

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case no: CCD09/2025

In the matter between:

THE STATE

and

DUDUZILE ZUMA-SAMBUDLA **ACCUSED**

ORDER

The following order is made:

The accused's application in terms of s 174 of the Criminal Procedure Act 51 of 1977 is refused.

JUDGMENT

Mathenjwa J

[1] At the close of the State's case the accused applied for a discharge in terms of s 174 of the Criminal Procedure Act 51 of 1977 (the CPA). The accused is being tried on one count of incitement to commit the offence of terrorism under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act

33 of 2004; one count of incitement to commit public violence read with s 18(2)*(b)* of the Riotous Assemblies Act 17 of 1956 (the RAA), and one count of incitement to commit public violence, read with s 17 of the RAA. The State is opposing the application.

[2] The accused posted on her public twitter account texts, images, audio and video clips prior to and during the period 7 to 17 July 2021 being the time of widespread incidents of unrest that unfolded in KwaZulu-Natal and Gauteng. The accused made admissions in terms of s 220 of the CPA admitting publication of these posts and accompanying statements. Some of the posted material consisted of images and video clips of the unrest while others contained images, audio and video clips not linked to the unrest. Some of the posts and accompanying statements are considered by the State witnesses to constitute incitement to terrorism and violence while other posts are considered by the State witnesses to be neutral and not constituting incitement to either terrorism or violence.

[3] Some of the video and video clips depicted the burning of infrastructure, discharging of guns, barricaded roads, AmaZulu regiments in their traditional attire carrying traditional weapons and, someone shooting at the posts depicting a picture of the sitting president wearing the African National Congress t-shirt. Some of the contentious statements amongst others between the State and the defence are the following statements; “We see you”, or “I see you, Amandla”, “your struggle continues from the outside and we must intensify Amandla”, “take the day off from being the bigger person, and choose violence, you deserve it” and a call for a total shutdown in KwaZulu-Natal. There is also evidence of the comments made by the followers of the accused on her Twitter account, some warning her that she was inciting violence while others were supporting her.

[4] The State called seven witnesses, four of whom were involved in the investigation of the offences and two of whom were employed by the State to translate some of the statements from English to Isizulu and vice versa. These witnesses supported the State’s case to the effect that the publication of the posts and statements by the accused constituted either incitement to terrorism and violence or incitement to violence. Some of the witnesses made concessions during

cross-examination by the defence counsel that some of the posts and statements individually do not constitute incitement to commit either terrorism or violence.

[5] The defence counsel submitted that the accused should be discharged at this stage of the criminal proceedings because the State has not established a prima facie case against her. Conversely, counsel for the State submitted that the accused should not be discharged at this stage because the State has made a prima facie case against the accused.

[6] The legal principles relating to the discharge of the accused at the end of the State's case was succinctly stated by both counsel for the defence and the State. Section 174 of the CPA provides:

'If, at the close of the case for the prosecution at any trial, the court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge, it may return a verdict of not guilty.'

The words "no evidence" at the close of the prosecution's case does not mean a complete absence of evidence, but absence of evidence upon which a reasonable court acting carefully, might convict.[1] At this stage of the trial the court is required to determine whether:[2]

'the State produced some evidence on each element of each charge that, if left unanswered, could possibly sustain a conviction. If the answer is yes, the application must fail. If the answer is no, the accused is entitled to be discharged on that count.'

[7] The accused must be discharged at the close of the State's case if there is no possibility of a conviction other than if the accused enters the witness box and incriminates herself.[3] At this stage of the trial the court does not determine the credibility of witnesses in a final sense nor whether the State has proved its case beyond a reasonable doubt.[4] However it is trite that if the evidence adduced by the State is of such poor quality that no reasonable person could accept it, the court should ignore the evidence adduced by the State and discharge the accused at the close of the State's case.

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[1] *S v Lubaxa* 2001 (2) SACR 703 (SCA) (*Lubaxa*) para 10; *S v Agliotti* 2011 (2) SACR 437 (GSJ) para 257.

[2] *S v Soboyise and Another* [2026] ZAWCHC 23 (*Soboyise*) para 5.

[8] This leads me to the evidence presented before this court. The evidence existed in the form of tweets, posts and statements accompanying the posts; admissions by the accused on the publication of the posts and accompanying statements; comments made by the accused's followers responding to her tweets, with some warning her that she was inciting violence and others supporting her; and evidence of witnesses involved in the investigation of the matter. Both counsel for the State and defence agreed that the evidence relating to the comments by the accused's followers was admissible, but the dispute would be on the weight to be accorded to such evidence.

[9] Given the nature of the evidence (real evidence) placed before court; the diametrically opposed views between the State and the defence about the meaning to be attributed to the posts and accompanying statements; and the lawfulness of the conduct and the intention of the accused, it is in the interests of justice for the court to conduct a holistic evaluation of the evidence at the end of the trial. In the circumstances of this case, it would be at the end of the trial that the court would be able to determine whether the accused is guilty or not. At that stage, the court will determine the credibility of the witnesses in a final sense, assess the probative weight of evidence and determine whether such evidence meets the standard of proof beyond reasonable doubt. For these reasons, the application.to discharge the accused at the close of the State's case must fail.

Order

[10] The following order is made:

The accused's application in terms of s 174 of the Criminal Procedure Act 51 of 1977 is refused.

Mathenjwa J

[3] *Lubaxa* para 18.
[4] *Soboyise* para 5.

Appearances

State's counsel:	Mr Moolman, Ms Ramkilawon and Mr Naidu
Instructed by:	Director of Public Prosecutions Durban
Accused's counsel:	Mr Mpofu SC with Mr Moela
Instructed by:	KMNS Attorneys Sandton
Date hearing:	29 October 2026
Date of judgment:	6 November 2026