

039

2ND REVISION

SS269/07-SvS
22/10/2009

1


JUDGMENT LTA

IN SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: SS269/07

DATE: 22/10/2009

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE	YES/NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	
DATE <u>11-05-2012</u>	SIGNATURE 

In the matter between

10 JOHN HAROLD KOTZE

APPLICANT

and

THE STATE

RESPONDENT

J U D G M E N T (leave to appeal)

COETZEE J: The accused applies for leave to appeal against the conviction by the Regional Court, confirmation of the conviction by this court as well as the sentence. Mr Moosa submits that another court may well come to a different conclusion than the magistrate and I did regarding the merits and as far as the sentence is concerned, may well reduce the sentence which he submits is shockingly inappropriate. He submits that the accused has reasonable prospects of success on appeal.

When I gave the judgment on the merits I said that we are dealing with the evidence of a child, we are dealing with the evidence of a single witness who is to some extent supported by a family member. I expressed

criticism of her evidence. In the light thereof my view is that leave to appeal against conviction should be granted.

It is not unlikely that another court will find the sentence imposed by me to be shockingly inappropriate, considering all the facts and factors that have been mentioned. In the result the accused is given leave to appeal to a full court of the South Gauteng High Court of South Africa against the sentence as well.

The accused is out on bail, he was released on bail some years ago. He has always come to court when he was supposed to do so unless
10 he was ill in which case his counsel handed in a medical certificate to show that he is unable to come to court.

In my view the accused is not a flight risk and under the circumstances bail is extended pending the finalisation of the appeal.