southern Insurance Co Ltd 1962 (4) SA 531 AD at pages 532 B-E;

[3] See paragraph 4 of the State's Heads of Argument

[4] Paragraphs 10 — 15 of the application for leave to appeal

[5] supra

[6] supra

[7] S v Smith 2012 (1) SACR 576 SCA @ para 7

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