



**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION: MTHATHA]**

Case No. CC10/2017

In the matter between:

THE STATE

and

PHIWOKUHLE MSUTHU

Accused No. 1

THANDISIZWE NTUMBUKANA

Accused No. 2

WANELE NDLEBE

Accused No. 3

MCEBISI POYO

Accused No. 4

LUNDI GUMENGE

Accused No. 5

WONKE NDLEBE

Accused No. 6

SENTENCE

JOLWANA J

[1] Various combinations of an armed group of robbers committed three cash in transit robberies of cash conveyance armoured vehicles from Fidelity Security

Services (Fidelity) in a period of less than two months between 14 September 2015 and 4 November 2015. These robberies were committed in the O.R. Tambo District Municipality area on 14 September 2015 in Lusikisiki (the Lusikisiki robbery) on the R61 main road between Lusikisiki and Port St Johns; on 2 November 2015 in Ngqeleni at St Barnabas Hospital (the St Barnabas Hospital robbery) on the R61 main road between Port St Johns and Mthatha; and on 4 November 2015 in Tsolo (the Tsolo robbery) on the N2 National Road between Tsolo and Mthatha.

[2] Only six accused were charged, presumably the other members of the armed groups were never found. Of the six accused who were charged, two accused died before the trial was concluded being accused no.2, Thandisizwe Ntumbukana and accused no.4, Mcebisi Poyo, the latter having never appeared in this Court. Two brothers being accused no.3 and 6, Wanele Ndlebe and Wonke Ndlebe respectively, were acquitted subsequent to an application in terms of section 174 of the Criminal Procedure Act 51 of 1977 (the CPA). Accused no.1 was also acquitted in terms of section 174 of the CPA on two murder charges in which Kuzo Andrea Mapipa and Mr Yamkela Zoya were killed in a hail of bullets at So What Lounge in Mthatha on 1 November 2015 due to insufficient evidence.

[3] At the conclusion of the trial, the two remaining accused being accused no.1 and 5, Phiwokuhle Msuthu and Lundi Gumenge were convicted as follows:

1. Accused no.1

- (a) Count 1, aggravated robbery in respect of the Lusikisiki robbery;
- (b) Count 2, unlawful possession of a firearm during the Lusikisiki robbery;
- (c) Count 7, aggravated robbery in respect of the St Barnabas Hospital robbery;

- (d) Count 8, attempted murder of Kwanele Vapi during the St Barnabas Hospital robbery;
- (e) Count 9, attempted murder of Mphumezi Mlenga during the St Barnabas Hospital robbery;
- (f) Count 10, unlawful possession of firearms during the St Barnabas Hospital robbery;
- (g) Count 11, unlawful possession of ammunition during the St Barnabas Hospital robbery;
- (h) Count 12, aggravated robbery in respect of the Tsolo robbery;
- (i) Count 13, the murder of Mnikelo Nqeto during the Tsolo robbery;
- (j) Count 15, aggravated robbery of the Mercedes Benz ML63 of Mr & Mrs Jama during the Tsolo robbery;
- (k) Count 16, unlawful possession of firearms during the Tsolo robbery and the high jacking of Mrs Jama's vehicle;
- (l) Count 17, unlawful possession of ammunition during the Tsolo robbery and the high jacking of Mr and Mrs Jama's vehicle;

2. Accused no.5

- (a) Count 7, aggravated robbery in respect of St Barnabas Hospital robbery;
- (b) Count 8, the attempted murder of Wanele Vapi during the St Barnabas Hospital robbery;
- (c) Count 9, the attempted murder of Mphumezi Mlenga during the St Barnabas Hospital robbery;

- (d) Count 10, the unlawful possession of firearms during the St Barnabas Hospital robbery;
- (e) Count 11, unlawful possession of ammunition during the St Barnabas Hospital robbery;
- (f) Count 12, aggravated robbery in respect of the Tsolo robbery;
- (g) Count 13, the murder of Mnikelo Nqeto during the Tsolo robbery;
- (h) Count 15, aggravated robbery of Mr and Mrs Jama during the Tsolo robbery;
- (i) Count 16, unlawful possession of firearms in respect of the high jacking of Mr and Mrs Jama's vehicle;
- (j) Count 17, unlawful possession of ammunition in respect of the high jacking of Mr & Mrs Jama's vehicle during the Tsolo robbery.

This Court is now faced with the onerous task of considering and imposing appropriate sentences on each accused for each offence for which they have been convicted being guided by all the trite sentencing principles and in particular, the *Zinn* triad which is similarly trite and needs no explanation.

[4] These types of offences are some of the most serious and heinous crimes that can be committed by an accused person. Not only are they very serious offences, the legislature, in recognition of their seriousness, has also prescribed minimum sentences in respect of some of them. For that reason, in the accused's indictment, the State invoked the provisions of section 51 of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentences Act). The parts of section 51 of the Minimum Sentences Act which are relevant for the purposes of these offences reads:

“(1) Notwithstanding, any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part 1 of Schedule 2 to imprisonment for life.

(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in-

(a) Part II of Schedule 2, in the case of –

(i) a first offender, to imprisonment for a period not less than 15 years;

...

(3) (a) If any court referred to in subsections (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings... .”

[5] Part I of Schedule 2 of the Minimum Sentences Act reads:

“Murder, when

(a) it was planned or premeditated,

...

(b) the death of the victim was caused by the accused in committing or attempting to commit or after having committed one of the following offences:

(i) ... ;

(ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act (Act 51 of 1977);

Attempted murder, in circumstances referred to in paragraphs (a) to (g) of the offence of ‘murder’. ”

[6] The relevant part of Part II of Schedule 2 reads as follows:

“Robbery –

(a) where there are aggravating circumstances.

....”

[7] Both accused elected not to testify and instead of testifying, Mr Potgieter, their counsel, made submissions on their behalf. In doing so, he started by the personal circumstances of accused no.1 which he listed as follows:

1. Accused no.1 is now 39 years old and was 30 years old when he was arrested;
2. He is married in terms of customary law;
3. He is a father of four children from different mothers. The oldest of them is 19 years old and the youngest is 10 years old;
4. At the time of his arrest he had a construction company and a security company;
5. Because of his incarceration since 31 January 2016 when he was arrested, to date, which is now 3 months short of 10 years awaiting trial in prison, those companies are no longer in operational;
6. Due to his incarceration, he did not contribute to the maintenance of his children. He also lost contact with them altogether and in the almost 10 years he has been in incarceration, he did not have any contact with his children.
7. He has no previous convictions.

[8] The personal circumstances of accused no.5 are as follows:

1. He is 41 years old and he was 31 years old or so and when he was arrested on 31 January 2016;
2. He is in a civil marriage with his wife Christina Gumenge;

3. He has five children from different mothers. The oldest child is 16 years of age and the youngest is 9 years old;
4. He was gainfully employed at the time of his arrest. He has not been supporting any of his children since his incarceration;
5. He had limited contact with two of his children by making telephone calls to them when he was able to do so using a phone of the prison but completely lost contact his three other children;
6. He has a previous conviction of assault for which he received a suspended sentence. That sentence fell away in 2022 because of automatic expungement;
7. He is therefore a first offender.

[9] Mr Potgieter did not make separate and individualised submissions on behalf of the two accused persons. He made a joint submission for both accused save for the issue relating to accused no.5 having been shot in the leg by the police during his arrest in Cape Town. His submissions started with the acknowledgement that the minimum sentences provided for in the Minimum Sentences Act are applicable for some of the offences. His submissions in the main were about the fact that the accused were and have been in pre-sentence incarceration for almost 10 years since their arrest on 31 January 2016 awaiting trial and are first offenders. In those circumstances, it was submitted that life imprisonment would be disproportionate and that the court should exercise his discretion and depart from the imposition of the prescribed minimum sentences. Furthermore, he submitted that both accused are first offenders including accused no.5 who, for all intents and purposes, is also a first

offender as the conviction for assault is no longer relevant for the purposes of the sentence in this matter due to automatic expungement.

[10] It was submitted that they had confessed to the crimes for which they were later convicted and therefore, they were remorseful. It was also submitted that the Lusikisiki robbery was an inside job. I am not sure what the point being made was about the Lusikisiki robbery being an inside job. In any event, what makes matters worse as far as that robbery being an inside job is concerned is that Anele Gqweta, a section 204 witness, testified that it was accused no.1 who initiated the whole idea and planned its execution after asking for his cooperation in planning and executing it. This, accused no.1 did by starting a conversation with Anele Gqweta asking him to assist him in robbing a Fidelity armoured vehicle which would be driven by Anele Gqweta who was employed as a driver at Fidelity on 14 September 2015. Accused no.1 planned that robbery using the inside information he, Anele Gqweta, provided at his request. Accused no.1's planning included organising other criminals from Cape Town and other places. The whole group was well prepared with different assortment of firearms and ammunition. It can surely not be to accused no.1's advantage for purposes of sentence that he convinced Anele Gqweta to join a brainchild of his which happened to be a criminal enterprise.

[11] It would not be unreasonable to conclude that accused no.1 was the so called ringleader in all three robberies which appear to have been meticulously planned with a clear decision that the fire power the groups had with them was not for mere scare mongering or even self-defence during their criminal enterprises, but for the groups to shoot their way into the safes of the Fidelity armoured vehicles even if that meant killing any or all the Fidelity employees manning those vehicles. I say this because between the two remaining accused, of all the other members of the

groups he was always the common denominator. This is so because he was present in all three robberies. In his confession, nowhere does he indicate that he was invited into joining the criminal enterprises by anyone else including the others who were not arrested.

[12] Furthermore, he happens to be one of those familiar with both the Eastern Cape and the Western Cape where other gang members were organised from by him. He is also the only known for having a working knowledge of cash conveyance vehicle operations as he has been an employee in that industry in the past. He, together with some of the members of the group, were arrested in Cape Town where they went into hiding after realising that that police were hot on their heels. He was the one who knew Anele Gqweta and it was him who came with the late accused no.2 when they met in Fortgale and on Norwood shortly before the execution of the Lusikisiki robbery. I cannot accept the proposition that a person who decides to form part of a criminal enterprise whether or not he or she is invited into it or initiates it should benefit from the fact that it was an inside job. This is besides the fact that in this case he is the one who lured Anele Gqweta into what was his initial idea. Furthermore, accused no.1 was also part of both the St Barnabas Hospital and the Tsolo robberies in which there was no inside man. My sense is that with or without Anele Gqweta in the Lusikisiki robbery, he would still have been part of it as he was in respect of the other two robberies in which there was no inside assistance.

[13] I have enormous difficulties in understanding an argument made on behalf of the accused the effect of which was that because they spent almost ten years in pre-sentence incarceration as awaiting trial prisoners, that should suffice as a substantial and compelling circumstance. I am not aware of an accused person who is convicted being automatically entitled to receive a lesser sentence on account of any period

spent in prison while awaiting trial. Differently put, I am not aware of any legal position that the time spent in prison as an awaiting trial prisoner should automatically result in a departure from prescribed minimum sentences. What I do understand to be the position is that the time spent in prison awaiting trial is but one of the many factors that, together with other considerations, could be part of the whole combination of circumstances in a particular matter which should also be considered and which could all sway a sentencing court into departing from imposing a prescribed minimum sentence.

[14] The correct legal position on what amounts to substantial and compelling circumstances was captured with eloquence and precision in *Pillay*¹ in which the court said:

“When sentencing an accused person, a court has to evaluate all the evidence, including the mitigating and aggravating factors, to decide whether substantial and compelling circumstances exist. A court must be conscious of the fact that the legislature has ordained a particular sentence for such an offence and there must be truly convincing reasons to depart therefrom which reasons must be stipulated on the record.

It is for this reason that the courts have not attempted to define what is meant by substantial and compelling circumstances. This is in keeping with the principle that the imposition of sentence is pre-eminently the domain of a sentencing court. A court must consider all the circumstances of the case, including the many factors traditionally taken into account by courts when sentencing offenders. For circumstances to qualify as substantial and compelling, they need not be ‘exceptional’ in the sense that they are seldom encountered or rare, nor are they limited to those which diminish the moral guilt of the offender.

Where a court is convinced, that after consideration of all the factors, an injustice would be done if the minimum sentence is imposed, then it can characterise such factors as constituting substantial and compelling circumstances and deviate from imposing the prescribed minimum sentences.

¹ S v Pillay 2018 (2) SACR 192 (KZD) at paragraphs 9-12.

In *S v Vilakazi* the court explained that particular factors, whether aggravating or mitigating, should not be taken individually and in isolation as substantial or compelling circumstances. Ultimately, in deciding whether substantial and compelling circumstances exist, one must look at traditional mitigating and aggravating factor and consider the cumulative effect thereof. When sentencing, a court takes into account the personal circumstances of an accused. However, only some of these carry sufficient weight to tip the scales in favour of the accused to impact on the sentence to be imposed. Often the fact that the accused is young and is a first offender has the effect of reducing a sentence, as there is potential for the offender not to repeat the crime and to be rehabilitated.”

[15] No submission at all was made as part of the initial submissions made on behalf of the two accused persons regarding remorse. That could only be because the accused were simply not remorseful. In any event I never even got even a whiff of remorse on their part about what they did throughout. This is in addition to their rather surprising failure to testify in mitigation of sentence and explain the circumstances which could have led to them acting so brazenly and what has happened since their arrest and detention. One would have thought that after spending almost 10 years in prison as awaiting trial prisoners, they would have a lot to say about anything they would have learnt in prison or even the value of freedom away from prison cells which they had enjoyed up to the age of about 30 years or so before they were arrested. Their four and five children that they have with different mothers were mentioned in passing as was the fact that there was very limited to no contact with those children for almost 10 years with no indication of what this has meant to them as fathers. While it cannot be said with any degree of certainty, the accused appeared to be indifferent about their experiences in prison and the time they have spent there; their loss of freedom and their yearning for it; their inability to contribute to the upbringing of their children etcetera. Nothing much was said about the role, if any, they played in the lives of their children before their arrest. Nothing

was said about their families and what has been happening in their family lives since their arrest.

[16] Even the issue of remorse was raised belatedly in reply by their counsel after counsel for the State submitted that the accused have not showed any remorse whatsoever. As a belated attempt was made to submit, inarticulately, in light of the accused having made confession statements which this Court ruled admissible was a weighty remorse consideration. I must point out that even an accused pleading guilty to a crime in respect of which minimum sentences are applicable, does not, without more, meet the standard of substantial and compelling circumstances. In my view, an accused person who confesses to crimes as the two accused did, but who later disavows the voluntariness with which the said confessions were obtained, cannot opportunistically rely on those confession for purposes of a lesser sentence being imposed. The accused's' disavowal of the voluntariness of their confessions led to a very lengthy trial within a trial. That contributed quite significant to the delays in the running and conclusion of the trial and therefore the almost ten year period they have been in incarceration awaiting trial.

[17] Still on the issue of the almost ten year period the accused have been in prison awaiting trial, as the State correctly pointed out, the accused changed their legal representatives a number of times. That also contributed quite significantly to the delays in the speedy conclusion of their trial. It also did not help that the accused pleaded with this Court to allow them to be represented by a legal representative of their choice who happened to be from Gauteng, who at that late stage, was Mr Potgieter. Incidentally, Mr Potgieter has a very busy practice and was not available for quite some time and the court accommodated the accused desire to be represented by him by making one of many long postponements at their instance. It

should be borne in mind that each time a new legal representative is instructed, he has to be provided with the docket, the exhibits, and all the transcribed of the voluminous record from inception which he needed time to familiarise himself to the point of understanding the full picture. All of this was done and had to happen to avoid prejudice to the accused and also to protect their fair trial rights.

[18] There is another difficult issue with the submission made on behalf of the accused about the almost 10 year period spent in pre-sentence incarceration. As I understood it, the submission was that in order to compensate and as the submission went, also in order to create proportionality, the court should make an order that the period spent in pre-sentence incarceration should be accounted for by an order being made indicating that the accused should qualify to be considered for parole at an earlier time commensurate with the almost ten year period they spent in prison while awaiting the conclusion of their trial. For this rather unusual proposition, reliance was placed on the Constitutional Court judgment of *Phaahla*². The court's attention was drawn specifically to the last portion of paragraph 70 which reads:

“...[I]f parole is part of the punishment, as we have held that it is, then the relevant date must be the date of the offence. This accords with s 35(3)(n), which provides that if the punishment has changed between date of offence and date of sentence, the accused has the right to the benefit of the least severe of the two punishments. The relevant dates are those of the commission of the offence and those of sentencing, the date of conviction does not enter the equation. For these reasons, the applicant's proposition should win the day: punishment, and parole eligibility, should be determined by the date of commission of the offence.”

[19] On any reading of this excerpt from *Phaahla*, it has nothing to do with the consideration of substantial and compelling circumstances or the consideration of the sentence to be imposed by a sentencing court. That submission is clearly misplaced.

² *Phaahla v Minister of justice and Correctional Services and Another* 2019 (2) SACR 88 (CC) para 70.

In my view, what the Constitutional Court said in *Phaahla* is not part of the equation for purposes of considering an appropriate sentence. It is also no authority for the sentencing court making a pre-determination of the commencement date of parole eligibility consideration. If the proposition made on behalf of the accused were to be followed, its unwieldiness and the incongruities in its implementation resulting in unequal treatment of offenders is glaring.

[20] When submissions were made during the sentencing proceedings, the accused indicated to the court that they wanted to give a specific instruction to counsel which they were allowed to do. It turned out that in order to deal with the State's submission that they were largely responsible for trial delays due to the number of times they changed legal representation, they wanted counsel to draw the attention of the court to the fact that it also often happened that there were also a number of delays in the police transporting them from Wellington Correctional Centre about 120 kilometres away where they were detained to Butterworth where this Court was sitting on circuit. To count all the hours of each delay and translate them into days, and other causes of postponements, or court adjournments would not only be an unwieldy process if it were to be implemented but also it would require a clear legislative regulation to ensure consistency.

[21] My understanding is that the period an accused person spent in prison while awaiting trial is one of the factors that, together with all other personal circumstances of the accused, and the entirety of the circumstances of the case should be considered in arriving at an appropriate sentence. It does not, on its own, entitle an accused person to either an automatic departure from a prescribed minimum sentence or an automatic reduction of the sentence that the court would have

imposed if there were no delays in the conclusion of the trial. In *Dlamini*³ the court made it clear that the period an accused person spent in custody while awaiting completion of his trial should be taken into account in deciding on an appropriate sentence. There were a number of postponements that occurred in this matter at the instance of the accused themselves including the more or less two year delay when submissions on the merits were delayed because their counsel felt he needed more time to prepare and conduct research on the constitutionality of section 217 of the CPA. Therefore, any suggestion, directly or indirectly that the State was largely responsible for the inordinately long period the accused spent in prison while awaiting trial is not borne out by the facts.

[22] This brings me to the seriousness of the offences that the accused have been convicted on. As counsel for the State submitted, cash in transit robberies are unfortunately not only very serious crimes but are regrettably very prevalent, not just in the jurisdiction of this Court but throughout the country. In this case the accused armed themselves with high calibre automatic rifles and other assortment of firearms which were used in attacking the Fidelity cash conveyance vehicles especially during the St Barnabas Hospital and Tsolo robberies. During the St Barnabas Hospital robbery, a group of armed robbers started shooting at the Fidelity vehicle on the public road outside the hospital. The security officers in that vehicle drove into the hospital premises in an attempt to run away from the assailants. Undeterred, the accused and their co-assailants continued pummelling the Fidelity armoured vehicle with heavy gunfire repeatedly. In doing so, they had no regard at all if those inside the Fidelity vehicle or the medical personnel and patients in that hospital were killed in the process. As a result, Mr Kwanele Vapi who was the driver of that vehicle was

³ *Dlamini v S* 2012(2) SACR 1 (SCA) para 41

struck by one bullet and decided to drive into the hospital which was about 500 metres away at the time. His evidence was that heavy gunfire continued right into the hospital premises while being chased by a one or more vehicles of the assailants until the end of the road inside the hospital where heavy gunfire by the robbers continued.

[23] The assailants alighted from their vehicle and continued shooting the Fidelity vehicle which had stopped by that time. During that heavy gunfire inside the hospital, Mr Mlenga was struck by one bullet while inside the vehicle. When the assailants left, he and his colleague alighted and found that a cash box had been stolen. During the Tsolo robbery, not only was Mr Mnikelo Nqeto shot and killed while running away and therefore posing no danger to the accused and their co-robbers, but also Mr Zola Mphako was shot and fell on the road. Mphako was fetched from where he had fallen on the road and brought to the Fidelity vehicle and was forced to call their office to get a code to open the safe of the cash van. The third Fidelity employee, Mr Vuyisile Mandoyi spent three months in hospital being treated for a gunshot wound. The point is that the accused demonstrated that they would stop at nothing and would kill the Fidelity employees in order to steal the money from the cash vans if they stood in their way. The only incident in which no shooting occurred was the Lusikisiki robbery because it also involved a Fidelity employee, Anele Gqweta. During that robbery the assailants stole R2.5million and also stole firearms belonging to Fidelity which were in possession of Fidelity security personnel. These incidents took place on public roads and during the Tsolo robbery, the N2 national road was completely blocked during until the accused and other members of the group hijacked Mr and Mrs Jama's vehicle which they used as a getaway vehicle. All three robberies took place in a period of less than two months. The fear

that must have been instilled in members of the public during the brazen robberies is unimaginable as is the manner in which public order and the rule of law were spectacularly undermined.

[24] In the final analysis, it being common cause that the prescribed minimum sentences are applicable for some of the offences, the question is whether or not the accused have come up with truly convincing reasons for this Court to depart therefrom. Nothing in the personal circumstances of the accused was said that would justify a departure from the prescribed minimum sentences. Their personal circumstances, even considered cumulatively, are not the kind of circumstances that would justify a departure because they are neither substantial nor compelling. Departure from the prescribed minimum sentences is not to be done for the reasons of the ilk submitted on behalf of the accused and I have carefully considered each one of them.

[25] I am emboldened in my conclusion that there are no substantial and compelling circumstances that have been raised by the two accused by the legal position on this issue as articulated about 15 years ago by the Supreme Court of Appeal in *Matyityi*⁴ where the court said:

“Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation continues to be alarming. It follows that, to borrow from *Malgas*, it still is ‘no longer business as usual’. And yet one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest reasons, as here, that do not survive scrutiny. As *Malgas* makes plain courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and like other arms of state owe their fealty to it. Our constitutional order can hardly

⁴ S v Matyityi 2011(1) SACR 40 (SCA) para 25.

survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domain of power of the other arms of state. Here parliament has spoken. It has ordained minimum sentences for certain specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as 'relative youthfulness' or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, is foundational to the rule of law which lies at the heart of our constitutional order."

[21] In all the circumstances the accused are sentenced as follows:

1. Count 2, unlawful possession of a firearm during the Lusikisiki robbery, accused no.1 is sentenced to 5 years imprisonment.
2. Count 1, aggravated robbery in respect of the Lusikisiki robbery accused no.1 is sentenced to 15 years imprisonment.
3. Counts 10 and 11, unlawful possession of firearms and ammunition during the St Barnabas Hospital robbery, both accused are sentenced to 5 years imprisonment.
4. Count 7, the aggravated robbery in respect of the St Barnabas Hospital robbery, both accused are each sentenced to 15 years imprisonment.
5. Counts 8 and 9, the attempted murders of Kwanele Vapi and Mphumzi Mlenga during the St Barnabas Hospital robbery, both accused are each sentenced to 20 years imprisonment.
6. Counts 16 and 17, the unlawful possession of firearms and ammunition during the Tsolo robbery, both accused are sentenced to 5 years imprisonment each.

7. Count 12, the aggravated robbery of the Mercedes Benz ML 63 of Mr and Mrs Jama, both accused are each sentenced to 15 years imprisonment.
8. Count 13, the murder of Mr Mnikelo Nqeto during the Tsolo robbery, both accused are each sentenced to life imprisonment.
9. In terms of section 39(2) of the Correctional Services Act, all the sentences shall run concurrently with the sentence of life imprisonment.
10. In terms of section 103 of the Firearms Control Act 60 of 2000 both accused are declared unfit to possess firearms.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearance

Counsel for the State : M.L Makubalo

Instructed by : NPA

MTHATHA

Counsel for the accused no.'s 1 and 5: H.J Potgieter

Instructed by : Groenewald Attorneys

GAUTENG

Date of hearing : 27 October 2025

Date delivered : 31 October 2025