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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: SS 92/2023

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE 5 March 2026

SIGNATURE

In the matter between:

THE STATE

and

CITA, SANDILE PATRICK

Accused

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 5 March 2026.

J U D G M E N T

CORAM: LIEBENBERG AJ:

[1] The accused stands arraigned on four charges being:

[1.1] Housebreaking with the intent to commit robbery and robbery with aggravating circumstances.

[1.2] Two counts of murder premised on common purpose; and

[1.3] Possession of dangerous weapons.

[2] Having pleaded not guilty, the accused filed a detailed plea explanation wherein he plead guilty to a charge of housebreaking with the intention to steal and attempted theft and explained that:

“1.1 On 31 May 2023 at about 16:00 I was at No. 1[...] A[...] Crescent, corner Albert Street, Weltevreden Park, Roodepoort (“the premises”).

1.2 I was in the company of the deceased referred to in Count 2, Vincent Sekeleni (“Vincent”) as well as the deceased referred to in Count 3, Bongani Mdaki

("Bongani") when we entered the premises with the intention to steal items inside the house.

1.3 We knocked at the gate and when there was no answer, we assumed that no-one was at home and we jumped over the wall with the intention to break into the house.

1.4 We were in possession of a crowbar to break open the door. However, the door was unlocked, and it was not necessary to break it open.

1.5 It was never our intention to threaten anybody with the crowbar, and we would never have entered if we knew there were people inside the house.

1.6 It was very quiet in the house confirming to us that no-one was at home. If I remember correctly, it was loadshedding.

1.7 After entering we went to the main bedroom and were surprised to find a man and a woman on the bed.

1.8 I panicked and did not know what to do. Vincent told me to go and find something to tie up the people, and I went to the kitchen not knowing what I was looking for.

1.9 I then heard gunshots and ran out of the house; I could not get over the palisade fence. Then Bongani came running out of the house.

1.10 When the man came out, I told Bongani we should surrender as they are shooting. Bongani, however again ran away and was shot whilst running away.

1.11 Bongani collapsed outside the yard in front of the neighbours' yard.

1.12 I surrendered and was taken outside the premises by the security guards who arrived on the scene.

1.13 We did not manage to steal anything.

1.14 I see that it is alleged by Mr Van Nieuwenhuizen that Vincent threatened him with a screwdriver and Bongani threatened his wife with an axe.

1.15 I did not see that. We did not bring a screwdriver and axe to the premises.

[3] The accused made *inter alia* the following formal admissions:

"Count 1

10. On 31 May 2023 at about 16:00 I unlawfully entered the premises with the intention to steal.

Count 2

11. The deceased referred to in count 2 is Vincent Sekeleni ("Vincent").
12. ...
13. The correctness of the observations by Dr Oumakie Sannah Hlalele's regarding the external appearance of the body of the deceased in count 2 namely four gunshot wounds, as well as his conclusion regarding the cause of death namely multiple gunshot wounds.
14. A copy of the relevant medico-legal autopsy report referenced under Death Register 654/2023 is annexed hereto as "B".

Count 3

15. That the deceased referred to in count 3 is Bongani Mdaki ("Bongani").
16. ...
17. The correctness of the observations by Dr Rowe regarding the external appearance of the body of Bongani, namely three gunshot wounds, one clearly from the back and the others too difficult to determine, as well as her conclusion regarding Bongani's cause of death namely gunshot wounds of the chest and abdomen.

Scene Investigation

18. Sergeant Matebeze Daniel Selepe visited the scene on 31 May 2023 at 19:20 where he retrieved seven cartridge casings, a projectile and a gun residue kit.
19. Mr Van Nieuwenhuizen's hand tested positive for primer residue.
20. Sergeant Matebeze Daniel Selepe took photographs of the scene, but it is NOT admitted that the photographs correctly reflect the scene as items had been moved before his arrival on his own version.
21. The screwdriver and axe that were allegedly used are not properly identified on the photographs."

[4] In respect of count 1, and based on his plea explanation and formal admissions the accused is guilty of housebreaking with the intent to steal. Yet the State persisted in its prosecution of the more serious charge of housebreaking with the intent to rob and robbery with aggravating circumstances.

- [5] In respect of count 4, the accused admits that he was possession of a crowbar being a dangerous weapon as envisaged by the Dangerous Weapons Act 15 of 2013, whereas the State contends that he was in possession of not only a crowbar but also a screwdriver and axe, all being dangerous weapons.
- [6] The accused denied both murder charges, the *actus rea* in respect of each being the actions of the home owner, Mr van Nieuwenhuizen. The State argued that the Accused stands to be convicted on the basis of common purpose and *dolus eventualis* in that the accused should have foreseen the presence of persons in the home who would offer resistance including being armed with firearms.

The State's case

Mr Leon van Nieuwenhuizen

- [7] Mr van Nieuwenhuizen is the owner of the premises and during the afternoon of 31 May 2023 he and his wife were resting on their bed when they became aware of three intruders in the passage outside the bedroom door.
- [8] Suspect 1 (later identified as Vincent) threatened him with a screwdriver and demanded jewellery. Suspect 2 (the accused) carried an axe which he was holding it over his wife and suspect 3 (Bongani) was standing at the door armed with a crowbar.
- [9] The suspect with the crowbar disappeared and the suspect with the axe also left and entered his son's room.
- [10] When suspect 1 turned around to look for the jewellery underneath the

television set, he retrieved his firearm from under his pillow and fired four shots at him. This person fell on him and he rolled the person off him.

[11] Thereafter another suspect came for him, and he fired two shots at this suspect whilst facing him.

[12] He went to his son's room but found no suspect but heard a sound at the palisade fence and saw a suspect (later identified as Bongani) forcing himself through the palisade fence.

[13] Under cross-examination it was put to him that the accused was not in possession of an axe and did not threaten him or his wife and was sent to the kitchen by Vincent to find something to tie them up. This happened because they were surprised to find people in the house.

[14] Under cross-examination he conceded that it was loadshedding and that his evidence that the suspects had gained entry through a sliding door was an assumption.

[15] It was put to him that the accused and the two deceased only wanted to break into the house to steal items from the house and did not expect people inside the house. This he could not deny that although he said that they came down the passage with force.

[16] Mr van Nieuwenhuizen was also cross-examined on the post-mortem findings relating to Bongani which showed three gunshot wounds and one clearly from behind. Mr van Nieuwenhuizen testified that he fired three shots and one possibly could have hit Bongani from behind when he turned around.

[17] It was put to him that the accused was outside and when Bongani came out of the house, he told Bongani to surrender but Bongani ran away when Mr van Nieuwenhuizen exited the house and was shot whilst running away. This Mr van Nieuwenhuizen denied.

[18] Mr van Nieuwenhuizen was questioned regarding the position of the seven cartridge cases on the photographs depicted to the left of him where he was lying on the bed.

[19] He was asked about this as he conceded that the firearm he used to shoot at the deceased would have kicked out the spent cartridges to his right.

[20] He further conceded that he was at two different positions when he shot at the deceased but that they were shot at inside the house.

[21] He could not point at anything taken depicted on the photographs/ Nor could he point out the screwdriver. He conceded that the axe that can be seen on the set of photographs was his property.

[22] Under re-examination, he stated that the axe is normally in the entertainment area where he keeps his wood and that after the incident it was on the kitchen floor.

Mrs van Nieuwenhuizen

[23] Mrs van Nieuwenhuizen repeated the evidence of her husband and that it happened very fast. She identified the accused as the person with the axe.

[24] She confirmed that the person shot by her husband tried to get up after her husband had left and attempted to attack her with the screwdriver. She could

not see down the passage what was happening at her son's bedroom.

[25] She also conceded that she made two statements.

Cowen Vhalitsheni Mukhwathi

[26] He was a security guard who arrived on the scene at about 16:15. He saw a suspect lying on the floor inside the house and he found a suspect lying in the yard outside which was the accused which he took out of the property.

The accused's case

[27] Only the accused testified in his case.

[28] The accused for all practical purposes repeated the version contained in his plea explanation. During cross-examination he, however, further conceded that he did not know the area and that there could have been people in the house (suggesting to him that he ought to have foreseen that persons may be in the house) and also that he knows that some homeowners possess firearms (suggesting to him that he ought to have foreseen that there may be a shooting).

[29] At no stage did the accused concede that he in fact foresaw that the deceased may be shot and he persisted with his version that the intention with which they entered the premises was to steal anything they could find.

[30] He did concede under cross-examination that tying up a person may constitute violence (for the purpose of robbery) but on his version he was still on his way to find something to tie up the homeowners.

[31] It was put to him that Vincent in fact took certain items and did so on behalf of the group. The accused conceded that if he did that, it would have been on behalf of the group. However, he was not present when handing over the items were allegedly violently demanded.

Evaluation

[32] Given the nature of the plea explanation, the admissions made by the accused, and his evidence, it is important to assess the State's evidence in the context thereof, to determine whether the State has proved the case pleaded in the indictment, beyond a reasonable doubt or put differently: is there on a conspectus of all the evidence, given the correct test to be applied to the assessment of evidence in a criminal matter, a reasonable doubt whether:

[32.1] The accused had entered the house of Mr and Mrs Van Nieuwenhuizen with the intention to rob them by threatening them with a screwdriver, axe and crowbar.

[32.2] Mr or Mrs Van Nieuwenhuizen was in fact robbed of any property.

[32.3] The accused when entering the premises in fact did foresee that Vincent or Bongani may be shot and killed and reconciled him with such fact, not whether he ought to have foreseen that there may be people in the house and there may be resistance.

[33] By reason of the nature of the issues before the court, it is well to remind oneself of the correct approach to the assessment of evidence in a criminal matter as succinctly summarised in the majority judgment in the matter of S v

Sicubeni¹ in which the test is set out as follows, emphasis added:

“[20] To secure a conviction, the State has to prove all the elements of the crime beyond reasonable doubt. If there is a reasonable possibility that the accused is not guilty, (s)he should be acquitted. The accused should be convicted if the court finds not only that his or her version is improbable, but also that it is false beyond reasonable doubt. It is not necessary for the court to believe an accused person in order to acquit him or her.

[21] The State has to prove its case against an accused beyond reasonable doubt, but in evaluating the evidence, the trial court is entitled to consider the probabilities and improbabilities. As stated in S v Chabalala, ‘[t]he correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused’s guilt.’

[22] An accused’s version cannot be rejected merely because it appears to be improbable. It must be shown, in light of the totality of the facts, to be so untenable and/or improbable and/or false that it cannot reasonably possibly be true.”

[34] In short, if there is any doubt on the evidence, the accused must get the benefit thereof and he need not be believed, his version need only to be reasonably possibly true.

[35] A Court is required to have regard to the full conspectus of evidence to determine an accused’s guilt or innocence. In S v Hadebe² Marais J, referring to the dictum in Moshephi and others v R (1980-1984) LAC 57 at 59 F-H stated as follows:

"the question for determination is whether in the light of all the evidence adduced at the trial, the guilt of the Appellants was established beyond reasonable doubt. The breaking down of the body of evidence into its component parts is obviously a

¹ 2022 JDR 0710 (WCC).

² 1997(2) SACR 641(SCA).

useful aid to a proper understanding and evaluation of it, but in doing so, one must guard against a tendency to focus too intently on upon the separate and individual parts of what is after all a mosaic of proof. Doubts about one aspect of the evidence led in a trail may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence, far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence, but once that has been done, it is necessary to step back a pace and consider the mosaic as whole. If that is not done one may fail to see the wood of trees."³

[36] In the case of the S v Trainer 2003 (1) SACR 35 (SCA), Navsa JA remarked as follows:

"A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as must be found to be false. Independently verifiable evidence, if any should be weighed to see if it supports any of the evidence tendered in considering whether evidence is reliable, the quality of that evidence must be of necessity be evaluated as must corroborative evidence if any evidence of course must be evaluated against the ones on any particular issue or in respect of the case in its entirety. The compartment and fragment approach of the magistrate is illogical and wrong."⁴

[37] The State's evidence must be weighed against the improbabilities and contradictions in the versions of the accused in order to determine whether it is compelling.⁵

[38] When relying on circumstantial evidence, such evidence must be consistent with the guilt of the accused and exclude every reasonable inference consistent with innocence.⁶

³ At 645I – 646B.

⁴ At 40 F-41C.

⁵ S v Lachman 2010 (2) SACR 52 (SCA) at para 43.

⁶ S v Shackell 2001 (2) SACR 185 (SCA).

[39] In respect of count 1 the State unsurprisingly could offer no direct evidence to gainsay the accused's direct evidence of the intention of the trio when they formed their common purpose to break into the premises. The accused's version is simply put: the three cohorts intended to steal what they could find and did not foresee the presence of anyone in the premises. According to the accused, had they received a response from their knocking at the gate or otherwise suspected people were present in the home, they would not have entered it. The absence of weapons other than a crowbar supports the probability that the accused's version is reasonably possibly true. The version certainly cannot be rejected as false beyond a reasonable doubt.

Count 1

[40] The State failed to present any evidence to establish the actual theft or robbery of any items. At best, there was an attempt to take control of the home owners' jewellery but no more.

[41] What must be determined is whether the trio's intention was to steal or to rob and a finding on this score is dependent on whose version is accepted. The home owners testified that they were threatened with a screwdriver and axe whereas the accused denies that he ever handled the axe and that any of Vincent or Bongani carried such items. It is common cause that the axe is the property of Mr van Nieuwenhuizen and it was found out of its usual place of storage, inside the home by the sliding door leading to the entertainment area. Just outside the sliding door, the crowbar was found. Peculiarly, the photographs of the scene do not depict any screwdriver, whether in Vincent's hand or on the floor somewhere.

[42] I am satisfied to accept Mr and Mrs van Nieuwenhuizen's evidence that Bongani carried a crowbar, which constitutes a dangerous weapon, when he entered the bedroom and that the crowbar constituted a threat. But there was no evidence to suggest that Bongani threatened either Mr or Mrs van Nieuwenhuizen with the crowbar. On their version, the sources of threats came from those carrying the screwdriver and axe.

[43] On a conspectus of the evidence, there is doubt in my mind as to whether or not the accused in fact handled the axe and threatened either Mr or Mrs van Nieuwenhuizen as they would have it. At best, the axe was a weapon found at the premises by happenstance. It did not form part of the common purpose plan they devised.

[44] In sum, on the evidence the state has failed to establish beyond reasonable doubt that the accused and his cohorts broke into the premises with the intention to rob and (attempted) robbery. At best, the accused is guilty of housebreaking with the intention to steal and attempted theft, there being no evidence of actual theft.

Counts 2 and 3

[45] The basis on which the perpetrator of an offence can be held accountable for the death of a co-perpetrator who dies during the execution of a common purpose, is set out as follows in the judgment in *S v Lungile*:⁷

“[15] [State counsel argued that the accused in that matter] ...Well-knowing that at least two of the gang members were armed with firearms, he must have foreseen that someone might be injured or killed in a confrontation. Nevertheless, he

⁷ 1999 (2) SACR 597 (SCA); See also *S v Dube and Others* 2010 (1) SACR 65 (KZP) and *S v Nkosi* 2016 (1) SACR 301 (SCA).

persisted in associating himself with the robbery. In such circumstances our Courts very often draw the inference that an accused foresaw the possibility that a killing might ensue and, because he persisted, reckless of such consequences, he had the necessary mens rea in the form of *dolus eventualis* (...).

[16] But this Court has cautioned, on several occasions, that one should not too readily proceed from 'ought to have foreseen' to 'must have foreseen' and hence to 'by necessary inference in fact did foresee' the possible consequences of the conduct inquired into. *Dolus* being a subjective state of mind, the several thought processes attributed to an accused must be established beyond any reasonable doubt, having due regard to the particular circumstances of the case (...).

[17] In the present case, the crucial question therefore is whether the State proved beyond reasonable doubt that the first appellant in fact did foresee ('inderdaad voorsien het') that the death of a person could result from the armed robbery in which he participated. In this case, as in many others, the question whether an accused in fact foresaw a particular consequence of his acts can only be answered by way of deductive reasoning. Because such reasoning can be misleading, one must be cautious. Generally speaking, the fact that the first appellant had prior to the robbery made common cause with his co-robbers to execute the crime, well-knowing that at least two of them were armed, would set in motion a logical inferential process leading up to a finding that he did in fact foresee the possibility of a killing during the robbery and that he was reckless as regards that result."

[46] There is a lacuna in the evidence in this matter in that the State did not present any basis upon which, even by inference, it can be established that the accused in fact foresaw the death of his cohorts. None of questions put to the accused in cross-examination elicited any response to indicate that the accused actually foresaw the possibility of the home owner not only being present but putting up resistance. It is not sufficient to argue, as the State did, that the accused should have foreseen the possibility of a killing. What is required is evidence, beyond reasonable doubt, that the accused indeed foresaw the possibility of a killing to which he stood reckless. Herein the State failed.

[47] In the result, the accused cannot be found guilty of the murders of his two cohorts based on common purpose.

Count 4

[48] There is also insufficient evidence to established beyond reasonable doubt count 4 as framed. However, given his plea explanation and formal admissions, the accused is guilty of having unlawfully and intentionally possessed a dangerous weapon, to wit a crowbar in contravention of the provisions of the Dangerous Weapons Act.

Conclusion

[49] In the result:

[49.1] In respect of count 1, the accused is convicted of a charge of housebreaking with the intent to steal and attempted theft.

[49.2] In respect of count 2, the accused is acquitted.

[49.3] In respect of count 3, the accused is acquitted.

[49.4] In respect of count 4, the accused is convicted of a charge of possession of a dangerous weapon, being a crowbar, in contravention of section 3(1) of the Dangerous Weapons Act 15 of 2013.

SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

For the State: Adv Phungo

For the defence: Adv Kolbe SC and Ms C Spangenberg (Attorney)

Date of hearings: 9, 10, 18 and 24 February 2026

Date of judgment: 5 March 2026