THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 388/2021

In the matter between:

MAXAM ONASIS	**FIRST APPELLANT**
NKOSI BONGANI	**SECOND APPELLANT**

and

DIRECTOR OF PUBLIC PROSECUTIONS SOUTH AFRICA	**RESPONDENT**

And in the matter between:

DIRECTOR OF PUBLIC PROSECUTIONS SOUTH AFRICA	**APPELLANT**

and

MAXAM ONASIS	**FIRST RESPONDENT**
MARAKALALA LESIBA JAMES	**SECOND RESPONDENT**
LEDWABA MALESELA DONALD	**THIRD RESPONDENT**
NDLELA FUNEKA FELICIA	**FOURTH RESPONDENT**
MOLOTSANE JABULILE TRACY	**FIFTH RESPONDENT**
PITJENG MAPHUTHI FRANCINAH	**SIXTH RESPONDENT**
NKOSI BONGANI	**SEVENTH RESPONDENT**

Neutral Citation: *Maxam and Another v Director of Public Prosecutions, South Gauteng*: *Director of Public Prosecutions v Maxam and Others* (Case no 388/2021) [2026] ZASCA 94 (29 June 2026)

Coram: HUGHES, MEYER, KOEN and COPPIN JJA and KGANYAGO AJA

Heard: 06 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 29 June 2026.

Summary: Criminal Law – Prevention of Organised Crime Act 121 of 1998 (POCA) – Racketeering – existence of an enterprise – whether evidence established that appellants and their co-accused all participated in the affairs of the enterprise through a pattern of racketeering activities – whether conviction of an accused in terms of both, s 2(1)*(e)* and of s 2(1)*(f)* of POCA competent – fraud – theft – armed robbery – unlawful possession of firearms and ammunition – common purpose – recusal of presiding judge.

Sentence – cross appeal by the State – interference with sentence imposed by a trial court – imposition of prescribed minimum sentence – whether high court erred in imposing non-parole period.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Maluleke J sitting as the first court of instance):

The following order is granted:

1. The appeals of both appellants are partially upheld to the extent set out hereunder.
2. The cross-appeal in respect of the sentences imposed on the appellants is partially upheld to the extent set out hereunder.
3. In respect of the first appellant (Mr Onasis Maxam):

   3.1 The convictions and sentences on the following counts are set aside: Count 4 (contravening s 2(1)*(f)* of the POCA); counts 9 and 18 (the unlawful possession of firearms); and counts 10, 19 and 54 (the unlawful possession of ammunition).

   3.2 The first appellant's convictions on the remaining counts are confirmed.

   3.3 The sentence in respect of count 3 (contravening s 2(1)*(e)* of the POCA) is set aside and is substituted with a sentence of 20 years' imprisonment. The other sentences are confirmed.

   3.4 All the sentences are antedated to 30 November 2012.

   3.5 Except for 3 years imposed in respect of the aggravated robbery counts, all the sentences are to run concurrently with the sentence imposed in respect of count 3. Thus, the effective sentence is 23 years' imprisonment.

   3.6 The first appellant is declared unfit to possess a firearm as contemplated in s103 of Act 60 of 2000.
4. In respect of the second appellant (Mr Bongani Nkosi):

   4.1 The convictions and sentences imposed in respect of the following counts are set aside: count 18 (the unlawful possession of firearms), and counts 10, 19 and 54 (the unlawful possession of ammunition).

   4.2 The second appellant's convictions on the remaining counts are confirmed.

4.3 The sentence imposed in respect of count 3 (for contravention of s 2(1)*(e)* of the POCA) is set aside and is replaced with a sentence of 15 years' imprisonment. The sentences in respect of the other convictions, and the declaration of his unfitness to possess a firearm, are confirmed.

4.4 All the sentences are antedated to 30 November 2012.

4.5 Except for 5 of the years imposed for the aggravated robberies, all the sentences are to run concurrently with the new sentence imposed for count 3. Thus, the effective sentence is 20 years' imprisonment.

4.6 The non-parole period imposed by the high court is set aside.

4.7 The second appellant is declared unfit to possess a firearm as contemplated in s103 of Act 60 of 2000.

5. The cross-appeal is otherwise dismissed also in respect of the sentences imposed on the third to seventh accused.

JUDGMENT

Coppin JA (Hughes, Meyer and Koen JJA and Kganyago AJA concurring):

[1] Following a trial in the Gauteng Division of the High Court, Johannesburg (the high court), the appellants, Mr Onasis Maxam (the first appellant) and Mr Bongani Nkosi (the second appellant), who were, respectively, accused 1 and 8 in those proceedings, were convicted of various offences perpetrated on branches of the South African Post Office (the post office). These included offences in terms of the Prevention of Organised Crime Act 121 of 1998 (the POCA) for managing and being involved in the activities, in a pattern of racketeering, of a criminal enterprise (the enterprise), robbery with aggravating circumstances, robbery, fraud, theft and the unlawful possession of firearms and ammunition. They were sentenced to effective terms of, respectively, 23 years' and 20 years' imprisonment.

[2] With the leave of the high court, the appellants are appealing against their convictions. The Director of Public Prosecutions (the State) is cross-appealing against the sentences imposed on them and on their co-accused, cited as the second, and the fourth to seventh respondents in the cross-appeal. The State seeks to have their sentences increased. The second and fourth to seventh respondents were, respectively, accused 3, 4, 5, 6 and 7 in the high court. Two of their co-accused, namely, accused 2 and 9, have died and are referred to in this judgment merely for completion of the narrative. The first and eighth accused shall be referred to as the first and second appellants respectively and their surviving co-accused, by their numbers as accused rather than their numbers in the cross appeal, or simply as 'the other accused'.

Background

[3] The offences with which the appellants and the other accused, including the deceased accused, were charged, relate to a spate of robberies and related activities at a branch in Midrand and various branches of the post office in the East Rand of Gauteng. The first appellant was previously employed as a branch manager of the Tembisa South branch of the post office. The other co-accused, with the exception of the second appellant, were also employed by the post office at different branches. The second appellant was not employed at the post office and was alleged to have committed the offences in question as part of the racketeering enterprise he managed with the first appellant.

[4] On 15 November 2012, the first appellant was convicted on various counts. By way of background, the offences he was convicted of in terms of those counts are those referred to in the following paragraphs.

[5] (a) Count 1- fraud – (this only relates to the first appellant). The high court, having found that the first appellant unlawfully, and with the intent to defraud and prejudice, falsely represented to the post office and/or Standard Bank (the bank) that certain amounts of money were deposited into the post office's accounts held at the bank, whereas that was not true;

(b) Count 3 – a contravention of s 2(1)*(e)* of the POCA. All the accused were charged with this count. The high court found that the appellants, were managing, or being employed by or associated with an enterprise as defined in section 1 of that Act (as fully described in the indictment), and conducted, or participated in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activities as described in counts 5 – 50 and 52 – 56 of the indictment;
(c) Count 4 – a contravention of s 2(1)*(f)* of the POCA. Only the first appellant and the late accused 2 were charged with this count. The high court found that the first appellant managed the operations and affairs of the enterprise and knew or ought to have known that any person employed by or associated with the enterprise, conducted and participated, directly or indirectly, in the affairs of such enterprise through a pattern of racketeering activity.

[6] (d) Counts 5 to 7 – these counts pertain to the robbery at the Ebony Park post office (the Ebony Park robbery). Counts 5, 6 and 7 are similar counts of fraud which relate to the fraudulent use by the accused of the personal details and identity information of different individuals, without their knowledge and permission, in order to open false post office bank savings and investments accounts.
(e) Counts 8 to 14 – these counts also relate to the Ebony Park robbery. Count 8 is the actual charge of robbery of items, including post office property, such as computer towers, a key board and cash, and items from individuals who were in the post office at the time, namely, cellular phones. Count 9 is in respect of the alleged unlawful possession of firearms and count 10 pertains to the alleged unlawful possession of ammunition in that robbery. Count 11 alleges that the accused, including the appellants, defrauded the post office by simulating a false 'deposit' into a false account, opened unlawfully in the name of a particular individual (Mabula) without his knowledge or consent. Count 12 is similar to count 11, save that it relates to a false deposit entered into a false account in the name of another individual. Counts 13 and 14 are similar and relate, respectively, to the theft of amounts (R80 000) from each of those false accounts.

[7] (f) Counts 15 and 16 – these counts only relate to the first appellant and two other accused, accused 3 and accused 2 (deceased). The second appellant was not charged with these counts. They pertain to the robbery that occurred on 29 June 2008 at the Boksburg North Post Office branch (the Boksburg North robbery). The main count 15 was one of fraud in terms of which it was alleged that the accused (including the first appellant) falsely represented to the post office that the mentioned individuals completed a post bank savings and investment application form, but had forged their signatures. Count 16 is a similar count in terms of which it is alleged that the said accused had made a false representation to the post office concerning another individual completing such a form and had also forged his signature.

[8] (g) Counts 17 to 29 – these counts also relate to the Boksburg North robbery. They implicated both appellants and certain of the other accused, but excluding accused 4. Count 17 is the actual robbery charge. Count 18 pertains to the alleged unlawful possession of firearms and count 19 to the alleged unlawful possession of ammunition. Count 20 is a fraud count, in which it is alleged that the accused (including the appellants) fraudulently represented to the post office that a certain individual had deposited R80 000, purporting to be his money, into one of the false accounts opened by them. Counts 21, 22, 23 and 24 are counts of fraud similar to count 20, but pertain to different amounts and individuals. Counts 25 to 29 are all counts of theft against those accused and relate, respectively, to the withdrawal of monies falsely deposited into the false accounts made in the name of the mentioned individuals without their knowledge and consent.

[9] (h) Counts 30 to 34 – these counts relate to a robbery perpetrated at the Randjiesfontein post office branch, in Midrand, on 21 July 2008 (the Randjiesfontein robbery). They were only brought against the first appellant, accused 2 (deceased), and accused 4. The second appellant was not implicated in these counts. Count 30 is a charge of fraud in terms of which it is alleged that on or about 15 July 2008, the accused (including first appellant) fraudulently represented to the post office that a particular individual opened a post bank savings and investment account, whereas that was false. Counts

31, 32 and 33 are similar fraud charges relating to the fraudulent use of particular individuals' names and personal particulars. The second respondent is also implicated. Count 34 is the actual robbery charge. In terms of this count it is alleged that the accused, (including the appellants) robbed an individual's cellular phone and post office property, namely, a keyboard, four computer towers, a monitor, five credit cards and R8 000 in cash.

[10] (j) Counts 37 to 46 – these counts still relate to the Randjiesfontein robbery. Counts 37, 38, 39, 40 and 41 are similar counts of fraud, but each of them deals with a different false account and the fictional deposit of amounts into that false account. Counts 42, 43, 44, 45 and 46 are similar counts of theft and they relate respectively to withdrawals of different amounts from those false accounts.

(k) Counts 52, 55 and 56 – they relate to a robbery at the Tembisa North Post Office branch in Kempton Park (the Tembisa North robbery). The first appellant was formally a manager of that branch. Both appellants were charged and convicted on these counts. The main count 52 is one of aggravated robbery of individuals' property (cellular phones, and the property of the post office, including a keyboard, two computer towers, debit cards, keys and cash). Counts 55 and 56 are similar counts of fraud, but each deals with a different amount of money falsely deposited into a different false or fraudulent post bank account. Although counts 53 and 54 were not specifically or expressly referred to in the high court's judgment, both appellants were in effect convicted on those counts. Those counts relate, respectively, to the unlawful possession of firearms, and ammunition.

[11] On 30 November 2012, the high court sentenced the first appellant as follows:

Count 3 (conviction in terms of s 2(1)*(e)* of the POCA) – 10 years' imprisonment;

Count 4 (conviction in terms of s (2)(1)*(f)* of the POCA) – 18 years' imprisonment;

Counts 1, 5, 6, 7, 11, 12, 15, 16, 20, 21, 22, 23, 24, 30, 31, 32, 33, 37, 38, 39, 40, 41, 55 and 56 (fraud), 2 years per count, totalling 48 years' imprisonment;

Counts 8,17 and 52 (aggravated robbery) – 10 years per count, totalling 30 years' imprisonment;
Count 34 (robbery) – 7 years' imprisonment;
Counts 9, 18 and 53 (unlawful possession of firearms) and counts 10,19 and 54 (unlawful possession of ammunition). The high court took them all together for the purpose of sentencing – imposing 3 years for each set, giving a total of 9 years' imprisonment;
Counts 13, 14, 25, 26, 27, 28, 29, 42, 43, 44, 45 and 46 (12 counts of theft) – 2 years per count, totalling 24 years' imprisonment.

[12] In respect of the first appellant, the high court also ordered the following regarding his sentence: 'Except for five years of the sentence for count 3, all the sentences are to run concurrently with the sentence in count 4 and therefore the effective sentence is 23 years' imprisonment. The accused is declared unfit to hold a firearm licence in terms of Section 103 of Act 60 of 2000.'

[13] The second appellant was convicted on 37 counts and on 30 November 2012, and was sentenced as follows:
Count 3 – (contravening section 2(1)*(i)* of the POCA) (this should have been a reference to s 2(1)*(e)* of POCA) – 12 years' imprisonment;
Counts 8 (Ebony Park branch robbery), 17 (the Boksburg North Branch robbery) and 52 (the Tembisa North robbery) (they are referred to as 3 counts of aggravated robbery) – 20 years' imprisonment on each count, totalling 60 years' imprisonment;
Count 34 (robbery) – 12 years' imprisonment;
Counts 9, 18 and 53 (unlawful possession of firearms) and counts 10,19 and 54 (unlawful possession of ammunition) taken as one for sentence; 5 years' imprisonment imposed for every set of 2 counts – totalling 15 years' imprisonment;
Counts 11,12, 20, 21, 22, 23, 24, 37, 38, 39, 40, 41, 55, 56 (14 counts of fraud); 2 years' imprisonment imposed for each count – totalling 28 years' imprisonment;

Counts 13, 14, 25, 26, 27, 28, 29, 42, 43, 44, 45 and 46 (12 counts of theft); 2 years' imprisonment imposed for each count – totalling 24 years' imprisonment.

[14] In respect of the second appellant's sentences, the high court ordered as follows:
'All sentences are to run concurrently and the effective sentence is therefore 20 years' imprisonment. It is ordered in terms of Section 276B (1) that the accused should not be eligible for parole before he has served 12 years of the effective sentence of 20 years' imprisonment. The accused is declared unfit to hold a firearm licence in terms of Section 103 of Act 60 of 2000.'

[15] The appellants are challenging their convictions. In essence, they deny any knowledge of, or of being a part of the alleged enterprise, or of having been involved in any of the crimes they were charged with or convicted of. In respect of the cross appeal, they contend, essentially, that if their convictions stand, there is no basis upon which this Court can interfere with the sentences imposed by the high court.

[16] In this judgment the appellants' appeal is dealt with first, and in that regard the following issues will be dealt with sequentially: the dismissal by the high court judge of an application for his recusal; and the appeal against the convictions of the appellants, including the question of the duplication of convictions of the first appellant for the POCA offences and the appellants' convictions for the unlawful possession of firearms and ammunition. The cross-appeal and the sentencing is dealt with thereafter, and lastly, the conclusion and the order.

The recusal application

[17] In the course of the trial the accused, including the appellants, applied in writing for the presiding judge's recusal. They alleged that the presiding judge: (a) made repeated references to the fact that their release on bail was delaying the finalisation of the trial; (b) acted unreasonably in not allowing them or their legal representative a reasonable opportunity to consult; (c)

appeared disinterested in their defence and was not making notes of the submissions made on their behalf; and (d) had private discussions with the state counsel. After having heard the parties, in a written ruling dated 30 November 2012, the presiding judge ruled that there was no substance in the application and dismissed it. In coming to that conclusion, the judge denied the allegations made, referred to the applicable principles and the test for recusal, and ruled that the test had not been met.

[18] The test for recusal, where there is reliance, not on actual bias, but on a reasonable perception of bias, is trite.[1] First, in the context of a criminal matter, there must be an apprehension that the presiding officer might be biased toward the accused. Second, the apprehension must be that of a reasonable person in the position of the accused, and it must be based on reasonable grounds. The test, referred to as 'the SARFU test', was formulated by the Constitutional Court as follows: 'The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel.'[2]

[19] In *SACCAWU*[3] and *Basson*[4] the Constitutional Court further formulated principles for deciding the question of recusal[5]. In *Systems Application*[6] it summarised those principles as follows:

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[1] *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 11; 2000 (1) SA 1; 1999 (4) SA 147 (CC); 1999 (10) BCLR 1059.
[2] Ibid para 48. See also *Sterea Digital CC and Another v City of Cape Town and Others* [2025] ZASCA 166; [2026] 1 All SA 85 (SCA); 2026 (2) SA 505 (SCA) para 15; *Afriforum v Economic Freedom Fighters and Others* [2024] ZASCA 82; [2024] 3 All SA 319 (SCA); 2024 (10) BCLR 1275 (SCA); 2024 (6) SA 1 (SCA) paras 20-23.
[3] *South African Commercial Catering and Allied Workers Union and Others v Irvin and Johnson Ltd (Seafoods Division Fish Processing)* [2000] ZACC 10; 2000 (3) SA 705 (CC); 2000 (8) BCLR 886 (CC); (2000) 21 ILJ 1583 (CC) *(SACCAWU)* paras 12, 13 and 15.
[4] *S v Basson* [2005] ZACC 10; 2005 (12) BCLR 1192 (CC); 2007 (3) SA 582 (CC); 2007 (1) SACR 566 para 42.
[5] See also *Stainbank v South African Apartheid Museum at Freedom Park* [2011] ZACC 20; 2011 (10) BCLR 1058 (CC); 2015 JDR 2524 (CC) para 45 and *Ramabele v S; Msimango v S* [2020] ZACC 22; 2020 (2) SACR 604 (CC); 2020 (11) BCLR 1312 (CC) paras 51-53.
[6] *Systems Applications Consultants (Pty) Limited v SAP SE and Another* [2016] ZACC 13; 2026 (6) BCLR 613 (CC); 2026 JDR 1504 (CC) para 45.

'In considering an application for recusal a court's starting point is to presume that judicial officers are impartial in adjudicating disputes. The presumption of judicial impartiality is not easily dislodged, requiring "cogent" or "convincing" evidence to be rebutted. Both the person apprehending bias and the apprehension itself must be reasonable in the circumstances. To establish bias based on a judicial officer's remarks, a complainant must show that the remarks were of such a number or quality to go beyond mere irritation and establish a pattern of conduct sufficient to dislodge the presumption of impartiality. And impartiality requires, in short "a mind open to persuasion by the evidence and the submissions of counsel."' (Citations omitted)

[20] Turning to the facts in this matter. It was not conceded that the presiding judge had private discussions with the state counsel. Both the counsel and the presiding judge denied having such discussions. From their application it is apparent that the accused (including the appellants) were relying on conjecture and inference for their assertion, which was not based on fact. They never saw the presiding judge have private discussions with the state counsel. The record does show that the presiding judge mentioned the fact that the accused's counsel, Mr Stratham-Ford was absent from the hearings so many times and that they were having difficulties arranging their diaries, including the presiding judge's diary. There is nothing improper about the arrangement or synchronisation of diaries. It was a necessary exercise in the circumstances and there is no basis for finding that this happened in private. The presumption of judicial impartiality was not dislodged. The required apprehension could not arise.

[21] Turning to the other grounds. They are even more spurious. The record shows that despite the frequent absences of their counsel, the presiding judge was very accommodating. The record shows further that ample opportunity was given for consultation and for the taking of further instructions. In fact, it was put on record that there had been a great number of requests for such indulgences and that none of those requests had been turned down. Regarding the remarks made in respect of the accused being on bail – the criticism of the presiding judge for making those remarks is not reasonable if regard is had to their context and the atmosphere that prevailed at the time.

There were many delays caused by the absence of the accused's legal representatives. The presiding judge had good reason for taking a dim view of the delays. When the presiding judge made the remarks, the legal representative was once again absent, apparently as he was busy with another case in Cape Town. The matter could not proceed and another week was wasted. What is required of a judge is 'impartiality and not neutrality'[7] when it comes to such matters.

[22] The judge's remarks had nothing to do with the guilt or innocence of the accused, but had everything to do with the needless delays and postponements that were hampering the finalisation of the trial and the administration of justice. The judge was rightly irritated by the many delays caused by the defence. The obvious baselessness of the ground alleging that the presiding judge did not take notes of the defence submissions, just serves to underscore the spuriousness of the recusal application. It is not required of a judge to take notes or written notes of submissions. The accused did not succeed in dislodging the presumption of the presiding judge's impartiality. It is so that even in trying circumstances judicial restraint is called for. However, taken individually or collectively, the grounds relied upon for the recusal were rightly dismissed by the presiding judge.

The appeal against the convictions

[23] Both appellants contest the correctness of their convictions. They maintain the high court should have upheld their defences in respect of every count and should have acquitted them. In proving its case against the accused, including the appellants, the State relied on the principle of common purpose, and on the following: (a) the viva voce evidence of 37 witnesses, including that of Mr Gibson Moshoene[8] (Mr Moshoene), Mr Ignatius Merwe Janse van Rensburg (Mr van Rensburg), national manager of the forensic investigation unit of the post office who analysed the phone calls made and the bank statements relating to the opening and operating of the false post

[7] *S v Shackell* [2001] ZASCA 72; 2001 (4) All SA 279; 2001 (4) SA 1; 2001 (2) SACR 185 (SCA) paras 21-22.

[8] This is how his surname is spelled in the judgement. Elsewhere in the record it is spelled 'Masoene'.

office bank accounts; (b) admitted cellular phone data evidence of phone calls and cellular phone tower locations obtained from service providers and relating to telephonic conversations of the accused (including the appellants); (c) admitted post office bank data and Standard Bank banking documents, including records, statements and reports regarding monies received by the affected post office branches, the creation and operation of false post office bank savings accounts, the fraudulent and false deposit entries into those accounts and the withdrawal of monies from them, as well as the analyses of such data; (d) the evidence of individual witnesses who identified the appellants, as well as the fingerprint evidence of the first appellant at one of the robbed branches, the use of the first appellant's red BMW vehicle, the identification of the second appellant and the use of a vehicle linked to him, in the execution of the enterprise's nefarious agenda.

[24] The evidence of Mr Moshoene, a Bosasa security guard stationed at the Ebony Park branch of the post office and an informer, in brief, was to the following effect. A day before the Ebony Park robbery he was inside the post office when he was approached by a man that requested a deposit slip from him. The person requested his help in completing the slip. After he showed the person how to complete it and where to write his name, the person wrote the name 'Onasis' on the slip and asked Mr Moshoene whether he knew the owner of that name. Mr Moshoene looked at him with surprise. The person then squashed the slip, told Mr Moshoene that other people were coming 'to finish off the job' and left with the slip. Mr Moshoene observed him leaving through the gate and then getting into the back of a red BMW. Mr Moshoene reported this to the branch manager and to Bosasa. The robbery took place in the morning of the following day. Mr Moshoene was pointed and threatened with a firearm and assaulted; he and the other staff were taken to the walk-in safe where they were closed in. One of the robbers outside the safe called others to 'come quickly'. Computers and other items were taken, including phone cards, scratch cards and coins, and some clients had been robbed of their phones. The next day Mr Moshoene, after having been asked to investigate the first appellant and, the now late, accused 2, phoned them and asked them whether they were the ones that robbed the post office, and they

denied it. He was then instructed by his superiors at Bosasa to approach those same persons and to tell them that he had resigned. He did so and asked those persons for employment because, so he told them, he was no longer employed.

[25] The first appellant and accused 2 (now deceased), unaware that he was an informer, and believing that he was unemployed, tried to recruit him into the enterprise. He went to Daveyton where the first appellant resides. He was driven in the first appellant's red BMW. They told him how they operate and he met some of their accomplices, including the second appellant. He was taken to the second appellant's place. He realised that the second appellant was 'one of the people who had come to the post office pointing firearms' at them in the Ebony Park robbery. He also got to know that the person that wrote 'Onasis' on the deposit slip was part of the appellants' enterprise. They wanted him to get his firearm and he was assured that if he works well with the group, he would be driving a 'Golf 4' before December. His evidence was corroborated, inter alia, by the cell phone data evidence, which was formally admitted by all the accused, including the appellants. The evidence, derived from the cell phones of the accused and the systems and cell phone towers of providers, indicated, inter alia, the dates and times of calls made between them, and the locations of the handsets at the times of the calls.

[26] At the trial, the first appellant gave evidence but did not call any witnesses. The second appellant also gave evidence and called three witnesses, namely, his two brothers and the father of the late accused 9, to confirm his alibi. On appeal, it is submitted on behalf of both appellants, in essence, that they were wrongly convicted and that the high court should have found that they were not involved in any of the offences. In this Court their counsel conceded ultimately that the true issue was whether the appellants were properly identified and implicated in the commission of the crimes. The appellants principally criticise the evidence of Mr Moshoene and the evidence relating to the cell phone records. They also submit that where

there has been a reliance by the state on circumstantial evidence, it was not sufficient for their conviction.

[27] The appellants submit the following. First, regarding Mr Moshoene, that he was a single witness and an accomplice in respect of some of the charges brought against them; that his evidence was not treated by the high court with 'the necessary caution it deserves' and should not have been accepted because of 'the glaring discrepancies' between his evidence and that of the other witnesses. Second, the circumstantial evidence proffered in the form of cell phone records was insufficient; certain cell phone numbers contributed to the second appellant were not compliant with the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (the RICA Act); and the second appellant's denial of using those numbers should have been found to be reasonably possibly true.

[28] Third, that the second appellant's identification by a single witness was insufficient and that his identification in relation to the Randjiesfontein robbery (counts 34-46) by Ms Sugar Mokgethi was a 'dock-identification' and was insufficient. Fourth, that Mr Moshoene's identification of the second appellant as the person who robbed him in relation to the Ebony Park robbery (counts 8-14) was that of a single witness and was unreliable because of the discrepancies between his evidence and that of other witnesses.

[29] It is an established principle that a court of appeal will not lightly interfere with the factual findings of a trial court. It will only do so if 'there is a demonstrable and material misdirection or finding that is clearly wrong.'[9]

Common cause facts

[30] The following facts were common cause or could not be disputed. The first appellant and the other accused, excluding the second appellant, are former employees of the post office. The first appellant was branch manager

[9] *Mashongwa v PRASA* [2015] ZACC 38; 2016 (3) SA 528 (CC) para 45, where the principle stated in *R v Dhlumayo and Another* 1948 (2) SA 677 (A) at 705-706, was applied. See also *Bernert v ABSA Bank Ltd* [2010] ZACC 28; 2011 (3) SA 92 (CC); 2011 (4) BCLR 329 (CC) paras 105-106.

of the Tembisa South post office until his resignation, after an audit revealed fraud and theft at that branch. The other accused were employed in various capacities: the late accused 2, was the manager at the Bakerton post office until his dismissal, after an audit found fraud and theft at his branch; accused 3 (second respondent) was manager of the Reiger Park branch; and accused 4, 5, 6 and 7 (the fourth, fifth, sixth and seventh respondents) were tellers at different branches.

[31] It was not disputed that during the period from 15 March 2008 to 18 July 2008, nine fraudulent bank accounts (false accounts) were opened by certain of the accused at various branches of the post office. On 15 March 2008 accused 2, now deceased, opened a false account at the Riverfield branch and on 1 April 2008, he opened two further false accounts at that branch. On 28 June 2008, accused 3 opened a false account at the Reiger Park branch, and on 18 July 2008, he opened another false account at the same branch. On 15, 16 and 18 July 2008, accused 4 opened false accounts at the Khumalo post office.

[32] It was also undisputed that during the period from June to September 2008, robberies were perpetrated at various branches of the post office, one in Midrand, and others in the East Rand. The Ebony Park robbery occurred on 12 June 2008, the Boksburg North robbery on 29 June 2008, the Randjiesfontein robbery on 21 July 2008, the Khumalo robbery on 4 August 2008, and the Tembisa North robbery on 23 September 2008. The modus operandi in the robberies was generally the same. In the course of the robbery, and once the staff had been removed or detained in the safe, the branch's computers would be used to enter fictious deposits into the false account(s) that had been opened. The false accounts would be credited with amounts as if actual deposits into that account had been made, whereas that was not the case. The computers and equipment and other robbed items would then be removed from the scene by the robbers; and withdrawals would be made from these false accounts, using the cards that had been issued in respect of those accounts.

Specific counts

Count 1

[33] This relates to the first appellant only. The first appellant argues in essence that there is a reasonable possibility that someone else perpetrated the fraud. The State maintains that he was correctly convicted on this count. The high court found that amounts were received at the first appellant's branch and were 'short banked' on the days when the first appellant was in control of the branch; that the first appellant's argument, that someone else did the banking in his temporary absence, did not avail him. Ultimately, it was his responsibility to manage the post bank monies and the banking thereof. The first appellant conceded that on 15 December 2007 he used a fictitious deposit slip number for the banking, and that at times he completed deposit slips in respect of monies paid in at the branch, but never forwarded those slips to the bank. On 15 December 2007 he was the only one at his branch. He did the banking on 14 January 2008 of less than what had been received on the previous day. He also admitted doing the banking on 15 and 16 January 2008, and on both these days there was also 'short banking'. His guilt on this count was established beyond a reasonable doubt.

Counts 3 and 4

[34] The first appellant was convicted on both counts and the second appellant on count 3. They relate to the management of and the participation in the activities of a criminal enterprise as contemplated in s 2(1)*(e)* and s 2(1)*(f)* of the POCA. Their main argument was that they were wrongfully implicated and that the testimony of the witnesses implicating them, including that of Mr Moshoene, was contradicted by that of other witnesses and was unreliable. Second, that the evidence showed that there were differences in the modus operandi of the robbers in the different robberies and that this implied that different gangs were involved; and that there was no proof that there was only one enterprise, or that they were involved in its activities, or that the first appellant managed it.

[35] The modus operandi of the robbers in the various robberies was the same. The inference therefore, that it was the same enterprise that was

involved in all the robberies, is irresistible. The body of evidence implicating the appellants, as detailed earlier, was overwhelming. This included the *viva voce* evidence of the witnesses, including Mr Moshoene, the post office forensic analyses, the cell phone data evidence, and the post office bank data, which were all admitted, as well as the fingerprint evidence.

[36] One issue that arose is whether the conviction of the first appellant for a contravention of, both, s 2(1)*(e)* and s 2(1)*(f)* of the POCA constituted a duplication of convictions, which is legally impermissible. Those sections read as follows:

'(1) any person who –

(e) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity;

(f) manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprises affairs through a pattern of racketeering activity; …

within the Republic or elsewhere, shall be guilty of an offence.'

[37] In *S v Prinsloo and Others* (*Prinsloo*)[10] the majority of this Court held, amongst others, that the offences contemplated in s 2(1)*(e)* and s 2(1)*(f)* were separate and distinct, and that a conviction on both does not constitute a duplication of convictions. It referred with approval to this Court's decision in *S v Eyssen*[11] where Cloete JA explained the essential difference between the offences in those sections as follows:

'The essence of the offence in ss *(e)* is that the accused must conduct (or participate in the conduct) of an enterprise's affairs. Actual participation is required (although it may be direct or indirect). In that respect the subsection differs from ss *(f)*, the essence of which is that the accused must know (or ought reasonably to have known) that another person did so. Knowledge, not participation is required. On the other hand, ss *(e)* is wider than ss *(f)* in that ss *(e)* covers a person who was

[10] *S v Prinsloo and Others* [2016] ZASCA 207; [2016] 1 All SA 390 (SCA); 2016 (2) SACR 25 (SCA).

[11] *S v Eyssen* [2008] ZASCA 97; 2009 (1) SACR 406 (SCA); [2009] 1 All SA 32 (SCA) para 5.

managing, or employed by, or associated with the enterprise, whereas ss *(f)* is limited to a person who manages the operations or activities of an enterprise ….'

[38] The majority in *Prinsloo* held the following about the subsections:

'In our view the intention of the legislature, as gathered from the plain wording of the POCA, is to hold those involved in organised crime liable for the different roles played by them in the conduct of an enterprise's affairs through a pattern of racketeering activity. These include managing (s 2(1)*(f)*), and personal participation in (s 2(1)*(e)*), the affairs of the enterprise. As commented by Bozalek J in *De Vries* … in paras 397-398, there appears to be no good reason why a person, who both manages and participates in the affairs of the enterprise directly, should only be liable for one of the two roles.

… We are in agreement with counsel on behalf of the state that, in construing the provisions of the POCA, and in particular s 2(1)*(e)* and *(f)*, a liberal or broad construction is to be preferred. This would be in accordance with the broad objectives of the POCA set out in the preamble thereto. In *National Director of Public Prosecutions and Another v Mohamed NO and Others* 2002 (2) SACR 196 (CC) … paras 14-16 the Constitutional Court, with reference to its preamble, emphasised the importance of the POCA to curb the rapid growth of organised crime, money-laundering, criminal gang activities and racketeering which threaten the rights of all in the Republic and present a danger to public order, safety and stability, thereby threatening economic stability. To curtail the ambit of s 2(1)*(e)* and *(f)*, as suggested by counsel for the first accused, would in our opinion be contrary to the intention of the legislature.

… Further, with regard to the intention of the legislature, we should emphasise that the South African legislature was strongly influenced by models of organised-crime legislation in the USA …

… Apart from the above, we, in any event, see no reason why the legislature would have intended to restrict the prosecution of persons under s 2(1)*(f)* of the POCA solely to those managers who have not dirtied their hands by personal acts of participation in the conduct of the affairs of the enterprise. Such a construction would lead to an absurdity, where the manager of a multibillion-rand racketeering enterprise, who has had minimal personal active participation, would only be liable for the minimal-participation role under s 2(1)*(e)* and not under s 2(1)*(f)* for the extensive managerial role played in a highly successful criminal enterprise.

… We therefore conclude that this submission of counsel for the first accused is without merit. It follows in our view that the court a quo correctly found the first accused guilty on count 1…'[12]

[39] In *Prinsloo*, count 1 dealt with a contravention of s 2(1)*(f)* of the POCA, and Count 2 with a contravention of s 2(1)*(e)*. In dealing with the latter, the majority found that the first accused there had also been correctly convicted of a contravention of that section. It said the following in that regard:

'… As emphasised in *Eyssen*, participation in the affairs of the enterprise is the offence…

… To summarise, it is now well settled that the essence of the offence in terms of s 2(1)*(e)* of the POCA is participation through a pattern of racketeering activity, and not knowledge. Once it is proved that the accused has participated in the conduct of an enterprise's affairs through a pattern of racketeering activity, ie by committing two or more predicate offences listed in sch 1 of the POCA, he or she is guilty of a contravention of s 2(1)*(e)* of the POCA. There is no need for further enquiry, as suggested on behalf of the first accused, as to an additional *mens rea* requirement over and above the *mens rea* required by the predicate offences.

… the appeal of the first accused against her conviction on count 2 should fail.'[13]

[40] In the minority judgment in *Prinsloo,* Brand JA, in effect, and with respect correctly, concluded that charging and convicting an accused of both the offences in the subsections might well involve the impermissible splitting of charges. Subsequently, in *S v Tiry and Others* (*Tiry*)[14] this Court, in a similarly constituted bench as in *Prinsloo,* was critical of the approach of the majority in *Prinsloo* and endorsed the views expressed by Brand JA.[15] However, this Court in *Tiry* did indicate that it was not appropriate for it, because of its composition, to overrule the majority decision in *Prinsloo*. Nevertheless, it gave the following helpful exposition of the correct approach. It held[16]:

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[12] *Prinsloo* 56-60.
[13] *Prinsloo* paras 63-64 and 67.
[14] *S v Tiry and Others* [2020] ZASCA 137; [2021] 1 All SA 80 (SCA); 2021 (1) SACR 349 (SCA).
[15] Ibid paras 111-112.
[16] Ibid para 112.

'It seems to us that it is not a case of having to choose whether liability is confined to the one or other section, but a matter of selecting the charge that most appropriately covers the criminal conduct in question. If the managers have "dirtied their hands" extensively s 2(1)*(e)* may be more appropriate, while if their active involvement is more limited, but their oversight of the enterprise greater, s 2(1)*(f)* may fit the bill.'

[41] The issue has now been determined by five judges of this Court in *S v Ditlhakanyane* (*Ditlhakanyane*)[17] where this Court endorsed *Tiry.* It held:[18]
'In sum, this Court in *Tiry* endorsed and re-affirmed the principles set out in the minority judgment of *Prinsloo* that a conviction on both s 2(1)*(e)* and *(f)* based on the evidence test, thus relying on the same evidence to convict an accused person, is a duplication of convictions. As this [C]ourt stated unequivocally in *S v BM*, it is a common-sense view of matters in the light of fairness to the accused and to prevent a duplication of convictions on what is essentially a single offence and, consequently, the duplication of punishment.'

[42] In *Ditlhakanyane*, the accused was also found to have been part of a criminal enterprise which set out to loot the post office. The modus operandi of that enterprise was somewhat different from the modus of the enterprise in this matter. He was convicted of a contravention of both subsections, and in addition, counts of fraud and theft. On appeal this Court, having found that the conviction of both subsections constituted an impermissible duplication, set aside the conviction based on s 2(1)*(f)*, but confirmed the conviction based on s 2(1)*(e)*.

[43] The high court did not err in its assessment of the evidence and in its findings regarding the contravention of the POCA provisions. The evidence of Mr Moshoene was approached with the necessary caution, and is corroborated by the other evidence, including the cell phone evidence. There are no material contradictions in his evidence that would detract from his credibility as a witness. The evidence also shows that Mr Moshoene was not an accomplice, but had infiltrated the appellants' enterprise, solely to obtain information, as part of the investigation of the illegal activities that were

[17] *S v Ditlhakanyane* [2025] ZASCA 90; 2025 (2) SACR 221 (SCA).
[18] Ibid para 32.

perpetrated on the post office branches in the East Rand. Mr Moshoene was also correctly found by the high court to have been a reliable witness, and there is no legal basis for interfering with that finding.

[44] However, the first appellant's conviction for a contravention of both the subsections of POCA, is based on the same evidence and is an impermissible duplication. His conviction of contravening s 2(1)*(f)* cannot stand. But the conviction based on subsection *(e)* is confirmed. It was established beyond a reasonable doubt that the first appellant not only managed the enterprise in this matter, but also 'dirtied his hands' by personally participating in its racketeering activities and was proved to have committed several offences that are listed in schedule 1 of POCA. The second appellant was also correctly convicted of a contravention of subsection *(e)*. Although his role was arguably lesser than that of the first appellant, he also managed the enterprise and 'dirtied his hands'.

Counts 5, 6 and 7

[45] These counts apply only to the first appellant. It was conceded that the evidence was irrefutable, that accused 2, who was a close friend of the first appellant and the former manager of the Tembisa South branch, opened the false accounts at the Riverfield branch. The argument was, in effect, that the first appellant's conviction on these counts was merely based on that friendship and on cell phone data; and that the evidence was insufficient to sustain his conviction, because there was a possibility that accused 2 was on a frolic of his own, or acting in concert with other persons, excluding the first appellant.

[46] The evidence shows that they were not only close friends, but that they co-operated and participated in the same enterprise to loot the post office. The opening of the false accounts was part of their modus. A day before accused 2 opened the false accounts the first appellant visited him at the Bakerton branch: just after the first false account was opened. The first appellant phoned accused 2, who then abandoned his station at the Bakerton branch to visit the first appellant in Daveyton, where the first appellant lives.

They also spoke to each other just before and after the other false accounts were opened by accused 2. In fact, the cellular phone data shows that they were almost in constant contact with each other, and with some of the other accused, from 14 March 2008. The cell phone tower data also showed the presence of the first appellant's handset at twenty-four of the places where withdrawals were made from the false 'Dube' account, and at thirteen of the places where withdrawals were made from the false 'Mabula' account. These false accounts were opened by accused 2.

[47] Taking all the admissible evidence into account, the only reasonable inference to be drawn, as the high court did, was that the first appellant was directly involved, and that he was also in possession of the bank cards relating to the false accounts from which the withdrawals were made.

Counts 8-14

[48] These counts pertain to all the accused, including the appellants. They relate to the Ebony Park robbery that occurred on 12 June 2008. Counts 9 and 10, respectively, are for the unlawful possession of firearms and ammunition. Those counts are dealt with separately below. Regarding the other counts, the first appellant submits the following: that there is 'absolutely no evidence' that he was inside the post office on the day of the robbery; and that the high court erred in accepting Mr Moshoene's evidence. Regarding the state's version that an individual who had visited the Ebony Park post office just before the robbery had written the name 'Onasis' on a deposit slip and asked Mr Moshoene whether he knew who that was, and had further stated that 'some people would come and finish the job', was a member of a syndicate that was linked to him, the first appellant argued that it is improbable that a member of a syndicate that was about to rob the post office would go there to reveal the identity of one of his fellow members.

[49] The evidence linking the first appellant to this robbery was not limited to the note, and is compelling. It could not be disputed that a day before the robbery the post office was reconnoitred or scouted. Mr Moshoene also testified that the individual that did the scouting got into a red BMW when he

left the post office. The cell phone data evidence placed the third respondent in close proximity to the post office a day before the robbery, and shows that the first appellant was communicating with the second appellant, who was identified as one of the actual robbers, who possessed a firearm. There were six phone calls between them around the time of the robbery. The second appellant phoned the first appellant shortly before the robbery, and then again while the robbery was in progress. That evidence also places the cell phone handset of the first appellant in Ebony Park at the time of the robbery.

[50] According to the evidence, during the robbery the false deposits were made into the fraudulent post bank accounts opened by the accused 2, and in which the first appellant was complicit. Logically, the person who made those false entries or deposits into the false accounts during the robbery, must have had knowledge of the details of those false accounts. These false entries or deposits were made after the staff in the post office had been closed into the safe, and after one of the robbers had made a phone call, summoning the one called to ‘come quickly’ and reporting, ‘we have locked them in the safe’. Another robber said ‘phone them and tell them we are through’.

[51] The evidence further established that after the robbery the first appellant withdrew R1000 from two of the false accounts into which false deposits were made during the robbery, at Nedbank, Totius Motors, Crystal Gate on his way to Daveyton, where he lives. It also shows that he communicated with the other accused after the robbery. Mr Moshoene testified that a week after the robbery, the appellants, being under the impression that he was joining their enterprise, informed him that they were robbing post offices, and its also when the first appellant introduced him to the second appellant and accused 9 (deceased), whom Mr Moshoene recognised as the perpetrators of the Ebony Park robbery. They also told him of their modus operandi. The evidence also showed that the appellants and the other accused were not strangers to each other, but knew each other more than casually.

[52] The only reasonable inference to be drawn from all the evidence, including the direct evidence implicating the appellants, was that this robbery was an activity, in the pattern of racketeering, of an enterprise involving the accused, which the first appellant managed and the second appellant knowingly and actively participated in.

Counts 15-16.

[53] These counts only relate to the first appellant and two of the other accused. It pertains to the Boksburg North robbery that occurred on 29 June 2008. They are fraud counts. The evidence established that on the morning of the day prior to the robbery, accused 3 opened false post bank accounts at the Reiger Park branch of the post office. One account was in the name of a person bearing the surname 'Leola' and another in the name of a person with the surname 'Motaung'. Shortly after that, accused 3 started communicating by phone with the first appellant and did so on at least six occasions from about 11h56 to 15h20. He opened a second 'Leola' account, and also reissued a bank card in respect of the first 'Leola' account. During the Boksburg North robbery a false entry purporting to be a deposit into this account was made. Following the robbery accused 3 transacted on the first 'Leola' account at various outlets. On 16 July 2008, using the bank cards relating to the first 'Leola' account, a withdrawal was made at the East Rand Mall from that false account, and on the same date the appellants, who were proved to have been in Hazyview at the time, used the second 'Leola' account bank card and that of the 'Motaung' account to make purchases at the Hazyview Pick n Pay and payment at a fuel station there.

Counts 17-29

[54] As regards count 17, the evidence established conclusively that the appellants communicated with each other by phone on seven occasions before the robbery. According to the cell phone data evidence, at 08h21 the appellants were in close proximity to the Boksburg North post office. The robbery occurred at 08h30, before any customers arrived. After the robbers left, Ms Desebo Diniso noticed that the hard drives of their computers had been taken. False entries, purporting to be deposits of R80 000, had been

made in five of the false accounts, namely, the first and second 'Leola' account, the 'Dube' and 'Mabula' and 'Motaung' accounts. According to the evidence, shortly after the robbery the appellants communicated with each other on at least five occasions on that day. After the robbery a R1000 was withdrawn from the 'Dube' and 'Mabula' accounts. Both appellants were shown to have been present at the Eastgate shopping centre, where the first appellant also made withdrawals from both those false accounts.

[55] The cell phone data evidence also showed that in the period following the robbery the appellants were in the same vicinity where other withdrawals were made from these false accounts. On 16 July 2008, both appellants were in Hazyview where transactions were done on the 'Motaung' and second 'Leola' accounts using the cards that had been issued following the opening of those false accounts. The uncontested evidence given by Ms Heather Shelton of the Rynfield Veterinary Clinic was that a bank card, issued in respect of the false 'Motaung' account, was used by the first appellant on 10 July 2008 to pay the clinic two amounts for the treatment of his dog(s). The appellant did not dispute that his dog(s) were treated at the clinic and that he made the payments. The cell phone data also places him at the clinic on that date. On 3 July 2008, accused 7, at the OR Tambo post bank, processed a R25 000 withdrawal from the false 'Motaung' account. The cell phone data placed the appellant and accused 2 in the vicinity of that post bank at the time of the withdrawal. The appellants could not have been in possession of the bank card relating to the 'Motaung' and second 'Leola' accounts, unless they were party to, or complicit in, the opening of those false accounts.

[56] The only reasonable inference to be drawn from all the evidence is that the appellants were directly involved in all the racketeering activities alleged in these counts. They were correctly convicted on these counts. I will deal separately with their convictions in respect of counts 18 and 19 which relate to the possession of arms and ammunition.

Counts 30-34 and 37-46.

[57] These counts relate to the Randjiesfontein branch robbery that occurred on 21 July 2008. Counts 30 to 33 were brought against the first appellant, accused 2 (deceased), and another accused. They are counts of fraud relating to the opening of false post bank accounts. Count 34 is the actual robbery count, which was also brought against the second appellant. Counts 37-41 are similar counts of fraud brought against all the accused. They relate to false or fictitious deposits made into the different false accounts on the date of the robbery. Counts 42 to 46 are similar counts of theft dealing with the withdrawal of monies from those false accounts following the robbery.

[58] The evidence established that the robbery was to have taken place on 19 July 2008, but that attempt was foiled. It eventually occurred on 21 July 2008. Consistent with the modus operandi of the enterprise, prior to the robbery false accounts were opened. On 18 July a false account was opened in the name of 'Khumalo' at the Khumalo post office in Katlehong and accused 3 also opened a false 'Nxumalo' account. The evidence showed that at the time of the opening of the 'Khumalo' account the first appellant was close to or at the Khumalo post office and that was at about 13h47 to 14h12. The first appellant communicated telephonically with accused 3 at 09h47, 11h21, 11h39, 11h41, 13h35, 13h47, 14h12, 15h10 and 18h30. During the robbery on 21 July 2008 false entries, purporting to be deposits, were made into the 'Khumalo' and 'Nxumalo' accounts using the post office's equipment. The cell phone data evidence further showed that the appellants communicated with each other telephonically 12 times on 19 July 2008, when the robbery was foiled. On the date of the robbery the first appellant communicated with the second appellant, who was identified as one of the robbers, on 28 occasions, 14 of these occasions were before the robbery. Both appellants and two of the other accused were placed at or near the Randjiesfontein post office at the time of the robbery. Following the robberies, monies were withdrawn from those false accounts before they could be blocked.

[59] Ms Sugar Mokgethi (Ms Mokgethi), branch manager of the Randjiesfontein post office in Midrand, inter alia, identified the second

appellant in the dock as the person that was involved in the robbery. She remembered him because she had seen and interacted with him before. She testified that he was the one that came to the branch on a Saturday, just before closing time, with a box in his possession. He was wearing a post office skipper. She told him that she could not serve him, but because of his dress she asked him where he was working and he just said 'Wits Pos', and left. He is the same man who entered the branch just before the robbery with the same box and used it as a means to gain access to the staff behind the counter and perpetrate the robbery. The box was used by the robbers to carry the computers out of the branch afterwards. This dock identification was sufficient to sustain the second appellant's conviction because it is reliable.[19]The only reasonable inference to be drawn from all the evidence is that the appellants were directly and indirectly involved in all of the activities detailed in these counts and were respectively correctly convicted on them. There is no basis for interfering with the factual findings of the high court.

Counts 52, 55 and 56

[60] These counts relate to the Tembisa North branch robbery which occurred on 23 September 2008. They apply to both appellants and accused 3. The appellants were convicted on these counts on the basis of direct and circumstantial evidence. This included evidence of the first appellant's fingerprint that was uplifted from a paper fixed to the door of the post office branch at the time of the robbery; cell phone records and the evidence of Mr Moshoene. According to the cell phone data evidence the appellants called each other on eight or nine occasions. Three of these were before the robbery. The evidence also places the first appellant, through his handset, in the vicinity of the robbery, shortly before it occurred. According to the evidence shortly before the robbery the first appellant's phone was switched off and remained off for about four hours. The second appellant's handset was also placed at or near the scene of the robbery and he was also linked to the robbery by his motor vehicle which was observed to have been at the scene at the time of the robbery.

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[19] See *S v Tandwa and Others* [2007] SCA 34 (RSA); 2008 (1) SACR 613 (SCA) para 132.

[61] Furthermore, Ms Nancy Teffo, the acting branch manager at the time, testified, inter alia, that two men wearing Bosasa security guard uniforms, and pretending to be such, held her and her staff up at gunpoint, tied them up and closed them in the toilet. During the robbery she heard the sounds of the pin pads of the teller machines that were used to open accounts and make transactions, including withdrawals. She testified that you needed training in order to work on the computers and the system of the post office. In the robbery, cash in the amounts of R4900 and R7000, two CPU's, Mzansi cards and her cell phone were taken. Otherwise, the modus operandi was very similar to that of the other robberies in this case. Instead of making false entries purporting to be deposits in new false accounts, there was an attempt to make such entries into old dormant accounts. The timeous blocking of these accounts following the robbery prevented withdrawals from them. The high court found that the state had established the guilt of both the appellants, who were placed at the scene of the robbery, on these counts.

[62] The first appellant and accused 2 had tried to recruit Mr Moshoene to join their criminal enterprise and had explained to him its modus operandi. Mr Moshoene was also introduced, inter alia, to the second appellant. He met and socialised with them on several occasions. They were planning to use Bosasa security uniforms in their robbery. After the robbery, when Mr Moshoene went to meet with the first appellant in Daveyton he found the first appellant with three other people outside a white motor vehicle at the taxi rank. They were wearing Bosasa Security uniforms and the first appellant was wearing a Bosasa tie. One of those people was the second appellant. He also saw a firearm in the vehicle. Mr Moshoene had also identified the second appellant as a robber in the Ebony Park robbery. There is no basis for interfering with the findings of the high court. The meticulous cell phone data evidence was effectively uncontested. It established irrefutably that the appellants (and the other accused) communicated frequently with each other before and after the robberies. The appellants' cell phone handsets also placed them at or near the scene of the robbery at the time of the robbery. The first appellant's explanation, as to how the note with his fingerprint came

to be at the door, is palpably false. It seems to have been placed there by them to deter customers from entering the branch during the robbery. The second appellant's alibi defence was correctly found not to be credible and rejected. Taking all the admissible evidence into account pertaining to these counts, the only reasonable inference is that the appellants planned and executed the robbery as part of the racketeering activity of their criminal enterprise.

The counts of unlawful possession of firearms and ammunition

[63] The relevant counts are: count 9 (firearms) and 10 (ammunition), which relate to the Ebony Park robbery; count 18 (firearms) and 19 (ammunition), relating to the Boksburg North robbery; and count 53 (firearms) and 54 (ammunition), relating to the Tembisa North robbery. The high court convicted both the appellants on the three counts of possession of firearms (counts 9, 18 and 53), and the three counts of possession of ammunition (counts 10, 19 and 54). It took all those counts together for the purpose of sentencing. It imposed a total sentence of nine years' imprisonment (3 years for each set of counts) on the first appellant, and a total of fifteen years' imprisonment (5 years for each set of counts) on the second appellant.

[64] At the hearing before this Court the State correctly conceded that none of the appellants should have been convicted on any of the counts of being in unlawful possession of ammunition, because there was no evidence to that effect. In the clear absence of that proof the appellants' convictions on counts 10, 19 and 54 cannot stand and should be set aside together with the sentences imposed in respect of those counts. Regarding the unlawful possession of firearms, the State also conceded in this Court that in respect of count 9 there was no evidence that the first appellant was in possession of a firearm during the Ebony Park robbery.

[65] It is now trite that for the first appellant to be found guilty on count 9 the State ought to have proved either that the first appellant personally (and unlawfully) possessed a firearm on that occasion, or that he jointly possessed a firearm which was physically seen to be in the second appellant's

possession at the time, in the sense held in *S v Nkosi (Nkosi).*[20] The test for establishing liability for the unlawful possession of firearms and ammunition was formulated in *Nkosi* [21] as follows:

'… in deciding whether the group (and hence the appellant) possessed the guns must be decided with reference to the answer to the question whether the State has established facts from which it can properly be inferred by a Court that:

(a) [T]he group had the intention (*animus*) to exercise possession of the guns through the actual detentor and [;]

(b) [T]he actual detentors had the intention to hold the guns on behalf of the group.

Only if both requirements are fulfilled can there be joint possession involving the group as a whole and the detentors, or common purpose between the members of the group to possess all the guns.'

[66] In *S v Makhubela and Another*[22] the Constitutional Court, confirming the correctness of the test established in *Nkosi*, found that the cases surveyed by it showed the following:

'… that there would be very few factual scenarios which meet the requirement to establish [the] joint possession set out in *Nkosi*. This is because of the difficulty inherent in proving that the possessor had the intention of possessing a firearm on behalf of a group. It is clear that, according to established precedent, awareness alone is not sufficient to establish intention of jointly possessing a firearm or the intention of holding a firearm on behalf of another in our law.'

[67] In my view, the State correctly conceded that the kind of proof envisaged in those cases is lacking here. Therefor, the conviction of the first appellant on count 9 (for possession of a firearm in connection to the Ebony Park robbery) cannot stand, and is to be set aside together with the sentence imposed in respect thereof. Turning to count 18, there is no evidence establishing that either of the appellants possessed a firearm(s) in the Boksburg North robbery. Therefore, their convictions and the sentences on

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[20] *S v Nkosi* 1998 (1) SACR 284 (W).

[21] Ibid at 286G-I. Dictum applied in *S v Ramoba* [2017] ZASCA 74; 2017 (2) SACR 353 (SCA) para 11. See also the dissenting judgment in *Schoeman v Director of Public Prosecutions* [2025] ZASCA 124; 2025 (2) SACR 561 (SCA); [2026] 1 All SA 95 para 48.

[22] *S v Makhubela and Another* [2017] ZACC 36; 2017 (2) SACR 665 (CC); 2017 (12) BCLR 1510 para 55.

this count cannot stand. However, in respect of count 53, ie the Tembisa North robbery, the evidence established that each of the appellants was a *detentor* of a firearm when executing the robbery. Their conviction on this count was correct.

Summary regarding the appellants' convictions

[68] To summarise, in respect of the first appellant: (a) his conviction on count 4 (for a contravention of s 2(1)*(f)* of the POCA), and the sentence imposed in that regard, are to be set aside; (b) his convictions and the sentences imposed in respect of counts 10, 19, and 54 (for unlawful possession of ammunition) are to be set aside; and (c) similarly, his conviction and sentences in respect of counts 9 and 18 (for the unlawful possession of firearms) are to be set aside; (d) Otherwise, his convictions by the high court on the other counts are confirmed.

In respect of the second appellant; (a) his convictions and sentences in respect of counts 10, 19, and 54 (for the unlawful possession of ammunition) are to be set aside; and (b) his conviction and sentence in respect of count 18 (for the unlawful possession of firearms) are to be set aside; (c) Otherwise, his convictions by the high court on the other counts are confirmed.

The sentencing and the cross-appeal

[69] The sentencing of the appellants needs to be revisited in light of the conclusion reached regarding their convictions. It also needs to be looked at again because of the State's cross-appeal against the sentences imposed by the high court on the appellants and the other accused (all of those still alive were cited as respondents in the cross-appeal), in respect of particular convictions. The State contends, essentially, the following: (a) Relying on this Court's decision in *Ditlhakanyane*, that in respect of the s 2(1)*(e)* contraventions of POCA, the high court imposed inappropriately low sentences on them; and (b) in respect of those offences where a minimum sentence applies in terms of the Criminal Law Amendment Act 105 of 1997 (the minimum sentencing legislation), and in particular, the aggravated robbery and certain fraud and theft counts, incorrectly found substantial and compelling circumstances that justify the imposition of sentences lesser than

the minimum prescribed sentences; and (c) that the sentences imposed, were too lenient and ought to be increased, because the high court over-emphasised the personal circumstances of the accused. Those circumstances are on record.

[70] In response to the State's cross-appeal, the other accused, listed as the second, and fourth to seventh respondents, withdrew their respective appeals against their convictions. Despite doing so, the State persisted with its cross-appeal against their sentences and that of the appellants. The heads of argument filed in this appeal by Legal Aid South Africa (Legal Aid), which had represented all of the accused from the outset, are only filed in respect of the two appellants, and only deals with their convictions on the various counts. Two paragraphs of those heads tersely deal with the question of the sentence, and in particular as follows:

'136. It is submitted that the learned justice correctly applied the sentencing principles and he has had regard to all factors traditionally considered and came to a just and appropriate sentence.

137. It is submitted that in ordering concurrency of sentences, the trial Court applied a measure of mercy when imposing sentence.'

[71] Further, the oral submissions made by the Legal Aid, were only made on behalf of the two appellants. The State's cross-appeal in respect of the sentences of the other accused, cited as the second, and fourth to seventh respondents, is accordingly unopposed. Seemingly, all the respondents in the cross-appeal, including the appellants, have been adequately forewarned of the implications of the cross-appeal. Presumably, they were all appropriately advised in that regard, and they made their choices regarding the cross-appeal on the basis of such advice.

[72] It is trite that this Court can interfere with the sentence imposed by the lower court where that court erred in the exercise of its discretion when sentencing, or where there is a shocking disproportion between the imposed

sentence and the sentence which this Court would impose[23]. It is also trite that this Court can so interfere in an appeal by an accused or by the State, and that this Court can increase the sentence imposed by the lower court.

The sentences for the POCA contraventions

[73] The sentences imposed on the appellants and the other accused for the contravention of s 2(1)*(e)* were as follows: (a) the first appellant (accused 1) - 10 years' imprisonment (he was also sentenced to 18 years' imprisonment for contravening s 2(1)(*f*)); the second appellant (accused 8) – 12 years' imprisonment; accused 3 – 8 years' imprisonment; accused 4 – 5 years' imprisonment; accused 5 – 5 years' imprisonment accused 6 – 5 years' imprisonment; and accused 7 – 5 years' imprisonment.

[74] In its cross-appeal the State seemingly implies that the sentence determined by this Court in *Ditlhakanyane* ought to be some sort of standard for the length of the sentences that ought to be imposed for this offence. The activities of the enterprise and those of the convicted in that case were serious, but lesser so than those in this matter, which suggests that the accused in this case ought to be sentenced more severely. While that is logically correct, there is a conceptual difficulty with this Court's approach in *Ditlhakanyane* that complicates the situation.

[75] In *Ditlhakanyane* this Court approached the sentences envisaged in s 3(1) of the POCA as prescribed sentences, which courts could not lightly deviate from and without good reason. This is apparent from its conclusion that the trial court there '… deviated from the prescribed sentence without providing reasons therefor'.[24] On that basis it interfered and increased the effective sentence of the full court, from 20 years' to 30 years' imprisonment, thus, restoring the sentence imposed by the trial court in that matter. This Court expressed the view that it 'is still not clear' why the full court 'perceived the sentence imposed by the trial court to be unduly harsh when the

[23] See *S v Malgas* 2001 (1) SACR 469 (SCA); [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA) (*Malgas*) para 12. See also *S v Moagi* [2025] ZASCA 188; [2026] 1 All SA 301 (SCA); 2026 (1) SACR 457 (SCA) para 23.
[24] *Ditlhakanyane* para 46.

legislature prescribed a much higher sentence.' The wording of that conclusion purports to be based on an erroneous premise that the legislature prescribed sentences, when in reality the legislature merely set maximum sentences for a contravention of that section. The maximum sentence is a fine of R1 billion, or imprisonment up to life imprisonment. Section 3(1) reads:

'Any person convicted of an offence referred to in section 2(1) shall be liable to a fine not exceeding R1000 million, or to imprisonment for a period up to imprisonment for life.'

[76] It is noteworthy that the section does not prescribe minimum sentences, but it sets maximum sentences. Section 3(1) envisages a fine or imprisonment. Its wording unambiguously recognises a gradation of seriousness. The less serious contraventions, which do not deserve a custodial sentence, may be punished by means of a fine: a low fine for the less egregious, and a steeper fine for the more egregious. The highest fine being reserved for the most egregious of those kinds of contravention. Thus, if the circumstances indicate that a custodial sentence is the only appropriate sanction, a sentence of imprisonment would have to be imposed. The period of imprisonment would depend on the seriousness of the offence. Life imprisonment is reserved for the most serious of those contraventions.

[77] Even if it is assumed that this Court in *Ditlhakanyane* intended to convey that the sentence or punishment of the full court in that matter did not reflect the seriousness in which the legislature and the POCA viewed the contravention, it does not appear from that judgment what measure was used to determine that a sentence there of 20 years' imprisonment was too lenient and that a sentence of 30 years was appropriate. No cases were used as guideline for pitching the sentence at a particular point on the continuum that culminates in the most severe custodial sentence, life imprisonment. The activities of the enterprise in this matter are, by comparison with those of the enterprise in that matter, far more serious. Here the modus operandi was not merely fraud and theft, but also armed robbery. Generally, depending on the personal circumstances of the perpetrators, the contravention in this case deserves a more severe sentence. If one uses *Ditlhakanyane* as a guide, that

means a sentence, in excess of 30 years' imprisonment, if not far in excess of it, has to be imposed on the appellants (and the other respondents in this matter) because of its comparative egregiousness.

[78] This Court has warned that the imposition of excessively long sentences is, generally, unrealistic and serves no genuine rehabilitative purpose, and emphasised that there is a risk of such sentences being perceived as only designed for public consumption[25]. This Court has also described a sentence of imprisonment of 25 years as 'a very severe punishment which should be reserved for particularly heinous offences.'[26] A 'heinous offence' is an extremely evil or horrible offence. Granted that those remarks were made in matters involving other offences, but if 25 years' imprisonment constitutes 'severe punishment', it remains such whatever the offence. This matter is very serious, but not the most heinous, or for that matter the most egregious of the contraventions of s 2(1)*(e)* of the POCA.

[79] Against that background I will now consider the sentences imposed on the individual accused (including the appellants). In the case of the first appellant, the high court imposed the sentence of 10 year's imprisonment for the contravention of s 2(1)*(e)*, presumably, because it also convicted him of a contravention of s 2(1)*(f).* In respect of the latter, it imposed a sentence of 18 years' imprisonment. For the reasons traversed earlier, the conviction for both the counts was irregular. He could only have been convicted for the contravention of s 2(1)*(e)*, but the sentence of 10 years' imprisonment is in those circumstances shockingly inadequate and lenient. Interference with that sentence is justified. The fact that the second appellant, whose role was much lesser than that of the first appellant, was sentenced to 12 years' imprisonment for contravening s 2(1)*(e)* underscores that point. The sentence of 12 years is, in any event, in my view also too lenient.

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[25] *S v Mhlakaza and Another* 1997 (1) SACR 515 SCA; 2 All SA 185 (A) at 519G-I; *S v Nemutandani* [2014] ZASCA 128; 2014 JDR 1898 (SCA) (*Nemutandani*) para 8.

[26] *S v Muller and Another* [2011] ZASCA 151; 2012 (2) SACR 545 (SCA) para 9-10; *Moswathupa v The State* [2011] ZASCA 172; 2012 (1) SACR 259 (SCA) (*Moswuthapa*) para 10; *Nemutandani* para 8. See also *S v Ndou* [2019] ZASCA 85; 2019 (2) SACR 243 (SCA) para 26.

[80] Having regard to the nature of the offence, the respective personal circumstances of the first and second appellants, and the interests of society, a sentence of 20 years' imprisonment for the first appellant and a sentence of 15 years' imprisonment for the second appellant for the contravention of s 2(1)*(e)* of the POCA, is just and fair. Taking all the factors relevant to sentencing into account, the sentences imposed on, respectively, the, third, fourth, fifth, sixth and seventh accused for this contravention appears just and fair. Their roles, in my estimation, were far lesser than those of the appellants.

The counts in respect of which a minimum sentence is prescribed

[81] Turning to the sentences in respect of those counts where there are minimum sentences. In respect of counts 8, 17 and 51, that is for robbery with aggravated circumstances, read with the minimum sentencing legislation, a minimum sentence of 15 years' imprisonment is prescribed. On those counts the first appellant was sentenced to 10 years' imprisonment on each count. Accused 3 was sentenced to 5 years' imprisonment on each count. Accused 5, accused 6, and accused 7 were respectively sentenced to 3 years' imprisonment on each of those counts.

[82] In respect of counts 37 – 41, which are counts of fraud read with the minimum sentencing legislation, a minimum sentence of 15 years' imprisonment is prescribed. The high court imposed a sentence of 2 years' imprisonment on each of those counts on each of the accused (including both appellants). And in respect of counts 42-46, which are counts of theft read with the minimum sentencing legislation, a minimum sentence of 15 years' imprisonment is prescribed. Each of the accused (including the appellants) were respectively sentenced to 2 years' imprisonment in respect of each of those counts. And in respect of count 34, robbery read with the minimum sentencing legislation, a sentence of 10 years' imprisonment is prescribed. Each of the accused (including the appellants) were respectively sentenced to 2 years' imprisonment on that count.

[83] It is apparent that, generally, the high court did not impose the minimum sentences in respect of the counts where it is prescribed. That is only justified if substantial and compelling factors are found justifying the imposition of a lesser sentence. First, the State contends that the high court was not justified in this instance, because it did not put on record what those factors were. This contention is not entirely borne out by the record.

[84] In respect of the first appellant, the high court, upon considering his personal circumstances, which are stated on the record, found that his '… personal circumstances do amount to weighty mitigating considerations that justify the imposition of lesser sentences and a departure from the minimum sentences prescribed …' in the minimum sentencing legislation. The high court found and recorded the same in respect of accused 3 (Mr Marakalala) and accused 4 (Mr Ledwaba). And in respect of accused 5 (Ms Ndlela), accused 6 (Ms Molotsane) and accused 7 (Ms Pitjeng), the high court notes their personal circumstances, but does not specifically record what the factors are that justified the imposition of lesser sentences on them, but it is very probable that their circumstances, that are on record, could also have been the justification.

It has been held by this Court that it is not possible to give 'an all-embracing definition' to the term 'substantial and compelling circumstances.'[27] The sentencing court is to consider all the facts and circumstances and to determine whether they are 'substantial and compelling' to justify the imposition of a sentence lesser that the prescribed minimum sentence. The determination is to be made with the understanding that the prescribed minimum is not to be departed from lightly or for frivolous reasons[28]. The high court cannot be faulted regarding those findings.

[85] In respect of the second appellant, the high court specifically found: that he 'carried out the robberies and he was positively and reliably identified wielding a firearm in at least 2 of the armed robberies. The mitigating [factors]

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[27] *Malgas*.
[28] Ibid.

are in his case therefore outweighed by the aggravating factors. The eyewitnesses working at the post offices he robbed are still traumatised. One of them actually wept when she saw the accused in the dock. There are therefore no substantial and compelling circumstances to impose a lesser sentence for the crimes under Section 51(2) of Act 105 of 1997. In his case the sentences for armed robberies will be the primary sentence.' The high court then went on to impose a sentence of 20 years' imprisonment on him in respect of each of the aggravated robbery counts, but imposed lesser sentences than the prescribed minimum sentences in respect of the convictions on the fraud and theft counts. The sentences of 20 years' imprisonment for the aggravated robbery counts were in fact in excess of the prescribed minimum sentence of 15 years.

[86] Regarding the sentences imposed in respect of the multiple fraud and theft accounts, which each of the respondents (including the appellants) were convicted of, the following is also relevant. Even though it assigned a number of years to each count, the high court appears, in effect, to have taken all the fraud and theft counts as one for the purpose of sentencing. Ultimately, it imposed a total sentence in respect of those counts, because these offences were effectively linked. Thus, the high court imposed in the case of the first respondent (first appellant) a total of 48 years' imprisonment for 24 counts of fraud and 24 years for 12 counts of theft. In his case it also did the same with the 3 counts of aggravated robbery. The second appellant was sentenced to a total of 28 years for 14 counts of fraud and 24 years for 12 counts of theft. Accused 3 (Mr Marakalala) got 30 years for 15 counts of fraud and 22 years for 11 counts of theft. Accused 4 (Mr Ledwaba) got 26 years for 13 counts of fraud. Accused 5 (Ms Ndlela), accused 6 (Ms Molotsane) and accused 7 (Ms Pitjeng), each got 28 years for 14 counts of fraud and 20 years for 10 counts of theft.

[87] In my view the State has not established a basis for interfering with those sentences. The high court was undoubtedly aware of the mitigating and aggravating factors, as well as the cumulative effect of the sentences, and guarded against the aggregate punishment in the case of each accused

becoming excessive and disproportionately severe, and being unrealistic. This Court has held that where multiple offences need to be punished, the sentencing court has to seek an appropriate sentence for all offences taken together, and that it must guard against imposing an aggregate penalty that is unduly severe.[29] Ultimately, 'sentencing is pre-eminently a matter for the discretion of the trial court'. It is a difficult exercise, involving the balancing and grading of all the relevant factors.[30] Another factor to consider is that the respondents were sentenced on 20 November 2012. The matter came before this Court, more than 13 years (13 years and 4 months) later, on 6 March 2026.

The Imposition of a non-parole period on the second appellant

[88] Before leaving the issue of sentence, it is necessary to deal with the high court's imposition of a non-parole period in respect of the second appellant (Mr Nkosi). As part of its sentencing the high court ordered in terms of s 276B(1) of the CPA that the second appellant was not eligible for parole until he has served 12 years of his effective 20 years of imprisonment. It is now confirmed by the Constitutional Court that a non-parole period can only be imposed if there are exceptional circumstances present which warrant that order, and the parties were given an opportunity to make submissions on the issue.[31] It does not appear from the record that this occurred here. At the hearing before this Court the State counsel correctly conceded that the high court erred or acted irregularly in imposing the non-parole period in those circumstances. This was not one of the grounds of the second appellant's appeal, but by virtue of this Court's power it can interfere with that imposition in the interests of justice and set it aside.

Conclusion

[89] In summary, the first appellant should be convicted and sentenced as follows:

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[29] *Moswathupa* para 8. See also *S v Cele* [2025] ZASCA 199; 2026 (1) SACR 445 (SCA) para 30.
[30] See, inter alia, *S v Rabie* 1975 (4) SA 855 (A) at 862 A-B and 862 G-H; *S v Banda* 1991 (2) SA 352 (BG) at 354E-G and 355A-B.
[31] *S v Sithole* [2024] ZACC 31; 2025 (1) SACR 349 (CC); 2025 (6) BCLR 693 para 27.

a. Count 3 (contravening s 2(1)*(e)* of POCA) – 20 years' imprisonment.
b. 24 counts of fraud – 2 years' imprisonment for each count.
c. 3 counts of aggravated robbery – 10 years' imprisonment for each count.
d. 1 count of unlawful possession of a firearm – 3 years' imprisonment.
e. Count 34 (robbery) – 7 years' imprisonment.
f. 12 counts of theft – 2 years' imprisonment for each count.
g. All the sentences are to be antedated to 30 November 2012.
h. Except for 3 years imposed in respect of the aggravated robbery counts, all the sentences are to run concurrently with the sentence imposed in respect of count 3. Thus, the effective sentence of the first appellant is 23 years' imprisonment.

[90] In summary, the second appellant should be convicted and sentenced as follows:

(a) Count 3 – 15 years' imprisonment.
(b) 3 counts of aggravated robbery – 20 years' imprisonment for each count.
(c) Count 34 – 12 years' imprisonment.
(d) 2 counts of unlawful possession of firearms – 10 years' imprisonment.
(e) 14 counts of fraud - 2 years' imprisonment for each count.
(f) 11 counts of theft – 2 years' imprisonment for each count.
(g) The sentences are all antedated to 30 November 2012.
(h) Except for 5 of the years imposed for the aggravated robberies, all the sentences are to run concurrently with the new sentence imposed for count 3. Thus, Mr Bongani Nkosi (the second appellant) is sentenced to an effective period of 20 years' imprisonment.

[91] The cross-appeal falls to be dismissed in respect of the sentences imposed on the third to seventh accused.

Order

[92] The following order is granted:

1. The appeals of both appellants are partially upheld to the extent set out hereunder.
2. The cross-appeal in respect of the sentences imposed on the appellants is partially upheld to the extent set out hereunder.
3. In respect of the first appellant (Mr Onasis Maxam):
   3.1 The convictions and sentences on the following counts are set aside: Count 4 (contravening s 2(1)*(f)* of the POCA); counts 9 and 18 (the unlawful possession of firearms); and counts 10, 19 and 54 (the unlawful possession of ammunition).
   3.2 The first appellant's convictions on the remaining counts are confirmed.
   3.3 The sentence in respect of count 3 (contravening s 2(1)*(e)* of the POCA) is set aside and is substituted with a sentence of 20 years' imprisonment. The other sentences are confirmed.
   3.4 All the sentences are antedated to 30 November 2012.
   3.5 Except for 3 years imposed in respect of the aggravated robbery counts, all the sentences are to run concurrently with the sentence imposed in respect of count 3. Thus, the effective sentence is 23 years' imprisonment.
   3.6 The first appellant is declared unfit to possess a firearm as contemplated in s103 of Act 60 of 2000.
4. In respect of the second appellant (Mr Bongani Nkosi):
   4.1 The convictions and sentences imposed in respect of the following counts are set aside: count 18 (the unlawful possession of firearms), and counts 10, 19 and 54 (the unlawful possession of ammunition).
   4.2 The second appellant's convictions on the remaining counts are confirmed.
   4.3 The sentence imposed in respect of count 3 (for contravention of s 2(1)*(e)* of the POCA) is set aside and is replaced with a sentence

of 15 years' imprisonment. The sentences in respect of the other convictions, and the declaration of his unfitness to possess a firearm, are confirmed.

4.4 All the sentences are antedated to 30 November 2012.

4.5 Except for 5 of the years imposed for the aggravated robberies, all the sentences are to run concurrently with the new sentence imposed for count 3. Thus, the effective sentence is 20 years' imprisonment.

4.6 The non-parole period imposed by the high court is set aside.

4.7 The second appellant is declared unfit to possess a firearm as contemplated in s103 of Act 60 of 2000.

5. The cross-appeal is otherwise dismissed also in respect of the sentences imposed on the third to seventh accused.

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JUDGE OF APPEAL

Appearances

For the Appellants:	M P Milubi
Instructed by:	Legal Aid South Africa, Johannesburg
	Legal Aid South Africa, Bloemfontein
For the Respondents:	A M Williams
Instructed by:	Director of Public Prosecutions, Johannesburg
	Director of Public Prosecutions, Bloemfontein.