

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2024/A36

**REPORTABLE: NO
OF INTREST TO OTHER JUDGES: NO
JUDGE KUNY 08 April 2025**

In the matter between:

SONZULU NOMBULELO ALETTA

APPELLANT

and

THE STATE

RESPONDENT

CORAM: KUNY et MOOSA JJ

JUDGMENT

KUNY J

1 On Monday, 10 March 2025 the court made the following order:

1 The appeal is upheld.

2 The conviction and sentence imposed on the appellant is set aside and she is acquitted of the charges.

2 These are the reasons for the order. The appellant (accused 1) was charged with Jamieson Koos Phiri (accused 2) in the regional court, Vosloorus, with the unlawful killing of a 5 month infant, Jayden Genyo Motshalefa (“the deceased”), on 20 April 2019 at Vosloorus.

3 It is alleged by the State that the appellant pushed P[...] D[...] (the grandmother of the deceased) whilst she was carrying the deceased on her back. As a result, D[...] fell on the ground with the deceased still on her back. It is further alleged that the appellant, acting in common purpose with Phiri, continued to kick the deceased. The State relied on the minimum sentencing provisions in Part 1 alternatively, Part 2 of the Act 105 of 1997. Accused 2 was also charged with having assaulting P[...] D[...] by pushing her.

4 This appeal was first heard on Monday, 16 September 2024. The hearing was postponed to ascertain what the position was with regard to accused 2, and whether he intended to appeal his conviction and sentence. It was subsequently reported that accused 2 had passed away on Sunday, 05 November 2023 and a death certificate confirming this was furnished to the court. The matter was then set down on Monday, 10 March 2025 for the appeal to be finalised.

5 The appellant was legally represented at her trial. She pleaded not guilty and gave a plea explanation in terms of section 115 of the Criminal Procedure Act, 51 of 1977 (‘CPA’). The appellant made formal admissions in terms of section 220 of the CPA, admitting the identity of the deceased and that the child died on Saturday, 20 April 2019 as a result of a blunt force head injury she sustained on that date.

6 The following witnesses gave evidence:

6.1 P[...] S[...] D[...], the grandmother of the deceased (“Ms D[...]).

6.2 T[...] M[...] , the father of the deceased.

6.3 S[...] Mi[...] D[...], the mother of the deceased.

6.4 The appellant.

6.5 Accused 2.

7 It was common cause that on Saturday, 20 April 2019 a graduation party was held at the house of the deceased's family. It was raining that day. The deceased's grandmother Ms D[...] requested to speak to the gathering first. She was carrying the deceased on her back using a towel to support the baby. The deceased's head was covered with a blanket because it was raining. As she was about to start speaking the appellant created a disturbance by banging the table loudly. Ms D[...] reprimanded the appellant who continued to hit the table. Ms D[...] stopped her speech.

8 The evidence showed that when Ms D[...] walked past the tables on her way to the house to put the deceased to bed, accused 2 pushed her with his hands. D[...] slipped and fell backwards. The surface underneath was a carpet that was on the grass. Ms D[...] testified that she used both hands to break her fall so that the child would not get hurt. Her evidence was that when she fell on the ground the appellant kicked her randomly until the father of the deceased intervened.

9 When Ms D[...] stood up the deceased was bleeding from her nose and mouth. The deceased was taken to the clinic and then transferred to hospital. The deceased died that evening of injuries to her brain. This included extensive deep scalp bruising, subgaleal haemorrhage involving the right and left parietal and temporal regions and the right occipital region. There was also reported bilateral subarachnoid haemorrhage with swelling of the brain.

10 The evidence established that there was an altercation between the family of the deceased, the appellant and accused 2. The injuries the deceased suffered were consistent with an impact that resulted from the grandmother falling backwards onto the child she was carrying on her back. Although, testimony was led to the effect that she tried to break her fall by extending her arms backwards, the probabilities are that the deceased sustained the fatal injury to her head when the fall occurred. There was no

fault on the part of the grandmother. However, the realities are that in those circumstances it would have been difficult, once she fell backwards, to control her descent onto the ground. The deceased was a young infant and was very vulnerable to any crushing force that would have arisen from the fall.

11 It is common cause that the grandmother slipped when she was pushed by accused 2. His culpability is not in issue in this appeal. However, the State's contention that the appellant acted in common purpose with accused 2, in my view, was not proved. There is a reasonable doubt from the evidence that appellant actually struck any blows to the deceased once Ms D[...] had fallen, and the appellant's version of the events could not be safely rejected.

12 It was common cause that the appellant was highly intoxicated at the time the incident occurred, so much so that she appeared to be "wasted". The tragic occurrence happened very quickly. It was a crowded space. The opportunity for clear observation was limited. The rain in all probability would have made the carpet slippery underfoot. It was not established in evidence that the appellant knew that the deceased was on the back of the child's grandmother. It is a reasonable possibility that the fatal injuries were sustained by the fall alone. On all the evidence, it cannot be said that the appellant either directly or indirectly intended to bring about the death of the deceased. In the circumstances the appellant was entitled to an acquittal.

S KUNY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG
TUESDAY, 08 APRIL 2025

I agree

C I MOOSA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG
TUESDAY, 08 APRIL 2025

For the appellant: Mr J Nel, Legal Aid SA

For the respondent: Adv E Mosekie, Office of the DPP