

IN THE HIGH COURT OF SOUTH AFRICA

(BHISHO)

CASE NO.: CA&R14/2004

DATE: 16 SEPTEMBER 2005

In the matter between:

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NTOMBOMZI NDOTYI & ANOTHER

versus

THE STATE

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EX TEMPORE JUDGMENT

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EBRAHIM J

Mr Simoyi who appears for the appellants in this appeal has, after some reflection, decided that he should move for the grounds of appeal to be amended. I need to mention that a notice of application for amendment of notice of appeal dated 11 February 2005 was delivered on 14 February 2005. This purported notice of amendment, however, was improperly drafted in the sense that it required the respondent, namely the State, to respond within 10 days failing which the grounds of appeal would be amended. Such a procedure is of course improper. I say so, since any amendment of the grounds of appeal must be proceeded with on the basis that there is a substantive application to the Court and the Court will then exercise its discretion whether to grant such amendment or not.

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In the present circumstances Mr Simoyi, as I have indicated, is of the view that he needs to move the application for the grounds of appeal to be amended as a failure to do so will result in the limited ground of appeal as set out in the notice of appeal, which reads to the effect that

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the sentence is so unreasonable that no reasonable Court would have imposed it. Mr Jonas who appears for the State has indicated that the State is not opposing the application.

Mr Simoyi has now moved firstly, for condonation for the improper notice of amendment, and secondly, for the amendment to be granted. 5

We are of the view that the amendment should be granted as it may prejudice the appellants should they be confined to the single ground of appeal. We are also of the view that the respondent is not prejudiced by an amendment in that the original heads of argument filed by the appellant dealt with the appeal on the basis that the expanded 10 grounds of appeal had in fact come into operation. The State was therefore able to reply to the appellants' heads of argument on that basis.

In the circumstances the Court grants the following order:

1. Condonation is granted for the improper notice of amendment. 15
2. The amendment of the grounds of appeal as set out in the notice dated 11 February 2005 is granted.
3. An amended notice of appeal is to be filed by not later than 23 September 2005.
4. The amended notice of appeal shall be served on the Magistrate 20 immediately to enable the Magistrate to respond thereto.

BHISHO : HIGH COURT

NDZONDO AJ

I agree.

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NDZONDO : ACTING JUDGE

BHISHO : HIGH COURT