



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

Not Reportable

Case No: 20770/14

In the matter between:

PHILANE SIHLE MCHUNU

Appellant

And

THE STATE

Respondent

Neutral citation: *Mchunu v The State* (20770/14) [2015] ZASCA 115 (09 September 2015)

Coram: Mpati P, Shongwe and Majiedt JJA

Heard: 09 September 2015

Delivered: 09 September 2015

Summary: Criminal law – leave to appeal – sought on basis of duplication of charges – refused by regional magistrate and high court – State conceding existence of reasonable prospects of success – leave granted.

ORDER

On appeal from: Gauteng Division, Pretoria (Potterill J and Van Der Byl AJ, sitting as a court of appeal):

1 The appeal is upheld.

2 Paragraph 2 of the order of the North Gauteng High Court issued on 4 June 2014 is set aside and replaced with the following:

‘2 The applicant is granted leave to appeal to the Gauteng Division of the High Court, Pretoria, only against his conviction and sentence on count 18.’

JUDGMENT

Mpati P (Shongwe and Majiedt JJA concurring):

[1] The appellant was arraigned before the regional court, Piet Retief, together with three other accused, where they stood trial on 18 counts arising out of a bank robbery, which took place on 25 August 2003 at Amsterdam, Mpumalanga. He was the second accused and was convicted on 15 September 2005 of robbery with aggravating circumstances (count 1), three counts of attempted murder (counts 12, 13 and 14) and malicious injury to property (count 18). The regional court imposed the following sentences:

(a) count 1: 15 years' imprisonment;

(b) counts 12, 13 and 14 (taken as one for purposes of sentence): eight (8) years' imprisonment; and

(c) count 18: four (4) years' imprisonment.

It appears that on 16 November 2005 the regional magistrate dismissed the appellant's application for leave to appeal against the conviction and sentences

imposed. The appellant subsequently petitioned the Judge President of the North Gauteng High Court, Pretoria, but his petition was dismissed by two judges of that court on 4 June 2013. In a further petition to the President of this court he sought leave to appeal against the refusal, by the two judges of the North Gauteng High Court, of leave to appeal against his conviction on count 18 and the sentence of four years' imprisonment imposed in respect of that count. This court (per Brand JA and Fourie AJA) granted the leave sought on 28 October 2014.

[2] In his heads of argument and in oral submissions before us counsel for the State conceded that the appellant's conviction on both counts one and 18 may well have amounted to a duplication of charges. She therefore submitted that this court should grant leave to the appellant to appeal against both the conviction and sentence in respect of count 18. I agree. In my view, there is a reasonable prospect that another court might find that the appellant should not have been convicted of malicious injury to property. The appeal must therefore succeed.

[3] In the result, the following order shall issue:

1 The appeal is upheld.

2 Paragraph 2 of the order of the North Gauteng High Court issued on 4 June 2014 is set aside and replaced with the following:

'2 The applicant is granted leave to appeal to the Gauteng Division of the High Court, Pretoria, only against his conviction and sentence on count 18.'

L Mpati
President

APPEARANCES

For the Appellants:

A B Booysen

Instructed by:

Du Toit Attorneys, Pretoria

SMO Seobe Attorneys, Bloemfontein

For the Respondent

J P van der Westhuysen

Instructed by:

Director of Public Prosecutions,
Pretoria

Director of Public Prosecutions,
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