IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) **REPORTABLE: YES / NO**
(2) **OF INTEREST TO OTHER JUDGES: YES / NO**
(3) **REVISED**

2016.08.26
DATE

SIGNATURE

CASE NUMBER: A377/14

DATE: 26 August 2016

MANDLA ISAAC MTSWENI — Appellant

V

THE STATE — Respondent

JUDGMENT

MABUSE J:

[1] This is an appeal against both conviction and sentence, leave so to appeal having been granted on petition on 14 May 2014.

[2] The appellant, Mr. Mandla Isaac Mtsweni, appeared before a regional court magistrate (Mr. Ball) at Secunda where he was charged with rape of the complainant JM, a 22 year old woman. Despite his plea of not guilty, he was convicted of rape and upon conviction sentenced to ten (10) years imprisonment. Accordingly, it is the aforementioned conviction and sentence he is appealing against.

[3] The appellant, who enjoyed legal representation throughout the entire trial, pleaded not guilty to the charge against him and made a plea-explanation through his legal representative in terms of s 115 of the Criminal Procedure Act 51 of 1977 ("the CPA"). In his aforementioned plea-explanation, he admitted that he had had sexual intercourse with the complainant but added that such sexual intercourse took place with the complainant's consent. Furthermore he told the court that he and the complainant had a love relationship. After the appellant had made the above admission, the Public Prosecutor informed the court that he was in possession of a Report by an Authorised Medical Practitioner On The Completion Of a Medico-Legal Examination, otherwise known as the J88. The said J88 was handed in as an exhibit by consent with the appellant.

[4] The State then proceeded to lead the evidence of its only two witnesses, the complainant, JM and her mother, RM. According to their evidence, the charge against the appellant arose from the following incident.

[5] <u>The evidence of JM</u>

On 31 July 2009 at approximately 20h00, the complainant proceeded to a shop where she found the appellant. When she came out of the shop, the appellant approached her and started assaulting her. She asked the appellant what he was doing but the appellant simply told her that she could see what he was doing. The appellant continued assaulting her while dragging her to an open veld just nearby.

[6] In the open veld, the appellant ordered her to undress. She refused. The appellant then threatened her and again ordered her to undress her panty. Still the complainant refused. The appellant then undressed her of her panty and a pair of trousers forcefully and, having done so, had sexual intercourse with her. The complainant screamed for help but no help came to her.

[7] After having had sexual intercourse with her in the open veld, the appellant took her to his home. He continued assaulting her by hitting her with fists and kicking her all over her body even after they had arrived at his home. The appellant again undressed her of her clothes and again had sexual intercourse with her. She screamed for help.

[8] When they arrived at the appellant's home, two of his brothers were present in the kitchen. At one stage one of his brothers asked him what he was doing after she had screamed. She spent the whole night during which the appellant had sexual intercourse with her until in the morning. In the morning the appellant opened the door for her. She walked out of the appellant's shack and went home. In all instances the appellant had sexual intercourse with her without her consent.

[9] Upon her arrival at home, she made a report about the incident to her mother RM and sister-in-law. They then walked to the Police Station to report the incident. On their way to the Police Station they met the Police. From the Police Station where the complainant had laid a charge against the appellant she was to a medical doctor for medical examination.

[10] She told the court furthermore that as a result of the assault, she sustained injuries on her thighs. Her whole body was painful. She had visible injuries all over her whole body and on the left thigh. Her left eye was swollen from being assaulted with fists. She showed all the injuries she had sustained to the doctor. She did not have any love affair with the appellant.

[11] <u>The evidence of RM</u>

RM told the court that JM was her daughter and that on 1 August 2009 she had sent her to the shop at 07h00 but she never came back. Ever since she left that morning of 1 August 2009 she only saw her again the following morning at 05h00. Around that time, she heard a knock at the door. She asked who it was and when she opened the door she realised that it was the

complainant. The complainant was injured on her face and neck and was bleeding above her left eye. She was walking barefoot. She asked the complainant where she was the whole night. The complainant told her that she met a certain boy who took her forcefully, first to an open veld, where he raped her, and thereafter to his shack. She continued and told her what had happened to her in the shack. As she was relating the incident to her, she was crying. She told her that the boy who raped her was Somandla, the appellant.

[12] The appellant was known to her. She knew him from where they were staying. The appellant and the complainant could not be a boyfriend and a girlfriend of each other because they were somehow related to each other. To her knowledge, the complainant had no love relationship with the appellant. The night that the complainant did not spend at home was the first night. The complainant did not frequent taverns.

[13] After the complainant had made a report to her, they decided to go to the Police Station to report the incident. On their way to the Police Station, they met the Police. After they had made a report to them, the Police decided to drive to the appellant's place. On their arrival they knocked at the door of the appellant's shack but, though he was present, the appellant refused to open the door. RM was the state's last witness after which the appellant and his brother also testified.

[14] <u>The appellant's evidence</u>

The appellant told the court that he started dating the complainant in September 2008. They continued with their love affair until it was broken by the allegations the complainant had made that he had raped her. He continued with his evidence and told the court that he went to Nelspruit where he spent more than nine months. On 31 July 2009, he had just returned from Nelspruit. Because he did not have cash in his possession, he proceeded to town to go and withdraw money from an ATM. After withdrawing money he proceeded to the tavern to go and purchase liquor. On the day of the incident he was at a tavern in Delmas when the complainant

unexpectedly arrived. The complainant came to him at the tavern because she feared that he would spend the whole money that he had.

[15] On her arrival at the tavern the complainant told him that her mother had sent her to go and fetch a church uniform from someone. The complainant told him that she had been missing him. She accused him of not bothering to keep in touch with her despite the fact that he had come back. She asked him why he behaved in that manner. He then told her that it was a mistake that he made. He told her that he did not have airtime and that he had left his cell phone at his place of residence. He and the complainant kept their relationship a secret. He did not really love her and for that reason did not want people to know about their relationship. The complainant remained with him at the tavern while he consumed liquor. Although the complainant did not consume liquor, on that particular day he made her to do so. The complainant started drinking soft drinks but drank liquor as time went by.

[16] In the tavern the appellant and the complainant were in the company of three females and two males. The three females were consuming liquor. The complainant drank one or two drinks of liquor until he stopped her from drinking any further. He had to stop her from doing so because the complainant had some form of disability, like himself.

[17] Because of the lateness of the hour, he told her that they should leave and both of them agreed to leave. The complainant suggested that they should first go to her parental home where she would first had to give a report to her mother about the boys who had returned from the initiation school and to report to her mother again that she did not find the person from whom she had been sent to fetch the church uniform, before they could proceed to his place of residence. The complainant entered his parents' home, while he waited for her somewhere and emerged from her home after some time. On re-joining him, the complainant told him that she had reported to her mother and had also told her mother that she would be going to a certain place and would

only return home the following day. The complainant told him furthermore that her mother did not have any objection.

[18] From her home both of them walked to his home, to the shack that he shared with his uncle and his uncle's wife. Because on their way to his home the complainant had complained that she was hungry and because furthermore the shops had closed at that stage, on their arrival at home they walked straight into the main house where his uncle and wife resided. Both his uncle and his wife were surprised by her visit as they had not seen her in a very long period. They were not seeing her on this particular day for the first time. The uncle suggested that he and the complainant should go and make some eggs and pap to eat.

[19] After eating eggs and pap, he left the complainant behind and went to buy some beers at the tavern close by. He had left the complainant in the company of his uncle and his uncle's wife. Upon his return he and the complainant went to his room, the room that the complainant knew. As soon as they had entered the room, the complainant told her that she knew that he had been away for a very long time; that she had heard that he had a lot of money and furthermore that they earned a lot of money whenever they went to the countryside. The complainant asked him for R60.00 so that she could go and make up her hair. He told the complainant that of the R50.00 that he had withdrawn, he had used R10.00 to purchase beer and that only R40.00 was left. The complainant took the R40.00 and tore it into pieces whereafter she told him that she had no interest in the sum of R40.00. The complainant demanded instead R60.00. He suggested that they should go and withdraw cash from an ATM the following day and the complainant accepted the suggestion. They then went to sleep.

[20] In the morning, at about 06h00 he saw the complainant away. For two reasons he did not accompany the complainant to her home. The first reason was that the complainant's mother did not like him and the second reason was that he was afraid that people would see them and if

they did they would have told the complainant's mother. Around 10h00 and 11h00, the complainant returned. She was still wearing the same clothes she had before. On her return the complainant told him that her mother had gone to the initiates and furthermore that she had not discovered that she did not sleep at home the previous night. The complainant left and he went back to sleep. He was arrested later.

[21] He denied that he forcefully took the complainant when she was from the shop. Furthermore he denied that he had assaulted her, dragged her to his homestead and raped her. He told the court furthermore that there are no shops in the vicinity of the tavern. The appellant denied that he raped the complainant the whole night. He testified though that they slept together. He denied furthermore that he raped the complainant in the bushes or open veld.

[22] On 25 March 2011, RM was recalled to testify. On this occasion she told the court that she was withdrawing the charge against the appellant because the appellant's family were begging her to do so. She conceded though that she had no authority to withdraw the charges.

[23] <u>The evidence of Daniel Mtsweni</u>

In support of his case, the appellant led the evidence of Daniel Mtsweni ("Daniel"), his brother. In his testimony Daniel told the court that the complainant was the appellant's girlfriend. He knew that the complainant was the appellant's girlfriend because she usually visited his parents' home. He continued and testified that on the day in question the complainant and the appellant arrived in happy vein at his parents' home between 19h00 and 20h00 and on their arrival asked for food. He showed them the food and they took both the konka and the food into their shack.

[24] The complainant usually came to his parents' home and when she did she would sleep there until in the morning. On occasions he would find the complainant in the morning sleeping alone while the appellant would have gone to the shop to buy cigarettes.

[25] At the close of the appellant's case both the state and the appellant's legal representative addressed the court. In their addresses, the state submitted, on one hand, that it had proved its case beyond reasonable doubt and on that basis applied for the conviction of the appellant as charged, while the appellant's legal representative submitted, on the other hand, that the state had not succeeded in proving its case beyond reasonable doubt. For that reason she asked for the acquittal of the appellant. The court *a quo* was satisfied though that the state had succeeded in proving its case beyond reasonable doubt and on that basis convicted the appellant of rape.

[26] In his grounds of appeal, the appellant has challenged the finding of the court *a quo* that the state has proved its case beyond reasonable doubt. Apart from being specific on this ground of appeal, there are several other grounds on the basis of which the appellant challenges his conviction by the court *a quo*. I do not deem it necessary, in this judgment, to deal with such grounds singly, save to state that the thrust of all such grounds is that the state has failed to discharge its onus of proving its case against the appellant.

[27] In this appeal, the appellant's case was presented by Mr. Moeng of the Local Justice Centre, while Mr. Rossouw of the office of the Director of Public Prosecutions here in Pretoria took care of the respondent's case.

[28] Evaluation of the evidence

It is a fundamental principle of our criminal law system that the state, as the asserter, must prove its case against an accused person beyond reasonable doubt. Section 35(3) of the Constitution of the Republic of South Africa Act No. 108 of 1996 ("the Constitution") states that:

"25(3) Every accused person has a right to a fair trial, which includes the right –

(h) to be presumed innocent ..."

Enshrined in the Constitution is the presumption of innocence in favour of the appellant. The said section only set out what was already a common law principle. In **R v Benjamin 1883 - 1884 (3) EDC at page 338** Buchanan J, as he then was, put the presumption of innocence as follows: *"But in a criminal trial there is a presumption of innocence in favour of the accused, which must be rebutted. Therefore there should not be a conviction unless the crime charge has been clearly proved to have been committed by the accused. Where evidence is not reasonably inconsistent with the prisoner's innocence, or, where a reasonable doubt as to his guilt exists, there should be an acquittal."*

[29] The crucial question that the court *a quo* had to decide was whether, having admitted that he had sexual intercourse with the complainant on the date and the place mentioned above, such sexual intercourse took place with the consent of the complainant. The duty lay on the state, in this respect, to prove absence of consent. It is clear, therefore, that the state had the onus to prove a negative. On appeal, Mr. Moeng who appeared for the appellant, was in agreement with my sister, Pretorius J, that the only issue that the appeal tribunal had to deal with was whether or not the complainant had consented to have sexual intercourse with the appellant.

[30] In deciding this issue, this court is obliged to search in the entire evidence of the parties whether the complainant had expressly given consent to have sexual intercourse with the appellant. In the absence of any express evidence the court must analyse the entire evidence and establish whether, on the basis of any such evidence, there are any objective facts on the basis of which the court can infer that by her conduct the complainant had consented to having sexual intercourse with the appellant. A court does not look at the evidence of the state in isolation to determine whether there is proof beyond reasonable doubt that the appellant has indeed committed the offence with which he was charged nor does it look at the exculpatory evidence of the appellant to determine whether it is reasonably possible that it might be true. Therefore, the conclusion that this court arrives at must be based on the entire evidence.

[31] The court *a quo* was satisfied with the evidence of the complainant despite its observation that the complainant had some mental retardation. In this regard the court is reminded by what Davis, A.J.A had to say in **R v Dhlumayo and Another 1948(2) SA 677 (AD) at page 705** where he stated that:

"The trial judge has advantages – which the appellate court cannot have – in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has he had the opportunity of observing their demeanour, but also their appearance and whole personality. This should never be overlooked."

This was the court *a quo* is assessment of the credibility of the complainant. It is not possible to prescribe a formula in terms of which every single witness' credibility can be determined, but it is essential to approach the evidence of a single witness with caution and to weigh up the good qualities of such a witness against all the facts which may diminish the credibility of the witness. Accordingly this court can only reject the court *a quo's* assessment of evidence if it should find that the court erred in doing so. The appeal court must therefore tackle this appeal on the basis that the trial court's findings were correct.

[32] In his heads of argument, Mr. Moeng conceded that the complainant was a single witness; that she had an opportunity to think her actions after spending a night away from home. Firstly, the argument that the complainant had an opportunity to think her action after spending a night away from home is, in my view, unmeritorious. This amount to a conjecture or speculation. There are no objective facts on the basis of which one can conclude that the complainant thought her action well after spending a night away. Mr. Moeng was, in my view, making an assumption instead of drawing an inference because the facts necessary for the drawing of an inference are lacking.

"Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to

establish ... But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture." See **Caswell v Powell Duffyn Associated Colleries Ltd 1940 AC 152 169, 1939 3 ALL ER 722 733.**

In the second place it is trite that the trial court only convicted the accused person on the evidence of a single witness as set out in s 208 of the CPA. Mr. Moeng conceded this principle but argued forcefully that such evidence must be satisfactory in all material respects. The trial court was at all material times aware of the circumstances of the complainant, the merits and shortcomings in the evidence of the complainant. It is correct, as pointed out by Mr. Moeng, that the court *a quo* placed the demeanour of the complainant on record and observed that at times she did not answer to the relevant questions and even remarked that the complainant appeared to be mentally retarded.

[33] Accordingly, the question becomes whether or not the complainant's evidence was satisfactory in all material respects. Mr. Moeng's view was that it was not satisfactory and furthermore that it was not corroborated by her mother's evidence. On the issue that the complainant was a single witness the court stated the following in **S v Sauls and Others 1981 (3) SA 172 A at page 180 E-F:**

"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 testimony, he is satisfied that the truth has been told. The cautionary rule referred by De Villiers JP, 1952 may be a guide to a right decision but it does not mean "that the appeal must succeed if any criticism however slender or when the witness's evidence were well founded." He continued that: *"It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense."*

[35] The court *a quo* found, correctly so, that the complainant and her mother were honest and credible witnesses, that the complainant did not contradict herself in any material respects. In S v Shaik and Others 2007 (1) SA 240 SCA at page 274 paragraph 88 the court stated:

"The question, then, is whether the appellants have shown that the trial Court overlooked important evidence or materially misconstrued the evidence it did consider. If so, there would be a basis on which we could endeavour to form our own conclusions on credibility, difficult as that exercise might be, based purely on the printed record. If not, we would at least defer to the factual findings of the trial Court even if not entirely satisfied that all those findings were correct. What is stated in this and the preceding paragraph outlines the long-established approach to the appellate adjudication. It is all the more to be borne in mind where the judgment under consideration is as comprehensive, and covers as many issues and as much evidence, as that of the trial Court in this matter."

It is accordingly trite law that a court of appeal will not lightly interfere with the credibility findings made by a trial court.

[36] Mr. Moeng criticized the complainant's testimony on the basis that although she told the court *a quo* that she had been heavily assaulted; that the assault lasted the entire night and that her mother only noted several scratches on her body, the medical report, the J88, that was handed in, showed no single injuries. On this basis it was argued by Mr. Moeng that the complainant was not honest with the court. The implication by Mr. Moeng is that the complainant did not tell the court the truth when she testified that she was severely assaulted. On the other hand, in his heads, Mr. Rossouw pointed out that the court *a quo* was aware of this fact. For that reason the court *a quo* found that there was no evidence with regard to the competency of the medical doctor who completed the J88. It would appear that the observation by the court *a quo*, that no evidence was placed on record about the competency of the medical doctor, was based on the unusual manner in which the J88 had been completed by the relevant doctor. The doctor unusually signed all the pages of the J88, at this stage she signed under the pictures showing

the gynaecological examination of the complainant but inexplicably failed to sign under the pictures showing other parts of the body. It would appear, in the circumstances, the doctor concentrated more on establishing whether there were any signs of sexual intercourse than on visible injuries. This becomes even clearer when one considers the uncontested evidence of the complainant, supported by her mother's evidence, that she had sustained an injury and that she showed the doctor such injury. The evidence of the complainant and her mother with regard to the presence of the injury on her face was challenged not because she did not have it but because the doctor did not indicate in the J88 that there were such injuries.

[37] Mr. Moeng argued furthermore that the court *a quo* should not have concluded that the complainant's version had been fully corroborated by her mother. There is no merit in this argument. In my view, the evidence of the complainant's mother was crucial in certain respects. Firstly, RM told the court that, although this is no longer our law, the complainant made a report to her about the incident of rape; secondly, the complainant's mother placed evidence before the court about the complainant's appearance in the morning. The complainant had no shoes and was crying and had a visible facial injury all of which corroborated the complainant's evidence.

[38] The court *a quo* was unhappy with the entire evidence of the appellant and made adverse remarks about it. In the first place, and the court *a quo* seemed not to have picked this up in the assessment of the appellant's evidence, the appellant's evidence was a complete fabrication. This is proved by the fact that his testimony in his evidence-in-chief was not the version that was put to the witnesses when they testified. A completely different version, in my view, was put to the witnesses. There was also no explanation as to why the evidence that he tendered was never put to the complainant. In **Small v Smith 1954(3) SWA 3434 at p. 48 Claasen J**, as he then was, had the following to say:

"It is, in my opinion, elementary and standard practice for a party to put to its opposing witness so much of its own case or defence as concerns that witness and if need be to inform him, if he

has not been given notice thereof, that other witnesses will contradict him, so as to give him a fair warning and an opportunity of explaining the contradictions and defending his own character. It is grossly unfair to let a witness' evidence go unchallenged in cross-examination and afterwards argue that he must be disbelieved."

[39] Secondly, the appellant's testimony was replete with contradictions. To give an example, on 1 April 2011 his testimony was that he was in Nelspruit for a period of nine months and that he did not, during that period, contact the complainant. But on 25 August 2011 his version changed. On this occasion he testified that he was working in Delmas and only went to Nelspruit during weekends when he was not working. In cross-examination it was put to the complainant that she was offered food in the kitchen to which he replied that she informed him that she was not hungry. On the contrary the appellant testified that the complainant complained of hunger, that his uncle informed them that they had had supper already and that they should cook pap and eggs. He went further and said that he left the complainant behind with his uncle and wife when he went to buy beer from a tavern just close by. This evidence was never put to the complainant. On 25 October 2011 Daniel Mtsweni testified that he is the brother of the appellant and when they arrived on that evening and that he showed them the food being pap, chicken and cabbage. They took the food and the konka to their room.

[40] The appellant told the court that he had a long term relationship with the complainant which commenced in 2008. He was in Nelspruit for a period of nine months prior to the incident during which he had no contact whatsoever with the complainant. They kept the relationship a secret, he did not really love her and he did not want people to know about their love relationship. The appellant, in my view, failed to prove that he had any relationship with the complainant. It will be recalled that the appellant's contention had always been that he had sexual intercourse with the complainant because he and the complainant had a love relationship. According to him, therefore, the consent that he referred to in his evidence is based on the love relationship that he

alleges he had with the complainant. By saying that the complainant was his girlfriend the appellant raised a special defence. In interpreting the onus to prove, the court stated in Pillay v Krishna and Another 1946 AD 946 at page 952 that:

"The onus is on the person who alleges something and not on his opponent who merely denies it."

A denial of a fact cannot naturally be proved. Accordingly, the duty lay on the appellant to prove what he alleged. He was obliged to satisfy the court that he was entitled to succeed on his special defence. The court continued at page 953 and stated as follows:

"The third point is that the onus, in the sense in which I used the word, can never shift from the party upon whom it originally rested. It may have been completely discharged once and for all, not by any evidence which he has led, but by some admission made by his opponent on the pleadings (or even during the course of the case) so that he can never be asked to do anything more in regard thereto; but the onus which then rests upon his opponent is not one which has been transferred to him: it is an entirely different onus, namely the onus of establishing any special defence which he may have."

[41] Now, in this regard, it was not sufficient for the appellant and his brother to simply allege that the appellant was the complainant's boyfriend. Having claimed that their relationship commenced in September 2008 and only ended after the complainant had laid charges of rape against him, it behoved the appellant to provide proof that in between those periods he had a love relationship with the complainant. The applicant failed dismally to show any such relationship. The appellant could not point out to the court *a quo*, any history or any track record of their love relationship. He could hardly point out to any one incident that took place during the period of courtship that indicated conclusively that they were a girlfriend and a boyfriend to each other. He had nothing to support the allegation which, in my view, was nothing more than a mere allegation that the complainant was his girlfriend. On the contrary there was enough evidence to support the view that the complainant was not his girlfriend. As already pointed out earlier he testified that he did

not love the complainant and did not even want the people to see them together or to know about their relationship. Furthermore the fact that he failed to communicate with the complainant for a period of nine months, while he was in Nelspruit; the fact that even after his return from Nelspruit, on his own version, he failed to notify the complainant that he had come back; the fact that the complainant's mother did not know him as the complainant's boyfriend but instead regarded him as a family relative; the fact that the complainant herself had her own boyfriend who was known to her family and lastly, the fact that she told the court that she slept out only once and this was on the occasion that she had been forcibly taken to the appellant's place, all indicate, in my view, that there was no such relationship between the complainant and him.

[42] The state case in the court *a quo* was made easier by the fact that the appellant had admitted sexual intercourse with the complainant. In his judgment the court *a quo* followed, and correctly so, the approach set out in **S v Trainor 2003 (1) SACR 35 SCA at page 41, paragraph 9** which is that:

"A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any of the evidence tendered. In considering whether the evidence is reliable, the quality of the evidence must of necessity be evaluated, as must corroborative evidence, if any. Evidence, of course, must be evaluated against the onus or any particular issue or in respect of the case in its entirety."

[43] In my view the court *a quo* was correct in its finding that the state had proved its case against the appellant beyond reasonable doubt and in convicting the appellant of rape. I have found no justifiable grounds to interfere with the conviction. Accordingly I am of the view that the appellant's appeal against conviction has no merit and should, for that reason, be dismissed and that the said conviction should be confirmed.

[44] In conclusion, I am of the view that the appeal against sentence should also fail. Mr. Moeng had no submissions to make in respect of the sentence. He was ready to concede that on the facts of the matter the appellant was fortunate that, despite his repeated rape of the complainant, a heavier sentence was not imposed on him. At any rate, having read the record, we see no reason to interfere with the sentence imposed on the appellant by the court *a quo*. Consequently,

1. **The appeal against both conviction and sentence is hereby dismissed.**
2. **The conviction of the appellant by the court *a quo* and the resultant sentence imposed on him are hereby confirmed.**

P.M. MABUSE
JUDGE OF THE HIGH COURT

I agree

M.J. TEFFO
JUDGE OF THE HIGH COURT

I agree and it is so ordered

C. PRETORIUS
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the appellant:	*Adv. S Moeng*
Instructed by:	*Attorneys – Pretoria Justice Centre*
Counsel for the respondent:	*Adv. AJ Rossouw*
Instructed by:	*Attorneys – Director of Public Prosecutions*

Date Heard: *12 August 2016*

Date of Judgment: *26 August 2016*