

REPUBLIC OF SOUTH AFRICA



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

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

18/10/2022

DATE

A handwritten signature in black ink, consisting of a stylized 'S' and 'A' intertwined.

SIGNATURE

Case no.: SS98/2018

In the matter between:

SIBANYONI HAMILTON ANTHONY

Appellant

And

THE STATE

Respondent

Coram:

Dlamini J

Date of hearing:

02 September 2022 – Court 2F

Date of delivery of reasons: 18 October 2022

This Judgment is deemed to have been delivered electronically by circulation to the parties' representatives via email and shall be uploaded onto the caselines system.

JUDGMENT
LEAVE TO APPEAL

DLAMINI J

[1] This is an application for leave to appeal both the conviction and sentence that was handed down by me on 10 December 2018.

[2] The Appellant, Mr. Hamilton Sibanyoni a 46 year old male, was, on 6 December 2020, found guilty and convicted on the following charges;-

- 2.1 Malicious damage to property,
- 2.2 Housebreaking,
- 2.3 Arson,
- 2.4 Murder and
- 2.5 Six counts of attempted murder.

[3] Upon conviction, the following sentences were handed over to the appellant;

- 3.1 Murder; life imprisonment,
- 3.2 Attempted murder; 5 years imprisonment on each count,
- 3.3 Malicious damage to property; 3 years imprisonment,
- 3.4 Assault; 3 years imprisonment,

The sentences were ordered to run concurrently with life imprisonment.

[4] In his grounds of appeal on conviction, the Appellant makes the following submissions that :

- 4.1 No witness saw the Appellant pour the petrol and or set the house alight.
- 4.2 The fire expert testified that it could not be petrol, paraffin, or diesel that caused the fire, but the broken window allowed air to worsen the fire.
- 4.3 The fire was started by the deceased and not the Appellant.
- 4.4 The state witnesses had conspired to concoct false charges against the Appellant.
- 4.4 The witness for the state could be classified as a single witness and the trial court should have applied the necessary cautionary rule.
- 4.5 The state failed to present evidence in the form of DNA, fingerprints, and or any witness that will show that the Appellant started the fire.

[5] On sentence, the Appellant submits that;-

- 5.1 The sentence imposed induces a sense of shock considering that the Appellant and the deceased were in a relationship and further that the Appellant was under the influence of alcohol on the day of the incident.
- 5.2 Finally, the trial Court did not take into account the personal circumstances of the Appellant when it imposed the sentence.

[6] In ***MEC for Health, Eastern Cape v Mkhitha et al***¹ the Supreme Court of Appeal has now confirmed that the test for granting leave to appeal is now a higher one.

¹ Case number 1221/2015{2016} ZASCA 176 (25 NOVEMBER 2016 at para 16

- [7] This Court may now only grant leave to appeal if it is of the opinion that the appeal would have a realistic chance of success not may have a reasonable chance of success
- [8] In my view, the state has led the evidence of credible witnesses who know the Appellant and clearly without hesitation identified the Appellant as the perpetrator on the day of the incident. They pointed the Appellant as the person who started the fire that resulted in the death of the deceased.
- [9] The Appellant was not an open and credible witness. His version was riddled with contradictions and improbabilities and it was thus rejected.
- [10] I am satisfied that the state has proven its case beyond a reasonable doubt, as a result, the appeal on conviction is dismissed.
- [11] The Appellant's conviction on the charge of murder attracts the imposition of a life sentence unless there exist substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed minimum sentence.
- [12] Having considered the personal circumstances of the Appellant, the nature of the crime, and the interest of society, I found no substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence.
- [13] In light of all the above, I am of the view that no other court would interfere with my judgment in this regard.

ORDER

1. Leave to appeal on conviction and sentence is dismissed



DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

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