



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Not Reportable**

Case no: 663/2016

In the matter between:

**KHANTSHO LLALE**

**APPELLANT**

**and**

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Llale v S* (663/2016) [2017] ZASCA 049 (25 April 2017)

**Coram:** Cachalia and Wallis JJA and Molemela, Gorven and  
Mbatha AJJA

**Heard:** No oral hearing in terms of s 19(a) of the Superior Courts Act 10  
of 2013.

**Delivered:** 26 April 2017

**Summary:** Conviction and Sentence – special leave to appeal – reasonable prospects of success on appeal against conviction to the high court, and special circumstances present which would justify the grant of special leave to appeal to the high court – failure by the trial court to take account of

inconsistencies in written statement and oral testimony of single witness –  
failure to consider elements of charge of attempt to steal a motor vehicle –  
leave to appeal to high court granted.

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## ORDER

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**On appeal from:** Gauteng Local Division of the High Court, Johannesburg  
(Fourie J and Denge AJ sitting as court of first instance):

1 The appeal is upheld.

2 The order of the court a quo is set aside and substituted with the following order:

'The appellant's petition for leave to appeal in terms of s 309C of the Criminal Procedure Act 51 of 1977 against conviction and sentence is granted.'

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## JUDGMENT

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**Mbatha AJA (Cachalia and Wallis JJA and Molemela and Gorven AJJA concurring)**

[1] The appellant, Mr Khantsho Llale, was arrested at FNB Stadium on 17 August 2013. He, together with his erstwhile co-accused, appeared in the Regional Court for the Regional Division of Gauteng, Johannesburg, on 15 January 2014. They faced one count of attempted theft of a white Toyota

Hilux bakkie (the motor vehicle) and another count of theft of three wheel caps of a different motor vehicle.

[2] In respect of count two, namely the theft charge, the appellant and his co-accused were acquitted and discharged at the close of the State case. At the conclusion of the trial on 12 May 2014 they were all convicted on one count of attempted theft of a motor vehicle. They were each sentenced to undergo three years' imprisonment. Their applications for leave to appeal against conviction and sentence were dismissed.

[3] All three of them subsequently petitioned the Judge President of the court a quo in terms of s 309C of the Act,<sup>1</sup> for leave to appeal. For reasons that do not emerge from the record before us the appellant's application was separated from those of his co-accused. His application was dismissed on 27 May 2015, even though theirs must by then have been granted as their appeal was upheld on 29 May 2015. The appellant then approached this court for special leave to appeal in terms of s 16(1)(b) of the Superior Courts Act 10 of 2013, against the dismissal of his petition for leave to appeal. He was granted special leave on 13 June 2016.

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<sup>1</sup> Section 309C(2)(a) of the Act provides that if any application ... '(iii) for leave to appeal, is refused by a lower court, the accused may by petition apply to the Judge President of the High Court having jurisdiction to grant any one or more of the applications in question'.

[4] The only issue in this case is whether there are reasonable prospects of success in the appellant's appeal, and whether there are special circumstances present which would justify the grant of special leave to appeal to the high court.<sup>2</sup> The fact that Mr Llale's co-accused succeeded in having their convictions set aside on appeal is on its own a special circumstance that justifies the grant of leave appeal. But in addition the full bench took the view that the three men had been convicted on the evidence of a single witness, a Mr Scheepers, and that his evidence was not convincing and was improbable in several respects, while there was no reason to reject the accuseds' versions. That must mean that there are reasonable prospects of success in an appeal by Mr Llale.

[5] In light of those considerations the appeal must succeed. Although the appeal has been set down for hearing of oral argument on 3 May 2017, I am of the view that the matter may be disposed of in terms of s 19(a) of the Superior Courts Act 10 of 2013, without hearing any oral argument. In this regard, I agree with the views expressed by Wallis JA in *Zulu v S*<sup>3</sup> that:

‘It is appropriate for us to exercise that power in the interest of the expeditious disposal of the appeal. It will be an appropriate use of judicial resources and will both speed the process of

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<sup>2</sup> See: *S v Van Wyk & another* [2014] ZASCA 152; 2015 (1) SACR 584 (SCA).

<sup>3</sup> *Zulu v S* unreported case no 226/2016 [2016] ZASCA 207 (21 December 2016) para 4.

setting down Mr Zulu's appeal for hearing and save costs that would otherwise have been incurred from the public purse.'

The appellant's counsel has confirmed that he was in agreement with the court in this respect.

[6] In the circumstances, I make the following order.

1 The appeal is upheld.

2 The order of the court a quo is set aside and substituted with the following order:

'The appellant's petition for leave to appeal in terms of s 309C of the Criminal Procedure Act 51 of 1977 against conviction and sentence is granted.'

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Y T MBATHA

ACTING JUDGE OF APPEAL

## Appearances

For appellant: MD Baloyi (with I Mabunda)

Instructed by: I Mabunda Attorneys, Randburg  
Symington & De Kok, Bloemfontein

For respondent: Adv P Marasela

Instructed by: Director of Public Prosecutions, Johannesburg  
Director of Public Prosecutions, Bloemfontein