



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Reportable/Not Reportable

Case No: A125/2025

In the matter between:

MLANDELI NYUKA

Appellant

and

THE STATE

Respondent

Coram: Justice V C Saldanha et Acting Justice V Barthus

Heard: 22 May 2026

Delivered electronically: 29 May 2026

JUDGMENT

Barthus AJ (Saldanha J concurring):

[1] This is an appeal against a conviction of sexual assault. The appellant was convicted in the Oudtshoorn Regional Court of sexual assault, in contravention

of **section 5 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007** read with Section 257 and 261 of the Criminal Procedure Act 51 of 1977.

- [2] The appellant was sentenced to five years' direct imprisonment in respect of the sexual assault on 9 February 2024. Leave to appeal was refused but was granted on petition on 28 January 2025 in respect of the conviction only.
- [3] The appellant, then serving as the Deputy Mayor of the Oudtshoorn Municipality, was charged with sexually assaulting the complainant, his administrative assistant, in his office. He pleaded not guilty and did not provide a plea explanation. He was legally represented throughout the trial in the court *a quo*. The State presented the evidence of the complainant and Mrs. Moos, while the appellant testified in his own defence and called no further witnesses.
- [4] It was common cause that the appellant and the complainant were affiliated with the same political party (the party). The offices of the appellant and that of the complainant were adjacent and lead into one another.
- [5] The complainant testified that on 27 September 2022 she travelled to work with the appellant, arriving at approximately 09h00. Shortly thereafter, he called her into his office. While they were discussing party-related matters, the appellant suddenly stood up, applied sanitiser to his hands, raised them to his face, and smelt them. He then locked the door, approached her, and offered her a managerial post. He proceeded to lift her dress and touched her vagina, buttocks, and breasts.

[6] The complainant pushed the appellant away and then, fortuitously his telephone rang. He answered the phone and she seized the opportunity to escape. She heard the appellant tell the security guard not to come up and that he did not want to be disturbed. The complainant left her handbag behind. The complainant testified that she stood shaking outside the Municipal Building contemplating whether she should go back to get her handbag. She decided against going back and proceeded to walk home. On route she encountered Mrs Moos, a municipal contractor, who asked the complainant why she was not at work. The complainant gave a tearful account of what transpired after which Mrs Moos encouraged her to report the matter to the police. Mrs Moos accompanied the complainant to the police station.

[7] In her testimony, Mrs. Moos confirmed that when she found the complainant, she looked distraught and that the complainant told her what the appellant had done to her in his office. She testified that the complainant was taken to the trauma counselling room at the police station because she was crying and shaking.

[8] The appellant's defence was that factions within the political party led the complainant to fabricate the allegation in order to remove him from office. He testified that, during the meeting in his office, he reprimanded the complainant for failing to complete her work on time. She allegedly raised a complaint about an electricity disconnection at her home and asked him for money. He claimed he had no cash and advised her to open a bank account so that he could transfer funds. He further stated that he allowed her to leave work to address the electricity issue.

This version was incoherent since on his version, neither of them had the R800 needed to pay the bill, yet he still permitted her to leave to resolve it.

[9] The appellant further asserted that the complainant had deposed to an affidavit in a court application against him before the High Court. The complainant denied this and testified that she was one of the members who trusted and supported the appellant. She claimed that her signature had been forged on the affidavit. She accompanied the appellant to the police station and confirmed that she did not prepare the affidavit and that she did not sign it either. The affidavit forms part of the record and does not bear the complainant's signature.

[10] The appellant accused Mrs Moos of instigating the complainant because she had a personal vendetta against the appellant for his refusal to offer her daughter a job at the municipality. Mrs. Moos denied this. Mrs. Moos did not attempt to embellish her testimony and readily made concessions. Her evidence was inconsistent with that of a malicious witness testifying out of spite or ulterior motive.

[11] The appellant denied sexually assaulting the complainant. However, much of his testimony was implausible and contradictory. His explanation for the complainant leaving her handbag behind, that she intended to collect it later, was unconvincing, particularly as her office was adjacent to his and she never returned for it. By contrast, the complainant's version is reasonable and consistent with her having left in haste.

[12] The most damaging aspect of the appellant's evidence was his claim that the complainant made sexual advances toward him as a gesture of gratitude for his

support. This version was not put to the complainant during cross-examination and emerged only later, evidently to bolster his defence. Its late introduction undermines the appellant's credibility.

[13] The Appellant raised the following points on appeal, in relation to the complainant's evidence and submitted that the court *a quo* erred in its assessment of the evidence in circumstances where:

- a) the complainant did not raise the alarm to the security guard about the violation.
- b) the complainant was part of a conspiracy to get rid of the appellant because of the factions within their political party;
- c) the complainant's statement to the police contradicted her evidence in court; and
- d) as a single witness the complainant's evidence should be approached with caution.

[14] The appellant's claim that the complainant should have reported the incident to the security guard is unsustainable. She acted reasonably by disclosing the incident to Mrs. Moos, whom she encountered by chance on her way home, and by subsequently reporting it to the police.

[15] Regarding the contradictions between the police statement and oral evidence, the Supreme Court of Appeal in ***S v Mafaladiso en andere***¹ held as follows:

¹ **2003 (1) SACR 583** (SCA) at 593F-594G.

"it must be carefully determined whether there is an actual contradiction and what the precise nature thereof is. ... Secondly, it must be held in mind that not every error by a witness and not every contradiction or deviation affects the credibility of a witness. Non-material deviations are not necessarily relevant.... Thirdly, the contradictory versions must be considered on a holistic basis. The circumstances under which the versions were made, the proven reasons for the contradictions, the actual effect of the contradictions with regard to the reliability and credibility of the witness, the question whether the witness was given sufficient opportunity to explain contradictions - and the quality of the explanations - and the connection between the contradictions and the rest of the witness' evidence, amongst other factors, to be taken into consideration and weighed up.... Lastly, there is the final task of the trial Judge, namely, to weigh up the previous statement against the viva voce evidence, to consider all the evidence and to decide whether it is reliable or not and to decide whether the truth have been told, despite any shortcomings."

[16] In the present matter, there were no material contradictions by the complainant. In fact, the non-material contradictions related to innocuous detail such as whether she stood under a tree outside the building after the incident which simply had no impact on her credibility. The other contradiction raised concerned who answered the phone. The complainant explained that she had taken a call before her meeting with the complainant but that his phone rang in the office during the incident and that he had taken the call. Given the nature of the ordeal and the fact that the complainant was traumatised one can reasonably accept that there might be minor contradictions in her statement. The complainant gave plausible explanations in this regard.

[17] In **S v J 1998 (2) SA 984 (SCA)**, the Court held that when evaluating the evidence of an alleged victim of rape or sexual assault cases, a Court need to do no more than exercise the caution that is necessary when there is only one witness to the offence alleged.

[18] In **S v Sauls & Others**² the Court referred to the cautionary rule and stated the following:

“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, even though there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told. The cautionary rule may be a guide to a right decision, but it does not mean that the appeal must succeed if any criticism, however slender, of the witnesses’ evidence were well-founded’ It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense.”

[19] The complainant’s evidence was clear and satisfactory in every material respect. It was both credible and reliable. I am more than satisfied that the state had proved the guilt of the appellant of the sexual assault on the complainant beyond reasonable doubt. The appellant’s version was hopelessly and inherently improbable and was correctly rejected by the magistrate as not reasonably possibly true. In the result I propose to confirm the conviction and dismiss the appeal.

[20] I should add that it is deeply concerning that a Deputy Mayor could commit such an offence against a subordinate. This conduct reflects a serious abuse of power.

² 1981 (3) SA 172 (A) at 180E–G

[21] At the hearing of the appeal ,counsel on behalf of the state confirmed that the state had not furnished the court *a quo* with a Victim Impact Report and so it was uncertain whether the complainant received any counselling for the trauma she suffered at the hands of the appellant and whether she was still employed by the municipality since laying the charge.

[22] Greater emphasis and care should be placed on the state of victims of sexual assault since the trauma continues long after the matter is reported to the police. A Victim Impact Report should as a matter of course be obtained and submitted to the trial court before sentencing since it provides insight into the tangible impact of the crime on the victim(s) and ultimately informs the considerations, amongst others, on a proper sentence. Moreover, it provides a proper opportunity for the victim to be acknowledged which in turn empowers and advances recovery from the traumatic event. Mr Uys on behalf of the State helpfully gave an undertaking to ensure that the complainant receives the appropriate counselling and assistance as a result of the sexual assault on her. The court is indebted to him and the office of the DPP for doing so.

[23] In respect of appeal against conviction, the following order is made:

1. The appeal against the conviction of sexual assault is dismissed and the conviction is confirmed.

V BARTHUS

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered.

V C SALDANHA

JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for the Appellant:

Ms A De Jongh

AltheaDJ@legal-aid.co.za

Counsel for the Respondent:

Adv K Uys

KUys@npa.gov.za