

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A2025/226222

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. ✓
28/08/2026	
DATE	SIGNATURE

In the matter between:

GOLIATH, ANVER ALFRED

Appellant

And

THE STATE

Respondent

CORAM: MABESELE J AND KARAM AJ

J U D G M E N T

MABESELE J (KARAM AJ concurring):

[1] The appellant, Mr Goliath Alfred, was convicted in the regional court, Vosloorus, on a charge of attempted murder, read with the provision of s 51(2) of the Criminal Law Amendment Act¹. He was sentenced to 12(twelve) years imprisonment. He was legally represented throughout the trial.

[2] Aggrieved by the conviction and sentence imposed upon him, Mr. Goliath sought leave to appeal to this Court against the conviction and sentence. Leave to appeal was granted against both the conviction and sentence.

[3] Mr. Goliath contends, *inter alia*, that the statements of the complainant; Clifford Ruiters (now deceased) ought not to have been admitted by the *court a quo* as part of evidence for the state. The reason being that the statements constitute hearsay evidence, and that the *court a quo* has attached too much weight to them. Mr. Goliath contends further that his corroborated version should have been accepted as reasonably possibly true.

[4] In his plea-explanation, tendered in terms of s115 of the Criminal Procedure Act ("the CPA")² Mr. Goliath stated that on 18 October 2020 he was at the park with the deceased and other friends and family members. He and the deceased had an argument whereafter the deceased swore at him. He and Mr. Roger Adams left. On their way to his car he heard gunshots and drove away. He denied that he shot the deceased.

[5] The deceased passed away before the trial commenced in the *court a quo*. He was shot and killed in an incident unrelated to this matter. Before his untimely death, the deceased made several statements to the police, explaining how it came about that Mr. Goliath shot him on 18 October 2020. His demise triggered an application by the state for admission into evidence of the statements in terms of s 3(1)(c) of the Law of Evidence Amendment Act³. The application was granted and the statements were admitted as part of the evidence of the state. Two of the statements are relevant to this matter.

¹ 105 of 1997

² 51 of 1977

³ 45 of 1988

[6] In the first statement dated 20 October 2020, the deceased stated that Mr. Goliath accused him of swearing at him and fired two shots in the air. Mr. Goliath took two steps backward and shot him twice in the stomach as he turned with the intention to walk away.

[7] In the second statement dated 10 November 2020, he stated that he heard Mr. Goliath saying he wants to shoot someone. Mr. Goliath took out a firearm and pointed it at his head. He decided to leave. Mr Goliath approached him and accused him of swearing at him. Thereafter Mr. Goliath shot him in the stomach.

[8] Mr. Kevin Clyde Koopman testified that he is in the employ of Netcare 911. He is a medic. He is stationed at the call center in Sunninghill. He usually accompanies the paramedics when called to attend to emergencies in the community.

[9] On 18 October 2020, Mr. Koopman was at his place of residence at Reiger Park, when he received a call from members of the community, informing him that someone by the name of Clifford Ruiters was shot. He went to the crime scene. Upon arrival at the crime scene he found a man lying on the ground at the public park. The area or public park was dark. Mr. Koopman used a torch to see what was happening. The light from the nearby houses could not reach the park.

[10] Mr. Koopman testified that the deceased told him that he was shot. He noticed an injury on the abdomen. He arranged for the ambulance to take the deceased to the hospital.

[11] Mr. Ronald Ntsoane testified that he is a policeman in the employ of the South African Police Services. He is stationed at Reiger Park police station. He was the investigating officer in this matter. He took several statements from the deceased.

[12] After the state had closed its case, Mr. Goliath applied for his discharge in terms of s 174 of the CPA on the basis that the state has failed to establish a *prima facie* case against him. The application was dismissed on the basis that Mr. Goliath has a case to answer.

[13] Mr. Goliath took the stand. He is a cousin of the deceased. Both had a close and good relationship. He testified that on 18 October 2020 at approximately 13h00, he arrived at the public park, at Reiger Park. He found 10 to 15 people (including the deceased) relaxing. He knew most of the people at the park. He joined them, and all drank alcohol.

[14] When it became dark, he told Mr. Roger Adams about the mechanical problems of his motor vehicle. While he was talking to Mr. Adams, the deceased came and asked about the problem with the motor vehicle. He told the deceased that the fan did not come on. When the deceased suggested to him to connect a wire directly from the battery to the fan, he informed the deceased that he had done that, already, but the engine did not start. The deceased swore at him. In order to avoid further argument, he told Mr. Adams that he was going home. Mr. Adams walked with him to the vehicle. While getting into the vehicle he heard two gunshots. He turned around and saw people running. He then told Mr. Adams to get into the vehicle, and he drove off.

[15] Mr. Goliath said that when he arrived at his residence, in Klippoortjie, he tried to call the people at the park to ask what had transpired, and no one answered the cellphones. Later on, his cousin, one Romeo, called him and informed him that the deceased was shot and taken to the hospital. He asked Romeo to come and pick him and Mr. Adams up and drive them to the hospital. Romeo came and drove them to the hospital. Upon arrival at the hospital, the nurse refused them access into the ward. Romeo drove them back home.

[16] Mr. Adams testified that he was at the park together with the deceased and approximately 15 other people, enjoying themselves, when Mr. Goliath arrived at the park. Mr. Goliath joined them and all were drinking alcohol.

During the course of the day Mr. Goliath told him about the mechanical problems with his motor vehicle. The deceased joined the discussion, and Mr. Goliath and the deceased ended up arguing to the extent that the deceased swore at Mr. Goliath. The deceased was drunk. He and Mr. Goliath decided to leave the park. On their way to Mr. Goliath's vehicle he heard gunshots. They got into the vehicle and drove away.

[17] Mr. Adams testified that when they arrived at Mr. Goliath's residence, Mr. Goliath made calls to find out what had actually happened at the park and did not receive a response. Mr. Adams said that Mr. Goliath ultimately received a call from Romeo, informing him that the deceased was shot and taken to the hospital. Romeo came and picked them up. They all drove to the hospital. Upon arrival at the hospital, the nurse refused them access and Romeo drove them back home

[18] The appellant was convicted on hearsay evidence, arising from the statements made by the deceased. The position in our law is that such evidence shall not ordinarily be permitted as evidence at criminal or civil proceedings. In this regard, s3 of the Law of Evidence Amendment Act⁴ states:

'Subject to the provisions of any other law hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-

- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;
- (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or
- (c) the court, having regard to-

⁴ Ibid

- (i) the nature of the proceedings;
- (ii) the nature of evidence;
- (iii) the purpose for which the evidence is tendered;
- (iv) the probative value of the evidence;
- (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
- (vi) any prejudice to a party which the admission of such evidence might entail; and
- (vii) any other factor which should in the opinion of the court be taken into account,

is of the opinion that such evidence should be admitted in the interests of justice'.

[19] Subsection (2) provides that, the provisions of subsection (1) shall not render admissible any evidence which is inadmissible on any ground other than that such evidence is hearsay evidence.

[20] Subsection (3) provides that hearsay evidence may be provisionally admitted in terms of subsection (1) (b) if the court is informed that the person upon whose credibility the probative value of such evidence depends, will himself testify in such proceedings: Provided that if such person does not later testify in such proceedings, the hearsay evidence shall be left out of account unless the hearsay evidence is admitted in terms of paragraph (c) of that subsection.

[21] The trial court was alive to the provisions of S3 of the Law of Evidence Amendment Act. It rightly admitted the statements of the deceased in the

interests of justice, stating that the deceased had been attending court on numerous occasions, that on each occasion, the trial could not proceed because the accused claimed to be sick and not fit to participate in the proceedings.

[22] The Supreme Court of Appeal in **S V Ndlovu**⁵ highlighted the circumstances under which the 'admissibility of hearsay evidence in the interests of justice' may not be challenged. The Court said the following: *'Use of hearsay evidence by the State does not violate the accused's right to challenge evidence by cross examination, if it is meant that the inability to cross-examine the source of a statement in itself violates the right to "challenge" evidence. The Bill of Rights does not guarantee an entitlement to subject all evidence to cross-examination. What it contains is the right [subject to limitation in terms of s36] to "challenge evidence". Where the evidence is hearsay, the right entails that the accused is entitled to resist its admission and to scrutinize its probative value, including its reliability. The provisions enshrine these entitlements. But where the interests of justice, constitutionally measured, require that hearsay evidence be admitted, no constitutional right is infringed. Put differently, where the interests of justice require that hearsay statement be admitted, the right to "challenge evidence" does not encompass the right to cross-examine the original declarator'.*

[23] The Court explained 'probative value' and 'prejudice' as follows: 'Probative value' means value for purposes of proof. This means not only 'what will the hearsay evidence prove if admitted,' but 'will it do so reliably?' Further, 'prejudice' in s3 clearly means procedural prejudice to the party against whom the hearsay is tendered. It envisages the fact that the party against whom hearsay is tendered cannot cross-examine the original declarant. That prejudice is always present when hearsay is admitted. It must be weighed against the reliability of the hearsay in deciding whether, despite inevitable prejudice, the interests of justice require its admission. The suggestion that the prejudice in question might include the disadvantage ensuing from the hearsay

⁵ 2002(6) SA 305 (SCA) at 307; F-H

being accorded with its just evidential weight once admitted must be discountenanced. Where the interests of justice require the admission of the hearsay, the provision does not require the absence of all prejudice'⁶.

[24] The question is whether each or both of these statements are reliable or contradict each other.

[25] The issue of the reliability of the statement or its probative value was dealt with, succinctly, **S V Kapa**⁷. Majiedt J, writing for the majority, was of the view that the reliability of the statement or for it to have probative value in its entirety, does not require that every material aspect of it must be corroborated. The requirement is that there must either be corroboration of every material aspect of the statement or corroboration of a significant number of material aspects.

[26] In the first and second statements the deceased stated that Mr. Goliath accused him of swearing at him and shot him in the stomach. In the first statement the deceased said he was shot twice in the stomach. In this regard, Dr. Carrim, in his medico- legal examination report (known as J 88 form) noted two wounds on the body of the deceased; one on the right flank of the abdomen and one on the left flank of the abdomen.

[27] Although the deceased did not give a reason that led to an accusation by Mr. Goliath that he swore at him, and did not mention the insult directed by him at Mr. Goliath, both messrs Goliath and Adams testified that Mr. Goliath and the deceased argued about the mechanical problems of Mr. Goliath's vehicle, and the deceased labelled Mr. Goliath as a 'poes'.

[28] Mr. Adams explained the argument between Mr. Goliath and the deceased as follows: '*They argued to such an extent that the complainant ended up swearing at the accused*'. It is clear from this phrase that there was a heated argument between Mr. Goliath and the deceased. In such circumstances, can

⁶At 308, H-I

⁷2023 (1) SACR 583 (cc)

it be said that, indeed, Mr. Goliath avoided further argument and went home, or that he shot the deceased for being called a 'poes'

[29] The testimony of Mr. Adams in so far as it relates to the nature and extent of the argument between Mr. Goliath and the deceased, as well as the nature or type of insult directed to Mr. Goliath by the deceased, points to the truthfulness and reliability of the statements of the deceased that Mr. Goliath accused him of swearing at him and shot him twice in the stomach.

[30] Regard should also be had that the people who gathered at the park on the day the deceased was shot, were relaxed, enjoying their drinks and laughing. There is no evidence that someone became violent at some stage, except Mr. Goliath and the deceased who were engaged in a heated argument. In fact, Mr. Goliath testified that the majority of the people who were gathered at the park were friends and family members. Therefore, it cannot be said that the deceased was shot by anyone among the group, save for Mr. Goliath.

[31] The testimony of Messrs Goliath and Adams that Romeo informed them about the shooting of the deceased is not confirmed by Romeo. It is illogical that Romeo would have fetched Messrs Goliath and Adams, with his vehicle, from Mr. Goliath's residence to take them to the hospital to visit the deceased, as alleged by Mr. Goliath. Mr. Goliath had his own vehicle which he drove to the park and back home. No explanation is given as to why he was unable to use his own vehicle, if in fact they did proceed to the hospital. For all these reasons the appeal against conviction cannot succeed.

[32] Mr. Goliath was sentenced to a period of 12 years imprisonment on a charge of attempted murder, read with the provisions of s 51(2) of Part 4 of schedule 2 of the Criminal Law Amendment Act. Part 4 makes provision for the minimum sentences as follows:

- (i) five years imprisonment for a first offender;
- (ii) seven years imprisonment for a second offender;
- (iii) ten years imprisonment for a third or subsequent offender.

[33] The maximum sentence that a Regional Court may impose in terms of Part 4 of Schedule 2 shall not be more than five years longer than the minimum sentence that it may impose in terms of the subsection. Accordingly, the maximum sentence that the trial court could have imposed was a sentence of 10 years imprisonment, provided there were no substantial and compelling circumstances that justify a lesser sentence.

[34] Mr. Goliath was 37 years old, first offender, married and has children. He was unemployed. The trial court found no substantial and compelling circumstances that justified deviation from the prescribed minimum sentence.

[35] We are of the view that:

35.1 The trial court erred in failing to find the following factors, cumulatively considered, constitute substantial and compelling circumstances warranting a departure from the prescribed minimum sentence:

35.1.1 The fact that the appellant is a first offender;

35.1.2 The fact that the appellant had spent multiple hours consuming alcohol and were under the influence thereof;

35.1.3 The fact that the relevant parties had engaged in an altercation pertaining to the mechanical problems with the appellant's motor vehicle;

35.1.4 The fact that the deceased had in the course of such altercation and in their state of inebriation, provoked the appellant in calling him "a poes".

35.2 Accordingly, and whilst we find that the trial court was justified in invoking its powers to increase the minimum sentence applicable, given the aggravating factors in the matter, it is evident from the record of the proceedings that the aforesaid relevant mitigating factors were not considered by the trial court either adequately or at all in its consideration of sentence.

[36] In the result, the following Order is made:

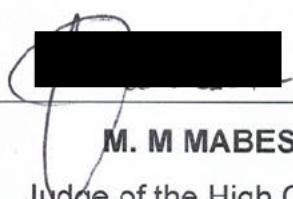
36.1 The appeal is upheld, partially.

36.2 The appeal against conviction is dismissed.

36.2.1 The conviction is confirmed.

36.3 The appeal against sentence is upheld.

36.3.1 The sentence of 12 years imprisonment imposed on Mr. Goliath is set aside and substituted with a sentence of 8 years imprisonment. This sentence is antedated to 28 July 2025.



M. M MABESELE

Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing : 27 July 2026
Date of judgment : 28 August 2026

Appearances

On behalf of the appellant: C.van As
Instructed by: Botha, Booysen & Van As Attorneys
Boksburg

On behalf of the respondent: N.P Tyeku
Instructed by: Office of the Director of Public Prosecutions
Johannesburg