



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **A221/2024**

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<u>02/03/26</u> Date  Signature	

In the matter between: -

SAKI ISAAC KUTUMELA

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT

CORAM: BAQWA J et DU PLESSIS AJ

BAQWA J

[1] This is an appeal against the judgment of the Regional Court, Pretoria, handed down on 28 February 2024.

[2] The appellant was charged on four counts of, pointing a firearm (count 1), theft (count 2), possession of an unlicensed firearm (count 3) and possession of ammunition (count 4).

[3] He was acquitted on counts 1, 2, and 4. He was found guilty on count 3 of possession of an unlicensed firearm and sentenced to an fine of R5 000 or 3 months' imprisonment.

Background

[4] The appellant applied for leave to appeal against the conviction and after dismissal of the application, he petitioned the Judge President of this court and was granted leave to appeal his conviction and sentence.

The grounds of appeal

[5] The appellant bases his appeal on the following grounds:

5.1 The trial court did not apply the cautionary rule relating to the evidence of a single witness.

5.2 The trial court accepted and relied on inadmissible hearsay evidence.

5.3 the trial court erroneously attached evidential weight to the averments made by the appellant's legal representative during the address on the merits of the case.

5.4 The trial court erroneously rejected the appellant's evidence.

Hearsay evidence

[6] The appellant's further grounds are:

6.1 The complainant testified that she was informed by her children nanny that the appellant, while the complainant was absent, came to her house, entered, and left with something behind his back. According to the complainant this was confirmed by the children who were present at the house.

6.2 Neither the nanny nor the children were called to testify in that regard.

6.3 The complainant further testified that the appellant, during interrogation by the police officers, admitted that he had a firearm and that it belonged to his girlfriend (the complainant).

[7] The appellant relied on section 3(1) of the Law of Evidence Amendment Act¹, which provides that hearsay evidence shall not be admitted as evidence at criminal or civil proceedings unless the provisions of section 3(1)(a), (b), or (c) have been complied with. It is common cause that at the trial the state did not seek to have the hearsay evidence admitted in terms of section 3(1) of the Act.

¹ Act 45 of 1988.

Analysis

[8] It is common cause that the appellant was legally represented at the trial before the court a quo.

[9] It is also trite that the court's power to interfere with the findings on facts of a trial court on appeal is limited. The appeal court will be reluctant to upset the factual findings and evaluation of evidence by the trial court and will only interfere where the trial court materially misdirected itself insofar as its factual credibility findings are concerned. See *S v Francis*², *R v Dhlumayo and Another*³

[10] It was also common cause that:

10.1 The firearm in question was a service pistol allocated to the complainant, Ms Nikile Mahlangu, which she received when she joined the South African Police Service.

10.2 The firearm went missing and Ms Mahlangu reported the fact to the police, and the said firearm was later recovered and identified as that of Ms Mahlangu.

10.3 The appellant had been involved in a romantic relationship, hence his ability to have unimpeded access to Ms Mahlangu's place of residence.

10.4 The only issue in dispute was whether the appellant was found in possession of the firearm or not.

10.5 The appellant does not possess a firearm licence.

[11] The error in the appellant's grounds of appeal is that he raises issues which were not traversed before the court a quo, and that in any event the persons or witnesses

² 1991 1 SACR 198 (A);

³ 1948 (2) SA 677 (A).

which he alleges ought to have been called would have testified to facts that were not disputed at the trial or which were confirmed by the direct evidence of Ms Mahlangu.

[12] Even though Ms Mahlangu, the complainant, was a single witness, she was a credible witness.

[13] Section 208 of the Criminal Procedure Act provides that an accused person may be convicted of any offence on the single evidence of a competent witness. The court's approach to the application and interpretation of section 208 of the Criminal Procedure Act was summarised in a dictum by Devilliers JP in *R v Mokoena*⁴, which stated as follows:

"In my opinion, that section should only be relied on where the evidence of the single witness is clear and satisfactory in every material respect. Thus, the section ought not to be invoked where, for instance, the witness has an interest or bias adverse to the accused, where he has made a previous inconsistent statement, where he contradicts himself in the witness box, where he has been found guilty of an offence involving dishonesty, where he has not had a proper opportunity for observation, etc."

[14] Any suggestion that Ms Mahlangu was motivated by a motive to implicate the appellant is vindicated and dispelled by the discovery of the firearm in his possession. Any attempt by the appellant to deny culpability is shown to be false beyond any doubt.

⁴ 1932 OPD 79 at 80.

[15] In the circumstances, it is highly improbable that the witness Nikile Mahlangu, would falsely create a story that the firearm was found and that she identified it at the premises of the appellant.

[16] The only conclusion is that it is highly improbable that the firearm in question was planted at the said premises in order to falsely implicate the appellant.

[17] It is correct that the court a quo had to take circumstantial evidence into consideration but in my view it did so as prescribed in *R v Blom*⁵ as follows:

The inference to be drawn must be consistent with all the proven facts, and secondly, the proven facts should exclude every other inference except the one to be drawn.

[18] The factual mosaic of the case leads to only one inference, namely, it was the appellant who was found in possession of the firearm in count 3.

[19] In the result, the appeal against conviction and sentence is dismissed.



SELBY BAQWA
JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I CONCUR



JULIAN DU PLESSIS

⁵ 1939 AD 188 at 202-203.

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 29 July 2025

Date of judgment: 02 March 2026

Appearance

Behalf of the Applicants

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On behalf of the Respondents

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