



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

Not Reportable

Case No: CA 42/2018

Regional Magistrates Case No: R/C 4/137/2012

In the matter between:

JACOBUS NKGOPOLANG MOKGETHI

APPELLANT

And

RESPONDENT

THE STATE

Coram: Hendricks JP and Petersen ADJP

Heard: 19 March 2026 (on the papers)

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 24 March 2026.

Summary: Appeal against conviction and sentence on a charge of murder — sole eyewitness’ evidence materially contradicted by post-mortem findings — co-accused’s versions mutually destructive — State failed to prove guilt beyond reasonable doubt — appeal upheld — conviction and sentence set aside — appellant acquitted.

ORDER

On appeal from: North West Regional Division, Klerksdorp (Regional Magistrate Melodi, sitting as court of first instance):

1. The appeal against conviction is upheld.
2. The conviction and sentence imposed by the court below are set aside and replaced with the following order:

“The accused is acquitted on the charge of murder.”

3. A copy of this judgment must be brought to the attention of the Provincial Head of the Office of the Chief Justice, North West for investigation and appropriate action in respect of the inordinate and unexplained delay in the processing of this appeal in the Office of the Chief Registrar; and, to the extent that the evidence so warrants, for referral to the South African Police Services for criminal investigation.
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JUDGMENT

PETERSEN ADJP (HENDRICKS JP CONCURRING):

Introduction

[1] This is an appeal against both conviction and sentence imposed by the Regional Court, Klerksdorp, on a charge of murder. The appellant, Mr Jacobus Nkgopolang Mokgethi (accused 1 in the court below), together with his co-accused, Mr Tsepo Emanuel Nteo (accused 2), were charged with the murder of Mr Pappa Johannes Nciwe on 4 December 2010 at Jouberton in the North West

Province. Both accused pleaded not guilty. On 29 July 2013 they were convicted as charged, and on 05 August 2013 each was sentenced to 15 years' imprisonment in terms of s 51(2) of the Criminal Law Amendment Act 105 of 1997. Additionally, both were declared unfit to possess a firearm in terms of s 103(1) of the Firearms Control Act 60 of 2000.

[2] The appellant's application for leave to appeal was refused by the trial court on 21 September 2017. Thereafter, he petitioned this court in terms of s 309C of the Criminal Procedure Act 51 of 1977. On 03 May 2018 the petition for leave to appeal against both conviction and sentence was granted. The matter now serves before the present panel since the previous panel failed to attend to the matter timeously.

Background facts

[3] The nomenclature adopted in summarising the background facts will be a reference to the appellant and his co-accused in the court a quo. On the afternoon of 04 December 2010 the deceased, Pappa Johannes Nciwe, visited his friend, Mr Jacob Mosinki, at his residence at 1[...] Extension 14, Jouberton. According to Mr Mosinki, the deceased came to borrow a t-shirt. While the deceased was about to leave the premises, the appellant and his co-accused, Mr Nteo, arrived at the gate. Mr Mosinki testified that both accused uttered the words 'here is that guy' as they entered the yard.

[4] Mr Mosinki's evidence regarding what transpired next formed the crux of the State's case. He testified that the appellant was armed with an axe, which had a steel handle covered with black rubber and a shiny blade approximately 30 centimetres in length. Accused 2 was armed with a knobkerrie in his right hand and a knife in his left hand. Accused 2 struck the deceased multiple times with the knobkerrie on his head and body before the deceased produced a panga. The deceased struck accused 2 once on the head with the panga. The appellant then joined the fight, striking the deceased on his back with the sharp edge of the axe, and continued striking him elsewhere on his body. The fight lasted approximately 15 minutes. The deceased ran away and fell inside Mr Mosinki's shack, where he died. The appellant left through the gate, still carrying the axe, while accused 2 jumped over the back of the shack and left. The deceased's panga was lying next to his body when Mr Mosinki left to wait for the police, but had disappeared when he returned.

[5] Under cross-examination by Mr Minty, who appeared for the appellant, several material contradictions emerged in Mr Mosinki's evidence. First, his statement to the police recorded that only accused 2 spoke when they arrived, whereas Mr Mosinki testified in court that both accused spoke. Second, his statement indicated he was sitting 'outside next to the gate', but he later claimed to have been inside the yard, approximately 12-15 metres from the gate. Third, and most significantly, his statement recorded that the appellant joined the fight 'stabbing him', yet Mr Mosinki conceded in cross-examination that the appellant had no knife and was only 'hitting' with an axe. When pressed on the distinction between 'stabbing' and 'hitting', Mr Mosinki gave the remarkable response that 'an axe and a knife is the same thing' and that stabbing and hitting are 'the same thing'.

The medical evidence

[6] Dr Ruwaida Morat, a specialist forensic pathologist, conducted the post-mortem examination on 08 December 2010. Her findings, recorded in the post-mortem report (Exhibit C), revealed the following injuries. A1: a laceration of the right fronto-temporal scalp, measuring 23 x 6 mm (blunt force trauma). A2: an oval abrasion of the left forehead (blunt force trauma). A3: the left eye was swollen and contused (blunt force trauma). A4: a 12 x 8 mm incised wound of the right upper lip (sharp force trauma). A5: a 55 x 12 mm incised wound of the right anterior chest wall (sharp force trauma). A6: linear abrasions and linear superficial incised wounds of the left forearm (both blunt and sharp force trauma). A circular depressed skull fracture of the right parietal bone. An incised wound of the upper and middle lobe of the right lung, with 200 ml of blood in the right chest cavity. Contusions (bruising) of the right parietal and occipital lobes of the brain, with brain swelling.

[7] Dr Morat concluded that the cause of death was blunt force head injury and a penetrating incised wound of the chest. Dr Morat testified that no injuries were present on the deceased's back, despite Mr Mosinki's evidence that the appellant struck the deceased repeatedly on his back with an axe. When asked about this discrepancy, Dr Morat confirmed that if the deceased had been struck with an axe on his back, she would have noted such injuries. A circular depressed skull fracture is consistent with being struck by a rounded instrument such as a knobkerrie, and is not consistent with an axe, which typically produces a linear fracture or 'slot' fracture. The incised wounds (A4 and A5) were caused by an instrument with a cutting edge, most probably a knife. An

axe, being a heavy instrument, would not typically produce superficial linear abrasions (as in A6); it would more likely fracture bone or cause more significant ‘chop wounds’. The injuries to the left forearm (A6) were consistent with defensive wounds sustained while attempting to ward off blows.

[8] When the court recalled Dr Morat for further clarification, she elaborated that an axe wound is typically a ‘chop wound’, a combination of a laceration (from the weight of the instrument) and an incised wound (from the cutting edge). She reiterated that the circular depressed skull fracture was inconsistent with an axe, and that the superficial incised wounds on the forearm could not be attributed to an axe given the absence of more significant injury to the underlying bone.

The appellant’s version

[9] The appellant testified in his own defence. His version was that he was at his grandparents’ home with accused 2 and accused 2’s friend, drinking alcohol and listening to music. The deceased entered the house uninvited and attempted to take a glass of beer from the table. Accused 2 stopped the deceased, and the glass fell and broke. He and accused 2 escorted the deceased out of the house. Outside, the deceased threatened them, saying he would ‘get’ them, and produced a panga. Approximately 5-10 minutes later, he and accused 2 decided to go to Matsadi’s tuck shop to buy more beer, and he was carrying two empty beer bottles in a plastic bag. As they approached Paulina’s yard (where Mr Mosinki resides), they saw the deceased standing alone at the gate. The deceased approached them, uttered words to the effect of ‘here is this young man’, and struck accused 2 on the forehead with a panga. He tried to stop the fight verbally, but the deceased then chased him with the panga, and he ran away. He did not see what happened thereafter, and at no stage did he assault the deceased or possess an axe or any weapon.

The co-accused’s version

[10] Accused 2 (Mr Nteo) testified that he and the appellant were alone at the appellant’s home. There was no third person. When the deceased entered, the appellant stopped him from taking the beer. Outside the yard, the appellant demanded the return of a rosary from the deceased. The deceased struck the appellant on the cheek with the flat side of a panga. Later, while walking to the tuck shop, they found the deceased sitting with Mr Mosinki at Paulina’s yard. The deceased stood up, produced a panga, and approached them. He stepped

between the deceased and the appellant, asking the deceased what he was doing. The deceased struck him twice with the panga (on the head and on the left wrist) and he fell to the ground. He picked up a stick lying in the yard and struck the deceased twice on the head. At that point, the appellant came from behind him and made a stabbing motion towards the deceased with something that looked like a knife. The deceased then turned and ran away. He did not see the appellant with an axe at any stage.

Evaluation of evidence

[11] The trial court was faced with three irreconcilable versions of the same incident. Mr Mosinki's evidence implicated both accused, but with material contradictions and an ultimate concession that his evidence could not be reconciled with the medical findings. The appellant claimed he ran away before any fatal assault occurred. Accused 2 admitted striking the deceased twice with a stick, but claimed the appellant inflicted the fatal stab wound.

[12] In convicting both accused, the trial court appears to have accepted that they acted with common purpose. However, the difficulty is that the two accused gave diametrically opposed versions of what occurred. As the prosecutor correctly submitted in argument, '[t]he two accused's versions are two total different versions from one single incident. They differ from each other on every single aspect.'

[13] The medical evidence is particularly significant. Mr Mosinki's evidence that the appellant repeatedly struck the deceased on his back with an axe is directly contradicted by Dr Morat's finding that there were no injuries on the deceased's back. When confronted with this during cross-examination, Mr Mosinki could offer no explanation, merely stating: 'I do not know but I saw him hitting him on his back.'

[14] Furthermore, Dr Morat's evidence that the fatal chest wound (A5) was an incised wound most probably caused by a knife, and that the circular depressed skull fracture was consistent with a knobkerrie rather than an axe, substantially undermines the State's case against the appellant. Mr Mosinki himself testified that the appellant had no knife, only an axe. Accused 2, by contrast, admitted to having a knife in his initial version, though he later denied this. The probabilities favour the conclusion that the fatal stab wound was inflicted by accused 2, not the appellant.

[15] The trial court's judgment does not adequately address these fundamental contradictions between the eyewitness evidence and the objective medical findings. In particular, the court failed to consider the import of Dr Morat's evidence that no injuries were present on the deceased's back; the circular depressed skull fracture was inconsistent with an axe; and the chest wound was consistent with a knife, not an axe.

[16] The appellant's version that he ran away when the deceased chased him with the panga is not inherently improbable. Mr Mosinki himself testified that the appellant left the scene through the gate while accused 2 jumped over the back of the shack. This is consistent with the appellant having fled the scene, as he claimed.

The credibility of Mr Mosinki

[17] Mr Mosinki's credibility as a witness must be assessed against the well-established principles in *S v Sauls and Others*,¹ where it was held that the trial court's findings on credibility are not immutable and may be overturned where they are clearly wrong. In this matter, several factors point to the unreliability of Mr Mosinki's evidence. He was a friend of the deceased, giving rise to potential bias. His statement to the police contained material differences from his oral testimony. His evidence that the appellant struck the deceased on the back with an axe was contradicted by the objective medical evidence. His conflation of 'stabbing' and 'hitting' and his insistence that an axe and a knife are 'the same thing' demonstrated a lack of precision in observation and recall. His evidence regarding his location during the incident shifted from 'outside next to the gate' to 'inside the yard, 12-15 metres from the gate'.

[18] In *S v Mafaladiso and Others*,² the Supreme Court of Appeal emphasised that contradictions in a witness's evidence do not necessarily destroy that evidence, but the court must assess whether they are material and whether they indicate dishonesty or merely faulty recollection. In this case, the contradictions were material and went to the heart of the State's case.

Common purpose

[19] The doctrine of common purpose requires that there be a shared intention to commit the crime, and that each accused be present and actively associated with the execution of the common design. Where co-accused give mutually

¹*S v Sauls and Others* 1981 (3) SA 172 (A) at 180E-G.

²*S v Mafaladiso and Others* 2003 (1) SACR 583 (SCA) para 24.

destructive versions, it becomes exceedingly difficult to establish a common purpose.

[20] In this case, the appellant denied any participation in the assault, while accused 2 claimed the appellant inflicted the fatal wound. If accused 2's version is accepted, there was no common purpose, the appellant acted alone in stabbing the deceased, while accused 2 merely struck him with a stick. If the appellant's version is accepted, he was not present during the fatal assault at all. If Mr Mosinki's version is accepted, both accused participated, but his evidence is fatally undermined by the medical evidence.

[21] In these circumstances, the State failed to prove beyond reasonable doubt that the appellant participated in the assault on the deceased, whether as a principal actor or through common purpose.

Onus of proof

[22] It is a trite principle that the State bears the onus of proving guilt beyond reasonable doubt. As was stated in *S v Van der Meyden* and approved by this court,³ the onus is discharged if the evidence establishes guilt beyond reasonable doubt and the accused is entitled to be acquitted if it is reasonably possible that he might be innocent.

[23] Where, as here, the State's key witness gives evidence that is materially contradicted by objective medical evidence, and where the co-accused give mutually destructive versions, a conviction cannot be sustained. The cumulative effect of the contradictions and the absence of corroborating medical evidence for the appellant's alleged use of an axe creates a reasonable doubt that must enure to the appellant's benefit.

[24] The trial court misdirected itself in accepting Mr Mosinki's evidence where it conflicted with the medical findings, and in failing to appreciate that the contradictions were material and went to the heart of the State's case. The conviction cannot stand.

The delay in the appeal

[25] I would be remiss if I did not address the inordinate delay in finalising this appeal. The petition for leave to appeal was granted on 03 May 2018, yet this matter did not reach the present panel until March 2026, a period exceeding

³*S v Van der Meyden* 1999 (1) SACR 447 (W) at 449f-h, approved in *S v Hadebe and Others* 1998 (1) SACR 422 (SCA) at 426e-f.

eight years. The delay appears prima facie to have occurred in the Office of the Chief Registrar and was regrettably compounded by the failure of the previous panel assigned by the Judge President to attend to the matter timeously.

[26] This court recently addressed an analogous dereliction in *Ramasilo v S; Malebatso v S*⁴, where petitions lodged in 2018 received no attention in the Office of the Registrar until 2024. This court held that accountability is the hallmark of any efficient administrative process and that this standard assumes a heightened duty of care when the administrative component is seized with constitutionally enshrined rights including the right of access to courts and the timeous processing of criminal appeals, reviews and petitions. A nonchalant attitude by the identified role players cannot be condoned. It cannot be business as usual. The conduct of the officials implicated in *Ramasilo* was found to be prima facie serious misconduct, tantamount to defeating the ends of justice, warranting referral to the Provincial Head of the Office of the Chief Justice and to the South African Police Services for criminal investigation.

[27] The delay of over eight years in the present matter is equally inexplicable and equally inexcusable. The failure to timeously process and enrol this appeal in the Office of the Chief Registrar has resulted in the matter having to be decided in March 2026, when the conviction and sentence date from 2013 and leave to appeal was granted in 2018. Whatever the outcome of the appeal on the merits, this court must record its strong displeasure at such administrative ineptitude, and direct that the matter be referred for investigation and appropriate action in the manner directed in *Ramasilo*.

Order

[28] In the result, the following order is made:

1. The appeal against conviction is upheld.
2. The conviction and sentence imposed by the court below are set aside and replaced with the following order:

“The accused is acquitted on the charge of murder.”

3. A copy of this judgment must be brought to the attention of the Provincial Head of the Office of the Chief Justice, North West for

⁴*Ramasilo v S; Malebatso v S* (CAP 26/2024; CA 27/2024) [2024] ZANWHC 317 (19 December 2024) at paras [22], [35]–[36].

investigation and appropriate action in respect of the inordinate and unexplained delay in the processing of this appeal in the Office of the Chief Registrar; and, to the extent that the evidence so warrants, for referral to the South African Police Services for criminal investigation.

A H PETERSEN
ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION
MAHIKENG

I agree.

R D HENDRICKS
JUDGE PRESIDENT OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION
MAHIKENG

Appearances

For the appellant: **Adv T Makgatho**
Instructed by: Legal Aid South Africa
Mafikeng

For the respondent: **Adv K E Mampo**
Instructed by: Director of Public Prosecutions
North West
Mahikeng