THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case no: 256/2020

In the matter between:

ZOLA CEDRIC MACHI **APPELLANT**

and

THE STATE **RESPONDENT**

Neutral citation: *Machi v The State* (256/2020) [2021] ZASCA 106 (30 July 2021)

Coram: ZONDI, MOCUMIE and MAKGOKA JJA and KGOELE and EKSTEEN AJJA

Heard: 13 May 2021

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 09h45 on 30 July 2021.

Summary: Criminal law – murder – circumstantial evidence – sufficiency and reliability thereof – whether common purpose was established – whether contradictions material – whether sentence is appropriate.

ORDER

On appeal from: Gauteng Division of the High Court, Johannesburg (Msimeki, Twala and Opperman JJ sitting as court of appeal):

The appeal against both the conviction and sentence is dismissed.

JUDGMENT

Kgoele AJA (Zondi, Mocumie and Makgoka JJA and Eksteeen AJA concurring):

[1] The appeal is a sequel to the death of Mr Walter Mandla Thusi (the deceased), who was fatally shot in his office at Engen Diesel Depot, Langlaagte, Johannesburg (the depot) while on duty on 19 January 2007. Mr Zola Cedric Machi (the appellant), his co-worker at that time, was subsequently arrested following this incident. He was charged and convicted of murder on 11 December 2008 by Mayat AJ sitting at the South Gauteng High Court (the trial court). He was sentenced to life imprisonment. With the leave of the trial court the appellant appealed to the full court of that Division against conviction and sentence. The full court (Msimeki J with Twala and Opperman JJ concurring) dismissed the appeal against conviction but upheld the appeal against sentence. It set aside the sentence of life imprisonment imposed by the trial court and substituted it with one of 20 years' imprisonment. The appellant, with the special leave granted by this Court, appeals against his conviction and sentence. He is currently on bail pending the finalisation of the appeal.

[2] The appeal lapsed because the appellant did not file the record timeously and the appellant applied for condonation for the late filing thereof and the reinstatement of the appeal. As the application was unopposed we granted condonation. In doing so we had regard to the fact that the delay is not excessive, (not more than 20 days); the appellant did not willfully disregard the time frames provided for in the rules and practice directives of this Court; and that the respondent was not prejudiced by the delay. With this, I now proceed to consider the merits of the appeal.

[3] The issues are, firstly, whether the State had proved beyond reasonable doubt that the appellant was at the scene of the crime when the deceased was fatally shot by an unknown person; secondly, whether the appellant had actively associated himself with the murder of the deceased; and lastly, whether the sentence imposed was appropriate.

The facts

[4] The events which gave rise to the appellant's conviction and sentence are briefly to the following effect. As I have said, the shooting took place at the depot, located behind the Engen garage (the garage), where the two state witnesses, Messrs Sunnyboy Ntunja (Mr Ntunja) and Sonwabo Alfred Makholisa (Mr Makholisa) were employed. The appellant was a truck driver employed by Engen and based at the depot, whilst the deceased had been his supervisor. The relationship between the appellant and the deceased was strained because, sometime before the incident, the appellant had been suspended from work. He blamed the deceased for his suspension, which was later lifted; the lighting at the garage was sufficient for one to be able to see at night; the Mercedes Benz allegedly involved in the incident belonged to the appellant's cousin, Ms Mlauli; at the time of the incident the motor-vehicle was under the control of the appellant

for his personal use. The contentious issues, as I have said, are firstly, whether the appellant was at the crime scene on the evening in question; and, secondly, whether he was correctly convicted on the basis of the common purpose doctrine. The appellant's defence was an alibi.

[5] For the purposes of placing the appellant on the scene, the State led the evidence of Messrs Ntunja and Makholisa. Their oral evidence, summarised, was to the effect that on 19 January 2007 at about 20h30, the appellant came to the garage driving a Mercedes Benz motor vehicle. He was in the company of an unknown man who wore clothing resembling an Engen uniform. When the two arrived, the witnesses were sitting and enjoying their meal next to a fridge, located outside the shop at the garage (the shop), not far from the entrance. They recognised the appellant as a truck driver from the depot who was a regular customer at the filling station. Prior to the incident Mr Makholisa had known the appellant for almost a year and Mr Ntunja for almost a month.

[6] Mr Ntunja said that the appellant and the unknown man had disembarked from the motor vehicle, where after the following unfolded: The unknown man walked away from the garage, in the direction of the depot and Spoornet offices, while the appellant entered the shop and bought airtime. Upon leaving the shop, the appellant gave him a R50-note to share with his colleagues. The appellant allegedly told him that there was 'someone who was disturbing him at work', but did not elaborate.

[7] He testified further that upon leaving the shop, the appellant proceeded to the motor vehicle, drove to one of the bowsers and filled up petrol, before driving out of the garage in the direction of Langlaagte police station. Upon reaching the robot-controlled intersection, he made a U-turn and drove back slowly in the direction of the garage. The motor vehicle proceeded past the garage, with its

hazard lights on, for some distance before stopping near the depot. At that stage he heard five or six gunshots coming from behind the shop (the depot side). He ran into the shop and looked through the toilet window in an attempt to establish the source of the gunshots. He did not see anything, nor who fired the shots. After a few minutes, he came out of the shop and stood on the tar road in front of the garage. There he saw the appellant's motor vehicle, still in a stationery position, with its hazard lights flashing, in the vicinity of the depot. The same unknown man he had earlier observed moving in the direction of depot came running back from there and climbed into the appellant's motor vehicle, after which it drove away.

[8] Mr Makholisa corroborated Mr Ntunja to a great extent, although his account of what happened after the two men had alighted from the motor vehicle differs in some respects from that of Mr Ntunja. There were also inconsistencies in, and discrepancies between, their written statements, which counsel for the appellant highlighted. I shall revert to these. It suffices for now to record that his version was that the appellant and the unknown man walked together towards the direction of the depot and the Spoornet offices. The appellant returned alone and went into the shop. When he exited the shop, he gave Mr Ntunja a R50-note to share and told him that 'he came to assault someone who is an 'impimpi' (an informer) at the back'.

[9] The State also led the evidence of the police officers who conducted the identification parade. Their unrefuted evidence was that both Messrs Ntunja and Makholisa identified the appellant positively.

[10] In denying complicity in the commission of the murder, the appellant raised an alibi as his defence. In short his defence was that he could not have been at the scene of the crime at the time of the shooting because he was at his

home in Soweto. Whilst the appellant admitted that Messrs Ntunja and Makholisa knew him, he denied ever being at the garage or near the depot on the night in question. His evidence was that he did not report for duty on 19 January 2009 because of ill-health. According to him, he started to feel ill whilst on duty on 18 January. He produced a copy of a sick note issued by a doctor whom he had consulted on 19 January 2009. His alibi was basically that he had spent the entire evening at his residence with his girlfriend, Madi, who corroborated him on their whereabouts on the two days. A totally new aspect of his version only emerged towards the end of his cross-examination when he stated that he was in fact driving a Corolla, and not a Mercedes Benz, on the day in question, as the Mercedes Benz was parked in Killarney at his grandfather's place.

[11] Mr David van Zyl (Mr van Zyl), a security officer who was on duty at the depot on the night in issue, was called by the appellant. He testified that he did not hear the gunshots, due to the noise made by the delivery trucks arriving at, or leaving, the depot. He received a report at 22h36 that there had been a shooting incident on the premises and he immediately made an entry to that effect in his occurrence book. He assumed that the shooting had just occurred. His reasoning was that, had the shooting taken place around 20h30, as the two State witnesses testified, he would have received the message much earlier.

The trial court

[12] The trial court found that Messrs Ntunja and Makholisa were reliable witnesses; they corroborated each other on material aspects and their evidence that several shots were fired was corroborated by other objective facts, in this case, the post-mortem report. Regarding the inconsistencies or contradictions in the oral evidence of these two state witnesses and those found in the statements of Mr Makholisa in particular, the trial court found that they did not adversely

affect their credibility. In rejecting the appellant's alibi as false, it accepted the evidence of the state witnesses and found that the only inference that could be drawn from the proven facts was that the appellant was present at the scene of crime and acted in common purpose with the unknown man who shot the deceased.

The full court

[13] Once more the contradictions and the inconsistencies in the evidence relied on by the State took centre stage before the full court. The full court found no demonstrable and material misdirection in the manner in which the trial court had evaluated the evidence. It furthermore, concluded that the application of the law, by the trial court, to the facts, had been sound. The appeal on the conviction was dismissed. As I have said, it only interfered with the sentence imposed.

Before this Court

[14] Before this Court, the appellant again attacked the credibility and the factual findings of the trial court, and the full court's upholding of them. The appellant also complained that the reduced sentence is inappropriately severe. In respect of the conviction, it was argued, on behalf of the appellant, that 'the evidence of the so-called eyewitnesses, [Mr] Ntunja and [Mr] Makholisa, was riddled with material contradictions and inconsistencies to such an extent that it should have been rejected by both the trial court and the full court'.

[15] Two key submissions were advanced on behalf of the appellant to support the above argument. First, that, considering the contradictions in the evidence of the state witnesses, the quality of the identification evidence that placed the appellant at the scene, was very poor. Second, that the trial court failed to accord sufficient weight to the fact that the two key witnesses were not in a position to positively identify the motor vehicle, including the driver thereof at the time it

picked up a person who came running from the direction of the depot after the gunshots had been heard. In developing this argument, it was contended that, even if it could be found that the appellant was positively identified as the person who was seen at the garage on that evening, the State failed to prove common purpose between that man (the shooter) and the appellant.

[16] This Court is therefore, required to determine whether the evaluation of the evidence by the trial court, confirmed by the full court was sound. Put differently, whether the factual and credibility findings by the trial court, confirmed by the full court, stand scrutiny, and if so, whether the evidence adduced by the State was sufficient for the trial court to draw an inference that the appellant was at the scene of crime and whether he acted in common purpose with the shooter to kill the deceased.

The law

[17] It is trite that in the absence of demonstrable and material misdirection a trial court's findings of fact are presumed to be correct and that they will only be disregarded on appeal if the recorded evidence shows them to be clearly wrong.[1]

[18] It is against this principle that the credibility and factual findings made by the trial court, and decried by the appellant, must be considered. In particular, this Court is called upon to determine whether this principle was correctly applied by the full court. It is important to first deal with the contradictions as they cut across the two bases of this appeal.

[1] *Rex v Dhlumayo and Another* [1948] 2 All SA 566 (A); 1948 (2) SA 677.

Contradictions

[19] The manner in which the contradictions between the version of two witnesses and the contradictions between the versions of the same witness (such as, inter alia, between their viva voce evidence and a previous statement made by them) should be approached was outlined by this Court more than a decade ago in *S v Mafaladiso and Andere*.[2]

[20] As far as the oral evidence of the two key state witnesses is concerned, it was argued on the one hand, that in his evidence in chief, Mr Ntunja did not testify about the R50 bribe allegedly given to them, but only mentioned this in cross-examination. On the other hand, the argument continued, Mr Makholisa was quick to mention this when he testified a day after Mr Ntunja's testimony. The criticism levelled in this regard is that the inconsistency or contradiction does not only affect their credibility, but shows that they were schooled to tailor their evidence to corroborate each other. This criticism is not justified. The mere fact that Mr Ntunja mentioned this part of evidence after being prompted during cross-examination as opposed to Mr Makholisa who mentioned it without being prompted, does not make it a contradiction. Furthermore, it remains speculative to suggest, as the appellant's counsel seems to do, that 'the probabilities are that [Mr] Makholisa was alerted to the criticism levelled against [Mr] Ntunja for not mentioning this on the previous day, and made sure that he mentions this aspect when he was not led on it'.

[21] An added string to the appellant's bow relating to the R50 note was that the two State witnesses contradicted each other with regard to the reason or purpose for which it was given. This argument need not detain this Court either. It suffices to say that it cannot advance the appellant's case. The difference

[2] *S v Mafaladiso en Andere* [2002] 4 All SA 74 (SCA); 2003 (1) SACR 583 (SCA) at 584-585.

between ‘he came there to assault someone who is an ‘impimpi’ at the back’ and that ‘he was being disturbed by someone at work’ is neither here nor there. Rather, it illustrates the absence of collusion.

[22] The other feature of their oral evidence which evoked a lot of criticism by counsel for the appellant was the testimony in chief of Mr Ntunja that when he came out of the toilet of the shop, his colleagues were not where he had left them. This, according to the appellant’s counsel, contradicted the evidence of Mr Makholisa that he was outside. This, it was contended, was a material contradiction which the trial court had overlooked. This criticism is ill- conceived. A careful reading of the record of the proceedings reveals that, although Mr Ntunja indicated that he did not see his colleagues when he came out of the shop, Mr Makholisa testified that he saw Mr Ntunja when he came out. Upon being asked where he (Mr Makholisa) was at that time, he indicated that he was standing next to a tree. Understandably, he could not, during cross- examination, explain Mr Ntunja’s evidence that when he came out of the shop, his colleagues had disappeared. Of significance is that it was not established where the tree was, or where he, Mr Makholisa, was standing in relation to the tree for Mr Ntunja not to see him. Quite frankly, a contextual and holistic evaluation of their account of events reveals that their evidence is not mutually incompatible. This is because, the possibility that Mr Ntunja could not see Mr Makholisa where he was next to the tree, although outside, cannot be discounted. The fact that Mr Makholisa was no longer in the vicinity of the fridge where they were having a meal when the gunshots were heard or in the vicinity where Mr Ntunja could see him, does not necessarily mean he was not outside. The difference in what they said can therefore not be classified as a contradiction at all.

[23] The record reveals that the trial court was not oblivious to these supposed contradictions and the criticism levelled against the evidence of the two state witnesses. The same applies to the seeming inconsistencies found in the sequence of their account as to how the appellant and the shooter conducted themselves after disembarking from the motor vehicle. It considered the criticisms, and rejected them, on the basis that they were not material as to affect the witnesses' credibility. The conclusion by the trial court cannot, in my view, be faulted. Instead, they show that their evidence was not tailored in order to falsely implicate the appellant.

[24] As regards the contradictions in the key state witnesses' written statements, it was submitted that the trial court should have rejected Mr Makholisa's evidence because he had made two statements which are not only at odds with each other, but also at variance with his oral evidence and that of Mr Ntunja. It was pointed out that in his first statement Mr Makholisa did not identify the appellant by name as the person who told him that he and the other man were there to kill a person and who gave him R50, whereas in his second statement, made two months after the first one, he identified the appellant by name. It was further pointed out that, Mr Makholisa stated in the same statement that the appellant and the unknown man had walked around the corner of the garage and 'after few minutes shots of [a] gun were heard in the vicinity and Zola Machi came back walking to the silver BMW and drove away'. The argument proceeded that his statements are at variance with his evidence in that he did not say that the appellant had said that he was there to kill someone; that the R50 was given to him; that he knew the appellant by name; and that the appellant had walked, after the sound of gunshots from the depot, to the silver BMW. It was submitted that Mr Makholisa's evidence had to be rejected in its totality because he changed his evidence from the first statement to the second, and from his statements and oral evidence.

[25] In evaluating these contradictions and inconsistencies levelled at Mr Makholisa's evidence including his written statements the trial court reasoned:

'[It] is my view that to the extent that such inconsistencies are relevant, *his explanation relating to the errors in these written statements were not implausible in the circumstances of this trial.* Moreover, if one takes into cognisance the relevance of the averred inconsistencies in the context of the rest of the material evidence, *such inconsistencies do not cast any doubt on his material evidence.* Mr Makholisa also confirmed in this regard that he *gave his statement in Zulu and that his statement was recorded in English*.' (Emphasis added.)

[26] There is in my view, no demonstrable irregularity that can be relied upon regarding the manner in which the trial court evaluated all of these contradictions and inconsistencies and the weight attached thereto. I am thus not persuaded that the contradictions and inconsistencies highlighted and considered were fatal to their credibility. The principle in *Rex v Dhlumayo and Another*[3] was therefore correctly applied by the full court. Having come to this conclusion, I proceed to consider below the evaluation of the facts found proven by the trial court.

Identity

[27] As regards the evidence of the appellant's identity, it is significant to note that the appellant did not dispute the fact that the two key state witnesses, Messrs Ntunja and Makholisa, knew him prior to this incident. He also admitted that he knew them too. Even though they testified that they did not know his name at first, the fact that in their statements mention was made of his name, does not take this matter any further, as there is no dispute that they knew him. There is therefore, in my view, no room for mistaken identity. Their evidence regarding the identity of the appellant was beyond doubt and could be relied upon

[3] *Dhlumayo* note 1 above.

independently of their identification in court and during the identification parade. Their evidence was that visibility in and around the filling station was good. They not only saw him, but spoke to him too.

[28] The finding of the trial court that Mr van Zyl could not positively testify about the exact time as to when the incident took place, as he did not hear the sound of a single shot, is unassailable. The recorded time of 22h36 in the occurrence book clearly relates to the time when a report was made to him, and not when the shots were fired. His evidence that the shooting took place closer to 22h36 was based on his own assumption. Consequently, the evidence of Mr van Zyl regarding the time of the shooting was correctly rejected by the trial court. In any event, the time is a neutral factor in this matter because the appellant's defence is an alibi.

[29] It was also submitted that an adverse inference should be drawn from the failure of the State to call an eye-witness, Mr Maxwell Njoi, who, it was said, could have corroborated the evidence of Mr van Zyl. Apart from the fact that the name of this witness did not feature in the list of witnesses for the State, I do not see how the evidence of this witness would have advanced the appellant's case considering that his defence was an alibi. No cogent reasons were advanced why the appellant could not call this witness in circumstances where the State elected not to call him.

[30] The conclusion by the trial court that the identity of the appellant was proven beyond reasonable doubt, cannot be faulted. The sum total of all the pieces of the proven facts from the evidence of all the witnesses called by the State, when sewn together, create an impregnable mosaic of proof that the appellant was at the garage at the time the deceased was killed.

[31] Regarding an alibi defence this Court held in *S v Liebenberg*:[4]

'Once the trial court accepted that the alibi evidence could not be rejected as false, it was not entitled to reject it on the basis that the prosecution had placed before it strong evidence linking the appellant to the offences. The acceptance of the prosecution's evidence could not, by itself alone, be a sufficient basis for rejecting the alibi evidence. Something more was required. The evidence must have been, *when considered in its totality,* of the nature that proved the alibi evidence to be false. . . .' (Emphasis added.)

[32] In *R v Hlongwane*[5] the court stated that '. . . the alibi does not have to be considered in isolation'.

[33] The alibi defence of the appellant was correctly rejected by the trial court as being not reasonably possibly true. The full court cannot be faulted for confirming the finding of the trial court that, the nature of the evidence of the State, considered in its totality, proved the evidence of the alibi to be false.

Doctrine of common purpose

[34] It is common cause that although the State rested its case on the doctrine of common purpose in this matter, the evidence adduced did not establish prior agreement to commit murder. It relied on active participation.

[35] This Court in *S v Mgedezi and Others*[6] had this to say where liability arises from active participation:

'In the first place, *he must have been present at the scene where the violence was being committed.* Secondly, he must have been aware of the assault on the inmates of room 12. Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault. Fourthly, he must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of association with the

[4] *S v Liebenberg* 2005 (2) SACR 355 (SCA) para 14.
[5] *R v Hlongwane* 1959 (3) SA 337 (A) at 340H.
[6] *S v Mgedezi and Others* [1989] 2 All SA 13 (A); 1989 (1) SA 687 (A) at 705I-706B.

conduct of the others. Fifthly, he must have had the requisite *mens rea*; so, in respect of the killing of the deceased, he must have intended them to be killed, or he must have foreseen the possibility of their being killed and performed his own act of association with recklessness as to whether or not death was to ensue.' (Emphasis added.)

[36] In *Dewnath v S*[7] Mocumie AJA, explained the application of the common purpose doctrine as follows:

'In the light of the facts of this case, it is important to note that the common purpose doctrine as espoused in *S v Mgedezi [and] others* has been pronounced by the Constitutional Court to be constitutional. The most critical requirement of active association is to curb too wide a liability. Current jurisprudence, premised on a proper application of *S v Mgedezi [and] others*, makes it clear that (i) *there must be a close proximity in fact between the conduct considered to be active association and the result; and (ii) such active association must be significant and not a limited participation removed from the actual execution of the crime*.' (Emphasis added.)

[37] The next question is whether the evidence of Messrs Ntunja and Makholisa was sufficient to prove that the appellant acted in common purpose with the shooter. It was argued that the trial court failed to attach sufficient weight to the fact that the two witnesses were not in a position to identify the driver of the vehicle which they saw picking up the shooter who came running from the direction of the depot. This contention was based on the argument that Mr Ntunja had testified that he remained in the toilet for seven to eight minutes while he tried to ascertain what was happening before he went out to look down Main Reef Road. The argument was that, in the intervening 7 to 8 minutes, several things could have happened that Mr Ntunja did not observe. This included the fact that a different Mercedes Benz may have arrived in order to pick up the shooter from the direction of the depot or that a different man got into the Mercedes Benz.

[7] *Dewnath v S* [2014] ZASCA 57 para 15.

[38] There are three reasons why these propositions adumbrated above should be rejected. In the first instance, the two key state witnesses testified that the man who disembarked from the appellant's vehicle and went to the direction of the depot, was the same man they saw being picked up by the Mercedes Benz, driven by the appellant, after it stopped, having made a U-turn at the robot – controlled intersection. In particular, Mr Ntunja stated that although he could not see the face of this man, he recognised him by the clothing he wore. Even though Mr Makholisa did not mention any particular feature by which he identified this person, he was adamant that it was the same man. He could see him from the lighting provided by the street lights. Secondly, they both testified that it was not busy at the garage that evening; the road was also not busy and there were no other motor vehicles at that time on the road. It was quiet.

[39] Thirdly and most importantly, Mr Makholisa indicated that from the time he saw the appellant leaving the garage until he made a U-turn, and ultimately stopped next to the depot with his hazard lights on, he never alighted from the vehicle. The ineluctable conclusion must be that he kept watch of the appellant's motor vehicle until the shooter jumped into the appellant's motor vehicle.

[40] It is clear from Mr Makholisa's evidence that he was at the forecourt of the filling station all the time. There is no evidence that he went inside the shop. The likelihood of another Mercedes Benz coming at that time, which happened to pick up the unknown man, is minimal. The same applies to the proposition that another man may have jumped into this motor vehicle. The finding by both courts that there was enough evidence from which an inference could be drawn that the appellant and an unknown man, who shot the deceased, acted in common purpose to kill the deceased cannot be faulted.

Sentence

[41] As far as the sentence is concerned, it was submitted that the full court did not go far enough to reduce the sentence, as the appellant has led an exemplary life throughout the period he has been on bail pending the outcome of this appeal and that he is a good candidate for rehabilitation.

[42] That the appellant has been convicted of a very serious offence admits of no doubt. It is also apparent that the murder falls within the ambit of Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997, for which life imprisonment is a prescribed sentence. The prescribed sentence could not be deviated from unless there were substantial and compelling circumstances. However, the full court found favour with the concession made by the State that, after the conviction and sentence, the appellant led a reasonable and exemplary life and therefore was a good candidate for rehabilitation. On this basis, the full court found that substantial and compelling circumstances were present which warranted the setting aside of the sentence of life imprisonment imposed by the trial court. It replaced it with a sentence of 20 years' imprisonment. This was done, despite the full court making a remark, correctly so, in my view, that 'I am unable to say that the [c]ourt a quo misdirected itself when it sentenced the appellant to imprisonment for life. Some of the factors I have referred to above surfaced after the appellant was convicted and sentenced'.

[43] The less said about the reasons for reducing the sentence by the full court, the better. It suffices to say that it is difficult to discern the full court's reasoning on the reduction of the sentence imposed by the trial court as it was based on contradictory statements. It found no misdirection in the manner in which the trial court exercised its sentencing discretion but yet it changed the sentence. As to why the full court considered the facts which, it acknowledged, surfaced after the appellant was convicted, boggles the mind. It is trite law that an appeal court

will only consider the facts and circumstances known when sentence was initially imposed. But since there is no cross-appeal by the State against the sentence imposed by the full court, nothing more needs to be said and there is no reason to interfere with the sentence.

[44] In the result, the following order is made:

The appeal against both the conviction and sentence is dismissed.

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A M KGOELE

ACTING JUDGE OF APPEAL

APPEARANCES

For the appellant:	G Malindi SC (with X D Matyolo)
Instructed by:	Nkosi Tshabalala Inc, Johannesburg McIntyre Van Der Post, Bloemfontein
For the respondent:	M P Moleko
Instructed by:	Director of Public Prosecutions, Johannesburg