



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: CC25/2024

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **YES/NO**

19 March 2026
DATE


SIGNATURE

In the matter between:

THE STATE

and

SYDNEY MOKOENA

FIRST ACCUSED

LUCKY SURPRISE MASEKO

SECOND ACCUSED

NKOSINATHI FAZO KHUMALO

THIRD ACCUSED

FORTUNE BONGUMUSA MATSANE**FOURTH ACCUSED**

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 19 March 2026 at 10h00.

SENTENCE

Moleleki AJ

[1] Originally, there were four Accused. Accused 2 passed away before the proceedings commenced. Accused 4 was acquitted in respect of all the charges. On 4 March 2026, Accused 1 was convicted of the contravention of Section 36 of the General Law Amendment Act, 62 of 1955. Accused 3 was convicted of the contravention of Section 18(2)(A) of the Riotous Assemblies Act, 17 of 1956 (conspiracy to commit robbery with aggravating circumstances), robbery with aggravating circumstances; one count of attempted murder and one count of murder.

[2] The provisions as contemplated in Section 51(2) of the Criminal Law Amendment Act, 105 of 1997 (CLAA) are applicable in respect of the counts of the contravention of Section 18(2)(A) of Act 17 of 1956 as well as robbery with aggravating circumstances. In respect of murder and attempted murder the provisions applicable are those contemplated in Section 51(1) of the Criminal Law Amendment Act, 105 of 1997.

[3] The court has reached a difficult stage of the proceedings. Appropriate sentences have to be imposed, and this is a process that requires a delicate balancing act. The court has to consider the seriousness of the offences committed, the personal circumstances of the Accused and the interests of society¹. Added to these factors, is the circumstances under which the offences were committed. The court must also consider the objectives of punishment being, prevention, rehabilitation, deterrence, and retribution.

[4] The court is aware that an Accused must be sentenced for the offence he/she is convicted of and must not be sentenced for his previous record. The society is harmed rather than served by sentences which are out of proportion to the gravity of the offence.

Accused 1

[5] Accused 1 has been convicted of an offence involving dishonesty, which carries the same sentence imposed on a conviction of theft. It is for that offence that he must be sentenced.

Accused 3

[6] Accused 3 has been convicted of offences to which the prescribed minimum sentences have been ordained. Such sentences should ordinarily be imposed unless the court finds substantial and compelling circumstances which justify a departure therefrom. The starting point when imposing sentence in matters of this nature is that

¹ *S v Zinn* 1969 (2) SA 537 (A) at 540G

minimum sentences must not be departed from for flimsy reasons². In determining whether substantial and compelling circumstances exist or not, a court must evaluate all the evidence, including the traditional mitigating and aggravating factors. These factors must be considered cumulatively and not individually and in isolation³.

[7] Both Accused did not lead any evidence in mitigation of sentence. Their respective counsels addressed the court from the bar.

The personal circumstances of Accused 1

[8] The Accused was born on 14 April 1980. He is 45 years old and about to turn 46 in a few weeks' time. At the time of the commission of the crime, he was 41 years old. The highest level of education is grade 12. The Accused has two siblings, and they were raised by their mother as a single parent. He is married and has three children and a grandson, all of whom are staying with the Accused and his wife. Having completed matric, he found employment at a company called Honeydew, where he worked for 15 years, which was when the company was liquidated.

[9] The Accused secured employment at Campwell, a company centred on outdoor equipment. He worked there for a period of five years until his arrest on 16 April 2021. Following his arrest, he remained in custody until February 2022. As a result, he lost his employment. After his release on bail, Accused 1 was fortunate enough to secure

² *S v Malgas* 2001 (1) SACR 469 (SCA) at para 9.

³ *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 54.

employment once again at a company offering similar services of outdoor equipment. The Accused has been working for a continuous period of 4 years, to date since his release on bail.

The seriousness of the offence committed by Accused 1,

[10] The court is alive to the circumstances under which the vehicles ended in the possession of Accused 1. The vehicles were stolen/ hijacked way before the current incident, later to be used as get-away vehicles after the robbery. However, the court is careful enough not to equate contravention of Section 36, Act 55 of 1962 with the offences with which he was not convicted (conspiracy, robbery, murder and attempted murder). He cannot be punished for the actions of the robbers, as it would be unjust to take him to the altar of sacrifice in respect thereof.

[11] The aggravating circumstances in this matter are that the Accused conceded that when a group of armed men arrived with the two vehicles at his residence, one of whom was injured, he was suspicious that they had committed some or other offence. However, he chose not to inform the police officers. By failing to report a suspected crime, Accused 1 prevented the perpetrators from being held accountable, leaving room for them to potentially commit more offences and/or posing danger to the community. In addition, failure to report reduced the chance of police officers recovering stolen property or firearms that were used in the commission of the offences.

[12] In mitigation, the court is cognisant that the Accused has no history of offending. Prior to his arrest, he was contributing positively to society as an employed father and husband. Although he had lost his employment following his arrest, he took it upon himself to seek employment. He has, as a result, been able to support his family pending the finalisation of this matter. With the R11 000 that he is currently earning, he carries the bulk of the financial support of the family. His wife earns half of what he earns. When one looks at his work history, it is clear that the Accused carries professional reliability. That is seen as a sign of loyalty and stability. The court was informed that his current employer has been aware of the charges against him. The employer is equally aware of the Accused's conviction yet is prepared to retain him. It would appear the employer chose to focus on rehabilitation and the value the Accused adds to the company, over the conviction.

[13] Under the circumstances, the court is of the view that, a sentence centred on rehabilitation will be appropriate as it will allow Accused 1 to remain a productive member of society. Such a sentence would allow him to maintain his normal life, continue working and support his family. The threat of potential incarceration being activated, will hang over his head and may provide a strong incentive for him to comply with the conditions imposed.

The personal circumstances of Accused 3

[14] Accused 3 was born on 6 August 1984. He is 41 years old. The highest level of education is grade 10. He is not married and has two daughters aged 13 and 9 years old, respectively. The Accused is not a first offender. He has previous convictions. He

committed murder, robbery and housebreaking in 2020, prior to the commission of the offences herein. In respect of the murder, he was sentenced to imprisonment for life.

[15] Over and above the previous convictions already mentioned above, he committed:

- (1) robbery with aggravating circumstances on 3 September 2021 in respect of which he was convicted on 5 June 2025 and sentenced to 15 years imprisonment. This robbery was committed 4 months after the robbery herein. This makes him a second offender for purposes of sentence.

[16] Careful consideration of the seriousness of the offences committed by Accused 3 is crucial. The offences with which Accused 3 was convicted are serious, and there are aggravating factors in the context of the background of the facts of the case. There was evidence of prior planning; the Accused's co-perpetrators were armed; therefore, more serious harm was intended or foreseen, and it resulted. The offences were committed by an organized criminal group who were motivated by financial gain. What makes it even more serious is that life was lost.

[17] Conspiracy to commit robbery is an extremely serious offence, which carries the same penalty as the substantive crime of robbery itself. What makes it more serious is that it involves aggravating circumstances. The plan was to intercept a cash-in-transit vehicle soon after the money had been collected from Khumbula filling station.

[18] Cash-in-transit robberies are considered serious offences due to the extreme violence often meted out during its commission, it is organized in a sophisticated manner and has severe and negative impact on the economy of the country. High calibre automatic rifles are often used, and the robberies often occur in public areas thus placing innocent members of the public at risk of being caught in the crossfire. Sadly, security guards or personnel working for companies that transport money are often rammed off the road, their vehicles detonated or even shot at. These lead to fatalities and probably to severe trauma for those who survive. Cash-in transit robberies involve other preliminary offences such as hijacking vehicles which are used as get-away vehicles as well as stealing or obtaining firearms and explosives. It is for these reasons that this court regards the entire planning as sophisticated. The complicity extends to reliance on inside information. In this case, prohibited firearms were used; more than one member of the group was armed. None of such firearms were recovered. It therefore means, such firearms are still in circulation and can still be used to commit further offences, more so that not all the perpetrators were arrested. The vehicles used as get-away cars had been stolen and the robbers knew more or less the time at which the cash vehicle would be at Khumbula filling station. There was also a fatality.

[19] The security vehicle had bullet holes as it was shot at. The damage would obviously require that the vehicle be replaced, and this would probably come at a remarkably high cost. The ripple effect is that insurance premiums would escalate.

[20] When the court looks at the aggravating factors as against the personal circumstances of Accused 3, they do not carry sufficient weight to tip the scales in his favour to impact the sentences ordained for the offences committed. The minimum sentences are not to be departed from for flimsy reasons.

[21] Considering the personal circumstances of Accused 3, weighed against the seriousness of the offences, the interests of society as well as other factors relevant to the imposition of sentence in this particular matter, the imposition of the prescribed minimum sentences cannot be said to be disproportionate to the offences committed nor would it amount to an injustice.

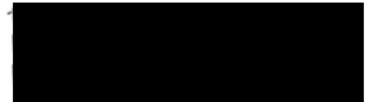
[22] In the result it is ordered that:

1. Accused 1 is sentenced to 5 years imprisonment wholly suspended for a period of 5 years on condition he is not convicted of contravention of Section 36 of the General Law Amendment Act 62 of 1955, contravention of Section 37 of the General Law Amendment Act 62 of 1955, attempted theft or theft, committed during the period of suspension.
2. Accused 3 is sentenced as follows:
 - (i) 15 years imprisonment in respect of count 1- Contravention of Section 18(2)(A) of the Riotous Assemblies Act, 17 of 1956, conspiracy to commit robbery.

- (ii) 20 years imprisonment in respect of count 2- Robbery with aggravating circumstances.
- (iii) Life imprisonment in respect of count 4 – Attempted murder of Mr Nicholas Mashaba.
- (iv) Life imprisonment in respect of count 5 – Murder of Mr France Molobela.

[23] In terms of Section 103 of the Firearms Control Act, each Accused is unfit to possess firearms.

[24] By operation of law, other sentences run simultaneously with life imprisonment.



M R MOLELEKI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

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Judgment delivered on: 19 March 2026