

NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, BHISHO)**

Case No. CC7/2019

In the matter between:

XOLA MAYEDWA

Applicant

and

THE STATE

Respondent

**JUDGMENT IN RESPECT OF
APPLICATION FOR LEAVE TO APPEAL**

HARTLE J

[1] The applicant seeks leave to appeal against both his conviction and sentence.

[2] At the outset I granted a request to condone the late filing of the application as it was evident even at the time I handed down sentence that the

applicant was not satisfied that he had been fairly convicted. Ms. Jodwana-Blayi for the state did not oppose the application.

[3] The grounds of the application and the basis upon which the state opposes the application are set out fully in the notice of motion and notice to appeal respectively. I do not intend to repeat those arguments.

[4] In a nutshell it was contended on the applicant's behalf that I erred in finding that his guilt had been proven beyond reasonable doubt and that I ignored crucial contradictions and placed dependence on the evidence of one of the children's grandmother whereas her evidence was neither reliable nor satisfactory. However, I dealt with these contradictions in my judgment and especially remarked that they were non-material. I did not focus especially on the tenor of the grandmother's evidence, but a review of her evidence confirms in my view that any shortcomings in her account do not detract from the reliable firsthand accounts of the primary witnesses whose testimony conformed to what I called the "essential narrative". Their evidence further make sense, was entirely probable, and corroboration was to be found in the seven sources I highlight in my judgment.

[5] I am accordingly satisfied that there are no reasonable prospects of success on appeal against the conviction.

[6] As for sentence, however, although not raised as a direct ground but one which concerns itself with the argument that I erred in finding that cumulatively the factors which were placed before me in mitigation did not constitute substantial and compelling circumstances, it appears that I perhaps failed to consider the reduced moral blameworthiness of the applicant on account of his state of intoxication. Each of the girls confirmed in their testimony that the applicant was drunk, even on the following day.

[7] I cannot therefore ignore the prospect that another court may well find that this factor, coupled with the applicant's age and his clean record cumulatively mitigate for him, thus rendering the sentence of life imprisonment inappropriate.

[8] In the result I issue the following order:

1. The applicant is granted leave to the Full Bench of this court to appeal against the sentence of life imprisonment imposed upon him by this court on 20 January 2021.

B HARTLE

JUDGE OF THE HIGH COURT

DATE OF HEARING: 22 July 2021

DATE OF JUDGMENT: 10 August 2021*

*Judgement delivered electronically to the parties by email on this date.

APPEARANCES:

For the applicant: Ms. Mtini of Legal Aid, King William's Town.

For the respondent: Ms Jodwana-Blayi of the Director of Public Prosecutions, Bhisho. .