

SOUTH AFRICA / JUDGMENT

# Tshabalala v S (CC 101/03) [2015]

## ZANWHC 12 (12 March 2015)

[2015] ZANWHC 12

## COURT

North West High Court, Mafikeng

## BEFORE

R D Hendricks

## CASE / FILE NUMBER

CC 101/03

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IN THE NORTH WEST HIGH COURT, MAFIKENG

CASE NO: CC 101/03

DATE: 12 MARCH 2015

In the matter between:-

ANANIUS TSHABALALA.....Applicant

And

THE STATE.....Respondent

DATE OF HEARING : 19 FEBRUARY 2015

DATE OF JUDGMENT : 12 MARCH 2015

COUNSEL FOR THE APPLICANT : MR SHAPIRO

COUNSEL FOR THE RESPONDENT : ADV MAEMA

APPLICATION FOR LEAVE TO APPEAL

## JUDGMENT

HENDRICKS J

- [1] This case has a very long and protracted history. The trial was finalized as far back as 07 November 2003. On the 21st November 2013 I gave judgment in an application for leave to appeal against sentence insofar as it concerns the present Applicant. Coupled with that application was also an application for condonation. In the said judgment I dealt comprehensively with the delay in so far as the condonation application is concerned and also with the prospects of success on appeal. This was done insofar as sentence is concerned

in respect of the present Applicant and in respect of his former co-accused (the Second Applicant in the application for leave to appeal Moses Serame Sibanda) both with regard to conviction and sentence. I need not repeat what is contained in that judgment, suffice to state that same can be incorporated to be part of this judgment.

- [2] On 12 August 2014 a document entitled “Notice of Motion of Application for leave to appeal” was filed with the Registrar of this Court, the first paragraph of which reads thus:-

*“PLEASE TAKE NOTICE the application will be made on behalf of the abovementioned applicant for leave to appeal to the Supreme Court of Appeal alternative to the Full bench of this Honourable Court against the convictions and sentences and on the basis of Special Entries in respect of Case No. CC 101/03 before the Honourable Mr. Justice Hendricks on a date to be mutually agreed between all the parties.”*

- [3] It is clear from this paragraph that an application is made inter alia for leave to appeal against the sentence imposed upon the Applicant. In the judgment on leave to appeal date 21 November 2013 this Court has already pronounced that there are no prospects of success on appeal insofar as the sentence of the Applicant is concerned. The refusal of leave to appeal in this regard and also insofar as the application for condonation is concerned, makes this Court functus officio and it cannot pronounce again on it.
- [4] Insofar as condonation for the present application is concerned, I am of the view that no proper case has been made out by the Applicant to be granted condonation for the late filing and prosecution of the application for leave to appeal against conviction. Cogent reasons were already advanced in the judgment dated 21 November 2013 and same need not be repeated herein.
- [5] As far as the prospects of success on conviction is concerned, I have perused the record of proceedings, the judgment on the merits and the heads of argument by both counsel as well as listened to their oral submissions. I am of the view that there are no prospects of success on appeal to either the Full Bench of this division or to the Supreme Court of Appeal.
- [6] In the notice, reference is made to applications for special entries in terms of the provisions of sections 316 (1)(a) and 317 of the Criminal Procedure Act 51 of 1977, as well as on the question of law in terms of section 319 of the said Act. I have carefully considered what is contained in the affidavit of the Applicant as well as the submissions made by counsel. I am of the view that there is no merit in any of these applications and they consequently stand to be dismissed. I am of the view that there are no prospects of any success on appeal also with regard to the special entries that the Applicant seeks to raise.

Order:-

- [7] Consequently, the following order is made:-

[i] The application for condonation is dismissed.

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

[iii] The applications for special entries in terms of sections 316 (1)(a); 317 and the question of law in terms of section 319 of the Criminal Procedure Act are dismissed.

R D HENDRICKS

JUDGE OF THE HIGH COURT

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Prepared on 12 October 2026 · Esheria