

and Pie

A286/2008

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER:

A286/2008

5 **DATE:**

31 AUGUST 2010

In the matter between:

DONOVAN LEIBRANDT

1st Appellant

LETOANE RANTAL

2nd Appellant

10 and

THE STATE

Respondent

J U D G M E N T

Application for Leave to Appeal

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HLOPHE, JP:

20 This is an application for leave to appeal against the judgment of Motala and Matojane JJ. Both judges are no longer active judges in this division, hence the current composition of the bench, consisting of myself and Acting Justice Samela.

25 We have heard the argument advanced by both counsel. Mr Marais, it is common cause, appeared for the appellants in this

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matter. The State was represented by Advocate Swart. The judgment of the court *a quo* was criticised by Mr Marais on various grounds, including, *inter alia*, the fact that the Court seems to have placed weight on what was not the evidence
5 before the Court. He was also critical of the judgment of the magistrate, in that that judgment, according to his submission, it was not proved beyond any reasonable doubt, relying upon circumstantial evidence, that indeed the accused was guilty of the crimes preferred against them.

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The difficulty in my view with Mr Marais' argument is, firstly, that there is no judgment which can ever be perfect; and secondly, whilst sitting here as a court of appeal, we are at large to look at the evidence in total and we have read the
15 record. It is clear to my mind that the court *a quo* correctly came to the conclusion that the appellants were properly convicted of the crime in question. I am not persuaded at all that another court, acting reasonably, can come to a different conclusion. In my judgment, the judgment of the court *a quo*
20 must be confirmed and I would refuse leave to appeal on the basis that there is no other court acting reasonably which can come to a different conclusion.

Accordingly I would refuse leave to appeal against conviction.

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SAMELA, AJ: I agree.

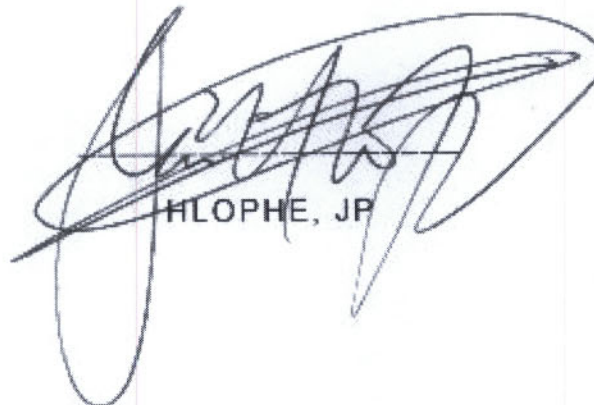
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SAMELA, AJ

HLOPHE, JP: That is the order of Court.

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A large, complex handwritten signature in black ink, featuring multiple overlapping loops and a long horizontal stroke across the middle.

HLOPHE, JP