

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

CASE NO:

SS108/08

DATE:

9 December 2010

5 In the matter between:

NTSIKELELO ZICINA

1st Applicant

ZUKISWA MAKOSA

2nd Applicant

and

THE STATE

Respondent

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JUDGMENT

(Application for Leave to Appeal)

HENNEY, AJ

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Clearly the evidence is still fresh in this Court's mind, it's largely as I said based on circumstantial evidence. There is a belief that where a case is based on circumstantial evidence that it is very easy for a Court to come to incorrect conclusions

20 in certain circumstances. I have a different view. It is very difficult to argue against circumstantial evidence; the difference between circumstantial evidence and oral testimony is that when it comes to oral testimony, after it has been tested and after you have heard and evaluated the evidence of

25 witnesses there might be – and there is always a possibility

that a possibility that a court might make a mistake in evaluating the evidence, whereas in the case of circumstantial evidence you have a fact in front of you, you have to draw certain inferences there from. I have considered all the
5 evidence upon which I based my findings and I was beyond reasonable doubt convinced that the accused had committed the offences as charged. Apart from this if you throw the two statements they made into the basket that also strengthened my finding with regards to the guilt and on that alone, having
10 regard to the circumstances of that case I was beyond reasonable doubt convinced of their guilt.

Therefore with regards to the CONVICTIONS ON BOTH COUNTS INsofar AS BOTH THE ACCUSED ARE
15 CONCERNED THE APPLICATION FOR LEAVE TO APPEAL IS DENIED.

There is always a possibility when it comes to sentence that a Court might be wrong, in my experience there is always a
20 chance that another court might come to a different conclusion with regards to a sentence, especially with regards to the fact that both the accused are literally first offenders, notwithstanding the fact that they have committed a very serious offence.

In the result I am of the view that there is a possibility and a chance that another Court might come to another conclusion when it comes to sentence, especially on count 1. Therefore the APPLICATION FOR LEAVE TO APPEAL WITH REGARDS
5 TO SENTENCE IS THEN GRANTED IN RESPECT OF THE
BOTH ACCUSED ON BOTH COUNTS.

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HENNEY, AJ