



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

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES ☒ NO ☒
(2)	OF INTEREST TO OTHER JUDGES: YES ☒ NO ☒
(3)	REVISED.
28/June 2019	
DATE	SIGNATURE

Appeal Case No: A135/2018

In the matter between:

SEKHOANE MABITLE

First Appellant

MOTINYANE SEABATA

Second Appellant

THABANG CASWELL KHOARAHLA

Third Appellant

and

THE STATE

Respondent

JUDGMENT

HF JACOBS, AJ:

[1] The appellants were convicted in the Court *a quo* on the following charges:

[1.1] Robbery with aggravating circumstances read with the provisions of section 51(2) of the Criminal Law Amendment Act, 105 of 1997 (Count 1);

[1.2] Attempted murder of Thomas Monname (Count 2);

[1.3] Attempted murder of Thabo Qekela (Count 3);

[1.4] Attempted murder of Oatiseng John Monname (Count 4);

[1.5] Attempted stock theft or produce to wit 48 goats (Count 5);
and

[1.6] Malicious injury to property (Count 6).

[2] The appellants were sentenced on 13 December 2017 as follows:

[2.1] Count 1 - 15 years imprisonment;

[2.2] Count 2 to 4 (taken together for sentence) - 4 years imprisonment;

[2.3] Count 5 - 5 years imprisonment; and

[2.4] Count 6 - one year imprisonment.

[3] The effective period of imprisonment is therefore 26 years for each of the three appellants. The trial Court refused leave to appeal against the conviction and sentences. A petition by the appellants against their convictions to this Court was similarly refused. Their petition for leave to appeal against their sentences was however granted. The salient facts that gave rise to their convictions are the following:

[4] One of the complainants, Mr John Monname, his father and a helper went to check their goats on New Year's Day 2016. On arrival they found their goats to be missing. Mr Monname went into the fields and when he got to a hollow he found about 48 goats of which the feet were tied up. When he looked up he saw the third appellant who was looking after the goats in the hollow. When the third appellant saw Mr Monname he ran away and Mr Monname chased after him. The third appellant then called the names of other persons and shouted for help. Three men came out of the hollow. The first appellant was one of them. The group of men stabbed Mr Monname and hit him with a kirie. He sustained injuries on the head and chest and had a stab wound on the arm. Mr Monname ran away and was chased by the group led by the first appellant. The group of men encircled Mr Monname and his father and the helper. Mr Monname's father took out a firearm and fired a warning shot. The group approached the three men with kuries and Mr Monname's father fired a second shot but the firearm jammed. At that moment Mr Monname saw the helper, he was on the ground hit by stones and kuries and he also saw the third appellant and others chasing him with kuries and screwdrivers. The first appellant then picked up the firearm of Mr Monname's father and the second

appellant dragged Mr Monname's father from behind. Mr Monname drove off in their van, met two police vehicles and returned. The police then assisted and took some of the injured to hospital.

[5] In his judgment on sentence the Magistrate, correctly in my view, recorded that the injuries the complainant sustained caused them considerable pain and suffering and medical expenses. Some of the goats were retrieved and some not. There was considerable financial loss. Mr Monname was 70 years of age. The firearm they took from the complainants was never returned by the appellants. The Magistrate took the personal circumstances of the appellants duly into account. In view of the nature of the crimes, the circumstances under which they have been committed the individual sentences imposed by the trial Court does not in my view induce shock. The effective period of imprisonment, however, does. Section 280 of the Criminal Procedure Act of 1977 provides that when a person is at any trial convicted of two or more offences or when a person undergoing sentence is convicted of another offence, the Court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the Court is competent to impose.

[6] In terms of section 280(2) such punishment, when consisting of imprisonment, shall commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such sentences of imprisonment shall run concurrently. When a Court is of the view that sentences should not be served cumulatively, but concurrently, a definite order in this

regard must be made.¹ In my view the cumulative effect of the sentences imposed by the trial Court are in combination shocking. The trial Court should have, in my view, considered giving an order that the sentences run concurrently. In S v Moswathupa² the Supreme Court of Appeal said:

"Where multiple offences need to be punished, the Court has to seek an appropriate sentence for all offences taken together. Where dealing with multiple offences a Court must not lose sight of the fact that the aggregate penalty must not be unduly severe."

[7] In my view the cumulative effect of the sentences is unduly severe. In my opinion the cumulative effect of the sentences warrant interference as it strikes me as excessive.³

[8] Under the circumstances the appeal against sentence must to that limited extent be upheld.

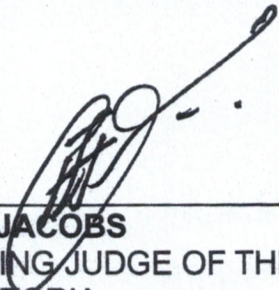
I propose the following order:

The individual sentences imposed by the trial Court are confirmed and it is ordered that the sentences imposed on the appellants shall be served concurrently in terms of section 280(2) of the Criminal Procedure Act of 1977.

¹ S v Brummer 1974 (4) SA 846 (N) at 847.

² 2012 (1) SACR 259 (SCA) at par [8].

³ See also: S v Dube 2012 (2) SACR 579 (ECG); S v Zondo [2013] ZASCA 51 (Unreported, SCA Case No: 627/12, 28 March 2013).



H F JACOBS
ACTING JUDGE OF THE HIGH COURT
PRETORIA

I agree, and it is so ordered.



T A N MAKHUBELE J
JUDGE OF THE HIGH COURT
PRETORIA

Mabitle, Seabata & Khoarahla v State (Appeal)