REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

CASE NUMBER: 12249/2018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

08/04/2021
DATE

SIGNATURE

In the matter between:

NABOLISA FRANK **APPLICANT**

and

THE LEARNED MAGISTRATE MS SYTA PRINSLOO **1st RESPONDENT**

THE DIRECTOR OF PUBLIC PROSECUTION GAUTENG LOCAL DIVISION **2nd RESPONDENT**

J U D G M E N T

BOKAKO AJ

INTRODUCTION

1. The applicant is Frank Nabolisa, an accused in criminal proceedings in the Regional Court for the Regional Division of Johannesburg, Alexandra (the Criminal Court), presided over by the first respondent (the Magistrate). The first respondent is the Regional Court Magistrate, Ms. Prinsloo, duly appointed as such at Alexandra Magistrates' Court. The second respondent is the Director of Public Prosecutions, Gauteng Local Division, Johannesburg.

2. The applicant was convicted of "possession with the intention to deal in cocaine in contravention of Section of the Drugs and Drug Trafficking Act, Act No. 140 of 1992 (“the Drugs Act"), as well as possession of paracetamol and methenamine in contravention of Section 22A of the Medicines and Related Substances Act, Act No, 101 of 1965 (“the Medicines Act") on 31 October 2013. On 19 May 2014, the applicant was sentenced to 20 years' direct imprisonment.

3. The applicant then applied for leave to appeal against his conviction and sentence, the court *a quo* refused leave to appeal and the applicant then unsuccessfully petitioned the Gauteng Local Division, Johannesburg. The applicant then applied to the Supreme Court of Appeal for special leave to appeal and was again unsuccessful. The applicant now approaches this court in terms of Rule 53 to review and set aside the proceedings of the court *a quo*.

4. The applicants’ complaint in the review is that the first respondent committed gross irregularities in the procedures she followed to arrive at her conclusions. He contends that the process was procedurally unfair and infringed the applicant’s rights to a fair trial, and that this resulted in a conclusion to which

no reasonable trier of fact could have come. The applicant contends that the judgment should be reviewed and set aside. The application is opposed by the second respondent and the first respondent abides the decision of this Court. Since only the second respondent opposes the application, where we refer simply to "the respondent" this refers to the second respondent.

PRELIMINARY ISSUES

5. The respondent raised a number of points *in limine*. These were that
   5.1. the applicant's affidavits are not properly commissioned;
   5.2. the record of proceedings was incomplete, and
   5.3. the issue was *res judicata* because of the unsuccessful attempts to appeal conviction and sentence.

6. As far as the commissioning of affidavits was concerned, the applicant asked the court to condone and accept the late filing of commissioned affidavits. The court did so, as it is in the interests of justice that all issues be properly ventilated and considered.

7. The respondent complained that the record of proceedings was incomplete and the review could not therefore be considered, because the applicant did not request the record from the first respondent in terms of Rule 53 of the Uniform Rules of Court.

8. The purpose of rule 53 is to "facilitate and regulate applications for review".[1] The requirement in rule 53(1)(b) that the decision-maker file the record of decision is primarily intended to operate in favour of an applicant in review proceedings. If the applicant chooses

[1] Jockey Club of South Africa v Forbes [1992] ZASCA 237; 1993 (1) SA 649 (A) (Jockey Club) at 661.

to proceed in the absence of requesting the record, that is at the applicant's peril. A respondent who has access to the relevant parts of the record (as in this case, the state had access to the allegedly missing part of the record, which was eventually produced) cannot rely on an applicant's failure to request the record to object to the proceedings continuing, as it is not prejudiced. In any event, the full record was ultimately before this court, including the application for special leave to appeal to the Supreme Court of Appeal (also referred to in this judgment as the petition).

9. There is, therefore, no merit in this preliminary point.

10. Finally, the respondent submitted that the application for special leave to appeal was based on similar grounds upon which the Rule 53 application is based and that therefore the matter was *res judicata*. The respondent contended that the application for special leave was not before this court and therefore the court was not able to decide whether in fact the matter was *res judicata*. However the court later received the application for special leave to appeal and determined that the grounds of the review are not all the same as the grounds for special leave to appeal, although there is some overlap. To the extent that there is overlap and the question has in essence been already considered by the High Court and the Supreme Court of Appeal, we deal with the specific issues below

11. The applicant raised one preliminary issue, that it was improper for the respondent's counsel to represent the respondent because she had deposed to a confirmatory affidavit. The contention was that it is a fundamental principle of professional ethics that no representative may also be a witness in a matter in which he or she represents that party. It is so that it is unusual for counsel to give evidence. However Ms Williams only confirmed Mr Nenghovela's evidence and it did not seem to us that her ability to represent the respondent

was impaired in this particular case. For that reason the court dismissed the applicant's point.

RELEVANT BACKGROUND FACTS AND EVIDENCE LEADING TO THE CONVICTION AND SENTENCE

12. The applicant was charged, convicted and sentenced at the Regional Court, Alexandra on the following counts: (1) Dealing in drugs, in contravention of Section 5(b), read with Section 1,13,17,25 and 64 of the Drugs Act, read with the provisions of Section 51(2) of Act 105 of 1997, alternatively, in contravention of Section 4(b) possession of drugs and (2) The Appellant further contravened Section 22A, read with Section 29(k), 30 and 31 of the Medicines and Related Substances Act, Act 101 of 1965, in that the applicant had in his possession a scheduled substance. The applicant pleaded not guilty and elected not to make a plea explanation in terms of Section 115 of the Criminal Procedure Act 51 of 1977 ("the CPA").

13. In respect of count one (1) the respondent contends that on the 28th of June 2008 at house 2053, Mapatha Street, Ebony Park the applicant did unlawfully have in his possession with an intention to deal a dangerous dependence producing substance as listed in part 2 of Schedule 2 of the said Act, to wit cocaine in that it was found in his possession.

14. The applicant did not testify during his trial and only relied on presentation the evidence of accused No.2`s expert witness. It was common cause that on the 28th of June 2008, drugs were seized by members of South African Police Services at the house mentioned in the charge indictment. At the time of seizure, the applicant was not present at the premises. A maroon suitcase and a black suitcase were seized by the police, on the strength of information obtained from intercepted communications.

15. Lt-Col Coertze testified that the police had authority to intercept the applicant's conversations, having obtained authorisation to intercept the applicant`s cell phone communications. In the intercepted communication, the applicant was heard explaining to one Natasha (Accused No.2 in court a quo) where the maroon bag was and further gave her the instructions on how to open the bag which had a combination lock by giving her the code. The applicant was also heard telling Natasha that there are four (4) packets inside the bag and such should be made up into five (5) packets.

16. Warrant Officer De Jager who was part of the team and who worked with Col Coertze testified in that upon arrival at the premises he found the owner of the house namely Audrey who gave him a permission to search the premises. It was at this time that he discovered the above mentioned maroon and black suitcases. He managed to open the maroon suitcase using code 138 that was provided to him by Col Coertze and obtained from the intercepted communications. This bag contained a substance which he described as cocaine. The first respondent found that the two bags belonged to the applicant and that the applicant had control over the contents thereof by virtue of the intercepted cell phone conversation between the applicant and Natasha. Further the first respondent found that the applicant was in control of the seized items.

17. Major Noluvuyo Gifta Makwatane and Sergeant Machimane testified about equipment used in the Forensic Science Laboratory, emphasising that such equipment had the ability to calibrate itself. These witnesses both have knowledge in specialised fields of forensic science.

18. Sergeant Machimane was based at the drug section of the chemistry unit of the Forensic Science Laboratory as a forensic analyst. He received two sealed bags, each with a unique

number, FSG249067 and FSG249068 respectively. The black bag FSG249067 contained five (5) units of powder each wrapped in plastic and with a total weight of 3257.6 grams. The maroon bag FSG249068 contained four (4) units of powder each wrapped in plastic and total weight of the powder was 313.9 grams. This witness analysed the said exhibits by using gas chromatography coupled with mass spectrometry, a GCMS. This is an internationally accepted comparative analytical technique. He further made use of the Fourier Transformed Infrared Spectroscopy (FTIR) during his analysis. This is also an internationally accepted molecule spectroscopy comparative technique whereby the characteristics patterns of the compounds are obtained.

19. Major Makwatane testified that she had carried out suitability tests on the machines used by Sgt Machimane, HP4 and HP9. She testified that the reports generated by the machines when the tests were conducted showed that the machines would not be able to give a conclusive negative result for cocaine but a positive result would be conclusive.

20. Accused number 2 called expert witnesses. According to Dr CC Viljoen, Sgt Machimane's evidence cannot safely say beyond a reasonable doubt that the substances were cocaine. Dr Dinsmare testified that there were various samples that had to be analysed and that Machimane only made use of one method to analyse the substances.

THE APPLICANT'S GROUNDS OF REVIEW

APPLICANT`S CASE

21. The applicant relied on the following grounds of review:

21.1. The second respondent's failure to make proper disclosure and the first respondent's failure to order proper disclosure of the working papers of the forensic analyst.

21.2. The first respondent placed an onus on an accused in a criminal matter.

21.3. The applicant was convicted of a non-existing offence, possession with intention to deal, relying on a presumption in terms of section 21 of the Drugs Act which has been declared unconstitutional.

21.4. The first respondent permitted rude and inappropriate cross-examination by the second respondent's counsel.

21.5. Evidence of a state witness in favour of the defence was rejected when the witness was not discredited.

21.6. Sentencing proceedings were unfair.

22. The applicant contends that his fair trial rights were infringed, particularly his right to challenge and adduce evidence with regard to Sgt Machimane's working papers. The applicant contends that Sgt Machimane`s evidence was not consistent with his working papers and could not be challenged because the state did not disclose Sgt Machimane's working papers to the applicant prior Sgt Machimane's testimony and also the state failed to raise discrepancies with Sgt Machimane whilst the state was leading him. The working papers were also not canvassed during Dr Viljoen`s testimony. The only time when the working papers were raised was during Dr Dinsmare's testimony.

23. The applicant submits that discovery relates to the disclosure of evidence on which a party intends relying to prove its case. The furnishing of further particulars to a criminal charge proceeding is regulated by Section 87(1) of the Criminal Procedure Act. It was important

that the state before the beginning of the trial discover such documents to enable the accused to exercise his constitutional right to a fair trial. Therefore, the state had an obligation and or legal duty to discover the working papers of Sgt Machimane whether asked or not. The applicant was entitled to have his own expert witness to rebut evidence of the state expert witnesses.

24. The first respondent allowed the second respondent to put questions to the defence witness, Dr Viljoen, who only had transcripts of oral evidence to rely on, so that he was not in a position to comment on and criticize Sgt Machimane`s evidence. The applicant submits that it was therefore irregular for the state not to put the full set of Sgt Machimane`s working papers to defence witnesses, since the state knew or should have known that Sgt Machimane`s oral evidence was not supported by his working papers.

25. After Dr Viljoen's evidence, the state applied for the re-opening of the state case to call Major Makwatane to testify on issues raised by Dr Viljoen. The first respondent granted the second respondent's request. The applicant also applied for an order that the state discloses the relevant working papers. The first respondent did not grant the order on the basis of Section 87 of the Criminal Procedure Act. The applicant submits that such refusal constitutes an irregularity, even though Major Makwatane fully disclosed Sgt Machimane`s working papers during cross-examination by the defence.

26. Dr Dinsmare testified that, according to the disclosed working papers, not all the units or items referred to in the charge sheet had been analysed. The applicant contends that it was unfair for the first respondent to allow the second respondent to put to Dr Dinsmare that he did not have all working papers and that he therefore could not conclude that not all units were analysed.

27. The applicant further submitted that Sgt Machimane was not cross-examined on his working papers as the working papers were suppressed by the state, with the knowledge that Sgt Machimane`s oral testimony was inconsistent with his working papers. Therefore, the defence's right to challenge this discrepancy was infringed.

28. The applicant submits that, because the first respondent permitted it to be put to Dr Dinsmare that he could not comment on the working documents he had not asked Sgt Machimane about them, this amounts to placing an onus on an accused person to discuss an issue with a state witness before testifying.

29. The working papers which were eventually disclosed showed that reference numbers were inserted by hand *ex post facto*. This indicates that the working papers had been tampered with and Sgt Machimane's evidence could not have been relied upon. The applicant contends that the first respondent should have accepted Dr Dinsmare`s evidence that not all units had been sampled and analysed. According to international standards all five samples (units) should have been analysed. Sgt Machimane did not tell the court that all units were analysed. Further the applicant averred that the respondent failed to attach standing operating procedures (SOP). In the same breath the applicant contends that the disclosure of SOP was irrelevant, as Dr Viljoen said SOP were only effective as from March 2017.

30. According to the applicant the instrumental technique employed by the respondent`s witnesses to analyse organic compounds, using an instrument comprising a gas chromatograph coupled to a mass spectrometer (GS-MS) is an internationally accepted comparative analytical technique, however the same international scientific community that accepts this technique , which includes the world Anti-Doping Association (WADA)

prescribes certain standards, protocols or criteria with which the process must comply to produce reliable results. Therefore, if the criteria set by the international scientific community are not complied with, the methodology used is not a method accepted by the international scientific community as producing reliable results. Therefore Section 18 of the Drugs Act does not assist because the state has not, according to the applicant, proved that the contents of the suitcases were in fact cocaine. In addition, the applicant contends that the laboratory was not accredited by the South African National Accreditation Systems (SANAS) established in terms of Section 3 of the Accreditation for Conformity, Assessment Calibration and Good Laboratory Practice Act, Act No.19 of 2006(ACACGLP), this is an entity that would only, if satisfies that the process and procedures of a laboratory meet international standards then they would be issued with an accreditation certificate.

31. The applicant further averred that the ruling of the first respondent was irregular in that her findings were made without affording Dr Viljoen an opportunity to be heard on the above mentioned issues. This resulted in total failure of justice. In addition it was contended that the first respondent's failure to recall Sgt Machimane in terms of Section 186 of the Criminal Procedure Act constituted a gross irregularity.

32. The applicant submitted that since his co-accused's mother had testified about who the two suitcases belonged to, it was not open to the first respondent to find that he had been in possession of the contents as her evidence had not been discredited.

33. In conclusion it was submitted by Ms Kolbe that the applicant did not receive a fair trial, and the only appropriate remedy in terms of Section 38 would be to set aside the proceedings as constituting a nullity.

34. These irregularities in the proceedings extended to and also affected the sentencing proceedings, in that the applicant was convicted of a non-existing offence. The Drug Act provides for two offences relevant to this matter: dealing in cocaine and possession of cocaine. The prescribed maximum sentence for possession is in terms of Section 13(d) its fifteen years (15) and the maximum for dealing is in terms of Section 139f) its twenty-five years (25) imprisonment. The applicant should have been sentenced for ten (10) years not twenty (20) years. The applicant alleges that his sentence was clouded with additional charges on which the applicant was initially arraigned before they were separated and transferred to Kwazulu-Natal. This constituted a gross irregularity in the proceedings.

35. The applicant submits that the proceedings ought to be set aside as a nullity.

RESPONDENT`S CONTENTIONS

36. In response to the applicant's first ground of review, the respondent contends that copies of the docket were duly supplied to the applicant and his legal representative, and the applicant at no stage requested further particulars. Nor did the applicant dispute the findings set out in the statement made in terms of Section 212 of the CPA by the forensic analyst. As far as working documents were concerned, they were only requested after the respondent had closed its case, and only by the applicant's co-accused's counsel. The respondent submitted that working documents such as those at issue do not ordinarily form part of a case docket.

37. The respondent submitted that a request for further particulars must be made in writing and before any evidence has been led with respect to the charge for which the particulars are required. In addition, if the accused person and the prosecution do not agree on the requested particulars, the accused may apply to court for an order compelling the prosecution to furnish particulars and such order must be granted prior the resumption of any evidence. The respondent pointed out that during the trial the applicant never disputed the forensic findings by the analyst, did not seek to cross-examine the analyst or brief an expert witness, and cannot at this late stage suggest that he was disadvantaged by the working documents not being timeously produced.

38. Further, the credibility and reliability of the findings of the State`s expert witnesses were already dealt with by the Johannesburg High Court and the Supreme Court of Appeal since their findings were challenged in the applicant's petitions.

39. The applicant did not seek to have Sgt Machimane recalled, nor did his co-accused. It was not open to him now to complain that Sgt Machimane was not recalled. There was no reverse onus, the question was only whether the second accused's expert's version had been put to Sgt Machimane, which it had not.

40. As far as the evidence of accused number two's mother was concerned, she did not have to be discredited. The question was whether on the totality of the evidence the state had proved that the suitcases were under the control of the applicant.

41. Regarding the purported conviction of the applicant on a non-existing offence and/ or reliance on the presumption in terms of Section 21 of the Drugs Act, the respondent denies that the state relied on a presumption that had been declared unconstitutional. It was pointed out that the state applied for the charge sheet to be amended to remove the reference to the

relevant provisions before the closing of the state's case. The only presumption relied upon was section 18 of that act, which had not been declared unconstitutional. The respondent submitted that the applicant was correctly convicted of dealing in drugs. The respondent suggested that this aspect was dealt with by the applicant in the petitions to the Johannesburg High Court and the Supreme Court of Appeal and therefore determined by those courts.

42. As far as the conduct of the state's counsel was concerned, the respondent submitted that the record did not bear out the allegations that she was rude and inappropriate, and certainly not to the extent that would vitiate the proceedings.

43. As far as sentencing is concerned, the respondent pointed out that the same issues had been dealt with in the applicant's petition and therefore determined by the High Court and the SCA.

WHETHER CERTAIN GROUNDS OF REVIEW HAVE ALREADY BEEN DETERMINED BY THIS COURT AND WHETHER ANY ISSUES ARE *RES JUDICATA*.

44. The applicant relied on the same grounds of appeal to the High Court and to the Supreme Court of Appeal:

44.1. The search of the premises and the seizure of the two bags was unlawful because the person who carried out the search and seizure did not explain to the person in charge of the property the purpose of the search and seizure, and no warrant was obtained.

44.2. The applicant ought not to have been found to be in control and therefore in possession of the two bags, as he was not at the premises and the state's witness testified about whose bags they were.

44.3. The state failed to prove that the two machines used to analyse the contents of the bags were capable of analysing cocaine.

44.4. Since it was not proved that the machines could analyse for cocaine, the presumption in section 18 of the Drugs Act did not apply.

44.5. The "previous conviction" was for a charge which was originally part of the same proceedings but was separated and determined first in Pietermaritzburg, and was not really a previous conviction.

44.6. The court ought to have taken account of the cumulative effect of the sentences including the Pietermaritzburg conviction.

45. Of these it can be seen that the only ground on the merits which the review and the petition have in common is the issue of the evidence of the applicant's control and therefore possession of the two bags.

46. In our view the attempt to rely on the first respondent's rejection of accused number two's mother's evidence where she had not been discredited is simply a recasting of the challenge of the first respondent's finding that the applicant had effective control and therefore was in possession of the contents of the two bags.

47. The finding was based not only on a rejection of evidence but on a consideration of the totality of evidence. There was therefore no need to discredit the witness in order to come to a finding that was not based on her evidence, despite the fact that she was a state witness and her evidence favoured the applicant.

48. Nevertheless, the first respondent did, explicitly, also find that the witness was unreliable.

49. The question of the evidence and the finding of possession has therefore been determined already and is *res judicata*. To the extent that it may not have been, the ground of review in any event has no merit.

50. As far as sentencing is concerned, to the extent that the review ground that the sentencing procedure was flawed relies on the first respondent having taken into account the "previous conviction", that is exactly the same as the appeal ground relied upon, and has therefore already been determined.

51. This court does not have the power to determine again issues that have already been determined by a court of similar or higher status. The applicant has already had his opportunity to have the issues considered and is not entitled to a second bite of the cherry in the guise of review.

52. Naturally if this court finds that the proceedings before the first respondent have been vitiated on any other grounds that may have an impact on the sentencing as well.

DID THE NON-DISCLOSURE OF SGT MACHIMANE'S WORKING DOCUMENTS INFRINGE THE APPLICANT'S FAIR TRIAL RIGHTS, INCLUDING PLACING AN ONUS ON AN ACCUSED PERSON?

53. As set out above, Sgt Machimane testified about his analysis of the substance found in the two bags, and his working papers were not disclosed until much later in proceedings, after the first of the defence expert witnesses had already testified, when the state applied to re-

open its case to rebut that evidence. Accused number two applied for them to be produced but the application was refused, however Major Makwatane stated that if accused number two's legal representative went to the laboratory and asked for the documents, they would be given to him. This is in fact what happened. The documents were then only put to Major Makwatane and Mr Dinsmare, the second expert witness for accused number two.

54. The state provided copies of the docket to the applicant and his legal representative. There was no request for further particulars, either before the trial in terms of section 87(1) of the CPA or at any time. Nor was there any request to recall Sgt Machimane. In addition there was no attempt to challenge or dispute Sgt Machimane's findings as set out in his statement.

55. This court finds that unpreparedness and laxity of the applicant in not disputing, or even attempting to test, the forensic findings was of his and his legal team's own accord, the applicant cannot by default use this court to rectifying his failure to pay attention to the details.

56. While it is true that the applicant as an accused person is entitled to a fair trial, and does not have any onus to discharge, this does not mean that a represented accused can take a completely supine approach to a trial, including not attempting to cross-examine witnesses or analyse and evaluate the docket and related documents provided, and then seek to review proceedings after the fact. Had the applicant been unrepresented, or had there been a reason to doubt the quality of his representation, the issue may be differently evaluated. However in this case the trial strategy appears to have been one of simply observing what occurred. That cannot be a basis on which to ground a review.

57. The question of the effect of the handwritten markings on the computer printouts is one that could easily have been put to Sgt Machimane, but, as we have pointed out, the applicant and his team did not even attempt to do so after the documents were provided. Any contentions regarding the markings is speculative, in that context.

58. As far as the question of functioning of the machines used to analyse the samples is concerned, that has already been dealt with in the petition, and therefore determined by the High Court and SCA to have no merit.

To the extent that the presumption in section 18 of the Drugs Act may have been relied on, it was unnecessary, since the basis of the applicant's conviction was not simply the amount of cocaine in his possession but also the manner in which he was proposing to dispose of or move the cocaine on.

WAS THE APPLICANT CONVICTED OF A NON-EXISTING OFFENCE?

59. The applicant was charged and found guilty of the following:

59.1. Dealing in drugs and contravention of section 5(b) read with sections 1, 3, 17, 25 and 64 of the Drugs Act read with the provisions of section 51(2) of Act 105 of 1997.

59.2. Contravention of section 22A read with section 29(k), 30 and 31 of the Medicines and Related Substances Act 101 of 1965.

60. In his affidavit supporting his petition, the applicant sets out that he was charged and found guilty of charges as detailed above. These are, in addition, the charges listed on the charge sheet and mentioned by the first respondent in her judgment. However it is true that the elaboration of the charge of dealing includes possession with the intention to deal. This is simply an element of the basis of the conclusion that the applicant was dealing in drugs, it is not the offence of which the applicant has been charged and convicted.

61. The applicant suggests that the finding that his guilt of the charge of dealing is based solely on an unconstitutional presumption that because he was in possession of a certain amount of drugs, and that he was convicted on possession with intent to deal on the basis of the possession of that amount.

62. This is incorrect. The first respondent clearly relies also upon the manner in which the applicant instructed his co-accused to repackage the drugs from four packets into five, and his stated intention in the intercepted telephone call to pass it on to someone who was taking it to Cape Town for someone who needed five packets. There was a clear inference that the drugs were not for his personal use but that he intended supplying them elsewhere. The applicant himself confirmed that the transcripts of the telephone calls are correct.

63. The applicant was not convicted of a non existent charge, nor did the conviction rely on an unconstitutional presumption.

64. There is no merit in this ground of review.

WAS THE STATE'S COUNSEL RUDE AND INAPPROPRIATE IN CROSS-EXAMINATION, TO THE EXTENT THAT IT RENDERED THE PROCEEDINGS UNFAIR?

65. There is no evidence that the state's counsel was rude and inappropriate during cross-examination. It is clear that there was robust engagement, but certainly nothing untoward and nothing that affects the integrity of the proceedings.

66. The only defence witnesses were the two expert witnesses called by the applicant's co-accused. The only comment by the state's counsel that is complained of is that she commented "ag shame" in response to Dr Dinsmare suggesting that Sgt Machimane could not have analysed the number of samples he said he did. While that was both rude and inappropriate, there is no evidence that Dr Dinsmare was intimidated by it. In addition he was the last of the defence witnesses and nobody else could have been intimidated by the comment.

67. There is no merit on this ground of review.

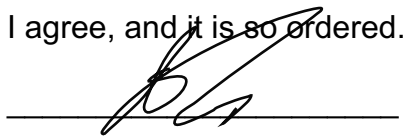
CONCLUSION

68. For the reasons set out above, the following order is made:

The application review application is dismissed.

TP BOKAKO
ACTING JUDGE OF THE HIGH COURT, GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree, and it is so ordered.



S YACOOB

JUDGE OF THE HIGH COURT,

GAUTENG LOCAL DIVISION, JOHANNESBURG

On behalf of the Appellant	:	Ms S Kolbe SC instructed by Hamilton Attorneys
On behalf of the State	:	Ms A.M Williams of the office of DPP
Date of Hearing	:	20 November 2020
Date of Judgment	:	08 April 2021