

Reportable:	YES / <b><u>NO</u></b>
Circulate to Judges:	YES / <b><u>NO</u></b>
Circulate to Magistrates:	YES / <b><u>NO</u></b>
Circulate to Regional Magistrates:	YES / <b><u>NO</u></b>



## IN THE NORTH WEST HIGH COURT, MAFIKENG

**CASE NO: CC51/2009**

**In the matter between:**

**VINCENT LEBESE  
GILBERT LEBESE  
SAMSON MARUNA**

**1<sup>st</sup> Applicant  
2<sup>nd</sup> Applicant  
3<sup>rd</sup> Applicant**

**and**

**THE STATE**

**Respondent**

**DATE OF HEARING : 21 OCTOBER 2016**

**DATE OF JUDGMENT : 27 OCTOBER 2016**

**COUNSEL FOR THE APPLICANT : ADV. NKAHLE**

**COUNSEL FOR THE RESPONDENT : ADV. SEBOTHE**

**JUDGMENT ON LEAVE TO APPEAL**

## **HENDRICKS J**

[1] The applicants Vincent Lebese, Gilbert Lebese and Samson Maruma were respectively accused numbers one (1), three (3) and four (4) during the trial. They were together with two others nl. Samuel Jappie Lebese who was accused number two (2) and Simon Songo who was accused number five (5), convicted of *inter alia* two counts of murder and sentenced to an effective term of imprisonment for eighteen (18) years on 02 December 2009.

[2] The applicants now apply for leave to appeal to the Full Bench of the High Court, North West Division, Mahikeng (this division) against their convictions as well as the sentences imposed upon them. Applications for condonation for the late noting and prosecution of the applications for leave to appeal were also made. These condonation applications are unopposed. I am inclined to grant the requisite condonation on the basis that there are reasonable prospects of success on appeal.

**See: S v Smith** 2012 (1) SACR 567 SCA

[3] Samuel Jappie Lebese, the former accused number two (2) and Simon Songo, the former accused number five (5), successfully petitioned the Supreme Court of Appeal (SCA) for leave to appeal. Leave to appeal was granted by the SCA to the Full Bench of the

High Court, North West Division, Mahikeng (this division) against their conviction and sentences. The Full Bench of this division *per* Landman J, Kgoele J *et* Chwaro AJ inter alia set aside the convictions of murder and replaced it with convictions on culpable homicide. The sentences were also altered to nine (9) years imprisonment for the counts of culpable homicide.

**See: Lebesse and Another v S** (CAF21/15) [2015] ZANWHC 68 (15 October 2015)

[4] In view of this, and based on the fact that the same evidence which implicates Samuel Jappie Lebesse and Simon Songo also implicates the current applicants, it was contended on their behalf that there are reasonable prospects of success on appeal against their convictions as well as the sentences. The Respondent also, correctly in my view, conceded that there are indeed such prospects of success on appeal.

[5] I find the following *dictum* in **S v Smith**, *supra*, quite apposite:

*“[7] What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not*

*remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”*

I am therefore of the view that there are reasonable prospects of success on appeal with regard to convictions as well as sentences.

## **Order**

[6] Consequently, the following order is made:

1. Condonation is granted for the late noting and prosecution of the applications for leave to appeal.
2. Leave to appeal is granted to the Full Bench of the High Court, North West Division, Mahikeng against the convictions and the sentences.

**R D HENDRICKS**  
**JUDGE OF THE HIGH COURT,**  
**NORTH WEST DIVISION, MAHIKENG**