

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

Case No: A 526/2017

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED
DATE: 5/10/2021

In the matter between:

Wouter Pretorius

Applicant

And

The State

JUDGMENT

Maumela J.

1. This is an application brought in terms of Section 19 of the Superior Courts Act¹. The applicant is Wouter Pretorius, a male who was 64 years

¹ Act 10 of 2013

of age at the time he was arraigned.

THE CHARGE

2. Before the Regional Court for the District of North-West, sitting in Potchefstroom, the Applicant, who was legally represented throughout the trial, was charged with the offence of: Indecent Assault, read with the provisions of Section 51 (2) (b) of the Criminal Law Amendment Act 1997: Act No 105 of 1997 - CLM.

THE ALLEGATIONS.

3. The allegations against the Applicant are that upon or about October 2004 and at or near Witpoort Farm in Ventersdorp in the Regional Division of North-West, the Applicant did unlawfully and intentionally commit an assault of an indecent nature upon I[...] V[...], a female aged 10, by touching her private parts and inserting his finger into her vagina.

4. The Applicant pleaded Not Guilty to the charge. He opted to exercise his right to remain silent and therefore did not disclose his basis of the defence. Evidence was led by both the state and the defence. At the close of evidence both sides addressed court on verdict. The court *a quo* accepted the version of the state and rejected that of the Applicant. Consequently, the Applicant was convicted as charged. He was dully sentenced. As indicated above, the applicant contests his conviction of Indecent Assault, read with the provisions of Section 51 (2) (b) of the Criminal Law Amendment Act 1997: Act No 105 of 1997 -CLAA.

BACKGROUND.

5. The Applicant is a husband to the aunt of the mother to the complainant in this case. It is worth noting that while the names of the Applicant are Wouter

Pretorius; the name of his son is Wouter Pretorius Junior. Wouter Pretorius Junior has twin-daughters who are therefore cousins to the complainant and her twin-sister. Over school- holidays, the complainant and her twin-sister would be taken over to go visiting at the farm where the Applicant stays.

6. Relevant to this case, after one such visit, the complainant, I[...] V[...], made allegations against the Applicant to the effect that on an occasion when she and her twin-sister went visiting at the farm where the Applicants stays, in the night while she, her twin- sister, her aunt and the Applicant slept on the bed, the Applicant assaulted her indecently. She claims that she was 10 years of age at the time when the Applicant subject her to the sexual assault. She was 19 years of age at the time she testified before the court *a quo*.

7. As indicated above, in these proceedings, the Applicant applies for permission to advance additional evidence. This is an additional effort on the part of the Applicant to challenge the verdict arrived at before him by the court *a quo*. The application is opposed.

EVIDENCE.

8. Before the court *a quo*, the complainant, I[...] V[...] was the first witness to be called by the state. Under oath she told court that she stays at E[...] Street No [...], Miederpark, Potchefstroom. She said that in October 2004, she and her younger sister S[...] went on a holiday to Witpoort farm, at the place of Wouter Pretorius Senior. She said that at that time, she was 10 years of age. She already knew the Applicant, Wouter Pretorius who is a husband to her mother's sister. She told court that whenever she and her sister visited the place, they used to sleep in the same bed with her and her husband; the Applicant. She would sleep right next to her sister on the right side of the bed.

9. She told court that one day, during the night, the Applicant woke up and walked around the bed to the side at which she was sleeping and he slept next

to her. She said that later, she woke up to find that the Applicant had his hand inside her panties. She said that the Applicant had actually inserted his finger inside her private parts, namely inside her vagina. On discovering this, she became uncomfortable. At that time the Applicant realized that she has woken up from her sleep and he immediately stopped what he was doing, namely inserting his hand inside her panties and his finger inside her private parts, (vagina).

10. The witness said that thereafter, nothing much happened further until the holidays were over and she and her sister returned home to Miederpark in Potchefstroom. She said that this incident made her to be fearful and as a result, she told her sister that she no longer wants to sleep in the Applicant's bed. She and her sister then slept in the spare room. She said that after this incident, she started suffering nightmares. Her sister would try to shake her awake whenever she suffered nightmares and she would be much fearful.

11. The witness said that one night, while she and her sister were asleep in the spare room, they heard footfalls of someone walking in the house. The person was walking towards the spare room where they were sleeping and she and her sister pretended to be fast asleep. She stated that the Applicant then came into the room where they were sleeping and he walked around their bed. She said that the Applicant went towards the wardrobes and he pretended as if he was looking for something. When the Applicant realized that she and her sister were not fast asleep, he left the room in which they were sleeping.

12. This witness told court that after she and her sister had returned home, she told her sister that she no longer wants to visit the Applicant's home again. However, she told her sister not to divulge what she told her, namely that she no longer wanted to go on visits to the Applicants place of abode. She asked her sister not to tell anyone that she is no longer interested in going to the Applicant's place for a visit. She stated that over the next school holidays, she had intended to resist going to the Applicant's home but her wish

did not materialize and she and her sister ended up going to the Applicant's place again.

13. The witness stated that the Applicant's son is known as Wouter Pretorius Junior and he has two daughters who are her twin-cousins. It means therefore that the Applicant is a grandfather to her and her twin-sister, much as he is also grandfather to the twin-daughters of Wouter Pretorius Junior. In that way, the twin-daughters of Wouter Pretorius Junior are her cousins. The witness stated that on this occasion when she and her twin-sister were back visiting over school- holidays, she suggested to her twin-sister that the two of them should reveal the misdemeanors which the Applicant had been up to when last they had come visiting; meaning that she suggested to his sister that the two of them should reveal that on the last time when they had come visiting over the school-holidays, as they slept, the Applicant inserted his hand into her panties; much as he inserted his finger into her vagina.

14. The witness said that once she and her twin sister were back at home, she related to her sister everything that happened whilst they were visiting the Applicant's home. In that regard she related to her sister that when they were at the Applicant's home, there was a night on which their aunt, her husband and the two of them were asleep on one bed and their aunt's husband inserted his hand into her panties, much as he inserted his finger into her vagina. She explained to her sister that is the reason why she had grown afraid of sleeping on the bed on which their aunt and her husband. She told her sister not to tell anyone about it. Her sister promised to keep their secret.

15. The witness stated that on the following December, she and her twin-sister did go again to the Applicant's home at the farm together with the twins born of the Applicant's son. She said that as agreed between her and her twin-sister, the two of them told their two cousins what happened when on the previous occasion when they visited at that house. They asked their cousins not to divulge what they told them namely what the Applicant did to the complainant when last she and her sister visited at that Applicant's home. She

told court that on this second occasion when she and her twin-sister visited at the Applicant's home, the Applicant approached her at her grandmother's home and asked her whether she told anyone about what happened when she and her sister visited at that house on the last occasion.

16. She said that she was afraid but she told the Applicant that she did divulge what happened between her and the Applicant on the previous occasion when she and her twin-sister went visiting at the Applicant's home. She said that before the incident in issue in this case relations between her and the Applicant were good. However, after the incident, she always avoided him.

17. The state then called S[...] V[...] who is a sister to the complainant. In her testimony, she confirmed that she and her sister visited the farm way Applicant states over the October 2004 holidays. She confirmed that when they were there, they would sleep in the same bed with the Applicant and his wife. They would be four on the bed. She further told court that before going to sleep, the Applicant used to tickle them. She confirmed that her sister told her that on the previous night, she woke up to find the Applicant having inserted his hand into her panties and a finger into her private parts, (her vagina).

18. The complainant's told her that she does not want to sleep in the same bed together with the Applicant and his wife. As a result, she and her sister slept in the spare room. This witness told court that the

21. The aspect of the statement labeled A1 was raised. It was argued that A1 was not done properly and as a result, the 10 desire to go and obtain an additional statement from the victim. And it was during that time that he saw Cecilia Labuschagne for the first time. This witness further confirmed that he never at any stage took any statement from the Applicant's wife. The person who took the first statement from the victim was Capt. Potgieter.

22. This witness was also subjected to cross-examination by the defence and

the state asked questions basically. Under cross-examination, it transpired that has 30 years of experience to his name of which 17 years' experience was in sexual offences cases. He explained how it came about that the docket was firstly attended to by Mr. Dlamini. Apparently Mr. Dlamini was on standby when the case was reported and because the proficiency of the individuals involved is in Afrikaans Mr. Dlamini was best suited for the case at the time. Under cross- examination, this witness admitted that there is a possibility that he might have visited the Applicant's place on three to four occasions.

23. The case was postponed on several occasions for various reasons. Basically it was postponed because there were statements on which signatures were supposed to be taken for forensic analysis. There were delays for various reasons until there was a report which could not take the case any further.

24. Johannes Potgieter was then called. He told court that he knows Mr. Dlamini as the relief commander. He admitted that he came to know the complainant when he obtained her statement. He said that the complainant was alone. He did not know how old she was at that time. At the time he took the statement; it was just himself and the complainant in the office. He said that the statement was made freely and voluntarily. Potgieter was also subjected to cross-examination by the defence. He said that de does not know Cecilia Labuschagne and that he on the 15th of March 2016, he was ranked Captain which he still is. The statement was raised with him concerning the case number in Ventersdorp. He also said he knows nothing about the statement which was taken in November.

25. Constable Dlamini was then called. Briefly, he confirmed as to the fact that he himself personally was just a standby in Potchefstroom and that he had a problem with Afrikaans and the docket was handed over to another office. Then the case was postponed for various reasons until the matter was transferred to the High Court. Ms. Horn then came on board when the

transcribed record was made available. She made an application to reopen the state case because there are certain issues which she wanted to get clarity about from Cecilia Labuschagne. There was no objection. Then the case was postponed for her availability for the 22nd of March. On that day, the witness was available. She explained what the Prosecutor wanted her to explain and after her testimony she was asked questions by the defence.

26. The questions were about the statement which she received from S[...] who is the mother of the twin from Somerset West. It transpired that she brought the statement to Potchefstroom. Under cross-examination, it transpired that the person who was mostly mentioned was working for the welfare it was a certain Mr. Erasmus. After her testimony, everything was finalized and the matter was postponed for addresses from both the state and the defence.

27. Both sides addressed court on verdict. In this case the state seeks to rely on evidence of a single witness, namely the complainant. The complainant is adamant that she was molested by the Applicant. Concerning evidence of a single witness, section 208 of the Criminal Procedure Act², - CPA, provides the following: *"An Applicant may be convicted of any offence on the single evidence of any competent witness."* The section confirms what Holmes JA said in *S V Artman and Another*³ at 340 G-H when he dealt with evidence of a single witness. He said: *"I pause here to observe that there is no rule of law requiring corroboration in criminal cases."*

28. In this case the court stated further as follows: *"However, a cautionary rule of practice exists regarding the testimony of accomplices, complainants in sexual cases and young children. The reason is, indeed, understandable because courts must be cautious of the dangers inherent in their evidence. Some safeguards are required to avoid wrong convictions."* Be that as it may, the judge cautioned as follows: *"the exercise of caution must not be allowed to displace the exercise of common sense."*

² Act Number 51 of 1977.

³ 1968 (3) SA 339 (A).

29. Still dealing with evidence of a single witness Diemont JA in the case of *S v Sauls and Others*⁴, at page 180E, said the following: *"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness. The trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told"*

30. In our law, it is permissible for an Applicant person to be convicted on the basis of single evidence of a single witness, as long as that evidence is clear and is convincing in all material aspects. The complainant was 10 years of age at the time when the offence was committed. But when she went to lay a charge or when the docket was opened, she was 18 years old. It was 8 years after the incident. That is when she narrated to this court the story of what transpired when she fell victim to molestation by the Applicant. Courts of law are duty-bound to exercise caution when considering evidence tendered by young children.

31. It is common knowledge that children are prone to manipulation. They are also prone to imagine things and once having done so, they can hardly differentiate between what they imagined and reality. I[...] testified to this court that in October 2014, she and her sister visited the farm. That is not in dispute. The complainant stuck to her ground. She was adamant that on the night of the incident, she, her sister S[...], her aunt, who is the Applicant's wife and the Applicant, slept in the same bed. The defence on the other side claims that this never happened and they never shared a bed with the children.

32. S[...] corroborated the version of the complainant to the effect that they did sleep in the same bed on the day in question. The complainant told court that she was asleep when she felt the hand of the Applicant was in her panties and when the Applicant realized that she has awoken, he took his hand out, basically stopping what he had been doing.

⁴ 1981 (3) SA 172 (A).

33. On the following day when they reached Potchefstroom when they went back home, the complainant told S[...] about what happened at the farm while they were asleep in the bed. However, she was not told exactly the whole situation but a part of it was she was informed about it. According to the complainant this incident did not sit well with her. It pained her. She said that the incident affected her a lot. She no longer trusted anyone. She became withdrawn. S[...] on the other hand said that what she realized that after this incident, the complainant could not sleep alone in her bed. She could not sleep properly at night. She would keep on waking up.

34. The complainant stated further that there was a time that they should return to the farm in December. She was reluctant to return there but her sister told her not to worry, promising that she would be there for her and would always be there to ensure her safety. It is then that the complaint actually to visit the farm again. Upon visiting the farm again in December, the two of them opted not to sleep in the bedroom where the Applicant slept but they object to sleep in the spare room.

35. The complainant further told court that whilst they were there at the farm, one day the Applicant asked her whether she told anybody about the incident and she said yes, I told somebody. She even told that she did tell the twins about what happened and said they must be careful.

36. Time elapsed until their aunt came to visit their home alone. It is then that the complainant opened up, revealing that she is not happy under that she feels abandoned because nobody assists her when in her times of need. It is then that the complainant narrated the story to Cecilia, telling her that the Applicant actually penetrated her private parts with her hand. It is this revelation which triggered the start of this case after the matter was referred to the police.

37. The court a *quo* found that the complainant's mother was open at the time she testified. She confirmed that relations inside the family are not good, neither is communication between herself and the children because she would

not spend most of the time with them. She said that when she received the call informing her about what the Applicant did to the complainant, she did confront the complainant in the presence of her husband, but she only took it lightly. She stated that she did not want to traumatize the complainant by going to court, thereby igniting a whole trial involving the complainant. It is for that reason that she let things lie.

38. The complainant openly told court that the only person she relied on for all her needs was her elder sister because the elder sister is always there for her. That is why she kept the pain to herself because her mother did not seem to take this thing seriously. She even stated that when she told Cecilia about it, the latter expressed that the family does not believe the allegations she was making.

39. The court *a quo* observed that this matter was common knowledge within the family before it was reported to the police because even Cecilia herself said that she heard about it but she could not take it further because people were under the impression that these allegations are untrue. For that reason, such a tender age, the complainant gained the impression that nobody is prepared to listen to her. Being still so tender in age, she did not know what to do about it but she now feels that she has become of age and has garnered sufficient confidence to approach the police in order to report the case.

40. Cecilia assured her, promising to stand by his side in all situations, all the time. It is then that the matter was reported to the police station. Statements were then taken. It has now come to light that a certain Mr. Erasmus from the Welfare is the one who actually took the statement. The defence categorically disputed the allegations against the Applicant. They were adamant that this never happened. The Applicant's wife took the view that the complainant is being influenced by her parent to level false allegations against the Applicant.

41. The Applicant stated that the children were brought by his wife from Potchefstroom in 2004. His wife disputed that she is the one who took the children to the farm. She stated that the children only came there in 2005 and not 2004. The defense contended that the Applicant never slept on the same bed with the children and he used to sleep in the spare room with his son.

42. The defence argues that the evidence of the complainant is riddled with contradictions. The court *a quo* found however that the said contradictions are not of such a material nature as to suggest that the complainant may not be believed. It found that the state's case was not destroyed. The court *a quo* took into regard that the complainant was 10 years of age at the time she fell victim to the crime issue in this case. The complaint also told court that the incident affected her adversely. She was traumatized. This effect of the crime on her was also noticed by her sister who noticed that the complainant could hardly sleep and had grown afraid of finding herself alone at any moment. She always preferred to have someone next to her.

43. The court *a quo* also found that the demeanor of the complainant over the time when she testified cannot be faulted. It observed that the complainant was very strong and she stood her ground on an array of points raised. The complainant even told court that she desires to move on with her life because the attack she suffered has been traumatizing her. Concerning education, the complainant is now at university but the incident still continues to haunt and to frustrate her. On that basis, the court *a quo* found the Applicant Guilty of Indecent Assault.

EVALUATION.

44. This court has to determine whether or not the court *a quo* was correct in convicting the Applicant. In order to do so, the court has to examine the evidence adduced before the court *a quo* in order to determine whether it justifies the verdict arrived at by the court *a quo*.

45. The court *a quo*, relying on the evidence brought before it, convicted the Applicant. It believed the version of the state and dismissed that of the Applicant. The court has to determine whether the court *a quo* was correct or wrong in arriving at the verdict it did.

46. In the case of *S v V*⁵; the court held as follows: *'While there is no statutory requirement that a child 's evidence must be corroborated, it has long been accepted that the evidence of young children should be treated with caution and that the evidence in a particular case involving sexual misconduct may call for a cautionary approach. Such a cautionary approach is called for where reasonable grounds are suggested by the Applicant for suspecting that the state's witnesses have a grudge against him, or a motive to implicate him falsely.'*

47. As indicated, the complainant was 10 years of age at the time the offence took place. However, she was 19 years old at the time she testified before the court *a quo*. In the case of *S v Artman*⁶, the court recommended the exercise of caution in instances where courts have to evaluate evidence adduced by a child. However, in the case of *S v Artman*⁷, the cautionary rule was held inapplicable to a girl aged 16. See also *R v Sikurlike*⁸. In their book, *The South African Law of Evidence*: by D.T. Zeffertt; A.P. Paizes; and A. St Q Skeen; 2003 edition at page 806, the following stands written: *"Young children are competent witnesses if the judge considers that they are old enough to know what it means -to tell the truth."*

48. In the case of *S v V*⁹, the court stated the following concerning evidence of a child: *"Whilst there is no statutory requirement that a child's evidence must be corroborated, it has long been accepted that the evidence of young children should be treated with caution and that the evidence in a particular case involving sexual misconduct may call for a cautionary approach. Such a cautionary approach is called for where*

⁵ 2000 (1) SACR 453 (SCA)

⁶ 1968 (3) SA 339 (A).

⁷ 1968 (3) SA 339 (A).

⁸ 1964 (3) SA 151 (SR).

⁹ 2000 (1) SACR 453 (SCA).

reasonable grounds are suggested by the Applicant for suspecting that the State's witnesses have a grudge against him, or a motive to implicate him falsely. It is trite that there is no obligation upon an Applicant person, where the State bears the onus, 'to convince the court'. If his version is reasonably possibly true he is entitled to his acquittal even though his explanation is improbable. A court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether the Applicant's version is reasonably possibly true, but whether one believes him is not the test. As pointed out in many judgments, the test is whether there is a reasonable possibility that the Applicant's evidence may be true. Accordingly, it is a misdirection for a trial court to regard an Applicant's failure 'to convince' it as a guarantee of the veracity of the evidence tendered by the State. It is of little value to judge an Applicant on his demeanor in the witness box and to convict on that ground. In this regard it must be borne in mind that it is not unusual nor surprising that an Applicant person, or indeed witnesses generally, should appear ill at ease when testifying. They may be afraid or even overwhelmed by the experience of giving evidence in court, possibly for the first time."

49. In *Woji v Santam Insurance Co. Ltd*¹⁰ the evidence of a minor witness was commented upon as follows: *"Trustworthiness of a child depends on factors such as the child's power of observation, his power of recollection, and his power of narration on the specific matter to be testified. His capacity of observation will depend on whether he appears intelligent enough to observe. Whether he had the capacity of recollection will depend again on whether he has sufficient years of discretion to remember what occurs while the capacity of narration and communication raises the question whether the child has the capacity to understand the questions put, and to frame and express intelligent answers."*

50. In *S v Artman and Another*¹¹; the court stated the following: *"I pause here to observe that there is no rule of law requiring corroboration in criminal cases."* "The court stated further: *"A cautionary rule of practice however exists regarding the testimony of accomplices, complainants in sexual cases and young children. The reason is indeed understandable because courts must be cautious in the dangers inherent in the evidence. Some safeguards are required to avoid wrong convictions."*

¹⁰ **1981 (1) SA 1021 (A).**

¹¹ 1968(3) SA 339 (A), at page 340.

51. In the case *S v S*¹² the court stated the following: *"In approaching cases with single minded eye towards seeking corroboration, courts tend to lose sight of the reasons for seeking it. Rational decision as to credibility requires application of a certain amount of psychology and awareness of recent advances in that discipline. As complainants in sexual offences; young girls are required to give evidence in an all-male court."* The Court on appeal recommended that female magistrate or prosecutor be appointed in such cases.

52. In this case, where it concerns the commission of the crime, the State relies on the evidence of a single witness namely the complainant. A cautionary rule of practice however exists regarding the testimony of accomplices, complainants in sexual cases and young children. The reason is, indeed, understandable because courts must be cautious of the dangers inherent in their evidence.

53. This court finds therefore that whereas the complainant became a single witness regarding the actual commission of the crime in this case, she testified clearly without contradicting herself. Besides peripheral issues on which she testified like the date and place of the commission of the crime, the way she reacted and people spoken to after the commission of the crime found corroboration on S[...] and the police officer to whom the complainant made a statement. Whereas this matter remained on course from the moment of reportage to the police to the time testimony was given in court. Consistency was maintained among the witnesses and of more importance, by the complainant herself.

THIS APPLICATION.

54. As indicated, in this application, the Applicant seeks permission to advance additional evidence that was not adduced in the trial consequent to which he was convicted as indicated above. Section 19 of the Superior

Courts Act¹³ provides the following:

"The supreme Court of Appeal or a Division exercising appeal jurisdiction may in addition to any power it may, in addition to any power as may specifically be provided for in any other law -

- (a). dispose of an appeal without the hearing of oral argument;*
- b). received further evidence;*
- (c). remit the case to the court of its first instance, order to the court whose decision is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Supreme Court of Appeal or the division deems necessary; or*
- (d). confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require."*

55. In this case the Applicant requests leave to lead new evidence in terms of Section 309B (5) (a) of the Criminal Procedure Act 1977: (Act No 51 of 1977) - CPA by receiving the information the information by way of affidavits and/or to re-submit the trial to the Court *a quo* to consider the new evidence.

56. To substantiate this application, the Applicant stated the following grounds: That Court documents relating to the dispute between "Woutertjie" and his wife pertaining to the custody of their children; (the twins) were found after the Applicant was convicted and sentenced and when they sold their property. According to the Applicant, these documents indicate how the proceedings were dealt with at the Durban High Court, under case number 9130/2004, which include the December Holiday 2004.

57. The Respondent submitted that in terms of the pronouncement in the case of *S v De Jager*¹⁴, at page number 613D, the following was set as further requirements for purposes of leading further evidence during appeal

¹² 1995 (1) SACR 50 (ZS).

¹³ *Supra*.

¹⁴ 1965 (2) SA 612 (A).

proceedings namely that there should be some reasonably sufficient explanation, based on allegations which may be true why the evidence which is sought to be led was not led at the trial. This was confirmed in the case of *S v Majodina*¹⁵.

58. It is trite that there should be *prima facie* likelihood of the truth of the evidence. That evidence must be materially relevant to the outcome of the trial.

59. In the case of *S v Wilmot*¹⁶, the court found that there should be a real anxiety, in the court's mind as to whether the exclusion of those circumstances might not result in the perpetuation of a possible miscarriage of justice. The Respondent submits that the evidence sought to be led as new evidence is not conclusive to the Applicant's innocence. Furthermore, the same evidence was already in existence at the time of his trial.

60. The Respondent raises the point that the Applicant still remembers what happened during the December holiday in issue. This is demonstrated by the fact that over cross-examination of the complainant and other witnesses, facts were put to them which demonstrate that he still recalls what happened in detail. It was put to the witnesses that the case against the Applicant was fabricated because of family feuds that obtain within the family.

61. The Respondent points out that the facts upon which the applicant relies in seeking to be allowed to lead additional evidence existed at least since 30th of July 2004. This is clear from the record of criminal proceedings which commenced in July 2013. The Applicant questions why the complainant and her sister only visited the farm again in December 2004, and advanced no reasons or explanation why Mr. Wouter Pretorius Junior, "Woutertjie" did not testify during the criminal proceedings. The Respondent submitted that admitting his evidence will not be in the interests of justice because it opens possibilities for the Applicant to tailor evidence which he

¹⁵ 1996 (2) SACR 369 (A).

¹⁶ 1996 (2) SACR 369 (A).

tenders to his own personal objectives and to have a second opportunity at influencing the outcome of the proceedings.

62. In any case, such evidence only goes to corroborate the complainant's evidence to the effect that after the incident in issue, the complainant and her sister only visited the farm again in December 2004. It is at this instance where the complainant contends that the Applicant inquired from her whether she informed anyone about the incident that happened during the previous visit.

63. The Respondent makes the point that the evidence which the Applicant now seeks to lead is not relevant to that day of the alleged offence in this case. That dismissal of this application shall in no way lead to possible injustice or the miscarriage of same.

64. The evidence on board speaks to the offence charged. The evidence which the Applicant seeks to bring for consideration does not seem to have any bearing to the offence at hand. It is only that it affects a number of the people who came into issue when the court *a quo* dealt with the offence with which the applicant was charged. It is about access to a child. Whether access to a child was properly or improperly handled, a finding on that is not likely to impact on the correctness or otherwise of verdict which the court *a quo* arrived at; which the applicant now seeks to have overturned

65. In the result, the application by the Applicant to lead further evidence pertaining to the case where he was convicted of Indecent Assault before the Regional Court for the District of North-West, sitting in Potchefstroom, stands to be dismissed. Consequently, the following order is made:

ORDER.

65.1. The application is dismissed.

T.A. Maumela.

Judge of the High Court of South Africa.

PD. Phahlane

Acting Judge of the High Court of South Africa

REFERENCES

For the Appellant:	Adv. J A Venter
Instructed by:	GM Parker Attorneys

For the Respondent:	Adv. K H Van Rensburg
Instructed by:	Office of the DPP

Judgment heard:	13 February 2020
Judgment delivered:	05 October 2021