



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

**JUDGMENT**

CASE NO: 20737/2014

**Not Reportable**

In the matter between:

**MTEWENI ZWELIBANZI MAHLANGU**

**APPELLANT**

**and**

**THE STATE**

**RESPONDENT**

**Neutral Citation:** *Mahlangu v S* (20737/2014) [2015] ZASCA 73 (22 May 2015).

**Coram:** Navsa ADP, Brand, Ponnann JJA

**Heard:** 22 May 2015

**Delivered:** 22 May 2015

**Summary:** Appeal against a refusal for application for leave to appeal – complaint of duplication of charges – reasonable prospects of success in contemplated appeal

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**ORDER**

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**On appeal from:** The Gauteng Provincial Division, Pretoria (Ranchod J sitting as court of first instance).

The following order is made:

The appeal is dismissed.

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**JUDGMENT**

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Navsa ADP (Brand and Ponnann JJA concurring):

[1] This is an appeal against the refusal of a petition in terms of s 309C of the Criminal Procedure Act 51 of 1977 (the CPA) in relation to a conviction on a second count of robbery and the accompanying sentence of 15 years' imprisonment.

[2] In adjudicating the present appeal, the consideration is whether the appellant has reasonable prospects of success in the contemplated appeal. The background is briefly set out hereafter. The appellant had been charged in the regional court Benoni with two counts of robbery with aggravating circumstances. He was convicted on both counts and sentenced to 15 years' imprisonment on each count, but it was ordered that five years of each sentence be served concurrently. Thus the effective sentence was one of 20 years' imprisonment. The trial court refused leave to appeal and the petition against refusal of leave to appeal was dismissed. Hence the present appeal against that refusal.

[3] The common cause facts are set out hereafter. The complainant in respect of the first robbery, Mr Marx senior, manufactured kitchen cabinets in his motor vehicle garage located at his home. Late one morning a motor vehicle transporting four men, including

the appellant, arrived at Mr Marx's home. Two of them produced firearms and assaulted the complainant. He was ordered to lie on the ground and R10 000 was forcibly taken from his back pocket. Shortly thereafter Mr Marx tried to get up but was pushed through a window by his two assailants. At that time, the complainant in the second robbery, Mr Marx junior, the first complainant's son, was working in an area that served as a workshop. He heard glass shatter and his father screaming for the police. He was aware of the vehicle in which the robbers had arrived and decided to park his motor vehicle behind theirs to prevent an escape. Whilst doing so, he noticed that there were two occupants still in the robbers' vehicle. Suddenly he was approached by someone who was armed. He was ordered out of his vehicle where he was busy on his cellular telephone trying to contact the police. The armed assailant forcibly took his cellular telephone and ordered him towards the workshop area, all the while training the firearm on him. The appellant was the individual who had confronted and overpowered him. When they reached the workshop area the appellant assaulted him, pressed a firearm against his head and forcibly took R2000 in cash that he had in his possession. In the interim the other two robbers decided to flee. Mr Marx senior moved towards the workshop area, ultimately all four robbers fled.

[4] The present appeal is directed against the appellant's conviction on the second count of robbery, namely the count in respect of which Mr Marx junior was the complainant, on the basis that it amounted to a duplication of convictions. The corollary is that the associated sentence also falls to be set aside. This is an aspect that was not raised before the trial court. The premise for the appellant's case is that the regional court erred in not concluding that the incident involving Mr Marx junior was not in effect the second robbery but was an extension of the robbery involving his father. Simply put, it was contended that the robbers including the appellant had intended to effect a robbery of the cabinet making business in which the two complainants were involved and that, in effect, is what had occurred. It is on that basis that the appellant submits that there is a reasonable prospect of success on appeal. I disagree.

[5] In my view, there is no such reasonable prospect of success in the proposed appeal. Accordingly I would dismiss the appeal against the refusal of leave to appeal by the high court.

[6] The following order is made:

The appeal is dismissed.

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M S NAVSA

ACTING DEPUTY PRESIDENT

APPEARANCES:

FOR APPELLANT:

Adv. H L Alberts

Instructed by:

Pretoria Justice Centre, Pretoria

Bloemfontein Justice Centre, Bloemfontein

FOR RESPONDENTS:

Adv. E Leonard

Instructed by:

Director of Public Prosecutions, Pretoria.

Director of Public Prosecutions, Bloemfontein.