REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: SS 248/12
DPP REF NO: JPV 2012/0320
DATE: 2nd APRIL 2013

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

16/4/13
DATE

SIGNATURE

In the matter between:

THE STATE

and

MVELASE, MPILO Accused 1

MBHELE, MZONJANI Accused 2

J U D G M E N T

MUDAU, AJ:

INTRODUCTION

[1] On the 9th June 2012 and at about 6pm, the complainant and the deceased in this matter, were inside a room at number 8 Langlaagte Deep Village where they stayed when they were accosted by two men and shot with

a firearm. During the process, the deceased (Mdeni Xaba) was set alight and fatally wounded. The complainant (Khululekani Nqulunga), was not only shot through his back and right eye, but was also stabbed sustaining serious knife wounds. Lastly, their room was also set alight.

[2] Arising from these facts the two accused, Mr Mvelase Mpilo (accused 1) and Mr Mbhele Mzonjani (accused 2), were arraigned for trial on an indictment consisting of three (3) charges. The charges are: Count 1, murder, in that on or about the 9th June 2012 and at or near number 8 Langlaagte Deep Village, Johannesburg, the accused did unlawfully and intentionally kill Mdeni Xaba. The indictment expressly states that the provisions of s 51 (1) of the Criminal Law Amendment Act 105 of 1997 (the so-called minimum sentences legislation) are applicable to the count of murder; count 2, attempted murder, in that on or about the date mentioned in count 1 in the district of Johannesburg, the accused did unlawfully and intentionally attempt to kill Khululekani Nqulunga; and count 3, arson, in that on or about the date and place mentioned in count 1, in the district of Johannesburg, the accused did unlawfully and intentionally and with intent to injure Mndeni Xaba and Khululekani Nqulunga in their property, set fire to and thereby damaged and or destroyed the house situated at number 8 Langlaagte Deep Village, being an immovable structure, the property of or in the lawful possession Mndeni Xaba and Khululekani Nqulunga.

[3] The accused pleaded not guilty to all charges against them. In addition the accused, as they were entitled to do, tendered no explanation of their plea.

[4] Accused 2 was, at the close of the state's case discharged in terms of section 174 of Criminal Procedure Act 51 of 1977 for reasons that will become apparent below.

[5] The central issue in this trial is whether the State had proved beyond a reasonable doubt that the remaining accused 1 was one of the two men who killed the deceased, committed arson, and attempted to kill the surviving victim.

[6] The State relies principally on the evidence of the surviving victim (Nqulunga) who is also the complainant.

THE EVIDENCE

[7] From the onset, the accused made formal admissions (Exhibits "A", "B", and "C") that are recorded in terms of section 220 of the Criminal Procedure Act 51 of 1977. The formal admissions inter alia are with regard to the identity of the deceased as well as the cause of his death, this being as a result of a "gun shot wound of the neck" and "burns". The defence also admitted formally that accused 1 was pointed out at an identity parade (Exhibit

"D") held on the 19th of October 2012 by the surviving complainant, Mr Nqulunga.

[8] A summary of the relevant oral evidence presented before court is as follows. Khululekani Vuni Nqulunga (Nqulunga), the complainant in respect of counts 2 and 3, testified that he and the deceased were cousins. On the date of these incidents and at about 6pm, he and the deceased had just arrived from a township in Weenen, KwaZulu-Natal where he and the deceased originally came from. It was his (Nqulunga)'s first visit to Johannesburg to look for work. He was seated on the bed, as the deceased was preparing to cook dinner on a paraffin stove. The deceased lived in a single room. A candle had been lit. Not long thereafter, some people came who called the deceased to come outside. Deceased went outside. The witness could tell that there was an argument outside but did not know what it was all about.

[9] Upon the deceased's return to the room, he asked the deceased who the men were with whom he (the deceased) had an argument. The deceased told him it was Mpilo, Mzo, Lucky and some others whose names he (the complainant) had forgotten. A moment after the deceased told him their names, one of them, who is accused 1, came inside the room. It was his first time to see the accused. The deceased said to the accused: "*It is better that you all leave, we shall finish our conversation tomorrow as you and the others have consumed alcohol*". About two minutes later, Accused 1 left the room.

[10] About five minutes later, the men returned and knocked at the door. They called out the deceased and told him to come out of his room to finish the discussions they had initially agreed to finish the next day. Deceased refused to do so and reiterated that the discussions be finished the next day. The next moment the men broke the door open. One of the men with a big hooded jacket stood at the doorway, took out a firearm and started shooting at the deceased. After shooting the deceased, the man shot the complainant through his right eye. The man again shot the deceased and once more shot the complainant on his back. At the time of the shooting, accused 1 was standing behind the man wielding the firearm.

[11] Deceased fell on top of the stove. The gun wielding man came closer. The accused handed the gunman a shopping plastic bag, which the gunman lit with fire from the paraffin stove that was on and set the deceased alight. The accused continued handing the gunman more shopping plastic bags, which the latter used to burn the deceased after setting the plastic bags on fire. As this continued, the complainant stood up and doused the fire on the deceased. The gunman came over and stabbed him twice, once on his left cheek and again on the back of his left hand. As a result, the complainant fell to the floor. The accused and his companion thereafter set the room alight after which they ran out some eight to ten minutes later.

[12] The complainant got up from the floor and went out of the room. The deceased tried to get out of the room, which was on fire, but his strength failed him and fell just short of the door. Community members came to help by

pulling the deceased out and extinguished the fire. Thereafter, both of them were taken to hospital by ambulances. The complainant remained in hospital for two weeks while he recovered from his injuries. It was whilst he was in hospital that he learnt of his cousin's death. It was the last time he saw accused 1 until he pointed out the accused at an identification parade held on the 19th October 2012.

[13] Under cross-examination, the complainant testified further as follows. When accused 1 entered the deceased's room, the accused was about 2 to 3 meters away from him (the complainant), when he spoke to the deceased. He could not make out what the nature of the argument was all about. He could not recall how the accused was dressed. Upon being asked whether he had observed the accused's face, he answered that he did so for approximately twenty seconds. At the stage that accused 1 handed the gunman plastic bags he was initially about ten meters away from them, and afterwards about 2 meters away when accused 1 handed over some more plastic bags. The accused's alibi defence was for the first time put to the complainant that he was in Weenen at the time when the offences were committed. The complainant disputed the allegation that the accused was not at the scene of crime at the time of the incident.

[14] As a result of examination by the court, the complainant testified further as follows. He recognised accused 1 by his neatly trimmed beard, nose and eyes. Accused 1's nose stands out whereas his eyes always look from side to side. His hair was short. The accused has red lips. In addition, accused 1 has

a dark complexion. With regard to the plastic bags that accused 1 passed to the gunman when the deceased was set alight, these were found in a dustbin inside the room.

[15] The next witness, Bhekimuzi NtshaliNtshali (NtshaliNtshali) testified briefly to the effect that he knew both accused from his hometown Weenen, KwaZulu-Natal, where they all stay. He also knew the deceased. Acting upon information that both accused were home and back from Gauteng shortly after the deceased's death, he (NtshaliNtshali) took the police to the two accused's place of residence. The two accused were as a result arrested, and taken back to Gauteng.

[16] Warrant officer Famanda Mabasa (Mabasa) from the Langlaagte police was the first police officer assigned to investigate this case. After his colleagues in Weenen, arrested the two accused, he travelled there to formally arrest them after which, he detained and charged them at Langlaagte police station. With this evidence, the state closed its case. Accused 2 was, as indicated above, discharged at the close of the state's case. Accused 2 was not implicated by the evidence of the complainant nor pointed out during the identification parade.

[17] In his defence, accused 1 testified briefly as follows. It is his evidence that he and the deceased came from the same location in KwaZulu-Natal. In Gauteng, they lived in the same house no 8 Langlaagte Deep Village but owned separate rooms. He enjoyed good relations with the deceased.

[18] On the day of the alleged incidents (9th June 2012), he was initially at the place of the alleged incidents. However, by 20h00 on that day, he was on his way home to Kwazulu-Natal and not in Crown Mines. He also lost his property as a result of the arson.

[19] Accused 1 testified under cross-examination further as follows. It is his evidence that he and accused 2 left Crown Mines where they lived with the deceased at about 4pm, by taxi. Their intention was to catch another taxi in Johannesburg by 5pm, which would have taken them to where they live in KwaZulu-Natal. Accused 1 was reminded of the version as put to the complainant to the effect that he (the accused) was in Weenen at the time of the incident. Accused 1 responded thus: "*I was not yet at Weenen, but on my way to Weenen*". When he was asked for the second time whether the version as put to the complainant was false, he responded as follows: "*Yes. I was at Weenen, but had not arrived at my place of residence*".

[20] Accused 1 was asked about his return trip to Gauteng. It is his evidence that he planned to return on the Tuesday and report for duty as he was off duty on the Monday (following the weekend of these incidents). When he was asked whether it would have been practical to travel from KwaZulu-Natal and report for duty the same day (Tuesday), he responded thus: "*I will have returned on Tuesday, but reported on Wednesday*".

[21] Upon being asked why the complainant falsely implicated him, accused 1 responded as follows: "*Some of the things he (the complainant) said were lies*". Consequently, he was asked to point out the truth in the complainant's version. He responded that it is true that "*I spoke to deceased before I left to the homelands*". He was then asked if it is true that the complainant saw him while speaking to the deceased. He responded thus: "*I will not know if he saw me, but there was someone in the house when I spoke to the deceased. I don't know if he saw me or not.*"

[22] This court sought clarity whether the accused meant he went inside the accused's room. He responded as follows. "*Deceased was from closing his shop. We met and spoke in the passage. After that, we went into his (deceased) room*". The State asked if Ngulunga was correct when he said he saw him (accused 1) inside the room speaking to the deceased. Accused 1 responded thus: "*Yes, he was speaking the truth if he was the one who was inside that room*".

[23] Accused 1 maintains that he had spoken to the deceased before the alleged incidents of crime occurred. The discussions were nothing else but an exchange of pleasantries as the deceased had just arrived from home whereas he and accused 2 were on their way home. Their interaction inside the deceased's room took about 2 minutes as the complainant had said, which enabled the complainant to point him out at the identification parade.

[24] Finally, in response to clarifying questions by the court, accused 1 further agreed with the physical description that the complainant had given of him before this court. Although he did not have a watch regarding the times he had given, he relied on his cell-phone to check the time. He was not in a position to tell the court what time it was when the taxi left Johannesburg for KwaZulu-Natal. With this evidence, the defence case was closed.

[25] In this matter, it has not been disputed or seriously challenged in respect of the murder, attempted murder and arson charges that the State was successful in proving all the essential elements of the said crimes.

THE LAW

[26] It is an established principle of our law that the State bears the *onus* of proving the guilt of the accused beyond reasonable doubt. There is no reverse onus on the part of the accused to prove his innocence. As it was held in *S v Van der Meyden*[1], which was approved and applied by the SCA in *S v Van Aswegen*[2], an accused is entitled to be acquitted if there exists a reasonable possibility that he might be innocent regard being had to the totality of the evidence. In assessing whether or not the guilt of the accused has been established the SCA in *S v Hadebe & Others*[3] approved of the approach adopted in S v *Moshephi & Others*[4] in which the following was stated:

> "*The breaking down of a body of evidence into its component parts is obviously a useful aid to a proper understanding and evaluation of it. But, in doing so, one must guard against a tendency to focus too intently upon the separate and individual parts of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in a trial*

may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood for the trees."

[27] It is trite law that an *alibi* defence has to be considered regard being had to the totality of the evidence[5].

[28] In dealing with evidence of the State a convenient point is to start with the evidence of Nqulunga, who is a single witness. As a single witness, Nqulunga's evidence must be treated cautiously.

[29] Section 208 of the Criminal Procedure Act however, stipulates that an accused may be convicted on the evidence of a single and competent witness. The test formulated by De Villiers JP in *R v Mokoena* was that the evidence of such a single witness must be found to be "*clear and satisfactory in every material respect*". In this regard see further, *R v Mokoena*[6]; *S v Webber*[7]. In *S v Sauls and Others*[8], Diemont JA said:

"There is no rule of thumb or formula to apply when it comes to a consideration of the credibility of the single witness... The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told... It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."

[30] The cautionary rule in the case of evidence by a single witness is aimed at overcoming the danger of an accused being wrongly convicted as a result of mistaken identity. The classic case on the issue of identity is *S v Mthetwa*[9], where Holmes JA expressed himself as follows on the need for such caution:

> *"Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait, and dress; the result of identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities"*

See other cases such as *R. v Masemang*[10]; *R. v Dladla and Others*[11]; *S. v Mehlape*[12]

EVALUATION OF THE EVIDENCE

[31] In this case, The State relied on a credible eyewitness (Nqulungu) whose opportunity to take note of the offending accused 1's features was substantial. In this case, light, proximity and duration were all favourable. The events in this matter played out at a moderate pace with no confusion of participants. Nqulungu is not only corroborated, in material respects by the evidence of accused 1, but his evidence stands out as he was not contradicted in any material way. Accused 1 confirmed that Nqulungu's

description of his features was accurate. I made a similar observation on record which counsel agreed with.

[32] I have carefully considered the evidence of the complainant (Nqulungu), and I am satisfied, on a conspectus of the evidence as a whole, that the evidence of the complainant fulfils the necessary degree of reliability demanded in the authorities referred to above. He gave his evidence in a satisfactory manner. Although his evidence is that of single witness, it has been corroborated. It indicates that the whole story was not concocted. I accept the complainant's testimony as reliable and truthful.

[33] I turn to deal with the evidence adduced on behalf of accused 1. Accused 1 denies committing the offences. In dealing with the evidence of accused 1, there is no doubt in my mind that his version is riddled with improbabilities and contradictions of a serious nature. The accused's denial of complicity and the alibi defence rests solely on his say-so with neither witnesses nor objective probabilities to strengthen them. A few examples of improbabilities and contradictions follow hereunder. From the onset, it was suggested to the complainant that the accused was in Weenen at the time of the commission of these offences.

[34] Of material significance is the fact that, on his own version, accused 1 placed himself at the scene shortly after the deceased and Nqulungu arrived from KwaZulu-Natal. He thus, corroborated Nqulungu's version. Yet, as indicated above, the accused went and spoke to the deceased in the

presence of the complainant at the time the deceased and the complainant had just arrived from KwaZulu-Natal. This materially casts doubt on the accused's alibi defence that he was in Weenen and lends credence to the complainant's version in its totality.

[35] I find it highly improbable that the accused would still be in Johannesburg, Gauteng at that time of the day when he still had to undergo a planned trip to KwaZulu-Natal. According to Warrant Officer Mabasa it is a five hour trip to where the accused stayed in KwaZulu-Natal. Accused 1 tried to extricate himself from this difficulty by placing himself in the deceased's room at about 4pm. The difficulty I have with this proposition is that it was not taken up with the complainant under cross-examination. Furthermore, this is in stark contrast with the complainant's version that these events all happened after 6pm, which also explains the need for a lit candle inside the deceased's room. Besides, by his own admission, accused 1 had no watch on him and merely speculated as to the times he gave the court.

[36] The alibi version by the accused that he was in Weenen and not at the scene of crimes is less convincing, when one considers his responses given under cross-examination (see for example paragraphs [18]-[21] above). In my view accused 1 was adapting his version as the case went along, and was therefore inconsistent.

[37] I find accused to be a most unsatisfactory witness in both manner and the substance of his evidence. To the extent that his evidence contradicts the state's version, his version is, accordingly, dismissed as false beyond reasonable doubt.

CONCLUSION

[38] *Burchell and Milton*[13] define the doctrine of common purpose in the following terms:

> "*Where two or more people agree to commit a crime or actively associate in a joint unlawful enterprise, each will be responsible for specific criminal conduct committed by one of their number which falls within their common design. Liability arises from their 'common purpose' to commit the crime.*"

[39] The evidence presented by the prosecution, which I summarised above, proves, in the absence of an alternative explanation, that the accused and the unidentified gunman associated in a common purpose to commit these crimes. Their presence together inside the deceased's room where the fatal shooting of the deceased and an attempt was made on the life of the complainant as well as the arson occurred, their continued active association when the deceased's body was set alight, their departure together shortly after the crimes were committed, and without any sign of disassociation by any of them, all point to collaboration in a plan to murder the deceased and attempt to kill the complainant as well as to commit arson.

[40] In the result I find accused 1, (Mvelase, Mpilo) guilty in respect of:

Count 1: Murder.

Count 2: Attempted murder.

Count 3: Arson.

T P MUDAU
ACTING JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

MATTER HEARD FROM: 26TH MARCH TO 28TH MARCH 2013

DATE OF JUDGEMENT: 2ND APRIL 2013

APPEARANCES:

FOR THE STATE: ADV RAMPYAPEDI

ON BEHALF OF ACCUSED 1: ADV JM MOGOTSI

ON BEHALF OF ACCUSED 2: ADV F M MOLOI

POSTEA: (5TH APRIL 2013)

SENTENCE

[1] Accused 1 has been convicted on counts of murder, attempted murder and arson. It remains to impose an appropriate sentence. The main purposes of punishment are deterrence, prevention, reformation and retribution[14]. Punishment is expected to fit him as a criminal as well as his transgressions, be fair to society in general and be blended with a measure of mercy according to the circumstances.

[2] It is incumbent before sentencing, to consider the accused's personal circumstances, the seriousness of the crimes involved as well as the interest of the community. The State, has requested that, in respect of the conviction on the charge of murder, the 'minimum sentence' prescribed by statute, namely life imprisonment, be imposed upon the accused. The State relies on the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997 ("*the Act*"). That section reads as follows:

> "*Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.*"

[3] Subsection (3)(a) reads as follows:

> "(a) *If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those*

subsections, it shall enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence..."

[4] The accused's personal circumstances are as follows. He is 24 years old and will turn 25 on the 24th April 2013. He was 24 years old at the time the offences were committed. The accused is unmarried and has no direct dependants. His mother has since passed on. As a result, the accused assumed the responsibility of taking care of his younger siblings (girls, aged 16 and 12 years respectively). Accused passed grade 10. At the time of his arrest, he worked as a machine operator in a private company earning R400-00 per week. He is a first time offender and has been in custody since his arrest.

[5] With regard to the offences committed, they are all by their very their nature, serious crimes. Of the first two (murder and attempted murder), they are sadly, not only serious crimes, but very prevalent within the court's area of jurisdiction. There is no crime which is more serious, than the taking away of another person's life particularly in a constitutional democracy such as ours, where the right to life is guaranteed[15]. In this case, the motive for the crimes committed was never established. It is clear however, that the deceased did not provoke the attack that followed and, neither did the complaint in respect of count 2 (attempted murder), which I find to be aggravating. The attacks on the victims were in all respect, senseless. The murder and attempted murder were cold, calculated and callous ones perpetrated on defenceless victims. The victims were both unarmed and had no chance to defend themselves. It is also aggravating that the deceased and the complainant were attacked within

the sanctity of their room. Their attackers had to break open the door to facilitate access shortly after the deceased had requested accused 1 to leave the room. Not only were these attacks senseless but were cruel, barbaric and inhumane as the deceased was set on fire after being shot. It is nothing shot of a miracle that the complainant in the attempted murder charge, survived the shooting, with the bullets having gone through his eye and back.

[6] The fact that no motive had been advanced for the murder, the only reasonable inference was that the murder had been planned or premeditated, as envisaged in s 51(1) of the Criminal Law Amendment Act 105 of 1997.

[7] *S v Matyityi*[16] Ponnan JA pointed out at para 11 as follows:

> *"S v Malgas is where one must start . . . . Malgas, which has since been followed in a long line of cases, set out how the minimum sentencing regime should be approached, and in particular how the enquiry into substantial and compelling circumstances is to be conducted by a court. To paraphrase from Malgas: the fact that Parliament had enacted the minimum sentencing legislation was an indication that it was no 'longer business as usual'. A court no longer had a clean slate to inscribe whatever sentence it thought fit for the specified crimes. It had to approach the question of sentencing conscious of the fact that the minimum sentence had been ordained as the sentence which ordinarily should be imposed unless substantial and compelling circumstances were found to be present."*

[8] It is trite that, the interest of an offender play a lesser role where the offence committed is not only serious, but prevalent. In *S v Mhlakaza and Another*[17] it was held that:

> *"Given the current levels of violence and serious crimes in this country, it seems proper that, in sentencing especially such crimes, the emphasis should be on retribution and deterrence ..."*

[9] In this case, this was the conduct of a gang. The phenomenon of serious crimes committed by collective individuals, acting in concert, remained a significant societal scourge[18]. Accused 1 expressed no remorse. I find it mitigating that the accused is a first offender. At 24 years of age at the time, he had youth on his side. In as much as accused 1 had not personally pulled the trigger, it must be recalled that deceased died from "*a gun shot wound of the neck and burns*". The accused helped fan the fire that also killed the deceased by handing the shopping bags to the gunman. Accused 1 therefore has blood in his hands. His personal circumstances and mitigating factors referred to above cannot in my view, constitute "*substantial and compelling circumstances*" justifying an imposition of a lesser sentence than that prescribed.

[10] In the result, I consider the following sentences to be appropriate.

Count 1: A life term of imprisonment.

Count 2: Ten (10) years of imprisonment.

Count 3: Five (5) years imprisonment.

In terms of section 103 (1) of the Firearms Control Act 60 of 2000, accused is declared unfit to possess an arm.

[11] The Registrar is directed to bring the fact of accused 1's convictions and sentences to the relevant Government Department pertaining to the welfare of the accused's minor siblings, without any undue delay.

T P MUDAU
ACTING JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

DATE OF SENTENCE: 5TH APRIL 2013

APPEARANCES:

FOR THE STATE: ADV RAMPYAPEDI

ON BEHALF OF ACCUSED 1: ADV JM MOGOTSI

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[1] *S v Van der* Meyden 1999 (1) SACR 447 (W) at 448.
[2] 2001 (1) SACR 97 (SCA).
[3] 1998 (1) SACR 422 (SCA) at 426e-h.
[4] *Moshephi & Others v R* (1980-1984) LAC 57 at 59F-H.
[5] *S v Liebenberg* 2005 (2) SACR 355 (SCA) para 14 as well as *R v Hlongwane* 1959 (3) SA 337 (A) at 341A.
[6] 1956 (3) SA 81 (A).
[7] 1971 (3) SA 754 (A) at 758G.
[8] 1981 (3) SA 172 (A) at 180E-G.
[9] *S v Mthetwa* 1972 (3) SA 766 (A) at 768A-C.
[10] 1950 (2) SA 488 (AD).
[11] 1962 (1) SA 307 (AD) at 310C.
[12] 1963 (2) SA 29 (AD).
[13] *Burchell and Milton* at 393.
[14] *S v Rabie* 1975 (4) SA 855 (A) at 862G-H.
[15] Section 11 of Act 108 of 1996 provides that: "Everyone has the right to life".
[16] 2011 (1) SACR 40 (SCA) para 11.
[17] 1997 (1) SACR 515 (SCA) at 519d-e.
[18] *S v Thebus and Another* 2003 (2) SACR 319 (CC).