



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: A2024/137608

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHERS JUDGES: NO
- (3) REVISED

24/03/2026

DATE

SIGNATURE

In the matter between:

NDUKULA RAISIBE MELDA

First Appellant

MTAMBO FAITH MAKHOSAZANA

Second Appellant

and

THE STATE

Respondent

JUDGMENT

NEMAVHIDI AJ:

Introduction

1. This is an appeal against both conviction and sentence by the First and Second Appellants, who were convicted in the Regional Court, Kempton Park, on charges of possession of cocaine, defeating the administration of justice, and theft. They were sentenced to an effective term of thirteen (13) years' imprisonment. The appeal is with leave of the trial court.

2. The Appellants, both members of the South African Police Service (SAPS) stationed at the Organised Crime Unit at OR Tambo International Airport, were charged together with one Lebogang Paulinah Tshabalala ('Tshabalala'), a former South African Airways flight attendant. Tshabalala entered into a plea and sentence agreement in terms of section 105A of the Criminal Procedure Act 51 of 1977 ('the CPA'), was convicted, and testified as a State witness against the Appellants.

Background Facts

3. The material facts are largely common cause. On 8 March 2013, Tshabalala arrived from Sao Paulo, Brazil, on flight SA 225. She was found in possession of cocaine concealed on her person—a body belt containing five (5) compartments of compressed cocaine, and two (2) cocaine 'bullets' hidden between her breasts. The discovery was made by SARS Customs officials, Pretty Dlamini (née Mashile) ('Pretty') and Dieketseng Beauty Motepe ('Beauty'), during a body search conducted in Customs Search Room 2.

4. The customs officials photographed Tshabalala and the contraband using their personal cellphones (a Samsung and an iPhone). These photographs (Exhibits 'C1' and 'C2') depict Tshabalala with the body belt containing what appears to be five (5) filled compartments, and two (2) bullets on her chest. Thereafter, Tshabalala was handed over to the First Appellant, who was on duty with the Second Appellant at the airport.

5. Tshabalala was transported to the SAPS Organised Crime offices at the airport. There, according to Tshabalala, the Appellants removed some of the cocaine packets from the body belt, placed them in a black laptop bag, and instructed the Second Appellant to remove the bag from the office. Tshabalala testified that the First Appellant

promised to assist her with bail and not to oppose her release, in exchange for the drugs taken. The First Appellant allegedly exchanged cellphone numbers with Tshabalala for this purpose.

6. The official SAPS photographer, Constable Baloyi, later photographed Tshabalala and the remaining drugs. Those photographs (Exhibit 'A') depict only one (1) bullet and two (2) packets of cocaine—a marked discrepancy from the photographs taken by the customs officials at the scene of the initial discovery.

7. The drugs seized were weighed by the First Appellant, recorded as 1060 grams, and booked into the SAP13 register. Upon analysis at the Forensic Science Laboratory, the mass was recorded as 1022.9 grams. The body belt itself, examined by Warrant Officer Banyini, was confirmed to have five (5) pockets of varying sizes, marked with the numbers 600, 500, 300, and 250—consistent with the compartments having been filled.

8. Tshabalala was released on bail of R120 000-00, which she sourced from her family. She later testified that the First Appellant failed to honour the alleged agreement. Charges against Tshabalala were initially withdrawn, but she was subsequently re-charged and, in terms of her section 105A agreement, received a wholly suspended sentence on condition that she testify against the Appellants.

9. The Appellants denied any wrongdoing. Their version was that the First Appellant first observed the drugs on Tshabalala only in her office at the SAPS premises. They denied that the First Appellant had entered Customs Search Room 2, denied any theft of drugs, denied the existence of a black laptop bag, and denied any exchange of cellphone numbers or agreement to assist Tshabalala.

10. The trial court rejected the Appellants' version as false and improbable, accepted the evidence of Tshabalala, Pretty, and Beauty as credible in material respects, and convicted the Appellants as charged. They now appeal.

Grounds of Appeal

11. The Appellants' heads of argument raise numerous grounds of appeal, which may be summarised as follows:

- a. That the trial court erred in finding that the State had proved its case beyond reasonable doubt;
- b. That the trial court misdirected itself in its assessment of the credibility of the State witnesses, particularly Tshabalala (a single witness and accomplice), and in its treatment of contradictions in the evidence of Pretty and Beauty;
- c. That the trial court adopted a compartmentalised approach to the evidence and failed to consider the mosaic of proof in its totality;
- d. That the trial court erred in finding that the Appellants' version was not reasonably possibly true;
- e. That the trial court gave insufficient weight to the absence of corroborative evidence, such as CCTV footage and cellphone records;
- f. That the trial court erred in its application of the principles relating to circumstantial evidence as set out in *R v Blom* 1939 AD 188;
- g. That the trial court misdirected itself in its criticism of the First Appellant's evidence regarding her training, the handling of exhibits, and the discrepancy in weight;
- h. That the trial court erred in its application of the doctrine of common purpose; and
- i. That the sentence of thirteen (13) years' imprisonment is shockingly inappropriate and induces a sense of shock.

Evaluation of the Appeal Against Conviction

Principles on Appeal

12. This court's power to interfere with the findings of fact of a trial court are circumscribed. An appeal court will not readily disturb findings of fact and credibility made by the trial court, which had the advantage of observing the witnesses testify. Intervention is justified only where the trial court misdirected itself on the facts, or where its findings are so unreasonable that no court could have come to that conclusion. (*S v Francis* ¹1991 (1) SACR 198 (A); *S v Hadebe and Others* ²1998 (1) SACR 422 (SCA)).

13. In *S v Hadebe* at 426E-H, Marais JA quoted with approval the following dictum from *Moshephi and Others v R* (1980-1984) LAC 57:

"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 a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently 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 trial 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 a whole. If that is not done, one may fail to see the wood for the trees."

14. The crisp issues for determination were whether the Appellants had stolen a portion of the cocaine seized from Tshabalala, and whether they were in unlawful possession thereof and had thereby defeated the administration of justice.

The Evidence of Tshabalala: Single Witness and Accomplice

¹ 1991 (1) SACR 198 (A)

² 1998 (1) SACR 422 (SCA)

15. The State's case rested, in part, on the single evidence of Tshabalala, who was both a single witness and an accomplice. It is trite that a court may convict on the evidence of a single competent witness (section 208 of the CPA). In *S v Sauls and Others*³ at 180E–G, Diemont JA stated:

"There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness. The trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told."

16. The evidence of an accomplice must be approached with caution. In *S v Hlapezula and Others*⁴ 1965 (4) SA 439 (A) at 440D–E, Holmes JA identified the dangers inherent in accomplice evidence:

"First, he is a self-confessed criminal. Second, various considerations may lead him to falsely implicate the accused, for example, a desire to shield a culprit or, particularly where he has not been sentenced, the hope of clemency. Third, by reason of his inside knowledge, he has a deceptive facility for convincing description—his only fiction being the substitution of the accused for the culprit."

17. The trial court was acutely aware of the cautionary rule. It expressly warned itself of the dangers of relying on a single witness and an accomplice. It did not accept Tshabalala's evidence uncritically; it identified flaws in her testimony, including her initial inability to recall certain details, her concession regarding the search in the First Appellant's office, and her belated evidence concerning the 'small phone'. Yet, despite these shortcomings, the trial court found that her core account—that drugs were removed from her possession at the instance of the Appellants—was reliable and corroborated by objective evidence.

³ 1981 SA (3) of SA 172(A) at 180E–G

⁴ 1965(4) SA 439 (A) at 440D–E

Corroboration of Tshabalala's Evidence

18. In *S v Gentle* ⁵2005 (1) SACR 420 (SCA) at para [18], Cloete JA stated:

"By corroboration is meant other evidence which supports the evidence of the complainant and which renders the evidence of the accused less probable, on the issues in dispute."

19. In *S v B* ⁶1976(2) SA 54 (C) at 59B, It was said that: "Corroboration is independent evidence which confirms the testimony of a witness. Such confirmation may be either "in a material respect" or else on a point tending to prove the guilt of the accused---".

20. The corroborative evidence in this matter was substantial and compelling. It included:

a. **The photographic evidence:** Exhibits 'C1' and 'C2' (taken by Pretty and Beauty at the search room) depict Tshabalala with a body belt containing five (5) filled compartments and two (2) bullets on her chest. Exhibit 'A' (taken by Constable Baloyi at the SAPS office) depicts only two (2) packets and one (1) bullet. This objective, contemporaneous visual record irrefutably establishes that the quantity of drugs present at the search room was greater than the quantity later photographed and booked into evidence.

b. **The body belt:** Exhibit 'D1' and 'D2' confirmed that the belt had five (5) pockets of varying sizes, marked with weights. This was consistent with Tshabalala's testimony that she had five (5) packets in the belt and two (2) bullets, and inconsistent with the Appellants' version that only three (3) items were present.

c. **The conduct of the First Appellant:** She removed the drugs from their individual wrappings and crushed them before sealing them in a single forensic bag. This was an irregularity. Her explanation that this was 'according to

⁵ 2005 (1) SACR 420 (SCA) at para[18]

⁶ 1976(2) SA 54 (C) at 59B

procedure' was unsupported and, in the absence of any confirmatory evidence from her superiors (Captain Ngwenyama or Constable Baloyi), was correctly rejected by the trial court as an attempt to obscure the original quantity.

d. **The weight discrepancy:** The First Appellant recorded the mass as 1060 grams; the forensic laboratory recorded 1022.9 grams. The First Appellant could offer no explanation. The suggestion, raised belatedly in re-examination, that the scale may not have been calibrated, was an unconvincing afterthought, particularly given that the forensic report (Exhibit 'P') was admitted as a formal admission in terms of section 220 of the CPA. In *S v Van der Westhuizen*⁷2011 (2) SACR 26 (SCA), it was held that a formal admission cannot be contradicted by an accused without a proper explanation for resiling therefrom. No such explanation was proffered.

e. **The exclusion of Pretty from the photographing process:** The First Appellant denied Pretty access to her office when Constable Baloyi was taking photographs. Her explanation—that this was 'procedure'—was, again, unsupported. This conduct, viewed in context, points to a consciousness of guilt and a desire to ensure that no independent witness observed the true state of the exhibits.

The Presence of the First Appellant in the Search Room

21. The trial court's finding that the First Appellant had entered Customs Search Room 2 was reasonably made. While there were contradictions between Pretty and Beauty regarding the exact sequence of events and the use of the iPhone, these were not, in the overall context, material. What was material and consistent was that both Pretty and Tshabalala placed the First Appellant inside the search room. The photographs depict hands—clearly not those of Pretty or Beauty—holding down the body shaper.

⁷ 2011(2) SACR 26 (SCA)

22. In *S v Mkohle* ⁸1990 (1) SACR 95 (A) "*Contradictions per se do not lead to the rejection of a witness's evidence, they may simply be indicative of an error. Not every error made by a witness affects his credibility: in each case the trier of fact has to make an evaluation, taking into account such matters as the nature of the contradiction, their number of importance, and their bearing on other parts of the witnesses' evidence.*" In *S v Mafaladio* ⁹2003 (1) SACR 583 (SCA), it was emphasized that discrepancies between different versions of the same witness must be handled with circumspection, taking into account factors such as the circumstances in which the statements were given and the witness's opportunity to explain the discrepancies. The trial court considered these factors and found that the contradictions were not fatal to the State's case.

23. The trial court was entitled to conclude, on a balance of probabilities, that the hands depicted belonged to the First Appellant. The absence of her name in Exhibit 'G' (the Body Search Book) and the absence of CCTV footage do not, in themselves, render that inference unreasonable. In *S v Khumalo* ¹⁰2019 JDR 1385 (GP) at para 63, it was held that while it may be desirable to have certain evidence, its absence does not automatically lead to a negative inference where other evidence is sufficient.

Circumstantial Evidence

24. In *R v Blom* ¹¹1939 AD 188 at 202-203, the court enunciated the two cardinal rules of logic governing circumstantial evidence:

"The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn. The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn."

25. The trial court correctly applied these principles. The proved facts—the photographic discrepancy, the structure of the body belt, the irregular handling of the

⁸ 1990 (1) SACR 95 (A)

⁹ 2003 (1) SACR 583 (SCA)

¹⁰ 2019 JDR 1385 (GP) at para 63

¹¹ 1939 AD 188 at 202-203

exhibits, the weight discrepancy, and the exclusion of Pretty from the photographing process—were all consistent with the inference that the Appellants had stolen a portion of the drugs. These facts excluded any reasonable inference other than guilt.

Mutually Destructive Versions

26. The trial court correctly applied the principles in *Stellenbosch Farmers' Winery Group Ltd & Another v Martell ET Cie and Others*¹²2003 (1) SA 11 (SCA) in evaluating mutually destructive versions. At 14I-15D, Nienaber JA stated:

"To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities."

27. The trial court weighed the credibility of the witnesses, the reliability of their evidence, and the inherent probabilities. It found the Appellants' version to be improbable in several material respects:

a. That Pretty and Beauty, having discovered the drugs and photographed them, would have had the opportunity or motive to steal any portion themselves, is highly improbable. They immediately reported the find, handed Tshabalala and the drugs (intact) to the police, and had no further access to the exhibits.

b. That the First Appellant, an experienced police officer trained in exhibit handling, would, in the ordinary course, remove drugs from their original packaging and crush them, is improbable and, on her own admission, contrary to proper procedure.

c. That the First Appellant, having allegedly committed no wrongdoing, would deny Pretty access to her office during the photographing process, is inexplicable on her version but entirely consistent with the State's case.

¹² 2003 (1) SA 11 (SCA)

d. That Tshabalala, facing a charge of dealing in cocaine (for which she received a wholly suspended sentence), would falsely implicate two police officers with whom she had no prior animosity, is improbable in the extreme. Her plea agreement required her to testify 'frankly and honestly'. A deliberate fabrication would have exposed her to the risk of prosecution for perjury and the revocation of her suspended sentence.

The Appellants' Evidence

28. The trial court's criticism of the First Appellant's evidence was justified. Her testimony regarding her training was equivocal and evasive. In *S v Singh* ¹³1975 (1) SA 227 (N), “[I]t would perhaps be wise to repeat once again how a court ought to approach a criminal case on fact where there is a conflict of fact between the evidence of the State witnesses and that of an accused. It is quite impermissible to approach such a case thus: because the court is satisfied as to the reliability and the credibility of the State witnesses that, therefore, the defence witnesses, including the accused, must be rejected. The proper approach in a case such as this is for the court to apply its mind not only to merits and the demerits of the State and the defence witnesses but also to the probabilities of the case. It is only after so applying its mind that a court would be justified in reaching a conclusion as to whether the guilt of an accused has been established beyond all reasonable doubt.”

29. The First Appellant's denial of having been trained in exhibit handling was immediately contradicted by her subsequent admission. Her inability to explain the weight discrepancy, and her reliance on an unsubstantiated claim of 'procedure' to justify the crushing of the drugs, undermined her credibility. The trial court, having observed her demeanour, was best placed to assess her veracity.

30. The trial court correctly concluded that there was no reasonable possibility that the Appellants' version might be true. The incriminating evidence was overwhelming, and the Appellants' version was so improbable that it could not reasonably possibly be true.

¹³ 1975 (1) SA 227 (N)

Common Purpose

31. The Second Appellant's evidence was largely corroborative of the First Appellant's. Her conviction was not based solely on the evidence of Tshabalala, as contended, but on her active participation in the common purpose. She was present in the office. She was sent to fetch the laptop bag. She left the office with it. She made no effort to report any irregularity. Her conduct manifested an active association with the theft.

32. In *S v Safatsa and Others* ¹⁴1988 (1) SA 868 (A) at 896a-b, it was held:

"In the present case, on the facts outlined earlier, there can be no doubt, in my judgment, that the individual acts of each of the six accused convicted of murder manifested an active association with the acts of the mob which caused the death of the deceased. These accused shared a common purpose with the crowd to kill the deceased and each of them had the requisite dolus in respect of his death. Consequently, the acts of the mob which caused the deceased's death must be imputed to each of these accused."

33. In *S v Mgedezi* ¹⁵1989 (1) SA 687 (A), the court set out the prerequisites for liability on the basis of common purpose in the absence of a prior agreement: presence at the scene, awareness of the assault, intention to make common cause, manifestation of such intention by some act of association, and the requisite mens rea. These prerequisites were satisfied in respect of the Second Appellant.

The Absence of CCTV Footage and Cellphone Records

34. The Appellants placed much emphasis on the absence of CCTV footage and cellphone records.

35. The State is not obliged to lead evidence that is not essential to prove its case. The evidence that was led was sufficient. The failure to secure the 'small phone' alleged by Tshabalala, and the absence of corroborating cellphone records, were matters going

¹⁴ 1988 (1) SA 868 (A) AT 896a-b

¹⁵ 1989 (1) SA 687 (A)

to the weight of her evidence, which the trial court properly assessed. The court was entitled to find that these omissions did not fatally undermine the State's case, particularly in light of the overwhelming objective corroboration.

The Appellants' Reliance on *S v Doorewaard*

36. The Appellants' reliance on *S v Doorewaard & Another*¹⁶2021 (SA) 235 (SCA) is misplaced. In that matter, the single witness was found to have deliberately fabricated evidence, and his testimony was contradicted by objective forensic evidence. In the present matter, Tshabalala's core account is powerfully corroborated by objective, contemporaneous documentary and photographic evidence. The trial court did not, as in *Doorewaard*, 'far too readily' accept the evidence of a single witness. It subjected it to rigorous scrutiny and found it to be reliable.

Conclusion on Conviction

37. Having considered the record and the submissions of counsel, I am satisfied that the trial court committed no misdirection of fact or law. Its findings of fact were reasonable and supported by the evidence. Its credibility findings are unassailable. Its application of the cautionary rules relating to single witnesses and accomplices was proper. Its evaluation of the circumstantial evidence was consistent with the rules in *R v Blom*. The conclusion that the State had proved the guilt of the Appellants beyond reasonable doubt is inescapable.

38. The appeal against conviction cannot succeed.

Evaluation of the Appeal Against Sentence

Principles on Sentencing Appeals

¹⁶ 2021 (SA)235 (SCA)

39. It is trite that sentence is a matter for the discretion of the trial court. An appellate court will not interfere unless the sentence is vitiated by a material misdirection or is so disproportionate or shocking that no reasonable court would have imposed it. (*S v Pieters* ¹⁷1987 (3) SA 717 (A); *S v Malgas* ¹⁸2001 (2) SA 1222 (SCA)).

40. In *S v Malgas* at para 12, Marais JA stated:

"A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court."

41. In *Director of Public Prosecutions v Mgoma* ¹⁹2010 (1) SACR 427 (SCA) at 432b-c, Bosielo JA held:

"For a sentence to be appropriate it must be fair to both the accused and society. Such a sentence must show a judicious balance between the interests of the accused and those of society."

The Zinn Triad

42. In *S v Zinn* ²⁰1969 (2) SA 537 (A), the court established the triad of factors to be considered in sentencing: the crime, the offender, and the interests of society.

43. **The crime:** The Appellants were convicted of serious offences. Possession of a significant quantity of cocaine (approximately 1400 grams) is, in itself, a grave offence, as recognised by the Legislature in prescribing a maximum sentence of fifteen (15) years' imprisonment in terms of section 17 of the Drugs and Drug Trafficking Act 140 of 1992.

¹⁷ *S v Pieters* 1987 (3) SA 717 (A)

¹⁸ 2001 (2) SA 1222 (SCA)

¹⁹ 2010 (1) SACR 427 (SCA) AT 432b-c

²⁰ 1969 (2) SA 537 (A)

44. In *S v Jiminez* ²¹2003 (1) SACR 507 (SCA), the court upheld a sentence of 12 years' imprisonment for dealing in 653.4 grams of cocaine, stating that drug trafficking inevitably results in grave harm to others and that courts should ensure that sentences have the requisite deterrent effect.

45. We must not allow ourselves to be dictated to by what Holmes JA termed 'maudlin sympathy' for the appellant. The type of offence of which the appellant stands convicted has the potential to ruin the lives of families in South Africa.

46. offences of theft and defeating the administration of justice, committed by police officers against exhibits in a criminal case, strike at the very heart of the criminal justice system. The Appellants did not merely steal property; they stole evidence destined for court, thereby undermining the prosecution of a serious drug offence and compromising the integrity of the investigative process.

47. In *S v Jwara and Others* ²²2015 (2) SACR 525 (SCA) at para 1, Gorven AJA stated:

"Quis custodiet ipsos custodes?" "(Who will guard the guards themselves? Or who watches the watchmen?) Thus enquired the satirist Juvenal in his poem, attempting to enforce moral behaviour. Since Plato this phrase has been used to lament the corrosive effect of corrupt police and judicial officials. When Captain Sizane, the investigating officer in this matter, stumbled on a reference to the first appellant being involved with a suspected manufacturer of substances proscribed under the Drugs and Drug Trafficking Act, he was confronted with just such corrupt behaviour.

48. In *S v Selebi* (SS25/2009) [2010] ZAGPJHC 52, Joffe J referred to the statement in *S v Shaik & Others* ²³2007 (1) SACR 247 (SCA) at para 223:

²¹ 2003 (1) SACR 507 (SCA)

²² 2015 (2) SACR 525 (SCA) at para 1

²³ 2007 (1) SACR 2477 (SCA) at para 223

"The seriousness of the offence of corruption cannot be over emphasized. It offends against the rule of law and the principles of good governance. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. As a country we have travelled a long and tortuous road to achieve democracy. Corruption threatens our constitutional order. We must make every effort to ensure that corruption with its putrefying effects is halted. Courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe."

49. When those entrusted with the enforcement of the law become its violators, public confidence in the justice system is eroded. This court must send a clear message that such conduct will not be tolerated.

50. **The offender:** The trial court properly had regard to the personal circumstances of the Appellants. The First Appellant is 45 years old, married with three minor children, a first offender, employed by SAPS since 2004, and studying towards an LLB degree. The Second Appellant is also 45 years old, a first offender, employed by SAPS since 2004, and responsible for the upkeep of her adult son and five-year-old grandson.

51. These are factors that traditionally weigh in mitigation. However, they must be balanced against the gravity of the offences and the interests of society.

52. In *S v Chetty* ²⁴2013 (2) SACR 142 (SCA), Plasket AJA held that the fact that incarceration would cause collateral harm for the offender's children was not sufficient to render that sentence inappropriate when incarceration would otherwise be appropriate.

53. In *Hewitt v S* (637/2015) ²⁵[2016] ZASCA 100 (unreported) at para 15, Maya DP stated:

"The appellant's poor health is certainly a matter which must be considered. And so is his advanced age. However, as the court a quo observed, he does not suffer from a terminal or incapacitating illness as he leads an active life, which

²⁴ 2013 (2) SACR 142 (SCA)

²⁵ [2016] ZASCA 100 (unreported) at para 15

includes personally and successfully running a commercial citrus farm, and is even able to drive his employees home daily. It was also not disputed that the medical treatment and care that he requires would be available in prison.^[13] Regarding his age, whilst courts have considered oldness as a mitigating factor,^[14] it is certainly not a bar to a sentence of imprisonment."

54. **The interests of society:** In *S v Karg*²⁶ 1961 (1) SA 231 (A) at 236, Schreiner JA held:

"It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands."

55. Society expects serious sentences for serious offences, particularly where those offences are committed by police officers who have betrayed the trust reposed in them.

Aggravating Factors

56. The trial court correctly identified the following aggravating factors:

- a. The prevalence of drug-related offences in the vicinity of OR Tambo International Airport;
- b. The significant quantity of cocaine involved (approximately 1400 grams);
- c. The Appellants' status as police officers, which carried with it a duty to uphold the law;
- d. The abuse of authority by the Appellants;
- e. The dishonesty inherent in the offences;
- f. The fact that the stolen drugs were returned to the streets rather than being destroyed or used as evidence;

²⁶ 1961 (1) SA 231 (A) at 236

g. The fact that Tshabalala was prosecuted for a lesser quantity of drugs than she had actually imported;

h. The theft of exhibits from the SAPS, the Appellants' own employer.

The Sentence Imposed

57. The sentence of ten (10) years on each count, with orders for concurrent serving of portions, resulting in an effective thirteen (13) years' imprisonment, cannot be said to be shockingly inappropriate.

58. In *S v Hightower* ²⁷1992 (1) SACR 420 (W), the appellant was convicted of dealing in 220 grams of cocaine, and a sentence of 10 years' imprisonment was imposed of which 3 years was suspended. In *S v Homareda* ²⁸1999 (2) SACR 319 (W), the appellant was convicted of dealing in 300 grams of cocaine, and a sentence of 10 years' imprisonment was upheld on appeal.

59. The quantity of cocaine involved in the present matter (approximately 1400 grams) far exceeds that in the aforementioned cases. An effective sentence of 13 years' imprisonment is well within the range of sentences imposed for such offences.

60. The Appellants' comparison with the sentence imposed on Tshabalala is inapposite. Tshabalala was a first offender who had entered into a plea agreement and demonstrated genuine remorse by pleading guilty and testifying against her co-perpetrators. Her sentence of a wholly suspended term of imprisonment reflects her cooperation and her status as a witness, not as a principal offender in the theft of the drugs. The Appellants were the architects of that theft. Their moral culpability is of an entirely different order.

Conclusion on Sentence

61. There is no misdirection in the trial court's approach to sentencing. The sentence imposed is fair, balanced, and proportionate to the gravity of the offences. It properly

²⁷ 1992 (1) SACR 420 (W)

²⁸ 1999 (2) SACR 319 (W)

balances the personal circumstances of the Appellants with the seriousness of the crimes and the interests of society.

62. The appeal against sentence cannot succeed.

Order

63. In the result, the following order is made:

- a. The appeal against conviction is dismissed.
- b. The appeal against sentence is dismissed.
- c. The convictions and sentences imposed by the trial court are confirmed.


NEMAVHIDI AJ

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

I concur


MOTHA J

JUDGE OF THE HIGH COURT

JOHANNESBURG

APPEARANCES:

For the Appellants: Adv M B Baloyi instructed by Pule Attorneys

For the Respondent: Adv J M Serepo instructed by Office of the Director of Public Prosecutions, Johannesburg

Date of Appeal: 09 February 2026

Date of Judgment: 24 March 2026