



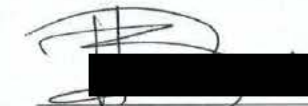
**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: CC2/25

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

08 August 2025

DATE


SIGNATURE

In the matter between:

THE STATE

and

**BONGANI MASEMOLA
KABELO DLOMO
NTSAKO NGOBENI
SIPHO MAPHOSA
PONANNI REGIONAL NUKERI**

**ACCUSED NO: 1
ACCUSED NO: 2
ACCUSED NO: 3
ACCUSED NO: 4
ACCUSED NO: 5**

JUDGMENT

Munzhelele J

Introduction

[1] The five accused were indicted on two counts of murder, one count of arson, and one count of assault with intent to do grievous bodily harm. All these offences are alleged to have occurred on the 7th of January 2024 at Lethabong Section, Skierlik Informal Settlement. The victims, Salomao Alfredo Tivane and Solomon Mashaba, were allegedly killed by a mob. The State informed the court that the offences were committed on the basis of a common purpose.

Counts 3 (arson) and 4 (assault with intent to do grievous bodily harm) were withdrawn by the State before the accused could plead thereto. Accordingly, the trial proceeded only on the two counts of murder. All accused pleaded not guilty and elected to exercise their right to remain silent, choosing not to disclose their respective defenses. Each of the accused was legally represented throughout the proceedings.

[2] The accused made formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977, which were recorded as such and marked Exhibit A1. The following admissions were made:

The identity of the two deceased persons and the cause of their deaths, as recorded in the post-mortem reports marked Exhibits B and C, were also admitted.

They admitted that Constable Patrick Ntsoane from the Local Criminal Record Centre took photographs and compiled the photo album marked as Exhibit D.

[3] During the trial, the defense handed in two prior statements of the witness, Mr. Vusi Mahlangu, marked Exhibits E and F, for the purpose of highlighting inconsistencies with his oral testimony. Accused 1, during his testimony, provisionally handed in Exhibit G, a document purportedly showing that he was employed at Mega Master at the time of the alleged mob justice incident. Although the defense Counsel undertook to authenticate the document, this was not done before the close of the defense case.

[4] The State called six witnesses to testify, namely: Thato Christian Moshomane, Sipho Mtsweni, Vusi Mahlangu, Judas Shai, Sergeant Mahlangu, and Sergeant Mashishi. At the close of the State's case, accused number 5 brought an application for discharge in terms of section 174 of the Criminal Procedure Act 51 of 1977. The application was granted and accused number 5 was found not guilty and discharged on all counts.

The remaining four accused proceeded to testify in their own defense. Accused 1 testified and called one witness, his girlfriend Ms. Mahlatse Mkhwebane. Accused 2 also testified and called two witnesses, namely Mr. Enock Sibanda (with whom he allegedly resided) and Mr. Desmond Kata. Accused 3 and Accused 4 testified but did not call any witnesses.

Arguments by the parties

[5] The State submitted that, although its case rested primarily on the testimony of a single witness, the evidence was satisfactory in material respects and capable of sustaining a conviction in terms of section 208 of the Criminal Procedure Act 51 of 1977. The State acknowledged that the cautionary rule applied to the witness's evidence, given the singularity of his account, but maintained that the witness had positively identified all four accused at the scene and described their respective roles during the incident.

The State further submitted that the allegation made by the accused—namely, that the witness falsely implicated them due to a vendetta or grudge—was unfounded and

speculative. The State argued that the court should reject this theory and find that it had proved its case against all the accused beyond a reasonable doubt.

[6] Counsel for Accused 1, Mr. Mphela submitted that the State had failed to discharge its burden of proof in respect of his client. He argued that the credibility and reliability of the State witness, Mr. Vusi Mahlangu, was seriously in question. It was submitted that the witness's testimony was riddled with contradictions, misleading statements, and inconsistencies when compared with his prior statement to the police. Counsel contended that the cautionary rule had not been satisfied and that the witness's evidence should be rejected. In contrast, the testimony of Accused 1 was reasonable and reliable within the context of the case. It was therefore submitted that Accused 1 should be acquitted on both counts.

[7] Counsel for Accused 2 Ms. Mzamane similarly submitted that the State relied on the evidence of a single witness and that such evidence, especially under the cautionary rule, must be satisfactory in all material respects. It was submitted that the evidence of Mr. Mahlangu was mutually destructive when compared with that of Accused 2, who denied being present at the scene. Mr. Mahlangu, however, claimed that Accused 2 was not only present but actively participated in the assault on the deceased.

Counsel argued that the court should evaluate the evidence in totality, considering which version is credible, reliable, and probable in the circumstances. It was submitted that Mr. Mahlangu failed to respond adequately to several crucial questions during cross-examination, and that his evidence concerning the alleged assault was vague and unreliable. Accordingly, his testimony should be rejected and that of Accused 2 should be accepted. It was submitted that Accused 2 ought to be acquitted on both charges.

[8] Counsel for Accused 3 and 4, Mr. Maluleke argued that the State is required to prove its case beyond a reasonable doubt, not merely on suspicion or conjecture. It was

contended that the evidence of the single State witness was unclear as to what transpired at the scene and who was responsible for the murders. The witness's ability to observe and accurately identify all relevant events and individuals was questioned, particularly given the chaotic nature of the scene.

Counsel further submitted that the witness's account lacked clarity and detail regarding the movements and actions of the accused. It was also argued that the witness was evasive during cross-examination, and that his version was less reliable than those presented by Accused 3 and 4. As a result, it was submitted that Accused 3 and 4 should be acquitted.

Background of the case

Testimony of Mr Vusi Mahlangu – State Witness

[9] Mr. Vusi Mahlangu testified that, in 2024, he resided with his wife, children, and parents-in-law in the Skierlik area, specifically in a section referred to as EFF. While he occasionally participated in community patrols and received a remuneration of R50 for his involvement, he did not regard himself as a community leader. However, he testified that he was known to the community as a local DJ and the police also know him.

[10] He confirmed that he was able to identify Accused 1 to 4 on the doc and stated that they were known to him as follows: Bongani (Accused 1), whom he had known for approximately three years and who resided in the ANC squatter camp within Skierlik; Long (Accused 2), known to him since approximately 2019 or 2020; Ntsako (Accused 3), known since 2021; and M'Sixty (Accused 4), known since 2018. Accused 5 was not known to him. All four accused persons also testified that they were familiar with Mr. Mahlangu and had recognized him on the night in question.

[11] Mr. Mahlangu testified that, on 7 January 2024, he was asleep at his residence with his family when they were awakened by the sound of a whistle and the voices of

community members calling people to come outside. He, his partner, and his in-laws proceeded to the main road in response to the commotion, where they observed a group of more than 20 community members heading in the direction of Lethabong. During cross-examination, it emerged that the location where Mr. Mahlangu encountered the group was at the border between Skierlik, Mountain View, and Lethabong. However, a further cross examination about this border in relation to Mtsweni's testimony misquoted the answer of Mr. Mahlangu regarding the borders.

[12] Among the group proceeding towards Lethabong, he identified Bongani (Accused 1), Long (Accused 2), Ntsako (Accused 3), M'sixty (Accused 4), and an individual known as Gogo and his boys. Mr. Mahlangu and his family observed the group from the side of the road and were not, at that stage, part of the mob's procession.

[13] At this border between Lethabong and Skierlik, that is where Mr. Mahlangu encountered a group of community members confronting an elderly man referred to as Mdala. Gogo and his two boys were accusing Mdala of withholding the names of accomplices and demanding that he disclose those involved. Under pressure, Mdala identified a man named Mashaba as his associate. Mr. Mahlangu testified that both Bongani and Ntsako were seen prodding Mdala with golf sticks while urging him to accompany them to this place where his accomplices were found.

[14] This incident occurred at approximately 04:00 AM, while it was still dark. Mr. Mahlangu observed these events from a distance of approximately 11 paces. The group, with Mdala leading, then proceeded to Mashaba's residence. Mdala pointed out both the residence and Mashaba to the group. Upon arrival and after Mdala pointed at Mashaba as one of the accomplices, Mr. Mahlangu witnessed Mashaba being assaulted without being afforded an opportunity to speak. The assault was perpetrated by M'Sixty and Long (Accused 2 and 4), who struck him across the torso using golf sticks and a pick-axe handle.

[15] Mr. Mahlangu confirmed, through photographic exhibits submitted in court, the identities of both Mdala and Mashaba as the individuals assaulted and later killed during the incident. He further detailed a sequence of violent events inflicted upon the two men by members of the community, including individuals known as M'Sixty (Accused 4), Long (Accused 2), Gogo and his sons, Bongani (Accused 1), Ntsako (Accused 3), and others. These individuals were allegedly involved in the assault, forced movement, and abuse of the two victims until the victims' death.

[16] At Mashaba's residence, Long, M'Sixty and Gogo demanded that Mdala disclose his residential address, which he did. Mashaba was then bound with wire by members of the group, including individuals who were coming from Mountain View with Mdala. These were Gogo, M'Sixty, and Long. The group also removed a stepladder from Mashaba's premises. The group then moved from Mashaba's home to Mdala's residence, continuing to push and assault Mashaba along the way, using sticks and golf sticks.

[17] Upon arrival at Mdala's home, Bongani, M'Sixty, Long, Gogo and Gogo's boys demanded entry at the gate, with Bongani taking the lead. Mdala's son briefly appeared but escaped by jumping over the fence. The group then broke the gate and forcibly entered the yard. They proceeded to the shack, where they forced open the wooden door and vandalized the property. Gogo removed the television, while others took additional items.

[18] Bongani questioned Mdala about the whereabouts and residence of other accomplices. Mdala indicated that another individual resided at the corner. The group — including Gogo, Bongani, Ntsako, Mdala, and Mashaba — proceeded to the house of a person identified as Mzinto. There, Mzinto's wife informed them that Mzinto was not present. Bongani and Ntsako then proceeded to Mzinto's nearby liquor shack and

removed alcohol. While this occurred, a certain woman began recording the events on her phone. Bongani noticed this, seized the phone, and forcibly instructed her to delete the video.

[20] The group, consisting of Gogo and his boys, Bongani, Ntsako, (and Mr. Mahlangu — who followed at a distance), continued toward the settlement border near a railway line. At a passageway, Long, Gogo, and M'Sixty used the stepladder to restrain both Mashaba and Mdala. Their hands were tied underneath the ladder, securing them to it. The ladder was then lifted and dropped, causing injury — particularly to Mdala, who appeared to have suffered broken limbs.

[21] Following this, the victims were untied from the stepladder but remained bound on their hands. The group, led by Bongani, Long, Ntsako, M'Sixty, and Gogo, crossed the railway line and reached a muddy area near a disused Jojo tank. Gogo's group threw Mdala into a puddle of water, approximately 7 meters from where Mr. Mahlangu was positioned. Long (Accused 2), M'Sixty, and others then led Mashaba into nearby bushes. Throughout his testimony, Mr. Mahlangu consistently placed himself, at a short distance from the events, asserting that he was an observer who did not participate. He testified that, when Long and M'Sixty led Mashaba into the bushes, he was approximately 25 meters away, standing on a concrete slab beside the road where he was able to see everything which was happening.

[22] Mr. Mahlangu further testified that Ntsako (Accused 3) took a golf stick and struck Mdala — who was lying on his side, tied from behind — four to five times on the leg. This resulted in a fracture to the lower leg, with the bone protruding through the skin. Bongani (Accused 1) then proceeded to further assault the same leg, crushing the bone until only the flesh held the foot in place.

[23] As Bongani concluded the assault, Long and M'Sixty emerged from the bush with Mashaba. At that point, a police vehicle approached, prompting the group to flee with Mashaba to the other side of the railway line to hide Mashaba. Ntsako approached the police vehicle, shouting, "When we are being killed, you do not come; you only come when we are doing the killing." Bongani (Accused 1) added, and said, "Turn around, turn around and go." A stone was then thrown from the direction of Gogo's group, where Mdala lay, striking the windscreen of the police vehicle.

[24] As the police vehicle retreated, M'Sixty approached Mashaba's hiding place, armed with a golf stick and pick handle, claiming that he had also been a victim of the attack. During this time, police officers who were near Mr. Mahlangu asked him about the group's direction (where the group of M'Sixty and Long, were running to). He informed them that they were heading toward where Mashaba had been hidden. Mr. Mahlangu was then threatened by members of Gogo's group for speaking to the police.

[25] Mr. Mahlangu, accompanied by his wife and mother-in-law, followed the group to Mashaba's hiding place. Upon arrival, he observed Long (Accused 2) binding Mashaba with wires while M'Sixty assaulted him with a golf stick. Long then dragged Mashaba across the railway line, stating that "he should not die here." They tied Mashaba's hands behind his head, attached them to a golf stick, and used it to pull him across, lowering his trousers in the process, leaving him in his underwear.

[26] Mr. Mahlangu confirmed seeing both Long and M'Sixty taking turns to assault Mashaba. Photographic evidence submitted in court corroborated his account, depicting Mashaba's trousers pulled down and his hands bound. Mr. Mahlangu stated that, when Mashaba was dragged across the railway line, he appeared lifeless.

Subsequently, Mr. Mahlangu while going away from the scene passed Mdala, who was still alive but severely injured. Mdala was apologizing to Bongani and Ntsako. Mr.

Mahlangu avoided interaction with the Criminal Investigation Division (CID) officers who had arrived, fearing reprisal. When the whole ordeal finished, Mr. Mahlangu then left the scene with his family.

[27] Mr. Mahlangu confirmed his knowledge of the subsequent arrests of Bongani, Ntsako, M'Sixty, and Long. He assisted the police by pointing out the residences of Bongani, Ntsako, and Long, but was unable to assist with locating M'Sixty as he did not know where he resided.

[28] During cross-examination of Mr. Mahlangu by Mr. Mphela, Counsel for Accused 1, he testified that he had been a permanent resident of the EFF section in Skierlik since 2016. He acknowledged, however, that he occasionally stayed with his girlfriend in the ANC section, contrary to the defense's assertion that he had no fixed place of residence.

Mr. Mahlangu further testified that visibility in informal settlements such as the EFF and ANC sections was limited due to poor lighting. He explained that visibility was partially aided by illumination from nearby permanent structures and Apollo lights. This evidence was corroborated by the accused, who stated that they were able to see and hear Mr. Mahlangu on the night in question.

[29] Mr. Mahlangu denied the allegations made by all the accused that he had blown a whistle or mobilized members of the community. He maintained that he merely followed the direction from which the whistle and accompanying noise emanated, together with his family. He stated that this led him to encounter a group of people, including the accused persons, who were moving from the Mountain View area towards Lethabong, near the border between Skierlik and Lethabong.

[30] Although he initially testified that he had proceeded directly to Lethabong, Mr. Mahlangu later clarified that he first went to Mountain View after learning of an arrest

there. Upon arrival, he found that the suspects had already left. He provided this clarification to rebut the allegation that he had blown the whistle or alerted the community about the arrest, stating that he was not involved in the apprehension of "Mdala" on the night in question and that he, too, had been awoken by the whistle and noise before following the commotion.

[31] Mr. Mahlangu maintained that Mdala's hands remained tied until the time he left the scene to return home with his family. When confronted with photographic evidence (Exhibit D), which depicted Mdala without visible restraints, Mr. Mahlangu acknowledged the absence of wire in the post-incident photograph but explained that he had already departed from the scene by the time the photograph was taken. So therefore, he would not have known what happened when the photos were taken.

He further testified that although he referred to the victim as "Paulos" or "Mdala," he did not know him personally but only by sight. He clarified that he knew both Paulos (Mdala) and Mashaba as individuals involved in illegal electricity connections within the community. He added that he had a family member residing on the same street as Mdala.

[32] Mr. Mahlangu confirmed that he knew Mashaba through their shared involvement in illegal electricity connections and stated that Mashaba was affiliated with a group in conflict with another group led by an individual known as Long, over control of these illegal activities. He described Mashaba as an employee of Mega Master and denied knowledge of Mashaba's alleged involvement in violent conduct, such as assaults using pangas. However, he was aware of Mashaba's role in the dispute regarding illegal electricity connections.

With regard to an argument concerning illegal connections, Mr. Mahlangu initially stated that a meeting had taken place on the morning of the same day, 7 January 2024, during which Mashaba and Long argued about the matter. He then retracted this statement, acknowledging that it could not be correct, as Mashaba was killed in the early hours of

that same day. He subsequently stated that the argument had occurred before the accused were arrested, assaulted, and ultimately killed.

[33] Mr. Mahlangu denied that Mr. Sipho Mtsweni, a community leader, was present at the border between Mountain View and Lethabong when he arrived. He confirmed, consistent with his evidence-in-chief, that the only individuals he recognized at the border were the four accused. He maintained that Mr. Mtsweni was not present at the border and only proceeded as far as Mountain View.

[34] Mr. Mahlangu further contradicted Mr. Mtsweni's testimony, in which the latter alleged that the four accused participated in the June 16 commemorative events. Mr. Mahlangu testified that the accused never attended those events. He stated that he could attest to this because he was present at all such events, serving as Mr. Mtsweni's bouncer.

It was further put to Mr. Mahlangu that the accused would allege that he was not part of the group involved in the incident because he was in the company of Mr. Mahlangu on the night in question. Mr. Mahlangu disputed this assertion, stating that he last saw Bongani between 17:00 and 18:00 that afternoon when he left to prepare food for his wife. Thereafter, he went on patrol.

[35] With regard to the events at Mr. Mashaba's residence, there was some inconsistency in Mr. Mahlangu's testimony concerning Mashaba's point of approach—specifically, whether Mashaba was coming from inside his yard or from outside. Mr. Mahlangu ultimately maintained that Mashaba was coming from outside the yard.

There was further confusion regarding who assaulted Mashaba at his residence. Mr. Mahlangu initially stated that "Gogo" and Gogo's group were responsible. He later altered his version, stating that Bongani and Ntsako approached Mashaba as he came from the side. At another point, he reiterated that Bongani approached Mashaba, grabbed him by

his clothes, and brought him to the community. Ntsako then allegedly struck him with golf clubs and sticks, while Long assaulted him with a pick handle.

[36] With respect to a child who was present at Mashaba's residence, Mr. Mahlangu initially testified that Bongani intended to assault the child. However, he later clarified that Bongani merely insulted the child and did not physically assault him.

[37] On the issue of geographical boundaries, Mr. Mahlangu explained that the railway line demarcates the border when crossing from Skierlik into Lethabong, and that a small dam, known as Nokaneng, serves as a landmark near Skierlik and Mountain View. He added that there are no formal roads in the immediate vicinity, and that residents often utilize informal paths and shortcuts, which renders precise border identification challenging.

[38] During cross-examination, Mr. Mahlangu remained firm in his assertion that he heard Bongani shouting, attributing this to Bongani's loud and intoxicated state. He insisted that despite the general noise created by the crowd, Bongani was audible because he was positioned at the front and was making considerable noise.

The defense put it to Mr. Mahlangu that he was falsely implicating Bongani due to personal animosity stemming from a prior incident at a community meeting, during which Bongani allegedly stated that employed individuals should not receive remuneration for patrol duties. Mr. Mahlangu denied harboring any grudge against Bongani and testified that Bongani and others were removed from patrol duties due to misconduct, including consuming alcohol while on duty and insulting women who were engaged in door-to-door fundraising efforts.

[39] It was put to Mr. Mahlangu that Accused 1 did not participate in patrols because he was employed full-time. Mr. Mahlangu denied this, stating that Bongani was not

employed and, in fact, forced himself into patrols. He testified that Bongani never contributed the R50 patrol fee but insisted on participating in patrols. Even when collection efforts were made, Bongani refused to pay, asserting that he would patrol regardless. Mr. Mahlangu explained that, at the time of collection, neither he nor the other collectors were aware that Bongani would refuse to contribute, which is why they went to his residence to collect the fee.

Mr. Mahlangu denied ever entering the residence of the deceased, Mdala, or removing a laptop, despite allegations to that effect.

[40] In relation to the scene at Mzinto's house, Mr. Mahlangu testified that he observed individuals removing alcohol from a shack. He identified Bongani and Ntsako as the individuals, despite being approximately 11 meters away and the area being poorly lit and illumination being provided only by starlight. The defense challenged the reliability of these observations, given the crowd size and poor environmental conditions.

[41] Regarding the issue of the mobile phone allegedly taken from a woman, Mr. Mahlangu testified that it was Bongani who took the phone and demanded that the woman delete the video footage she had recorded. The defense put it to Mr. Mahlangu that it was actually Oscar who had grabbed the phone and fled with it. Mr. Mahlangu denied this version and stated that no such incident involving Oscar occurred on that night. It was further suggested that Oscar, known to the community as a friend of Accused 1, fled with the phone, prompting people to demand that Accused 1 retrieve the phone from him. Mr. Mahlangu denied this as well.

[42] It was further put to Mr. Mahlangu that Bongani left the scene to retrieve the phone and never returned, leaving his girlfriend behind so he could take her home after recovering the phone. Mr. Mahlangu disputed this version, maintaining that when he left

the scene following the death of the deceased, Mashaba and Mdala, Bongani was still present at the scene.

[43] The defense further questioned Mr. Mahlangu regarding his account of the stone-throwing incident. Mr. Mahlangu initially claimed that the stone had been thrown from behind by members of Gogo's group. He later changed his version, stating the stone came from the side, which created confusion regarding his perspective. He attempted to clarify the discrepancy by describing his movements during the incident and the physical layout of the area, and he offered to draw a sketch for further clarity. Nonetheless, his narration regarding the stone throwing remained unclear and confusing. Mr. Mahlangu maintained throughout that he had a clear view of the events.

[44] During cross-examination by Ms. Mzamane, on behalf of Accused 2, it was suggested that Mr. Mahlangu had been evasive in answering questions. Mr. Mahlangu disputed this, asserting that he responded to all questions to the best of his knowledge.

It was further put to Mr. Mahlangu that he failed to mention what Accused 2 did in his evidence from the time he encountered the group at the border until the incident at Mashaba's residence, where he testified that Long assaulted Mashaba together with Msixty. Mr. Mahlangu responded by stating that all individuals present at the scene assaulted Mashaba.

It was also put to Mr. Mahlangu that accused 2 did not know all of these accused in the doc and that he only became acquainted with them during the court proceedings, unlike Accused 1, who stated that he only knew Accused 3 prior to the trial. However later on during accused 2's testimony he testified that he knew accused 3 before this incident occurred.

[45] During cross-examination by Mr. Maluleke, on behalf of Accused 3 and 4, it emerged that Mr. Mahlangu had previously testified that when he attempted to collect

money from Ntsako, he eventually gave up because Ntsako refused to pay. This contradicted his earlier evidence that no one had refused to pay the fee and further contradicted his statement that he had not personally collected money from Ntsako.

Additionally, during cross-examination, reference was made to the information from Lucia, (hearsay evidence) who allegedly said that Mr. Mahlangu was pointing at her with a firearm. However, Lucia was never called, as a witness during Accused 3's defense, and therefore her alleged evidence remains hearsay. As such, it is inadmissible and will not be repeated for the purpose of discrediting Mr. Mahlangu. Mr. Mahlangu also denied that there was ever a meeting at which the issue of his firearm was discussed and stated that the police never came to his house regarding the matter.

Mr. Mahlangu denied harboring any animosity towards Ntsako. He also denied allegations that he sought to have Accused 3 arrested and was heard in the community saying that he would ensure Accused 3 goes to prison. He testified that such statements are hearsay and unsubstantiated by any credible evidence, describing them as mere bold allegations.

It was put to Mr. Mahlangu by Accused 3 that he awoke in the early hours of the morning upon hearing people calling others to wake up and that he subsequently followed the community to the border between Skierlik and Lethabong. While at the border, accused 3 allegedly received a phone call summoning him to work. Mr. Mahlangu denied this statement, especially because he had already said that accused 3 was unemployed.

[46] With regard to Accused 4, Mr. Mahlangu denied ever having been involved in a physical altercation that caused M'Sixty to sustain a scar on his face. He further denied that no criminal case had ever been opened against him in that regard. According to Mr. Mahlangu, M'Sixty's scar was the result of an attack by individuals from Maphanga. Mr. Mashishi confirmed during his testimony that a docket was indeed opened where Mr. Mahlangu was an accused person and the matter was withdrawn against him at the instance of the complainant which was accused 4. This withdrawal was denied by the accused 4. He said that he had no knowledge of it, and yet there was a statement for

withdrawal that bears his signature which he confirmed was his. This was also puzzling because accused 4 said he cannot write.

[47] **Constable Thato Christiaan Musumane**, a member of the South African Police Service (SAPS) with five years of service, is currently stationed at Boschkop Police Station and holds the rank of Constable. In his testimony, he confirmed that the areas of Skierlik and Lethabong fall within the jurisdiction of the Boschkop Police Station.

On 7 January 2024, Constable Musumane conducted a preliminary investigation and opened a docket in relation to Boschkop CAS 79/01/2024. While en route to report for duty with Constable Ngomane, they received a complaint concerning an incident of mob justice occurring near the border between Skierlik and Lethabong. The officers responded in a marked police vehicle, dressed in full SAPS uniform.

[48] Upon approaching the scene, they encountered a group of approximately twenty or more community members who obstructed their vehicle, preventing access to the scene. The crowd banged on the vehicle and acted in a hostile manner, hindering the officers' ability to intervene. Efforts to engage the crowd and ascertain the nature of the complaint were unsuccessful. During the confrontation, a loud noise was heard, later determined to be a stone thrown at the police vehicle, striking and damaging the left side of the windscreen. Due to safety concerns, the officers withdrew to a safer distance and continued monitoring the situation from afar.

[49] The crowd remained aggressive, using disrespectful language and expressly stating that police presence was not welcome. The officers requested backup. While awaiting support, the crowd began to disperse, allowing the officers to cautiously approach the scene. They discovered a motionless individual lying on a gravel road. Nearby residents informed them that another individual had also been attacked by the

mob. Constable Ngomane proceeded to a second location near the railway line, while Constable Musumane secured the first scene.

[50] Upon his return, Constable Ngomane reported finding a second male victim, also motionless and bound at the wrists, lying on the grass adjacent to the railway line. The relevant role players, including the investigating officer, paramedics, forensic pathology services, and the Local Criminal Record Centre (LCRC), were contacted. Upon arrival, Constable Musumane accompanied them to the second scene and confirmed the presence of a second deceased male. The bodies were formally handed over to the forensic pathology services. Both crime scenes were processed, and a docket was subsequently opened.

[51] **Mr Simon Sipho Mtsweni**, a resident and community leader in Skierlik, Mountain View, testified that he could identify the accused as members of the local community. On 7 January 2024, at approximately 01:00 AM, he was awoken by a phone call from Mr. Frans Makhubela informing him of a mob justice incident. After dressing, Mr. Mtsweni stepped outside and heard a whistle—commonly used in the community to signal that a household is under attack. He followed the direction of the sound and arrived at a gathering.

[52] Upon arrival, he observed an individual, known as “Mdala,” seated on a plinth forming the foundation of a Jojo tank. Mdala was fully clothed, bound with wire around his torso and arms, and had visible blood streaming down his face. The area was illuminated by light from a nearby tavern. Mr. Mtsweni contacted Mr. Makhubela to update him, and the latter requested that Mdala be rescued from the crowd. Mr. Mtsweni did not intervene physically but made inquiries about the situation and was informed that Mdala had been apprehended by a local patrol group formed by the community in response to previous attacks.

[53] He reported to Mr. Makhubela that the situation was escalating and advised that the police be contacted. Several individuals accused Mdala of prior assaults, pointing to old injuries. In an attempt to de-escalate the situation and buy time for police intervention, Mr. Mtsweni convinced the crowd to allow him to escort Mdala to Lethabong, under the pretext of identifying accomplices.

Mdala was led on foot by an individual pulling him with the wire. Upon arrival in Lethabong, Mr. Mtsweni notified Mr. Makhubela that they had arrived safely and was informed that both the police and local community members had been alerted. Mr. Mtsweni confirmed that Mdala had been secured, after which he returned home. He was unable to identify the person who had dragged Mdala by the wire.

[54] **Mr. Lethabo Judas Shai**, also a resident of Skierlik, resides with his wife Mabulethi and their child. He holds a leadership position within the community. Mr. Shai testified that he had known Accused 5 since 2018, having met him during the allocation of residential stands in Mountain View and Powerline, where Accused 5 accompanied his father.

In the early hours of 7 January 2024, Mr. Shai was awoken by a commotion. He and his wife investigated and found a man, tied with wire and bleeding from the head, near his shop. According to Accused 5, the man had been apprehended by community members at Powerline for alleged theft. Mr. Shai expressed his disapproval, cautioning the group that such vigilante actions often led to fatalities, with the perpetrators later evading accountability. He reminded them that he was already involved in another pending criminal matter.

[55] While dispersing the crowd, Mr. Shai noticed a fellow community leader, Mr. Sipho Mtsweni in the vicinity. Throughout the incident, accused 5 remained at Mr. Shai's side.

Eventually, the group departed, taking the injured individual with them, and Mr. Shai returned to his home.

[56] **Sergeant Bongani Michael Mahlangu**, a member of the SAPS stationed at Boschkop Police Station, is the investigating officer in Boschkop CAS 3/01/2024. He testified that on the 7th January 2024, while on standby duty with Sergeant Mashishi, they responded to a mob justice incident in Skierlik. Upon arrival, they observed a marked police vehicle parked approximately 200 meters from the scene, obstructed by a hostile crowd. Constables Musumane and Ngomane reported their inability to reach the scene due to the mob's obstruction.

[57] While monitoring the situation, the crowd began to disperse. A man later identified as Vusi Mahlangu walked past and greeted the officers. Due to non-cooperation from other community members, Mr. Mahlangu was recalled for questioning. He was traced to his workplace at a hardware store through contact details obtained from his girlfriend. He voluntarily submitted a statement. A docket was officially assigned to Sergeant Mahlangu one or two days after the incident. Due to witness non-cooperation, Mr. Mahlangu's statement was only obtained approximately three months later, following information provided by the deceased's family, particularly Mr. Paulos.

This led to an interview with Mr. Judas Shai, who identified the individual that had brought the deceased to him. It was confirmed that Vusi Mahlangu was never treated as a suspect; his statement was taken solely due to his presence at the scene. This was contrary to the allegations made on behalf of the accused 2, 3, and 4 who said that Vusi Mahlangu was the first on the list of the suspects in this case. Sergeant Mahlangu also confirmed that a prior matter (Boschkop CAS 123/12/2017) had been opened by Accused 4 against Vusi Mahlangu. Although he knew Vusi from that previous case, he emphasized that Vusi was not a suspect in the present matter. No other suspects had been apprehended as of his testimony.

[58] **Sergeant Lesiba Mashishi**, also stationed at Boschkop Police Station, has been in service since at least 2017. He confirmed that in 2017; while holding the rank of Constable, he served as the investigating officer in Boschkop CAS 123/12/2017—a matter involving complainant Sipho Maphosa and accused Vusi Mahlangu, concerning common robbery and assault.

Vusi Mahlangu appeared in court on 15 January 2018, and the case was withdrawn on 30 January 2018 following a formal withdrawal statement by the complainant. This statement was taken by Sgt. Mashishi at the Cullinan Magistrates' Court after the complainant indicated his intention to withdraw the charges.

[59] Sgt. Mashishi confirmed his acquaintance with Vusi Mahlangu from that matter and acknowledged that Vusi later became a witness in a separate firearm case related to a tavern incident. He admitted that he initially failed to disclose this witness relationship to the Court, explaining that he only answered the question about how he first came to know Vusi. Sgt. Mashishi confirmed that he is not the lead investigator in the current double murder matter but was assigned to assist Sgt. Mahlangu by his branch commander, Colonel Smith, who was then stationed at Mamelodi West Police Station.

[60] He denied suggestions by the defense that he held any personal interest in the case or any improper relationship with Vusi Mahlangu. He maintained that investigative work is often collaborative, and assisting in a matter does not indicate bias. The defense challenged the credibility of his account regarding who contacted whom in the 2017 case and why the withdrawal statement was taken in court rather than at the police station. Sgt. Mashishi explained that withdrawal statements are typically handled in court after consultation with the prosecutor.

[61] While Vusi Mahlangu claimed to have assisted Sgt. Mashishi and Sgt. Mahlangu in a firearm-related arrest, Sgt. Mashishi denied being present at the time of arrest,

thereby contradicting Vusi's testimony. He confirmed compiling the bail report in the 2017 case and stated that Vusi was granted bail before the matter was withdrawn. He did not oppose bail, as he had no reason to do so. He reaffirmed that he had no special relationship with Vusi Mahlangu

The Defense case

[62] **Bongani Masemola (Accused 1)** testified about the events on 7 January 2024. He stated that around 02:00 a.m., he was at home with his girlfriend, Mahlatsi Mkhwebane, when they heard a whistle. He awoke first, alerted his girlfriend, and they went outside. There, they encountered patrollers, including a man named Vusi Mahlangu, along with approximately 100 other community members. Vusi reportedly explained to the gathered crowd that an individual had been apprehended in Mountain View for allegedly attacking people with pangas. This person had allegedly confessed and named accomplices from Lethabong. Vusi requested the crowd's assistance in identifying the suspects from some video evidence. Accused 1 and others, including his girlfriend and a man named Oscar joined a group that followed Vusi towards Lethabong. They took a route near the railway line and taxi rank, where more community members joined. The group entered Lethabong and stopped at a house identified as belonging to the deceased, Paulos. At Paulos' house, accused 1 observed people taking items from the house, including electronics. He specifically saw Vusi exiting the house carrying a laptop. Paulos was not present at that moment but later appeared, injured and bleeding from the face, with his hands bound at the wrists. The crowd claimed Paulos had confessed to working with another individual. The group moved to the location of the alleged accomplice. When they arrived, accused 1 witnessed another person being assaulted. Despite the confusion, he identified the individual by a jacket labeled "Mega Master" as Mashaba, a former colleague at a security company (Eco 1) stationed at Mega Master. Accused 1 testified that he tried to notify his companions that Mashaba was being mistaken for someone else but did not intervene further due to the chaos and unfamiliarity with the attackers. Accused 1 presented timesheets allegedly proving employment at Mega

Master via Eco 1 Security. These were provisionally accepted by the court as Exhibit G, pending authentication. The State questioned their originality and verification, pointing out that they appeared computer-generated and lacked sufficient authentication. Accused 1 saw Mashaba being taken to another shack, linked to an individual named Mzinto, although he admitted that he did not know that person. He remained at a distance, could not confirm what happened inside the shack, and later overheard a woman in the crowd asking for her phone. He stated that someone behind him had questioned him about a missing phone, and although he did not witness Oscar taking it, it was later established that Oscar had the phone. Accused 1 denied taking the phone himself and clarified that a girl, assumed to be part of the group demanding the phone, accused him because he had been walking with Oscar. After the group told him to retrieve the phone, accused 1 went to look for Oscar, leaving his girlfriend, Mahlatsi, behind with the group. He first searched at Oscar's residence in the EFF section but did not find him there. Eventually, he located Oscar at a place called Alex, where they argued about the phone. Oscar admitted to having taken it but was initially unwilling to return it. Accused 1 insisted that Oscar return the phone as it was putting Mahlatsi in danger. Mahlatsi later arrived and indicated where the group was waiting. Accused 1 and Oscar then approached the group on the street. Oscar returned the phone and apologized. After the phone was returned, the group left and accused 1 and Oscar did not return to Lethabong.

[63] During cross-examination, accused 1 clarified several issues surrounding electricity access, community patrols, and his relationship with a co-accused and others in the community. He confirmed that Lethabong does have electricity, though it is illegally connected, known locally as izinyoka. He claimed no knowledge of how the electricity is managed or whether residents pay for it. Patrols began around January 2 or 3, 2024, in the ANC section where, accused 1 resided. According to him, the community had agreed that unemployed residents would perform patrolling duties and only leaders were permitted to collect patrol fees. Accused 1 identified Lebo, Sammy, Thabo, and Thami as leaders authorized to collect these fees. Accused 1 testified that Vusi Mahlangu, whom he claimed was employed as a DJ and water carrier, came to collect patrol fees. He

refused to pay Vusi, believing it was inappropriate for an employed person to collect money. This caused tension and accused 1 described Vusi as being visibly angry. After this incident, he instructed his girlfriend to reject any future attempts by Vusi to collect money from their household. Although Vusi's name appeared in the patrollers' book, accused 1 maintained that the rules precluded employed individuals from performing patrol duties or collecting fees. Accused 1 denied any involvement in the deaths of Paulos or Mashaba. He specifically denied prodding or assaulting Paulos with a golf stick, breaking it on his neck, or participating in any form of violence against either victim. He testified that he was only involved in an earlier phone dispute and had no knowledge of the circumstances surrounding the deaths. Accused 1 stated that he did not know Kabelo Dlomo (Accused 2) prior to their arrest. He only became aware of Mr. Dlomo's identity during the criminal proceedings. Under questioning, accused 1 confirmed that while he saw Vusi's name in the patrol book, he did not witness him patrolling due to work commitments. He reiterated that he did not know how patrol operations were organized or who appointed patrollers but understood that leaders handled financial collections. Accused 1 insisted that he was surprised and skeptical when Vusi came to collect money, as it contradicted the stated rules. Accused 1 confirmed he knew accused 3 (Ntsako Ngoben) prior to arrest but denied knowing accused 4 (Sipho Maphosa). He confirmed that he witnessed the group moving from Paulos' home to Mashaba's and that Paulos was bound but walking with the group. Accused 1 claimed he followed the group out of confusion and because he wanted to see how things would end, especially as Mashaba was involved.

The state challenged Masemola's claim that he wanted to see "where things would end up" with the group by pointing out inconsistencies in his behavior, specifically that he left after Oscar returned the phone and did not follow through on his stated intent. Masemola acknowledged that his interest disappeared after his girlfriend's safety was secured.

[64] **Ms. Mahlatsi Mkhwebane**, testified and confirmed that they woke up hearing the whistle and further confirmed that Vusi claimed that they had apprehended a person at Mountain View and were proceeding to Lethabong. She further confirmed the evidence

that Vusi took a laptop at Mdala's place and heard him say: "You are just standing here when the people are taking things out there." (This evidence was never put to Vusi during cross examination.) The crowd moved to a tavern, where Ms. Mkhwebane saw people stealing drinks. She also witnessed some individuals being assaulted, but due to poor lighting and the size of the crowd, she could not identify who was involved in the assaults. An issue arose where Bongani was accused of stealing a phone. Although she had been with him the entire time, she questioned him, due to pressure from the crowd and concern for Bongani's safety. He denied taking it, instead alleged that Oscar had taken the phone. Ms. Mkhwebane confirmed she did not see accused 1 or Oscar take the cellphone but pleaded with Bongani (accused 1) to return it because others at the scene insisted, he had it.

[65] **Kabelo Dlomo (Accused 2)** testified that on 7 January 2024 he was residing in Skierlek, specifically in a section called "Rephafohile." He was not living alone but shared his shack with a young man named Enoch, whom he had taken in to assist with his informal shop business located on the same premises. In the early hours of that morning, Mr. Dlomo and Enoch were asleep when they were awakened by the sound of a whistle being blown outside. Recognizing the whistle as a community signal indicating that something was occurring, they went outside to investigate. Mr. Dlomo observed a group of fewer than ten men, including one he identified as Vusi, moving along their street and knocking on shacks to wake residents. Vusi was actively blowing a whistle and shouting "vukani" ("wake up" in isiZulu), which led Mr. Dlomo to conclude that Vusi was leading the group. Upon recognizing Vusi and recalling their history of animosity, Mr. Dlomo told Enoch they should return inside, which they did. He explained that their strained relationship stemmed from a prior incident involving Vusi's brother, Sibusiso, whom Mr. Dlomo had reported to the police for attempting to break into a neighbour's shack in 2023. Mr. Dlomo had led police officers to Vusi's residence in an area known as Permanent, where Sibusiso was found with Vusi. Upon being identified by Mr. Dlomo, Sibusiso was placed in the back of a police van. However, while two officers were away, Vusi allegedly opened the unsecured van and helped Sibusiso escape. Mr. Dlomo reported this to the

remaining officer. Following this incident, Mr. Dlomo claims that Vusi began to threaten him, calling him a "spy" and threatening to "necklace" him. This is a violent form of punishment involving burning with a tyre. He further testified that Vusi demanded R50 from him in November 2023 for community patrols, which Mr. Dlomo refused to pay, citing Vusi's involvement in his brother's escape. Mr. Dlomo clarified that Vusi did not target him specifically during collections, he was accompanied by two others and approached all residents in the area. Mr. Dlomo attributes the animosity primarily to his role in Sibusiso's arrest. Mr. Dlomo was arrested on 20 March 2024 while asleep, with Enoch present. Mr. Dlomo denied all allegations by Vusi Mahlangu, stating that he participated in the assault and killing of a person named Mashaba and that he tied him with a wire. He stated that he did not know Mashaba or Mdala.

[66] **Enoch Patrick Sibanda** resides in Skierlek, Rephafohile, in a house owned by accused 2, Thabang Dlomo. He confirmed sharing a room with accused 2, with the tuck-shop operating adjacent to it. He approached accused 2 in late 2023, November/December for accommodation after losing his previous place. Accused 2 agreed and allowed Mr. Sibanda to stay, in exchange for assistance in his tuck-shop. Mr. Sibanda was not formally employed or paid a salary but helped accused 2 in the tuck-shop, primarily Monday to Saturday. He occasionally took Sundays off to attend soccer games. His payment was informal and occasional, depending on profits. Mr. Sibanda estimated he worked in the shop for 6 to 7 months, up until around three months prior to the court appearance, when the shop ceased operating following accused 2's arrest in March 2024. He confirmed what accused 2 said regarding the whistle blown and the noise which woke them up and that when they saw Vusi, they returned back to the house and continued to sleep.

[67] **Desmond Kata** is a community office worker in Rephafohile. The office serves as a place where community members report issues or seek assistance. He testified regarding his interactions with accused 2, a resident of the same area. Mr. Kata recognized accused 2 as Thabang, a local resident known for reporting community

concerns to the office. Mr. Kata confirmed that accused 2 reported three incidents to the community office. He reported that an individual named Vusi had escaped with handcuffs and in response, Mr. Kata and a colleague, Shadreck, went to Sibusiso's house, where Vusi was believed to be and involved the police. Secondly, accused 2 reported that Vusi had threatened to kill him. The office advised him to contact the police, as they deemed it a personal matter beyond their scope. Thirdly, accused 2 reported a break-in at his house, including damage to his fence and in response, the office called a community meeting to address the issue of rising crime and encouraged residents to begin patrols. While the office acts on broader community issues, individual complaints, such as personal threats, are referred to the police. Mr. Kata clarified that decisions to act on complaints rest with Shadreck, the office head, and that his role as second-in-command limits his authority.

[68] **Ntsako Calvin Ngobeni (Accused 3)**, testified that on the night of 07 January 2024, he was asleep at home until approximately 2–3 AM. He was awoken by a whistle and went to his front door, where he saw three individuals passing. He recognized one of them as Vusi, based on sight and voice. Although the area lacked electricity, Mr. Ngobeni testified that he could see Vusi due to proximity, familiarity and recognized his voice. He confirmed familiarity with Vusi, as a local resident and DJ known in the area and having identified him from an estimated distance of about 7 meters. Mr. Ngobeni and nearby residents gathered and agreed to walk towards Lethabong, where Vusi claimed that some individuals had been apprehended. Vusi did not join their group but instead went in another direction to alert others in a different section. Mr. Ngobeni further stated that he received a phone call between 3–4 AM from his work supervisor. As a coordinator overseeing mobile toilets, he was informed that one had been burned in a park. He was instructed to inspect and photograph the damage around 6 AM. As a result, he returned home, bathed, and prepared to walk a 30–40-minute distance to the site.

[69] Mr. Ngoben could not comment on claims that Mtsweni and others including "Mdala" moved from Mountain View to Lethabong, as he said he was not present. He also

could not comment on claims that accused 5 and others approached Shayi with an apprehended individual, as he had no knowledge of it. Mr. Ngobeni asserted that he was a passive observer who took no part in the alleged crimes. During cross-examination, Mr. Ngobeni consistently denied all allegations made against him by the state witness, Mr. Vusi Mahlangu, labeling them as untrue or “green lies.” Mr. Mahlangu had implicated accused 3 in a series of violent incidents involving mob justice, including assaults, forced movements of alleged victims, theft of liquor, and interactions with police. Mr. Ngobeni denied any involvement, stating that he was not present during these events and further stated that he did not see individuals such as co-accused Bongani or Mr. Mahlangu on the day in question. Mr. Ngobeni further alleged a personal motive behind the accusations. Mr. Ngobeni testified that, his formerly cordial relationship with Mr. Mahlangu soured after he reported to community leaders that Mr. Mahlangu was carrying a firearm, based on information given to him by a local woman. Mr. Ngobeni claimed Mr. Mahlangu later confronted him angrily, accusing him of making the report. He also confirmed knowledge of a group known as “Mapanga” believed to be terrorizing the community. He stated that this threat prompted the establishment of community patrols in his area (EFF Section) around late December 2023. Mr. Ngobeni testified that Mr. Mahlangu was elected as a leader of these patrols in the EFF Section and actively participated. He also indicated that he himself occasionally assisted in the patrols over weekends. Patrollers were compensated through a community fund, with each household contributing R50. This money was collected monthly by designated women in each subsection of the EFF area and managed at a local office. Mr. Ngobeni clarified that patrollers were not armed, and their main defense strategy was to blow whistles to alert others and call the police. He emphasized that he had never personally apprehended anyone and was unsure how suspects were usually caught. He denied any knowledge or involvement in using force or obstructing police efforts. Further, Mr. Ngobeni confirmed he was present in the group that moved towards Lethabong, to observe who had been apprehended. He however, maintained that he had no active role in any assault or obstruction. He insisted that he only joined the group out of curiosity and intended to wait for the police.

[70] **Sipho Maphosa (Accused 4)**, also referred to as "Msixty," resided in Skierlek, a section near Mamelodi, specifically in Tabeni ye Nyani, "Small Mountain". He estimated that Mountain View was approximately 10–15 minutes away by foot. Mr. Maphosa testified that he was asleep in his shack when he heard whistles from four different directions, including Mountain View, EFF, Repafoeng, and a sports ground. He exited his shack, tied his shoes, and walked towards the main road, encountering a group of people. The group discussed the whistles and moved together to Mountain View, eventually arriving at Mr. Shai's house, where they found six women and two men. The women indicated that only one elderly man, allegedly in possession of pliers had been apprehended and that others had proceeded towards Lethabong. Mr. Maphosa stated that, he then returned to his shack with two women and did not follow the group further. He denied allegations made by state witness Mr. Vusi Mahlangu, who implicated him as "M'Sixty" in several acts of violence, including assaulting Mashaba, tying Mdala with wire, participating in the kidnapping or assault of victims, carrying or using weapons such as golf sticks. Mr. Maphosa responded to each of these accusations with "That is a lie," stating he was not present during the incidents described. He acknowledged a hostile history with Mr. Mahlangu, stemming from a love triangle involving a woman named Bonolo. The dispute escalated to a physical altercation in 2017, during which Mr. Maphosa was injured and later laid a charge against Mr. Mahlangu. Mr. Maphosa claimed that although he opened a police case, he was unaware the matter was later withdrawn. He admitted signing a document at the Cullinan Magistrate's Court but did not read it and only recently discovered it was a withdrawal statement. He stated that they have not been on good terms since. He acknowledged hearing about a criminal group known as "Amapanga" terrorizing Skierlek, but claimed his area, Small Mountain, was unaffected. His section formed a patrol group in response to community fears, elected from unemployed residents via community meetings. Mr. Maphosa stated that he never participated in patrols and contributed R50 per household to support the initiative. Maphosa alleged that Vusi Mahlangu's testimony was false and possibly motivated by their past conflict. He portrayed himself as a victim of false identification and community misperceptions.

Issues in Dispute

[71] After careful consideration of the totality of the evidence, I have identified the following issues in dispute: the identification of the culprits who killed the deceased on the night in question by a single witness, and the alibi raised by the accused. The identification evidence of the accused by the single witness, Mr. Mahlangu, must be approached with caution. Conversely, the alibi raised by the accused must be assessed in light of the totality of the evidence presented in this case.

Law applicable

[72] Regarding the defense of alibi raised by the accused, it remains the duty of the State to prove that all the accused were present at the scene and were properly identified by the State witness. In determining whether such an alibi is true or reasonably and possibly true, the court must assess it in the context of the totality of the evidence. See *R v Biya* 1952 (4) SA 514 (AD). The State, through credible and reliable evidence, must establish not only that the accused were present at the scene, but also that they committed the offence with which they are charged, thereby disproving the alibi.

Where an alibi is found to be false, the effect is that the accused is placed in the same position as if he had not testified at all. See *S v Shabalala* 1986 (4) SA 734 (A) at 736B–C. It must be emphasized that the State bears the burden of proving every element of the offence beyond a reasonable doubt, and there is no onus on the accused to prove the alibi. See *R v Hlongwane* 1959 (3) SA 337 (A) 340H where the court said the following:

“The legal position with regard to an alibi is that there is no onus on an accused to establish it, and if it might reasonably be true, he must be acquitted. See also *R v Biya*, 1952 (4) SA 514 (AD). But it is important to point out that in applying for this test, the alibi does not have to be considered in isolation. ... 341A: The correct approach is to consider the alibi in the light of the totality of the evidence in the case, and the Court's impressions of the witnesses. In the *Biya's* case *supra*, Greenberg, J.A., said at p. 521 “... if on all

the evidence there is a reasonable possibility that this alibi evidence is true, it means that there is the same possibility that he has not committed the crime”.

[73] It is a trite principle that, for identification evidence to be reliable and accepted as accurate, there must be certain factors present which assist the court in determining the reliability of such identification. Accordingly, the evidence of Mr. Mahlangu must be evaluated against those factors in the court's assessment, as outlined in *S v Mthetwa* 1972 (3) SA 766 (A) at 768A–C, where the court held that:

“Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait, and dress; the result of identification parades, if any, and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities”.

[74] However, the reliability of identification by a single witness who was acquainted with the accused prior to the incident may still be found to be probable, notwithstanding the fact that the witness was a single witness, as held in *S v Miggel* 2007 (1) SACR 675 (C) per Saner AJ.

“The probability that an identification is reliable is strengthened when the person who has been identified was known beforehand to the identifying witness. But even in that case, close attention must be paid to the opportunity which the witness had of identity of the person in question in the circumstance prevailing, in order to ascertain whether a correct identification was made. However, at the end of the day, the test is, and remains, whether

there was proof beyond all reasonable doubt, taking into account the evidence as a whole, including the question as to whether an accused has even evidence or not (S V Mthetwa at 769 A-F) or has given a false alibi (S V Khumalo above at 328G) 678f-h".

In *R v Dladla* 1962(1) SA 307 (A) 310 James J put it aptly: "One of the 'factors which in our view is of the greatest importance in a case of identification, is the witness's previous knowledge of the person sought to be identified. If the witness knows the person well or has seen him frequently before, the probability that his identification will be accurate is substantially increased ... the very fact that he knows him provides him with a picture of the person in the round which is a summary of all his observations of the person's physiognomy, physique and gait, and this fact will greatly heighten the probability of an accurate identification ... In a case where the witness has known the person previously, questions of identification marks, of facial characteristics, and of clothing are in our view of much less importance than in cases where there was no previous acquaintance with the person sought to be identified. What is important is to test the degree of previous knowledge and the opportunity for a correct identification, having regard to the circumstances in which it was made." See also *Nkomo and Others v The State* (Case no 130/2022) **[2024] ZASCA 61** (26 April 2024) at para 18.

[75] It is a trite principle that the state has a duty to prove its case beyond reasonable doubt. If the version of the accused is found to be reasonably and possibly true, they should be acquitted of all their charges. See *S v T* 2005 (2) SCAR 318 (ECD) 329b-e where the court said:

"The state is required, when it tries a person for allegedly committing an offence, to prove the guilt of the accused beyond a reasonable doubt. This high standard of proof – universally required in civilized systems of criminal justice – is a core component of the fundamental right that every person enjoys under the Constitution, and under the common law prior to 1994, to a fair trial. It is not part of a charter for criminals, and neither is it a mere technicality. When the court finds that the guilt of an accused has not been proved beyond reasonable doubt, that accused is entitled to an acquittal, even if there may be suspicions that he or she was, indeed, the perpetrator of the crime in question. That is an

inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and are respected. The inverse – convictions based on suspicion or speculation – is the hallmark of a tyrannical system of law.”

[76] In order to prove its case beyond a reasonable doubt, the State, as previously indicated, called a single witness who was present at the scene of the incident on the night in question until the conclusion of the ordeal. This witness identified the four accused—Bongani, Kabelo, Ntsako, and Sipho—as the individuals who committed the murders of Mdala and Mashaba. He was able to do so because he knew them prior to the incident, and the accused themselves confirmed that they knew Mr. Mahlangu before the events in question. In terms of section 208 of the Criminal Procedure Act 51 of 1977, an accused may be convicted of any offence on the single evidence of a competent witness.

[77] However, the evidence of a single witness must be approached with caution to guard against factors that may have influenced the witness to testify falsely or to implicate the accused. It has repeatedly been stated that such caution must not override the application of common sense. Accordingly, in evaluating the totality of the evidence, and to guard against possible bias that may have influenced the single witness in implicating the accused, the court is guided by the principle laid down in *Stevens v S* 2005 (1) All SA 1 (SCA), where it was held that:

“It is, however, a well-established judicial principle that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility. The correct approach to the application of the so-called ‘cautionary rule’ was set out by Diemont JA in *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G ... 5i-j, 6a-d where it was said: “...her judgment illustrates the dangers of what has been called “a compartmentalized approach” to the assessment of evidence, namely on approach which separates the evidence before the court into

compartments by examining the 'defense case' in isolation from the 'State case' and vice versa".

[78] In the words of Nugent J in *S v Van der Meyden* 1999 (1) SACR 447 (W) at 449c - 450b he said:

'The proper test is that an accused is bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logic corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether to convict or acquit) must count for all the evidence. Some of the evidence might be found to be false; some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none may simply be ignored.'

[79] In *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G it was held that:

"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness... The trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether there are shortcomings or defects or contradictions in his testimony, or whether he is satisfied that the truth has been told. The cautionary rule referred to by De Villiers JP in 1932 (in *R v Mokoena*), may be a guide to a right decision but it does not mean "that the appeal must succeed if any criticism, however slender, of the witnesses' evidence were well founded"

[80] Finally on single evidence of a single witness, the court will have to make a finding whether the evidence of single witness was clear and satisfactory, taking into consideration all the evidence led in court. See *S v Artman and Another* 1968 (3) SA 339

(SCA) where Holmes JA said that the evidence of a single witness, required that her testimony should be clear and satisfactory in all material aspects.

[81] As indicated above, the versions of the accused and that of the single witness are mutually irreconcilable. The single witness testified that all the accused were present at the scene from the time he arrived at the border between Skierlik and Lethabong, where they were already assaulting Mdala, and that they continued with the assault on Mashaba upon reaching his residence, ultimately resulting in the deaths of both the deceased.

In contrast, the accused denied the allegations against them, asserting that they were not present at the scene where the murders took place. Bongani stated that he went only as far as Mzinto's house before returning home. Kabelo testified that, upon hearing a whistle and recognizing it as Mr. Mahlangu summoning people, he returned to his home to sleep, accompanied by Enoch Sibanda. Ntsako claimed he only reached the border between Lethabong and Skierlik, after which he received a call requiring him to attend to an issue concerning the toilets at the park, and he did not return to the scene. Sipho stated that he went to Mountain View, where he was informed that Mdala had already been taken to Lethabong, and thereafter returned to his place of residence. All the accused raised the defense of alibi.

[82] Where two mutually irreconcilable versions are presented by the State and the defense, the court must assess the evidence in accordance with the principles set out in *Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others* 2003 (1) SA 11 (SCA), where Nienaber JA held at 14I–J to 15A–D:

"The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarized as follows: To come to a conclusion on the disputed issues, a court must make findings on:

(a) the credibility of the various factual witnesses;(b) their reliability; and (c) the probabilities.

As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as:

- (i) the witness' candour and demeanour in the witness-box;
- (ii) his bias, latent and blatant,
- (iii) internal contradictions in his evidence,
- (iv) external contradictions with what was pleaded or put on his behalf or with established fact or with his own extra curial statements or actions,
- (v) the probability or improbability of particular aspects of his own version,
- (vi) the caliber and cogency of his performance compared to that of other witnesses testifying about the same incident or events.

As to (b), a witness' reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on the opportunities he had to experience or observe the event in question and the quality, integrity and independence of his recall thereof.

AS to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it."

[83] With regard to the principle of common purpose, the court must assess the evidence to determine whether the accused acted in furtherance of a common purpose, as this is the basis upon which the State seeks to establish the guilt of the accused in the present matter. The offences were committed in the context of a group of individuals who came together to punish those suspected of being involved in the so-called "amaphanga" killings and robberies, which had been terrorizing residents in Mountain View, Skierlik, and Lethabong. Residents lived in constant fear within their homes, as these criminals were reportedly breaking in during the early hours of the morning while victims were still asleep. Frustrated by the lack of effective police intervention, members of the community allegedly took the law into their own hands when they apprehended the suspects.

In *S v Thebus* 2003 (2) SACR 319 (CC), the Constitutional Court affirmed the approach adopted in *S v Mgedezi* 1989 (1) SA 687 (A), and the matter was put beyond doubt by Moseneke J at 341E, paragraph 34, where the learned Justice stated:

“Provided the accused actively associated with the conduct of the perpetrators in the group that caused the death and had the required intention in respect of the unlawful consequence, the accused would be guilty of the offence” *Thebus* at 345, para [45] as follows: “[45] A collective approach to determining the actual conduct or active association of an individual accused has many evidentiary pitfalls. The trial court must seek to determine, in respect of each accused person, the location, timing, sequence, duration, frequency and nature of the conduct alleged to constitute sufficient participation or active association and its relationship, if any, to the criminal result and to all other prerequisites of guilt. Whether or not active association has been appropriately established will depend upon the factual context of each case.”

Further at 341, para [34] d-g: “In our law, ordinarily, in a consequence crime, a causal nexus between the conduct of an accused and the criminal consequence is a prerequisite for criminal liability. The doctrine of common purpose dispenses with the causation requirement. Provided the accused actively associated with the conduct of the perpetrators in the group that caused the death and had the required intention in respect of the unlawful consequence, the accused would be guilty of the offence. The principal object of the doctrine of common purpose is to criminalize collective criminal conduct and thus to satisfy the social ‘need to control crime committed in the course of joint enterprises’.

Assessment of the evidence

IDENTIFICATION

[84] The State relies primarily on the evidence of Mr. Vusi Mahlangu for the identification of the accused. Mr. Mahlangu, who knew the accused prior to the incident, testified that he observed them during the assault of both deceased persons. He stated that Accused 1 and Accused 3 assaulted Paulos by striking him with golf sticks while at the border between Skierlik and Lethabong and further paraded him to identify his accomplice. The witness was approximately 11 meters away from the accused at the time.

He further testified that Accused 2 and Accused 4 used golf sticks and a pick handle to assault Mashaba after he had been pointed out by Mdala as an accomplice. During this incident, the witness was again approximately 11 meters away from the accused.

While walking from Mashaba's residence to Mdala's residence and then to Mzinto's house, both deceased were assaulted and pushed with golf sticks and wooden sticks by members of the community, and Mashaba was bound with wire on his hands by residents from Mountain View. A stepladder was also taken and later used by Accused 2 and the individual referred to as "Gogo and gogo's boys," and Accused 4, to further restrain and assault the deceased. This resulted in severe injuries to the deceased's limbs.

The group of individuals then proceeded to a muddy area near the railway line, where Mdala was abused by being thrown into a puddle of water by the group associated with Gogo. The State witness observed this incident from a distance of approximately 7 meters. He further testified that Accused 2 and Accused 4 took Mashaba into the bush near the railway line. From a vantage point atop a concrete slab, approximately 25 meters away, the witness had a clear view of the events taking place.

Accused 1 and Accused 3 were seen alternately striking Mdala, who was lying in the puddle of muddy water, with a golf stick—resulting in crushed bones to the extent that only flesh appeared to be holding the foot together. Subsequently, accused 4, claiming to be a victim of the "amaphanga", went into the bush armed with a golf stick and a pick handle. The witness followed and observed that Mr. Mashaba was by then lifeless. He saw Accused 2 binding Mashaba with wire while Accused 4 assaulted him with the golf stick. Thereafter, accused 2 dragged Mashaba's lifeless body across the railway line.

As the witness departed for home, he testified that Accused 1 and Accused 3 remained at the scene talking to Mdala who was by then not yet dead.

[85] The identification of the accused is not based on fleeting observations of strangers, but rather on long-standing acquaintances. Mr. Mahlangu testified that he had known Bongani (Accused 1) for approximately three years; Long (Accused 2) for four years; Ntsako (Accused 3) for three years; and M'Sixty (Accused 4) for seven years. The events in question occurred in the early hours of the morning and continued into daylight. There is no indication from the evidence of either the State or the accused that visibility was in any way compromised. The accused were not disguised during the incident. The witness observed the accused from varying distances—approximately 7 metres, 11 metres, and 25 metres—at different stages of the incident.

Despite the presence of a large crowd, estimated to be over 100 people, the witness was able to clearly observe and describe the actions of each accused. This enhances the reliability of the identification, in line with the principles articulated in *S v Mthetwa* 1972 (3) SA 766 (A) at 768A–C, where the court held that factors such as lighting, proximity, duration of observation, and prior knowledge of the accused must be considered in evaluating identification evidence.

[86] The court is satisfied that Mr. Mahlangu had sufficient opportunity to observe the accused and that he reliably identified them. His identification is further strengthened by his prior acquaintance with the accused, which the court in *R v Dladla* 1962 (1) SA 307 (A) at 310 recognized as a material factor that enhances the probability of a correct identification. Similarly, in *S v Miggel* 2007 (1) SACR 675 (C), it was held that even where the accused are known to the witness, the court must still assess the quality of the observation. Mr. Mahlangu's identification meets the required threshold. Even though he was a single witness in this regard, his evidence is clear and satisfactory in the circumstances.

ALIBI DEFENCES

[87] Accused 1 does not raise a complete alibi. His version places him in close proximity to the scene contemporaneously with the events. He initially concedes that he was part of the group but claims to have withdrawn prior to the fatal assaults. This selective distancing appears opportunistic, particularly because of his own evidence when he said that he wanted to observe how events would unfold especially for Mashaba whom he knew as an employee of Mega-Master. His version lacks credibility, especially when considered in light of *R v Hlongwane* 1959 (3) SA 337 (A) at 340H, where the court held that an alibi, if reasonably possibly true, must result in an acquittal. However, when weighed against the totality of the evidence, as instructed in *S v Van der Meyden* 1999 (1) SACR 447 (W) at 449C–450B, the version advanced by Accused 1 is not reasonably possibly true.

[88] The suggestion that Mr. Mahlangu falsely implicated Accused 1 due to a dispute over patroller fees is speculative and unsupported by the evidence. The evidence confirms that Mr. Mahlangu was officially listed as a patroller—a fact also confirmed by Accused 3 and also by accused 1 himself. Mr. Mahlangu was entitled to remuneration for his services. Furthermore, the collection of fees was not undertaken solely by Mr. Mahlangu, but jointly with two women. Had Accused 1 wished to make payment, he could have done so through them. In any event, Mr. Mahlangu testified that he harbored no animosity towards Accused 1 for refusing to pay the fees.

A speculative motive is insufficient to undermine otherwise clear and credible identification evidence. See *Phipson on Evidence*, para 33.74, edited by Hodge M Malek QC. 'Nor are the opinions of witnesses admissible to prove another person's intention.' It follows that they are even less admissible to prove another person's motives for their acts. *Charles Velkes Mail Order 1973 (Pty) Ltd v Commissioner for Inland Revenue* 1987 (3) SA 345 (A) at 359H-I.

[89] Accused 1's version is partially corroborated by his girlfriend. However, given the nature of their personal relationship, her corroboration must be approached with caution. As held in *S v Sauls and Others* 1981 (3) SA 172 (A) at 180E–G, the appropriate approach is a commonsense evaluation of such evidence while exercising the necessary caution.

[90] Accused 2 raised an alibi, claiming that he remained at home due to prior threats allegedly made by Mr. Mahlangu. These alleged threats, the strained relationship, and the issue surrounding Sibusiso's escape from lawful custody were neither put to Mr. Mahlangu during cross-examination nor reported to the police. The version put to Mr. Mahlangu was that, upon recognizing that it was Mr. Mahlangu blowing the whistle and leading a group of fewer than ten people, accused 2 returned home and went to sleep.

The introduction of a belated reason for the alibi undermines the accused's credibility, as it raises questions about the veracity of the defense. No satisfactory explanation was provided for the delay in disclosing the alleged threats. I find these reasons to be a fabrication, which materially weakens the alibi of accused 2. The delayed disclosure diminishes the rebuttal value of the alibi, as held in *R v Biya* 1952 (4) SA 514 (AD) and *R v Hlongwane* 1959 (3) SA 337 (A).

[91] Accused 3 alleged that Mr. Mahlangu had a motive to falsely implicate him because he had reported Mahlangu's alleged unlawful possession of a firearm to the community office. However, this claim was based on hearsay and is therefore inadmissible. Furthermore, the alleged motive was unsubstantiated, and no corroborating witness was called to support this claim of a firearm. The court accordingly disregards this evidence as inadmissible. With the alleged motive falling away, the only remaining defense is the alibi, which is improbable when weighed against the clear identification evidence presented by the State witness.

[92] Accused 4 alleged that he was falsely implicated due to a 2017 altercation of a romantic and assault-related nature with Mr. Mahlangu. However, this incident was resolved by way of a withdrawn statement seven years ago, rendering the alleged motive speculative and tenuous. Notably, no case against Mr. Mahlangu arose from that incident, as it had been withdrawn in court in favour of Mr. Mahlangu. During proceedings, Mr. Mahlangu appeared to have forgotten about the matter, as he was unable to recall whether he had any case against Accused 4. This conduct of Mr. Mahlangu will be understandable given that he never went to court on this matter. The matter was withdrawn, and seven years have already passed since the withdrawal of the matter.

The probative value of the alleged motive, as a reason for implicating Accused 4 in this case, fails to rebut the identification made by Mr. Mahlangu of Accused 4's presence at the scene and his participation in the assault on the deceased. In *S v Ndhlovu and Others* [2002] ZASCA 70; (3) All SA 760; 2002 (6) SA 305, this court defined "probative value" as follows: "Probative value" means value for purposes of proof, which the accused has failed.

Accused 4 himself disputes the withdrawal of the case, notwithstanding that he signed the statement. However, mere suspicion or speculation cannot displace the clear identification evidence given by a State witness who had known the accused for seven years.

[93] The doctrine of common purpose, as endorsed in *S v Thebus* 2003 (2) SACR 319 (CC), dispenses with the requirement for direct causation. It is sufficient that the accused associated themselves with the conduct of the group or mob. The evidence demonstrates that all the accused joined the group, marched with the mob, were present during the assaults on both deceased and actively participated therein. Each accused was present and took part in the assaults as described by the State witness. Their conduct supports a finding of a shared intention to assault and punish the deceased, resulting in their deaths, thereby satisfying the requirements set out in *S v Mgedezi* 1989 (1) SA 687 (A) and approved in *Thebus*, paragraph 34.

CREDIBILITY AND RELIABILITY

[94] Mr. Mahlangu's evidence remained materially consistent despite rigorous cross-examination. He provided a coherent and unwavering account of each accused's conduct and participation. In assessing his credibility, the court adopts the holistic approach set out in *Stellenbosch Farmers' Winery Group Ltd v Martell et Cie* 2003 (1) SA 11 (SCA) at 15A–D, which evaluates credibility, reliability, and probabilities collectively.

Although attempts were made to challenge his credibility on the basis of alleged ulterior motives to falsely implicate the accused, no material contradictions or improbabilities arose to undermine his testimony regarding identification. His demeanour was composed, albeit with a tendency to over-explain at times, and his narrative of the events remained steadfast under cross-examination.

[95] The accused sought to distance themselves from the events despite being known community members who were observed by the witness at the scenes. Accused 1 admitted his presence and confirmed the assault on Paulos and Mashaba, even attempting to intervene. Consequently, his version corroborates aspects of Mr. Mahlangu's testimony. Their reliance on alibi and alleged motives to falsely implicate them were found to be weak and inherently improbable when weighed against the State witness's evidence identifying them and describing their brutal assault of the deceased.

The court applies the principle set out in *S v Artman and Another* 1968 (3) SA 339 (SCA), where Holmes JA held that the evidence of a single witness must be clear and satisfactory in all material respects. Mr. Mahlangu's evidence meets that standard.

CONTRADICTIONS AND CORROBORATION

[96] The defense raised inconsistencies in Mr. Mahlangu's testimony, particularly

regarding his role as a patroller, past altercations with Accused 4, and discrepancies between his statement to the police and his viva voce evidence. These contradictions are peripheral and do not go to the core of his evidence. The proper approach to contradictions, as set out in *Mafaladiso v S* 2003 (1) SACR 583 (SCA) at 593J–594G, is to consider the context, language, and cultural translation differences, and to weigh contradictions against the viva voce evidence (see *R v Gumede* 1949 (3) SA 749 (A) at 757). In *S v Govender and Others* 2006 (1) SACR 322 (E), Nepgen J discussed this issue extensively, emphasizing that it should always be borne in mind that “. . . police statements are, as a matter of common experience, frequently not taken with the degree of care, accuracy and completeness which is desirable...” (*S v Xaba* 1983 (3) SA 717 (A) at 730B–C). Furthermore, as pointed out in *S v Bruiners en 'n Ander* 1998 (2) SACR 432 (SE) at 437h, the purpose of a police statement is to obtain details of an offence to decide whether to institute prosecution, and it is not intended to be a precursor to the witness' evidence in court.

[97] The court also considers the principle in *S v Mkohle* 1990 (1) SA 95 (A) at 98F–G, where it was held that not all contradictions warrant rejection of the entire testimony; only material contradictions, assessed holistically, justify such rejection. Mr. Mahlangu's evidence withstands this scrutiny. In *Makhala & Another v S* 2022 (1) SACR 485 (SCA) at paras 111–115, Meyer AJA stated:

“Thus, the mere fact that a witness has contradicted himself is no reason to disregard or exclude his evidence in its entirety.”

[98] Accused 1's testimony partially corroborates Mr. Mahlangu's account regarding the victims being tied and assaulted. Accused 1's evidence that the crowd intended to punish the deceased confirms the chaotic and collective conduct of the group, thereby partially corroborating Mr. Mahlangu's testimony. Similarly, partial corroboration from defense witness Mkhwebane concerning looting and the crowd's behaviour lends further credibility to Mr. Mahlangu's evidence. This meets the standard for corroboration outlined

in *S v Gentle* 2005 (1) SACR 420 (SCA) at 430J–C and renders the accused's evidence less probable on the issues in dispute.

PROBABILITIES

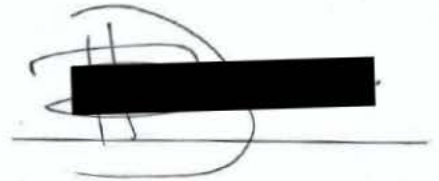
[99] The direct and objective evidence—including the nature and location of the injuries, the discovery of the deceased tied and beaten, and the collective movement of the mob—aligns with Mr. Mahlangu's account. Selective denials by the accused are improbable, especially considering that the State witness had known the accused for a long time. It is unlikely that the accused were present but played no role, particularly given that Accused 1's friend and Accused 4 were also victims of the "amapanga". Their selective admissions and implausible denials undermine their defenses. Speculative motives should be rejected as inherently improbable and not reasonably possibly true in the circumstances.

FINDING

[100] Applying the principles from *S v Van der Meyden* supra, the court finds that the accused were positively identified. The State has proved the guilt of the accused beyond a reasonable doubt. The alibi defenses are false or not reasonably possibly true. The identification by Mr. Mahlangu, a credible witness with prior knowledge of the accused, is accepted as reliable. The accused acted with common purpose in committing the assaults that led to the deaths of Paulos and Solomon Mashaba. Accordingly, the accused should be found guilty based on their participation under the doctrine of common purpose.

ORDER

[101] All four accused are found guilty of murder on both counts.

A handwritten signature in black ink, consisting of a large, stylized 'M' with a horizontal line through it, followed by a series of loops and a final vertical stroke. The signature is written over a horizontal line.

M MUNZHELELE

JUDGE OF THE HIGH COURT

PRETORIA

Appearances:

Counsel For the State: Adv. Tshabalala

Counsel For Accused 1: Mr. Mphela

Counsel For Accused 2: Adv. Mzamane

Counsel For Accused 3 & 4: Adv. Maluleke