

SOUTH AFRICA / JUDGMENT

Makgisa v S (Appeal) (CA14/2023) [2025] ZANWHC 135 (30 June 2025)

[2025] ZANWHC 135**COURT**

North West High Court, Mafikeng

BEFORE

Morris, Laubscher

CASE / FILE NUMBER

CA 14/2023

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redacted from this document in compliance with the law
and SAFLII****Policy****IN****THE HIGH COURT OF SOUTH AFRICA****(NORTH-WEST****DIVISION, MAHIKENG)****CASE****NO.: CA 14/2023****REGIONAL****COURT CASE NO.: RC76/2018****Reportable:**

YES / NO

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to Judges: YES / NO

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to Magistrates: YES / NO

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to Regional Magistrates: YES / NO

IN

THE CRIMINAL APPEAL
OF:

TEBOGO
BONOLO MAKGISA
Appellant
and
THE
STATE
Respondent

JUDGMENT

CORAM: MORRIS AJ ET LAUBSCHER AJ

INTRODUCTION

1. This is an appeal against the conviction and sentence imposed by the Regional Court on 30 March 2023. The Appellant, Tebogo Bonolo Makgisa, was convicted of rape, acting in common purpose with one Mosweu (the second accused in the court a quo) and sentenced to life imprisonment.

2. The Appellant was charged with rape in that on or about 6 December 2017 and at or near Bopibe Village, in the Regional Division of the North West, the Appellant and one Serame Mosweu ("Mosweu") did unlawfully and intentionally commit an act of sexual penetration with a female person to wit N[...] S[...] 21 years old by inserting

his penis and having sexual intercourse with her without her consent. The charge sheet states that the doctrine of common purpose applies in the matter in that the Appellant and Mosweu pursued a common purpose of raping the complainant. The charge sheet also expressly refers to sections 1, 55, 56(1), 57, 58, 59, 60 and 61 of the Criminal Law Amendment Act (Sexual Offences and Related Matters), Act 32 of 2007 read with sections 256, 257 and 281 of the Criminal Procedure Act, Act 51 of 1977, further read with the provisions of section 51, Schedule 2 Part 1 or Part III of the Criminal Law Amendment Act 105 of 1997, as amended as well as sections 92(2) and 94 of the Criminal Procedure Act, Act 51 of 1977. The Appellant and Mosweu were also charged with the crime of attempted murder in that they upon or about 6 December 2017 at or near Bodibe Village in the Regional Division of the North West unlawfully and intentionally attempted to kill N[...] S[...] a female person by stabbing and hitting her with a spade. The Appellant was not found guilty on the second charge of attempted murder.

3. This appeal was decided on the record and papers before this court of appeal, without hearing oral argument, in terms of the provisions of section 19(a) of the Superior Courts Act, Act 10 of 2013.

GROUND OF APPEAL: CONVICTION

4. The appellant's grounds of appeal as regards the conviction is that the court a quo erred in:

- 4.1. finding that the state proved its case beyond reasonable and that the version of the complainant was true;
- 4.2. as regards the inconsistencies in the testimony of state witnesses:
 - 4.2.1. not rejecting the complainant's evidence on the basis of discrepancies between her evidence and the content of her witness statement;
 - 4.2.2. not rejecting the state witness' statement on the basis of discrepancies between her evidence and the content of her witness statement;
 - 4.2.3. accepting that both the evidence of the complainant and the state witness were reliable and truthful despite their contradictions;
 - 4.2.4. finding that the explanation for contradictions to be reasonable and acceptable; and
- 4.3. wrongfully burdening the Appellant with the onus of proof.

GROUND OF APPEAL: SENTENCING

5. The Appellant's grounds of appeal as regards the sentence is that the court a quo erred in:
 - 5.1. imposing a sentence of life imprisonment on the Appellant and in not finding that there were substantial and compelling circumstances in order to justify a departure from the mandatory minimum sentence of life imprisonment;
 - 5.2. over-emphasising the seriousness of the offence and downplaying the personal circumstances of the accused and the interest of the community and the possible impact of the offence on the victim;
 - 5.3. not doing enough to ensure that all the information relevant to sentencing the appellant was placed before it prior to meting out a sentence on the appellant.

OVERVIEW OF THE EVIDENCE

First state witness: the complainant's evidence

6. The state called upon two witnesses namely, the complainant and the complainant's cousin; P[...] M[...] ("M[...]").
7. The complainant indicated that on 6 December 2017, she was at Mopiki's Tavern (in Bodibe village) with her cousin; M[...]. The complainant went to Mopiki's Tavern as her boyfriend, Rocky, is employed there and she came to collect a key. Whilst there, she had met the Appellant and Mosweu. Mosweu had asked her why she did not inform him that she would be there. Thereafter the complainant requested her jersey from Mosweu. Mosweu indicated that they should go to his parental place of residence to collect the jersey. The complainant then told M[...] that they must leave or proceed to Mosweu's place of residence.

8. Thereafter, the complainant, the Appellant and Mosweu, as well as M[...] proceeded to the parental place of residence of Mosweu. Mosweu's cousin was already at Mosweu's parental place of residence. Subsequent to their arrival, Mosweu refused to let them leave.
9. Mosweu then closed the door and instructed the complainant to go to sleep, but the complainant refused to do so. As a result, Mosweu started assaulting the complainant and the Appellant reprimanded Mosweu. Mosweu assaulted the complainant with a clenched fist on her face, then with a cup and pot on her head, with a stick over her whole body, and lastly attempted to assault her with a spade fork.
10. As a result of the assault, the complainant was bleeding from the nose and mouth and felt dizzy. She fell to the ground, whereupon Mosweu and the Appellant pulled her into a room. Mosweu then instructed the Appellant to undress the complainant. The Appellant undressed her and climbed on top of the complainant and Mosweu pinned her down. The Appellant then raped the complainant. Mosweu then proceeded to another room to sleep. The complainant remained with the Appellant, who raped her again. Eventually, and when the Appellant awoke, he told the complainant that he would like to leave to find money for alcohol.
11. The complainant then left the room and had a brief conversation with M[...] during which the complainant told her what had happened. Mosweu, concerned about the complainant leaving in her current physical state, had gotten a basin which he said had warm water in it for M[...] to massage the complainant. Mosweu also proceeded to make food for the complainant and M[...]. Once Mosweu arrived with food, his cousin Tricka knocked at the door and indicated that a third party, one Happy Nthabiseng ("Happy"), is looking for the complainant. Mosweu then told the complainant to collect the key, and
the complainant left the house with Happy. Mosweu did not allow M[...] to leave the house.
12. Upon leaving the house, Happy asked the complainant about what had happened, but the complainant did not say anything. The complainant only indicated that she wanted to go to the clinic. On her way to the clinic, she fell and was then surrounded by people. Happy accompanied her to the clinic. At the clinic, the complainant provided her version to the nurse, who then called the police.
13. During cross examination, the complainant indicated that on the night in question, Mosweu had slept with M[...]. During cross examination, the complainant also stated that her boyfriend was looking for her which is the reason why Happy came to the Mosweu's parental place of residence.

Second state witness: P[...] M[...]s evidence

14. M[...] corroborated the complainant's version insofar as the following is concerned:
 - 14.1. That they left the tavern as the complainant requested her jersey from Mosweu;

14.2. That once they entered the parental residential place of Mosweu, they were not allowed to leave the house;

14.3. That the complainant was assaulted and that she was taken to a room;

14.4. That as the complainant left the room, she noticed that the complainant's face was swollen, that she had a bruise on her arm and that she was bleeding - all of which prompted M[...] ask the complainant what had happened;

14.5. That Mosweu had asked M[...] to massage the complainant.

14.6. That someone did in fact knock on the door on the night in question.

15. However, the M[...] testified that she was not in the same room as the complainant at the time the rape occurred.

16. M[...] further testified that as they left the tavern Mosweu confessed his love to the complainant, but she refused as she is lesbian, and that the Appellant further professed his love for her.

17. Further, the M[...] denied that she slept in the same bedroom as Mosweu.

18. The M[...] testified that she did witness the assault of the complainant but did not witness the rape.

Defence witness: Serame Mosweu's evidence

19. Mosweu admits to being at the tavern on the night in question. However, Mosweu testified that the reason they left the tavern was because the complainant and M[...] were hungry and wanted something to eat.

20. Mosweu testified that once they entered the house, they all started eating together and at all times the kitchen door was unlocked. After which the Appellant and the complainant entered one bedroom while Mosweu and the M[...] proceeded to another. This all happened voluntarily. Mosweu stated that he slept with M[...].

21. Mosweu denies that:

21.1. he assaulted the complainant;

21.2. he was with the complainant in the bedroom;

21.3. the Appellant raped the complainant during the evening;

21.4. he noticed the Appellant having sexual intercourse with the complainant

22. Mosweu admitted that he did profess his love to the M[...] and that she refused to accept same.

23. Mosweu adds that, in the morning, the Appellant said that he is leaving for town. The complainant also left to fetch her clothes and thereafter, Mosweu's younger sister arrived at the house and informed him that the complainant had fallen onto the ground at the gate. Mosweu maintains that the complainant sustained injuries as a result of her boyfriend attacking her.
24. The Appellant did not testify in his own defence.

THE COURT-A-QUO'S FINDING: THE CONVICTION AND THE SENTENCE IMPOSED

The conviction of the Appellant

25. It is noted that the Appellant was originally charged with the offence of attempted murder and rape at the commencement of the proceedings. However, at the close of the state's case, the Appellant was discharged in respect of the charge of attempted murder, as referred to above.
26. The court found the Appellant and Mosweu guilty of rape by way of common purpose, in that Mosweu pinned down the complainant in order for the Appellant to rape the complainant.
27. The court also found that the assault upon the complainant as testified to by the complainant occurred prior to the rape.
28. The court was satisfied that the complainant was injured, as she was asked twice, by the M[...] and Happy, about what had happened to her
 - due to her appearance.
29. The court a quo in analysing the all the evidence adduced before it concluded that the Appellant did not obtain the complainant's consent when he had sexual intercourse with her.
30. The court found that the contradictions in testimony were immaterial inconsistencies and, in any event, isolated from the main issues.
31. The court found that the state witnesses were reliable, honest and truthful. The court found the demeanour of the state witnesses to be straightforward, consistent, calm, credible in comparison to Mosweu who was disingenuous; especially with his bare denials.
32. As such, the court a quo proceeded to convict the Appellant of the charge of rape as set out in the charge sheet referred to above.

The sentence imposed on the Appellant

33. The court a quo sentenced the Appellant to life imprisonment on the basis that the Appellant failed to prove substantial and compelling circumstances to justify a deviation from the prescribed minimum sentence for the offence of rape as per the provisions of Section 51 of the Criminal Law Amendment Act 105 of 1997, as amended.
34. The court a quo referred to the brutal manner in which the offence was committed and the interests of the victim, relating to her dignity, privacy and humanity.
35. The court a quo in passing sentence referred to the following facts in relation to the Appellant's personal interests, which were placed before the court a quo for the purpose of sentencing:

35.1. the Appellant was 25 years old;

35.2. whilst the Appellant has a two-year-old child, the Appellant however did not indicate that he was the primary caregiver of the child. Furthermore, the Appellant did not plead that, noting his previous conviction, imposing the minimum sentence would have a particular adverse effect on the child.

35.3. As regards the Appellant's medical condition, there were no submissions that correctional services would not be unable to cater to the Appellant's needs in this regard sufficiently.

35.4. the Appellant was previously convicted of assault with intent to do grievous bodily harm on 16 November 2017 and was sentenced to the payment of a R1 000.00 fine or 18 months imprisonment. The Appellant paid the fine. However, the court found there to be a lack of detailed information around the reason why he was subsequently detained in custody on two accounts for a period of approximately two years.

THE FINDINGS OF THIS COURT AS REGARDS THE CONVICTION OF THE APPELLANT

Whether the Appellant did rape the complainant

36. It is trite that the rape relates to "any person who unlawfully and intentionally commits an act of sexual penetration with a complainant, without the consent of the

complainant".[1] The complainant alleges that she was raped by the Appellant who acted in common purpose with Mosweu. The Appellant made no plea explanation and also elected not testify in his own defence. From the evidence of Mosweu it can be deducted that the Appellant's defence is one of consent, i.e. that the sexual intercourse which he had with the complainant was consensual. The Court a quo rejected this version of Mosweu. As aforementioned, the court a quo found that the Appellant did rape the complainant.

37. This court a quo found that there was proof, with reference to the J88 medical examiner's form which was admitted into evidence, that the complainant did sustain injuries to her face, head, arms and knee. There is also indication of bruising, swelling and an incomplete tear of the complainant's genital parts carrying the conclusion of sexual assault. Further, the DNA sample of the cervical swab of the complainant matched the Appellant.

38. Significantly, the Appellant did not testify in his own defence and to address the evidence adduced against him by the complainant and the other state witness. The court a quo, correctly in this Court's view, indicated the general position that an accused who fails to produce evidence to rebut a prima facie case of the prosecution is at risk that the prosecution may be able to prove all elements of the offence. However, this does not relieve the prosecution of its onus to prove the guilt of an accused person beyond reasonable doubt.
39. This court also notes that in the matter of *Embrace Project NPC and Others v Minister of Justice and Correctional Services and Others* the court held that certain sections of the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 are declared unconstitutional and invalid.[2] Further, that the declaration of invalidity was suspended for 18 months for Parliament to remedy same. It further held that in the interim:

"for a person charged with, amongst others, rape, "it is not a valid defence for that accused person to rely on a subjective belief that the complainant was consenting to the conduct in question, unless the accused took objectively reasonable steps to ascertain that the complainant consented to the sexual conduct in question."

This case is important to note in terms of the requirements of a defence to the charge of rape and the required "objectively reasonable steps" which were taken by an accused person to "...ascertain that the complainant consented to sexual conduct in question."

40. The types and level of injuries sustained by the complainant are telling and the contents of the J88 medical examiner's report support the version of the complainant and the other state witness.
41. Furthermore, the versions of the state witnesses corroborate each other in all material aspects and the court a quo correctly found that this is so.
42. On the conspectus of evidence, it is found that the court a quo did not err in finding that the state proved its case beyond reasonable doubt and that the version of the complainant was true.

The effect of the alleged inconsistencies in evidence of the state witnesses

43. Counsel who represented the Appellant at trial, argued before the court a quo that certain inconsistencies in the evidence of the two state witnesses were overlooked by the court a quo. The Appellant reiterated this argument in his grounds of appeal as referred to above. It is however important to note that the court a quo was alive to certain of the inconsistencies in the version of the state witnesses, but the court a quo found that these inconsistencies were not material to the extent of tainting the versions of the state witness to same being rejected as untrue. The court a quo found, and correctly so in the view of this court that the state witness's testimony corroborated each other on the material issues in this matter.
44. The inconsistencies to which the attention of this court of appeal were directed by the Appellant are the following:

The reason for the complainant. her cousin. the Appellant and Mosweu to have left the tavern

45. The complainant's reason for leaving the tavern, per her witness statement, is inconsistent with her explanation in her testimony before the court a quo. However, the inconsistency is immaterial in that while the sequence of events seems to be inconsistent, the actual explanation of events is accurate save for the fact that the complainant claimed to be going to her residential place first. It must be remarked that it is not unexpected that there may be certain immaterial inconsistencies between a statement made at the time when an incident occurred and evidence led at a later stage, provided that these inconsistencies are not on material issues and are not the norm but the exception.
46. The complainant said in examination in chief that: "I then told my cousin that we must leave or proceed to, to his place of residence Your Worship". However, the relevant portions of the complainant's witness statement were read into the record as follows: "... I was then told my cousin that I want to go home. Serame and Bonola then followed us and they told us that they will accompany us to our place of residence. While on the way Serame told his friend that he blame me, he said I am responsible for making my other cousin to leave him. He told me he will assault me, Serame then told us to go to his place of residence".
47. This contradiction is in the view of this court not material so as to enjoin the court a quo to reject the version of this witness.

The whereabouts of the M[...] at the time of the rape

48. The whereabouts of M[...] at the time of the rape was contradicted in the complainant's testimony in comparison to the M[...] 's testimony. This is immaterial as the whereabouts of the M[...] is less important compared to the conversation between the complainant and the M[...] after the complainant was raped. More importantly, the M[...] corroborated the complainant's version in various other respects.
- 48.1. The complainant's version in cross examination, is: Mr Tshabalala: "... the, the allege rape that you, you are talking about when you were raped, alleged raped where was your cousin?" Ms Khulu: "My cousin was sleeping with Serame's cousin".
- 48.2. M[...] version in examination in chief is: Prosecutor: "what happened after she exited the bedroom? Okay before that, when she exited the bedroom, where were you?" Ms M[: "... I was at the dining-room". M[...] version in cross examination is: Mr Tshabalala: "the complainant gave evidence before this court that you slept in the same bedroom with Serame's cousin. What is your comment?" Ms M[: "... That is not the truth".
48. In the view of this court the aforementioned contradiction is not material.

Whether both the Appellant and Mosweu were with the complainant at the time at which she was taken into the room

49. M[...] contradicts the complainant as regards to whether both the Appellant and Mosweu were with her at the time she was taken into the room. This is also an immaterial inconsistency.
50. The complainant's version is: Prosecutor: "okay. You earlier on indicated that after being assaulted by accused 2, then you felt dizzy. Continue to tell the court what happened thereafter". Ms Khulu: "I then fell on the ground, as I was on the ground Serame and Bonola pulled me onto the bed your worship".
51. M[...]s version in examination in chief is consistent: Prosecutor: "you saw them taking S[...] to the bedroom. Who was taking S[...] to the bedroom?". Ms M[:]: "Mosweu". Prosecutor: "What was Makgisa doing at the time?" Ms M[:]: "he was already inside the bedroom".

Whether the complainant or the accused persons left the room first

52. There also is an inconsistency with the version of the complainant and M[...] as regards who left the room first.
53. The complainant's version is: Prosecutor: "okay then after Mosweu told Makgisa that it is 02:30 in the morning what happened?" Ms Khulu: "then Serame proceeded to the other room to sleep your worship"Ms Khulu: "as I was with Bonolo ... I remained with Bonolo" Ms Khulu: "then he woke me up and told me that he wants to go somewhere and get money to [intervene]". Prosecutor: "Who is that?" Ms Khulu: "I am referring to Makgisa Your worship Bonolo". Prosecutor: "okay. Proceed" Ms Khulu: "that he wants to go and seek money so he buys beers".
54. M[...]s version, in cross examination, was: Mr Mathaba: "what were Makgisa and Mosweu doing while you were sitting there, taking about what happened?" Ms M[:]: "inside the bedroom". Mr Mathaba: "they were sitting together in one room". Ms M[:]: "that time when S[...] left the bedroom, they were still inside the bedroom".
48. This Court does not believe the aforementioned contradiction to be material so as to discredit the version of the state witnesses on the material issues.

The number of times that the Appellant left the house on the night in question

55. M[...] was inconsistent, in her testimony and in her statement, about how many times the Appellant left the house. The relevant portions of the record are too lengthy to quote but, M[...] indicated on one instance that the Appellant left the house and didn't return but then indicated that the Appellant had returned.

The complainants body position at the time of the rape

56. The complainant was asked to explain the position of her arms at the time of the rape. The complainant states that she was lying on her back on the bed facing upwards and that Mosweu was holding her hands nearest her head, and the Appellant was on top of her. However, in cross-examination it was posed to the complainant that the position of the Mosweu in relation to her body is practically impossible and that the complainant was not physically restrained as she testified.
57. However, during cross examination the complainant clarified the issue regarding the position of Mosweu i.e., that Mosweu applied pressure to her upper arms, in a downwardly direction; toward the bed, which were behind her back. This elaborated version of the complaint cannot be said to be practically impossible.
58. Therefore, and although there were inconsistencies in the state witnesses' testimony, these inconsistencies are not material as stated above and hence the court a quo correctly accepted the material portions of the versions of the state witnesses. It has already been stated that the version of the state witnesses not only corroborated each other on material issues but these material issues are also confirmed by the J88 report.
59. This court is alive to the following trite principles which stand to be applied by a court of appeal in adjudicating and appeal and has applied same in its adjudication of this appeal:
- 59.1. In the matter of *R v Dhlumayo and Another*[3] the Appeal Court (as it was then known) stated: "The trial court has the advantages, which the appeal judges do not have, in seeing and hearing the witness being steeped in the atmosphere of the trial. Not only has the trial court the opportunity of observing the demeanor, but also their appearances and whole personality. This should not be overlooked".
- 59.2. In the matter of *AM and Another v MEC Health, Western Cape*[4] the court referred to the matter of *ST v CT*[5] and reiterated the following "trite principles" as reaffirmed by the Constitutional Court: "In *Makate v Vodacom (Pty) Ltd*[6] the Constitutional Court, reaffirmed the trite principles outlined in *Dhlumayo*, quoting the following dictum of Lord Wright in *Powell and Wife v Streatham Nursing Home*: 'Not having seen the witnesses puts the appellant judges in a permanent position of disadvantage against the trial judges, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the Higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case'. (emphasis added)
- 59.3. A court of appeal can only reject the trial court's assessment of the evidence if the court of appeal is convinced that the trial court's assessment of the evidence was wrong. If the appeal court is in doubt, the trial court's judgment must remain in place.[7]
- 59.4. The court of appeal must be careful in making decisions, which are purely based on paper and representations in court without the presence of the parties in the actual case.[8]

59.5. The above referred to principles were stated in a similar vein in the matter of *S v Kebana*[9] as follows: "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 testify in his presence in court. As the saying goes, he was steeped in the atmosphere of the trial. Absent any positive finding that he was wrong, this court is not at liberty to interfere with his findings".

59.6. In *Khoza v S*[10] it was confirmed that a "...court of appeal is not at liberty to depart from the trial court's findings of fact and credibility unless they are vitiated by irregularity, or unless an examination of the record reveals that those findings are patently wrong."

59.7. Ponnann JA in the matter of *S v Monyane and Others*[11] confirmed the following principles regarding the powers of a court of appeal: "This court's powers to interfere on appeal with the findings of fact of a trial court are limited ... In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong (*S v Hadebe and Others* 1997

(2) SACR 641 (SCA) at 645 e-f)."

THE FINDINGS OF THIS COURT AS REGARDS SENTENCING

60. The findings and reasoning of the court a quo as set out in the judgment of the court a quo was rational, suffer no ill-logical conclusions and was well-reasoned premised upon the contents of the record of the proceedings which were placed before this court of appeal.
61. The court a quo adequately addressed each of the Appellant's submissions in as far as the personal circumstances of the Appellant was concerned. There is in the view of this court of appeal no reason to interfere with the sentence passed by the court a quo.
62. This court adds that the Criminal Law Amendment Act, Act 105 of 1997 does not define "substantial and compelling circumstances". In the matter of *S v Malgas*, referred to by the court a quo, it was stated that: "frequency or infrequency of a set of circumstances is logically irrelevant to the question of whether or not they are substantial and compelling" . [12]
63. Further, it was held in *S v Malgas* that all factors traditionally taken in account in sentencing "continue to play a role" and it is the "ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ("substantial and compelling") and must be such as cumulatively justify a departure from the standardised response that the legislature has ordained".[13]
64. The court a quo duly considered and interrogated the factors raised by the Appellant as relates to his: (i) age, (ii) child; (iii) medical condition; and (iv) previous conviction and reached the conclusion that these factors did not amount to "substantial and compelling circumstances".

65. This court of appeal aligns with the view of the court a quo regarding the seriousness of the offence. The court a quo was not mistaken in its assessment that no "substantial and compelling circumstances" were present in casu in order to justify a departure from the prescribed minimum sentence.

CONCLUSION

AND JUDGMENT

66. Accordingly, it is the finding and judgment of this court that the Appellant's appeal against his conviction and sentence be dismissed and the conviction and sentenced as made and imposed by the trial court are confirmed.

DATED AT SANDTON ON THIS 30th DAY OF JUNE 2025

B MORRIS

ACTING JUDGE OF THE HIGH COURT,

NORTH-WEST DIVISION, MAHIKENG

I AGREE.

N G LAUBSCHER

For the Appellant: Tshabalala Attorneys, Mr Tshabalala

For the Respondent: No appearance

Date of Hearing: 19 June 2025

Date of Judgment: 30 June 2025

[1] Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

[2] (04856/22) [2024] ZAGPPHC 961 (30 September 2024) at paragraph 78.

[3] 1948 (2) SA 677 (A) at 705.

[4] 2021 (3) SA 337 (SCA) at para [8].

[5] 2018 (5) SA 479 (SCA) para [26].

[6] 2016 (4) SA 121 (CC).

[7] S v Robinson 1968

(1) SA 666 (A) at 675 H.

[8] Bernert v ABSA Bank Ltd 2011

(3) SA 92 CC at para [106].

- [9] S v Kebana [2010] 1 All SA 310 (SCA) para [12].
- [10] (A222/2022) [2023] ZAGPPHC 1122 (8 September 2023) at para [16].
- [11] 2001 (1) SACR 543 (SCA) at para 15 and also see S v Francis 1991 (1) SACR 198 (A) at 198 J -199 A.
- [12]
- [2001] 3 All SA 220 (A) at para 11.
- [13] Ibid at para 25.
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