IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Criminal Appeal case No: 31/2015

In the matter between:

DIRECTOR OF PUBLIC PROSECUTIONS	**APPELLANT**
And	
BHEKWAKO MESHACK DLAMINI	**FIRST RESPONDENT**
KHANYA DLAMINI	**SECOND RESPONDENT**
MXOLISI HENDRY MABUZA	**THIRD RESPONDENT**

In re:

BHEKWAKO MESHACK DLAMINI	FIRST APPLICANT
KHANYA DLAMINI	SECOND APPLICANT
MXOLISI HANRY MABUZA	THIRD APPLICANT
And	
DIRECTOR OF PUBLIC PROSECUTIONS	RESPONDENT

Neutral citation: *Director of Public Prosecutions v. Bhekwako Meshack Dlamini & 2 Others (478/2015) [2016] SZSC 40 (30th June 2016)*

CORAM: **M.C.B. MAPHALALA CJ,**
S.P. DLAMINI JA,
M.J. MANZINI AJA.

Heard **27th May 2016**
Delivered **30th June 2016**

Summary

Criminal Appeal – appeal on a question of law – respondents indicted for premeditated murder under the Fifth Schedule of the Criminal Procedure and Evidence Act No. 67/1938 as amended – the Crown alleging that the respondents committed the offence acting in furtherance of a common purpose – the requisites of offences listed under the Fifth Schedule considered;

Held, that the respondents have failed to adduce evidence on a balance of probabilities which satisfies the court that the interests of justice permit their release in accordance with sections 96 (1) (a), 96 (4) and 96 (12) (b) of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended;

Held further, that in addition the respondents have failed to adduce evidence which satisfies the court on a balance of probabilities that exceptional circumstances exist which in the interest of justice permit their release as required by section 96 (12) (a) of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended – accordingly the appeal succeeds, and, bail is consequently refused.

JUDGMENT

M.C.B. MAPHALALA, CJ

[1] The respondents lodged an urgent application for bail on the 20th November, 2015 before the court *a quo*. They are charged with premeditated murder, which is an offence listed under the Fifth Schedule of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended. In terms of the indictment the respondents are alleged to have unlawfully and intentionally killed Khemba Dlamini by shooting him several times with a pistol. The indictment further alleges that the respondents killed the deceased acting in furtherance of a common purpose.

[2] It is common cause that the first respondent was arrested on the 12th November, 2015; the second respondent was arrested on the 11th November, 2015 together with the third respondent. They were subsequently charged with premeditated murder.

[3] The Crown opposed their bail application on the basis that, if released on bail, they would endanger the safety of the public, and, that their release would lead to violence in the area. The Crown further contends that the first respondent is the leader of a faction within the Chiefdom which is opposed to Chief Zwelihle Maseko, the current Traditional Authority of

the area. The Crown also contends that the second and third respondents are assassins who are on the payroll of the first respondent and hired to kill members of the community who pay allegiance to the current Chief. The third respondent is alleged to have released the trigger which killed the deceased.

[4] The Crown further contends that the first respondent, prior to his arrest, was holding and leading unauthorised meetings of the opposing faction; and, that these meetings were interjected by the police in a bid to maintain peace and order within the Chiefdom. The Crown also contends that the first respondent is allegedly the main perpetrator in the commission of the offence; and, that he instructed the second and third respondents to kill the deceased and further supplied them with the murder weapon. The Crown further alleged that the first respondent had targeted to kill the deceased together with other members of the Chief's Inner Council to which the deceased was a member as well as the Chief and his family.

[5] The respondents have denied these allegations; however, the first respondent conceded that the murder weapon belongs to him. The first respondent contended that the murder weapon was stolen from his possession; and, he denied giving the murder weapon to the second and

third respondents to kill the deceased. Furthermore, he conceded that he never reported the theft of the murder weapon to the police allegedly because it was not licenced. He contended that he obtained the firearm for personal security after receiving reports that Chief Zwelihle had sent certain people to kill him; however, he could not disclose the source of this information as well as the names of the hired assassins. Similarly, he conceded that he was involved in the chieftaincy dispute to the extent that his group which is opposed to the installation of the Chief has approached various traditional institutions challenging the appointment of the Chief.

[6] The Crown further contends that the first respondent has a pending criminal charge of malicious damage to property where he is charged with cutting the fence and setting alight a chicken shed belonging to the Chief's mother; and, that the first respondent has been tried for several assault charges relating to the chieftaincy dispute in the area. Similarly, the Crown contends that in 2014, the court issued an order stopping the holding of unauthorised meetings relating to chieftaincy disputes in the area; and, that the first respondent had failed to comply with the court order. The first respondent is accused of undermining public peace and security by perpetrating violence within the Chiefdom in his opposition to the installation of the Traditional Authority.

[7] The Crown contends that if released on bail, the first respondent would interfere with Crown witnesses, and, that he personally knows the Crown witnesses who implicated him in the murder. Another Crown witness is said to be the neighbour and a close relative of the deceased. The Crown contends that the first respondent, if released on bail, would put the lives of Crown witnesses in danger; and, that he will not comply with bail conditions.

[8] The first respondent has denied perpetrating violence in the area or holding unauthorized meetings over the chieftaincy dispute. However, he did not deny knowledge of the Crown witnesses or the fact that the police have been deployed in the area to provide security after several attempts were made to kill members of the Chief's Inner Council as well as the Chief and his family. Similarly, he admitted that he was actively involved with members of the community who are opposed to the installation of the Chief. The deceased was allegedly murdered about two hundred metres away from the Royal Kraal where the police were providing security.

[9] The Learned Judge in the court *a quo* granted bail to the respondents on the basis that there was no evidence that their release would endanger the

safety of the public and further cause violence in the community. His Lordship further held that there was no evidence that the respondents, if released on bail, would influence and intimidate Crown witnesses. It was the finding of the court *a quo* that the evidence against the respondents was merely speculative and not substantive.

[10] Subsequently, the Crown lodged an application in terms of section 6 (1) of the Court of Appeal Act No. 74 of 1954 seeking leave to appeal to the Supreme Court on a question of law. The learned Judge in the court *a quo* accordingly issued the Judge's Certificate in terms of section 6 of the Court of Appeal Act certifying that the matter was fit for an appeal in view of the grounds of appeal attached to the application. The Act provides the following:

> **"6. (1) The Attorney-General or, in the case of a private prosecution, the prosecutor, may appeal to the Court of Appeal, against any judgment of the High Court made in its criminal original or appellate jurisdiction, with leave of the Court of Appeal or upon a certificate of the Judge who gave the judgment appealed against, on any ground of appeal which involves a question of law but not a question of fact, nor against severity of sentence.**
>
> **(2) For the purposes of this Section, the question as to whether there was any evidence upon which the court could have come to the conclusion to which it did come shall be deemed to be a question of fact and not one of law. (Amended A.5/1967.)**

7. (1) On an appeal brought by the Attorney-General or other prosecutor, the Court of Appeal may, if it decides the matter in issue in favour of the appellant —

(a) **give such decision or take such action as the High Court ought, in the opinion of the Court of Appeal, to have given or taken; or**

(*b*) give such directions as the Court of Appeal may think just.

(2) If an appeal brought by the Attorney-General or other prosecutor is disallowed, the Court of Appeal may order that the appellant pay to the respondent costs, if any, to which the respondent was put in opposing the appeal and such costs may be taxed according to the scale of civil appeals to the Court of Appeal.

(3) If the Attorney-General is the appellant, the costs which he is so ordered to pay shall be paid by the Government."

[11] The Notice of Appeal for the Reservation of Questions of Law deals with four issues. Firstly, that the court *a quo* erred in law in rejecting the Crown's submission for the court to consider section 96 (4) (a) of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended. Secondly, that the court *a quo* erred in law in not considering section 96 (5) of the Criminal Procedure and Evidence Act as amended. Thirdly, that the court erred in rejecting the Crown's submission that the granting of bail to the respondents would endanger the safety and security of the public notwithstanding the court's appreciation that the murder was well-planned and executed. Lastly, that the court *a quo* erred in law

in rejecting the Crown's submission that if the respondents were granted bail, they would interfere with Crown witnesses.

[12] The court has a discretion to determine and grant bail to an accused unless the court finds that it is the interests of justice that the accused should be detained in custody. Such a discretion should not be exercised capriciously but judiciously having regard to legislative provisions, the peculiar circumstances of the case as well as the bill of rights enshrined in the Constitution. When discharging this obligation, the Court should balance the right of the accused to his liberty with the interests of justice.

[13] His Lordship M.C.B. Maphalala CJ, in the case of *Sibusiso Sibonginkosi Shongwe v. Rex*[1] had this to say:

> **"[19] It is trite that bail is a discretionary remedy; however, the court is required to exercise that discretion judiciously having regard to legislative provisions applicable, the peculiar circumstances of the case as well as the bill of rights enshrined in the Constitution. The purpose of bail in every constitutional democracy is to protect and advance the liberty of the accused person to the extent that the interests of justice are not thereby prejudiced. The protection of the right to liberty is premised on the fundamental principle that an accused is presumed to be innocent until his guilt has been**

[1] Criminal Appeal Case No. 26/2015 at para 19.

established in court. It is against this background that the court will always lean in favour of granting bail in the absence of evidence that doing so will prejudice the administration of justice."

[14] The interests of justice sought to be protected in bail proceedings are two-fold: firstly, that the accused should attend trial and not abscond or evade trial. Secondly, that the accused does not undermine the proper functioning of the criminal justice system including but not limited to interfering with the evidence of the prosecution as well as undermining the safety and security of the public. The accused bears the onus to establish on a balance of probabilities that it is in the interests of justice that he should be released on bail. Where the accused is charged with an offence listed in the Fifth Schedule of the Criminal Procedure and Evidence Act, the accused should, in addition, adduce evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his release.[2]

[2] *Maxwell Mancoba Dlamini and Another v. Rex* Criminal Appeal Case No. 46/2014 at para 14-17; *Sibusiso Sibonginkosi Shongwe v. Rex* Criminal Appeal Case No. 26/2015 at para 11.

[15] Similarly, it is trite law that an accused cannot be arrested and detained in custody in order to facilitate police investigations; such a practice is unlawful and offends the recognised presumption of innocence.[3] The essence of an arrest is to present an accused before court to answer to the indictment upon a fully investigated case. Substantial evidence is required to rebut the evidence of the accused applying for bail. Once the court makes a specific finding denying bail, it becomes *functus officio* and cannot entertain a subsequent bail application under the guise of "new facts" or "changed circumstances" which have arisen.[4]

[16] A subsequent bail application before the same court is permissible where bail has been granted, and, the accused only seeks to vary bail conditions:[5]

> **"(18) Any court before which a charge is pending in respect of which**
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> **bail has been granted, may at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition of bail-**

[3] *Siboniso Sibonginkosi Shongwe v.* Rex Criminal Appeal Case No. 26/2015 at para 11-13; Maxwell & Another v. Rex Criminal Appeal Case No. 42/2014 at para 14.
[4] *Sibusiso Shongwe v. Rex* (supra) at para 16-18; *Maxwell & Another v. Rex* Criminal Appeal Case No. 42/2014 at para 4-6.
[5] Ibid footnote 4; Sections 96 (18), (19) and (20) of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended.

(*a*) with regard to the reporting in person by the accused at any specified time and place to any specified person or authority;

(*b*) with regard to any place to which the accused is forbidden to go;

(*c*) with regard to the prohibition of or control over communication by the accused with witnesses for the prosecution;

(*d*) with regard to the place at which any document may be served on him under this Act;

(*e*) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the accused;

(*f*) which provides that the accused shall be placed under the supervision of a probation officer or a correctional official.

(19) Subject to the provisions of this Act—

(*a*) any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, subject to the provisions of sections 95(3) and 95(4), increase or reduce the amount of bail so determined, or amend or supplement any condition imposed under subsection (15) or (18) whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of

the accused and, when the accused is present in court, determine the application;

(*b*) if the court referred to in paragraph (*a*) is a superior court, an application under that paragraph may be made to any judge of that court if the court is not sitting at the time of the application.

(20) The court dealing with bail proceedings as contemplated herein or which imposes any further condition under subsection (18) or which, under subsection (19), amends the amount of bail or amends or supplements any condition or refuses to do so, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof and where such court is a magistrate's court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such conditions or any amendment or supplementation thereof."

[17] Having dealt with the general principles of law applicable in bail proceedings, I now turn to deal with the particular facts of the present appeal. It is common cause that the respondents are charged with premeditated murder which is an offence listed under the Fifth Schedule

of the Criminal Procedure and Evidence Act as amended. Similarly, it is not disputed that the murder was committed pursuant to a chieftaincy dispute raging in the area. The deceased was a member of the Chief's Inner Council at the time of his death.

[18] It is further not disputed that the first respondent is a leading member of the faction that is opposed to the installation of the Chief. In addition the first respondent has conceded that the murder weapon belongs to him even though he alleges that it was stolen from him by the alleged perpetrators of the offence; however, he conceded that he never reported the theft of the murder weapon to the police allegedly because the murder weapon was not legally licenced. He contends that he kept the weapon for personal security; however, there is no evidence that the first respondent was under any threat to possess a weapon, and, no such threat was ever reported to the police.

[19] It is apparent from the evidence that there is public violence in the area coupled with personal insecurity resulting from the various factions to the chieftaincy disputes. Consequently, several attacks have been made to the Chief's residence, and, the police have been deployed in the area to provide security and maintain peace. The evidence shows clearly that the community is outraged and shocked at the violence caused by the

chieftaincy dispute. The evidence by the prosecution that there is a list of opponents destined to be killed for supporting the Chief has not been denied. The evidence that the deceased was shot and brutally killed by his assailants not very far from the Royal Kraal which is guarded by the police has not been disputed. The evidence paints a picture of a community that is in turmoil and living in fear of being killed by the various factions to the chieftaincy dispute.

[20] The Criminal Procedure and Evidence Act[6] provides the following:

> **"96. (1) (*a*) In any court, an accused person who is in custody in respect of an offence shall, subject to the provisions of section 95 and the Fourth and Fifth Schedules, be entitled to be released on bail at any stage preceding the accused's conviction in respect of such offence, unless the court finds that it is in the interests of justice that the accused be detained in custody;**
>
> **. . . .**
>
> **(4) The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established:**
>
> **(*a*) Where there is a likelihood that the accused, if released on bail, may endanger the safety of the public or any particular person or**

[6] Sections 96 (1) (a) and (4) of the Criminal Procedure and Evidence Act 67/1938 as amended.

may commit an offence listed in Part II of the First Schedule; or

(*b*) where there is a likelihood that the accused, if released on bail, may attempt to evade the trial;

(*c*) where there is a likelihood that the accused, if released on bail, may attempt to influence or intimidate witnesses or to conceal or destroy evidence;

(*d*) where there is a likelihood that the accused, if released on bail, may undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or

(*e*) where in exceptional circumstances there is a likelihood that the release of the accused may disturb the public order or undermine the public peace or security."

[21] The contention by the Crown that the release of the respondents would disturb public order and endanger public safety is not far-fetched as this evidence has not been disputed. The evidence against the respondents indicates that it would not be in the interests of justice to release the respondents on bail. It is clear from the evidence that the identity of the Crown witnesses and their evidence is well-known to the respondents; and, in view of the evidence before this Court, the safety of Crown

witnesses cannot be guaranteed if the respondents could to be released on bail.[7] Similarly, the volatile and explosive environment within the community may cause violent eruptions which would compromise the safety of the community[8]. Clearly, the offence has caused outrage in the community. The release of the respondents could undermine public confidence in the criminal justice system[9]. Furthermore, a sense of peace and security in the community would be undermined[10]. The release of the respondents would cause outrage in the community which could lead to public disorder[11].

[22] The brutal manner in which the deceased was killed is likely to induce a sense of shock and outrage in the community if the respondents were to be released. The Learned Judge in the court *a quo* acknowledged this fact in his judgment[12].

> **"I am alive to the most violent manner in which the deceased died, but at this stage it is not for me to determine the guilt of the accused or, for that matter, the presence or absence of aggravating circumstances. I am concerned here with the delicate act of balancing the interest of justice and those of the applicants. One day the accused may or may not pay for this heinous crime. Until**

[7] Section 96 (7) of Criminal Procedure and Evidence Act 67/1938 as amended.
[8] Section 96 (5) of Criminal Procedure and Evidence Act 67/1938 as amended.
[9] Section 96 (9) of Criminal Procedure and Evidence Act 67/1938 as amended.
[10] Ibid footnote 5 above.
[11] Ibid footnote 5 above.
[12] Paragraph 11 of the judgment of the court of quo.

the court decides on that aspect, the curtailment of the accused's constitutional rights must be no more than strictly necessary."

[23] An accused indicted for an offence listed under the Fifth Schedule of the Criminal Procedure and Evidence Act as amended who desires to be released on bail, should first adduce evidence which satisfies the court, on a balance of probabilities, that the interests of justice permit his release.[13] In addition to the above requirements the accused is required to adduce evidence which satisfies the court on a balance of probabilities that exceptional circumstances exist which in the interest of justice permit his release.[14] Clearly, there is a more stringent and rigorous test for bail in respect of offences listed under the Fifth Schedule of the Act:

"96. (12) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to—

(*a*) in the Fifth Schedule the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his or her release;

(*b*) in the Fourth Schedule but not in the Fifth Schedule the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless

[13] Section 96 (1) (a), (4) and (12) (b) of the Criminal Procedure and Evidence Act as amended.
[14] Section 96 (12) (a) of the Criminal Procedure.

the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release."

[24] The offences listed under the Fifth Schedule of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended are serious and violent crimes including but not limited to premeditated murder, armed robbery, robbery resulting in group rape or repeated rape of the victim, rape where the victim is a girl under 16 years or physically disabled or mentally ill and rape where the victim consequently suffers the infliction of grievous bodily harm. In South Africa these offences are listed under the Sixth Schedule of the Criminal Procedure Act No. 51 of 1977; its wording is substantially the same as the Criminal Procedure and Evidence Act No. 67 of 1938 as amended.

[25] The offences listed under the Fifth Schedule are accompanied by severe penalties in view of their seriousness. It is apparent that section 96 (12) (a) of the Criminal Procedure and Evidence Act as amended was enacted with a view to curtail and place stringent measures on the release on bail pending trial. Not only does the legislation place the onus of proof upon the accused but it requires that he adduces evidence on a balance of probabilities which satisfies the court that exceptional circumstances exist which in the interest of justice permit his release. The accused in a bail

application cannot rely on information provided by the prosecution or placed before court or informal factors which tend to show that he should be released. The accused should actually adduce evidence failing which his detention continues pending trial.

[26] *His Lordship M.C.B. Maphalala JA*, as he then was, in the unanimous judgment of the Supreme Court of Swaziland in the case of *Wonder Dlamini and Another v. Rex*[15] quoted with approval the South African Constitutional Court case of *S. v. Dlamini; S. v. Dladla and Others; S. v. Jourbert; S. v. Schietekat 1999* (2) SACR 51; 1999 (4) SA 623 (CC). The issue before the South African Constitutional Court was whether section 60 (11) (a) of the Criminal Procedure Act 51 of 1977 infringes upon the accused's right to personal liberty by the requirement that the accused should adduce evidence which satisfies the court that "exceptional circumstances" exist which in the interest of justice permit his release. Section 60 (11) (a) of the Criminal Procedure Act is similar to section 96 (12) (a) of the Criminal Procedure and Evidence Act 67 of 1938 as amended.

[15] Criminal Appeal case No. 01/2013 para10-13.

[27] *Kriegler J* who delivered the judgment of the South African Constitutional had this to say[16]:

> **"[60] . . . an accused on a schedule 6 charge must adduce evidence to satisfy a court that 'exceptional circumstances' exist which permit his or her release.**
>
> **[61] . . . . Under section (11) (a) the lawgiver makes it quite plain that a formal onus rests on a detainee to 'satisfy the court'. Furthermore, unlike other applicants for bail, such detainees cannot put relevant factors before the court informally, nor can they rely on information produced by the prosecution; they actually have to adduce evidence. In addition, the evaluation of such cases has the predetermined starting point that continued detention is the norm. Finally, and crucially, such applicants for bail have to satisfy the court that 'exceptional circumstances' exist."**
>
> **. . . .**
>
> **[63] Section 60 (11) (a) applies only when an accused is charged with one of the serious offences listed in schedule 6. It is true that the seriousness of the offence, and with it the heightened temptation to flee because of the severity of the possible penalty, have always been important factors relevant to deciding whether bail should be granted. So, too, have been the possibility of interference with the course of the case, and the accused's propensity to interfere in the light of his or her criminal record. Indeed, those are factors that are expressly mentioned in the list of 'ordinary' circumstances contained earlier in section 60.**

[16] *S. v. Dlamini; S. v. Dladla and Others; S. v. Jourbert; S. v. Schietekat 1999* (2) SACR 51; 1999 (4) SA 623 (CC) at para 60, 61, 63, 64 and 74 of the judgment.

[64] These are factors, therefore, which in the past would have been considered in determining whether bail should be granted. However, s 60 (11) (a) does more than restate the ordinary principles of bail. It states that where an accused is charged with a schedule 6 offence, the exercise to be undertaken by the judicial officer in determining whether bail should be granted is not the ordinary exercise . . . in which the interests of the accused in liberty are weighed against the factors that would suggest that bail be refused in the interests of society. Section 60 (11) (a) contemplates an exercise in which the balance between the liberty interests of the accused and the interests of society in denying the accused bail, will be resolved in favour of the denial of bail, unless 'exceptional circumstances' are shown by the accused to exist. This exercise is one which departs from the constitutional standard set by section 35 (1) (f). Its effect is to add weight to the scales against the liberty interest of the accused and to render bail more difficult to obtain than it would have been if the ordinary constitutional test of the 'interests of justice' were to be applied."

. . . .

[74] Section 60 (11) (a) does not contain an outright ban on bail in relation to certain offences, but leaves the particular circumstances of each case to be considered by the presiding officer. The ability to consider the circumstances of each case affords flexibility that diminishes the overall impact of the provision. What is of importance is that the grant or refusal of bail is under judicial control, and judicial officers have the ultimate decision as to whether or not, in the circumstances of a particular case, bail should be granted."

[28] Consequently, it should be observed that the respondents did not apply for a speedy trial in the event that this Court allows the appeal. It is well-settled that the accused should apply for an appropriate directive to expedite his trial under section 88*bis* in the event bail is refused[17]; hence, this remedy is not automatic in the event that bail is refused. It is common cause that the Registrar of the High Court has already allocated the trial in the matter to the second session of 2016 commencing on the 6th June 2016 to 5th August, 2016.

[29] Accordingly, the following order is made:

1. The appeal is allowed.
2. The judgment of the court a quo is substituted with the following order:

   2.1 bail is refused.

M.C.B. MAPHALALA
CHIEF JUSTICE

[17] Section 95 (7) Criminal Procedure and Evidence Act.

I agree: S.P. DLAMINI
JUSTICE OF APPEAL

I agree: M.J. MANZINI
ACTING JUSTICE OF APPEAL

For Appellant: Senior Crown Counsel M. Nxumalo
For Respondent: Attorney Mandla Mkhwanazi

DELIVERED IN OPEN COURT ON 30th JUNE 2016