

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

A443/2007

DATE:

16 MAY 2008

5 In the matter between:

SIPHELO RUBUSANA

First Appellant

BUKHULUBAKHE MAMAZA

Second Appellant

XOLISA MZAMO

Third Appellant

and

10 THE STATE

Respondent

ON RESUMPTION ON 16 MAY 2008: (at 09:54)

MR WEEBER: As it pleases the Honourable Court M'Lords, I
15 appear on behalf of the three applicants, in this matter.

COURT: Thank you.

MS COOK: If it pleases the Court M'Lords, I appear on behalf of
the respondent in this matter.

COURT: Thank you. Would you like to address the Court.

20 MR WEEBER: I would submit with respect that my heads contain
my argument, and I do not have anything more to say beyond
that.

COURT: Right, thank you. What is the attitude of the State? It
appears, perhaps we need to place on record, the conviction,

there is no appeal against conviction, my learned brother and I have read the record, our *prima facie* view approach is that the conviction should stand, and we intend making an order confirming the conviction. Any comments from the State?

5 MS COOK: Nothing M'Lord, as said in my ... (intervention).

COURT: Then the only problem, it appears, relates to sentence, according to your heads of argument, and the record as well, it would appear that a certain Mr Lingani appeared on behalf of the three accused, after they were convicted, and the
10 point which was taken on behalf of the appellants was that Mr Lingani is not a lawyer as defined for purposes of admission, in as much as he has no right of appearance in Court, and therefore he is not a lawyer.

Our *prima facie* view is that there is merits in relation
15 thereto, these are accused persons, they are entitled, in terms of Section 35 of the Constitution, to be legally represented by someone who is legally qualified and not a bush lawyer. And our *prima facie* view would be therefore that we would confirm the conviction but set aside the sentence and order that the matter
20 be referred to the trial court and the rights of the accused persons be explained by the judicial officer, insofar as they relate to the right of an accused person to be legally represented by someone who is legally qualified, and obviously once that takes place we cannot dictate to the practitioner what evidence should
25 be placed before Court. Any comments?

MR WEEBER: We're indebted M'Lord, that is what I was hoping for.

ORDER

5 Thank you. The order which we make in this matter is as follows:

1. The conviction of all three appellants for murder is hereby confirmed;

10 2. The sentence imposed on all three appellants is hereby set aside, the reason being that they were not properly legally represented as appears from the record.

15 It is now common cause that Mr Lingani, who appeared for the three accused in the court a quo and purported to address the Court did not in fact have the right to appear in Court and therefore he is not a lawyer as defined for purposes of appearing in Court and this was clearly in violation of the accused right
20 contained in Section 35 of the Constitution, the right of the accused person to be legally represented, particularly in serious cases such as this one, because they were charged with murder, so for that reason the sentence as imposed on all three accused is hereby set aside and this matter is referred to the Court a quo
25 for purposes of the Court explaining to the accused person their

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right to legal representation under Section 35 of the Constitution. We cannot, sitting on this bench obviously dictate what evidence should be placed by the accused new legal representative in the Court *a quo*.

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That is the order of court in summary, the CONVICTION IS CONFIRMED. THE SENTENCES IMPOSED ON ALL THREE ACCUSED ARE SET ASIDE, and the matter is referred back to the Court *a quo* for purposes of the Court *a quo* hearing evidence, if necessary in this regard, and for purposes of the Court *a quo* explaining to the accused persons their rights to legal representations, that is the order of court, I will propose.

Furthermore the ACCUSED PERSONS SHALL BE ENTITLED TO BE RELEASED IMMEDIATELY ON CONDITION THAT THEY MUST REPORT TO THE REGIONAL COURT, COURT B IN WYNBERG, ON THE 3RD OF JUNE 2008. That is a condition for their release, they are entitled to be released today, only on that condition.

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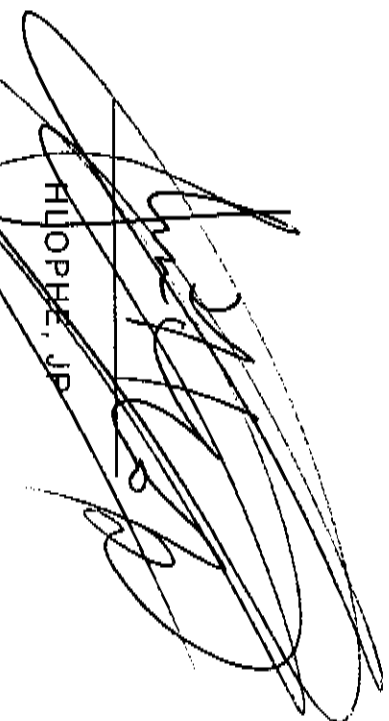
I would like to warn the accused that if they don't meet those conditions, obviously the law will take its course. That is the order of Court.

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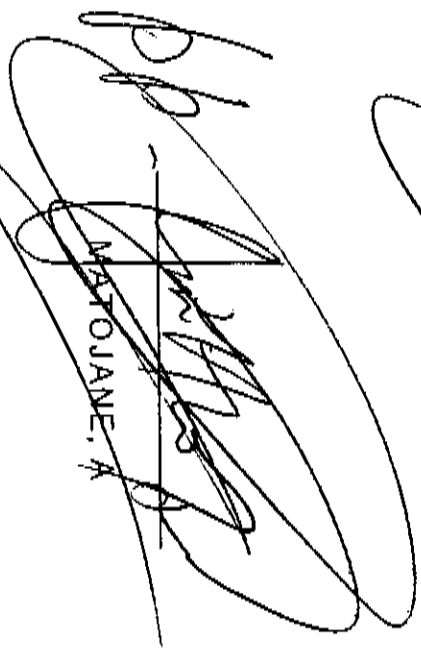
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I agree,

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FLOPHIE, JP



MATOLANE, A