

SOUTH AFRICA / JUDGMENT

Seloana and Others v Director of Public Prosecutions and Others (4019/2020) [2021] ZAFSHC 280 (11 October 2021)

[2021] ZAFSHC 280

COURT

Free State High Court, Bloemfontein

BEFORE

NS Daniso, NM Mbhele

CASE / FILE NUMBER

4019/2020

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IN

THE HIGH COURT OF SOUTH AFRICA,
FREE
STATE DIVISION, BLOEMFONTEIN

Case Number:

4019/2020
In

the matter between:

SECHABA
SELOANA
1st
Applicant
MMUSO
SELOANA
2nd Applicant
ABRAHAM
ITUMELENG POPA
3rd
Applicant
And
DIRECTOR
OF PUBLIC PROSECUTIONS
1st
Respondent
NATIONAL
DIRECTOR OF PUBLIC PROSECUTIONS
2nd
Respondent
HONOURABLE
MAGISTRATE Mr

CHOENE
3rd
Respondent
HEARD

ON: This
application was determined on the
basis of written arguments instead of an oral hearing as
provided for in Rule 16.5 of this court's practice directives
relating to the conduct of the hearings during the Covid-19
pandemic.
WRITTEN HEADS OF ARGUMENT DELIVERED
ON 05 OCTOBER 2021.

JUDGMENT

BY: DANISO, J

DELIVERED ON: 11 OCTOBER 2021

[1] The applicants seek leave to appeal against the judgment and order of this court handed down on 24 August 2021 in terms of which the applicants' review application was dismissed with costs.

[2] The application is unopposed.

[3] The provisions of Section 17(1) (a) [1] enjoins us to grant leave only if we are of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling

reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[4] The onus is on the applicants to fulfil this stringent threshold by convincing this court that they have prospects of success on appeal and that based on those facts another court would come to a different conclusion.

[5] The facts of this matter are comprehensively illustrated in the main judgment it is unnecessary to repeat them in this judgment. The grounds for leave to appeal are embodied in the notice of application for leave to appeal. We also don't deem it necessary to repeat them verbatim except to refer to the relevant parts thereof for the purpose of this judgment.

[6] The applicants' case is essentially that this court erred in its finding that: the Welkom district court does not have jurisdiction to adjudicate the applicants' case; the transfer of the applicants' case from the district court to the high court was done in terms of sections 75(1), 75(2)(a) and 75(3) of the Criminal Procedure Act 51 of 1977; the third respondent is exempt from giving reasons for his decision to transfer the applicants' case from the district court to the high court and, he was also not required to hear the applicants' views before transferring

their case.

[7] The submissions proffered by the applicants are meritless and have no prospects of success on appeal for the reasons that:

7.1. In the heads of argument, the applicants have essentially repeated the submissions they presented in the review application except that, in this application there is a deliberate distortion of the facts upon which the applicants' review application was premised.

7.2. In the review application, the applicants' objection to the transfer of their case from the district court to the high court was not premised on the grounds that the district court was also competent to hear their case. The applicants' case was that the regional court has sufficient jurisdiction to try the case therefore the third respondent was not entitled to bypass the regional court and transfer the case to the high court, consequently, an order was sought that the third respondent's decision to transfer the case to the high court be set aside and that the applicants' case be heard by the regional court.[2]

7.3. The applicants' assertion that this court found that the third respondent was exempt from giving reasons for his decision is quite disingenuous. In paragraph 13 of the judgment this court held that in terms of Rule 53

(1) (b) of the Uniform Rules the third respondent may provide reasons if he so desires not that he was exempt from furnishing reasons.

7.4. It is important to note that on the facts germane to this matter the applicants had applied and obtained an order before the hearing of the review application that the third respondent should furnish the record of the proceedings together with his reasons. The third respondent had duly complied.[3]

7.5. As regards the remainder of the grounds of appeal, we are of the view that the judgment in paragraphs 14 to 16 has adequately dealt with all the aspects raised in these grounds of appeal.

[8] We are not persuaded that another court will reasonably come to a different conclusion or that compelling reasons exists why leave to appeal should be granted.

Order

[9] In the result the following order is made:

1. The application for leave to appeal is dismissed with costs.

Dated at BLOEMFONTEIN on this the 11th day of OCTOBER 2021.

NS DANISO, J

I agree

N.M. MBHELE, DJP

For the applicants:

Adv. A.B. Omar

Zehir Omar Attorneys

C/O Horn & Van Rensburg Attorneys

BLOEMFONTEIN

For the respondents

Adv. T.L. Manye

State Attorney

- [1] Superior Courts Act 10 of 2013.
- [2] Paragraph 2 of the applicants' Notice of Motion, Paragraphs 26 to 28 of the applicants' supplementary heads of argument.
- [3] The court order is attached as Annexure 56 to 57 to the applicant's review application dated 11 March 2021 and at pages 58 to 59 is the third respondent's replying notice in terms of Rule 53 (1) (b).

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Prepared on 10 October 2026 · Esheria