

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: SS114/2018

|                                                                                                                                                                                                           |                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| (1)                                                                                                                                                                                                       | REPORTABLE: YES / <input checked="" type="radio"/> NO                  |
| (2)                                                                                                                                                                                                       | OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO |
| (3)                                                                                                                                                                                                       | REVISED.                                                               |
| <div style="display: flex; justify-content: space-between;"><div>2/10/2023<br/>DATE</div><div><br/>SIGNATURE</div></div> |                                                                        |

In the matter between:

**KUBHEKA STHABISO**  
**MTHIYANE MOTLALEPULE**  
**XABA MLULEKI**

1<sup>st</sup> Applicant  
2<sup>nd</sup> Applicant  
3<sup>rd</sup> Applicant

And

**THE STATE**

Respondent

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**JUDGMENT**

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**MAKUME, J:**

- [1] The three Applicants were convicted by this Court on the 15<sup>th</sup> March 2019 and sentenced as follows:

- 1.1 Count one Murder 20 years' imprisonment
- 1.2 Count 2 Possession of Unlicensed Firearm 10 years' imprisonment
- 1.3 Count 3 Possession of prohibited Firearm 15 years' imprisonment
- 1.4 Count 4 Possession of Ammunition 10 year's imprisonment

[2] This Court further ordered that the sentences in counts 2 and 4 run concurrently with the sentence of 20 years' imprisonment in count 1. Effectively the Applicants have been committed to serve 35 years' in prison.

[3] The first and third Applicants are seeking leave to appeal against conviction and sentence whilst the second Applicant only seeks leave in respect of sentence on the basis that the cumulative effect of a sentence of 35 years is disturbingly shocking.

[4] It is trite law that the test to be applied in deciding whether or not leave to appeal should be granted is governed by the provisions of Section 17(1) of the Superior Courts Act number 10 of 2013 which provides as follows:

“Leave to Appeal may only be given where the judge or judges concerned are of the opinion that:

- (a) The Appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard including conflicting judgement.”

[5] The first and third Applicants main ground of appeal is that the witnesses Dladla and Khanyile never saw them shooting at the deceased because Dladla only heard gun shots after he had escaped through the window.

- [6] Secondly it is argued that Dladla and Khanyile as eyewitness- influenced each other falsely implicating the three Applicants as a revenge for them having had charges withdrawn against them in KZN when they had shot and injured Dladlas father. All three Applicants pleaded alibis which they could not substantiate.
- [7] It was never placed in dispute that the witnesses Dladla and Khanyile knew the Applicants as they all come from Ladysmith which means that the issue of identity no longer becomes an issue. The room in which the shooting took place including the outside was well illuminated that also was never put in dispute.
- [8] Dladla and Khanyile even though they did not see who shot the deceased amongst the three men they saw firearms in their possession and shooting took place after they, had run away, they heard gun shots and the deceased was found dead. The only reasonable inference is that it is the three men whom they last saw at the door with firearms who shot the deceased.
- [9] A few days after the shooting two firearms were found in the possession of Accused number 1 and 2 and the results of the ballistic tests linked the two firearms to the cartridges and bullets found at the scene of the murder
- [10] In the end result after carefully reading the judgement and evidence led I am not persuaded that there are any reasonable prospects of the appeal succeeding.

#### AD SENTENCES

- [11] The three Appellants acted in common purpose when they shot and killed the deceased. This Court deviated from imposing the minimum sentence of life imprisonment when it could have done so.

[12] Secondly the sentences in count 2 and 4 were made to run concurrently with the sentence of 20 years thus reducing their sentence by another 20 years.

[13] The sentence of 35 years is in my view just and equitable in view of the offence especially that I did not opt for a sentence of life imprisonment.

[14] In the result I make the following order:

ORDER

- (i) Application for Leave to Appeal against conviction by first and third Applicants is refused.
- (ii) Application for Leave to Appeal against sentence by first, second and third Applicants is refused.

Dated at Johannesburg on this 2 day of October 2023

  
M A MAKUME  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, JOHANNESBURG

Appearances:

|                  |   |                                |
|------------------|---|--------------------------------|
| DATE OF HEARING  | : | 14 SEPTEMBER 2023              |
| DATE OF JUDGMENT | : | 02 OCTOBER 2023                |
| FOR APPELLANTS   | : | ADV GREYLING                   |
| INSTRUCTED BY    | : | LEGAL-AID SA                   |
| FOR RESPONDENT   | : | ADV WILLIAMS                   |
| INSTRUCTED BY    | : | NATIONAL PROSECUTING AUTHORITY |