



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 126/13

In the matter between:

THEMBEKILE MOLAUDZI

Applicant

and

THE STATE

Respondent

Neutral citation: *S v Molaudzi* [2014] ZACC 15

Coram: Skweyiya ADCJ, Cameron J, Dambuza AJ, Froneman J, Jafta J, Madlanga J, Mhlantla AJ, Nkabinde J and Zondo J

Decided on: 20 May 2014

Summary: Criminal law – appeal against conviction – attack based on factual findings – no constitutional issue arising – application dismissed – unacceptable delay in obtaining the trial record

ORDER

On appeal from the North West High Court, Mahikeng, it is ordered that:

1. Leave to appeal is dismissed.

2. The Registrar is requested to forward a copy of this judgment to the office of the National Director of Public Prosecutions, the Minister of Justice and Constitutional Development, the Mahikeng Justice Centre, Lawyers for Human Rights and the Judge President of the Mahikeng High Court.

JUDGMENT

THE COURT

[1] The applicant was convicted, together with a number of co-accused, by the North West High Court, Mahikeng (High Court), of murder and robbery of an off-duty policeman and for being in possession of a firearm and ammunition without a licence. They were sentenced to life imprisonment for murder and an additional 21 years for the remaining crimes. The applicant sought and was granted leave to appeal to the Full Court. The appeal was dismissed. The Supreme Court of Appeal refused an application for further leave to it.

[2] The applicant now seeks leave to this Court essentially on the basis that he was wrongly convicted. The application cannot succeed. It is based on an attack on the factual findings made in the trial court. That does not raise a proper constitutional

issue for this Court to entertain.¹ In addition, there are no reasonable prospects of success. The Full Court considered the arguments on appeal and properly rejected them. The application for leave to appeal must thus be dismissed.

[3] There is, however, one aspect that calls for comment and censure. The applicant was sentenced on 22 July 2004. The appeal was only heard by the Full Court on 7 December 2012. How did this come about?

[4] The applicant alleges that subsequent to his conviction and sentencing he applied for leave to appeal, but was told that he had to obtain a copy of the trial record before his application could be considered. The trial judge only signed a copy of the record in October 2008. The record was incomplete and the applicant was told that the trial judge was attempting to reconstruct the record from her trial notes. Only after intervention by the Mahikeng Justice Centre and Lawyers for Human Rights did the applicant receive the full trial record in 2012, some eight years after his conviction and sentence.

[5] This is unacceptable. Delay in trial proceedings may render a trial unfair.² It is not necessary to decide whether a delay in appeal proceedings might also be considered a breach of fair trial rights, because here the record was eventually

¹ See *Mbatha v University of Zululand* [2013] ZACC 43 at paras 193-7 and 215-24; *Phoebus Apollo Aviation CC v Minister of Safety and Security* [2002] ZACC 26; 2003 (2) SA 34 (CC); 2003 (1) BCLR 14 (CC) at para 9; and *S v Boesak* [2000] ZACC 25; 2001 (1) SA 912 (CC); 2001 (1) BCLR 36 (CC) at para 15.

² See *Sanderson v Attorney-General, Eastern Cape* [1997] ZACC 18; 1998 (2) SA 38 (CC); 1997 (12) BCLR 1675 (CC) at paras 24 and 41, and section 35(3)(d) of the Constitution which states that:

“Every accused person has a right to a fair trial, which includes the right to have their trial begin and conclude without unreasonable delay.”

properly completed and available for a fair assessment of the matter on appeal. It could easily have been otherwise if the compilation of a proper record became impossible because of a lapse of time. Judicial officers have a duty to ensure that egregious delays of this kind do not occur. In view of the fact that the delay was reported to and investigated by the Judicial Services Commission it is not necessary to comment any further on the reasons for the delay.

[6] In the result the application for leave to appeal is dismissed. The Registrar is requested to forward a copy of this judgment to the office of the National Director of Public Prosecutions, the Minister of Justice and Constitutional Development, the Mahikeng Justice Centre, Lawyers for Human Rights and the Judge President of the Mahikeng High Court.