



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: A169/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

A handwritten signature in black ink, appearing to read "Gunnthies", is written over the signature line.

SIGNATURE

22 January 2021
DATE

In the matter between:

VICTOR SIBUSISO ZUMA

Appellant

and

THE STATE

Respondent

JUDGMENT

AVVAKOUMIDES AJ

INTRODUCTION:

1. The Appellant was convicted in the Regional Court, Cullinan, on one count of robbery with aggravating circumstances, read with section 1 of Act 51 of 1977. The Appellant was sentenced to 15 years imprisonment.

Pursuant to the refusal of an application for leave to appeal before the Regional Court, the Appellant's petition to this Court was granted on 7 March 2019 only in respect of the conviction.

ISSUES ON APPEAL:

2. The Appellant has placed in dispute whether the State proved, beyond a reasonable doubt, that he was part of a group who robbed various complainants as Eskom.
3. It appears to be common cause that the Appellant was present at the scene and that a robbery ensued. The Appellant however has denied that he played any part in the robbery.

THE EVIDENCE:

4. The State led the evidence of Mr Lukhele, a security officer at Eskom, who was on duty on 16 August 2014. He testified that one Bongani and Mr Makgoba were nearby him. At approximately 21h00 that evening he noticed a grey Corsa vehicle with blue lights on the dashboard of the vehicle which arrived at the gate where he was on duty. Mr Lukhele thought that the vehicle was a police vehicle. When approaching the vehicle, a person sitting in the front passenger seat introduced themselves as police officials. A second person wore a reflector jacket

with the words "*crime scene*" portrayed thereon. A third person appeared to Mr Lukhele to have a case docket in his possession. The driver of the vehicle was the Appellant.

5. Mr Lukhele was informed that they had come to search the premises because they were looking for someone. The three men who accompanied the Appellant alighted from the vehicle and opened the gate themselves and entered the premises on foot. Mr Lukhele then formed the belief that they were not police officers, more so when one of the men asked him whether he was in possession of a panic button. He did not notice the driver of the vehicle clearly.
6. He approached the building of Eskom together with the three men, but the Appellant remained in the vehicle. The three men tied Mr Lukhele up with rope together with two other men who were employed in the office at Eskom. They demanded that they be shown where the copper was. According to Mr Lukhele the driver (the Appellant) later drove the vehicle inside the premises.
7. Mr Lukhele identified that it was the Appellant who held him and the two men hostage in the office and that he was in possession of a firearm. When the police arrived at the scene the Appellant was arrested in the office whilst he was holding Mr Lukhele and the two other men hostage. It took approximately one hour before the police arrived. This is an

important aspect because, inasmuch as the Appellant denied that he was part of the robbery, it is common cause that three men were tied up with ropes whilst the Appellant was not tied up at all. This flies in the face of his evidence that he was a victim as well and that all he did was to transport the three men to Eskom against payment of the sum of R1 000.00.

8. Mr Lukhele confirmed that there was sufficient lighting where he and the other two men were held hostage and only the Appellant was arrested by the police at the scene upon their arrival. Mr Lukhele testified that the Appellant was part of the group of men who arrived at the scene and that he took part in the robbery. The Appellant kept watch over Mr Lukhele and the two men in the office and there was no indication that the Appellant was under any duress to participate in the robbery.
9. The State called a second witness, Mr Monyae who testified that he was also on duty as a security officer on 18 August 2014. Mr Lukhele and three men approached him, and one of the three men asked him whether he carried a panic button. He and Mr Lukhele were tied up and were taken to Mr Makgoba's office where they were held hostage. When the police arrived, the Appellant was arrested in the office and he was the one who kept watch over them. Mr Monyae's evidence is corroborated by that of Mr Lukhele and, that there was no indication whatsoever that the Appellant was held at gunpoint or forced to take part in the robbery.

10. The State called Mr Makgoba who was on duty on the night of 18 August 2014. His evidence also corroborates the evidence of the other two witnesses in all material respects. Mr Makgoba confirmed that when the police arrived only the Appellant was arrested, and he was responsible for keeping watch over the three of them who were tied up.

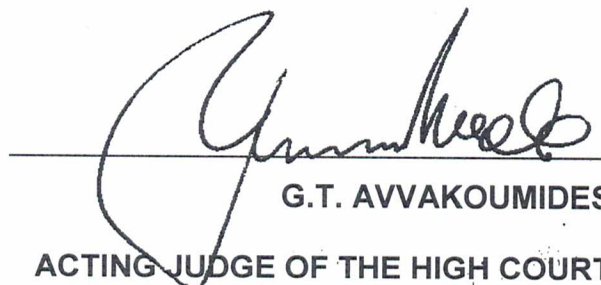
CONVICTION:

11. The Respondent submitted that the evidence of the State witnesses corroborated each other in all material respects. It was further submitted that it is indisputable that four persons entered the premises and only one was arrested at the scene by the police, being the Appellant. The three State witnesses all testified that it was the Appellant who kept watch over them during the robbery. In doing so, bearing in mind the facts and the evidence led, the Appellant acted with common purpose in the robbery at Eskom.
12. The Appellant, in denying that he acted with common purpose, submitted that two of the State witnesses could not clearly identify the Appellant. However, in rebuttal, the State submitted that it was common cause that only one person was arrested in the office by the police and that is the Appellant. This is while the three men employed by Eskom were tied up and lying on the floor of the office. In this regard the State submitted that the version of the Appellant that his role was simply to transport the three

other men to the premises of Eskom against payment, was correctly rejected by the Court *a quo* as not reasonably and possibly true.

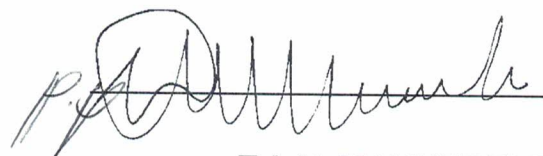
13. Having considered the evidence and the submissions made by the parties, I am not persuaded that the appeal against the conviction has any merit. Consequently, I make the following order:

- 13.1 The appeal against the conviction is dismissed.



G.T. AVVAKOUMIDES
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree



T.A.N. MAKHUBELE

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 01 September 2020
Date of judgment: 22 January 2021

Delivered: This judgment was prepared and authored by the Judge(s) whose name(s) is/are reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 22 January 2021.

Appearances:

On behalf of Appellant:	Adv LA van Wyk
Instructed by:	The Legal Aid Board of South Africa
On behalf of Respondent:	Adv L Williams
Instructed by:	National Prosecuting Authority