

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: AA 14/2017

(1)	REPORTABLE: <u>YES/NO</u>
(2)	OF INTEREST TO THE JUDGES: <u>YES/NO</u>
(3)	REVISED.
Signature	<i>[Handwritten Signature]</i>
Date	<u>24/4/2018</u>

In the matter between:

KHEHLA JONATHAN HLATSWAYO

1ST APPELLANT

NEO TLADI

2ND APPELLANT

NKOSINATHI KHUMALO

3RD APPELLANT

ISHMAEL POOE

4TH APPELLANT

MDUDUZI CEFRID NKOSI

6TH APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

MAKGOBA JP

- [1] The five Appellants in this matter were convicted by a single Judge of this Division (Mphahlele J) on 4 March 2016 of the following charges:
- 1.1. Count 1: Contravention of section 18(2)(a) of the Riotous Assemblies Act 17 of 1956 – Conspiracy to commit a crime of theft;
 - 1.2. Count 2: Contravention of section 27 (1) read with sections 27(1)(c) and 27(3) of the Explosives Act 26 of 1956 – Endangering life or property alternatively malicious injury to property;
 - 1.3. Count 3: Contravention of section 51(1) read with sections 27 and 28(2) of the Explosives Act 26 of 1956 – Unlawful possession of explosives;
 - 1.4. Count 4: Theft read with section 51(2) of the Criminal Law Amendment Act 105 of 1997;
 - 1.5. Count 5: Robbery with aggravating circumstances;
 - 1.6. Count 6: Kidnapping;
 - 1.7. Count 7: Robbery with aggravating circumstances;
 - 1.8. Count 8: Kidnapping
 - 1.9. Count 9: Kidnapping
- [2] The Appellants were sentenced on the 30 June 2016. The sentences in count 1,2,3,5,6,7,8 and 9 were made to run concurrently with the sentences in count 4, resulting in the effective sentences of 11 years imprisonment in respect of

Appellants number 1, 2, 3 and 4; and the effective sentence of 12 years imprisonment in respect of the 6th Appellant.

[3] This appeal, with leave of the trial Court, is against the conviction only.

[4] The conviction of the Appellants arise from an incident that occurred on 18 March 2008 when three automatic teller machines (ATM) at Masubelele Shopping Complex at Botlokwa, Limpopo Province , were bombed, damaged and a certain amount of cash was stolen. All the Appellants had pleaded not guilty to all charges.

Admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977.

[5] At the start of the trial the following admissions were made by the Appellants, who were all legally represented, and recorded in terms of section 220 of the Criminal Procedure Act 51 of 1977:

5.1. That two Standard Bank automatic teller machines as well as one Nedbank automatic teller machine based at Masubelele Filling Station were damaged on the 18 March 2008. That the damage was caused by explosives blast.

5.2. That the two Standard Bank automatic teller machines were damaged beyond repair and that there was an amount of R 242 680.00 in the

Standard Bank automatic teller machines at the time of the damage. After the damage an amount of R 4 872.00 was recovered from the damaged machines.

- 5.3. That the amount that was stolen was R 237 810.00.
- 5.4. That Warrant Officer Lombard handed over to Johan Eloff of SBV a money bag containing R 137 216.00 cash with official serial number 4377894 from the Nedbank automatic teller machine.
- 5.5. That Johan Eloff further received an official police evidence bag with seal number FSC 778669 containing notes and pieces of notes from the damaged Standard Bank automatic teller machines.

Uncontested evidence of state witnesses, Lucas Mangena, Simon Ratsaka and Ephraim Mashiane.

- [6] The abovementioned three witnesses are complainants in counts 5 (robbery with aggravating circumstances), 6 (kidnapping), 7 (robbery with aggravating circumstances), 8 (kidnapping) and 9 (kidnapping). The witness Mangena was employed as a security guard at Perseverance Garage at Masubelele Shopping Complex. In the early hours of the 18 March 2008 he was on duty with the two petrol attendants employed at the garage, namely Simon Ratsaka and Ephraim Mashiane.

They were attacked by a group of men (more than five in number) who were armed with firearms. They were ordered to lie down next to a Venture motor vehicle. One of the assailants had earlier alighted from a Jetta motor vehicle which had earlier stopped at the filling station and thereafter drove away.

- [7] The assailants searched the three witnesses and in the process took Mr Mangena's Nokia 1600 cellphone, his cap and hand gloves. They also took Mr Mashiane's new jacket, cellphone and a cash amount of R 700.00. The three witnesses were made to stand up and by force escorted into a toilet wherein they were instructed to hold on to the wall and not look back. One of the assailants, holding a big firearm, watched over them. While in the toilet they heard three loud explosion sounds, with intervals between the sounds. They later heard sounds of about three motor vehicles speeding away. The three witnesses were kept in the toilet and still held on to the wall until the owner of the filling station, Mr Chris Masubelele came with the Police and rescued them.
- [8] The three state witnesses all testified, corroborated each other but none of them could identify their assailants as the men were wearing balaclavas over their faces. The witnesses later noticed that two Standard Bank automatic teller machines as well as one Nedbank automatic teller machine on the

premises were damaged by the explosion and some of the money lying on the floor.

- [9] The evidence of the aforementioned three witnesses, even though it does not point out any of the Appellants as perpetrators, proves beyond reasonable doubt that the offences of robbery with aggravating circumstances (count 5), kidnapping (count 6), robbery with aggravating circumstances (count 7), kidnapping (count 8) and kidnapping (count 9) have been committed on the 18 March 2008 at Masubelele Filling Station, Botlokwa.

Evidence of Kgadi Sarel Nong – Section 204 witness.

- [10] The witness Kgadi Sarel Nong is an accomplice in the commission of the offences allegedly committed by the Appellants. He was called as a state witness and duly warned in terms of Section 204 of the Criminal Procedure Act 51 of 1977. He testified that he knew all the Appellants. He first met Mr Kehla Hlatshwayo, Appellant number one in Polokwane when they were in preparation for the commission of the crimes in Botlokwa. He spent much time with Appellant number one in the latter's silver Nissan Nevara motor vehicle. This Nevara motor vehicle was intended to be used as a getaway car after the commission of the crimes.

- [11] Appellant number two, Mr Neo Tladi is the one who called him on the day the Appellants came to Polokwane on 17 March 2008. Mr Tladi was referred to him by one Mr Snell Phoshoko, a friend of his who is working in Gauteng. Mr Phoshoko had informed him that the Appellants were his friends who were supposed to come to Polokwane to do some job. Mr Phoshoko further informed him that the intention was to use this witness' house as a hideout.
- [12] On 17 March 2008 Appellant number two arrived at Mr Nong's house in the company of another person in a white double Cap Van. Then later on Appellant number one called on Appellant number two's cellphone for direction to Mr Nong's house. On arrival at Mr Nong's house Appellant number one was in the company of Appellant numbers three and six. Appellant six fetched a bag containing sausage like items from the Nissan Nevara motor vehicle and brought them into the house.
- [13] Later that night of 17 March 2008 or in the early hours of the 18 March 2008 Mr Nong, Appellants 1,2,3 and 6 left Nong's house in two cars for Botlokwa. En route at a filling station just outside Polokwane they were joined by two other cars, a BMW and a Jetta. Mr Nong was not able to see the occupants of those two cars as their windows were tinted black. All cars proceeded to Botlokwa. Mr Nong was a passenger inside the Nevara motor vehicle driven by Appellant number one.

At a fourway junction in Botlokwa the Nevara motor vehicle took a right hand turn and stopped immediately at the side of the road, a distance from the filling station where the automatic teller machines were to be damaged. The other motor vehicles drove towards the direction of the filling station where there was a shop and Standard Bank automatic teller machines. In the Nevara motor vehicle at the time it was Mr Nong and Appellant number one.

[14] While waiting on the side of the road Appellant number one was busy talking to Appellant number two on the phone. He was looking in the direction of the filling station and wanted to know from Appellant number two as to how far they were. Appellant number one was calling Appellant number two by the name of Neo while talking on the phone. After a twenty minutes wait there was a loud explosion sound and thereafter the other motor vehicles came back and they all drove away taking the Soekmekaar road.

[15] Mr Nong testified that he got to know Appellant number four, Mr Ishmael Pooe on that night. While driving with Appellant number one in the Nevara motor vehicle Appellant number one invited Appellant number four to ride with him in the Nevara motor vehicle. Mr Nong then went into the Jetta motor vehicle and Appellant number four moved from the Jetta motor vehicle into the Nevara motor vehicle. One of the reasons why Mr Nong had to travel in the Jetta

motor vehicle was for him to guide and give directions on the road since the driver of the Jetta motor vehicle was not familiar with that road.

[16] They took the Soekmekaar Road, through Turfloop to Bendor in Polokwane. In the Jetta motor vehicle Mr Nong was with Appellant number three and the driver of the Jetta motor vehicle. At Bendor they were chased by a police van and then lost sight of the other cars.

They took refuge at Mr Nong's friend's house in Eduan Park until in the morning when they left for Gauteng in the Jetta motor vehicle. In Gauteng they met with Appellants 1, 2 and 6. Appellant two gave Mr Nong a cash amount of R 14 000.00 as his share and accompanied him to take a taxi to Polokwane. While in Polokwane Mr Nong was contacted by Appellant number three enquiring whether he had a safe journey back home.

[17] In evaluating Mr Nong's evidence the Court *a quo* correctly regarded him as an accomplice in this case and for the following reasons:

- He agreed for his house to be used as a safehouse;
- He was aware that the intentions of the Appellants were to damage the automatic teller machines and take money;
- He travelled with the Appellants to the scene of the crime, albeit he and Appellant number one waited in the Nevara motor vehicle a distance from the scene of the crime and

- He thereafter received an amount of R 14 000.00 as his share.

The Court *a quo* made a finding that the quality of Mr Nong's evidence satisfies the cautionary rule applicable to the assessment and evaluation of the evidence of an accomplice and a single witness.

- [18] The Court *a quo* properly warned itself of the special danger of convicting on the evidence of an accomplice. It appears clearly from the judgment of the Court *a quo* that reference was made to the case of **State v Hlapezula and Others 1965 (4) SA 439 (AD)** where Holmes JA stated the following at 440 D – E:

"It is well settled that the testimony of an accomplice requires particular scrutiny because of the cumulative effect of the following factors: first, he is a self-confessed criminal. Second, various considerations may lead him falsely to implicate the accused, for example, a desire to shield a culprit, or particularly where he has not been sanctioned, the hope of clemency. Third, by reason of his inside knowledge, he has a deceptive facility for convincing description – his only fiction being the substitution of the accused for the culprit"

See also **R v Ncanana 1948 (4) SA 399 (AD)** at pp 405-6.

- [19] The learned Judge *a quo* did not only warn herself of the danger of convicting on the evidence of an accomplice but went further to find corroboration of Mr Nong's evidence from the evidence of cellphone contacts amongst all the

Appellants. I shall deal with the cellphone contacts evidence later in this judgment.

The Appellate Division (as it then was) stated the following in **S v Avon Bottle Store (Pty) Ltd and Others 1963 (2) SA 389 (AD) at 393 F – G**.

“It is clear that the cautionary rule requires no more than an appreciation by the trier of fact of the risk of false incrimination of an accused by an accomplice, a risk which will be reduced by the presence of certain features, such as corroboration of the accomplice implicating the accused. The absence of such features will, however, not by itself invalidate a conviction on accomplice evidence if the trier of fact appreciated the peculiar danger inherent in in accomplice evidence”

[20] The Court *a quo* regarded Mr Nong as a credible witness and accepted his evidence as reliable. This is a credibility finding with which the appellate Court is slow to temper with. Where there has been no misdirection on fact by the trial Court, the presumption is that the conclusion is correct. The appellate Court will only reverse it where it is convinced that it is wrong.

See **Rex v Dhlumayo and Another 1948 (2) SA 677 (AD)**.

In *casu* I do not find any misdirection by the Court *a quo* on its factual findings regarding the credibility of the witness, Mr Nong.

Evidence of Warrant Officer Lombard – the Investigating Officer

[21] Warrant Officer Liezel Lombard is the investigating officer in this case and is based at Polokwane Organised Crime Unit. She testified that on 18 March

2008 she attended the scene of the crime at the Perseverance Filling Station at Botlokwa. On the night the automatic teller machines were damaged one of the security guards at the filling station, Mr Lucas Mangena, was robbed of his cellphone. Upon investigation it was discovered that a different sim card was inserted into Mr Mangena's cellphone. The number of the sim card was established and they managed to identify numerous cellphone numbers which made contact with this number at the time of the incident. The cellphone number of the sim card inserted in Mr Mangena's cellphone handset is 076 499 6483.

[22] A breakthrough in this case was made when Appellant number 3 (Mr Nkosinathi Khumalo) was arrested in an unrelated matter. During the interview Appellant number 3 provided a cellphone number which had contact with the number inserted in Mr Mangena's robbed cellphone. It was in fact established that the Appellant number 3's sim card i.e number 076 499 6483 was inserted in the robbed cellphone. A call was, subsequent to the commission of the crime on 18 March 2008, made from this robbed handset at 9h27 using the Eduan Park Tower.

[23] It is significant to note that according to the evidence of Mr Nong Appellant number 3, the driver of the Jetta motor vehicle and himself sought refuge at a

certain house in Eduan Park after they were chased by a police van at Bendor. They could only proceed to Gauteng the following morning.

It would then appear that the aforesaid call at 9h27 was made before they could leave Eduan Park for Gauteng.

- [24] Appellant number 3 was arrested on 23 July 2008 in connection with this case. Later as and when the other Appellants were arrested Warrant Officer Lombard and her team would confiscate the Appellants' cellphones, check the cellphone numbers provided against the cellphone numbers at their disposal. Appellant number 1 was arrested by Warrant Officer Kgapane on 14 June 2008 at a flat in Gauteng. His arrest was on the basis of the information received from Appellant number 3. Appellant number 2 was arrested on the same date and place as Appellant number 1. Appellant number 4 was arrested by Captain Putter in Katlehong, Gauteng on 23 March 2009 after being linked through the cellphone number found on him. Appellant number 6 was arrested during August / September 2009 after being linked through his cellphone number.

The witness, Mr Nong handed himself over to the police on 10 February 2010 and his warning statement was taken the same day and in the presence of his legal representative. He also provided his cellphone number 079 566 6763 to the police.

Evidence through cellphone contacts

[25] Major Franscios Samuel Moller is a police officer attached to the technological investigations support centre of the Detective Service Head Office of South African Police Service. His core functions are analysis of data and forensic investigation of electronic devices. He testified that he received several handsets from Warrant Officer Lombard, investigating officer in this case for analysis. He was also handed a list of cell numbers as well as names of the respective users. He was requested firstly to determine if any of these cell numbers were saved in any of the phones. Secondly to analyses and determine any association of the cellphones and cell numbers before, during or after the commission of the crime in this case.

[26] Major Moller divided the time periods into three. First communication that took place on 17 March 2008, then 18 March 2008 and lastly 19 March 2008. He did an analysis and then compiled three different association charts. He contacted the service providers in order to obtain the detailed billing records in respect of each number involved. The detailed billing records indicate the dates and the times calls were made and to whom the respective calls were made. The service provider also provided the tower details through which the respective calls were connected.

[27] Upon analysis of the phone book of Appellant number 1 his investigations reveal that phone number 076 499 6483 was saved as Nathi (Appellant number 3) and the number 072 772 4840 was saved as Neo (Appellant number 2). His investigations further reveal that on 17 March 2008 the number 071 125 2048 belonging to Mr Khehla Hlatswayo (Appellant number 1) had contact with numbers belonging to Mr Neo Tladi (Appellant number 2), Mr Nkosinathi Khumalo (Appellant number 3), Mr Ishmael Pooe (Appellant number 4), Mr Mduduzi Nkosi (Appellant number 6) and Mr Sarel Nong (the State witness). Further that the number 082 062 6785 belonging to Mr Neo Tladi (Appellant number 2) had contact with the numbers belonging to Mr Nkosinathi Khumalo (Appellant number 3), Mr Mduduzi Nkosi (Appellant number 6) and Mr Sarel Nong.

[28] Furthermore the number 076 499 6483 belonging to Mr Nkosinathi Khumalo (Appellant number 3) had contacts with the number belonging to Mr Ishmael Pooe (Appellant number 4) and the number belonging to Mr Mduduzi Nkosi (Appellant number 6). The number belonging to Mr Ishmael Pooe (Appellant number 4) had contact with numbers belonging to Mr Gift Zwane (deceased accused number 5) and Mr Mduduzi Nkosi (Appellant number 6). The number 083 956 7899 belonging to Mr Gift Zwane had contact with the number belonging to Mr Mduduzi Nkosi (Appellant number 6).

[29] The cellphone contacts or communications established from the uncontested evidence of Major Moller show clearly that all the Appellants including the witness Mr Nong and the erstwhile accused number 5, Mr Gift Zwane, were in communication with each other on the 17 March 2008 and 18 March 2008, that is before and after the commission of the crime at Botlokwa. This evidence flies in the face of the Appellants' version that they did not know each other but only met for the first time after their arrest. Only Appellant number 1 and 2 admitted that they know each other. This is not surprising since they were arrested while being together at a flat in Gauteng on 14 June 2008.

[30] Furthermore the evidence emanating from the cellphone contacts corroborates the *viva voce* evidence of Mr Nong that he was with the Appellants on 17 March 2008 and 18 March 2008. That while he was waiting in the Nevara motor vehicle with Appellant number 1, the latter continued calling the others telephonically to find out how far they were with their mission of blasting the automatic teller machines. The evidence of Mr Nong is further to the effect that before they left Botlokwa after their mission was accomplished Appellant number 1 contacted Appellant number 4 telling the latter to move out of the Jetta motor vehicle and join him in the Nevara motor vehicle.

Admitted Statements by Appellants number 1 and 2.

- [31] Appellant number 1, Mr Kehla Hlatswayo made an admission statement to Captain Korff on the 16 June 2008. After a trial within a trial was held to determine the admissibility of the said statement, same was admitted as evidence and read into record. In the statement Appellant number 1 admitted that he participated in the commission of the blasting of automatic teller machines and the theft of money at a Shopping Complex in Matoks, between Polokwane and Louis Trichardt on the 18 March 2008. That he received an amount of R 22 000.00 as his share in the stolen money.
- [32] Appellant number 2, Mr Neo Tladi also made an admission statement which was admitted in evidence after a trial within a trial was held. The statement was made to Captain Putter on the 16 June 2008. In the statement Appellant number 2 admits his participation in the blasting of the automatic teller machines and theft of money at Matoks on the 18 March 2008. He mentioned that he received an amount R 20 000.00 as his share in the stolen money.
- [33] It is significant to note that in his statement Appellant number 1 stated that during the blasting he did not advance to the shopping complex or filling station but stayed in his Nissan Nevara motor vehicle with Mr Nong some distance away waiting for the others to accomplish their mission. This piece of evidence corroborates the version of the state witness, Mr Sarel Nong that

they sat together in the Nissan Nevara motor vehicle when the others had gone to attack the filling station.

The Appellants' version

[34] The Court *a quo* rejected the version of all the Appellants as false and not being reasonably possibly true. All the Appellants denied their participation in the alleged crimes. They all stated that the witness Mr Sarel Nong was unknown to them and that they met him for the first time after their arrest. Only Appellant number 1 and 2 admitted that they knew each other. Their version was that they did not know Appellants number 3, 4 and 6. Appellants 3, 4 and 6 denied that they knew Appellants number 1 and 2.

[35] In the light of the accepted evidence of Mr Sarel Nong as corroborated by the cellphone communications amongst all the Appellants including Mr Sarel Nong, I am of the view that the Court *a quo* correctly rejected the Appellants' version as false. The Court *a quo*'s finding that all the Appellants were not credible witnesses cannot be faulted.

Conviction on the basis of common purpose

[36] It is apparent from the indictment as well as from the summary of substantial facts furnished in terms of section 144(3)(a) of the Criminal Procedure Act 51 of 1977 that no mention was made by the State that the Appellants acted with common purpose. Counsel for Appellants number 4 and 6 referred us to the decision in **S v Ndaba 2003 (1) SACR 364 (W) at para [102]** and also to the unreported case of **S v Siphoro A399/2012 [2014] ZA GPJHC 168 (14 August 2014)** at para [11] and argued that the Court *a quo* erred in finding common purpose on the part of the Appellants whereas no allegation of common purpose was made in the indictment.

[37] There is no merit in the argument raised by the defence. The decision or cases of **Ndaba** and **Siphoro** supra, are distinguishable from the present case. In the present case there is evidence of prior agreement or conspiracy amongst the Appellants before they left Polokwane for Botlokwa. There was an agreement or conspiracy even at the time they were in Mr Srael Nong's house in Polokwane. There is evidence that they travelled together to Botlokwa and back (albeit in three or four different cars). The stolen money was shared amongst them including Mr Sarel Nong.

[38] The criminal liability on the basis of common purpose has been well set out by Constitutional Court in the case of **S v Thebus and Another 2003 (2) SACR 319 (CC)** and as follows:

"[19] The liability requirements of a joint criminal enterprise fall into two categories. The first arises where there is a prior agreement, express or implied, to commit a criminal offence. In the second category, no such prior agreement exists or is proved. The liability arises from an active association and participation in a common criminal design with the requisite blameworthy state of mind"

In the present case there is evidence of a clear manifestation of the sharing of a common purpose amongst the Appellants as perpetrators of the offences committed on the 18 March 2008 at Botlokwa / Matoks. There is also evidence of active association. The test for active association is set forth in the seminal case of **S v Mgedezi and Others 1989 (1) SA 687 AD**.

[39] The principal object of the doctrine of common purpose is to criminalise collective criminal conduct and thus to satisfy the social need to control crime committed in the course of joint enterprise. The phenomenon of serious crimes committed by collective individuals, acting in concert, remain a significant societal scourge.

See **Thebus and Another, supra at [38]**. Moseneke J (as he then was) in the **Thebus** case went on to state that a causal prerequisite for liability would render nugatory and ineffectual the object of the criminal norm of common purpose and make prosecution of collaborative criminal enterprise intractable and ineffectual.

- [40] In my view the acquittal of some or all of the Appellants in this case based solely on the lack of allegation of common purpose in the indictment is not appropriate but will be rather technical. It will not be in the interest of justice. In the circumstances I make a finding that the doctrine of common purpose is applicable in the present case despite the failure by the State to make an allegation thereof in the indictment.

Duplication or Splitting of Convictions

- [41] The Court *a quo* found all the Appellants guilty of both conspiracy to commit a crime of theft (count 1) and theft (count 4) on the basis of common purpose. In this regard it erred because once a person conspires to commit a crime and then commits the crime he cannot be guilty of both since the two crimes merge. See **S v Gcam – Gcam 2015 (2) SACR 501 (SCA) at [37]**;
C R Snyman Criminal Law 5 ed (2008) p 295.
By convicting the Appellants of both crimes the Court *a quo* incorrectly duplicated the convictions. The appeal in respect of count 1 should succeed.

Convictions on Counts 2 and 3

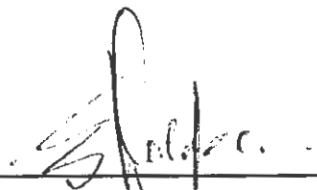
- [42] On count 2 the Appellants were charged with and convicted of contravention of section 27(1) read with sections 27(1)(c) and 27(3) of the Explosives Act 26 of 1956. On count 3 they were charged with and convicted of contravention of section 51(1) read with sections 27 and 28(2) of the Explosives Act 26 of 1956.
- [43] It is common cause that the aforementioned Act was wholly repealed by the Explosives Act 15 of 2003. The Appellants are alleged to have committed the offences on 18 March 2008, that is during the operation of the new Explosives Act 15 of 2003. However the State charged the Appellants under the old and repealed Act and the Court *a quo* invoked the provisions of section 22 of the new Explosives Act 15 of 2003. It is common cause that before judgment by the Court *a quo*, the State did not apply for an amendment of the charge in terms of section 86 of the Criminal Procedure Act 51 of 1977.
- [44] The Court *a quo* invoked the provisions of the new Act *mero motu* and without the required application for amendment of the charge. The Court *a quo* erred in this regard. The convictions of all Appellants in respect of counts 2 and 3 cannot stand.

Conclusion.

[45] I make the following order:

- (1) The appeal by all Appellants is upheld in respect of counts 1, 2 and 3 and the convictions and the resultant sentences are set aside.

- (2) The appeal by all Appellants in respect of counts 4, 5, 6, 7, 8 and 9 is dismissed and the convictions and resultant sentences are confirmed.



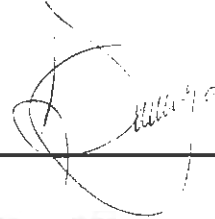
**E M MAKGOBA
JUDGE PRESIDENT OF THE
HIGH COURT, LIMPOPO
DIVISION, POLOKWANE**

I agree



**M G PHATUDI
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE**

I agree



**M V SEMENYA
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE**

APPEARANCES

Appeal Heard on	:	20 April 2018
Judgment Delivered	:	26 April 2018
For 1st, 2nd & 3rd Appellants	:	Mr L M Manzini Legal Aid South Africa Polokwane Justice Centre
For 4th & 6th Appellants	:	Mr M P Legodi Legal Aid South Africa Polokwane Justice Centre
For Respondent	:	Adv. A Koalepe Director of Public Prosecution Limpopo