IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GRAHAMSTOWN CASE NO. CA&R 260/2016

In the matter between:

ATHINI MLAWU **Appellant**

and

THE STATE **Respondent**

APPEAL JUDGMENT

Bloem J.

[1] The appellant was charged in the regional court at East London with two counts of attempted murder alternatively that he drove a motor vehicle recklessly or negligently in contravention of section 63 of the National Road Traffic Act.[1] Despite his plea of not guilty on both the main and alternative charges he was convicted of attempted murder on count 1 and sentenced to six years' imprisonment. On count 2 he was found not guilty of attempted murder but convicted of negligent driving and sentenced to twelve months' imprisonment. The sentence on count 2 was ordered to run concurrently with the sentence imposed on count 1. In addition, the appellant's driving licence was suspended for eighteen months in terms of section 34 (1) (a) of the National Road Traffic Act. Although the magistrate granted the appellant leave to appeal against both conviction and sentence and although he noted an appeal against both, submissions were made in respect of the above convictions only.

[1] National Road Traffic Act, 1996 (Act No. 93 0f 1996).

[2] The allegations against the appellant were that on 26 February 2011 and at the corner of Mcilonga and Hans Streets, Duncan Village, East London the appellant unlawfully and intentionally attempted to kill Yonela Lumkwana and Lindokuhle Twana by driving his Toyota Corolla motor vehicle over them and knocking down Ms Twana. Although the appellant did not disclose the basis of his plea of not guilty, it became apparent during the cross-examination of the state witnesses and his evidence that his defence was firstly, a denial that he intended to kill Mr Lumkwana and secondly, also a denial that his motor vehicle collided with Ms Twana. In the light of the submissions made on behalf of the parties, I will set out in detail the evidence given by the witnesses.

[3] Mr Lumkwana, the complainant in count 1, testified that during the evening of Saturday, 26 February 2011 he was standing on the pavement of Nolili's tavern which is situated at the corner of Mcilonga and Hans Streets. A vehicle which drove along Mcilonga Street turned left into Hans Street whereafter it stopped. He testified that he, Ms Twana and Anele Tsapo were on the driver's side of the vehicle. He heard someone saying from inside the vehicle "*here is the shit*". The driver revved the vehicle very hard whereafter the vehicle sped off in the direction of Ms Twana who was about one meter from him. The left hand side of the vehicle collided with Ms Twana who screamed. Thereafter the front of the vehicle collided with him. He fell and was dragged under the vehicle until it collided with the boundary wall of the tavern. His evidence was that his entire body, except for his head, was underneath the vehicle.

[4] The passenger of the vehicle, Siyabonga Titi, alighted, went towards Mr Lumkwana, leaned towards his face and said "*no, this is not the one we are*

looking for". Mr Titi assisted to get him from underneath the vehicle. The appellant alighted and pointed a firearm at him. While he was standing next to the wall, Mr Titi said to the appellant not to shoot Mr Lumkwana because he was not the person that they were looking for. They got into the vehicle and drove off. Mr Lumkwana testified that, with the assistance of a lady, he also went home. That same evening he was taken to hospital where he was treated for his injuries. The medical report, handed in by agreement, reflects that he sustained a fractured right clavicle and an abrasion on his right front shoulder. He furthermore testified that the following morning when he was at home he was visited by the appellant and his uncle. The appellant apologised to him, offered him money and said that he drove into him by mistake because he wanted to drive into Mr Tsapo, Mr Lumkwana testified.

[5] Mr Tsapo testified that during the early evening of 26 February 2011 he and two others arrived at a shebeen. One of his companions entered the shebeen but ran out shortly thereafter having been assaulted inside the shebeen. Mr Tsapo and his other companion decided not to enter the shebeen but to go home. On their way they met the appellant who was in the company of someone else. The appellant asked them about firearms and he said that he did not know what the appellant was talking about. The appellant pushed and hit him. He responded and hit the appellant who fell down, got up and drove off in his vehicle. Mr Tsapo testified that he walked home. On his way and near Nolili's tavern he met a young girl who was with her friend and her brother. While he was with them on the pavement in front of the boundary wall of the tavern, the appellant's vehicle arrived near where they were. It first stopped at the intersection between Mcilonga and Hans Streets before turning left into Hans Street. He told those

around him that he had just had an altercation with the driver of the vehicle and that they needed to be careful. At that stage Mr Lumkwana was also on the pavement near them. The appellant drove his vehicle in Mr Lumkwana's direction. In the process one of the ladies, who turned out to be Ms Twana, was bumped by the left side of the vehicle whereafter it collided with Mr Lumkwana. It dragged him until the vehicle came to a standstill against the wall. Mr Titi alighted and said to the appellant that the person under the vehicle was not the one who they were looking for. The appellant alighted with a firearm in his hand. After Mr Lumkwana had been freed from underneath the vehicle, the appellant and Mr Titi drove off. Mr Lumkwana went home and was later taken to hospital.

[6] Ms Tsana testified that on that Saturday evening she, Mr Tsapo and two others were on their way to Nolili's tavern. Mr Lumkwana was also walking on the tavern side of the road. As she was talking to Mr Lumkwana a vehicle sped in their direction. The left side of the vehicle collided with her. She did not know what happened to the others who were near her. After the collision she went home. The state then closed its case.

[7] The appellant testified that on the evening in question he drove to Nkosi's tavern to meet a friend. Upon his arrival he asked patrons who were sitting outside whether they had not seen his friend. One person, who knew his friend, said that he was not at the tavern. He suggested that he look for him at another tavern not far from Nkosi's tavern. The appellant left his vehicle behind and walked to the other tavern but did not find his friend. On his way to his vehicle he went past shacks where a few men were standing. He passed a joke. One person, who turned out to be Mr Tsapo, approached him when he was at his vehicle. Mr Tsapo

accused him of talking nonsense and punched him in the face. Mr Tsapo also assaulted another person, one Lunga. A number of persons witnessed the assault by Mr Tsapo on him and Lunga. The appellant went home. When he was near his home he met his friend, Mr Titi, who had just arrived from work. The two of them drove to Nolili's tavern.

[8] In front of that tavern a person, who turned out to be Mr Lumkwana, ran from among the shacks on the left side of the vehicle in the direction of the tavern on the right side of the vehicle while he was driving along Hans Street. He swerved the vehicle to the right in an attempt to avoid colliding with the person. He collided with the person. The vehicle continued until it came to a standstill after colliding with the boundary wall of Nolili's tavern. He and Mr Titi alighted to attend to the person who was underneath the vehicle. Once the person was freed, some of the people at the shacks threw stones at them as a result of which the left front window of the vehicle was broken. He went to his vehicle and retrieved a firearm from underneath the driver's seat. Some people left the scene with the injured person. The appellant and Mr Titi also drove from the scene. The appellant testified that he did not see either Mr Tsapo or Ms Tsana on the scene.

[9] The following morning he and his uncle went to Mr Lumkwana's house to ascertain the nature of his injuries and to apologise to him about the collision. Mr Lumkwana was in the presence of some of his family members. He offered to assist with the payment of Mr Lumkwana's medical expenses and loss of income caused by the collision. He offered to pay R5 000.00 to Mr Lumkwana's family but they refused to accept it because the sum was too little to make up the loss of income because Mr Lumkwana was the breadwinner of his family.

[10] Mr Titi testified that on the Saturday evening in question he knocked off at 10 o' clock. On arrival at home he requested the appellant, his neighbour, to take him to Nkosi's tavern to buy beer. There were many vehicles at the tavern as a result of which they found it difficult to find parking. They took a turn in Hans Street. A person, whose upper body was not clothed, crossed the road from the left side of the vehicle as it was travelling along Hans Street. The appellant swerved to the right. He collided with the half-naked person in the street. The vehicle came to a standstill after colliding with the wall. He and the appellant went to the person underneath the vehicle and, with the assistance of others, removed him. He had sustained scratches. He refused to be taken to hospital. The two of them got into the vehicle. While they were still inside the vehicle people threw stones at the vehicle and broke the window near the front passenger seat. Mr Titi denied that, before the vehicle collided with the half-naked man, someone inside the vehicle said "*here is the shit*". He furthermore denied that the vehicle also collided with a lady on the scene or that Mr Tsapo was on the scene.

[11] Bavusile Mtuzule testified that a few days after the collision he had a conversation with Mr Tsapo who told him that his friendship with one Lunga had ended because the appellant was Lunga's new friend. Mr Tsapo told him that he did not like the appellant because of the above collision. He testified that Mr Tsapo told him that he wanted the appellant to lose his job at the Buffalo City Municipality where he was employed as a law enforcement officer. Because the appellant is related to him (they share the same clan name), he informed him what Mr Tsapo had said about him and requested him to be cautious of Mr Tsapo.

[12] The magistrate convicted the appellant after finding that he drove into Mr

Lumkwana because he thought that he was Mr Tsapo with whom he had a physical altercation earlier that evening. He found that in the process of driving into Mr Lumkwana, he recklessly collided with Ms Twana. Mr Price, counsel for the appellant, submitted that the magistrate's judgment did not appear to have been based on the facts placed before him. Counsel criticised the magistrate's assessment of the evidence. Mr Obermeyer, counsel for the state, submitted that the appellant was correctly convicted.

[13] The essence of the submissions made on behalf of the appellant is that the magistrate was wrong to accept the evidence of the state witnesses and reject the evidence given by the appellant and his witnesses. It was submitted firstly, that the state witnesses did not only contradict their own oral evidence; they also contradicted each other and some of them contradicted the contents of the statements that they had previously made to the police. Secondly, it was submitted that it cannot be said that the appellant's version was not reasonably possibly true.

[14] The above submission must be considered by this court, as a court of appeal, against the principle that a court of appeal is very reluctant to upset the factual and credibility findings of the trial court. That is so because the trial court has had the advantages of seeing and hearing the witnesses while they were testifying. The trial court would accordingly have had the opportunity of observing the witnesses' demeanour, appearance and whole personality. A court of appeal does not have those advantages. It may nevertheless disregard the factual findings of the trial court where it is satisfied that the trial court has misdirected itself, for instance where the reasons are either on their face unsatisfactory or

where the record shows them to be such; also where, although the reasons, as far as they go, are satisfactory, the trial court is shown to have overlooked other facts or probabilities.[2] In other words, a court of appeal does not have *carte blanche* to interfere with the factual and credibility findings of a trial court. Its powers in that regard are circumscribed.[3]

[15] It is common cause that on the evening in question there was a physical altercation at a tavern between the appellant and Mr Tsapo who slapped the appellant. Later that same evening and at Hans Street the vehicle, driven by the appellant, collided with Mr Lumkwana whereafter he landed underneath the vehicle which dragged him until it came to a standstill against the wall. Mr Lumkwana was retrieved from underneath the vehicle, went to hospital and discharged that same evening. The following day the appellant and his uncle visited Mr Lumkwana at home where the appellant apologised to him for having caused the collision. The magistrate found that the state proved beyond reasonable doubt that the appellant had the intention to kill Mr Lumkwana when he collided with him but that such intention was absent when his vehicle collided with Ms Twana "*but he was clearly, obviously grossly negligent in striking her with his car*", hence the convictions of attempted murder and negligent driving respectively. Against the above undisputed facts I now deal with counsel's submissions.

[16] The first submission relates to the time of the collision. Counsel referred to it as "*an important issue*" because it relates to the state of sobriety of Mr Lumkwana and it "*puts a serious challenge against the evidence of Ms Twana*". In my view

[2] *Rex v Dhlumayo and another* 1948 (2) SA 677 (A) at 705-6.
[3] *Modiga v S* [2015] 4 All SA 13 (SCA) at 20d-e.

whether the collision occurred at 20h30 or 23h00 is irrelevant because it is common cause that during the evening in question the vehicle collided with Mr Lumkwana in Hans Street. Regarding Mr Lumkwana's state of sobriety, he denied that he was drunk when that statement was put to him under cross-examination. When the appellant was cross-examined, the public prosecutor put it to him what was put on his behalf to Mr Lumkwana in this regard. The record reflects the following:

> "*Prosecutor: It was specifically put to the complainant that you will come and say he was drunk that night. --- That is not true.*
>
> *No, no sir you instructed your attorney to say so to Yonela, are you changing now: --- Yes I am not changing so, but the way he appeared to me he seemed as a person who has been drinking, if you check the place where we were, and the incident that happened.*
>
> *So you don't know whether he was drunk or not? --- I would say that he did drink, but I cannot say he was drunk, he was not drunk*."

[17] The appellant's evidence in this regard shows that he was unable to say that Mr Lumkwana was drunk. Mr Lumkwana's denial that he was drunk must be accepted because there was no evidence to the contrary. At best for the appellant, he suggested that the appellant may have been drunk. That suggestion was based solely on the fact that the collision occurred near a tavern. In the circumstances there is, in my view, no correlation between the time of the collision and Mr Lumkwana's state of sobriety.

[18] Regarding Ms Twana's evidence, the magistrate regarded her as an independent witness who had no interest in the version of either Mr Lumkwana or the appellant. He accepted her evidence because, according to him, it was corroborated by the evidence given by Mr Lumkwana and Mr Tsapo. The criticism levelled at Ms Twana's evidence, both in the magistrate's court and

before us, was that she did not mention in the statement made to the police that, before the collision, the vehicle had stopped, switched its lights on bright and revved before it drove into her. The submission was that the absence of those events in her statement gave credibility to the appellant's version that the vehicle did not collide with her. When she was asked why she omitted to mention those events in her statement, her response was "*I was just asked how I was collided with. It was not asked what the detail was*". That response is consistent with the reminder to the adjudicator of fact expressed by Olivier JA in *S v Mafaladiso en andere*[4] to the effect that it must be kept in mind that such a statement is not taken down by means of cross-examination and that the person giving the statement is seldom, if ever, asked by the police officer to explain his or her statement in detail. In my view the criticism against Ms Twana's evidence is unwarranted in view of her explanation for the absence of those events in the statement that she made to the police.

[19] In respect of Mr Lumkwana, it was submitted firstly, that the magistrate ignored Mr Titi's claim that he could smell alcohol on Mr Lumkwana's breath; secondly, that he worked for the Road Accident Fund and accordingly knew "*quite clearly*" that if he could not prove in his claim against the Road Accident Fund that the appellant was negligent or acted intentionally, his claim would fail; and thirdly, that there was no basis for finding that he was an honest and truthful witness. Mr Titi testified about Mr Lumkwana's state of sobriety as a result of a leading question from the appellant's attorney. The record reflects the following in that regard:

"*Did you notice the state of sobriety of the gentleman who was*

[4] *S v Mafaladiso en andere* 2003 (1) SACR 583 (SCA) at 594a-B.

knocked down by this car? --- You could see that he had actually consumed liquor.

Why do you say that? --- I could see his actions before the vehicle had bumped him.

What are those actions? --- At that time at night he was not dressed on his upper body, and also he was shouting, and also refusing to go to the hospital."

[20] Up until that stage of his evidence Mr Titi had given a detailed description of Mr Lumkwana's movement before the collision as well as what happened to him when they retrieved him from underneath the vehicle and thereafter. He said nothing about Mr Lumkwana's state of sobriety. The factors that made him to believe that Mr Lumkwana had consumed liquor were simply because his upper body was not clothed, he was shouting and he refused to go to hospital. None of those factors, individually or cumulatively, would, in my view, lead a reasonable person to conclude that Mr Lumkwana had consumed liquor. The prosecutor wanted to find out from him as to how he could arrive at the conclusion that Mr Lumkwana appeared to him to be drunk based on the above factors. The record reflects the following in that regard:

"*Prosecutor: You said the complainant you know now is Yonela Nonkwana, it appeared to you that he was drunk? ---Yes.*

Because he was naked on his upper body? --- Yes he was arguing and also he was not dressed on his upper body.

Okay, so the sign of being naked on the upper body to you suggests that you are drunk? --- You can see a person when the person is walking at night and he is not stable that he did actually consume liquor.

Are you suggesting that Yonela was not stable, yes or no? --- According to my seeing him he was not to me.

Explain that. What do you mean by that? --- When I enquired from him does he want to go to the hospital he said he did not want to go to the hospital,

so it seems to me as if he was under the influence of liquor."

[21] As is apparent from the above quotations, Mr Titi did not testify that he smelt alcohol on Mr Lumkwana's breath. His conclusion that he could see that Mr Lumkwana had consumed liquor was not based on any evidence. His view that Mr Lumkwana appeared to be drunk must be considered in the light of the fact that he could not positively testify that Mr Lumkwana was drunk and also Mr Lumkwana's denial in that regard.

[22] Mr Lumkwana testified that he is employed by the Road Accident Fund. It was put to him that he laid the criminal charge against the appellant because he tried to claim money from the Road Accident Fund and, when his claimed failed, he demanded money from the appellant. There is no evidence to support that submission. Mr Lumkwana's evidence, that he had lodged a claim for compensation with the Road Accident Fund and that the claim was pending, was unchallenged. It must therefore be accepted that his claim against the Road Accident Fund has not failed. In addition, the appellant testified that he offered to pay to Mr Lumkwana and his family the sum of R5 000.00 as compensation but "*it became clear that they wanted money that was more than R5 000.00*" and "*we could never again sit and discuss this further*". The appellant did not lead evidence in support of what was put to Mr Lumkwana. What was put to him in this regard is based on the assumption that Mr Lumkwana knew what was required of him to claim successfully against the Road Accident Fund. It also goes against the objective and undisputed facts namely, that the vehicle driven by the appellant collided with Mr Lumkwana, the appellant offered to pay money to him and Mr Lumkwana lodged a claim for compensation against the Road Accident Fund, which claim is pending.

[23] The magistrate was criticised for having found that Mr Lumkwana was an honest and truthful witness. That finding was based primarily on the magistrate's other finding that, on the probabilities, the manner in which Mr Lumkwana landed underneath the vehicle fits in with his version that he was struck by the front of the vehicle wherafter he landed under it, rather than that he was running from the left side of the vehicle when the collision occurred, as testified to by the appellant and Mr Titi. The magistrate found that, at the time when the vehicle collided with Mr Lumkwana, he knew the appellant only as a policeman and had no axe to grind with him. That was not the position with Mr Tsapo. It is common cause that earlier that evening Mr Tsapo punched the appellant outside another tavern. He was obviously offended by Mr Tsapo's conduct. It is in that regard that the magistrate found that, when the appellant collided with Mr Lumkwana, he erroneously thought that he was Mr Tsapo. The evidence of Mr Lumkwana and Mr Tsapo was that, prior to the vehicle driving in their direction at high speed, a person inside the vehicle said "*here is the shit*", obviously referring to Mr Tsapo.

[24] The magistrate was also criticised for having found that those words were uttered or that they could have been heard by anyone outside the vehicle because it was the evidence of the appellant and Mr Titi that the windows were closed. The magistrate dismissed the appellant's version in that regard because he did not impress the magistrate as a witness, the magistrate found that his version was improbable, which improbability became more apparent with Mr Titi's evidence. The improbabilities that the magistrate highlighted were that the lights of the vehicle were on which means that the appellant could have seen people in front of the vehicle, there was nothing wrong with the brakes of the vehicle which means that, as an experienced driver, the appellant, faced with a sudden

emergency, on his version, could have and would probably instinctively have applied brakes, but inexplicably did not do so. Instead he dragged Mr Lumkwana underneath the vehicle until it came to a standstill. The magistrate accepted Mr Lumkwana's evidence that Mr Titi, after he had looked at Mr Lumkwana, said that he was not the person that they were looking for. That evidence was corroborated by Mr Tsapo. An acceptance of that evidence by the magistrate means that he was justified in his finding that the appellant drove at a high speed in the direction of Mr Lumkwana believing that he was Mr Tsapo "*with the sole purpose to injure and kill the person. It was clearly no accident*". That the collision was probably an act of revenge on the part of the appellant is strengthened by the fact that the appellant, a law enforcement officer, did not lay a criminal charge against Mr Tsapo for the unprovoked assault on him.

[25] A further factor taken into account by the magistrate when he considered the probabilities was that the appellant apologised to Mr Lumkwana on the following day. It was submitted that the magistrate turned around the apology "*in a most disingenuous*[5] *manner*" because, so it was submitted, there was no basis in law or fact for finding that the appellant was lying when he testified as it was part of his culture, as a black person, to apologise to someone who had been hurt. The prosecutor challenged the appellant about the alleged culture to apologise even if "*there is no wrong on your side*" on the basis that he knew "*a lot of black people who are not doing that including myself*". The appellant persisted with his explanation that one needs to apologise where one has not done something deliberately. I am prepared to accept that a driver might feel the need to

[5] Disingenuous, according to the *Shorter Oxford English Dictionary*, 1988 means the opposite of ingenuous; lacking of frankness, insincere, morally fraudulent.

apologise where a victim has been injured even though the injuries sustained by the victim were not caused by the fault of the driver. But, I cannot accept that such a driver would, apologise despite being blameless (since, according to the appellant, the drunk victim ran into the moving vehicle) and want to make payment of R5 000.00 to the victim. An apology would have been sufficient. I am of the view that the appellant offered money to Mr Lumkwana to get him to agree not to lay a criminal charge against him. In the circumstances, the criticism against the magistrate in this regard was completely unwarranted. For the reasons set out above, the submissions on behalf of the appellant in this regard cannot be sustained.

[26] The magistrate was severely criticised for having allegedly descended into the arena on the side of the state as "*he was determined, with respect, to convict the Appellant*". For that submission counsel relied on the fact that, while the appellant was giving evidence, the magistrate asked him six questions but after his attorney indicated that he would not re-examine the appellant, the magistrate asked him thirty six questions. It is correct that the magistrate asked the appellant many questions after he had been cross-examined. The magistrate wanted clarity firstly, on why he allegedly continued swerving to the right instead of applying brakes. Secondly, the magistrate sought clarity about the appellant's need to apologise to Mr Lumkwana when, on his version, he had done nothing wrong. Thirdly, the magistrate enquired from the appellant why he, as a law enforcement officer, did not deem it necessary to arrest Mr Tsapo after he had assaulted him. Lastly, the magistrate enquired whether or not the appellant reported the accident to the police and if so, when. The answers that the appellant gave to the questions asked by the magistrate obliged him to ask further questions to get

clarity. The suggestion that the magistrate cross-examined the appellant is not borne out by the record. In my view the magistrate asked questions to obtain clarity on the above aspects. He was fully entitled to do so. There is accordingly no merit in the submission that the magistrate asked questions because he was determined to convict the appellant.

[27] I now deal with Ms Twana's evidence. It was submitted on behalf of the appellant that she was at best an average to poor witness. The criticism was based on her evidence that the speeding vehicle collided with the lower part of her body, yet she sustained no injuries requiring medical attention. Her evidence was that after the vehicle had collided with her she swung and her left elbow made contact with the left window of the vehicle. She sustained a swollen ankle and scars. She subsequently obtained medication from a pharmacy. The appellant's version is that he did not see Ms Twana on the scene. He denied having collided with her. Mr Obermeyer submitted that Ms Twana, like the other state witnesses, was an excellent witness. He submitted that all the state witnesses corroborated each other in all material respects and, where there were discrepancies in their evidence, they were on immaterial issues which did not reflect on their credibility.

[28] Ms Twana's evidence was not shaken in cross-examination. Mr Lumkwana testified that he saw when the vehicle collided with her. It collided with her first, she screamed and then it collided with him. His evidence was that he, Ms Twana and Mr Tsapo were on the right side of the vehicle as it was travelling along Hans Street. Ms Twana was ahead of him. The vehicle turned and drove in their direction. It is not difficult to understand that, under those circumstances, the vehicle collided with Ms Twana before it collided with Mr Lumkwana. The fact

that Ms Twana escaped without serious injuries does not make her version improbable. Her version of how the vehicle collided with her is corroborated by Mr Lumkwana and Mr Tsapo. In my view there is no reason to doubt the magistrate's finding that, before he collided with Mr Lumkwana, the appellant collided with Ms Twana, such collision having been caused by his negligent driving.

[29] In all the circumstances, there is no reason to interfere with any of the factual findings made by the magistrate or the credibility findings that he made in respect of the witnesses. The probabilities are such that it cannot be said that the appellant's version is reasonably possibly true. It was accordingly correctly rejected by the magistrate. That being the case, there is no reason to interfere with the magistrate's findings that the state proved beyond reasonable doubt that the appellant intended to kill Mr Lumkwana and that the collision with Ms Twana was caused by his negligent driving.

[30] In the result, the appeal against the conviction is dismissed.

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G H BLOEM
Judge of the High Court

GOOSEN, J

I agree.

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G G GOOSEN
Judge of the High Court

For the appellant:	Adv T N Price SC, instructed by Griebenow Incorporated, Port Elizabeth and Netteltons Attorneys, Grahamstown.
For the state:	Adv H L Obermeyer of the office of the Deputy Director of Public Prosecutions, Grahamstown.
Date of hearing:	2 May 2018.
Date of delivery of the judgment:	22 May 2018.