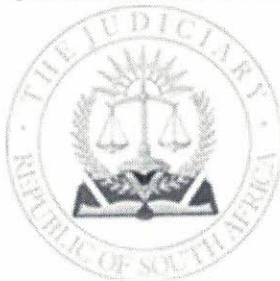


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS147/17

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
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DATE	SIGNATURE

In the matter between:

THE STATE

and

MOPEDINYANE, FRANCIS MOKOAELA

Accused 1

SETENE, LEI

Accused 2

SETLABA, LEFA EMMANUEL

Accused 3

MOROB, THABISO

Accused 4

JUDGMENT - SENTENCE

MOSHIDI, J:

INTRODUCTION

[1] The four (4) accused have been found guilty of various offences; and variously as follows:

- (a) Accused 1 (Mopedinyane Francis Mokoaela), Counts 1, 2 and 3, being murder, read with the provisions of section 51(1), and Schedule 2 of the Criminal Law Amendment Act 105 of 1997, as amended (*"the Amendment Act"*); as well as the unlawful possession of a firearm and accompanied ammunition. Counts 4, 5 and 6, which is another murder as well as the unlawful possession of a firearm and accompanying ammunition. Counts 7, 8, 9, 10, 11, 12 and 13 being the unlawful possession of a firearm, namely a Norinco 1 x 9 mm Calibre Semi-automatic Model 201C Firearm (*"Count 7"*), as well as the unlawful possession of ammunition, namely seven (7) 1 x 9 mm calibre live round 1 (*"Count 8"*). Count 9 is the theft of a firearm, namely a 12 Gauge Calibre Model Muster Pump gun Action Shotgun with serial number AM 34077, as well as the possession thereof (*"Count 10"*), and the unlawful possession of the accompanying ammunition, namely four (4) live rounds (*"Count*

11"). Count 12 is the unlawful possession of a firearm, namely a Norinco semi-automatic firearm with serial number 666669, and the accompanying unlawful possession of ammunition, namely six (6) 1 x 9 mm live rounds ("*Count 13*"). Count 15 is the attempted murder of Warrant Officer Msibi by shooting at him on 1 June 2017, ("*Count 15*"). The final count is Count 16, namely the robbery of Mr Thembelihle Mvelase and/or Mr Christopher Tsingoane on 23 May 2017, ("*Count 16*").

(b) Accused 2 (Setene Lei) was found guilty of the above counts, namely Counts 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 15 and 16.

(c) Accused 3 (Setlaba Lefa Emmanuel) was found guilty of lesser counts above, namely Counts 7, 8, 9, 10, 11, 12, 13, 15 and 16.

(d) Accused 4 (Morobi Thabiso) was found guilty of the above counts, namely Counts 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 15 and 16.

[2] It is now my difficult but necessary task to impose appropriate sentences in accordance with the trite principles of sentencing, having regard to all the relevant circumstances and factors cumulatively.

[3] The starting point and of crucial importance, are the respective personal circumstances of the accused, which have been extensively placed on record by their respective legal representatives. I have had due regard to

all the personal circumstances, which contain a commonality. In short, accused 1 testified that he was born on 23 April 1992, which made him about 25 years, at the time of the offences. He is a Lesotho national. His parents are still alive. He is the second born of six (6) siblings. He dropped out of school in Standard six (6) in Lesotho. He is married, with an unemployed wife, and two (2) minor children, aged about 6 years and 3 years, respectively. He is a breadwinner and supported his family. As a self-employed recycler at the crime scene, in Count 7, he used to send to his family in Lesotho, the sum of about R3/4 000,00 per month in good times. He came to South Africa to seek employment. He denies committing the present crimes, and therefore disputes the convictions. Importantly, he has no previous convictions.

[4] Accused 2, as well has no previous convictions. He was born in 1985, in Maseru, Lesotho, and is therefore about 33 years old. He came to South Africa in 2011 to seek employment. He is married with about three (3) minor children. He supported his family in Lesotho from his occupation as a self-employed recycler at the mine dumping site mentioned in Count 7. He completed Grade 12 (matric) in Lesotho during 2004. The Court was urged upon to consider the role played by accused 2 in the crimes. Accused 3, Setlaba Lefa Emmanuel, testified in mitigation of sentence. He too has no previous convictions. He too was born in Lesotho during July 1987, which means he was about 30 years at the time of the offences. His parents are still alive. He has two (2) siblings. He came to South Africa in 2012, after dropping out of school in Standard 3 (three). He is married with three (3)

minor children and an unemployed wife in Lesotho. He supported his family from his self-employed occupation as a recycler at the local mine dumping site. His earnings varied from about R150,00 per day to R500,00. He too, testified that he was incorrectly convicted. He, like his co-accused, has been in custody awaiting trial in this matter from the date of arrest on 1 June 2017.

[5] Accused 4, testified in mitigation. He too, was born in Maseru, Lesotho during March 1985, some 32 years ago. He never went to school. He is an orphan. He is married for the second time with four (4) minor children. He supports his family, and used to send some R1 500,00 per quarter to Lesotho for his children's school fees. He also received from his Government financial aid for schooling. He came to South Africa in 2007, and worked in construction before being self-employed as a recycler at the dumping site, where he earned about R350,00 per day in good times. He too, denies complicity in the present crimes. He has one unrelated previous conviction under the Immigration Act 13 of 2002, for which he had to be deported to Lesotho.

[6] There is no doubt that the various offences committed by the accused are not only prevalent, but also of a serious nature. The latter was in fact readily conceded by their counsel. There is therefore the compelling and justified reason in the circumstances of this matter to protect strongly, and decisively, the interests of society by removing the accused from society for a lengthy period.

[7] There are several reasons for the above determination. The murder Counts 1 (all accused), and Count 4 (accused 1); the robbery Count 16; and the attempted murder count, Count 15, are all very serious offences. The seriousness of the crimes was accompanied by significant aggravation. In the first place, the murders were gruesome, merciless, and committed brazenly in daylight. The mother of the deceased in Count 1, testified how the murder has affected the family, and the deceased's (39 years) minor children, aged 15, 10 and 4 years, respectively. The 15 years old child has been affected mentally and attending treatment such as counselling. Equally, the deceased in Count 4, was chased, cornered and brutally killed.

[8] In regard to the attempted murder count, Count 15, Warrant Officer Msibi, was lucky to have escaped unhurt. However, the victims in Count 16, the robbery count, were not so lucky. They were insulted, assaulted and harassed in the safety of their workplace. Some of them were still angry and hostile towards the accused when they testified. The deceased in Count 1 was a co-citizen with the accused persons. What was worrisome in this matter was the ease with which the accused gained possession, jointly of exceedingly dangerous firearms, and used so senselessly on various victims.

[9] More aggravating, in the view of the Court, was the blatant lack of remorse on the part of all the accused. Some of them displayed visible disrespect for the Court, and officers for the Court. It was truly unnecessary. The list of aggravating circumstances was not exhaustive. In closing argument, the Court went out of its way to invite counsel for the accused to

assist the Court in point out possible substantial and compelling circumstances, where applicable. None came to the fore, except that the accused had no previous convictions, were injured on arrest, and the ages of the accused. The latter factor is in fact a neutral factor since relative younger persons also commit serious offences. (Compare for example, *S v Matyityi* 2011 (1) SACR 40 (SCA).) In the judgment of the Court, the only possible, and conceivable mitigating circumstances, are the clean criminal records of the accused, and to an extent, the period spent in custody awaiting trial, which translates to about 1 year and 4 months today. However, these factors must tritely be considered with all other factors in sentencing. The sum total was that cumulatively considered, the meagre mitigating factors that may be present, are by far outweighed by the aggravating circumstances. Where required, there are simply no substantial and compelling circumstances to be found in crimes carefully pre-planned, and pre-meditated, and carried out in common purpose, and common and joint possession, where applicable in regard to firearms. Murder is the most serious offence for which a person can be convicted, and the shooting of innocent persons, and police officers with high calibre firearms, for financial greed, cannot, and should not, be condoned by the courts. The cumulative effect of the sentences to be imposed must be carefully considered here. There is no reasonable probability that the accused may soon be rehabilitated, especially in the light of their lack of visible remorse.

CONCLUSION

[10] I have considered all the relevant circumstances, and factors to be taken into account in the sentencing process. I sympathize with the accused for leaving their country of origin in pursuit of greener pastures in South Africa. However, their destination in such serious offences, such as the present, cannot be countenanced by the courts. The under-mentioned sentences are just and appropriate.

ORDER

[11] The following order is made:

(a) Accused 1 (Mopedinyane Francis Mokoaela):

Count 1 (Murder) is sentenced to 20 years' imprisonment.

Counts 2 and 3, taken together for sentencing purposes, is sentenced to ten (10) years' imprisonment.

Count 4 (Murder), is sentenced to life imprisonment.

Counts 5 and 6, taken together for purposes of sentence, is sentenced to ten (10) years' imprisonment.

Counts 7 and 8 (the unlawful possession of a Norinco 1 x 9 mm calibre semi-automatic firearm, and the related unlawful of ammunition, the accused is sentenced to ten (10) years' imprisonment.

Count 9, the theft of the 12 Gauge Calibre Pump Action Shotgun, and by virtue of common purpose and joint possession, as well as the doctrine of recent possession, the accused is sentenced to five (5) years' imprisonment.

Counts 10, 11, 12 and 13, the unlawful possession of the 12 Gauge Calibre Pump Action Shotgun, with serial number AM 34077, the unlawful possession of the ammunition thereof, and the unlawful possession of the Norinco pistol semi-automatic firearm with serial number 666669, and the accompanying unlawful possession of the ammunition thereof, respectively, taken together for purposes of sentence, the accused is sentenced to 12 years' imprisonment.

Count 15, the attempted murder of Warrant Officer Msibi, the accused is sentenced to 8 years' imprisonment.

Count 16, the robbery with aggravating circumstances, on 23 May 2017, the accused is sentenced to 10 years' imprisonment.

ORDER – It is ordered that forty-five (45) years' imprisonment imposed in respect of Counts 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 and 16, shall run concurrently with the sentence imposed in respect of Count 4. The effective term of imprisonment is therefore: Imprisonment for life (Count 4) plus 40 years' imprisonment.

(b) Accused 2 (Setene Lei)

Count 1, murder, is sentenced to 20 years' imprisonment.

Counts 2 and 3, taken together for purposes of sentence, is sentenced to 10 years' imprisonment.

Counts 7 and 8, the unlawful possession of a Norinco 1 x 9 mm calibre, semi-automatic firearm, and the related unlawful possession of ammunition, the accused is sentenced to 10 years' imprisonment.

Count 9, the theft of the 12 Gauge Calibre Pump Action Shotgun, and by virtue of common purpose, and joint possession, as well as the doctrine of recent possession, the accused is sentenced to five (5) years' imprisonment.

Counts 10, 11, 12 and 13, the unlawful possession of the 12 Gauge Calibre Pump Action Shotgun, with serial number 34077, the unlawful possession of the ammunition thereof, and the unlawful possession of the Norinco pistol, semi-automatic firearm with serial number 666669, as well as the accompanying unlawful possession of the ammunition thereof, respectively, taken together for the purposes of sentence, the accused is sentenced to 12 years' imprisonment.

Count 15, the attempted murder on Warrant Officer Msibi, the accused is sentenced to 8 years' imprisonment.

Count 16, the robbery with aggravating circumstances, on 23 May 2017, the accused is sentenced to 10 years' imprisonment.

ORDER – It is ordered that forty-five (45) years' imprisonment imposed in respect of Counts 2, 3, 7, 8, 9, 10, 11, 12, 13, 15 and

16, shall run concurrently with the sentence imposed in respect of Count 1. The effective term of imprisonment is therefore 30 years' imprisonment.

(c) Accused 3 (Setlaba Lefa Emmanuel)

Counts 7 and 8, the unlawful possession of a Norinco 1 x 9 mm calibre, semi-automatic firearm, and the related unlawful possession of ammunition, taken together for the purposes of sentence, the accused is sentenced to 10 years' imprisonment.

Count 9, the theft of the 12 Gauge Calibre Pump Action Shotgun, and based on the principles of common purpose, and joint possession, the accused is sentenced to five (5) years' imprisonment.

Counts 10, 11, 12 and 13, the unlawful possession of the 12 Gauge Calibre Pump Action Shotgun, with serial number AM 34077, and the unlawful possession of the ammunition thereof, as well as the unlawful possession of the Norinco pistol, semi-automatic firearm, with serial number 666669, and the accompanying unlawful possession of the ammunition thereof, respectively taken together for the purposes of sentence, the accused is sentenced to 12 years' imprisonment.

Count 15, the attempted murder of Warrant Officer Msibi, the accused is sentenced to 8 years' imprisonment.

Count 16, the robbery with aggravating circumstances on 23 May 2017, the accused is sentenced to 10 years' imprisonment.

ORDER – It is ordered that the sentences imposed in respect of Counts 9 and 16, shall run concurrently with the sentences imposed in respect of Counts 7, 8, 10, 11, 12, 13 and 15. The effective term of imprisonment is therefore 30 years' imprisonment.

(d) Accused 4 (Morobi Thabiso)

Count 1, the accused is sentenced to 20 years' imprisonment.

Counts 2 and 3, taken together for sentencing purposes, the accused is sentenced to 10 years' imprisonment.

Counts 7 and 8, the unlawful possession of a Norinco 1 x 9 mm calibre, semi-automatic firearm, as well as the accompanying unlawful possession of the ammunition thereof, the accused is sentenced to 10 years' imprisonment.

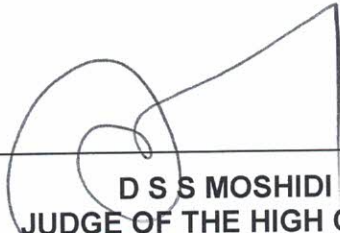
Count 9, the theft of the 12 Gauge Calibre Pump Action Shotgun, and based on the principles of common purpose, and joint possession, and the doctrine of recent possession, the accused is sentenced to five (5) years' imprisonment.

Counts 10, 11, 12 and 13, the unlawful possession of the 12 Gauge Calibre Pump Action Shotgun, with serial number AM 34077, as well as the accompanying unlawful possession of the ammunition thereof, and the unlawful possession of the Norinco pistol, semi-automatic firearm with serial number 666669, as well as the accompanying unlawful possession of the ammunition thereof, respectively, and taken together for the purposes of sentence, the accused is sentenced to 12 years' imprisonment.

Count 15, the attempted murder of Warrant Officer Msibi, the accused is sentenced to 8 years' imprisonment.

Count 16, the robbery with aggravating circumstances on 23 May 2017, the accused is sentenced to 10 years' imprisonment.

ORDER – It is ordered that the sentences imposed in respect of Counts 2, 3, 7, 8, 9, 10, 11, 12, 13 and 15 shall run concurrently with the sentences imposed in respect of Counts 1 and 16. The effective term of imprisonment is therefore 30 years' imprisonment.



D S S MOSHIDI
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Counsel for accused 1 and 4	Adv V D T Nolutshungu
Instructed by	Johannesburg Justice Centre
Counsel for accused 2	M Buthelezi
Instructed by	Johannesburg Justice Centre
Counsel for accused 3	P Milubi
Instructed by	Johannesburg Justice Centre
Counsel for the State	J M Serepo
Instructed by	DPP, Johannesburg
Date of hearing	4/5 October 2018
Date of judgment	26 October 2018