



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
EX-TEMPORE JUDGMENT**

Case no: CC 11/2015

In the matter between:

THE STATE

APPLICANT

and

DESMOND CORNELIUS VRIES

RESPONDENT

Neutral citation: *State v Vries* (CC 11/2015) [2017] NAHCMD 194 (18 July 2017)

Coram: USIKU, J

Heard on: 18 July 2017

Delivered: 18 July 2017

Flynote: Criminal procedure – Appeal – Application for leave to appeal – Applicant required to satisfy the court that it has reasonable prospects of success on appeal – Court found that Applicant has failed to show that it has reasonable prospects of success on appeal – Consequently court dismissed the application.

Summary: Criminal procedure – Appeal – Application by Prosecutor-General for leave to appeal against the acquittal of the Respondent on murder charge – Having

considered the application for leave to appeal, the court found that the Applicant has no prospects of success on appeal – Consequently the court dismissed the application.

ORDER

The application for leave to appeal is dismissed.

JUDGMENT

USIKU, J:

[1] On the 28 February 2017 this court found the Respondent in this matter not guilty on three counts, including one count of murder and ordered his acquittal.

[2] The Applicant, not satisfied with that decision, applies for leave to appeal to the Supreme Court against the not-guilty verdict in respect of the murder charge only.

[3] The grounds advanced in support of the application for leave to appeal are as set out in the Applicant's Notice for Leave to Appeal, and its heads of argument.

[4] The Respondent opposes the application and contends that the application be dismissed, as Applicant has no prospects of success on appeal.

[5] In an application for leave to appeal an applicant bears onus to satisfy the court that he has reasonable prospects of success on appeal. The application should only be granted if it appears to the court that there is a reasonable prospect of success on appeal.

[6] In the instant matter, the court has given its reasoned judgment on the 28 February 2017 setting out its reasons for its findings, such reasons covers the grounds raised by the Applicant in this application, and I do not deem it necessary to repeat such reasons herein.

[7] I have assessed all the grounds raised by the Applicant herein, and I am not satisfied that the grounds raised by the Applicant establish reasonable prospects of success on appeal.

[8] Most of the grounds raised by the Applicant revolve around the testimony of witness Diego Piete, during trial. As set out in the court's judgment dated the 28 February 2017, none of the events relating to the alleged assault testified to by witness Diego, were borne out by objective evidence. The court dealt with the approach to be taken in regard to single witness' evidence, in the judgment, which I need not reiterate here.

[9] The Applicant has not cited authority to persuade this court that Applicant has reasonable prospects of success on appeal. Most of the authorities cited by Applicant are authorities the court's attention was referred to prior to delivery of judgment.

[10] For example, Applicant submits that the court erred in law and/or in fact in that it:

- (a) considered the promise of a bicycle to witness Diego Piete as an encouragement for him to testify, as basis for treating his testimony with caution;
- (b) failed to pay due regard to witness Diego Piete's age and lapse of time and allow for possible shortcomings in his testimony;
- (c) found as relevant how Wilfred ended up sleeping in the same bed with the deceased, etc etc.

[11] However, the Applicant in its application for leave to appeal, has not cited authority, supporting the above propositions to persuade the court, to the effect that:

(a) testimony of a witness who was promised a bicycle as an inducement to testify should or may, be received without caution; or,

(b) greater latitude should or may, be given to young witnesses where there has been long lapse of time, since occurrence of events testified about; or

(c) the circumstances about how someone ended up sleeping in the same bed with a deceased person, are not relevant during a murder trial.

[12] Viewed against the evidence on record, and the judgment of the court dated the 28 February 2017, the grounds raised by the Applicant have no remote prospects of success on appeal, and this application, therefore, falls to be dismissed.

[13] In the result, I make the following order:

The application for leave to appeal is dismissed.

B Usiku
Acting Judge

APPEARANCES

PLAINTIFF

S. Nduna
of Office of the Prosecutor-General
Windhoek

DEFENDANT:

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