SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

<div align="right">

Not Reportable

Case No: 20393/2014

</div>

In the appeal between:

MANDLA SITHOLE   **First Appellant**

and

THE STATE   **Respondent**

Neutral citation: *Mandla Sithole* v *The State* (20393/2014) [2015] ZASCA 106 (19 August 2015).

Coram: **Mhlantla, Tshiqi and Dambuza JJA**

Heard: **19 August 2015**

Delivered: **19 August 2015**

Summary: Criminal Procedure – appeal against refusal to grant leave to appeal on petition – whether leave to the high court ought to have been granted.

.
_____

ORDER

_____

On appeal from: Gauteng Division of the High Court, Pretoria (Mavudla J and Mabena AJ sitting as court of appeal):

1 The appeal is upheld.

2 The order of the high court is set aside and replaced with the following:

'The applicant is granted leave to appeal to the Gauteng Division of the High Court against his conviction of two counts of murder in the Regional Court, Standerton, Mpumalanga.

3 The matter is remitted to the court a quo to entertain the merits of the appeal.

_____

JUDGMENT

_____

Mhlantla JA (Tshiqi and Dambuza JJA concurring):

[1]   This is an appeal against the refusal by the Gauteng Division of the High Court, Pretoria of the appellant's application for leave to appeal to that court against his conviction of two counts murder in the Regional Court, Standerton, Mpumalanga (refusal of his petition). The appeal is with leave of the court a quo.

[2]   The conviction on the two counts of murder arose out of a traffic incident which occurred on 4 April 2009 at Charl Cilliers and which resulted in the death of Ms Jeaneth Nontlantla Ngema and Mr Vusimuzi Petrus Ngema (the driver of one of the motor vehicles involved in the

collision). The appellant was the driver of the other motor vehicle involved in the collision.

[3]   Both the State and the appellant adduced evidence. At the end of the trial, the appellant was convicted on both counts of murder. He was sentenced to eight years' imprisonment on each of the counts. The court ordered the sentences to run concurrently.

[4]   On 18 April 2012, the appellant applied for leave to appeal against conviction and sentence. His application was partially successful in that the Regional Magistrate granted leave against sentence only. Aggrieved by the outcome of his application, the appellant lodged his petition in the high court on 3 November 2012 and applied for leave to appeal to this court against the refusal of his petition in respect of the convictions. On 19 July 2013, the high court granted the appellant leave to appeal against the refusal of his petition. This court therefore has jurisdiction to entertain the appeal since leave to appeal was granted before the Superior Courts Act 10 of 2013 came into operation.[1]

[5]   The issue before this court is whether the high court ought to have granted leave to appeal against the convictions.

[6]   Before us, counsel for the State correctly conceded that the appellant has reasonable prospects of success on appeal against his conviction on the two murder charges. I agree with the submission that the appeal on the merits is arguable. In the result the order by the high court cannot stand and has to be set aside. The appeal must therefore

---

[1] *S v Khoasasa* 2003 (1) SACR 123 (SCA) at paras 14 and 19 – 22; *S v Tonkin* 2014 (1) SACR 583 (SCA).

succeed.

[6]   In the result the following order is made:

1 The appeal is upheld.

2 The order of the high court is set aside and replaced with the following:

'The applicant is granted leave to appeal to the Gauteng Division of the High Court against his conviction of two counts of murder in the Regional Court, Standerton, Mpumalanga.

3 The matter is remitted to the court a quo to entertain the merits of the appeal.

_____

NZ MHLANTLA
JUDGE OF APPEAL

APPEARANCES:

For Appellant: P Pistorious

Instructed by: Van Zyl Le Roux Inc

                    Pretoria

                    c/o Honey Attorneys

                    Bloemfontein

For Respondent: P Voster

Instructed by: Director of Public Prosecutions

                    High Court

                    Pretoria