



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION – MAHIKENG**

Case No: CA 35 / 2025

Court a quo Case No: RC 61/2019

**MATHAPELO VICTORIA SEICHOKO
KHANTSO ROSINA TLHALATSI**

**FIRST APPELLANT
SECOND APPELLANT**

And

THE STATE

RESPONDENT

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is 12 January 2026 at 10h00.

ORDER

1. The appeal against both conviction and sentence is dismissed

JUDGMENT

MAODI AJ

Introduction

- [1] This is an automatic appeal. The two appellants faced one count of murder read with the provisions of s 51 (1) and Schedule 2 Part 1 of the Criminal Law Amendment Act 105 of 1997 in the court a quo, in that they acted in common purpose. The appellants pleaded not guilty to the charge. The matter then proceeded with the State having to prove the appellants' guilt. The State led evidence and the appellants testified in their defence. On 1 September 2022 the appellants were found guilty as charged and sentenced to life imprisonment. The appellants have appealed the conviction and sentence of the court a quo.
- [2] On 15 August 2025 the appellants noted their appeal to this Court, which appeal included an application for condonation for the late noting and prosecution thereof.
- [3] The grounds of appeal are contained in the notice of appeal and are that:
- “Ad conviction
- 3.1 The court misdirected itself in proceeding with trial without assessors and thus committed gross irregularity.
- 3.2 The learned magistrate misdirected himself by correcting his judgment.
- 3.3 The court erred in finding that Bonolo Mokae's contradictions do not adversely affect his credibility.

Ad sentence in respect of first appellant

- 3.4 The court erred by sentencing the appellant to life imprisonment.
- 3.5 The sentence imposed is strikingly inappropriate in that it is out of proportion to the totality of the accepted facts in mitigation.
- 3.6 The honourable trial court should have found that imposing a sentence of life imprisonment was disproportionate to the crime, the criminal and the interests of society.
- 3.7 The court erred by not imposing a shorter term of imprisonment, more particularly taking into consideration that:
 - 3.7.1 She is 51 years old.
 - 3.7.2 The appellant is a first offender.
 - 3.7.3 The appellant is looking after 5 minor children.
 - 3.7.4 She looks after her husband who is on chronic medication.
 - 3.7.5 She has permanent employment.
- 3.8 The court over emphasised the seriousness of the offence at the expense of the personal circumstances of the appellant. The court imposed an excessive and severe sentence.
- 3.9 There are reasonable prospects that another court may arrive at a different conclusion and sentence.

Ad sentence in respect of second appellant

- 3.10 The court erred by sentencing the appellant to life imprisonment.

- 3.11 The sentence imposed is strikingly inappropriate in that it is out of proportion to the totality of the accepted facts in mitigation.
- 3.12 The honourable trial court should have found that imposing a sentence of life imprisonment was disproportionate to the crime, the criminal and the interests of society.
- 3.13 The court erred by not imposing a shorter term of imprisonment, more particularly taking into consideration that:
- 3.13.1 She is 60 years old.
- 3.13.2 The appellant is a first offender.
- 3.13.3 She is a pensioner.
- 3.14 The court over emphasised the seriousness of the offence at the expense of the personal circumstances of the appellant. The court imposed an excessive and severe sentence.”

Condonation

- [4] In their application for condonation, the appellants provided exhaustive reasons for same. The condonation application is not opposed by the respondent. I find that the appellants have succeeded in their application for condonation. Condonation is therefore granted.

Background and evidence

- [5] The first witness for the state was Mbanyana Mothibinyana (Mothibinyana) who testified that she is 23 years old and resides in Madibogo. The deceased was her boyfriend. On 6 January 2019 two women, two men and three boys came to her house looking for Thabang Kabili (the deceased). They said they came to fetch the deceased to Setlagole as he had left some stuff and had wronged them or done something wrong to them.

They were in a fighting mood. Upon arrival they found the deceased who tried to run away but the three boys followed him, caught him and brought him back to the two men and two women. They tied the deceased with a rope.

[6] She knows the three boys and mentioned their names. She only knows one woman of the two women. Her name is Manto and she stays next door to the deceased. The deceased stays in Setlagole while she stays in Madibogo. It was the first time she saw the first appellant. However, she can identify the first appellant as she paid attention to her on that day. The first appellant was fighting with the deceased because the deceased did not want to climb into the car. The first appellant assaulted the deceased with hands and pushed him into the car. It was 11:00 in the morning. The second appellant was just standing there and watching. The deceased was finally put into the car. The two men were also present. She does not know their names, but knows them by sight.

[7] At the time the appellants arrived at her home, the deceased was inside the house. She went outside to meet the appellants who were in company of some co-accused and three boys. Accused 3 in the court a quo went behind the house while accused 4 stood guard in front of the house so that the deceased would not escape. However, the deceased escaped through a window. First appellant told her that the deceased had escaped, they were taking her instead. When the deceased was chased by the three boys, the first appellant, second appellant, accused 3 and 4 remained at home with her. The deceased was caught by the three boys. After they put the deceased in the car, they told her that they were taking him to Setlagole. As they were leaving the second appellant was ululating. She did not go with them to Setlagole. It was the last time she saw the deceased.

- [8] Under cross examination by the first appellant she testified that the deceased arrived at her house at around 09:00 and sat with them outside. He then asked to sleep as he was tired, but was in a good mood. The deceased went into the bedroom. Upon arrival of the appellants, she went to wake the deceased up as they were making noise. The deceased fled through a window and the three boys chased him while the appellants and their co-accused remained behind with her. The first appellant was verbally and physically assaulting the deceased with her hands.
- [9] It was put to her that the first appellant's version is that the first appellant admits to verbally confronting the deceased but not physically assaulting him. Her response was that her brother asked the first appellant why she did not call police, but the first appellant told them that she was the police herself. After they left, she asked community members to call members of the deceased's family.
- [10] The first appellant's version was put to her that 8 people asked Gololo as to the whereabouts of the deceased. Gololo told them that the deceased had fled to Madibogo. They then got into a bakkie which belongs to the first appellant. Gololo is the one who directed them to Mothibinyana's house. They found Mothibinyana and asked her where the deceased was. She informed them that he was in the house. The first appellant asked her to tell the deceased to come out. It is true that the first and second appellant together with accused 3 surrounded the house for purposes of apprehending the deceased if he flees. Deceased got away through the window. Some of the members of the group ran after him, apprehended him and brought him back to the house.

[11] They put the deceased in the bakkie and drove with him to Setlagole. The items stolen were recovered. The first appellant did not deem deceased's injuries serious and she then went to her parents' house around 13:00. Later that day around 17:00, the first appellant received a call from her husband that the deceased and Gololo arrived at her house badly injured. She drove to her house and upon arrival was told that the deceased had passed away as he was assaulted by members of the community.

[12] Under cross examination by the second appellant she testified that she did not hear the second appellant, accused 3 and 4 instruct the boys to chase deceased. The boys did it on their own. The second appellant's version was put to her that the second appellant went to Mr Mokae's house and found that his property was stolen. Bonolo is the one who told them that it was the deceased who stole the items. The first appellant suggested that they find the deceased as he is known for stealing in Setlagole. Further that the deceased was not tied, but went into the car on his own volition. The first appellant is the one who drove the car to Lapopeng Section where the community was gathered. The first appellant dropped the deceased at a veld and told him that as the items were recovered, there was no need to lay criminal charges. The community then assaulted the deceased. The second appellant, accused 3 and 4 stood by as the community assaulted the deceased.

[13] The second witness was Bonolo Mokae who testified that he was staying in Gauteng before the 6 January 2019 but came home to Setlagole. He knows the first appellant very well as she is the wife to his grandfather. He knows the second appellant too. On 6 January 2019 he was walking with the deceased next to a tavern. The deceased took him to a house where the deceased took out food for them to eat. The deceased went to sell a drill to one Mangwane and was given money. They went from one tavern to the

other until the morning when they went to the deceased's house. His grandfather, the second appellant and grandfather Mokete arrived and asked them where grandfather Mokete's items were. The deceased ran away. It was around 08:00 or 09:00.

[14] The first and second appellants grabbed him and assaulted him with a sjambok. They put him in a van which was driven by the first appellant. The second appellant and the son of the first appellant are the ones who put him in a van. The first and second appellant tied him with ropes. They went to Shakes' house where they had sold the items. Shakes gave the items back. The appellants assaulted him in the bushes and poured oil on him. They said he must show them where the deceased was in Madibogo. He took them to the deceased's wife in Madibogo.

[15] Upon their arrival in Madibogo the deceased ran away. Half loaf chased the deceased and caught up with him. The first and second appellants were outside the van. They put the deceased inside the van whilst assaulting him. It was half loaf and the second appellant who were assaulting the deceased. They took both of them back to Setlagole and to Mr Tshelo's place. The first and second appellants were exchanging sjambok to assault both him and the deceased. The appellants were hitting the deceased with stones. He left and went to his house to sleep, but the deceased was lying flat on his stomach when he left. The deceased was unable to walk.

[16] Under cross examination by the first appellant he testified that the first appellant assaulted him. They went to the deceased. Half loaf tied the deceased with wire. He only saw one boy chasing the deceased. After that they put them in the van and untied them. He requested grandfather Mokete

to go home to sleep. When he left the deceased was still alive. They gave him permission to leave.

[17] Under cross examination by the second appellant he testified that the second appellant tied his hands and was exchanging a sjambok with the first appellant to assault him and the deceased. He cannot dispute that the deceased was assaulted further by the community members as he left. The state closed its case.

[18] The first witness for the defence was Mmathapelo Victoria Seichoko (first appellant) who testified that on 6 January 2019 she was at her home in Mahikeng, Mapuru Village where she stays and was doing laundry at around 06:00. At about 07:00 her husband Mr Mokete told her that his brother called him and said that he saw footsteps of people jumping into his yard. She put the laundry into her bakkie and drove to Setlagole. Upon arrival they met the deceased at a two roomed house. Her husband and Mathews Mokae asked the deceased what he did, but he ran away.

[19] She noticed Bonolo in another room and asked him why they break into their grandfather's house. She also saw a 5kg of mixed portions of chicken inside a bath tub. They took Bonolo to her husband's place where the incident occurred, but Bonolo denied everything and blamed the deceased. She went to her parents' place where she collected her son Michael and went back to Mr Mokae's place. She and community members drove to Mangwane's place where stolen items were sold. They took the drill machine.

[20] As Bonolo was denying the theft of items, they drove with him to the veld just to talk to him. Bonolo said the deceased had fled to Madibogo. They drove to Madibogo. She was the driver in the company of second appellant

and accused 4, her son and other boys. Upon arrival at Madibogo she met Mbanyana who is deceased's girlfriend. She asked Mbanyana where the deceased was, to which she replied that he was inside the house. Bonolo pointed her at the deceased who had gone through the window to run away. The boys chased him, caught him and brought him back.

[21] The deceased entered the bakkie. She asked the deceased why he stole to which the deceased replied that he wanted money to go to Johannesburg. They then drove back to Setlagole. At Setlagole she stopped the car between her parents' house and her husband's house. She told the deceased that as the goods were recovered there was no need to lay criminal charges against him. She dropped the deceased, Bonolo and some community members there and went to her parents' house to do her chores.

[22] Around 17:00 she received a call from her husband that Bonolo and the deceased had entered his house. She drove there and found community members with the deceased who was lying on the ground. Police arrived and her husband made a statement. After that they drove back to her parents' house. She did not think it was dangerous to leave them with community members.

[23] Under cross examination she testified that she did not notice if second appellant and accused 4 were there when she went to Mr Mokae's house as there were a lot of people. When they went to Madibogo at deceased's girlfriend the second appellant and accused 4 were there. The second appellant and accused 4 did not assault the deceased at all.

[24] She has been working as a police officer from 2007 to date of trial with the rank of Sergeant. She knows her duties and what is expected of a member

of SAPS. She knows how to prevent crime and that members of society who are tired of crime can take the law into their own hands. She noticed that the community was not happy with what Bonolo had done. She played a big role in Bonolo and deceased being apprehended as she wanted to recover items, but not for them to be attacked. It was a leadership role. She knows, as a police officer, that it is wrong for someone to take the law into their own hands. The deceased was bleeding when he was put in the car. She initially said he was assaulted but changed and said she does not know what caused his bleeding. She did not deliver them to the nearest police station as she did not want to open a case.

[25] The second witness for the defence was Rosina Gantsa Tlhalatsi (second appellant) who testified that she goes by the nickname Mantsho. She knows Bonolo as he stays front opposite to her house. She was not there when the deceased ran away from the premises of Mr Mokete's house. She did not assault Bonolo with a sjambok but was present when they went to Shakes' house. In the company of members of the community they took Bonolo to a river to ask him questions. First appellant is the one who was driving and asking questions. They went to the deceased's girlfriend's house but she did nothing. The deceased was put in a car from Madibogo to Setlagole. She did not pelt the deceased with stones. Upon arrival in Setlagole they found a group or community crowd who demanded for Bonolo and the deceased. The community asked Bonolo and deceased what they did. It was at this time that she left to go home. She did not see when the deceased and Bonolo were assaulted. Never at any stage did she assault the deceased.

[26] Under cross examination she testified that she did not see the deceased jumping out of the window at his girlfriend's place as she was at the back of the house. However, they drove back to Setlagole with the deceased. She

admitted that at the time the group decided to go to Madibogo to fetch the deceased she could have dissociated herself from that, which she did not do. By going to Madibogo it was to make sure they catch the deceased. By surrounding the house it was to make sure the deceased does not escape.

[27] The third witness was William Tshelo who testified that he does not know Bonolo, the deceased or the second appellant. He never saw the first and second appellants bringing Bonolo to his house. He never assaulted anyone. He was herding sheep and knows nothing about the events.

[28] Under cross examination he testified that he does not know the first appellant. He did not meet her on 6 January 2019. He can't testify on anything of 6 January 2019 as he knows nothing. He maintained that he was not there. He did not see the assault but could see that a person was tied to the tree.

[29] The fourth witness was Abraham Mokae who testified that he was in Mafikeng when he received a call from his sibling. He travelled to Setlagole and found that items had been stolen from his house. He went to his sister's house and found Bonolo and the deceased. The deceased ran away. Only Bonolo remained. He left to his house but left his wife there. Later Bonolo and the deceased arrived at his house having sustained injuries from being assaulted. He asked them what happened and they told him that they were assaulted by the community. Bonolo left. He called his wife who is the first appellant in this matter to inform her that the deceased had passed away. The defence closed their case.

Assessors

- [30] It is best to set out the chronology of how the issue of assessors was handled by the court a quo. Two assessors were appointed for the matter, being Mr Kgopodi Jefferson Molete (Molete) and Mr Phumelo Ephraim Maloane (Maloane). This was because on 8 June 2020 Mr Opperman, on behalf of the first appellant, requested that assessors be present. The matter was postponed for that purpose. On 5 August 2020 the two assessors were present and duly sworn in. Hence the matter proceeded with two assessors.
- [31] On 28 October 2020 when the matter was supposed to proceed, only one assessor was present (Maloane). Molete was not present. Accused 4 was also not present. The respondent asked for separation of the case against accused 4 and that the matter proceed against accused 1 to 3. The court a quo enquired if it is not proper to first deal with the issue of assessors. First appellant's counsel (Mr Opperman) stated that it is in the interests of justice to move or proceed without the assistance of a second assessor as there will be no prejudice to anyone. The second appellant's legal representative (Mr Thusi) echoed the same sentiments that it is in the interests of justice that the matter proceed without assessors. The court a quo ordered that the matter proceed with one assessor. All accused informed the court a quo that they did not object to separation of trials and so it was ordered.
- [32] The one assessor (Maloane) was present throughout the proceedings until the defence closed its case. The assessor (Maloane) was not present on 8 April 2021 and the matter was postponed for his presence. On 27 September 2021 the assessor was again not present. The court a quo enquired with the appellants and the respondent if the matter should proceed without assessors. The first and second appellants, through their legal representatives, stated

that they did not object to proceeding without assessors. The matter proceeded as such.

Findings by the court a quo and correction of judgment

[33] The court a quo found that the appellants assaulted the deceased. In doing so the appellants acted and shared a common purpose which led to the deceased's death. The court a quo concluded that the respondent had proven its case against the appellants beyond a reasonable doubt.

[34] The court a quo convicted the appellants on murder read with the provisions of s 51(2) of Act 105 of 1997. The respondent then requested the court a quo to correct its judgment as the appellants were charged under the principle of common purpose as provided for in s 51(1) of Act 105 of 1997. Further that the court a quo is allowed to do this in terms of s 176 of the Criminal Procedure Act 51 of 1977. The first and second appellants, through their legal representatives, indicated that they did not have a problem with the court a quo correcting its own judgment. The second appellant indicated that it is of no consequence. The court a quo proceeded to correct its judgment and found the appellants guilty as charged.

Analysis and reasons for judgment

[35] The issue of assessors is provided for in s 93ter of the Magistrates Court Act 32 of 1944. The authorities are clear that, once an accused is represented by a legal practitioner in the regional court, it is sufficient for the trial court to canvass the issue of assessors with the legal representative and without necessarily having to confirm same with the accused him/herself.

[36] On 28 October 2020, when one assessor did not come to court, the court a quo exhaustively addressed the issue of continuing with one assessor. Both appellants' legal representatives indicated that the matter should proceed with one assessor. The court a quo proceeded as such. On 27 September 2021, when the remaining assessor did not attend court, the court a quo again enquired with the appellants whether the matter should proceed without any assessors. Both appellants' legal representatives indicated that the matter should proceed without assessors and that they had no objection. In fact the appellants' legal representatives indicated that it is in the interests of justice that the matter proceed and that there was no prejudice to be suffered by the appellants. At all relevant times, the appellants were respectively represented by the same legal representatives.

[37] In *Director of Public Prosecutions, KwaZulu-Natal v Pillay 2023 (2) SACR 254 (SCA)* at para 61, the court stated that:

“The wording of the proviso is clear and unambiguous concerning the composition of the court, and the accused’s entitlement to formally ask that the trial proceed with or without assessors. However, the interpretation of the proviso in *Langalitshoni* and *Nxumalo* produces a manifest absurdity. It is a settled principle that statutes should be construed to avoid absurdities or anomalous results. **Had the legal representative in both those cases informed the court that assessors were required, it would have been accepted that the proviso had been explained to the accused and that there was compliance with the requirements of the proviso.** And in that scenario, it cannot be suggested, as the court in *Langalitshoni* found, that the question, ‘Are you going to use the services of assessors’, was ‘misleading’, because it did not convey to the accused the proper constitution of the court. **As stated, the legal representative would be aware of the proviso, would have advised the accused of its requirements, and neither the representative nor the accused could conceivably be ‘misled’.** Why should the position be any different in the case where the legal representative informs the court that assessors are not required? In both scenarios the proviso requires no more than a formal request by the defence lawyer that the trial proceed with or without assessors.” Emphasis.

[38] I find that the court a quo did not misdirect itself in proceeding with trial without assessors and thus did not commit any gross irregularity. The first ground of appeal must fail.

[39] With regard to the second ground of appeal, amendment of a judgment is authorised by s 176 of the Criminal Procedure Act 51 of 1977 which provides as follows:

“s 176 – When by mistake a wrong judgment is delivered, the court may, before or immediately after it is recorded, amend the judgment.”

[40] The appellants were convicted and sentenced on the same day, which is 1 September 2022. The court a quo, upon realising its mistake, allowed the appellants and the respondent to address it on same. The respondent indicated to the court a quo that the appellants were charged with common purpose. Both appellants’ counsel indicated that they were fine with the amendment. There was no objection. This was done before addresses on sentence. The amendment was in line with the charge as put to the appellants and the evidence which was led.

[41] Common purpose is provided for in terms of s 51(1) read with Schedule 2 Part 1 (d) of Act 105 of 1997. I find that the court a quo did not misdirect itself by correcting its judgment. The second ground of appeal must therefore fail.

[42] With regard to the third ground of appeal, the authorities are clear that the onus remains on the State to prove the accused’s guilt beyond a reasonable doubt. Once the State has acquitted itself of this onus, it is then upon the accused to provide evidence which is reasonably possibly true so that his version can be accepted. The accused has no obligation to assist the State

in proving its case and his explanation does not have to be beyond a reasonable doubt.

[43] In *S v M 2006 (1) SACR 135 (SCA)* at para 189, the court stated that:

“The point is that the totality of evidence must be measured, not in isolation, but by assessing properly whether in the light of the inherent strengths, weaknesses, probabilities and improbabilities on both sides the balance weighs so heavily in favour of the state that any reasonable doubt about the accused’s guilt is excluded.” See also *S v Chabalala 2003 (1) SACR 134 (SCA)* at para 15.

[44] In *Pillay v S (451/2022) [2023] ZASCA 113 (27 July 2023)* at para 15, the court stated that:

“In matters of this nature, this Court is not at liberty to interfere with the findings of fact made by the trial court unless the manner in which the evidence was evaluated is proved to be wrong. In determining the question of whether the full bench committed an error, of fact or law, the findings of fact made by the trial court must be evaluated against the entire evidence that was led at the trial. That much was stated by this Court in *S v Trainor*. That exercise has to be undertaken against the legal principle that the duty to prove that the accused is guilty lies squarely within the domain of the prosecution, and that duty does not shift to the accused even if they have raised a private defence. Where, in the performance of that exercise, it is found that it is reasonably possible that the accused might be innocent, the accused must be acquitted.”

[45] From the record, it is clear that the appellants were both present when the deceased was fetched from Madibogo at his girlfriend’s place. The first appellant was driving the car. She is a police officer and did not want to report the case to the police as she wanted the items herself from the deceased. She further indicated under cross examination that she knew that members of society who are tired of crime would take the law in their own hands. Yet she handed the deceased to a mob in Setlagole.

[46] The second appellant testified that she did not dissociate herself from the group when they left to fetch the deceased from Madibogo. The evidence is that she was always present and ensured that the deceased was prevented from escaping. Bonolo Mokae is related to her and there was no serious contradictions in his evidence. The third ground of appeal must therefore fail.

[47] With regard to sentence in respect of both appellants, I find that there is no substantial and compelling circumstances. Further that there was no misdirection that warrants intervention with the findings of the court a quo. Therefore, appeal against sentence fails.

Order

[48] I make an order as follows:

1. The appeal against both conviction and sentence is dismissed.




J. T. MAODI

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
NORTH WEST DIVISION, MAHIKENG**

I agree:



R.D. HENDRICKS

JUDGE PRESIDENT OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

FOR THE APPELLANTS:

Mr T. R. Setumo

Instructed by:

Legal Aid SA

FOR THE RESPONDENT:

Adv. D. W. Ntsala

Instructed by:

NDPP – North West Division

Date judgment reserved:

9 September 2025

Date of Judgment:

12 January 2026