

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



CASE NO: CC65/19

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
19 July 2024	[REDACTED]
DATE	SIGNATURE

In the matter between:

THE STATE

And

KGAUKGELO GODFREY MOKOANE

Accused No 1

SELLO BRADLEY SENYATSI

Accused No 2

BOITUMELO DANIEL APHANE

Accused No 3

LUCAS MUDAU

Accused No 4

KABELO MASEMOLA

Accused No 5

PITSO STEVEN KGOTSANE

Accused No 6

JUDGMENT

LUKHAIMANE AJ

1. The accused were arraigned before this court on multiple counts of aggravated robberies, murder, attempted murders, kidnappings, unlawful possession of firearms, unlawful possession of ammunition, malicious damage of property, conspiracy, endangering life or property and money laundering. The charges stem from two incidents; one on 6 November 2017 at a Total Garage in KwaMhlanga and another on 20 December 2017 at Eersterus. Accused no 6 jumped bail and his trial was separated from the others. Accused no 2 applied to be a section 204 witness. Accused no 1, 3, 4 and 5 pleaded not guilty to all charges preferred against them. Accused no 4 has since passed on. Accused no 5 made use of his right to silence.
2. The State presented its case, calling several witnesses and thereafter closed the case for the prosecution. At the close of the case for the prosecution, accused no 5, Kabelo Masemola, applied to be discharged in terms of section 174 of the Criminal Procedure Act 51 of 1977 ("the CPA") on all the charges. All the accused were legally represented throughout the proceedings even though legal representation for accused no 1 changed during the trial.
3. Section 174 of the CPA provides for the consideration of a discharge of an accused person after the case for the prosecution has been closed and reads as follows:

"If at the close of the case for the prosecution at any trial; the court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge, it may return a verdict of not guilty."
4. It is on the basis of these provisions that accused no 5 has moved his application.

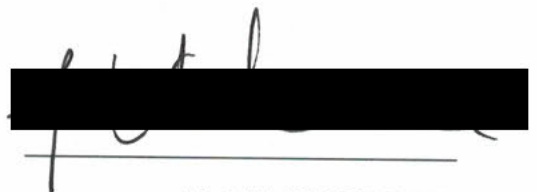
The evidence of the state against accused no 5.

5. Accused no 5 has been charged on all the counts that the state alleges, were committed by some or all the accused. He applied for a discharge in respect of all the charges. The State did not oppose the application.
6. Evidence was led in the main trial and a trial within a trial to determine the admissibility of confessions and pointing out allegedly done by the accused. This court has already ruled that the alleged pointing out by accused no 5 should be excluded.
7. For purposes of this application, it is not necessary to repeat any of the State's evidence in specificity. It suffices to state that the section 204 witness, accused no 2 on the indictment, testified on his involvement in the commission of the alleged offences. His evidence did not mention accused no 5 at all. No other State witness made any mention of accused no 5. In addition, the section 205 evidence regarding Vodacom cellular telephone data and records did not link accused no 5 to any of the other accused nor to any of the crime scenes.
8. Section 219 of the CPA states as follows:

"No confession made by any person shall be admissible against another person."

The law favours a strict interpretation of these provisions. Therefore, any extra-curial confession made by any of the co-accused cannot be admitted as evidence against an accused.

9. It is trite that once an accused pleads to the charges, the case can no longer be withdrawn, and the accused must be acquitted if the evidence falls below the minimum threshold for charging him in the first place. In accused no 5's case, it is not even an issue of evidence having been led and evaluated by this court and found to be weak for a conviction. It is an issue of no evidence being led at all. It is as if the state forgot that accused no 5 was there. Accused no 5 was forced to plead in circumstances where the State ought to have known that there was no evidence at all.
10. In the result, accused no 5's application must succeed.
11. I therefore make the following order:
- 11.1 The application by accused no 5 to be discharged in terms of section 174 of the CPA on all counts, is granted.



M A LUKHAIMANE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the State: Adv. MM Mashuga

Counsel for Accused no. 1 and 3: Adv. OKK Matshego

Counsel for Accused no. 5: Mr. Francois Joubert

Heard on : 18 July 2024

Delivered on : 19 July 2024

ⁱ See *S v Molimi* (CCT 10/07) (2008) ZA CC 2; 2008(3) SA 608 CC; 2008(2) SACR 76 CC; 2008(5) BCLR 451 (CC) (4 March 2008)