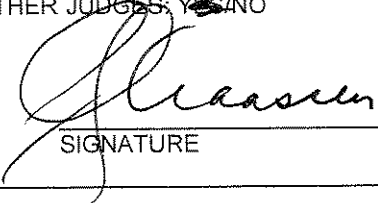


**IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA  
(JOHANNESBURG)**

Case No: A475/2011  
DPP Ref No: JPV 2000/0024  
Date of Appeal: 10 May 2012

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
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10/05/2012 DATE	 SIGNATURE

In the matter between:

**STEVEN S. MAKHUBU**

Appellant

And

**THE STATE**

Respondent

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**JUDGMENT**

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**C. J. CLAASSEN J:**

**INTRODUCTION**

- [1] On Wednesday, 27 March 1999, a Khulani Springbok Patrols armoured vehicle arrived at Witwatersrand University to collect money. While the money was being loaded into the vehicle, it was attacked by several armed individuals. Various shots were fired by the assailants. The security guards returned the fire. During the cross-fire, one of the security guards and one of the attackers were killed.

- [2] The attackers took the money and loaded it into one of the escape vehicles. The attackers also loaded their comrade in the escape vehicle and dumped his body somewhere in Eldorado Park.
- [3] Five men were charged with two counts of murder, three counts of attempted murder, two counts of robbery with aggravating circumstances and four counts of contravening the Firearms Act 75 of 1969. The trial commenced before Heher J (as he then was) on 17 May 2001 in this court. On 30 October 2001 Heher J delivered judgment.
- [4] Steven Sechaba Makhubu was arraigned in the court *a quo* as accused 1. He was convicted in the court *a quo* on count 1, i.e. murder, count 4, i.e. attempted murder, count 6, i.e. robbery with aggravating circumstances, count 7, i.e. robbery with aggravating circumstances and counts 8, 9, 10 and 11, i.e. two counts of unlawful possession of machine guns, one count of illegal possession of arms and one count of illegal possession of ammunition. The next day he was sentenced to life imprisonment, twenty years' imprisonment effectively on counts 4, 6 and 7 and fifteen years' imprisonment effectively on counts 8, 9, 10 and 11.
- [5] Accused 1, the appellant, was granted leave to appeal against both his convictions and sentences. Due to the absence of Heher J, the application for leave to appeal was heard and granted by Satchwell J.

### ISSUES ON APPEAL

- [6] The single question for decision is whether or not the court *a quo* was correct in finding that the appellant was one of the attackers on the day of the armed robbery. The appellant raised an alibi as a defence. This defence was rejected largely on the basis of evidence that fingerprints belonging to the appellant were found on the getaway vehicles. In this

regard the expert testimony of two fingerprint experts, Captain Abrahams and Captain Nagel, was tendered by the State.

### THE EVIDENCE


- [7] The evidence of Captain Abrahams that he had lifted a middle fingerprint of the appellant's left hand from the Khulani armoured vehicle, was heavily criticised in the court *a quo*. He was given a copy of the print that he had lifted (Exhibit "W") and asked to describe the features which he said were the features seen in the fingerprints of accused 1. The court *a quo* held as follows:

"It would not be an exaggeration to say that he made a botch of that attempt, pointing out ridges that he previously described as bifurcations and bifurcations that he described as ridges. His explanation for this was that he cannot identify a bifurcation on a lifted print without looking at a print which is known to be that of an accused. He testified that he does also look for differences in prints."

- [8] Needless to say, counsel for the appellant submitted in her heads of argument that the court *a quo* misdirected itself in relying upon the evidence of Abrahams. She submitted that he was fallible and contradicted his evidence in chief in relation to characteristics of the fingerprint compared to the admitted specimen of the appellant's print.
- [9] I find it unnecessary to analyse the evidence of Abrahams and will for purposes of this appeal accept that his evidence is unreliable and that it stands to be rejected. However, that is not dispositive of the appeal.
- [10] The expert testimony of Captain Nagel was not criticised at all in the heads of argument of counsel for the appellant. Captain Nagel was also closely cross-examined in the court *a quo*. He stood his ground and did not deviate from his evidence in chief. He testified that he was on the scene of the crime shortly after it was committed. He lifted a fingerprint from the Khulani vehicle at 14:36 on 24 March 1999. This fingerprint

pointed upwards and was found at the position which he described as approximately at point "P" on the photograph exhibit J35. He received a set of the appellant's fingerprint (Exhibit "U") and compared the two prints. He found that the left middle fingerprint of the two sets of prints was identical. On exhibit "U" he indicated nine ridge marks which corresponded to the appellant's fingerprint (Only seven ridge marks are required). On the day he gave evidence he took another set of the appellant's fingerprints and found that the left middle finger also coincided with the two sets which he previously had seen. He further said that the fingerprint which he had lifted from the Khulani vehicle was extremely clear and that he was absolutely certain it belonged to the appellant.

- [11] Counsel for the appellant did not attack the evidence of Captain Nagel in argument and rightly so. It would seem to me that his evidence was beyond reproach and that the court *a quo* was justified in accepting his evidence. In most criminal cases the court is favoured with the expert testimony of only one fingerprint expert. It is therefore not strange to rely on the single testimony of one fingerprint expert in convicting an accused.
- [12] The record placed before this court of appeal was incomplete. It contained none of the exhibits. Despite this deficiency in the record, counsel for the appellant submitted "that the appeal can be argued without the said prints." The wisdom of this approach was not questioned by counsel for the State. In my view, this is not a practice which should be allowed only in exceptional circumstances. The special circumstances that persuaded me to continue with this appeal despite the incompleteness of the record, are as follows:

  
**C. J. CLAASSEN**  
**JUDGE OF THE HIGH COURT**

I agree

  
**R. MOKGOATLHENG**  
**JUDGE OF THE HIGH COURT**

I agree

  
**Z. CARELSE**  
**JUDGE OF THE HIGH COURT**

It is so ordered.

Counsel for the Appellant: Adv K. Cosyn  
Counsel for the Respondent: Adv R. T. Mareume

Attorney for the Appellant: Johannesburg Justice Centre  
Attorney for the Respondent: Director of Public Prosecutions

Date of Hearing of Appeal: 10 May 2012