



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG HIGH COURT)**

Case number: A448/2006

Date: 11/4/2011

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	YES
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	YES
(3) REVISED	YES
31/03/2011	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

MADALA GOODWILL SHUBANE
GEORGE MONDLANA

1st Applicant

2nd Applicant

and

THE STATE

Respondent

LEAVE TO APPEAL JUDGMENT

PRETORIUS J.

In this matter Mr George Mondlana's application for appeal against sentence was heard on 15 June 2010 and dismissed by this court.

His co-accused, Mr Madala Goodwill Shubane, now applies to this court for condonation for the late filing of his application for leave to appeal. The application for condonation is granted.

The applicant is applying for leave to appeal only against sentence. The learned magistrate sentenced the appellant to 17 years imprisonment for robbery with aggravating circumstances – 2 years more than the minimum sentence prescribed by section 51 (2) of the Criminal Procedure Amendment Act 105 of 1997. The court *a quo* set out the reasons for imposing a sentence higher than the prescribed sentence.

Ms van Wyk, the legal representative for the applicant, referred the court to the unreported matter of **AA Maake vs Director of Public Prosecutions (481/09) [2010] ZASCA 51 (31 March 2010)** where Navsa and Tshiqi JJA held at paragraph 27:

*“Although the appellant was represented, it is clear from the record that there is no indication at all that the magistrate considered imposing the maximum sentence. **The appellant’s legal representative could consequently not have been invited to make submissions in this regard.**”* (court’s emphasis)

Although the learned magistrate had motivated the reasons for the higher sentence in his judgment, he did not indicate at any stage during the proceedings that he was contemplating a higher sentence than the minimum sentence. The applicant’s legal representative had no opportunity to make

submissions to the court before sentencing. It cannot be said that the applicant had a fair opportunity to deal with the question of the higher sentence.

Therefore this court is of the opinion that leave to appeal should be granted in these circumstances.

Due to the fact that the court is granting leave to appeal to the present applicant the order by which leave to appeal was dismissed on 15 June 2010 for Mr George Mondlana is recalled and leave to appeal is granted in his application for leave to appeal.

It is ordered:

1. Leave to appeal to the Supreme Court of Appeal against the sentence of 17 years is granted to the applicant;
2. The order against Mr George Mondlana dated 15 June 2010 is recalled;
3. Leave to appeal to the Supreme Court of Appeal against the sentence of 17 years is granted to Mr George Mondlana



C Pretorius

Judge of the High Court

I agree,



FG Preller

Judge of the High Court

Case number	:	A634/10
Heard on	:	31 March 2011
For the Applicant	:	Adv van Wyk
Instructed by	:	Legal Aid Board
For the Respondent	:	Adv Sampson
Instructed by	:	Director of Public Prosecutions
Date of Judgment	:	