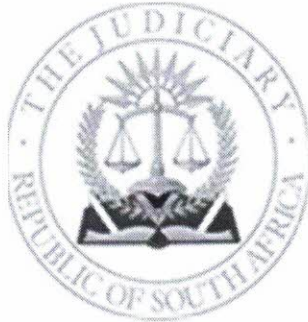



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: CC5/2014

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
<u>06/08/2020</u> 	

In the matter between:

NGNWANDISA PATRICK MATHEBULA

Applicant

and

THE STATE

Respondent

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] On 24 October 2014, the applicant was convicted on one count of murder and sentenced to life imprisonment by Coetzee, J. The applicant sought leave to appeal the conviction and sentence imposed. That application was allocated to me for adjudication on 21 February

2019, as Coetzee, J., has since retired. Counsel for the respondent opposed that application on the ground that it only dealt with the sentence and no application was made in respect of the conviction. Following on that opposition, the applicant requested that the matter be removed from the role, as he sought to apply for leave to appeal against the conviction as well. The matter was then removed from the role. The applicant also indicated that Legal Aid SA would assist him in his endeavour.

- [2] The applicant is now represented by Ms van Augustyn from Legal Aid SA. The application for leave to appeal now includes the issue of the conviction and was re-enrolled for adjudication. Due to the National Lock Down in view of the COVID-19 pandemic, the parties agreed that the application can be dealt with on the papers.

- [3] Heads of Argument were filed by both parties. The grounds for leave to appeal raised in the applicant's heads of argument are terse to say the least. In respect of the issue of the conviction, it merely records that the court *a quo* had erred in finding that the State had proven the act of murder by the applicant on the evidence presented. The submission is that there were insufficient facts to sustain an inference that the applicant was the perpetrator. It is trite that another court would be loath to interfere with a trial court's findings on facts and the inferences to be drawn therefrom. See in this regard *R v Dhlumayo et al* 1948(2) SA 677 (A).

- [4] After careful consideration, I am of the view that the applicant has not satisfied the criteria for the granting of leave to appeal, in particular where it is not shown where the court *a quo* has misdirected itself on the issues of fact and consequential inferences to be drawn there from. It follows that I am not convinced that another court would find itself compelled to interfere with the judgment of the court *a quo* on the issue of the conviction. The applicant cannot succeed on that ground.

- [5] In respect of the issue of sentence, it is correct as pointed out by Mr Luyt, who appeared on the respondent's behalf, that the applicant was convicted of murder under the provisions of section 51(1) of Act 105 of 1997, and that the applicant was obliged to show compelling circumstances why a lesser sentence than life imprisonment had to be imposed.
- [6] In this regard, the trial court found that the applicant had not discharged his onus in that respect and further *mero moto* did not find any to exist. No misdirection on the part of the court *a quo* has been shown in respect of the issue of sentencing.
- [7] It follows that the application in respect of sentence cannot succeed.
- [8] The application for leave to appeal against conviction and sentence consequently stands to be dismissed.

I grant the following order:

1. The application for leave to appeal against both conviction and sentence is dismissed.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

Date Heard:	Decided on the papers during National Lockdown
On behalf of Applicant:	Ms L van Augustyn
Instructed by:	Legal Aid SA
On behalf of Respondent:	P C VB Luyt
Instructed by:	NDPP
Judgment handed down:	6 August 2020