

IN THE HIGH COURT OF SOUTH AFRICA  
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER: 8045/2008

DATE: 19 AUGUST 2008

5 In the matter between:

1. JOSEPH ARTHUR BROWN 1<sup>ST</sup> APPLICANT

2. SUSAN JENNIFER BROWN 2<sup>ND</sup> APPLICANT

and

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1. THE DIRECTOR OF PUBLIC  
PROSECUTIONS 1<sup>ST</sup> RESPONDENT

2. DIRECTORATE OF SPECIAL  
OPERATIONS (WESTERN CAPE) 2<sup>ND</sup> RESPONDENT

15 3. THE DISTRICT CONTROL  
MAGISTRATE (MR MAKU) 3<sup>RD</sup> RESPONDENT

4. THE DISTRICT MAGISTRATE  
(MR VUSI MHLANGU) CAPE TOWN  
MAGISTRATE COURT 4<sup>TH</sup> RESPONDENT

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JUDGMENT

(Leave to Appeal Application)

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FOURIE, J:

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The applicants apply for leave to appeal against the whole of the judgment delivered and orders made by me on 2 June 2008. The application is opposed. It is trite that in an application of this nature, an applicant has to show that it has  
5 a reasonable prospect of success on appeal.

I have considered the grounds of the intended appeal as set out in the notice of application dated 23 June 2008 as amplified by the amended notice dated 18 August 2008. I have  
10 also considered the submissions made on behalf of the parties and in particular too the heads of argument prepared by Mr Khan and handed up today.

In my view there is, for the reasons already furnished in my  
15 written judgment, no reasonable prospect that another Court will come to a different conclusion than the conclusion to which I had come in my judgment. I should add that as regards the constitutionality of Section 43 of the Criminal Procedure Act, it is in my view not the proper time for  
20 applicants, at this belated stage, to challenge the constitutionality of this section. In the result the application for leave to appeal is dismissed with costs.

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FOURIE, J

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