

SS94/11-SvS
28/11/2013

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JUDGMENT LTA

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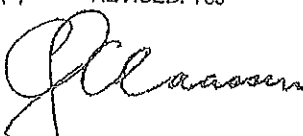
"H02"

IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: SS94/11

DATE: 28/11/2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: Yes
	
SIGNATURE	<u>6 December 2013</u> DATE

In the matter between

HENRY EMOMOTIMI OKAH

Applicant

and

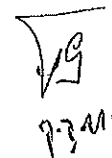
THE STATE

Respondent

JUDGMENT
(Application for Leave to Appeal)

C. J. CLAASSEN J:

- [1] This is an application for leave to appeal certain aspects only of the judgment and sentence handed down earlier this year. The main contention by the applicant affects the jurisdictional entitlement of this court to charge the applicant with acts of terrorism that were committed beyond the borders of South Africa, namely in Nigeria. It therefore affects the proper construction of the jurisdictional reach of Act 33 of 2004 ("the Act").



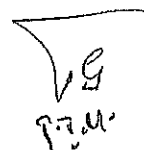
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- [2] I am of the view that this case, being the very first prosecution under the aforesaid Act, should be granted the jurisprudential oversight of the Supreme Court of Appeal, as the proper scope, understanding and application of the Act and its terms, have local and international implications. The notice of application, specifically frame this aspect in 5.1, as follows:

"Granting the applicant leave to appeal to the Supreme Court of Appeal against the finding that the court had jurisdiction to hear counts 1 to 12".

- [3] Resolving this issue would amount to a legal argument only. It would appear to me that the parties could in fact agree to formulate this issue in a stated case without having to burden the Supreme Court of Appeal with the enormous record which was generated in this case.
- [4] The second ground of appeal is against the convictions on counts 3, 4, 5, 6, 7, and 8 on the basis that they constituted duplication of charges. I am of the view that there is no substance in this argument and that there are no reasonable prospect of another court finding that these charges are duplicated. The application for leave to appeal on this second ground is therefore refused.
- [5] The third ground is leveled against the conviction on count 13 only. Count 13 can be separated from the other counts as it relates to a contravention of Section 14(a) of the Act. The applicant was found guilty of threatening to engage in terrorist activity against South African business interests in Nigeria. These threats were made in the presence



of Colonel Zeeman.

- [6] Mr Marais, on behalf of the applicant, argued strenuously that another court could come to a different finding on the evidence which in his submission lacked any indication as to the response of the applicant, him not having known the contents of EXHIBIT L.
- [7] I am of the view that there does exist reasonable prospects of another court coming to a different finding on the conviction of count 13. I am therefore of the view that leave to appeal should be granted against the conviction on count 13.
- [8] In conclusion I therefore make the following order:
1. Leave is granted to the Supreme Court of Appeal against this court's finding that it had jurisdiction in terms of Act 33 of 2004 to hear and adjudicate counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
 2. The application for leave to appeal the convictions on the merits of counts 3 to 8, based on an alleged duplication of charges, is dismissed.
 3. Leave is granted to the Supreme Court of Appeal against the conviction only on count 13.

DATED THE 6th DAY OF December 2013 AT JOHANNESBURG



C. J. CLAASSEN
JUDGE OF THE HIGH COURT



Vg
P. J. A.



Counsel for the Applicant: Adv J. P. Marais instructed by McMenemy, Van Huyssteen & Botes Attorneys

Counsel for the Respondent: Adv S. K. Abrahams instructed by the Director of Public Prosecutions

The application for leave to appeal was heard on 28 November 2013



VS
p.m.

