

CASE NO. CC 46/2000

IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)

In the matter between:

AYANDA NTULI

1ST APPLICANT

THAMI NTULI

2ND APPLICANT

and

THE STATE

RESPONDENT

JUDGMENT

MOGOENG JP.

- [1] This is an application for leave to appeal against both conviction and sentence which was heard on 27 June 2003. I reserved judgment and this then is that judgment.
- [2] The first Applicant was accused no. 1 during the trial whereas the second Applicant was accused no. 4. They were convicted and sentenced as set out below, on 23 June 2000.

2.1 First Applicant:-

- a) count 1: Murder in respect of which he was sentenced to undergo life imprisonment;
- b) count 2: Robbery in respect of which he was sentenced to undergo 12 years imprisonment; and
- c) count 3: Possession of a firearm without a licence to do so in respect of which a sentence of 5 years imprisonment was imposed.

2.2 Second Applicant:-

- d) count 1: Accessory after the fact to murder for which he was sentenced to undergo 15 years imprisonment;
- e) Count 3: Possession of a firearm without a licence to do so for which a sentence of 5 years imprisonment was imposed; and
- f) count 4: Unlawful possession of ammunition in respect of which he was sentenced to 1 year imprisonment.

[3] Mr Pistorius, for the Applicants, conceded during argument that there are no reasonable prospects of success on appeal in respect of the conviction. I am of the opinion that that concession was well-made. The application for leave to appeal in respect of the conviction accordingly falls to be dismissed. He, however, submitted that another Court may well come to a different conclusion with respect to sentence.

[4] I think that the following circumstances are supportive of Mr Pistorius' contention. The first and second Applicants were 14 years and 16 years old respectively at the time of the commission of the crimes they were found guilty of; they were both under some influence of intoxicating liquor, and the crime of

murder and of accessory after the fact to murder were not premeditated. Another Court may well find that the cumulatively effect of these and other factors portray the sentence that I imposed, particularly in respect of these offences, as being so severe as to induce a sense of shock or that the disparity between the sentence that I imposed and that which the Appeal Court would have imposed is so wide as to justify interference in the interests of justice. When the sentence was imposed, the Criminal Law Amendment Act 105 of 1997 was already applicable. Its relevant provisions should, therefore, have been taken into account. The Court should have considered whether or not that Act applied to the facts before it and if so, whether or not substantial and compelling circumstances exist and deal with the matter accordingly. This was not done and it is an irregularity which may or may not be serious. This irregularity is yet another reason why leave to appeal against sentence should be granted. I would, therefore, grant leave to appeal in respect of all the sentences imposed on the Applicants.

- [5] This application for leave to appeal was launched almost three years after the accused were sentenced. As a result an application for condonation was made. The explanation given for this inordinate delay is very unsatisfactory to say the least. Nevertheless, I have decided to grant condonation. The reasons why I have decided in favour of granting condonation were the importance of the matter to these youngsters as well as their good prospects of success on appeal.

- [6] In the result, I make the following order:

- g) Condonation for the late bringing of the application for leave to appeal is granted;
- h) Leave to appeal against the convictions is refused;

and

- i) Leave to appeal against the sentences is granted.

M.T.R. MOGOENG

JUDGE PRESIDENT OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 27 JUNE 2003

DATE OF JUDGMENT : 03 JULY 2003

COUNSEL FOR APPLICANTS : ADV P.F. PISTORIUS

COUNSEL FOR RESPONDENT : ADV G.S. MAEMA

ATTORNEYS FOR APPLICANTS : VAN ONSELEN & VAN
ROOYEN INC.

ATTORNEYS FOR RESPONDENT : THE DIRECTOR OF PUBLIC
PROSECUTIONS