

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

REPUBLIC OF SOUTH AFRICA



Case Number: A228/2015

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES / NO
- (3) REVISED

02/03/2016
DATE

SIGNATURE

2/3/2016

In the matter between:

NTSOEU OSIA SIMON MOCHADIBANE

Appellant

and

THE STATE

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] The appellant was found guilty of murder and attempted murder in the Magistrates court for the district of Emfuleni, held at Sebokeng. In respect of the murder charge, the appellant received ten years imprisonment and in respect of the attempted murder charge, five years imprisonment.
- [2] The appeal is only against conviction.

FACTS

- [3] On 16 March 2007, the appellant, a police officer, attended at a certain shebeen. Whilst at the shebeen, the appellant received information that the deceased was in the shebeen and was in possession of an unlicensed firearm. The appellant accosted the deceased and in the process the deceased managed to fire a shot, which shot hit the appellant in his left shoulder.
- [4] The appellant was admitted to hospital and released on the 19th of March 2007. Late in the evening on 19 March 2007, the appellant received information about the deceased's whereabouts. The appellant proceeded to the house where the deceased allegedly was and shot both the deceased and the complainant in the attempted murder charge. The appellant in his plea explanation relied on self-defence. The court *a quo* rejected the appellant's defence and found him guilty as charged.

GROUND OF APPEAL

- [5] In his heads of argument and during argument in court, Mr Strydom relied on the following grounds of appeal:
- (i) the contradictions and improbabilities contained in the evidence of the state witnesses is of such a nature that the evidence should be rejected;

- (ii) the court *a quo* committed an irregularity in refusing the appellant's application in terms of section 174 of the Criminal Procedure Act 51 of 1977;
- (iii) the appellant gave a reasonable explanation for his conduct, which explanation should have been accepted by the court *a quo*.

Section 174 application

- [6] The application was brought at the close of the State case on the basis that the evidence presented by the state was not sufficient for a reasonable court to convict the accused. The argument was mainly based on certain contradictions in the evidence of the state witnesses. The court *a quo* considered the application and in its judgment it stated *inter alia* the following:

"Issues of credibility of state witnesses are normally considered at the end of the trial and not at the stage of the application for 174. In order to succeed with an application for a discharge on the ground that the state witnesses lack credibility, it must be clear that no reliance can be placed upon the evidence of the state witnesses at all."

- [7] Applying the aforesaid test, the court *a quo* was of the opinion that the state made out a *prima facie* case and the application was refused. I agree with the court *a quo* and am of the view that the court did not misdirect itself or erred in refusing the application. In the result, this ground of appeal cannot succeed.

Evidence by state witnesses and the appellant

- [8] In the court *a quo*'s judgment, the evidence of the state witnesses and that of the appellant was comprehensively discussed and analysed.
- [9] The difficulty with the appellant's version is the fact that he approached the deceased's place with his firearm cocked and ready to shoot. The appellant

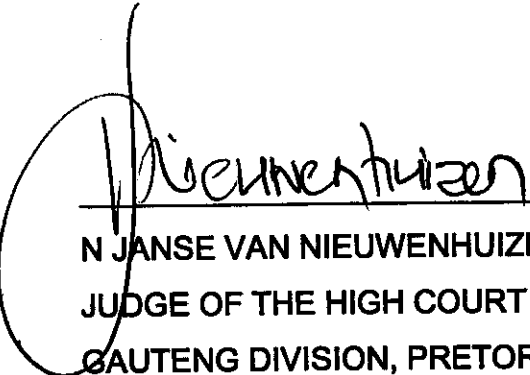
foresaw that the deceased would be armed, but did not wait for back up before he proceeded to fire several shots into the house the deceased was in. It is important to note that, although the appellant alleges that the deceased's firearm was cocked and he was advancing in the direction of the appellant, the deceased did not succeed in firing a single shot.

[10] The court *a quo* correctly found that there was no unlawful eminent attack on the appellant or his life when he fired the shots and that his actions were rather retaliatory than defensive.

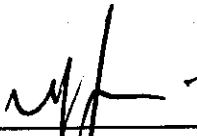
[12] In the premises, I am of the view that the appellant's appeal has no merit and should be dismissed.

I propose the following order:

The appeal against conviction is dismissed.


N JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree.


VRNS NKOSI
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

It is so ordered.

Appearances:

Counsel for the Appellant : Advocate Strydom

Instructed by : B H Attorneys

Counsel for the state : Advocate Mashuga

Instructed by : State Attorney