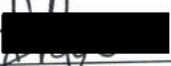




**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: A225/2025

1.	REPORTABLE: YES / NO
2.	OF INTEREST TO OTHER JUDGES: YES/NO
3.	REVISED: YES/NO
5 FEBRUARY 2026	
DATE	SIGNATURE

In the matter between:

SYDNEY HENRY MATHEBULA

Appellant

and

THE STATE

Respondent

The matter was heard in open court. The judgment is handed down electronically by circulation to the parties' legal representatives via email and uploading to the electronic file of this matter on Caselines. The date of the judgment and order is deemed to be 5 February 2026.

J U D G M E N T

MAZIBUKO J (LEDWABA AJP AND KUBUSHI J CONCURRING)

- [1] Sydney Henry Mathebula ('the appellant') was accused number 3, and together with Jacob Ntate Boye, accused number 1 and Ndumiso Kgomo, accused number 2, were arraigned before the Delmas Circuit Court, Gauteng Division ('the trial court') with the following counts:
- [1.1] Robbery with aggravating circumstances,
- [1.2] Murder read with section 51(1) and part 1 of schedule 2 of the Criminal Law Amendment Act 105 of 1997,
- [1.3] Unlawful possession of a firearm and
- [1.4] Unlawful possession of ammunition.
- [2] They were duly informed of the implications of section 51(1) provisions of the Criminal Law Amendment Act 105 of 1997 in relation to the offences they were facing. They were legally represented during the trial.
- [3] They pleaded not guilty to all charges and exercised their right to remain silent.
- [4] Accused number 2 was acquitted on all charges.
- [5] Accused number 1 and the appellant were convicted on all counts, and the following sentence was imposed:
- [5.1] 15 years for the count of robbery with aggravating circumstances,
- [5.2] Life imprisonment for the count of murder and
- [5.3] 5 years imprisonment for the counts of unlawful possession of a firearm and of ammunition, which were taken together for the purpose of sentence.
- [6] Following the appellant's unsuccessful leave to appeal application against conviction and sentence in the trial court, the Supreme Court of Appeal granted leave to appeal only on counts 3 and 4, unlawful possession of a firearm and ammunition. This court will therefore only focus on the appellant's appeal in respect of counts 3 and 4.

- [7] Given that the appeal is limited to counts 3 and 4, despite incomplete transcription of some evidence, particularly that of Mr Steve Nkuna, the parties agree that the record remains sufficient for purposes of adjudicating the appeal. The Supreme Court of Appeal in *S v Chabedi*,¹ held in paragraph 5 thereof that

“... the requirement is that the record must be adequate for proper consideration of the appeal; not that it must be a perfect recordal of everything that was said at the trial”.

And at paragraph 7 stated the following:

“The question whether defects in a record are so serious that a proper consideration of the appeal is not possible, cannot be answered in the abstract. It depends, inter alia, on the nature of the defects in the particular record and on the nature of the issues to be decided on appeal.

This court will therefore proceed to adjudicate the appeal, although the transcribed record is incomplete.

- [8] The State initially opposed the appeal; however, in its heads of argument, it has since conceded that it could not prove the appellant's guilt beyond reasonable doubt on counts 3 and 4.
- [9] The issue before the trial court was whether the State had proven beyond reasonable doubt that the appellant was in joint possession of a firearm and ammunition with his co-accused, accused number 1.
- [10] The trial court was satisfied that the appellant had, on his own version, admitted that he was present at the time of the robbery and shooting incident. In its judgment,² the trial court stated that:
- ‘The only reasonable inference is that the two assailants who assisted accused no 1 who admits having shot the deceased knew that he was armed and consequently that intention of possessing the firearm is imputed to accused 3.’*
- [11] The appellant's ground of appeal is that the trial court misdirected itself by imputing intention to possess the firearm and ammunition on him, when it drew

¹ *S v Chabedi* (497/04) [2005] ZASCA 5; 2005 (1) SACR 415 (SCA) (3 March 2005) paras 5 and 7.

² Record: Volume 8 page 706 line 10-16.

the inference that accused number 1's co-perpetrators must have known that he had a firearm and ammunition.

- [12] The issue for determination in this appeal is whether the trial court correctly applied the principles of joint possession in convicting the appellant on possession of the firearm and ammunition.
- [13] In securing the conviction for unlawful possession of a firearm and ammunition, the State relied on the admission made by accused number 1 that he was in possession of the firearm when he shot the deceased. Further, the appellant also admitted in his statement that he saw accused number 1 with the firearm, and the shot went off whilst accused number 1 and the deceased wrestled over the firearm, which shot later led to the death of the deceased.
- [14] Despite the trial court's admission of their statements into evidence, during their testimony, accused number 1 and the appellant denied any participation in the commission of the crime.
- [15] It is trite that the court of appeal will only interfere with the trial court's factual findings where the trial court has materially misdirected itself on facts.
- [16] In order to succeed on appeal, the appellant must persuade this court, on adequate grounds, that the trial court misdirected itself in accepting the State's evidence and rejecting his version as not being reasonably possibly true. There are established principles governing the hearing of appeals against findings of fact. In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct. They will only be disregarded if the recorded evidence shows them to be clearly wrong.³
- [17] In order to determine whether the State had adduced factual evidence from which the court can draw a proper inference that a co-perpetrator was liable for the joint possession of the firearm and or ammunition, there are two crucial questions to be answered. The first question is whether the co-perpetrators had the intention to exercise possession of the firearm and or ammunition through the accused, who had the actual physical possession. The second one is

³ *S v Monyane and Others* 2008(1) SACR 543 (SCA) at para 15.

whether the accused, who had the actual physical possession, had the intention to hold the firearm and or ammunition on behalf of his co-perpetrators. Only if both questions are answered in the affirmative, the court would draw proper inference that there existed common possession between the group and the actual possessor of the firearm and or ammunition, or that there was joint possession involving the whole group and the one who was in actual possession.⁴

- [18] In *S v Mbuli*,⁵ the SCA stated that where the offence is 'possession' of a firearm (or in that case a hand grenade), it is not the principles of common purpose that have application, but rather those relating to joint possession. A conviction of joint possession can only be competent if more than one person possesses the firearm. Mere knowledge by the others that one member of the group was in possession of a hand grenade, or even acquiescence to its use in the execution of their common purpose to commit a crime, was not sufficient to make them joint possessors thereof.
- [19] In the matter of *Kwanda v State*⁶, the Supreme Court of Appeal held that the fact that an accused conspired with their co-accused to commit robbery, and was even aware that some of their co-accused possessed firearms for the purpose of committing the robbery, does not lead to the inference that the accused possessed such firearms jointly with their co-accused. The Constitutional Court in *S v Makhubela and Another*⁷ confirmed that awareness alone is insufficient to establish the intention to possess a firearm jointly or to hold a firearm on behalf of another.
- [20] The mere fact that an accused participated in a robbery where his co-perpetrators possessed firearms will not prove beyond reasonable doubt that the accused, who during the robbery had actual physical possession, possessed the firearms jointly with the other co-perpetrators.⁸

⁴ *S v Nkosi* 1998 (1) SACR 284 (W) at 286H – I.

⁵ (422/2001) [2002] ZASCA 78;2003(1) SACR 97(SCA)(7 June 2002), para 72.

⁶ (592/10) [2011] ZASCA 50 (30 March 2011) at para 5.

⁷ 2017 (2) SACR 665 (CC), para 55.

⁸ *S v Leshilo* 2020 JDR 1882 (SCA), para 11.

- [21] It is beyond dispute that accused number 1, the appellant and the other person conspired to commit robbery and carried it out. The co-perpetrators of accused number 1 knew about the firearm in his possession. However, the State did not adduce evidence to prove the guilt of the appellant beyond reasonable doubt concerning joint possession. I could not find that the appellant was at any time in possession of the firearm and or ammunition.
- [22] In my respectful view, the trial court erred when it imputed the intention to possess a firearm on any or all of accused number 1's co-perpetrators. There was no evidence that the appellant, as a co-perpetrator of accused number 1, intended to exercise possession of the firearm and ammunition through accused number 1, who had the actual physical possession of the firearm and ammunition.
- [23] There was also no evidence adduced in the trial court that accused number 1, who had the actual physical possession, had the intention to hold the firearm and ammunition on behalf of his co-perpetrator, the appellant. Since these requirements were not met, the trial court was incorrect in drawing the inference that, because the appellant knew about the firearm and ammunition in the possession of accused number 1, the intention to possess them was to be imputed to the appellant.
- [24] There was no factual evidence adduced by the State to prove the guilt of the appellant beyond reasonable doubt with regard to joint possession. In my respectful view, the Appeal Court is entitled to interfere with the trial court's decision that there was joint possession, in that the trial court misdirected itself when it imputed the intention to possess a firearm and ammunition on any of accused number 1's co-perpetrators. Accordingly, the appeal against conviction on counts 3 and 4 should succeed.
- [25] As a result, I propose the following order.

Order:

[25.1] The appeal against conviction and sentence on counts 3 and 4 is upheld.



JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree, and it is so ordered.



ACTING JUDGE PRESIDENT OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

M KUBUSHI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing:

5 February 2026

Judgment delivered:

5 February 2026

Appearances:

For the appellant:

Adv F Van As

Attorneys for the appellant:

Legal Aid South Africa

For the respondent:

Adv K Germishuis Khosa

National Director of Prosecutions