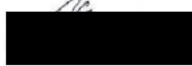


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A72/2025

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
30 JULY 2026 DATE	 SIGNATURE

In the matter between:

THABANG WELCOME MAVIMBELA

Appellant

And

THE STATE

Respondent

Coram: **MNGQIBISA-THUSI J AND KEKANA AJ**

Heard on: **26 MAY 2026**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is electronically circulated to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **30 July 2026**.

JUDGMENT

KEKANA AJ (MNGQIBISA-THUSI J CONCURRING)

Introduction and background

[1] The Appellant was convicted in the Benoni Regional Court of two counts:

- i) count 1 of murder in terms of the provisions of Section 51 (1) of The Criminal Law Amendment Act 105 of 1997 (the CPA);
- ii) count 2, escaping from lawful custody.

[2] The Appellant pleaded guilty to count 2 under section 112 of the CPA and was immediately found guilty. The Appellant was found guilty of count 2 on 19 August 2024, and sentenced to life imprisonment in respect of count 1 on 26 August 2024, and two years' imprisonment in respect of count 2. It was ordered that both sentences shall run concurrently in terms of section 280 of the CPA.

[3] The appeal before us by the Appellant is in respect of the conviction and sentence on count 1, that of murder.

Submissions by parties

[4] The Appellant argues that:

- 4.1 the state did not present any evidence from which to infer that there was a prior agreement between the Appellant and the other two perpetrators to kill the deceased.

4.2 the evidence of the single witness does not prove that the Appellant had shared a common purpose consciously with any of the other two perpetrators to kill the deceased, or that he had foreseen the possibility that the deceased might be killed, and reconciled himself with such a possibility;

4.3 the trial court erred in convicting the Appellant on common purpose. Common purpose only came as an afterthought.

4.4 the trial court erred in not finding substantial and compelling circumstances. The Appellant was a first offender. He was arrested on 19 November 2019, and was held in custody awaiting the finalisation of the trial on 26 August 2024

[5] Respondent submits that:

5.1 the trial court dealt extensively with section 208 of the CPA, as well as the cautionary rules applicable to the evidence of a single witness;

5.2 the trial court believed the witness who testified, and found that the version of the Appellant makes no sense and is not reasonably possibly true;

5.3 authority as regards the doctrine of common purpose, is that when a Court deals with the position where there is no evidence of common purpose, or evidence of a prior agreement, an Accused who was not proved to have contributed causally to the killing or wounding of a victim, can be liable for the events, if:

- i) he was present on the scene;
- ii) was aware of the assault against the victims;
- iii) he must have intended to make common purpose with those committing the assault;
- iv) he must perform some act of association with the conduct of the others;
- v) he must have intended or have foreseen that death might occur and still performed his own act of association with recklessness as to whether death was to ensue.

Condonation

[6] The Respondent seeks condonation for the late filing of its heads of argument. The Respondent submits that there were missing appeal records at the filing date; consequently, an application for a postponement was launched. The Respondent further argues that the delay in the filing of the heads of argument was not a result of fault on its side but rather the incomplete records. This Court is satisfied with the satisfactory explanation provided, and for that reason, condonation is granted.

The Evidence

[7] On 12 November 2021, the deceased was in the company of his friend, Mr Savelo Jiyane. Mr Jiyane went to buy airtime in the shop, and as he went out, he found amongst others, the deceased, the Appellant and someone by the name of "Karas" also called "Makaras", arguing. It was not clear to him what triggered the argument. According to Jiyane, the Appellant, Karas and Upelo took out knives and started stabbing the deceased.

[8] Mr Jiyane went on to testify that the Appellant was the first person to stab the deceased. The deceased tried to run away but fell, and the Appellant, Uphelo and Karas continued to stab the deceased. He went to fetch his vehicle to take the deceased for medical attention. Upon arrival at the medical facility, the deceased was declared dead.

[9] The Appellant denied stabbing the deceased. He testified that he was coming from a bottle store when he saw that Karas was bleeding from a wound on his head. He noticed that the deceased and Karas were fighting with each other. The Appellant testified that he was arguing with Kagiso while Karas was fighting with the deceased.

[10] From the facts, Kagiso held Karas, preventing Karas from stabbing the deceased. The Appellant then held Kagiso and Karas, and the two argued. While the two were arguing, Karas continued to stab the deceased.

Ad Conviction

[11] The issue before this Court is whether the trial court erred in its reliance on the evidence of a single witness. While I agree with the Appellant that evidence of a single witness must be approached with caution, weighed against factors which militate against his or her credibility.” It should be noted that in terms of section 208 of the CPA:

“An accused may be convicted of any offence on the single evidence of any competent witness.”

[12] The Appellant does not allege any contradiction in the testimony of Mr Jiyane as a single witness. I find the overall testimony of Mr Jiyane to be consistent; he did not demonstrate any bias towards the Appellant, and in my view, credible and reliable.

[13] As regards the version by the Appellant, the trial court was correct in its findings in that it is could not be reasonably possibly true. The Appellant was not able to answer why he didn't take Karas for medical treatment, if he was stabbed as he alleged, and just decided to leave him on the street. In addition, it cannot be correct that the Appellant was separating the deceased and Karas by holding Kagiso, who was not fighting and who was not having a knife with him. The Appellant chose to leave the violent person with a knife to continue stabbing the deceased; it is not true that this conduct by the Appellant can be reconciled with that of the person who was trying to separate, as alleged.

[14] As regards conviction, the Appellant's main ground of appeal is that the trial court did not find the Appellant guilty on common purpose, and that the trial court failed to deal with common purpose in the judgment. The Appellant's contention is that it has not been proved that there was an agreement between the Appellant and the two perpetrators.

[15] It is important, as regards common purpose, to distinguish common purpose by agreement and common purpose by active association¹. While this Court agrees that there was no agreement, the evidence shows that there was an active association between the Appellant and the conduct of the other perpetrators.

¹ *S v Mgedezi and Others* 1989 (1) SA 687 (A)

[16] This Court is of the view that but for the conduct of the Appellant by holding Kagiso, who was the only person preventing Karas from stabbing the deceased, enabled Karas to continue stabbing the deceased. The Appellant's conduct accounts for common purpose by association, it associates with that of Karas.

[17] This Court is of the view that the Appellant satisfied all requirements for common purpose by association as listed in *Mgedezi*² in that:

17.1 he was present at the scene where the violence was being committed;

17.2 he was aware of the assault on the deceased;

17.3 he intended to make common cause with those who were actually perpetrating the assault;

17.4 he manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with the conduct of the others;

17.5 he should have foreseen the possibility of the deceased being killed and performed his own act of association with recklessness as to whether or not death was to ensue.

[18] As regards the argument by the Appellant that common purpose was an afterthought, as it was not explicitly mentioned in the judgment. It is this Court's view that the judgment does not need to contain a full, textbook articulation of the doctrine. The test is whether the court's reasoning shows it understood and applied the correct test. If, in its analyses of the evidence against an accused, the court considered the requirements for common purpose, then the conclusion is strong that it has applied the doctrine of common purpose, even if the term itself is not explicitly stated.

[19] The appeal on conviction is, as a result, dismissed.

Ad Sentence

[20] In the case of *S v Rabie*³ it was stated by Holmes JA that:

² *Mgedezi* (supra).

³ 1975(4) SA 855 (A).

"In every appeal against a sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal -

- (a) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court"; and*
- (b) should be careful not to erode such discretion; hence the further principle that the sentence should only be altered if the discretion has not been "judicially and properly exercised."*

[21] The question, therefore, is whether this Court has the authority to alter the sentence of life imprisonment imposed by the trial court. Put differently, the question is whether the discretion of the trial court has not been judicially and properly exercised.

[22] This Court will only interfere with the sentence imposed by the trial court where there has been an irregularity that results in a failure of justice; that the court below misdirected itself to such an extent that its decision on sentence is vitiated; or the sentence is so disproportionate or shocking that no reasonable court could have imposed it⁴.

[23] The Appellant was convicted of one count of murder and escaping from lawful custody with the provisions of section 51(1) of the Criminal Law Amendment Act, Act 105 of 1997 (CLAA), which provides that:

"[n]otwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in Part I of Schedule 2, to life imprisonment."

[24] It is argued on behalf of the Appellant that the learned magistrate misdirected herself in finding that the Appellant failed to prove the existence of substantial and compelling circumstances in this matter. The trial court was too harsh in imposing a sentence of life imprisonment.

[25] It is trite that a material misdirection by the trial court vitiates its exercise of its discretion. In **S v Malgas**, the Supreme Court of Appeal held that:

⁴ S v Bogaards 2013 (1) SACR 1 (CC) at para 41.

“Where material misdirection by the trial court vitiates its exercise of that discretion, an appeal court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate court is large”.⁵

[26] The trite traditional factors applicable to sentencing are the personal circumstances of the offender (this would include mitigating and aggravating factors); the nature and gravity of the offence; and the interests of society.⁶ In determining the sentence to be imposed, the purpose of sentencing, being prevention, retribution, reformation and deterrence, must also be taken into account.⁷

[27] The personal circumstances of the appellant tendered in mitigation of sentence are that:

27.1 the Appellant was 32 years old;

27.2 he is single;

27.3 he has a Grade 10 education;

27.4 he has no children;

27.5 he was a first offender;

27.6 he was self-employed and earned an income of R1500 per week, working in construction;

27.7 he supported two siblings aged 18 and 23 as their parents were both deceased;

27.8 he was held in custody from his arrest on 19 November 2019, until sentence was imposed on 26 August 2024.

[28] In terms of section 51(3) of the CLAA, the trial court has discretion to impose a lesser sentence than the one prescribed by law, provided there are substantial and compelling circumstances which justify the imposition of a lesser sentence.

⁵ *S v Malgas* 2001 (2) SA 1222 (SCA) para 12.

⁶ *Ibid* at para 25F.

⁷ *S v RO and Another* 2010 (2) SACR 248 (SCA) para 30.

[29] Section 51(3) of the CLAA provides as follows:

"If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence."

[30] It is this Court's view that there are substantial and compelling circumstances warranting a deviation from imposing the prescribed sentence. Although one can consider the personal circumstances of the Appellant, such factors cannot be overemphasised in light of the gravity of the offence and the interests of society. This Court is, thus, at large to look at sentence afresh.

[31] The circumstances under which this offence was committed, and the gravity of the offence, a lengthy custodial sentence is still warranted. The deceased died a very gruesome death with multiple stab wounds.

Conclusion

[32] The court must not evaluate the single witness's evidence in isolation. It must consider it alongside all other evidence presented at trial to determine whether the State has proven guilt beyond reasonable doubt. The final conclusion must account for the totality of the evidence. This Court is satisfied that the trial court was correct in its admission of the evidence of Mr Jiyane, more so as the evidence of the Appellant was in itself not reasonably possibly true.

[33] This Court concludes that while the term common purpose may not have been preferred in the judgment, factors applicable in the doctrine were considered and hence the Appellant was correctly found guilty of murder with common purpose by association.

[33] The magistrate should have at least considered the existence of substantial and compelling circumstances. The sentence imposed by the trial court is shockingly too harsh given the fact that the Appellant is a first-time offender and that there is no evidence that the offence was planned. Additionally, it could not be prove that there was common purpose by agreement but rather the conclusion was only made on

common purpose was by association. Under the circumstances, this Court is of the view that the sentencing imposed warrant interference from this Court.

Order

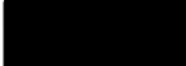
[34] In the circumstances, the following order is made:

1. The appeal against conviction is dismissed.
2. The appeal on sentence is upheld, and the imposed sentence of life imprisonment is set aside and replaced with a sentence of 20 years imprisonment.
3. The sentence is to be ante-dated to the date of 26 August 2024.



ND KEKANA
ACTING JUDGE OF THE HIGH COURT

I concur,



NP MNGQIBISA-THUSI
JUDGE OF THE HIGH COURT

Date of hearing: 28 May 2026
Date of judgment: 30 July 2026

APPEARANCES:

For the Appellant: Adv LA Van Wyk (Legal Aid, SA)

For the Respondent: Adv P Jacobs (Office of the Director of Public Prosecutions,
Gauteng Division, Pretoria)