

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

CASE NO: A88/2005  
DATE: 19 MAY 2011

5 In the matter between:

**YAZEED PETERSEN** Applicant

and

**THE STATE** Respondent

10

**JUDGMENT**

**(Application for condonation and leave to appeal)**

**TRAVERSO, DJP:**

15 We have before us today two applications. The one is an  
 application for leave to appeal, the other an application for  
 condonation for the late bringing of this appeal.

In this matter my colleague and I heard the appeal and  
 20 confirmed the conviction and the sentence on 7 December  
 2006. We were approached a few days ago to ask whether we  
 would be prepared to hear an application for leave to appeal.

The application for condonation in this matter, in my view,  
 25 makes out absolutely no case whatsoever. The appellant was  
 /CDK /...

A88/2005

aware, on his own version, since March 2007, that the police were looking for him, and that his appeal was unsuccessful.

In 2005 he was granted bail pending leave to appeal. He then  
5 starts to explain why, from March 2007, he never handed himself over. His explanation is vague. It has no substance. He repeatedly states that he first visited the offices of Mr John Riley, a practising attorney. He stated that, thereafter, he visited the offices of Mr R. Davies, a practising attorney in  
10 Mitchells Plain. He stated that Mr Davies informed him that he would be able to assist him in the appeal and he left a copy of the record with him.

However, he says that Mr Davies never phoned him back. He  
15 simply carries on and states that because he was unemployed, he could not afford Mr Davies' services. That is in direct contradiction to his statement that Mr Davies confirmed that he would be able to assist him in the appeal and that he left a copy of the record with him.

20

Later that year he consulted a certain Mr Timothy Kleinfeldt. Mr Kleinfeldt, not surprisingly, told him that he could only assist him if he provided him with a copy of the record. By then he found out that Mr Davies had lost the record. He then  
25 paid a deposit to Mr Kleinfeldt and was going to attend to the

/CDK

/...

A88/2005

matter but, however, on an unspecified date in 2008 Mr Kleinfeldt passed away.

The rest of the information placed before us is really  
5 irrelevant. It is a constant refrain that from 2007 to 2009 and until the present time the applicant is hard done by financially. He says that he got married in 2009 and in 2010 his father-in-law agreed to assist him financially.

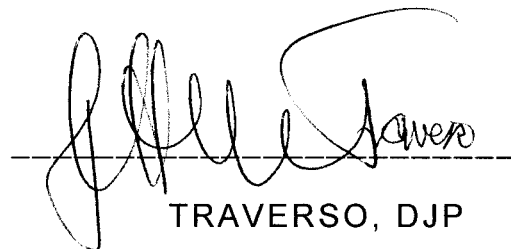
10 In my view, there is therefore no merit whatsoever in the application for condonation, but the Court is loathe to close the doors of the Court to any litigant and had there been any merit in the application for leave to appeal, I would still have considered granting condonation. However, the application for  
15 leave to appeal is in my view without any substance whatsoever.

During argument before us today Ms Ruiters repeatedly, upon questioning from the Bench, answered that she cannot take the  
20 point any further because there was no cross-examination on that particular point in the court of first instance.

The only point that she really made was that there are prospects of success, because the complainant only reported  
25 the rape ten months after the incident. It is trite that that in

itself is not enough. The other evidence was carefully considered by the magistrate. It was taken into account that there was a delay in reporting the rape. It was dealt with fully and properly and I think we have dealt with that in our  
5 judgment as well.

In my view, this application, both for condonation and leave to appeal, is so wanting of any merit that I am satisfied that no other Court can reasonably come to the assistance of the  
10 applicant and accordingly the **APPLICATION IS DISMISSED.**



TRAVERSO, DJP

15

NDITA J: I agree.

20

-----  
NDITA, J