

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS54/2016

DATE: 2025-10-30

In the matter between

10

DAVID MOKUBUNG

Applicant

and

THE STATE

Respondent

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED



SIGNATURE

DATE: 30 October 2025

J U D G M E N T

LEAVE TO APPEAL

WILSON J: The applicant was the second accused at trial. He was indicted before my sister Siwendu J on multiple
20 charges arising from an armed robbery in the course of which two people were murdered.

The trial judge convicted Mr Mokubung on all counts, including both murders, the armed robberies themselves, the attempted murder of another individual involved at the scene of the armed robbery, the kidnapping

of another person, and the unlawful possession of various explosives and firearms. There was also a charge of theft of a motor vehicle. Having convicted Mr Mokubung of the offences I have just enumerated, the trial judge sentenced Mr Mokubung to an effective life term.

I need not take the charges individually because for reasons that will shortly become clear, I am satisfied that leave to appeal to a Full Court should be granted against both the convictions and the sentences that
10 followed from them

Overall, what is recorded in the trial judge's judgment seems to me to be wholly insufficient to justify the convictions the trial judge returned. The evidence admitted against Mr Mokubung appears to have been limited to DNA found on a cell phone at the scene of the robbery, DNA found on a balaclava which appears, at least on the trial judgment, not to have been found at the scene of the robbery, his presence in a car that looked very much like the getaway car used at the robbery, and the presence in
20 that car of another one of the accused and firearms which were linked to the robbery by ballistics tests.

There were also admission statements extracted from Mr Mokubung. Mr Mokubung says that they were coerced from him. The trial judge rejected that contention after a trial-within-a-trial. However, it is difficult to ascertain

from the judgment what Mr. Mokubung's admissions were, and what role they played in the trial judge's ultimate decision to convict him. In the judgment on sentencing it emerges that the trial judge felt herself able to reach a conclusion that Mr Mokubung was guilty of all the charges proffered against him without the admission statements.

The trial judge convicted Mr Mokubung of the murders that took place in the course of the robbery on the basis of common purpose. However, I do not think that the
10 trial judge adequately set out how the doctrine of common purpose fills the gap between evidence of Mr Mokubung's DNA on a cell phone found at the scene of the armed robbery and his participation in the murder of the two people who died.

One can speculate on any number of scenarios that might fill that gap, and which might have found support in the evidence led at trial. But criminal convictions are returned not on speculation but upon facts that leave no reasonable possibility of innocence. Upon reading the trial
20 judge's judgment as a whole I do not think that there are within that judgment facts that exclude the reasonable possibility that Mr Mokubung is innocent of any or all of the counts of which he was convicted.

Turning to the judgment on sentencing, the cumulative effect of the sentences the trial judge imposed

was an effective life term. Although a number of sentences of varying length were imposed in relation to the kidnapping, the robbery, the attempted murder, the unlawful possession of firearms and explosives, and the theft, the imposition of the life sentences for the two murders mean, by virtue of the Correctional Services Act, that all of the sentences are rolled together into a life term.

Without having made findings in either judgment as to Mr Mokubung's degree of participation in the murders he
10 is said to have committed, and the precise respect in which he is said to have made common purpose with whomever murdered the two deceased, I do not think that the trial judge equipped herself with the facts necessary to justify a life sentence. It seems to me that even if I were to accept that all the convictions are safe, I would still be left in some doubt about whether a life sentence could be justified given the facts that are currently available to me on Mr Mokubung's alleged degree of participation in the two murders on which the life sentences were handed down.

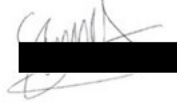
20 For that reason, leave to appeal against the sentences handed down must be granted.

I must record my gratitude to counsel for the National Prosecuting Authority who, despite having been briefed at very short notice and given the benefit of a short adjournment to read the trial judgments, very fairly

conceded that leave to appeal had to be granted. It seems to me that her conduct in these circumstances displayed the very highest standards of advocacy.

For all of the reasons I have given I make the following order:

- [1] The application for leave to appeal against both conviction and sentence is granted.
- [2] The appeals will lie to a Full Court of this division.


WILSON J
JUDGE OF THE HIGH COURT
30 OCTOBER 2025

