

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable/Reportable

Case no: A60/2025

In the matter between:

TANKI DICKSON MOTSEKI

APPELLANT

vesus

THE STATE

RESPONDENT

Neutral citation: *Tanki Dickson Motseki v The State* (A60/2025) [2026] ZAFSHC 77 (27 February 2026)

Coram: MHLAMBI ADJP *et* REINDERS J *et* PARKS AJ

Heard: 30 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for the hand-down is deemed to be 10h00 on 03 March 2026.

Summary: Criminal appeal – conviction and sentence – robbery with aggravating circumstances – murder – circumstantial evidence – common purpose – pointing out by co-accused – admissibility – cell phone data – minimum sentences – substantial and compelling circumstances.

ORDER

1 Appeal against conviction and sentence is dismissed.

JUDGMENT

Parks AJ

Introduction

[1] This is a full bench appeal, with leave to appeal granted by the Supreme Court of Appeal, challenging the conviction and sentence imposed by Daniso J in the Virginia circuit court. The appellant appeals against his conviction on the following grounds:

- (a) The court misdirected itself in accepting evidence implicating the appellant, which emanated from a pointing-out by a co-accused;
- (b) The State failed to prove beyond reasonable doubt that the accused committed the offence, as the circumstantial evidence does not meet the threshold required to sustain a conviction; and
- (c) The State failed to prove that the appellant acted in common purpose in the commission of the offence.

[2] The State conceded that the court *a quo* erred in considering evidence from a pointing-out by a co-accused that implicated the appellant.

Facts

[3] The appellant, along with two co-accused, was charged with robbery with aggravating circumstances, in accordance with s 51(2) of the Criminal Law Amendment Act 105 of 1997, and with murder, in accordance with section 51(1) of the same Act. The State's case relied entirely on circumstantial evidence within the framework of the doctrine of common purpose. This is evident from the judgment of Daniso J, who found that the appellant was near the deceased's residence at the time of the robbery and when items were taken from the deceased's home, as shown by cell phone data records. During that same period, the appellant was in constant contact with the co-accused persons. Additionally, the co-accused, who later identified the appellant to a police officer, placed him at the crime scene, specifically at the deceased's residence, and later, at another area called 'the forest.

Submissions

[4] Counsel for the appellant argued that, given the requirements of the doctrine of common purpose, particularly the need for active participation, and in the absence of any

evidence of a prior agreement, the court must consider the principles outlined in *S v Mgedezi*,¹ to determine if active participation has been proven. The first of these requirements is that the perpetrator must have been present at the scene of the violence. The main challenge here is the lack of clear evidence regarding where or when the deceased received the fatal injuries.

[5] This issue is significant because the deceased's body was found in Gauteng, and no blood was detected at his residence. The lack of blood at the home supports the conclusion that he was not fatally injured there. Counsel further argued that if the deceased was injured at the location where his body was later discovered, then the appellant could not have been present during the assault or during the transportation of the body from the Free State to Gauteng. In this regard, cell phone data shows that the appellant stayed within the Goldfields area during the relevant period. Therefore, the appellant, who was not with those who transported and fatally injured the deceased, could not have actively participated in the commission of the offence.

[6] Counsel further contended that Captain Steyn's testimony was inconsistent. While she testified that the appellant led them to the deceased's residence, her affidavit states that she took the appellant there, an assertion she expressly denied during cross-examination. The only reason why Captain Steyn transported the appellant to the deceased's house was that she lacked an appropriate interview venue due to ongoing renovations at the local police station. Counsel argued that any information conveyed to her by the appellant constitutes inadmissible evidence, as it amounts to an extra-curial statement and should be excluded. Counsel, in conclusion, submitted that although the court found the existence of substantial and compelling circumstances, it nevertheless imposed a sentence that is shockingly inappropriate.

[7] On behalf of the state, counsel emphasized that the state relied on circumstantial objective evidence. This evidence demonstrated that the appellant showed Captain Steyn the deceased's house. Additionally, the cell phone data of the appellant and the co-accused showed that they were in the vicinity of the Riebeeckstad towers; all three remained together in the area after 9 p.m.

¹ *S v Mgedezi and Others* 1989 (1) SA 687 (A) at p705I-J.

[8] Counsel for the state argued further that it is not coincidental that the appellant and accused 1 communicated multiple times on 24 September 2018, the day the deceased disappeared from his home. The information conveyed to Captain Steyn cannot be considered inadmissible, as it amounted to an admission reflecting the appellant's intention to 'come clean'. Communication between the appellant and accused 1 continued after 04h00, with one of the calls lasting 123 seconds. Moreover, the fact that the appellant had a photograph of the deceased's brother on his phone, coupled with the communication between the appellant and his co-accused prior to the deceased's death, strongly suggests that they had a prior agreement or common purpose to commit an offence.

[9] Counsel for the state concluded that the sentence imposed cannot be regarded as harsh when viewed against the seriousness of the offence. The deceased was an 82-year-old man who was assaulted, his body abandoned, and ultimately buried as a pauper. The callous disposal of the body, depriving the deceased's family of the opportunity to pay their final respects, underscores the gravity and moral reprehensibility of the conduct.

Evidence considered

[10] Mr Heynecke from National Security testified about the alarm activity at the deceased's house. According to the security records, the alarm was first activated on 23 September 2018 at 23h11. Throughout the night and into the next morning, the alarm was activated and deactivated via remote control. At 06h51, a burglary signal was generated but not received by the control room. The last recorded movement inside the house occurred at 07h12 and again at 07h44.

[11] Captain Strydom, who took over the investigation in November 2018, analysed the deceased's cell phone records. He found that MTN number [...]5594 was inserted into the deceased's phone on 24 September 2018 at 15h52 and used until 26 September 2018. The number's movements placed it in Thabong, Jim Fouché Park, Riebeeckstad, Kroonstad, Vaal Barrage, and later Soshanguve, and it was confirmed to belong to accused 1, Mr Tseki. A second number, [...]5381, showed similar movements in the Jim Fouché Park area on the morning of 24 September 2018, which was later found to belong to the appellant.

[12] Mr Kanti, an MTN manager, testified about the cell phone activity of numbers ...5594 and ...5381 on 24 September. At 10h33:21, number ...5594 called [...]8504, belonging to accused 2, initially connecting to a Welkom Telkom Uwave tower and ending 35 seconds later in Jim Fouché Park, where it remained until 11h24:29 before later connecting from Riebeeckstad, Kroonstad, the area between Parys and Fochville, and then the Vaal Barrage. During the same period, the appellant, made calls at 10h33 and 10h53:11, connecting to Jim Fouché Park Sector 2 towers, covering the deceased's residence, until 10h57, then moving to Sector 3 at 11h24, followed by Riebeeckstad, and later the Thabong/Welkom area. Notably, at 10h55:17, both numbers connected to the Jim Fouché Park tower simultaneously, indicating they were in the same area.

[13] Captain Hayes attended the deceased's residence after a neighbour reported that the gates were standing open on 24 September 2018 at 19h00. Captain Steyn testified about the communication that occurred between numbers ending in...5381 and...5594 on 24 September, from 17h47. They contacted each other about 11 times that evening, and the same numbers were in contact before the sim card was inserted into the deceased's phone and thereafter.

[14] In the appellant's case, the evidence showed frequent communication between the appellant and accused 1 and 2. On 24 September 2018, accused 2 attempted to contact the appellant at 02h01:02, and later that morning, the appellant spoke to accused 2 for 52 seconds, with further contact between their numbers throughout the day. On 25 September 2018, accused 1 called the appellant at 04h07 (123 seconds), followed by additional calls from accused 2 at 04h35:37 (42 seconds) and 07h26 (204 seconds). Cell tower records indicated all three numbers were in Jim Fouché Park on 24 September 2018 while the deceased was still at home, and later near the Riebeeckstad tower during overlapping periods. A photograph on the appellant's phone, showing the deceased's brother with a person identified as Mohua, was taken at a mall in Welkom.

[15] Accused 1 testified that on 24 September 2018, he left home at about 09h00. After 10h00, he contacted accused 2, and the two communicated roughly eight times that day. Within a 90-minute period, he also spoke with the appellant three times, including calls at 10h03:05 (to the appellant) and 10h18:22 (to accused 2). Between 10h33 and 10h35, all

three were in the same cell-tower sector as the deceased's home, which accused 1 attributed to the appellant having a friend in the area, Charity Mohau. Further frequent calls occurred on 24 and 25 September 2018, amounting to about 9 with accused two and 11 with the appellant.

[16] Accused 2, on the other hand, stated that he does not really know the appellant and denied knowing or using the number ...0854, despite it being used on his cell phone. He also denied communicating with the appellant on 23 September 2018 at 9h05:30, as well as any subsequent communication three times thereafter.

Reasoning

[17] Daniso J held that, although the State's case was based solely on circumstantial evidence, a review of the facts as a whole pointed to the guilt of the appellant. The learned judge also reasoned that the principle of common purpose is not limited to conduct at the scene of the crime but can also stem from a prior agreement and be inferred from the circumstances surrounding the commission of the offense.

[18] When the objective evidence is compared with the appellant's claim that his phone was used only for accused 1 and accused 2 to communicate with each other, the explanation becomes improbable, as the records show he contacted both accused at times when neither was with him. Although he asserts that he does not socialise with accused 2 and accused 2 likewise confirms that he hardly knows the appellant, the appellant's phone records reflect multiple communications between them on 24–25 September 2018. While the appellant does not deny contact with his co-accused, the frequency, timing, and even early-morning calls make it unlikely that they were not closely associated.

[19] Logic suggests that people who are not closely connected wouldn't communicate at 2h00 or 4h00 in the morning without a good reason, but the appellant says nothing significant happened during this time. It is also unlikely that the appellant would have a photo of someone related to the deceased, especially with someone he knows who shares the name Mohau, particularly since accused 1 testified that a person named Mohau lived in the deceased's area. This further weakens the appellant's explanation for why his phone activity showed him near the cell tower covering the deceased's home.

[20] The ongoing communication between the appellant and the co-accused, both before and after accused 1 inserted his SIM card into the deceased's phone, supports the conclusion that they reached a prior agreement and shared a common purpose to commit the crime, specifically the robbery and murder of the deceased. It is highly unlikely that this frequent and coordinated contact was just a coincidence, and this conclusion is further supported by the fact that the appellant had a photo on his phone of a relative of the deceased, which fits the broader pattern of their involvement.

[21] Although the evidence is circumstantial, it nevertheless strongly supports the State's case and outweighs any reasonable doubt the court *a quo* may have entertained regarding the appellant's involvement in the offences. I therefore concur with the reasoning of Daniso J in convicting the appellant and find that she neither erred nor misdirected herself in ultimately returning a conviction on both charges.

[22] Counsel for the appellant argued that the 25-year prison sentence for the murder conviction is 'shockingly inappropriate'. However, no substantial reasons were provided to support this claim. As Terblanche² notes in his work on sentencing, a court must consider all three components of the Zinn triad and, given the specific circumstances of each case, decide how much weight to assign to each element. This approach ensures that the final sentence reflects a proper and proportionate balance among them.

[23] It is clear that the presiding judge properly considered the factors outlined in the *Zinn* triad, as well as the principles established in the well-known *Malgas*³ decision, which warns courts against deviating from the prescribed minimum sentences for the flimsiest reasons. The court *a quo* ultimately concluded that there were substantial and compelling circumstances, justifying a departure from the mandatory life sentence and resulting in a lesser sentence. This shows that the court showed a measure of mercy toward the appellant. In this case, it is unnecessary to repeat the mitigating and aggravating factors discussed during sentencing. I therefore cannot find that the imposed sentence is shockingly inappropriate.

Order

² S S Terblanche *Guide to Sentencing in South Africa* 3ed 2016 at 161.

³ *S v Malgas* 2001 (2) SA 1222 (SCA) at 1231A.

[24] I accordingly make the following order:

- 1 Appeal against conviction and sentence is dismissed.

C PARKS

ACTING JUDGE OF THE HIGH COURT

I concur

MHLAMBI

ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

I concur

REINDERS J

JUDGE OF THE HIGH COURT

Appearances

For the appellant: R J Nkhahle
Instructed by: Thebe Attorneys, Bloemfontein

For the respondent: A Bester
Instructed by: Director of Public Prosecutions, Bloemfontein.