



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable
Case no: A168/2025

In the matter between:

LEMPIDITSE GEORGE JABANG

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Jabang v The State* (A168/2025) [2026] ZAFSHC 316 (28 May 2026)

Coram: DANISO J et CRONJÉ AJ

Heard: 13 April 2026

Delivered: 28 May 2026

Summary: Criminal appeal – two convictions of rape – complainant a single witness – evidence satisfactory in every material respect – s 208 of the Criminal Procedure Act 51 of 1977 (CPA) satisfied – magistrate presiding without assessors – s 93*ter* of the Magistrate’s Court Act 32 of 1944 not effective – no obligation to appoint assessors – s 186 of the CPA affords the court a prerogative to subpoena witnesses if it finds it essential to the just decision of the case – no basis for finding that the court did not exercised its prerogative judicially - presenting a victim impact report at the sentencing stage not irregular – alleged non-compliance with the National Instructions of the Police, if applicable, not resulting in an unfair trial.

ORDER

1 The appeal is dismissed.

JUDGMENT

Cronjé AJ

[1] The appellant was convicted on two counts of rape in the Regional Court and sentenced to 22 years on each count, with the sentences running concurrently. The appellant was deemed unfit to possess a firearm, and his particulars were to be included in the National Register for Sex Offenders in terms of s 50(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA). The appellant appeals against the convictions and the sentences imposed. It should be noted from the outset that the legal representative appearing for the appellant in the appeal was not the legal representative who represented him at trial.

Grounds of appeal

[2] The grounds of appeal are numerous and will be dealt with thematically where possible.

First ground

[3] The court a quo erred by admitting unlawful and uncorroborated evidence and drawing incorrect inferences therefrom. The court, notwithstanding its remark that the complainant was a single witness with no first report, convicted the appellant.

[4] Whilst there may be argument in the criticism of a strict interpretation of what a first report is, the complainant testified that she typed the incidents on her telephone and posted what happened to her on Facebook, telling her family members about her situation and asking for help. Her brothers were unemployed and could not send money for her transport. When she eventually left the farm, she reported it to the police. This evidence was not presented as direct evidence given under oath.

[5] In *Vilakazi v The State*,¹ it was held:

[15] *It is my view that our courts have not considered the lack of evidence of a voluntary complaint (also referred to as a 'first report') to be fatal to a charge of rape.* In this regard, Milton, in *South African Criminal Law and Procedure*, says: "It is not mandatory that there should be evidence that the woman has complained that she has been raped. However, if she has, such complaint is admitted in evidence to show consistency and to negative a defence of consent, but not as proof of their contents nor to corroborate the complainant. But it is not essential that consent should be in issue; the complainant may, for instance, be a girl of under 12 years of age. The purpose of admitting evidence of a complaint is that it serves to rebut any suspicion that the woman has lied about being raped. The corollary is, of course, that should a woman not complain, or not complain timeously, the conclusion may be drawn that she is lying in her evidence that she was raped. The conclusion may well be unfair to the victim, since women may hesitate to complain of rape for reasons of shame, embarrassment or fear.' (Own emphasis and footnote omitted.)

[6] In *Cupido v S*,² the Supreme Court of Appeal considered the provisions of s 208 of the Criminal Procedure Act 51 of 1977 (the CPA) and held that:

[19] Section 208 of the CPA provides that an accused may be convicted of any offence on the single evidence of any competent witness. The general approach as to how the evidence of a single witness should be treated is well established. Mr Mathewson relied on the case of *R v Mokoena (Mokoena)*, a case which dealt with the predecessor section to s 208, where it was stated:

"Now the uncorroborated evidence of a single competent and credible witness is no doubt declared to be sufficient for a conviction by s 284 of Act 31 of 1917, but 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 proper opportunities for observation, etc" (Footnotes omitted.)

¹ *Vilakazi v The State* [2015] ZASCA 103. See also: *Maila v S* [2023] ZASCA 3 paras 27-29.

² *Cupido v S* [2024] ZASCA 4.

[7] In *S v van der Meyden*,³ the court held that to convict, the evidence must establish the guilt of the accused beyond a reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. The court does not look at the evidence implicating the accused in isolation in order to determine whether there is proof beyond a reasonable doubt, and neither does it look at the exculpatory evidence in isolation in order to determine whether it is reasonably possible that it might be true.

[8] Applying the tests, I cannot find any reason why the court was not entitled to rely on the complainant's evidence as a single witness. Mr Smit, incidentally, in the application for leave to appeal, conveyed to the court a quo that it is not the appellant's case that the court '*erred per se*' in relying on the evidence of a single witness, but it is one of the grounds of appeal.⁴

[9] The court found her evidence straightforward and mostly uncontested, as she never contradicted herself during cross-examination. The court noted that the only issue was that much of the information was not forthcoming in evidence-in-chief but only during cross-examination. In my view, those were not material to the extent that they diminished the reliability and credibility of the complainant and her evidence.

Second ground

[10] The court erred here in not taking judicial notice in terms of s 224 of the CPA of the compulsory requisite endorsed in Item 7(3)(d) and (e) of National Instruction 3/2008 (SAPS) on sexual offences published in terms of s 66(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (herein referred to as the CLA).⁵

[11] This is not a correct reading and interpretation of the Item. It outlines the responsibilities of the first police officer at the crime scene, who must reassure the victim, obtain a brief account of the events, listen to the victim, write down everything the victim says, and later prepare a comprehensive report. The complainant testified

³ *S v van der Meyden* 1999 (1) SACR 447 (WLD) at 448F-H.

⁴ Record, page 214.

⁵ Government Notice 865 in Government Gazette No. 31330 dated 15 August 2008.

that she was raped more than once on the farm, and when she left the farm, she reported it. The complainant was no longer at the crime scene. It can therefore not be said that there was an irregular or wrongful deviation from the formalities and rules of procedure aimed at ensuring a fair trial.

Third ground

[12] It is stated that the court erred in not informing the appellant of his right to have the matter adjudicated before two assessors in terms of s 93*ter* of the Magistrates' Court Act 32 of 1944, as endorsed in s 68 of the CLA, where the offence includes rape or compelled rape.

[13] Although the reference to the legislation is correct, s 93*ter* has not, to date, come into effect. For that reason, there is still no right or obligation to engage assessors. The obligation to do so in respect of murder is trite.⁶

Fourth ground

[14] The court erred by failing to place it on record whether or not the interpreter was officially appointed or is a casual interpreter. The record does not provide a basis for the extent of the qualification of the interpreter and therefore renders the evidence adduced by the single witness inadmissible. Related to this ground is the allegation that the court erred by failing to put the charges to the appellant in his language of choice or to ensure he could understand them. It cannot be said that the appellant understood the charges.

[15] Raising a new ground on appeal is an extraordinary measure which can only be permitted if it involves a point of law or evidence which is already present in the record of the proceedings, regard must be had to fairness to the opponent and the interests of justice. It can never be fair to an opponent (the State) to be confronted with complainants which were never raised at trial, they do not appear in the record and it can never be in the interest of justice that an appeal court is turned to a re-trial, fairness dictates that the State is entitled to answer to these grounds. It must also be borne in mind that these grounds including those mentioned in grounds 7, 10 and 13 are

⁶ *Gayiya v S* [2016] ZASCA 65; 2016 (2) SACR 165 (SCA) para 11.

irrelevant and have no bearing on the evidence relied upon by the court to convict the appellant. They are merely procedural aspects which some relate to the investigation etc, not the facts and evidence relayed at trial. An appeal is confined to the record. If there were issues about for example the arrest, they should have been dealt with prior to the trial by way of interlocutory applications or at least appear on the record. Not every error (if any) prejudices an appellant in the conduct of his defence with the result that proceedings were not in accordance with justice.

[16] There is no affidavit or other evidence from either the appellant or Mr Neves (who represented the appellant at the trial) to support this ground. There is a single reference in the record to an instance of an incorrect translation. The passage reads as follows:

'MS MOCK: He asked them whether they were seeing their new mother. They said yes.

COURT: I think in your, in your explanation [vernacular].

INTERPRETER: Oh ja, I omitted that one, they further said they were happy for her, Thanks your worship.⁷

[17] This evidence was not critical in determining whether the appellant raped the complainant, nor does any other such instances.

Fifth ground

[18] It is stated that the court erred by allowing hearsay evidence and failed to apply s 3 of the Law of Evidence Amendment Act 45 of 1988, which pertains to the complainant's reference to a certain Masintle.⁸

[19] It should be noted that Mr Neves objected to the hearsay. The prosecutor implored the complainant to refrain from using a version of what other people told her. There was no need for the court to make a ruling.

[20] The court, mero motu, without objection from Mr Neves, stated that it would not allow hearsay evidence regarding what one Mpho told the complainant.⁹

⁷ Record, Part 3, page 9.

⁸ Record, Part 3, page 9.

⁹ Record, Part 3, page 23 - 24

[21] In respect to the references to one Shorty, Mr Neves objected, and the state immediately confirmed that he will not be called, and no more came from it. It was not necessary for the court to make a ruling.

[22] The judgment of the court, in any event, places no reliance on any of these people. There is a cursory reference to one Mampuru in the judgment, but no substance. The examination of the record does not show that the court a quo relied on such evidence.

Sixth ground

[23] The appellant avers that the court erred in failing to call witnesses. Reliance is placed on the powers of the police and labour legislation to obtain the names, addresses and contact details of the employees (witnesses) who worked on the farm during the period in question. The court had a legal duty to see to it that justice is done and that a just decision of the matter prevailed.

[24] A cautionary note should be added. In paragraphs 13.9 to 14.3 of the grounds of appeal, it is stated that the court erred in not invoking the duty under s 186 of the CPA to call CCMA¹⁰ witnesses who transported the complainant after she had already left the farm. It is stated that Mr Smith (the present legal representative) made enquiries post-trial and determined that the so-called witnesses do not exist and that no investigations were conducted. It is not proper to present a court of appeal with allegations on the grounds of appeal where the material and evidence was not placed before the trial court. Grounds of appeal are not evidence.

[25] The record shows that both parties had several potential witnesses available; the complainant stated that those who may have supported her do not wish to testify, for whatever reason. The appellant stated that 44 people can confirm his version of the events on the farm, but he did not call a single one. Pertaining to the critical facts of the instances of rape, the court was faced with the credibility, reliability and consistency of the evidence of both the complainant and the appellant and needed no extraneous

¹⁰ Commission for Conciliation, Mediation and Arbitration.

facts to make a finding. A litigant is entitled to call any witness that he believes would bolster his case. Section 186 of the CPA affords the court a prerogative to subpoena witnesses if it finds it essential to the just decision of the case. The court cannot be faulted.

Seventh ground

[26] The court erred in considering that the investigation officer failed to depose a précis or a summary of the case in terms of Item 6(1)(f) of Standing Order (General) 321 – Docket Management - Case docket (SAPS 3M).

[27] I know of no legal requirement that the court be involved or informed of this. If the appellant was of the view that this is material, it should have been placed on record, and the state, or the appellant, may also have elected to call the investigating officer. This was not done, and this ground carries no weight. The ground of appeal does not state how this may have resulted in a different conclusion by the Court.

Eighth ground

[28] The court erred by allowing the complainant to continue to rely on hearsay evidence and to testify about issues beyond the scope of her affidavit disclosed to the defence. Reliance is placed on *Shabalala and Others v Attorney-General of the Transvaal and Another (Shabalala)*.¹¹

[29] It is not apparent from the record that the court was addressed on this point. Nor could I find any request for access to or copies of other documents. There do not appear to be any references in the record to the complainant's statement, and, on my reading of the record, it was not put to the complainant that her evidence deviated from her statement. I also could not find any questions put to the complainant about whether she made more than one statement. In *Shabalala*,¹² the court, inter alia, held that, ordinarily, an accused person should be entitled to have access at least to the statements of prosecution witnesses, but the prosecution may, in a particular case, be

¹¹ *Shabalala and Others v Attorney-General of the Transvaal and Another* [1995] ZACC 12; 1995 (12) BCLR 1593; 1996 (1) SA 725.

¹² Ibid para 37.

able to justify the denial of such access on the ground that it is not justified for the purposes of a fair trial.

[30] What a fair trial might require in a particular case depends on the circumstances. The application of the law pertaining to the adequacy of the particulars furnished might have to be re-examined, having regard to the 'spirit, purport and objects of the Constitution of the Republic of South Africa, 1996 (the Constitution), to identify witnesses able to contradict the assertions made by the State witnesses; to obtain evidence which might sufficiently impact upon the credibility and motives of the State witnesses during cross-examination; to properly instruct expert witnesses to adduce evidence which might similarly detract from the probability and the veracity of the version to be deposed to by the State witnesses; to focus properly on significant matters omitted by the State witnesses in their depositions; to properly deal with the significance of matters deposed to by such witnesses in one statement and not in another, or deposed to in a statement and not repeated in evidence; or to address hesitations, contradictions and uncertainties manifest in a police statement but overtaken by confidence and dogmatism in viva voce testimony.

[31] No rigid rules are desirable. It is for the trial Court to exercise a proper discretion having regard to the circumstances of each case. The State might successfully contend that, having regard to the particulars in the indictment, read with the summary of substantial facts, the Court would have to have regard to all the relevant circumstances in identifying whether the right to a fair trial in a particular case should include the right of access to the police docket. If the answer is in the negative, the application for such access must fail. If the answer is in the affirmative, the Court would ordinarily direct that access by the accused to the relevant parts of the police docket be allowed.

Nineth ground

[32] It is stated that Item 5(1), Step 6, the South African Police Standing Order (General) 327 on attestation of statements makes it clear that the deponent and the commissioner of oaths must initial every page of the statement and the deponent must sign in the appropriate place in the presence of the commissioner of oaths.

[33] Regulations Governing the Administration of Oaths have been promulgated in terms of s 10 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. Section 10(1)(b) of this Act confers upon the Minister of Justice the power to make regulations prescribing the form and manner in which an oath or affirmation shall be administered, and a solemn or attested declaration shall be taken, when not prescribed by any other law. It provides that the deponent shall sign the declaration *in the presence* of the commissioner of oaths, and below the deponent's signature, the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration, and he shall state the manner, *place and date of taking the declaration*.¹³ There is no requirement that each page shall be signed by a commissioner of oaths. Non-compliance is, in any event, condonable. It cannot be said that there is no affidavit. The court, in any event, had to weigh the evidence, taking all into consideration, and the reasons cannot be faulted.

[34] It is noted that the complainant's statement refers to CAS 1087/11/22. The content pertains to the charges. The complainant's statement in the record complies with the requirements in every material respect. A standing order of the police cannot override the clear empowering provisions of a national Act. It may bind the police but, in my view, does not bind a court. If the legal representative and the prosecutor fail in their duty to the Court, it does not mean that the state failed to prove the offences. A legal representative should raise these issues timeously.

Tenth ground

[35] Various issues are raised. It is firstly stated that a Victim Impact Statement (VIS) was not taken in terms of Item 21 of the National Instruction. It never formed part of the docket, and it is therefore unlawful and irregular.

[36] Notwithstanding my search for precedents in which a statement was only dealt with at the sentencing proceedings and found to be irregular, I found none. In *Maila v S*,¹⁴ the court considered a victim impact statement during the sentencing proceedings

¹³ See: *VJS v SH* [2024] ZAWCHC 333 para 18.

¹⁴ Op cit fn 1 para 49.

to reflect the complainant's voice in proceedings that affect her directly. In *State v Matyityi*,¹⁵ it was expressed as follows:

[17] *By accommodating the victim during the sentencing process the court will be better informed before sentencing about the after effects of the crime. The court will thus have at its disposal information pertaining to both the accused and victim and in that way hopefully a more balanced approach to sentencing can be achieved.* Absent evidence from the victim the court will only have half of the information necessary to properly exercise its sentencing discretion. It is thus important that information pertaining not just to the objective gravity of the offence but also the impact of the crime on the victim be placed before the court. That in turn will contribute to the achievement of the right sense of balance and in the ultimate analysis will enhance proportionality rather than harshness. Furthermore, courts generally do not have the necessary experience to generalise or draw conclusions about the effects and consequences of a rape for a rape victim. As Müller and Van der Merwe put it: "It is extremely difficult for any individual, even a highly trained person such as a magistrate or a judge, to comprehend fully the range of emotions and suffering a particular victim of sexual violence may have experienced. Each individual brings with himself or herself a different background, a different support system and, therefore, a different manner of coping with the trauma flowing from the abuse". (Own emphasis and footnotes omitted.)

[37] There is no basis to criticise the commissioning of the VIS and the court's acceptance of the statement. One may appreciate a situation in which a statement is taken at the crime scene and needs to be supplemented when the complainant is in a better frame of mind to provide more detail. In this instance, however, the complainant was a major, and the crime occurred at a place where she did not find herself any longer. A further statement was, in my view, not necessary. The appellant's legal representative took no issue with the report.

Eleventh ground

[38] It is stated that the appellant's legal representative did not lead evidence disclosing the appellant's version, but instead immediately cross-examined the appellant during his evidence in chief on the complainant's version. This led the appellant to deny the complainant's version, and his own version was never solicited by his legal representative. On this basis, the appellant incriminated himself.

¹⁵ *State v Matyityi* [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA).

[39] I cannot agree with this criticism. The record shows not only that the complainant was cross-examined and the appellant's version put to her, but also that Mr Neves, on more than one occasion, took instructions during cross-examination. There is nothing untoward in a legal representative asking his client to comment on what a complainant testified to, and the record does not show that the appellant was cross-examined by his own representative.

Twelfth ground

[40] It is stated that the errors and gross irregularities that were committed during the trial open the door for the appellant to rely on and enforce his constitutional right in terms of s 35(2)(d) of the Constitution and demand his release from custody as his incarceration is unlawful.

[41] This should not be seen in isolation. When the grounds are considered, no infringement of the constitutional rights can be noted.

Thirteenth ground

[42] The court erred in finding that the complainant was pregnant during the course of the alleged occurrence of the crimes, and the appellant was convicted without any medical evidence presented in this regard.

[43] There is no basis for this criticism. The complainant arrived at the farm on 8 November 2022 and left on 24 November 2022. She went to the police on 25 November 2022 and opened the case against the appellant. She went to the clinic on 28 November 2022, and police officers took her to the National Hospital, where she was informed that she had an infection and was four months pregnant. She was therefore pregnant before she arrived on the farm and was raped whilst pregnant.

The sentences imposed

[44] The only substantive criticism is that the court erred in allowing the alleged unlawful VIS to be adduced as evidence and admitted as an exhibit after conviction.

[45] Presenting VIS is not unlawful. The statement was duly deposed and commissioned. It was presented before sentencing commenced. Mr Neves raised no objection to it being handed in as evidence, and the court duly considered the profile of the appellant.

[46] The principles applicable for a court to interfere with a sentence were set out in *S v Malgas*:¹⁶


'[12] Subject of course to any limitations imposed by legislation or binding judicial precedent, a trial court will consider the particular circumstances of the case in the light of the well-known triad of factors relevant to sentence and impose what it considers to be a just and appropriate sentence. 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. ... It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate". . . .'

[47] Considering the record, the grounds of appeal, and the arguments, there exists no basis for this Court to interfere with the convictions and sentences imposed.

[48] The appeal is therefore dismissed.

[49] In line with practise, the following order is made:

1 The appeal is dismissed.


P R CRONJÉ
ACTING JUDGE OF THE HIGH COURT

I concur.

¹⁶ *S v Malgas* [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (SCA).

The Honourable Justice
2026 -05- 28
N.S. Daniso

N S DANISO
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

E Smit

Instructed by:

Trust Account Advocate

For the respondent:

No appearance.