



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION - GQEBERHA)**

**Case No: CC 32/2025**

In the matter between:

**THE STATE**

and

**SIPHELELE NTISANA**

**Accused**

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**JUDGMENT**

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**MAJALI AJ:**

[1] The accused, *Siphelele Ntisana*, is facing the following charges:

- 1.1 Five (5) counts of conspiracy to commit murder (counts 1-5);
- 1.2 Five (5) counts of Incitement to commit murder (counts 6-10);
- 1.3 Two (2) counts of murder (counts 11-12);

- 1.4 Three (3) counts of attempted murder (counts 13-15);
- 1.5 Two (2) counts of robbery with aggravating circumstances (counts 16-17);
- 1.6 One (1) count of attempted robbery with aggravating circumstances (count 18);
- 1.7 One (1) count of unlawful possession of a firearm (semi-automatic) (count 19);
- 1.8 One (1) count of unlawful possession of ammunition (count 20); and
- 1.9 One (1) count of unlawful possession of a firearm (semi-automatic) with the intention to commit an offence (count 21).

[2] All the charges emanate from an incident that occurred on 22 December 2024 and at *Kwadwesi* in the district of *New Brighton* in *Gqeberha*, the State alleges that the accused was acting in execution of a common purpose when he committed the alleged offences.

2.1 In respect of counts 1-5 it is alleged that the accused unlawfully and intentionally conspired with persons unknown to procure the killing of the following persons:

- (i) *Bulelani Raymond Peter*
- (ii) *Siyabulela Plaatjies*
- (iii) *Xola Kuse*;
- (iv) *Aphiwe George* and
- (v) *Mandile Matshaya*

2.2 In counts 6 - 10 the *State* alleges that the accused incited the killing of the following individuals namely *Bulelani Raymond Peter*, *Siyabulela Plaatjies*, *Xola Kuse*, *Aphiwe George* and *Mandile Matshaya*.

- 2.3 In counts 11 - 12 the *State* alleges that the accused unlawfully and intentionally kill *Bulelani Raymond Peter* and *Siyabulela Plaatjies* by shooting each of these with a firearm.
- 2.4 In counts 13 - 15 the *State* alleges that the accused unlawfully and intentionally attempted to kill the following individuals: *Xola Kuse*, *Aphiwe George* and *Mandile Matshaya* by shooting at them with a firearm, as they were in the company of the deceased in counts 11 and 12.
- 2.5 In counts 16 - 17 the *State* alleges that the accused unlawfully and with the intent to induce submission assaulted the following individuals: *Xola Kuse* by shooting at him with a firearm and taking his cellular phone and a wallet containing *R60.00 cash*, and one *Aphiwe George* by shooting at him and taking his cellular phone.
- 2.6 In count 18 the *State* alleges that accused did unlawfully and intentionally with the intent to induce submission assaulted *Mandile Matshaya* and or threatened with violence attempted to steal from him property unknown to the state by searching him in an attempt to rob him.
- 2.7 In count 19 the *State* alleges that accused did unlawfully and intentionally have joint possession of a firearm to wit a 9mm parabellum calibre semi-automatic pistol without holding a licence, permit or authorisation in terms of the *Act* to possess the said firearm.
- 2.8 In count 20 the *State* alleges that accused did unlawfully and intentionally have joint possession of a 9mm calibre ammunition,

without being the holder of a licence in respect of a firearm capable of discharging that ammunition or a permit to possess that ammunition or any licence, permit or authorisation to possess that ammunition.

2.9 In count 21 the *State* alleges that accused did unlawfully and intentionally have joint possession of any firearm, to wit one (1) 9mm calibre semi-automatic pistol, with intent to commit an offence to wit murder.

[3] The accused pleaded not guilty to all counts. He elected to exercise his right to silence and not to disclose the basis of his defence.

### **Admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977**

[4] The accused made formal admissions in terms of *section 220 of the Criminal Procedure Act 51 of 1977 (the Act)* which were admitted marked *Exhibit A*. As a result of the admissions, the identity of the two deceased, the postmortem findings, the chain evidence relating to the time the bodies of the deceased were recovered until the postmortem examinations were conducted, the photographs relating to crime scene were all no longer in dispute.

[5] Further substantial evidence was handed in with the consent of the defence without proof of such evidence (*Exhibits B-O*).

## **Evidence of the State**

[6] *Apiwe George*, was a friend to the deceased. He testified that during the early morning of the 22 December 2024, he together with *Xola Kuse*, *Mandile Matshaya* and the two deceased went to the room where the *Bulelani Peter* resided and they found *Onikisipho* who was the girlfriend of *Bulelani Peter*. Upon their arrival at the room they prepared dagga and mandrax pipe to smoke.

[7] Whilst preparing the pipe, they heard a knock on the door. On enquiring the person at the door identified himself as *Hupa*. He was known by most of the people present in the room including the first deceased. *Mandile* was instructed to open the door as he was seated closest to it, which he did.

[8] *Mr George* testified that *Hupa* got inside the room and immediately moved aside next to the door. He was followed by an unknown adult male carrying a firearm. The stranger enquired from *Hupa* about who amongst the occupants is the target they were looking for and *Hupa* responded and said all of them except the lady was in the room. The lady was told to cover herself under the blankets. It was clear to *Mr George* that *Hupa* and the stranger had discussed about the occupants of the room.

[9] The unknown male shot *Mandile* as he was about to be seated. After he was shot *Mandile* remained on the couch until paramedics arrived and took him to hospital. The unknown male then shot and killed *Bulelani Peter* and *Siyabulela Plaatjies*, both were shot on the head whilst they were seated. The unknown male shot him right elbow and on the right knee as he was in a crouching position seated on the couch. Then the unknown male shot *Xola Kuse* who was seated next to him. Although he is not an expert in firearms, he described features consistent with a semi-automatic pistol, namely the movement of the slide backwards and forward during the operation.

[10] *Hupa* called (2) two other unknown males to enter and search the occupants in the room. They were all searched and from *Aphiwe* a cell phone valued around R800.00 was robbed. *Hupa* and the three (3) unknown males also removed phones belonging to other victims who had been shot and thereafter they left.

[11] The room was well lit and therefore visibility inside was good. He had known *Hupa* for about two years before the said incident. They used to smoke together dagga and mandrax at *Hupa's* place.

[12] *Mr George* gave evidence that he spent few weeks in hospital. Upon discharge on 9 January 2025, he went home. In January 2025 whilst at home in the evening still recuperating and on crutches, the accused came to

his shack. He apologized for the injuries to *Mr George*. The accused told him that the main person they were looking for on that fateful night was the first deceased because of a previous incident between the accused and the first deceased. He accepted the apology and the accused promised to bring a case of beer and a bottle of brandy. He testified that he was shocked to see the accused in his room and he thought he was there to finish himself. From that day he decided not to sleep in his room because he was afraid.

[13] During January 2025 the investigating officer, Sergeant *Wright* came to his house and requested him to point out the accused's place of residence. He also told the investigating officer about the accused's earlier visit. He and the investigating officer went to look for the accused at his place, they were told that accused moved to *Soweto on Sea*. The mother of the accused took the police to the accuse. *Mr George* later confirmed the identity of the accused to the police who arrested the accused.

[14] The first statement he made to the police was when he was in hospital still in pain. When asked why, in his statement to the police, did he make mention of only two people involved, he said he was still in pain and his focus was on the accused and the unknown shooter.

[15] It was put to him that the accused knows him, but they are not friends. The accused further denies going to *Bulelani Peter's* shack on the date of the

incident as he was at home sleeping. He denies being involved in the commission of the alleged offences. He also denies going to *Apiwe* place to apologize in January 2025.

[16] *Xola Kuse*, testified that he was in *Bulelani's* shack in the early morning on 22 December 2024 with *Bulelani Peter (deceased)*, *Siyabulela Plaatjies (deceased)*, *Mandile Matshaya* and *Apiwe George*. He knew *Hupa* before the date of the incident. His evidence was corroborated by *Apiwe George* in material aspects. The unknown male shot him and the bullet struck him on the fingers and grazed the top of his head. In his possession he had a *Nokia* cell phone and a wallet containing *R60.00* cash which were taken away. Thereafter he lost consciousness and when he regained it, he crawled out of the shack as he could not walk and he remained there until the police and the ambulance arrived. He was taken to *Livingstone* hospital and was admitted for few weeks.

[17] *Mandile Matshaya's* evidence corroborated *Apiwe George* in all material respects. He testified that after the accused knocked on the door and identified himself as *Hupa*, he stood up and opened the door as instructed by *Bulelani Peter*. He opened the door and as he was about to sit down, he saw *Hupa* and an unknown male carrying a firearm next to the door.

[18] *Mr Matshaya* gave evidence that the stranger started to shoot him on the face and he fell down. Whilst on the ground he felt someone searching him. He did not have any valuable items on him. He remained on the ground until it was silent and because he could not walk, he crawled out to his brother's shack which was about thirty (30) metres away. Later, the paramedics came and he was taken to hospital. He was admitted in the intensive care unit for few days.

[19] *Mr Matshaya* stated that upon discharge from hospital he was taken by the investigating officer, *Sgt Wright* to attend a photo identification parade in *KwaDwesi* police station. A male police officer conducted the photo identification parade and he pointed out the accused on the photos. On top of the accused's photo he wrote accused's name, *Hupa*.

[20] During cross examination he testified that he knew accused for about seven (7) months before the incident and they would meet at *Bulelani's* shack for smoke sessions. The version of the accused was put to him which he denied.

[21] *Tandile Fatyi* is a constable in the *South African Police Service* who testified that she is a crime scene investigator. She testified that on the 22 December 2024 she attended a crime scene at *Westville* informal section, *KwaDwesi* in *Gqeberha*. She recovered the following ballistic evidence:

- 21.1 two (2) cartridge cases close to the entrance door;
- 21.2 two (2) bullet fragments close to one of the deceased;
- 21.3 one (1) bullet on the couch next to the entrance door;
- 21.4 one(1) cartridge case next to the deceased - *Bulelani Peter*; and
- 21.5 one (1) bullet under the deceased - *Bulelani Peter's* body.

All these items were placed in evidence bags. She took photographs on the crime scene and compiled a photograph album. She later sent the items collected from the scene to the ballistic expert for analysis.

[22] *Jaline Kotze* is a qualified medical doctor. She is a Senior Manager in medical services and is working in *Livingstone* hospital. She did not examine the following three (3) victims/patients: *Xola Kuse*; *Apiwe George* and *Mandile Matshaya*. They were seen by different doctors in *Livingstone* hospital. She testified she received the medical information from the hospital records. She asserted that she is authorized to testify on behalf of the doctors that examined these patients.

[23] *Dr Kotze* testified that *Mr George* was examined at 09h34 on 22 December 2024 with multiple gunshot wounds on the right elbow and the right knee. He was transferred to the *Orthopaedic* unit, where an operation was done. He was discharged on 25 January 2025. The clinical findings

were that the injuries were consistent with a high velocity penetrating projectile (*bullet*) at close range. The injuries were potentially life threatening as there are major blood vessels in the area of the gunshot wounds.

[24] *Dr Kotze* testified that *Xola Kuse* was examined on 22 December 2024 at 08h51 with a history of loss of consciousness. He had a gunshot wound on the head and on the left hand. The clinical findings were that he suffered a traumatic brain injury, skull fracture, the left index finger and a thumb were fractured. He was seen by a neurosurgeon and referred to maxilla-facial for review. The injuries were consistent with a high velocity penetrating projectile (*bullet*) and were life threatening due to the skull fracture. He absconded from hospital on 13 January 2025.

[25] *Dr Kotze* testified that *Mandile Matshaya* was examined on 22 December 2024 at 06h20 when it was discovered that he had gunshot wounds to the mouth and on the left side of the neck. An entry wound to the mouth and exit wound on the left side of the neck. He was discharged on 31 December 2024. The injuries he sustained are consistent with a high velocity penetrating projectile (*bullet*) and were life threatening if not medically treated.

[26] *Juden Botha* is a warrant officer in the *South African Police Service* attached to the ballistic section and is a *Forensic Analyst* with eleven (11) years of experience.

[27] *Warrant Officer Botha* testified on 6 August 2025 he received sealed evidence bags containing the following:

27.1 three (3) 9mm parabellum calibre fired cartridge cases;

27.2 one (1) undetermined calibre fired bullet;

27.3 two (2) 9mm calibre fired bullets; and

27.4 one (1) 9mm calibre fired bullet.

[28] *Warrant Officer Botha* conducted an examination of the fired bullets and cartridges. He compared the individual and class characteristics markings transferred to them by firearm components during the firing process, using a comparison microscope. He found that the three cartridge cases were fired from the same firearm and that the bullets were fired from the same firearm. The cartridge cases were designed to be fired by a semi-automatic firearm. On conclusion of the analysis he put the items on the evidence bag and sent them back.

[29] *Anele Mahleza* is a *Sergeant* in the *South African Police Service* attached to the *Nelson Mandela Bay Murder for Money Task Team*.

[30] *Sgt Mahleza* testified that on 7 April 2025 the investigating officer *Sgt Wright* requested him to assist with photos of male suspects that had a similar resemblance of an image he had in his possession. *Sgt Wright* sent the image to his computer, and he found other images for comparison from his computer. The details of the case were not discussed. He found eight images and included the one brought by *Sgt Wright* to the layout. He printed the nine unmarked images on an *A4* page and sealed in an evidence bag.

[31] On 9 April 2025 he handed the sealed bag to *Sgt Wright*. Later that day, after the photo album identification parade was completed, he was asked by *Sgt Wright* to compile the indexing of the images. The images were marked and the accused's name was written on image six (6).

[32] *Xola Peta* is a *Warrant Officer* in the *South African Police Service* attached to the *Provincial Organized Crime*.

[33] *Warrant Officer Peta* testified that on 2 April 2025 he was on duty when *Sgt Wright* asked him to assist in conducting a photo identity parade and that was to be done on 9 April 2026 at *KwaDwesi* police station.

[34] On 9 April 2025 *Sgt Wright* gave him a sealed bag inside there was an envelope. The photo identification parade was conducted in the boardroom. The witness *Mandile Matshaya* arrived, he explained the procedure to be followed. He opened the sealed bag and took out an envelope that contained an *A4* size paper with nine (9) images. The witness identified the accused by writing the name Hupa on the image and the witness signed and put a date. He also signed and placed the paper on a new exhibit bag and sealed it. He took a statement from the witness. In court he opened the sealed evidence bag and identified that as the same as that he used on the day.

[35] *Iristan John Sam* is a qualified medical doctor. In 2024 he worked as a forensic pathologist.

[36] *Dr Sam* testified that on 24 December 2024 he was on duty and conducted a postmortem on the two deceased. He examined the body *Siyabulela Plaatjie*. The penetrating bullet entered the body and did not leave; it caused injuries to the soft tissues on the bones in the neck around the spinal cord and lacerated it. It moved through the spinal cord to the back of the mouth through the tongue and fractured the lower jaws. There was blood found between the layers of the brain. One projectile was retrieved on the lower jaw. Fresh abrasion on the left forearm which was *15mm x 100* which could have been caused when the deceased fell. The cause of death was the gunshot to the head. The gunshot wound is consistent with

intermediate range of gunshot wound. *Dr Sam* examined the body of *Bulelani Peter* with two (2) perforating gunshot wound tracks in the body, one on the head and another on the wrist. The cause of death was a gunshot to the head. These features were consistent with an intermediate range of a gunshot wound.

[37] *Nigel John Wright* testified that he is the Sergeant in the *South African Police Services* attached to the *Provincial Serious and Violence Crimes Unit* with twenty (20) years of service, he is the investigating officer of this case.

[38] According to *Sgt Wright*, as part of the investigation, he visited the victims in hospital and interviewed each separately. Each victim identified the accused as being involved in the incident. Upon the discharge of *Mr George* from hospital, he took him to point out the residence of accused. He corroborated the evidence of *Mr George*.

[39] *Sgt Wright* stated that upon arrest the accused made a warning statement disclosing that his friend *Lisakhanya* came and asked to be shown *Bulelani's* shack as *Bulelani* and *Mapapa* were keeping a firearm. He showed *Lisakhanya* the shack and thereafter went away. Whilst investigating the information he received from accused, he discovered that *Lisakhanya* was shot and killed a few weeks after this incident.

[40] During cross-examination it was put to *Sgt Wright* that he and his colleagues tortured accused by putting a tube on his head. The version of the accused was put to him.

[41] Sipehelele Ntisana the accused, testified that he resides in KwaDwesi.

[42] The accused confirmed that his nickname is *Hupa*. He testified that he knew both the deceased persons. He regarded *Bulelani Peters* as a friend. They had known each other before his passing for about seven (7) months. They used to smoke dagga and cocaine together. He confirmed he knew *Aphiwe George*, *Xola Kuse* and *Mandile Matshaya* before the date of the incident.

[43] Accused gave evidence that two (2) days after the shooting incident he heard from his girlfriend that both deceased persons had been shot dead and three (3) victims were injured during the ordeal. He then decided to go and stay with *Sticks* at *Soweto on Sea* because he was scared to remain in his place due to the fact that both the deceased were his friends and he was concerned that he could be the next victim.

[44] The accused stated that early morning on 14 January 2025 while at *Sticks* house with him and their girlfriends. Police officers in civilian clothes

arrived. They said they were looking for *Hupa* to which his girlfriend pointed at him. He was searched and asked whether he was in possession of a firearm. His mother called him to come outside.

[45] According to the accused the police took him to an unmarked motor vehicle and the police told him why they were looking for him. He was taken to *Kwadwesi* police station and was detained in a single cell for about an hour. After an hour he was taken to an office where he was asked whether he knew anything about the shooting incident that took place in *Westville*. He told the police he did not know anything, he only heard about it from his girlfriend, *Asemahle*. He told the police the reason he fled to *Sticks*' house was because he feared for his life as the deceased were his friends.

[46] The accused asserted that while in the office, both his hands and feet were cuffed. *Sgt Wright* told him to switch his phone on and log on to his *Facebook* account. He was asked if he was friends with *Lisakhanya* and he told *Sgt Wright* that he only knew him from the neighbourhood. *Sgt Wright* put a plastic bag over his head suffocating him. He offered to tell the police what they wanted to hear which to them will serve as the truth because he feared they would kill him.

[47] He made a warning statement to *Sgt Wright* stating that he was at his house when *Lisakhanya* came and asked him to show where *Bulelani Peter*

stayed because he was looking for *Mapapa* who was *Bulelani's* friend and he was keeping a gun in *Bulelani's* shack. This information he gave out under oath to *Sgt Wright* was a lie. *Sgt Wright* took him to *Lisakhanya's* house on arrival he was not at home.

[48] He testified that what is written on the warning statement is a lie and he did not have any knowledge about the alleged offences.

[49] The accused stated that the three victims all know him as *Hupa* and all three victims are well known to him. He had been to *Bulelani's* shack before the incident. He does not know why the three (3) victims told the court he was at *Bulelani's* shack because on the night of the incident he was at his place of residence with *Asemahle*. He denied that he visited *Aphiwe* to apologize.

[50] Defence counsel requested the investigating officer *Sgt Wright* to go and trace *Asemahle* who is accused's girlfriend. *Sgt Wright* testified that he visited accused's residence and met accused mother and his brother, both advised him that they do not know where *Asemahle* stays and do not know her whereabouts.

## **Analysis**

[51] In *S v Van Der Meyden*<sup>1</sup> the court said;

*“In determining whether the State has proved its case beyond reasonable doubt, the correct approach is to consider the totality of the evidence. The court must weigh up all the elements which point towards the guilt of the accused against all that are indicative of his innocence taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the state as to exclude any reasonable doubt about accused’s guilt.”*

[52] One of the relevant legal principles in this case is evidence of identification. The general rule is that evidence of identification must be treated with caution. With regard to identity, in *S v Zatu*<sup>2</sup> it was held that a distinction should be made between the reliability of the witness’ evidence and his credibility. This aspect is enunciated in *S v Khumalo*<sup>3</sup> that the honesty and conviction of a witness must never influence the separate investigation into the reliability of the identification by that witness.

[53] The doctrine of common purpose was authoritatively stated in *S v Mgedezi & Others*<sup>4</sup> which stated:

*“In the absence of prior agreement, the state must prove;*

*(a) Presence at the scene.*

*(b) Awareness of the assault or criminal conduct.*

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<sup>1</sup> 1999 (1) SACR 447 W at 448 f-g.

<sup>2</sup> 1993 (1) SACR 718 (A).

<sup>3</sup> 1991 (4) SA 310 (A) at pg. 328.

<sup>4</sup> 1989 (1) SA 687 A.

- (c) *Intention to make common cause with the perpetrator.*
- (d) *Manifestation of sharing such common purpose by act of association.*
- (e) *The requisite mens rae."*

[54] Accused was accompanied by the armed assailant to *Bulelani Peter's* shack. He was known to the occupants and there could be no reasonable probability of mistaken identity. Upon entering, the assailant enquired from the accused who are they amongst the occupants, accused responded and made a hand gesture saying it's all of them. This demonstrates prior targeting of the occupants. It was an identification and confirmation on the intended victims immediately before the shooting commenced.

[55] That conduct amounted to active association with the crimes committed. I am satisfied that the accused foresaw, at the very least, the possibility that the occupants would be killed or seriously injured when the armed accomplice entered the shack and sought confirmation before opening fire. Despite such foresight, he reconciled himself with the outcome. The only reasonable inference is that he shared the common purpose with the shooter.

[56] In the present case, the incident occurred in circumstances conducive to proper observation. The three (3) eyewitnesses who were also injured during the shooting observed the accused and the assailant at close range.

The eyewitnesses had prior knowledge of the accused. There was sufficient lighting inside the shack, and they had no difficulty recognizing him.

[57] *Aphiwe George* heard accused calling two unknown males to come inside and search the occupants. All occupants were searched; it is evident that the occupants were indeed searched as the photos show the pockets of both deceased turned inside out.

[58] I find the *State* witnesses to be credible and reliable. Their evidence was consistent regarding the arrival of the accused with the armed assailant, the question posed by the armed assailant, the response by the accused and the subsequent shooting.

[59] The accused neither dissociated himself from the conduct of the assailant nor attempted to warn the occupants. Instead, he left the scene with the assailant after the shooting. The only reasonable inference is that accused shared a common purpose with the gunman. He ought to have foreseen the possibility that the death or grievous bodily harm would result when he accompanied an armed man into a confined shack, identified the occupants to him and immediately shots were fired. He nevertheless reconciled himself with the outcome.

[60] The ballistic evidence establishes that the spent cartridges and casings recovered from the scene were discharged from a self-loading firearm, consistent with a semi-automatic pistol. This finding accords with the evidence that a semi-automatic pistol was used during the commission of the offences.

[61] I am satisfied that the state proved beyond reasonable doubt that the firearm was possessed jointly by the accused and the gunman, or that the gunman possessed it on behalf of the accused.

[62] The accused raised an *alibi* defence. It is trite that an accused bears no onus to prove an alibi. The *State* must prove beyond reasonable doubt that the accused was present at the scene of the crime.

[63] In *S v Ngcobo*<sup>5</sup> it was held that an alibi must be evaluated against the totality of the evidence and not in isolation where there is a reasonable possibility that the alibi may be true, the accused is entitled to the benefit of doubt.

[64] In the present matter, the accused's *alibi* is contradicted by the credible evidence of eyewitnesses who knew the accused prior to the

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<sup>5</sup> 1992(2)SACR 702(A)

incident and identified him as the person who entered the shack with the armed assailant.

[65] The accused was a poor witness under oath, he told the court he lied to *Sgt Wright* who took down the wrong statement. The question to be asked is how *Sgt Wright* got to know about *Lisakhanya's* home and where he lives. It is clear that this information came from him.

[66] Although the accused was charged with conspiracy to commit murder in addition to murder. The court must guard against an improper duplication of convictions. Conspiring criminalizes the agreement to commit an offence, whereas murder punishes the completed unlawful killing.

[67] In the present matter, the evidence establishes the alleged conspiring substantially overlap with the evidence relied upon to prove common purpose in the murders. The conspiring charges add no distinct criminal conduct separate from the execution of the murder.

[68] The *Supreme Court of Appeal* clarified this aspect in the case of *S v Nongogo*<sup>6</sup> where it was established that to determine if an unfair duplication has occurred, the court should apply two (2) fundamental tests.

68.1 The evidence test: Does the exact same evidence require to prove conspiring also prove murder? and

68.2 The intention test: Was there a single, continuous criminal intent (*mens rea*) throughout the transaction?

[69] I find that a separate conviction on conspiracy would amount to an improper duplication of convictions.

[70] The *State* further relied on the conduct of the accused as constituting incitement to commit murder. While the accused's identification of the occupants to the armed assailant immediately before shooting may constitute encouragement or instigation. I am satisfied that such conduct formed part of the accused's active association in the execution of the murders themselves and other offences. Such criminality is adequately addressed through the convictions based on common purpose. A separate conviction for incitement would in the circumstances amount to an improper duplication of convictions.

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<sup>6</sup> 2022(1)SACR131 (SCA).

[71] With regards to attempted murder of the three (3) eyewitnesses evidence accepted shows that the injuries they sustained are life threatening.

[72] The evidence established beyond reasonable doubt that the accused and the unidentified gunman acted in concert pursuant to a common criminal design. The accused accompanied the armed assailant to the shack for the very purpose to identify the intended victims. The dream was integral to the execution of their joint enterprise.

[73] Therefore, the only reasonable inference is that the gunman possessed the will not solely for his own behalf but of the accused in the furtherance of their common design. The requirement for joint possession as contemplated in *S v Mbuli*<sup>7</sup> has been established beyond reasonable doubt.

[74] Consequently, the following is issued:

**74.1 Counts 1-10**

**The accused is found not guilty and discharged on all these counts.**

**74.2 Counts 11-21**

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<sup>7</sup> 2003 (1) SACR 97 SCA.

**The accused is found guilty on each of these counts as charged.**

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**K MAJALI**

**ACTING JUDGE OF THE HIGH COURT**

**Appearances:**

For the State: Adv Andrews *instructed by*  
Deputy Director of Public Prosecutions  
Organised Crime Component  
**GQEBERHA**

For the Accused: Adv Coertzen *instructed by*  
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**GQEBERHA**

Heard on: 14 April 2026 until 14 May 2026

Judgment delivered: 22 June 2026