



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

**Reportable**  
Case No: 015/2012

In the matter between:

**SINETHEMBA NTLANYENI**

**APPELLANT**

and

**THE STATE**

**RESPONDENT**

**Neutral citation:** *Ntlanyeni v The State* (015/2016) [2016] ZASCA 3 (25 February 2016)

**Coram:** Tshiqi, Wallis, Dambuza JJA and Plasket and Tsoka AJJA

**Heard:** 15 February 2016

**Delivered:** 25 February 2016

**Summary:** Reconsideration of an application for leave of appeal under s 17(2)(f) of the Superior Courts Act 10 of 2013 – lodging an application for reconsideration outside stipulated one month period – there is no time limit where the President of the Supreme Court of Appeal refers an order for reconsideration *mero motu*.

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## ORDER

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**On appeal from:** Eastern Cape High Court, Port Elizabeth (Bloem AJ sitting as a court of first instance).

Leave is granted to the applicant to appeal to the full bench of the Eastern Cape High Court, Grahamstown against his conviction.

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## JUDGMENT

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**Dambuza JA (Tshiqi, Wallis JJA and Plasket and Tsoka AJJA concurring):**

[1] This is an application for reconsideration of an application for leave to appeal brought in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act).

[2] The applicant and his two co-accused were charged before the Eastern Cape High Court, Port Elizabeth (Bloem AJ), with assault with intent to do grievous bodily harm, kidnapping and two counts of rape. He was the third accused in the trial court and was convicted together with the second accused (Mr Nkompo), only on the charges of kidnapping and the two counts of rape. They were both sentenced to an effective term of 22 years' imprisonment. The first accused (Mr Poni) was convicted on all the charges. Leave to appeal against the convictions and sentences was refused by the trial court to all three accused. Thereafter each accused brought a separate application before this court for leave to appeal. The first accused's application was considered by Cachalia and Leach JJA. On 7 June 2012 the learned judges granted that accused leave to appeal against the convictions. On 22 November 2012 Lewis JA and Southwood AJA, granted the second accused leave to appeal against his convictions.

[3] Earlier, on 11 January 2012 the applicant, Mr Sinethemba Ntlanyeni, had brought an application for leave to appeal. That application was dismissed by this

court (Ponnan *et Saldulker* JJA) on 1 September 2014. However, during 2012, the applicant had been advised that leave to appeal had been granted to the full bench of the Eastern Cape High Court, Grahamstown. It was only when his 'appeal' was pending in that court that he learned that the earlier advice given to him during 2012 had been erroneous. On 15 July 2015, within seven days of being advised of the misfortune relating to his application for leave to appeal, he brought an application in terms of s 17(2)(f) of the Act for the President of this court to refer the decision of 1 September 2014 to this court for reconsideration. By the time the applicant launched the application for reconsideration it was almost ten months after dismissal of his application for leave to appeal.

[4] The reason for the delay in considering the applicant's original application for leave to appeal was that the order by Cachalia and Leach JJA in respect of the first accused's leave to appeal had erroneously been understood, presumably by the Registrar, to be applicable to the applicant as well. Hence the applicant was advised that his appeal would be heard by the full bench of the Eastern Cape High Court, Grahamstown on 28 January 2014.

[5] Whilst Mpati P was of the firm view that the application merits reconsideration he expressed a concern about the fact that it was filed outside the period stipulated in s 17(2)(f). However, the concern need not detain us. Section 17(2)(f) of the Act provides that:

'The decision by the majority of the judges considering leave to appeal in terms of s 17(2)(b) or the decision to grant or refuse an application for leave shall be final: Provided that the President of the Supreme Court of Appeal shall, in *exceptional circumstances, whether of his or her own accord or on application filed within one month of the decision*, refer the decision to the court for reconsideration or, if necessary, variation.' (My emphasis.)

[6] This provision empowers the President of this court, 'of his or her own accord,' to refer a decision for reconsideration. The President's *mero motu* authority under s 17(2)(f) is not time-bound. This much the respondent correctly conceded. What is paramount is that the circumstances leading to the application must be *exceptional*.<sup>1</sup> In the ordinary course of events the President will only become aware of the

<sup>1</sup>What is exceptional will be determined on the merits of each case. See, for example *R v Maihlome* 1913 AD 133; *R v Kgolane & others* 1959 (4) SA 483 (A).

circumstances in an application for leave to appeal when his or her attention is drawn thereto. In this case the unfortunate circumstances in the applicant's application did not come to the attention of the President so that he could determine whether he should exercise his powers under s 17(2)(f) of the Act *mero motu*, until he received the applicant's application. But I am satisfied that had his attention been drawn thereto, other than through this application, he would have done so. It is apparent from the reasons given by the President of this court that he was satisfied that the refusal of leave to appeal to the applicant alone within the context of the merits of this case and the mishandling of the applicant's application for leave to appeal constituted exceptional circumstances. The fact that the applicant brought his application ten months after refusal of leave seems to me, in the circumstances of this case, irrelevant.

[7] As to the merits of the application, I am of the view that there is a good case for a finding that another court might come to a different conclusion than that of the trial court. Although the evidence supports the complainant's allegations that she was attacked on the night in question, her evidence that she was raped and her identification of the applicant as one of the culprits, merits reconsideration. The fact that the applicant's co-accused were granted leave to appeal strengthens this view.

[8] Consequently, leave is granted to the applicant to appeal to the full bench of the Eastern Cape High Court, Grahamstown against his conviction.

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N DAMBUZA  
JUDGE OF APPEAL

APPEARANCES:

For the Appellant:

J Van der Spuy

Instructed by:

Port Elizabeth Justice Centre, Port Elizabeth

Bloemfontein Justice Centre, Bloemfontein

For the Respondent:

M M Sandan

Instructed by:

Director of Public Prosecutions, Grahamstown

Director of Public Prosecutions, Bloemfontein