



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

Case No: CC108/2013

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
14 June 2016      EJ FRANCIS	

14/6/2016

In the matter between:

LUNGELO TSEPISO DLAMINI

Applicant

and

THE STATE

Respondent

---

**JUDGMENT**

---

**FRANCIS J**

1. On 5 May 2014, the applicant was convicted of murder read with the provisions of section 51(1) of Act 105 of 1997 as amended and with robbery with aggravating circumstances. On 15 July 2014, the applicant in respect of the murder charge was sentenced to 25 years imprisonment and for the robbery charge to 15 years imprisonment. The sentence imposed on the robbery charge was ordered to run concurrently with the sentence imposed on murder and the effective sentence was 25 years imprisonment. He was automatically declared unfit to possess a firearm

2.

2. The applicant is applying for condonation for the late filing of the application for leave to appeal and leave to appeal. I am satisfied that a proper case has been made out for condonation and condonation is granted.
3. The applicant in his application for leave to appeal indicated that he was applying for leave to appeal against both conviction and sentence. I raised this with his counsel whether the application for leave to appeal was against both conviction and sentencing, and I was informed that it relates only to sentencing.
4. The grounds for leave to appeal against sentence are as follows:
  - 4.1 An effective term of 25 years imprisonment is strikingly inappropriate and should be reduced.
  - 4.2 The applicant did not waste the court's time and pleaded guilty to the charges and in doing so showed remorse. He is a first offender and is still young and the 25 years imprisonment will destroy his future
  - 4.3 The purpose of sentence is punishment, retribution, rehabilitation and deterrence and he requests a reduction of sentence.
  - 4.4 The situation at his home is not good at all and his sister is not healthy. No one is working and before conviction and sentencing they were helping each other and no one will look after his child.
5. It is trite that the traditional test in deciding whether leave to appeal should be granted is whether there is a reasonable prospect that another court may come

3.

to a different conclusion to that reached by me in my judgment.

6. The sentence that a court must impose for the murder conviction that the applicant was found guilty of attracts a minimum sentence of life imprisonment unless the court was to find that there are substantial and compelling circumstances that warrants a different sentence to life imprisonment. I had found in my judgment that there are substantial and compelling circumstances that warrants a different sentence to life imprisonment. All the factors that the applicant has raised in this application for leave to appeal were considered by me when I decided to deviate from the prescribed minimum sentence. It is not necessary to repeat it.
7. There is in my view, no reasonable prospects that another court will come to a different conclusion to that reached by me in sentencing the applicant to 25 years imprisonment. .
8. The application for leave to appeal stands to be dismissed.
9. In the circumstances the following order is made:
  - 9.1 The application for leave to appeal against sentence is dismissed.

4.

  
FRANCIS J  
HIGH COURT JUDGE  
GAUTENG LOCAL DIVISION

FOR APPLICANT	:	ADVOCATE F VAN AS OF PRETORIA JUSTICE CENTRE
FOR RESPONDENT	:	ADVOCATE A J FOURIE OF DPP
DATE OF HEARING	:	14 JUNE 2016
DATE OF JUDGMENT	:	14 JUNE 2016