



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA
(CIRCUIT COURT HELD AT KOMANI)**

NOT REPORTABLE

Case No: CC 28/2026

In the matter between:

THE STATE

vs

THULANI MGODELI

Accused

JUDGMENT

Mjame AJ

- [1] The accused, Mr Thulani Mgodeli (the accused), faces seven counts, three of which are kidnapping counts, three rape counts read with the provisions of section 51(1) Act 105 of 1997 and one count of theft. Initially he was indicted with eight counts, however, the state withdrew count number 3. He pleaded not guilty to all counts and there was no plea explanation offered.

- [2] In respect of Count 1 and 2 it is alleged that the accused did unlawfully and intentionally deprive Z[...] N[...], a 15-year-old girl of her freedom of movement by locking her in his house against her will and commit an act of sexual intercourse without her consent.

The allegations in count 4, 5 & 6 are that during the period 7-9 April 2023 the accused did unlawfully and intentionally deprive Z[...] P[...], a 20-year-old female of her freedom of movement by forcing her to go to his room and locked her inside against her will and did then engage in sexual intercourse without her consent. He also stole a Mobicell phone of the said complainant.

In count 7 & 8 it is alleged that the accused did unlawfully and intentionally deprive L[...] M[...], an 18-year-old girl of her freedom of movement, forcing her to go to his house and locked her inside and did then engage in sexual intercourse without her consent.

- [3] The evidential material handed in by consent were:

Birth certificate of complainant in Count 1 & 2 - Marked exhibit "A"

Medical report of L[...] N[...] - Marked exhibit "B"

Medical report of Z[...] P[...] - Marked Exhibit "C"

Medical Report of L[...] M[...] - Marked Exhibit "D"

EVIDENCE OF THE STATE

- [4] Z[...] N[...], a 21-year-old female testified about the incident which occurred on the 29 August 2020 when she was 15 years old. She testified that on the evening she was sent to the shop by one Nandipha. She proceeded to the shop in company of Khaya, Qhawe and N[...]. They met the accused who also sent them to buy some items at the shop. They came back and brought the items at his place. On arrival accused told them that they forgot to buy bread. He pushed Khaya, Qhaba and N[...] out of the room and locked her inside. Accused then pulled her to his room. She resisted trying to free herself

without success. Masande, the brother to the accused was present in the room but did not intervene.

Accused forcefully undressed her tight pants and underwear. He took an empty bottle and sjambok threatening to kill her. He pushed her to the bed. Accused then inserted his penis into her vagina without consent. He got up. N[...] and others knocked at the door. Accused told them that the complainant has left. She could not scream as she was afraid of the accused who threatened to kill her. They went to report to the elderly people. Her family arrived and knocked at the door. He refused to open. His brother told him to open. Accused then stood up to open the door. She then got a chance to dress up and advanced to the door. She got out of the room crying. She went to her elder sister who was amongst the family members. She was taken to one Mathembalethu who is a community committee member. She reported the incident to her in presence of her family members. The matter was reported to the police. She was taken to the doctor by the police officers for examination.

[5] It was put to the witness that she voluntarily left behind in accused's place. He had a love relationship with her. It was further put that they romance with each other and engaged in sexual intercourse by consent. The complainant vehemently denied the version of the accused.

[6] N[...] K [...], the sister to the complainant testified that she was in company of the complainant to the shop when they came across with the accused who also sent them to buy some items at the shop. They brought his items but accused told them to go back and buy bread. He said complainant must remain behind. Complainant refused. The accused pushed them out of the room, that is, herself, Qhama and Khaya. They left to the shop leaving complainant behind. On coming back the door was closed. They knocked and accused told his brother to tell them that Z[...] was not there. They left to report to the elderly people that accused had locked the complainant at his place.

The version of the accused was put to the witness denying pushing them outside the room.

[7] L[...] N[...], testified that N[...] with other children arrived at her place coming from the shop and reported that the accused has locked the complainant, Z[...], in his room. She knows accused. They are residing in the same area. They proceeded to accused's place and knocked. Masande, the brother of the accused opened the door and kept the burglar closed. He told them that Z[...] was not there. As they were leaving the complainant came out of the house crying. She reported to her that accused had sexual intercourse without her consent.

[8] Z[...] P[...], the complainant in count **IV, V and VI**, testified that she knows the accused. They are residing at Bhekela Location in Ugie. On the evening of the 7 April 2023 she was sent by one Abadu the brother of her boyfriend to buy liquor at kwaNombombo's tavern. Her boyfriend was at work. She went to one Emihle to accompany her. They arrived at the tavern. On arrival at the tavern she accidentally bumped at the accused. The accused's cell phone fell down and it got damaged. The accused became furious. She apologised to him promising to pay it in the morning when her boyfriend is back from work. The accused did not want to listen. One Unam appeared and also apologised on her behalf. Accused was in an angry mood. Accused told her to go with him and wait for her boyfriend in his room till the following day. She left with Emihle and accused. On the way he told Emihle to turn back. He was in a fighting mood. He forced her to go along with him. She was scared of the accused. They arrived at his place. Accused locked the door and drew out a knife instructing her to undress. She refused, struggling with him. Accused put the knife on her neck. She was also overpowered by the accused. She submitted. Accused pushed her to the bed. He undressed her pants and underwear. He then climbed on top of her and engaged in sexual intercourse without her consent.

After he finished he stood up and sat on the chair having a smoke. He then left, locking her inside the room. She tried to get out but the door and burglar gate were closed. The windows were mounted with nett wire. She could not get out.

The accused came back and again engaged in sexual intercourse with her without consent. She was at accused's place from Friday night till Sunday evening. Accused released her on Sunday evening. Accused accompanied her to Emihle's place. The accused also took her mobicell phone which was in her pocket. She did not tell Emihle of the ordeal. She was scared of the accused who threatened to kill her. In the morning she left to her home. She reported the incident to her mother. She then went to report the rape incident to the police.

[9] On cross examination accused disputed that the complainant was in his house. He denied ever having sexual intercourse with her on that night. The complainant stood firm on her evidence that accused kidnapped her and engage in sexual intercourse without her consent.

[10] N[...] P[...], the first report witness, who happened to be the mother of the victim testified that, it was on Monday morning when complainant arrived at her home crying. She told her that she was raped by Thulani. She last saw the complainant on Friday when she left visiting the father of her children. The matter was then reported to the police.

[11] L[...] M[...], the complainant in Count VII and VIII, testified that she knows the accused. She is related to him and she takes him as a brother. On the 19 September 2024 she was in company of one Z[...] visiting accused at his place where he runs a tavern. Z[...] was invited by the accused at his place. On arrival the accused bought them snacks. She was going to visit her boyfriend at Ntokozweni Location. In the evening she decided to leave. Z[...] left to her place to fetch jersey to wear so that she accompanies her. The accused also offered to accompany her to Ntokozweni location. At a certain point Z[...] turned back and she was left walking with the accused. She felt safe in company of the accused as they are related. On the way accused told her to turn back to his place to take a machine. She refused telling him that they were closer to Ntokozweni he must first accompany her. The accused refused and blocked her way. He pulled her. She resisted, struggling with him. The accused threatened to assault her. He picked up a big stone threatening her. He continued pulling her whilst she was resisting. The accused was

angry and violent towards her. She told him to let her go. Accused followed her behind driving her to his place. He was carrying the stone. When she resisted on the way accused would pull her. She ended up going with him. On arrival at his place accused opened and forced her to get inside the room, which she did. The accused locked the room. He pulled her to his room. He then instructed her to undress. She refused, struggling with him. Accused took a belt and assaulted her with it forcing her to undress. She grabbed the belt and they continued struggling over it. As she was overpowering him, accused went to look for something in between bed matrass. She stopped the accused and told him she will undress herself. She was afraid of the accused. The accused took out an iron rod threatening to kill her and leave the area to Durban. She undressed herself under duress and remain wearing underwear. Accused instructed her to lay on her back on the bed. She complied out of fear. He climbed on top of her and opened her legs apart lowering her underwear. He did then insert his penis into her vagina engaging into sexual intercourse without her consent. Accused had sexual intercourse with her more than once. In the morning accused gave her R10 to buy airtime which she refused to take. She got a chance to leave when accused was in the toilet. She went to Z[...]’s place and told her what had happened between her and accused. She pleaded with Z[...] not to tell anyone about this incident. She was afraid of the accused who threatened to kill her.

She later reported the incident to her sister who was in Mpumalanga. Her sister reported to the elderly people. The matter was then taken up to the police where a case was opened against the accused.

- [12] On cross examination it was put to the witness that she was in a love relationship with the accused. That she voluntarily remained with the accused in his room after Z[...] has left. That the sexual intercourse was consensual. This was disputed by the complainant.
- [13] Z[...] L[...], the first report witness, who is also a friend to the complainant, testified that on the date of the incident she was invited by the accused to his place. The accused is selling liquor at his place. She proceeded to accused’s place with the complainant L[...]. On arrival the accused bought them some

snacks. After sometime in the evening the complainant told her that she was going to Ntokozweni visiting her boyfriend. She accompanied her. The accused later joined them. On the way she turned back to her home as the accused offered to accompany complainant. She received a phone call from the accused's phone. It happened that the caller was L[...] who told her that she was being assaulted by the accused. The call was cut off. On the following day in the morning, L[...] arrived at her place. She was crying and was looking untidy. The complainant told her that the accused raped her previous night. The complainant pleaded with her not to tell anyone about the rape. She told her that the accused was vicious and threatened to kill her should she disclose the incident.

EVIDENCE OF THE ACCUSED

[14] Thulani Mgodeli, the accused, testified under oath that he knows the complainant, Z[...]. He was in a love relationship with her. On the date of the alleged incident he met her. She was in company of Khaya, Qhama and N[...] going to the shop. He also sent them to buy some items at the shop. They brought the items in his room. It transpired that they forgot to buy bread. They left to buy it. The complainant said she will not go to the shop and will remain behind with the accused. He denied pulling the complainant to his room. He admitted that he had sexual intercourse by consent. His evidence is that he did not know the age of the complainant. He testified that the complainant is falsely implicating him because she was assaulted by her sisters. She was assaulted when they came to fetch her from his room asking her why she had a love relationship with the accused knowing that accused had a love relationship with her sister Thembakazi.

In relation to the charges in count 4,5,6, he denied that he forcefully pulled Z[...], the complainant to his place and engaged in sexual intercourse with her. His testimony is that he met complainant in company of Emihle and one Monwabisi. He only knows her by sight. He never spoke with her. They proceeded to Nombombo's tavern. Complainant told them that she had a deal. They must go to her boyfriend's place in the morning to take money.

Complainant had in her possession a sum of three hundred Rands which they consumed it buying liquor. His evidence is that he left Nombombo's tavern around 23h00, leaving complainant behind with Emihle and Monwabisi. He slept till the morning. He was woken up by the complainant's boyfriend knocking asking the whereabouts of the complainant.

In relation to count 7 and 8 he also disputed that he forcefully pulled complainant to his room and engaged in sexual intercourse with her without her consent. His evidence is that complainant remained with him in his room after Z[...] left to fetch jersey at her home. Complainant told her that she will sleep over there, she was no longer going to Ntokozweni. He also testified that he was in a love relation with her sister, A[...] and Z[...]. His evidence is that complainant did not want Z[...] to know that she slept at his place.

During cross examination he denied all the allegations levelled against him. He contradicted the version which was put to the witnesses. He even contradicted his own version. He came up with new matters which were material in the case and which were not put to the witnesses to answer. He could not answer clear questions put to him by the state.

ARGUMENTS

[15] The state argued that it has proved the guilt of the accused on all counts. The evidence before court must be evaluated holistically. Although the evidence on all counts is that of single witnesses, their evidence is clear and reasonable in all material respect. The evidence points towards the guilt of the accused, therefore, he must be found guilty as charged on all counts.

The defence argued that the court in evaluating evidence must consider certain factors on the evidence of the 1st complainant. That she was a minor and she is a single witness. In relation to 2nd complainant the court must consider that the complainant had consumed alcohol and that the accused disputes engaging in sexual intercourse with the complainant. There is no DNA which links the accused to the offence.

The defence also submitted that evidence of 3rd complainant must also be evaluated with caution as it is the testimony of a single witness. It was submitted that in evaluating the evidence holistically the benefit of doubt must be in favour of the accused.

EVALUATION OF EVIDENCE

[16] It is trite law that for conviction to follow the state must prove its case beyond reasonable doubt. In **State vs Ntsele**¹ it was said that:

“Onus rested upon the state to prove the guilt of the accused beyond reasonable doubt not beyond all shadow of doubt.”

An accused person may only be convicted if, after proper consideration of all evidence presented, his guilt has been established beyond reasonable doubt. It follows that an accused person must be acquitted if it is reasonably possible that he might be innocent – **(See) S vs Aswegen**² with reference to **State vs Van deer Meyden**³

Before rejecting an accused’s version on probabilities, the court must be able to find, as a matter of probability, that the accused’s version is simply not reasonable possible true. If the accused ‘s version is reasonably possibly true in substance the Court must decide the matter on the acceptance of that version. **(See-S vs Schakkel)**⁴.

[17] It is common cause that the accused and witnesses are of the same location and they know each other. It is not in dispute that the accused did have sexual intercourse with complainants in count one, two, seven and eight. The issue in dispute is whether the sexual intercourse was consensual. In respect of count four, five, six the issue in dispute is whether accused did kidnapped, engaged in sexual intercourse with complainant and stole her cell phone.

[18] The evidence before court on all counts is that of single witnesses.

¹ S vs Ntsele 1998(2) SACR 178.

² S vs Aswegen 2001(2) SACR 97 SCA.

³ S vs Van deer Meyden 1999(2) SA 79 W.

⁴ S vs Schakkel 2001(2) SACR 185 SCA paragraph 50.

Section 208 of the Criminal Procedure Act 51 of 1977 provides that an accused may be convicted of any offence on the single evidence of any competent witness. It is generally understood that for the evidence of a single witness to be acceptable, that evidence should be clear and satisfactorily in all material respects⁵ and it goes without saying that the witness should, in addition, be credible.

[19] In **State vs Webber** ⁶, the Court held that:

“A conviction is possible on the evidence of a single witness such witness must be credible, and the evidence should be approached with caution. Due consideration should be given to factors which affirm, and factors which detract from the credibility of the witness. The probative value of the evidence of a single witness should also not be equated with that of several witnesses.”

[20] The principles applicable in respect of a single witness evidence was confirmed in **Micheal Jantjies vs State** ⁷, The SCA stated:

“When assessing the credibility of a single witness, it is crucial to understand that there is no one -size-fits-all approach. The evidence presented by such a witness must undergo the same vigorous scrutiny as any other evidence. The trial court is tasked with meticulously evaluating the evidence, considering both its strong points and shortcomings. After this thorough examination the court must then determine whether despite potential flaws or inconsistencies in the testimony, it is convinced of the truthfulness of the witness account. This careful and balanced evaluation is fundamental to ensuring a fair and just legal process.”

[21] The complainants on all counts narrated to this court how the incidents unfolded. They gave a clear and straight forward evidence. Their evidence was not affected nor discredited under cross examination. They answered all questions put to them in a satisfactory manner.

⁵ *R v Mokoena* 1932OPD 79 at page 80 (this judgement dealt with a section of an act that preceded s 208).

⁶ *State vs Webber* 1971 (3) SA 574 (A).

⁷ *Micheal Jantjies vs State* (Case N0 532/2022) [2023] ZASCA (15/01/24) @ par 15.

They were honest, credible and honest witnesses. The evidence of the 1st complainant, Z[...] is consistent with the evidence of N[...] and K[...]. The doctor who examined the complainant observed tears on the private parts of the victim which corroborates the evidence of the complainant. It is improbable for the person who consented to sexual intercourse to sustain injuries on her vagina. However, there was a contradiction on the evidence of N[...] and Z[...] whether she saw her when she was pulled by the accused. This was not a material contradiction. The same was later corrected by the witness on questioning by the court.

In Mkhle ⁸, Nestadt JA commented that:

“Contradictions per se do not lead to the rejection of witness evidence, they may simple be indicative of an error.”

The emotional condition of all the complainants is inconsistent with the person who consented to sexual intercourse. The evidence of L[...] M[...] is consistent with the evidence of Z[...] the first report witness. The evidence of Z[...] P[...] is consistent with the evidence of the first report witness N[...] P[...]. There were no contradictions in their evidence.

ISSUE OF CONSENT

[22] In Swiggler ⁹, AJA Murray when analysing consent stated that:

- Consent must be active, mere submission is not a valid consent.
- It is fallacious to take absence of resistance as per se proof of consent.
- Submission itself is not grant to consent and if a man so intimidates a woman as to induce her to abandon resistance and submit to intercourse to which she is unwilling he commits the crime of rape.
- All circumstances must be considered to determine whether the passivity is proof of implied consent or whether it is merely the

⁸ S vs Mkhle 1990 (1) SACR 95 A.

⁹ S vs Swiggelaar 1950(1) PH H61A.

abandonment of outward resistance which the woman, while persisting in her objection to intercourse is afraid to display or realises is useless.

[23] This is what happened to the complainants. They were forcefully pulled by the accused. They were threatened and assaulted by the accused person. They could not succeed in resisting. They submitted to what accused was demanding. There was no consent to sexual intercourse by the complainants.

The evidence of the accused is full of improbabilities. It is improbable for the complainants on diverse occasions who voluntarily went to his place and willing parties to sexual intercourse just changed their minds and cried rape. It is also improbable for accused to say he was not aware of the age of the complainant in Count 1 and 2. The same accused according to him was in a love relation with complainants' sister. He even himself told this court that he used to see her being a child who would come to Ugie from Barkley.

[24] Having evaluated the evidence before court in its totality I find that the state has proved the guilt of the accused on all counts. The accused was a poor witness. His evidence was unreliable. I do not accept the evidence of the accused as it is not reasonable possibly true.

CONCLUSION

[25] I accordingly come to the following findings:

- i. On count 1, being Kidnapping of Z[...] N[...], the accused is found guilty.
- ii. On count 2, being Rape read with section 51(1) of Act 105 of 1997 of Z[...] N[...], the accused is found guilty.
- iii. On count 4, being Kidnapping of Z[...] P[...], the accused is found guilty.
- iv. On count 5, being Rape read with section 51(1) of Act 105 of 1997 of Z[...] P[...], the accused is found guilty.
- v. On Count 6, being theft, the accused is found guilty.

- vi. On count 7, being Kidnapping of L[...] M[...], the accused is found guilty.
- vii. On count 8, being Rape read with section 51(1) of Act 105 of 1997, the accused is found guilty.

P C N MJAME

ACTING JUDGE OF THE HIGH COURT

Heard: 20 to 24 July 2026

Delivered: 28 July 2026

APPEARANCES

Counsel for the State: Advocate Van Rooyen

Instructed by: Office of Director of Public Prosecutions

Makhanda

Counsel for the accused: Mr Charles

Instructed by: Legal Aid South Africa

Makhanda