

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

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. <i>OK</i>
<i>07/03/2017</i>	<i>[Signature]</i>
DATE	SIGNATURE

Case no. 24/2015

In the matter between:

M. MOLEFE

Applicant

and

THE STATE

Respondent

Reasons for

JUDGMENT

1. The Petitioner's petition was denied. The petitioner was accused 3 during the trial. I shall now refer to the salient reasons for dismissing the petition.
2. Accused 2 and 3 were charged with robbery with aggravating circumstances and attempted murder and convicted on both counts and sentenced to 15 and 5 year's imprisonment respectively which sentences were ordered to be served concurrently.

3. As to the question how the accused came to be in possession of the complainant's car, accused 3 testified that he was phoned by accused 2 on 23 September 2012 from Orange Farm and requested to assist him with his vehicle which had broken down. He acceded to the request and found accused 2 with the Golf motor vehicle. They decided to push the car to where his cousin, accused 1, resided and to look at car the next day.
4. Later, after the arrest of accused 1, accused 3 made a statement to the police which was handed in as Exhibit B. In the statement accused 3, however, lied to the police and said that he knew nothing of the car.
5. Accused 1's evidence was important. He testified that he was phoned by his cousin, accused 3, who said that he was on his way to Orange Farm. When he arrived in the company of other men and in three cars, at between 1:00 and 1:30, accused 3 said to accused 1 he wanted to park the cars at accused 1's place. Accused 1 opened the garage and accused 3 parked the Golf in the garage and the other cars were parked on the property. It was the complainant's Golf vehicle which accused 3 was driving and which he parked in the garage of accused 1. Accused 1 did not know the six persons with accused 3 who drove in the other two cars except that accused 2 was one of them. He had seen accused 2 with accused 3 before. Accused 3 said they were going drinking and he would be back the following day to get the car. Accused 1 was not cross-examined on behalf of accused 3.
6. It seems clear that accused 3 played the leading role as far as the hiding of the stolen car at accused 1's place is concerned and that the car was in a working condition and that accused 3 was the one who drove the car into the garage.

7. Earlier that night, at 21:30 on 22 September 2012, the robbery took place. At approximately 2:00 on 23 September Const Sumbana got the message to look for the stolen vehicle. At the same time they got the signal from the vehicle's tracking system. They found the vehicle in the garage of accused 1. The burglar gate of the garage was locked. Accused 1 immediately told Const Sumbana that the car belonged to his cousin, accused 3. Accused 1 phoned accused 3 and told him that the police were there for the stolen vehicle. The line went dead and after that accused 3's phone remained off.
8. Later accused 3 visited accused 1 in jail and told him to deny everything. Accused 1 got angry because accused 3 brought the car there and then denied everything.
9. Accused 2's version was that he was phoned by accused 3, who was one of his employees, and requested to go with him to a client who owed them money. Accused 3 directed him to the complainant's place. Accused 3 got out and went to the complainant who was outside his house. They walked away from the house and accused 3 told accused 2 to follow them. The complainant apparently owed accused 3 money. According to accused 2 the complainant and accused 3 knew each other and he added that he had seen the complainant at accused 3's place in Orlando. According to accused 3 the business with the complainant did not go as anticipated and according to accused 2, accused 3 then produced a firearm and pointed it at the complainant.
10. The complainant grabbed the firearm and they struggled for possession thereof. The firearm fell on the ground and accused 2 went back to their car. He then heard a shot. Accused 2 drove off and later phoned accused 3 asking him what

had happened. According to accused 2 he was not with accused 3 when he parked the stolen Golf at accused 1's place.

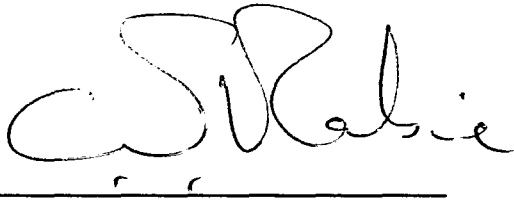
11. As mentioned before accused 3 testified that accused 2 phoned him to come and assist him with his car that had broken down and couldn't start. He went to accused 2, then took his own car to his grandmother's place. That is the place where accused 1 was residing. He went back to accused 2 and they pushed the broken down Golf vehicle to accused 1's place.
12. The version that accused 3 parked his car at accused 1's place and then walked back to where accused 2 was, was never put to accused 1. It was also not put to accused 1 that the complainant's car was pushed and not driven, when he testified that accused 3 had driven the car.
13. Accused 3 could also not explain adequately why the car could start and run perfectly well the next day if it could not start the previous night and had to be pushed, according to his version.
14. There is no doubt that the evidence of accused 1 has to be accepted. According to his evidence accused 3 was in control of the stolen car and drove the car and put it in accused 1's garage before going to town with his friends, including accused 2.
15. Furthermore, accused 3's version is riddled with improbabilities. To suggest that accused 2 would have called him to come out in the early hours of the morning if the car was starting and running perfectly, has to be rejected. Furthermore, accused 3 and accused 2 would hardly have pushed the car to accused 1's home if the car was running perfectly well. The whole basis for accused 3's defence,

namely his reason for being on the scene, was destroyed by these simple facts. Furthermore, once it is accepted that there was nothing wrong with the car's engine, it destroys accused 3's version as to why he went to Orange Farm in the first place because then accused 2 would not have phoned him to assist him with his breakdown.

16. Accused 3 admitted that accused 1 phoned him when the police were there to arrest him. His explanation why he did not phone accused 1 back or went to him, was not adequately explained to him.
17. Later he was phoned by accused 1 who told him he had been arrested. He could not get hold of accused 2 and went to the police station. He told the police that "we" left the car at accused 1's house. Accused 3 was arrested. The police told him the car had been hijacked and that the owner had been shot and killed. According to accused 3 he then panicked and therefore left the car there.
18. Accused 3 thus admitted that he was one of the persons who took the car to accused 1. By doing so he tried to convince the police of accused 1's innocence. But he could hardly have done so without having had knowledge of the car. And why would he panic if he had done nothing wrong. He lied to the police before he was even implicated.
19. In fact, in his statement to the police he denied any knowledge of the car. Why would he deny all knowledge if he had done nothing wrong.
20. It is necessary to again refer to the status of the complainant's car. The complainant said there was no problem with his car when he found it after the robbery. There was also no suggestion of anything being wrong with its engine

prior to the robbery. Thus accused 3's allegation that accused 2 phoned him to come and fix the Golf and that it couldn't start, cannot be true. Furthermore, accused 2 was a mechanic himself and according to accused 2 he would have been able to fix mechanical problems himself. Furthermore, how would they get the car to accused 1's place if it had mechanical problems. Accused 3 said they pushed the car after he had left his own car at accused 1's place. But, as I have already mentioned, it was never put to accused 1 that accused 3 was at his place twice, once to leave his own car and again when they pushed the car there. If they had fixed the car, why would they leave the car with accused 1 in the early hours of the morning only to return the next day.

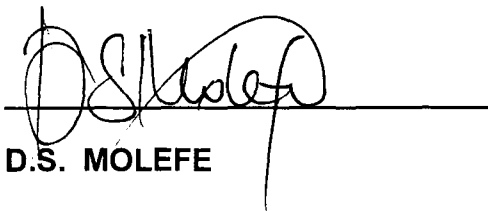
21. I cannot fault the Magistrate's acceptance of the evidence of the complainant and of accused 1 and describing them as good witnesses. I also agree with the Magistrate's rejection of the evidence of accused 3 and the reasons for doing so. Accused 3 tried to distance himself from the hijacked vehicle but he failed dismally in his efforts. His evidence was, as against the accepted evidence of the complainant and accused 1, not reasonably possibly true and in my view no other court would reasonably come to a different finding.
22. I consequently cannot fault the Magistrate's finding that accused 2 and accused 3 acted in concert when they committed the robbery and when accused 2 shot the complainant and in my view accused 3 has no reasonable prospects of success in any appeal proceedings.
23. Consequently, the petition was denied.

A handwritten signature in cursive script, appearing to read 'C.P. Rabie', written over a horizontal line.

C.P. RABIE

JUDGE OF THE HIGH COURT

I agree

A handwritten signature in cursive script, appearing to read 'D.S. Molefe', written over a horizontal line.

D.S. MOLEFE

JUDGE OF THE HIGH COURT