

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

Case no: 5027/2017

In the matter between:

**MEDIA 24 LIMITED**

Applicant

and

**THE NATIONAL DIRECTOR OF  
PUBLIC PROSECUTIONS**

First Respondent

**HENRI VAN BREDA**

Second Respondent

**ADV LOUISE BUIKMAN SC**

Third Respondent

In re:

**THE STATE**

and

**VAN BREDA**

Accused

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**JUDGMENT DELIVERED ON 6 APRIL 2017  
IN THE APPLICATION FOR LEAVE TO APPEAL**

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**DESAI J.**

[1] The National Director of Public Prosecutions and the Accused, the first respondent and the second respondent respectively, both continue to resist the video recording and broadcast of the criminal trial in which the Accused is indicted

on several charges of murder. They now seek leave to appeal to the Supreme Court of Appeal against my order dated 27 March 2017 permitting such broadcast.

[2] I am not at liberty to grant the leave sought, unless I am persuaded that there are reasonable prospects that the appeal would succeed or that there is some other compelling reason why the matter should be ventilated in a higher court.

[3] I was, and am, acutely aware that any order I make should not inhibit justice or compromise the second respondent's fair-trial rights. Similarly I am alert to the notion of the vulnerability of witnesses on camera contained in the dicta from cases cited by counsel.

[4] Epstein SC, once again appearing for the first respondents, has meticulously highlighted the possible adverse effects of broadcasting the testimony of a particular witness. He does not, and cannot, say that it would occur in this instance. There is no evidence to support that.

[5] Also, it is not easily ascertainable from his argument how, in this specific trial, the Accused's fair-trial rights would be compromised. If there is any hint of that occurring, the order granted by me can be easily varied.

[6] Van Zyl SC, appearing for the second respondent, re-stated the argument that potential witnesses would have direct access to the evidence of the witness testifying in court. This argument is logically untenable for the reasons already cited.

[7] Van Zyl SC also dealt with the inhibiting effect of cameras and the broadcasting upon witnesses and counsel. Again there is no real evidence to suggest that the witnesses in this case would find the cameras inhibiting. Counsel appearing for both sides in the trial are reasonably senior in practice and I do not think that either of them would wilt under camera lights (if such).

[8] The problems highlighted by counsel could occur in any trial and, I re-state, that if there is any suggestion of such problems occurring, I shall not hesitate to vary my order.

[9] In light of the above the rights of free expression, as contemplated in our Constitution, should hold sway.

[10] In considering other compelling reasons to grant leave herein, I have considered the judgments referred to by counsel. There may be conflicting points of view in certain respects. But the principles are clear. The so called clash of rights is recognised and I am invested with a discretion in deciding the matter. I have done so.

[11] It seems to me that in the modern era of rapidly increasing methods of mass communication, to decline this order would be inconsistent with the current and, certainly, the future reality.

[12] I am accordingly unconvinced that another court would come to a different conclusion.

**THE LEAVE TO APPEAL IS ACCORDINGLY REFUSED.**

  

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S DESAI

Judge of the High Court