

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

CASE NO: A172/2012

DATE: 14 JUNE 2012

5 In the matter between:

LUYANDACHULAYO Appellant

and

THE STATE Respondent

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J U D G M E N T

VELDHUIZEN, J:

15 This matter came before us on appeal and on 16 April this  
year, this Court upheld the appellant's appeal against his  
conviction on murder and changed the conviction to one of  
guilty of culpable homicide. In the light thereof the sentence  
was also set aside and replaced with a sentence of 5 years  
imprisonment in terms of section 276(1)(i) of the Criminal  
20 Procedure Act, 51 of 1977.

Today there is before us an application for leave to appeal to  
the Supreme Court of Appeal against this Court's judgment  
and the application is directed against both the conviction and  
25 the sentence.

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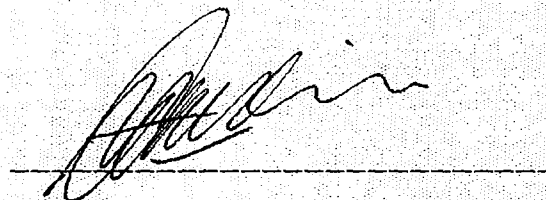
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We have again considered the matter and, in my view, there is no prospect that another court will come to a difference conclusion as far as the conviction of culpable homicide is  
5 concerned.

Mr Avontuur for the applicant argued that, instead of this court imposing the sentence, we should rather have referred the matter back to the trial court to consider sentence afresh after  
10 considering a probation officer's report as to the desirability of imposing a sentence of correctional supervision.

We had before us a report and we had all the facts which were pertinent to the consideration of the appropriate sentence. In  
15 the circumstance, I see no reason why the matter should have been referred back to the trial court to consider sentence afresh. In my view, there is no prospect that another court will come to a different conclusion, in the result **THE APPLICATION FOR LEAVE TO APPEAL IS DISMISSED**

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VELDHUIZEN, J

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A172/2012

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GANGEN, AJ

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