



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

**Not Reportable**

Case no: 433/2020

In the matter between:

**LUNGISA GRIFHS**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Lungisa Grifhs v The State* (433/2020) [2021] ZASCA 112 (1 September 2021)

**Coram:** VAN DER MERWE, MOLEMELA, MBATHA and CARELSE JJA and POTTERILL AJA

**Heard:** Appeal disposed of without the hearing of oral argument in terms of s19(a) of the Superior Courts Act 10 of 2013.

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down of the judgment is deemed to be 10h00 on 1 September 2021.

**Summary:** Criminal procedure – appeal against refusal of petition by High Court – reasonable prospects of success on appeal against conviction

and sentence on account of inconsistencies in the written statement and oral testimony of single witness – leave to appeal to High Court granted.

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## **ORDER**

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**On appeal from:** Eastern Cape Division of the High Court, Mthatha  
(Beneke AJ and Dawood J concurring, sitting as court of appeal):

1 The appeal is upheld.

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

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

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## JUDGMENT

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**Mbatha JA (Van der Merwe, Molemela and Carelse JJA and Potterill AJA concurring):**

[1] On 28 November 2018, the appellant, Mr Lungisa Grifhs, was convicted together with two of his erstwhile co-accused in the Regional Court for the Eastern Cape Region, Mthatha, on one count of murder read with the provisions of s 1(1) of the Criminal Law Amendment Act 105 Of 1997. The Regional Court found substantial and compelling circumstances that warranted the imposition of a sentence less than the one prescribed in the Criminal Law Amendment Act. The appellant was accordingly sentenced to 16 years imprisonment. His application for leave to appeal against both conviction and sentence was dismissed.

[2] The appellant subsequently petitioned the Judge President of the Eastern Cape Local Division of the High Court, in terms of s 309 of the Criminal Procedure Act 51 of 1977, for leave to appeal. The petition met with the same fate. Consequently, the appellant 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 to appeal on 15 May 2020.

[3] Pursuant to that order, the parties agreed that this court may dispose of the appeal without hearing oral argument, in terms of s 19(a) of the Superior Court's Act. There are two preliminary applications that must be disposed of before delving into the appeal. First, the appellant applied in

terms of rule 12 of the Rules of the Supreme Court of Appeal (the rules) for the condonation of his failure to comply with rule 7(1)(b) of the rules, by not filing a notice of appeal within the prescribed one-month period from the date of the granting of leave to appeal. Second, the appellant applied for condonation for the late filing of the heads of argument within the prescribed time. The applications were not opposed by the respondent. Accordingly, the appellant's non-compliance should be condoned and, likewise, the appeal be revived and re-instated.

[4] The only issue on this appeal is whether there are reasonable prospects of success in the appellant's appeal. (*Van Wyk v The State and Galela v The State* [2014] ZASCA 152; [2014] 4 All SA 708 (SCA); 2015(1) SACR 584 (SCA)). The appellant was convicted on the evidence of a single witness, Mr Bavu. It is trite that the appellant could only have been properly convicted if the evidence of the single witness was clear and satisfactory in all material respects. The appellant contended that it was not reliable, as it was improbable and inconsistent with the admitted statement that the witness had made to the police. It suffices to say that it appears that there are substantial unexplained contradictions between Mr Bavu's oral testimony and his written statement to the police.

[5] Accordingly, without pre-judging the merits, I find that there are reasonable prospects of success on the appeal against both conviction and sentence.

[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:

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

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Y T MBATHA  
JUDGE OF APPEAL

## Appearances

For appellant:            S C Vutula  
                                     S C Vutula & Co., Mthatha

For respondent:         M Ntlakaza  
                                     Director of Public Prosecutions, Mthatha