



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

Not Reportable
Case No: 527/17

In the matter between:

JOSEPH MANYIKE

APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *Manyike v S* (527/17) [2017] ZASCA 96 (15 June 2017)

Coram: Shongwe AP

Heard: In Chambers

Delivered: 15 June 2017

Summary: Application in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013: powers of the President of the SCA: in exceptional circumstances: to refer a decision of this court on petition for reconsideration and, if necessary, variation: exceptional circumstances not found: application refused.

ORDER

On appeal from: Application in terms of section 17 (2) (f) of the Superior Courts Act 10 of 2013.

The application is dismissed.

JUDGMENT

Shongwe AP

[1] On 23 October 2013, the applicant was arrested and charged with housebreaking with intent to rob, murder and robbery with aggravating circumstances as defined in s 1 of the Criminal Procedure Act 51 of 1977 (the CPA) read with the provisions of s 51(1) and (2) of the Criminal Law Amendment Act 105 of 1997 (the CLAA). He subsequently pleaded guilty in terms of s 112(2) of the CPA, and was found guilty on his plea. On 31 October 2014 he was sentenced to 5 years' imprisonment on the charge of housebreaking with intent to rob; life imprisonment on the charge of murder; and 15 years' imprisonment on the charge of robbery with aggravating circumstances. However, the sentences on the charges of housebreaking and robbery with aggravating circumstances were ordered to run concurrently with the sentence of life imprisonment. Effectively, he would have to serve life imprisonment.

[2] His application for leave to appeal against sentence was unsuccessful and so was his petition to the President of the Superior Court of Appeal (the SCA). He now brings this application in terms of s 17(2)(f) of the Superior Courts Act

10 of 2013 (the SC Act). He also asks for condonation for the late filing of this application. To persuade the President of the SCA to refer the decision to this court for consideration and, if necessary, variation, the appellant must demonstrate that exceptional circumstances exist.

[3] What constitutes exceptional circumstances depends on the facts of each case. (See *Avnit v First Rand Bank Ltd* [2014] ZASCA 132 (23/9/14) para 4; *S v Dlamini*; *S v Dladla & others*; *S v Joubert*; *S v Scheitikat* [1999] ZACC 8; 1999 (4) SA 623 (CC) paras 75-77). Thring J in *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas & another* 2002 (6) SA 150 (C) at 156H remarked that:

- ‘1. What is ordinarily contemplated by the words “exceptional circumstances’ is something out of the ordinary and of an unusual nature; something which is accepted in the sense that the general rule does not apply to it; something uncommon, rare or different’
2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.
3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.
4. Depending on the context in which it is used, the word “exceptional” has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.
5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.’

In a nutshell the context is essential in the process of considering what constitutes exceptional circumstances.

[4] The facts of this particular case are briefly that the appellant and his fellow *socius criminis* broke into the house of an elderly lady, 89 years of age, in the dead of night. The appellant strangled and suffocated her while demanding money. An 80kg maize meal bag was placed on her chest to restrain her, frail as she was. They ransacked the house and took off with a sum of money. She was left dead as the appellant killed her by strangulation. All this happened while her 6 year old grandson was watching. The deceased was defenceless; there is no evidence that she resisted the attack. This was simply a callous and greedy act of criminality which lacked justification.

[5] The trial court, correctly so in my view, found no substantial and compelling circumstances, hence the sentence of life imprisonment on the charge of murder and the 15 years' imprisonment on the charge of robbery with aggravating circumstances. The applicant on the other hand contended that the trial court failed to consider antedating the sentence, however did not suggest a particular date. It is unclear as he was convicted on 29 October 2014 and sentenced the following day, 30 October 2014. Antedating is therefore irrelevant. He complained that he pleaded guilty but such plea was not given sufficient consideration. He further pleaded for mercy, especially on the charge of murder. The murder occurred during a robbery, which falls under section 51 part 1 of schedule 2 of the CLAA. Life imprisonment is mandatory under the circumstances in the absence of substantial and compelling circumstances.

[6] The trial court was unable to find any reasonable prospects of success for an appeal and so did the two judges of this court who considered the petition. After considering the merits of the case as well as all the factors considered by

the trial court when imposing an appropriate sentence, I am satisfied that no exceptional circumstances exist to merit a further appeal and or a variation of the decision to refuse the appellant's application for leave to appeal.

[7] The application must fail and I thus make the following order.

[8] The application is dismissed.

J B Z Shongwe
Acting President

Appearances:

For the Appellant: In Person

For the Respondent: No appearance