REPUBLIC OF SOUTH AFRICA

IN THE GAUTENG HIGH COURT
(LOCAL DIVISION JOHANNESBURG)

CASE NO:A387/2013

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

13 JUNE 2014

Signature

In the matter between

SIBUSISO MADLALA **APPELLANT**

and

THE STATE **RESPONDENT**

JUDGMENT

Criminal Law

Robbery with aggravating circumstances – what constitutes – firearm used after property has been taken to facilitate escape rather than to cause submission to the taking - centrality of attribution to the notion of common purpose.

Criminal Procedure

Robbery with aggravating circumstances – section 51 of the *Criminal Law Amendment Act* 105 of 1997 – conviction for first offender attracts a minimum sentence of 15 years.

Criminal Procedure – Evidence

Evidence adduced at bail proceedings – Admissibility of at subsequent trial – section 60 (11B) (c) of the Criminal Procedure Act 51 of 1977 – Duty of Court to warn accused where accused intends to use affidavit.

Evidence

Admissibility – criminal matter – statements made by accused during course of bail proceedings – admissibility of the record of bail proceedings at the subsequent trial - issue to be decided on a case-by-case basis and governed by principles of a fair trial - exclusion under section 35(5) of Constitution of the Republic of South Africa 108 of 1996, of evidence obtained in a manner that violates any right in Bill of Rights - applicable principles summarised.

SUMMARY:

Criminal Appeal – conviction – appellant convicted of aggravated robbery – trial court relied on written statements made by accused during the course of bail proceedings and the evidence of a single witness – proper judicial approach – whether the court treated the evidence with caution – whether the court below erred in finding that the guilt of the appellant was proved beyond reasonable doubt.

CORAM: MONAMA J et MOSIKATSANA AJ:

[1] This is an appeal against a conviction for robbery with aggravating circumstances. The appellant was charged in the Orlando Regional Magistrate's Court, with one count of robbery with aggravating circumstances. The charge was read in line, with section 1(1)(b) of the *Criminal Procedure Act*[1](CPA), and the provisions of s 51 of the *Criminal Law Amendment Act*[2](CLAA).

[2] The appellant was the first of two accused. He pleaded not guilty to the charge on 05 November, 2012. On 18 March, 2013 the appellant and his co-accused were both convicted of the offence charged. They were each sentenced to a term of fifteen years' imprisonment. They were correspondingly declared unfit to possess a firearm. On 06 June, 2014 the appellant was granted leave to appeal against both conviction and sentence.

[3] I shall first deal with the conviction. The complainant is a police officer. He was a single witness. The parties gave conflicting narratives. The complainant's version is that he and the appellant are known to each other, having lived in the same area for a number of years. The incident from which the charges arose, occurred on 02 December, 2011 shortly after midnight. The complainant was walking home from a tavern. He was accosted by the appellant, his co-accused and three others.

[4] The appellant slapped the complainant with his open hand in the face. Appellant then asked the complainant what was wrong with him. Appellant's accomplices including his co-accused joined in. The co-accused grabbed the complainant by the belt. The three others helped the co-accused to search him. They put their hands in his pockets. He had money in

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[1]51 of 1977
[2]105 of 1997

his pockets. His cell-phone was in the back pocket. They robbed him of his money in the amount of a thousand rands (R1,000.00). After they robbed him of his money, they left.

[5] One of the robbers noticed the cell-phone in the complainant's back-pocket. He stayed behind and tried to take the complainant's cell-phone. He and the complainant wrestled for the cell-phone. It fell to the ground. As complainant tried to pick it up, a gunshot rang. Complainant saw the person who fired the shot as one of his assailants but he did not know him as he had not seen him before. The person who fired the shot shouted, ordering complainant not to pick up his cell-phone. Somehow, the complainant was able to grab the cell-phone and run away. His assailants threw bricks at him, but he escaped injury. The complainant fled into his landlord's yard. The appellant ordered his accomplices to leave him.

[6] The appellant's version is that he was only with his co-accused at the tavern and not with three others. He stated that whilst at the tavern, he went to the toilet. When he came out of the toilet, he found the complainant and his co-accused arguing over some of their liquor that the complainant had taken. Appellant reprimanded them. He asked them not to argue. The complainant pushed the appellant to the ground. As the appellant tried to stand up, the complainant fought the appellant by laying his hands on him and by kicking him. They were then reprimanded and the fight stopped. Appellant flatly denied the complainant's version of events. He stated that the complainant was not alone at the tavern but that he was with his friends.

[7] Appellant's testimony at trial contradicted earlier statements he had made in his bail affidavit. In the bail affidavit he stated that it was his co-accused who had gone to the toilet when the altercation between him and the complainant started. His statement in the bail affidavit was the reverse of the testimony he gave at trial. The appellant's testimony at trial not only contradicted his deposition in his bail affidavit but it also contradicted materially, his co- accused's testimony at trial.

[8] Under cross-examination, it transpired that during his bail application, in which he was represented by counsel, appellant had submitted an affidavit in support of his bail application. Appellant's counsel agreed to the affidavit being admitted into evidence. In the bail affidavit, the appellant testified that the complainant had mistakenly taken a beer belonging to them. At the time, his co-accused was in the toilet. He approached the complainant. An argument ensued. It turned physical with the complainant slapping him with an open hand. He retaliated and a fight broke out. When his co-accused returned from the toilet, he saw the altercation and reprimanded them. The statement in the appellant's bail affidavit is a *volte-face* of what he testified to at trial. In his bail affidavit he deposed to the fact that the altercation started between him and the complainant and that at the time, his co-accused had gone to the toilet. His testimony at trial reverses the order of events as deposed to in his bail affidavit.

[9] Further, appellant's co-accused contradicted materially appellant's version at trial, that appellant was in the toilet when the altercation started between complainant and his co-accused. The co-accused denied that appellant was in the toilet when the altercation started, he also denied that they were in the tavern when the fight broke out. The co-

accused's version is that they were outside the tavern when the altercation started and that the appellant was lying when he testified at trial, that the fight broke out inside the tavern.

[10] In his heads of argument, appellant's counsel makes the submission that the regional magistrate was misdirected in admitting the appellant's bail affidavit into the record in the absence of proof of substantial compliance with s 60(11B)(c)[3] of the *CPA* which requires:

> 10.1 That the appellant not only be advised by his attorney that the statements in his bail affidavit may be used against him during his trial and form part of the record, but also;
>
> 10.2 that the *court* must itself, inform the appellant, that his statement may be used against him, at his trial.

[11] Appellant's counsel submits that the regional magistrate's admission of the appellant's bail affidavit into the record, absent proof that the court had informed the appellant of his rights during the bail application, is a misdirection resulting in an unfair trial. In support of his argument, appellant's counsel relies on the decision in *S v Sejaphale*[4]for the proposition that s 60(11B)(c) does not exempt a court from discharging its duty,to inform an accused person, during a bail hearing, of his or her rights, even where he is legally represented as in the instant case. The court in *Sejaphale* stated that non-compliance with s 60(11B)(c) of the CPA, renders the record of the bail proceedings inadmissible.

[12] Appellant's counsel also relied on the dicta of Jali J[5] and Kgomo J[6] for the same argument that, even if an applicant/accused person is represented by the most competent lawyer, the presiding officer in a bail hearing, is legally obliged in terms of s 60(11B)(c), to admonish applicant/accused, of the likelihood that his or her statements, may be used against him or her, in a subsequent trial. And that failure to warn the applicant/accused will

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[3] Section 60 (11B)(c) states: 'The record of the bail proceedings, excluding the information in paragraph (a), shall form part of the record of the trial of the accused following upon such bail proceedings: Provided that if the accused elects to testify during the course of the bail proceedings the court must inform him or her of the fact that anything he or she says, may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings.'

[4]2000 (1) SACR 603 (TPD)

[5]in S v Nzima and Another 2001 (2) SACR 354 (CPD) at 356 f-h where it was stated that 'If one reads s 60(11B)(c) it is clear that the Legislature placed the obligation on the court to advise the accused of the fact that the evidence he gives during the bail proceedings may subsequently be used against him in any proceedings. In my view, whether the accused is represented by an experienced legal representative or an inexperienced legal representative, the court still has a duty to establish that the accused's rights have been properly explained to him. It is not a duty which rests upon a legal representative even though the legal representative may assist or complement the court's obligation in explaining the accused's right.'

[6]in *S v Agliotti* 2012(1) SACR 559 (GSJ) at 566 par 39 where it was stated that: '... [E]ven where an accused or applicant, in a bail hearing concerning schedule 6 offences, intends to use an affidavit, it is a peremptory duty of the court, right at the beginning of the proceedings, to warn him fully and comprehensively of the provisions of s 60(11B)(c). That would allow the applicant/accused to make an informed choice before he decides on testifying viva voce or making use of an affidavit.'and at 567 par 41 Kgomo J continues: 'Whether he was represented by a good, able or competent, or experienced counsel is not a consideration that would affect what ought to be done. It should be done by the court, not by counsel or attorney representing the applicant in the bail proceedings.'

result in the statements made during the bail application, being inadmissible at trial in order to avoid an unfair trial.

[13] In my view, trial fairness in terms of ss 35(5) of the Constitution[7] will not always require that evidence admitted into the trial record contrary to s 60(11B)(c) be excluded. Section 35(5) of the Constitution stipulates that '[e]vidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair...'. Subsection 35(5) is flexible enough, to allow the trial court the discretion to determine fairness with reference to the factual matrix of the particular case.[8] Factors that the trial court may take into account in determining trial fairness, include the nature and extent of the constitutional rights violation,[9] whether there is prejudice to the accused,[10] the need to ensure that exclusion of evidence does not unduly compromise crime control in favour of due process,[11] societal interests,[12] and public policy[13].

[14] Respondent's counsel argued, that there is no requirement that the presiding officer at the bail proceedings, should inform the applicant/accused of his rights, if the accused as in the instant case, submits an affidavit. He argued that s 60(11B)(c) only requires the presiding officer to warn the applicant/accused if he '... elects to testify during the course of the bail proceedings...'. He concludes that because the applicant/accused submitted an affidavit and did not elect to testify, there is no obligation on the part of the presiding officer to warn the applicant/accused of his rights. Kgomo J considered the invidious distinction between written statements and oral submissions during bail proceedings to be an unnecessary distraction. In his words:

> 'It does not make sense to me to want to utilise evidence obtained through both oral testimony and affidavit, but expect the owner of such evidence to be warned only when he testifies orally. ... [B]oth oral evidence and affidavit are evidence that may be used in the subsequent trial. As such, the requisite warning should be issued by the court to the accused before he elects to testify orally or to use an affidavit.'[14]

[15] Counsel for the respondent further argued that because there was no transcript of the bail hearing at trial, it cannot be definitively stated that the court, during the bail proceedings, did not inform the appellant of his rights.

[16] In my view, even if the presiding officer did not inform the applicant/accused of his rights during the bail proceedings, such misdirection does not warrant a reversal. The admission of inadmissible evidence is material and prejudicial to the accused if it forms the basis for the adverse decision reached. *In casu,* the failure of the regional magistrate to 'exclude' the 'inadmissible' evidence is immaterial and non-prejudicial to the accused,

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[7] Constitution of the Republic of South Africa Act 108 of 1996
[8] PJ Schwikkard & SE Van Der Merwe *Principles of Evidence* (2009) pp225-228.
[9] *S v Tandwa* 2008 1 SACR 613 (SCA) at [117]; *S v Seseane* 2000 2 SACR 225 (O).
[10] *Sv Tandwa* (supra note 9); *S v Soci* 1998 2 SACR 275 (E) 293j-294b.
[11] *S v Cloete* 1999 2 SACR 137(C) at 150 h-i.
[12] *S v Soci* (supra note 10) at 397f-g.
[13] *S v Lottering* 1999 12 BCLR 1478 (N) 1483H; *S v Soci*(supra note 10) at 295d-e and 297f-g.
[14] *S v Agliotti*(supra note 6) at par 39

because the regional magistrate did not emphasise the inadmissible evidence in reaching his conclusions as to the factual issues in the case.

[17] In his finding of guilt, the regional magistrate did not hang his hat on the internal inconsistencies, between the appellant's statements made during the bail hearing and his testimony at trial, but on the general demeanour of the appellant and his co-accused in so far as they presented evidence that is incredible, unreliable and riddled with external contradictions at trial, as against the complainant who was found to be a credible and reliable witness. Even without factoring the internally contradictory statements made by the appellant during the bail proceedings and at trial, a finding of guilt is still supported by the regional magistrate's credibility findings, based on the externally contradictory evidence of the appellant and his co-accused at trial.

[18] The regional magistrate had the advantage of seeing and hearing the complainant on the one hand and the appellant and his co-accused on the other. His credibility findings are borne out by the evidence presented at trial. I am therefore not at liberty to interfere with such findings. If anything, I attach great weight to the credibility findings of the regional magistrate. My observations in this regard are resonant with the following dictum of Bosielo JA (Shongwe and Leach JJA concurring) in *Pistorius v The State*[15] that:

> 'It is a time-honoured principle that once a trial court has made credibility findings, an appeal court should be deferential and slow to interfere therewith unless it is convinced on a conspectus of the evidence that the trial court was clearly wrong. *R v Dhlumayo & Another* 1948 (2) SA 677 (A) at 706; *Kebana v S* 10 (1) All SA 310 (SCA) para 12. It can hardly be disputed that the magistrate had advantages which we, as an appeal court, do not have of having seen, observed and heard the witnesses testifying in his presence in court. As the saying goes he was steeped in the atmosphere of the trial. Absent any finding that he was wrong, *this court* is not at liberty to interfere with his findings.'

[19] Appellant's counsel submits that the appellant's conviction was based on the evidence of a single witness and that the trial court, should not have accepted his uncorroborated evidence as credible and reliable.

[20] On the contrary, counsel for the respondent submits quite rightly in my view, that s 208 of the CPA empowers a court, to convict on the evidence of a single witness. Respondent's counsel relies on the decisions in S v *Sauls*[16]and *S v Carolus*[17] for the argument that, where appropriate, a court may convict on the uncorroborated evidence of a single witness.

[21] The regional magistrate noted that the complainant was a single witness and that his evidence must be treated with caution. However, he found that the complainant testified logically, confidently and consistently and that there was nothing unlikely in his testimony. The regional magistrate also noted that the complainant was honest in his testimony and that he did not try to worsen the case against either of the accused. He readily conceded

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[15] (253/13) [2014] ZASCA 47 (01 April 2014) at paras [30] –[31].
[16] 1981 (3) SA 172(A)
[17] 2008 (2) SACR 207 (SCA)

points in their favour such as the fact that neither of the accused was in possession of a firearm or any other weapon during the robbery, and that the firearm was wielded by someone else who was with them. On the contrary the regional magistrate found that the versions given by both accused at trial were false and both versions were rejected.

[22] I accept that the evidence of a single witness must be treated with caution, it is, however, trite that where appropriate, as in the instant case, a conviction may rightly follow on such evidence, if found to be consistent, credible and reliable.

[23] Appellant's counsel argued that that it is highly unlikely, that the complainant who was a police officer, and should have been aware of the prevalence of street robberies, would wander off into the night with one thousand rands in his pockets. He disputes the fact that the complainant still had one thousand rands in his pockets after he had spent some money in the tavern.

[24] The argument that it is highly unlikely that the complainant who was a police officer and should have been aware of the prevalence of street robberies, would wander off into the night, with one thousand rands in his pockets is a red herring and it is unavailing. It focuses unfairly on the conduct of the complainant and not those of the appellant and his co-accused. Such an argument implicitly blames the complainant who is the victim,[18] for the robbery to which he was subjected.

[25] Victim-blaming, tends to devalue the violent criminal act of the appellant and his co-accused by focusing on what the complainant, who is the innocent victim of the robbery, might have done to cause the violence committed against him. In my view, the focus should be trained on the violent acts of the appellant and his co-accused and not on the conduct of the complainant.

[26] There is nothing implausible about the fact that the complainant living in a free and democratic South Africa, can saunter the streets of his neighbourhood from a night at the tavern, with a thousand rands in his pockets. The complainant was merely exercising his constitutional right to freedom of movement.[19] It is not unthinkable that the complainant also rightfully expected his constitutional rights to security of the person[20] and to property[21] to be respected.

[27] Further, the exact amount that the complainant has been robbed of, is not a constitutive element of the offence charged, as the crime of robbery is defined, not by the *amount* appropriated, but by the appropriation *per se*, accompanied by threats of, or the use of force.[22] The value of the property appropriated through threats of, or the use of

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[18] Ryan Williams *Blaming the Victim* (1976) Vintage Books New York; See generally, Jürgen Maes 'Blaming the Victim: Belief in Control or Belief in Justice?' in *Social Justice Research*, vol 7, No 1, 1994 pp 69-85.
[19] Section 21 *Constitution of the Republic of South Africa* 1996
[20] Section 12 *Constitution of the Republic of South Africa* 1996
[21] Section 25 *Constitution of the Republic of South Africa* 1996
[22] Jonathan Burchell *Principles of Criminal Law* 2013 (4ed) Juta p 706

force, may tend to influence either the discretion whether or not to prosecute[23] or the degree of punishment to be imposed.

[28] Appellant's counsel submitted that the shot was only fired after the robbery with which the appellant was charged had been completed. He argued that because the firearm was only produced after the 'common' robbery of the money was completed, it cannot be said that a firearm was wielded during the robbery.

[29] Appellant's submission raises the two linked and most vexed questions of *continuity* and *contemporaneity* regarding the crime of robbery.

> [29.1] The *continuity* question relates to whether or not the crime of robbery was completed after the money was taken by appellant and the other assailants and whether the firing of the gunshot can still be considered to have been in furtherance of the robbery as the money had already been taken. In my view, the unlawful appropriation in robbery is a continuing offence. For as long as the appellant and the other assailants were in possession of the money that was forcibly appropriated the crime of robbery was still in progress.[24]
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> [29.2] *Contemporaneity* relates to whether or not the threats of or use of violence must precede or co-exist with the appropriation. In the past South African common law required that the threat of, or use of force must precede the taking. However, this rule was abandoned in S v *Yolelo*[25] where it was stated that:
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> 'Ek meen derhalwe dat roof gepleeg kan word ook indien geweld volg op die voltooing van diefstal in 'n juridiese sin. In elke geval sal nagegaan moet word of daar in die lig van al die omstandighede, en veral die tyd en plek van die handelinge, so 'n noue verband tussen die diefstal en die geweldpleging bestaan dat die´ as aaneenskakelende komponente van wesentlik een gedraging beskou kan word.'[26]

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[23] For instance where the value of the property appropriated during the robbery is negligible the prosecution may decline to prosecute on the principle that *de minimis non curat lex*.

[24] See: *S v Cassiem* 2001 (1) SACR 489 (SCA); See also *R v Hale* [1978] 68 Cr App R 415 where two defendants broke into a woman's home, took some jewellery from her bedroom. After taking the jewellery they tied her up. They were convicted of robbery. They appealed on the basis that the force was applied after the theft and therefore it did not precede nor was it contemporaneous with the appropriation. The conviction for robbery was upheld. Eveleigh LJ: stated that: "To say the conduct is over and done with as soon as he laid hands on the property is contrary to common-sense and to the natural meaning of the words. The act of appropriation does not cease. It is a continuous act and it is a matter for the jury to decide whether or not the appropriation has finished." [Accessed at **www.e-lawresources.co.uk/R-v-Hale.php** on 15 June, 2014]; *R v Lockley* [1995] Crim LR 656, where the defendant was caught by a security guard while shoplifting. He used force on the security guard to effect his escape. He was convicted of robbery. On appeal he argued that the case of *Gomez* [1993] AC 442 implicitly overruled *Hale* on the legal principle that appropriation is a continuing act. The appeal was dismissed on the basis that Hale is still good law and that appropriation is a continuing act. Therefore force used in order to escape is treated as force used in order to steal. In the result, the conviction was upheld. [Accessed at www.e-lawresources.co.uk/R-v-Lockley.php on 15 June, 2014]

[25] 1981 (1) SA 1002 (A)

[26] See *Yolelo* (supra note 25) at 1015G; See also Jonathan Burchell (supra note 19) at 713.

Since the decision in Yolelo, South African common law no longer requires that the threats of, or use of force must precede the taking or that the threats of, or use of force and the appropriation must co-exist. There need only be a causal nexus between the threats of, or use of force and the appropriation.

[30] The reasoning of Low PJ in People v *Estes,*[27] an analogous case, decided in the jurisprudentially kindred Anglo-American legal environment, neatly sums up my view:

> 'Defendant ... claims that the robbery verdict cannot stand since his assaultive behaviour was not contemporaneous with the taking of the merchandise from the store. Defendant maintains that he was, at most, guilty of petty theft and a subsequent assault. Appellant's theory is contrary to the law. The crime of robbery is a continuing offense that begins from the time of the original taking until the robber reaches a place of relative safety. It is sufficient to support the conviction that appellant used force to prevent the guard from retaking the property and to facilitate his escape. The crime is not divisible into a series of separate acts. Defendant's guilt is not to be weighed at each step of the robbery as it unfolds. The events constituting the crime of robbery, although they may extend over large distances and take some time to complete, are linked by a single-mindedness of purpose. (See People v Laursen (1972) 8 Cal. 3d 192 199-200 [104 Cal.Rptr. 425, 501 P.2d 1145]. Whether defendant used force to gain original possession of the property or to resist attempts to retake the stolen property, force was applied against the guard in furtherance of the robbery and can properly be used to sustain the conviction.
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> A similar result was reached in *People v Kent* (1981) 125 Cal. App.3d 207 [178 Cal. Rptr. 28]. There a defendant used a ruse to enter the victim's house. While defendant was alone in the kitchen he took cash from the victim's purse. A short time later, the victim discovered the money was missing and confronted defendant. At that point defendant struck the victim, brandished a knife and demanded more money. Defendant left the premises without obtaining additional cash. His conviction of robbery was affirmed. The court rejected defendant' contention "that the jury could have reasonably concluded that the taking of the money constituted a mere larceny and that the application of force or fear occurred after the larceny was completed."'

[31] For the reasons mentioned above, I find that the regional magistrate was not misdirected and that the appellant was properly convicted of the crime of robbery with aggravating circumstances.

[32] I now turn to the sentencing. Appellant's counsel submits that no firearm was used during the robbery, the complainant was only slapped with open hands and apparently he did not sustain any injuries. This argument is unsustainable. The relevance of the fact that the firearm was only discharged after appropriation had taken place, to the criminal liability

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[27] (1983) 147 Cal. App. 3d 23, 194 Cal. Rptr. 909

of the appellant, and the gravity of the offence, has already been addressed in paragraphs 28 to 30 above and need not be repeated here.

[33] It also needs to be mentioned that the fact that the firearm was not discharged by the appellant but by someone acting in concert with him, does not lessen his culpability for the aggravated robbery. According to common purpose doctrine, the act of the appellant's co-perpetrator in firing the weapon during the robbery is also attributable to the appellant.[28]

[34] Appellant's counsel further submits that the appellant is a first offender and was gainfully employed. He suggests that a sentence not exceeding six years' imprisonment would be appropriate.

[35] Counsel for the respondent submits that s 51(3) CLAA has prescribed a minimum sentence for the crime of aggravated robbery and that though the court may impose a lesser sentence if substantial and compelling circumstances are found to exist, the specified sentences are not to be departed from lightly.[29]

[36] Respondent's counsel reminds this court that sentence is a matter for the sentencing court[30] and that the court of appeal is not to interfere with the sentence imposed merely because it would have imposed a different sentence or even a lighter sentence.[31] The appeal court, it is argued, can only interfere with the sentence, if it is convinced that the regional magistrate did not exercise his discretion judiciously.[32] Respondent's counsel further argues that the regional magistrate, carefully weighed all the factors in imposing a sentence of fifteen years and that this court is not empowered to interfere.

[37] I have given due considerations to the submissions made on behalf of the appellant on the issue of sentence. It is my view, that the sentence is neither shockingly severe nor disproportionate with the severity of the offence for which the appellant was convicted.

[38] For all the above reasons there is no merit in the appeal and it must fail.

[39] In the result the appeal against the conviction and the sentence is dismissed.

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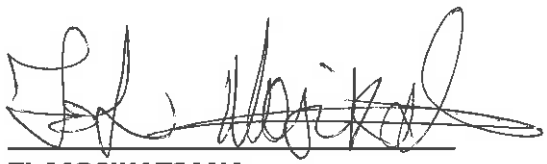
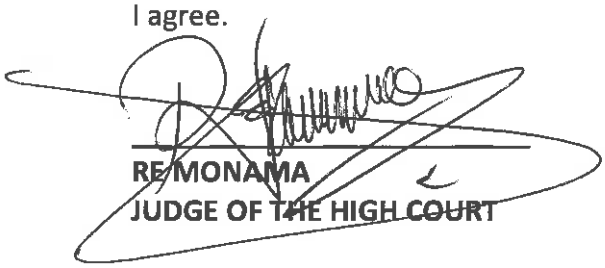
[28] See *S v Malinga* 1963 (1) SA 692 (A) where it was stated that *attribution* is central to the notion of common purpose.
[29] *S v Malgas* 2001 (1) SACR 469 (SCA).
[30] *S v Kgosimore* 1992 (2) SACR 238 (SCA)
[31] S v Mofokeng & Another 1999 (1) SACR 502 (W)
[32] *S v Skenjana* 1985 (3) SA 51 (A).



TL MOSIKATSANA
ACTING JUDGE OF THE HIGH COURT

I agree.



RE MONAMA
JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPELLANT	***MR. JO VAN SCHALKWYK (BDK ATTORNEYS)***
COUNSEL FOR RESPONDENT	***ADV E DUPLOOY***
Instructed by:	
DATE OF HEARING:	***11 MARCH 2014***
DATE OF JUDGMENT	***13 JUNE 2014***