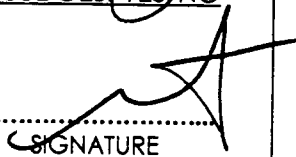


## REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG DIVISION, PRETORIACIRCUIT LOCAL DIVISION OF THE NORTHERN CIRCUIT DISTRICT HELD AT  
SEKGOSESE, MOREBENG

CASE NO: CC 154/2013

18 MAY 2016

(1)	REPORTABLE <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED. <u>✓</u>
<div style="display: flex; justify-content: space-between;"> <div> <u>18-5-16</u> DATE         </div> <div>  SIGNATURE         </div> </div>	

In the matter between:

**MODISHA SEBOPETJA****APPLICANT**

and

**THE STATE****RESPONDENT**


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**APPLICATIONS FOR CONDONATION AND LEAVE TO APPEAL**


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**WRIGHT J**

1. The applicant is a man who was convicted by me of murder and robbery with aggravating circumstances. He was sentenced to life imprisonment on the murder count and to 15 years imprisonment on the robbery count. The trial

was held at Sekgosese in the Morebeng District in Limpopo Province in November 2013. At the time of trial and sentencing the applicant's then legal representative was handed typed and signed copies of my judgments on both conviction and sentence. The applicant is currently in prison in Makhado.

2. On 21 October 2015 the applicant filed with the registrar of the "*High Court of South Africa (Pretoria) North Gauteng* " a bundle of documents prepared by himself, possibly with lay help. The applicant seeks leave to appeal his convictions and sentences. He seeks condonation for the late filing of his application for leave to appeal. I received the applications in February 2016 in my chambers in Johannesburg.
3. His application was launched nearly two years out of time. He seeks condonation for the late filling of his application on the grounds of lack of funds read with reasonable prospects on appeal. Although the applicant was legally represented at the trial he was unrepresented until after the filing of his application for leave to appeal. The applicant did not serve a copy of his application on the DPP. My clerk sent a copy to the DPP. Because I was concerned about further delay I set the matter down for hearing on 10 March 2016. Mr Matlapeng appeared for the applicant at very short notice. Ms Van der Westhuysen appeared for the State. I postponed the hearing to give both counsel an opportunity to prepare, particularly on the question of which court is to hear the appeal in the event of my deciding to grant leave to appeal. I thank both for their industry in preparing heads of argument. Ms MMP Masete appeared at the hearing for the applicant.
4. The appellant is short of money and has been in prison since the date of sentencing. Ms Van der Westhuysen, quite sensibly did not oppose the condonation application. I am inclined to hear the application for leave to appeal on its merits as I understand the applicant's predicament and I think that he has reasonable prospects of success on appeal.
5. Under section 316(1)(a) of the Criminal Procedure Act 51 of 1977 any accused convicted of any offence by a High Court may apply to that court for leave to appeal against such conviction or against any resultant sentence or order. Under section 316(2)(a) such application must be made to the judge

whose conviction or sentence is the subject of the prospective appeal provided that if in the case of a conviction before a circuit court the said court is not sitting the application may be made to any other judge of the High Court concerned. The said court is not still sitting but in my view I am the appropriate judge to hear the application.

6. Under section 315(1)(a) of the Criminal Procedure Act the court of appeal, for appeals in cases originally heard by the High Court, shall be the Supreme Court of Appeal except where, under section 315(2)(a), the judge hearing the application for leave to appeal is satisfied that the matter does not require the attention of the SCA. In such a case the judge shall direct that the appeal be heard by a full court. In my view, this case does not need the attention of the SCA.
7. The relevant portion of section 315(3) reads:  

*"An appeal which is to be heard by a full court in terms of a direction under paragraph (a) of subsection (2) which has not been set aside under paragraph (b) of that subsection, shall be heard*

*(a) in the case of an appeal in a criminal case heard by a single judge of a provincial division, by the full court of the **provincial division concerned***  
(my emphasis);

*(b) in the case of an appeal in a criminal case heard by a single judge of a local division other than the Witwatersrand Local Division, by the full court of the provincial division which exercises concurrent jurisdiction in the area of jurisdiction of the local division concerned".*
8. Most of the provisions of the Superior Courts Act 10 of 2013 came into operation on 23 August 2013. See Presidential Proclamation R36, 2013 in Government Gazette 36774 of 22 August 2013. Those sections of the Superior Courts Act which did not then come into operation are not relevant to this case.
9. Under 6(1) of the Superior Courts Act the High Court of South Africa consists of a number of stated Divisions. Under section 6(1)(c) there is a Gauteng Division with its main seat in Pretoria. Under section 6(1)(e) there is a Limpopo Division with its main seat in Polokwane. Under section 6(3)(a) the

Minister responsible for the administration of justice must, after consultation with the Judicial Service Commission, by notice in the Gazette, determine the area under the jurisdiction of a Division, and may in the same manner amend or withdraw such a notice.

10. Under section 7 of the Superior Courts Act the Judge President of a Division may by notice in the Gazette, within the area under the jurisdiction of that Division establish circuit districts for the adjudication of civil or criminal matters, and may by like notice alter the boundaries of any such district.
11. Under section 50(2), notwithstanding section 6(1), the Gauteng Division shall also function as the Limpopo and Mpumalanga Divisions, respectively, until a notice published in terms of section 6(3) in respect of those Divisions comes into operation.
12. Under section 50(3), any circuit court established under any law repealed by the Superior Courts Act and in existence immediately before the commencement of this Act, shall be deemed to have been duly established in terms of the Superior Courts Act as a circuit court of the Division concerned.
13. Under section 52(1), subject to section 27, proceedings pending in any court at the commencement of the Superior Courts Act must be continued and concluded as if the Act had not been passed.
14. When I presided over the trial I did so as a single judge of the Gauteng Division, with its main seat in Pretoria as referred to in section 6(1)(c) of the Superior Courts Act. Even though the trial was held in Limpopo Province the Gauteng Division functioned as the Limpopo Division under section 6(2).
15. On 21 December 2015, some two months after the present application was launched, the Minister of Justice and Correctional Services caused to be published in Government Gazette 39540 notice 1266 determining the areas under the jurisdiction of the Divisions of the High Court of South Africa. The Minister later withdrew notice 1266 under notice 31 published in Government Gazette 39601 of 15 January 2016. On the same date and in the same Gazette, under notice 30 the Minister determined the areas of jurisdiction of certain Divisions of the High Court. He determined areas of jurisdiction for the Limpopo Division with its main seat at Polokwane and for its local seats at

Lephalale and Thohoyandou. The determination is by reference to magisterial districts.

16. The proceedings before me are applications for leave to appeal and for condonation for the late filing of the application for leave to appeal. The trial and sentencing procedures were concluded in November 2013.
17. The present application, launched as it was prior to the Minister's determination on 15 January 2016 is a proceeding pending in the Gauteng Division, Pretoria, within the meaning of the phrase "*proceedings pending* " in section 52(1) of the Superior Courts Act and falls to be concluded in this court.
18. Under section 1 of the Superior Courts Act the word "*appeal* " is defined to exclude an appeal in a matter regulated in terms of the Criminal Procedure Act or in terms of any other criminal procedural law. I have made reference to the Superior Courts Act because not all aspects of the present application and forthcoming appeal are regulated by the Criminal Procedure Act or any other criminal procedural law.
19. A question is what test to apply when considering an application for leave to appeal such as the present. The Criminal Procedure Act does not set out the test which is applicable. For many years, at common law, which I take to be a form of "*criminal procedural law* " as set out in section 1 of the Superior Courts Act, an applicant who can show reasonable prospects of success is entitled to leave to appeal.
20. In my view the accused has reasonable prospects on appeal against his convictions and sentences. Given that I am of the view that the appeal does not need the attention of the SCA I need to decide to which court to direct the appeal. In my view the full bench of the Gauteng Division, Pretoria should hear the appeal. I say so for two reasons. Firstly, the Gauteng Division is "*the provincial division concerned* " as referred to in section 315(3)(a) of the Criminal Procedure Act, particularly because during the trial I sat as a judge of the Gauteng Division. Secondly, even if a circuit court is a local division as referred to in section 315(3)(b) of the Criminal Procedure Act (I make not finding on this point) the appeal would lie to the full court of the provincial division.

21. The appeal itself will be heard after the Minister's determination. In my view the determination does not supplant the provisions of section 315(3) of the Criminal Procedure Act nor was it intended by the Minister to do so. It would take an Act of Parliament to alter the effect of section 315.

**ORDER**

1. The late filing of the application for leave to appeal is condoned.
2. The applicant is granted leave to appeal his convictions and sentences.
3. Leave is granted to the full bench of the Gauteng Division, Pretoria.



**GC WRIGHT  
JUDGE OF THE HIGH COURT,  
GAUTENG DIVISION,  
PRETORIA**

On behalf of the Applicant:

**Ms MMP Masete**

On behalf of the State:

**Adv. J Van der Westhuysen**

**012 351 6722**

**083 755 4265**

Date of Hearing:

**18 May 2016**

Date of Judgment:

**18 May 2016**