

SOUTH AFRICA / JUDGMENT

Moepya and Others v S (Appeal) (A289/2022) [2025] ZAGPPHC 605 (6 June 2025) [2025] ZAGPPHC 605

COURT

North Gauteng High Court, Pretoria

BEFORE

PD Phahlane, Francis-Subbiah

CASE / FILE NUMBER

A289/2022

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REPUBLIC OF SOUTH
AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG

DIVISION, PRETORIA

CASE

NO: A289/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER

JUDGES: NO

(3) REVISED: YES/NO

DATE: 06 -06-2025

SIGNATURE: PD. PHAHLANE

In

the matter between:

LUCKY
MOEPYA & THREE
OTHERS
APPELLANT
And
THE
STATE
RESPONDENT

Delivered: This judgment was prepared and authored by the Judges whose names are reflected herein and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 06 June 2025

JUDGMENT

PHAHLANE, J

- [1] This is an appeal against conviction and sentence imposed by the Benoni Regional Court on 11 October 2021. The appellants who were legally represented during trial proceedings were initially arraigned on eight (8) counts. The first two counts relate to robbery with aggravating circumstances read with the provisions of section 1 of the Criminal Procedure Act 51 of 1977 (“the CPA”) and further read with section 51(2) of the Criminal Law Amendment Act 105 of 1997 (“the CLAA”). Counts 3–8 relate to three counts of contravening the provisions of section 4(1)(f) of the Firearms Control Act 60 of 2000 (for being in unlawful possession of various types of semi-automatic rifles) and three counts of contravening section 90 of the same Act (for unlawful possession of ammunition).
- [2] All the appellants were convicted on counts 3–8 as charged. The third and fourth appellants were also convicted on count 2 of robbery with aggravating circumstances. The trial court found no substantial and compelling circumstances that warranted a deviation from the minimum sentence prescribed in terms of the CLAA and accordingly sentenced the appellants as follows:
- 2.1 The first appellant was sentenced to an effective term of 20 years imprisonment.
- 2.2 The second appellant to an effective term of 30 years imprisonment.
- 2.3 The third appellant to an effective term of 40 years imprisonment; and
- 2.4 The fourth appellant to an effective term of 20 years imprisonment.
- [3] Aggrieved by this decision, the appellants applied for leave to appeal against their convictions and sentences, and the trial court granted them leave in respect of count 3 to 8. However, leave to appeal was refused in respect of count 2 on behalf of the third and fourth appellant.
- [4] The third and fourth appellant did not make any attempt to prosecute the appeal in respect of count 2. Their counsel submitted before this court that the court should entertain the appeal in respect of count 2 because it has the inherent powers to do so.

- [5] It is trite that where the trial court denies leave to appeal to an accused person, such accused can apply to the High Court for leave to appeal. If the High Court also denies leave to appeal, the accused is afforded further redress by directing a petition to the relevant Judge President of the High Court. These procedures have long been established. It was therefore crucial for the appellants to pursue this avenue to prosecute the appeal and not be ignorant of the legal procedures to be followed because non-compliance with procedural and practice requirements renders the conviction and sentence imposed to remain in effect.
- [6] It evident from the perusal of the court records that the second appellant was legally represented by advocate Tshole during trial before the Learned Magistrate. The record also reflects that from 23 November 2021, the first, and fourth appellants were also represented by advocate Tshole. On 10 December 2021 when leave to appeal was refused by the trial court in respect of count 2, the fourth appellant was still represented by advocate Tshole.
- [7] When counsel on behalf of the appellants submitted that the court should entertain the appeal in respect of count 2, this was an application and a submission made from the bar, and no reasons were advanced as to why the applicable legal procedures were ignored or disregarded by the third and fourth appellant.
- [8] One is consequently left with the impression that the matter did not appear to be of significant importance to the third and fourth appellant because they chose not to follow due process or the legal avenues within the legal framework available to them – bearing in mind that they have always been legally represented.
- [9] It is important to note that non-compliance with procedural requirements cannot simply be ignored. Nothing precluded the third and fourth appellant from filing a petition. Accordingly, the submission made on their behalf is a non-starter and cannot stand because ignorance of the legal procedures does not give them the latitude of a free ride on the basis that the appeal court has jurisdiction. Consequently, the application is refused.
- [10] I will now deal with the circumstances that led to the arrest and the ultimate conviction of the appellants, which forms the basis of this appeal. The undisputed evidence placed before the trial court was that the complainant in count 2, Mr Barend Du Preez, was robbed of his Mercedes Benz C220 on 28 July 2017 by two men that were armed with 9mm firearms. His work equipment which included a camera, lenses for the camera, laptop and an electronic tablet, worth R100 000 were also forcefully taken from his possession.

- [11] It is common cause that Warrant officer Odendaal from the Benoni Flying Squad and Mr Oosthuizen from the Tracker Vehicle tracking company picked up and followed the signal transmitted by the tracker unit in the Mercedes Benz which led them to the house of the first appellant at Crystal Park, Extension 2, Benoni. The two arrived simultaneously at the scene around 23:00 and found the gates to the premises open.
- [12] As they entered the premises, they found the Mercedes Benz parked in front of the garage, and a blue vehicle was parked behind it. The original registration plates of the Mercedes Benz were covered by false ones from Mpumalanga. There was also a white BMW was parked next to the blue Fiesta, and another vehicle was parked in front of the BMW next to the Mercedes. Warrant officer Van der Berg who was with Warrant officer Odendaal as his crew recovered a CZA3 browning pistol from the blue Fiesta motor vehicle.
- [13] They also found the first appellant and another male on the driveway coming from around the corner of the house. The two were apprehended and detained. The officers proceeded to the back of the house where they found a well-lit Lapa with canvas sides. As they entered the Lapa, they saw a bag on the pool table with a muzzle of a firearm protruding from it.
- [14] Appellant two to four were seated in the Lapa around a gas heater having drinks with another male person. That person managed to flee from the Lapa when the appellants were ordered to lie on the ground. Warrant officer Odendaal admitted to emptying the contents of the bag onto the pool table. Upon further investigation a backpack containing a pistol was seen on a round table in the Lapa and a bag containing a dash-prod rifle leaned against the chair between two of the suspects. They also recovered magazines and ammunition for different firearms.
- [15] Warrant Officer Johannes Shoaatja from Springs Local Criminal Record Centre ("LCRC") attended the scene and took photographs of the scene and collected the swabs from the firearms for DNA purposes. He further uplifted fingerprints from the Mercedes Benz. He testified that the fingerprints, specifically the right-hand palm print that he lifted from the driver's door handle inside the Mercedes Benz belonged to the fourth appellant.
- [16] He further testified that a glove was found on the ground behind the Lapa and stated that apart from the firearms found in the bag, balaclavas were also found in the bag that was in the Lapa. He stated that the firearm which was in the yellow bag on the round table in the Lapa had a live round in the chamber. Furthermore, that the magazine of a pistol was also recovered from the same round table. Warrant Officer Shwatwa also found an R5 rifle on the pool table and the Dash-prod was on the round table in the Lapa.
- [17] Another State witness, Captain Regina Jansen Van Rensburg testified that the DNA of the third appellant was found on the R5 rifle and the balaclava that was found at the scene where he was arrested. Captain Van Rensburg further testified that the DNA of the second appellant was found in another balaclava that was also found at the scene where he was arrested.

- [18] The exhibits recovered from the scene (which included several semi-automatic pistols, several semi-automatic rifles, a large number of ammunitions and several magazines) were taken in for ballistic testing.
- [19] The evidence of the above witnesses was corroborated in toto by several other witnesses, and I will therefore not repeat the evidence of those witnesses herein.
- [20] After the State had closed its case, the first and second appellants closed their cases without testifying or presenting any evidence to the court and contended that they had already presented their evidence during their bail application. The fourth appellant also closed his cases without testifying but called Ms. Magula as his witness to testify in his defence. The third appellant was therefore the only appellant that presented oral evidence during the trial.
- [21] It is common cause that the first appellant is the only one who testified during the bail hearing. The other appellants moved their bail applications by way of affidavits, which meant that their versions noted in the affidavits could not be tested by way of cross-examination. Be that as it may, the record of the bail hearing admitted into evidence during trial had to be evaluated and considered together with the other evidence presented by the State during trial.
- [22] The trial court having considered the evidence presented on behalf of the appellants during the bail hearing, rejected it and concluded that the evidence of the first appellant was so poor that it could not be relied upon in the trial proceedings. With regards to the second to fourth appellants, the trial court held that their versions given in their respective bail affidavits differed from the versions put to the witnesses during the trial, and held as follows:

“With regards to bail applications accused 1 was the only one that testified in the bail application in Court. Having read his evidence in the bail application as well as the judgment of my learned sister that gave such, I cannot disagree with her when she stated that the version of accused 1 as far as it is contained in the bail application is also – let us use the word ‘left wanting’.

His evidence in the bail application was so poor that it cannot be relied upon at all in these proceedings.

The other applicants moved their bail applications by way of affidavit and the versions that they gave in their affidavits are also different to the evidence and statements which were made to witnesses in these proceedings”.

- [23] With regards to the evidence of the third appellant before the trial court, he denied robbing Mr. Du Preez of his Mercedes Benz and further denied handling the firearms. It is common cause that he was arrested at the house of the first appellant and his evidence was that he went there with the fourth appellant because there was a party.

- [24] With regards to the evidence presented on behalf of the fourth appellant, Ms. Magula testified that on the date of the incident, which was 28 July 2017, she was ill and she requested the fourth appellant who was at the house in Vosloorus at the time to, take her to a doctor. She presented the court with a medical certificate that was admitted by the court as an exhibit to prove that she consulted the doctor on the date in question. However, the medical certificate shows that she was attended to by Dr Orlode on 26 July 2017 and signed by the doctor on the same day of 26 July 2017, which is two days before the day of the incident.
- [25] In convicting the appellants, the trial court rejected the evidence of the third appellant as well as the evidence presented on behalf of the fourth appellant by Ms. Magula as not being reasonably possibly true. In this regard, it held that the third appellant was not a credible witness because his evidence was riddled with a host of improbabilities and contradictions.
- [26] As far as the evidence of Ms. Magula is concerned, the trial court held that her medical certificate contradicted her evidence in that the offence was committed two days after she had already consulted with her doctor on 26 July 2017. The trial court referred to her medical certificate as dubious because it had obvious discrepancies, one of which relates to the last date of examination noted as 28 July 2017, while the doctor had already signed it on the 26th of July 2017.
- [27] Furthermore, the trial court held that the evidence of the fourth appellant's fingerprints found inside the Mercedes Benz on the driver's door was not rebutted.
- [28] As far as the first and second appellants are concerned, the trial court held that even though they have the right to remain silent and not testify as guaranteed in section 35(3)(h) and (j) of the Constitution[1], the totality of the evidence tendered by the State required a response from the appellants.
- [29] It appears from the grounds of appeal and the appellants heads of argument that the appeal against conviction is based on a finding of fact and the law. The appellants contends that the trial court erred in finding that the respondent has proved its case against them beyond a reasonable doubt. The appellants further contends that the trial court misdirected itself in finding that they were all in joint possession of the firearms and further making a finding that they acted in common purpose.
- [30] It is trite law that a court of appeal will not interfere with the trial court's decision regarding a conviction, unless it finds that the trial court misdirected itself as regards its findings or the law[2]. To succeed on appeal, the appellants needed to convince this court on adequate grounds that the trial court misdirected itself. Even so, there are well-established principles governing the hearing of appeals against findings of fact. 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[3].

[31] In determining whether the appellants were correctly convicted, this court must look at the totality of the evidence led, including evidence led on behalf of the appellants, and compare it to the factual findings made by the trial court in relation to that evidence, and then determine whether the trial court applied the law or applicable legal principles correctly to the said facts in coming to its decision.

[32] It is common cause that all the appellants were arrested at the residence of the first appellant where the Mercedes Benz belonging to Mr Du Preez was also recovered on the same day it was robbed. Of more relevance to the issues to be decided by this court is the illegal firearms and ammunitions that were also found at the same premises. It is not in dispute that these firearms were found where appellants two to four were seated in the Lapa and they were not concealed

because the barrels of the rifles were protruding from the bags.

[33] As already indicated above, the first, second and fourth appellants did not testify, and no explanation was given as to how the firearms came to be at the place where they were seated.

[34] Mr Tshole appearing for the appellants submitted on behalf of the first, second and fourth appellants that there was no evidence placed before the trial court calling for them to an answer because their explanation was given during the bail hearing. He further submitted that the third appellant's evidence that he was not in possession of, and did not handle any firearm and ammunition should not have been disregarded by the trial court.

[35] Relying on *S v Boesak*[4] Mr More appearing for the respondent submitted that the magistrate was correct in his finding that the totality of the evidence tendered by the State required a response from the appellants, and that in the absence thereof, the trial court was justified to draw an adverse inference against the appellants. The court in *Boesak* stated the following:

"The fact that an accused person is under no obligation to testify does not mean that there are no consequences attaching to a decision to remain silent during the trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused. Whether such a conclusion is justified will depend on the weight of the evidence. What is stated above is consistent with the remarks of Madala J, writing for the Court, in Osman and Another v Attorney-General, Transvaal[5], *when he said the following:*

"Our legal system is an adversarial one. Once the prosecution has produced evidence sufficient to establish a prima facie case, an accused who fails to produce evidence to rebut that case is at risk. The failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt. An accused, however, always runs the risk that, absent any rebuttal, the prosecution's case may be sufficient to prove the elements of the offence. The fact that an accused has to make such an election is not a breach of the right to silence. If the right to silence were to be so interpreted, it would destroy the fundamental nature of our adversarial system of criminal justice."

[36] Having regard to the above principle, I concur with the respondent that one would have expected the appellants to testify in order to explain why they were in possession of the items identified in counts 3 to 8, but they elected to remain silent. I say this being mindful of the fact that the trial court had already ruled that the evidence of the appellants during their bail application is rejected because their versions given in their bail affidavits contradicted and

differed with the corroborative evidence presented during trial and their version put to the witnesses during trial.

[37] In respect of the first appellant, the application of the law by the trial court was the correct one. The trial court stated that it was common cause that the firearms were found on a residential premises which was under the control of the first appellant, where he was also ordinarily resident on the premises and over the age of 16 years. In this regard, the trial court relied on the provisions of section 117(2) of the Firearms Control Act 60 of 2000 which provides as follows:

117. Presumption of possession of firearm or ammunition

(2)Whenever a person is charged in terms of this Act with an offence of which the possession of a firearm or ammunition is

an element, and the State can show that despite the taking of reasonable steps it was not able with reasonable certainty to link

the possession of the firearm or ammunition to any other person, the following circumstances will, in the absence of evidence to the contrary which raises reasonable doubt, be sufficient evidence of possession by that person of the firearm or ammunition where it is proved that the firearm or ammunition was found—

(a) on residential premises and the person was, at the time—

(i) in control of such premises; or

(ii) over the age of 16 years and ordinarily resident at such premises;

[38] The undisputed evidence presented before the trial court was that the house where all the appellants were arrested and where the items in counts 3 to 8 were found at Crystal Park, Extension 2, Benoni, belongs to the first appellant. In this regard, the trial court correctly held that the first appellant “failed to present the court with any credible evidence and therefore failed to rebut the presumption in section 117(2) of the Firearms Control Act 60 of 2000.

[39] In light of the above, I cannot fault the decision of the trial court in its application of the above section as it relates to the first appellant.

- [40] It is common cause that the respondent relied on circumstantial evidence. The trial court correctly stated that in certain instances, circumstantial evidence could be more compelling than direct evidence because it is the cumulative effect of the circumstantial evidence that determines its probative value.
- [41] Although the appellants were not found holding the firearms, on consideration of the evidence as it appears on record, it is evident that the trial court followed the 'holistic' approach as enunciated in *S v Chabalala*[6] and evaluated all the evidence before it and also considered the probabilities and improbabilities inherent in the case. This is so because the trial court had the following to say: "it is important for the court not to consider each circumstance in isolation but to consider it in unison with the rest".
- [42] It is important to note that even though the crux of this appeal is on counts 3 to 8 which relates to illegal possession of both firearms and ammunition, that could not have been done without disregarding the overwhelming and undisputed evidence that relates to count 2 of robbery of the Mercedes Benz belonging to Mr. Du Preez in which the fingerprints of the third and fourth appellants were found on the inside of the vehicle.
- [43] A perusal of the judgment of the trial court reflect that the legal principles enunciated in *R vs. Blom*[7], were strictly followed by the trial court. Accordingly, the court noted the following as the accepted circumstantial evidence:
- (a) "On the date in question all four accused persons were on the premises where some items very important items to this matter were recovered.
 - (b) Two vehicles that were robbed on previous occasions as well as the firearms formed the subjects of counts 4 up to and including count 8.
 - (c) Accused 1 was in the driveway of his house where he stays whereas accused 2 ~ accused 3 and accused 4 were found inside a Lapa where all the firearms were found.
 - (d) One of the vehicles that were found on the premises was the vehicle that was robbed from the complainant in count number 1. Mr Setswala who was robbed of his BMW 320 on 2 June 2017. Secondly the vehicle Mercedes Benz C220 diesel which was robbed from Mr Du Preez on the very same day at approximately 14:00 in the afternoon was also recovered found on the premises with number plates which has been changed.
 - (e) Numberplates were changed in the sense that for example the new "MP" registration numbers were just placed or, or pasted over the existing number plates of the vehicle.
 - (f) All the firearms and ammunition as indicated in counts number 2 to 8 were found inside a Lapa. Accused 1, accused 2 and accused 4
- elected to remain silent in the proceedings and closed their cases.
- (g) Accused 4 after presenting the evidence of Ms Magula, but there is no evidence from them.

- (h) Accused 3 was the only accused person that testified in the proceedings. His evidence as well as the evidence of the witness who

testified behalf of accused 4 was left wanting.

- (i) As far as accused 1 is concerned, evidence before the court is that he stayed on that premises. He failed to testify despite the

fact that the bags with firearms were in the Lapa on his premises, and two vehicles, one of which was robbed on that specific day”.

- [44] Having regard to the above, I am of the view that the trial court applied the legal principles to the facts of the case correctly. It is on the basis of the above accepted circumstantial evidence that the respondent submitted that all the appellants jointly possessed the firearms found at the scene. The respondent relied on the decision in *S v Nkosi*[8] where the court set out the test for joint possession of firearm and ammunition and stated that it must be possible to properly infer from the established facts that:

“The issues which arise in deciding whether the group (and hence the appellant) possessed the guns must be decided with reference to the answer to the question whether the State has established facts from which it can properly be inferred by a court that:

- (a) the group had the intention (animus) to exercise possession of the guns through the actual detentor and

(b)

- (b) the actual detentors had the intention to hold the guns on behalf of the group. Only if both requirements are fulfilled can there be joint possession involving the group as a whole and the detentors, or common purpose between the members of the group to

possess all the guns”.

- [45] A consideration of the application of the above-mentioned principles is evident from the trial court's decision which takes into account, the two cardinal rules of logic stated in *Blom*. It is for this reason that the trial court held that: “the only reasonable inference that one can draw from the proved facts are that all four accused persons were in joint possession of all the firearms on that premises in the Lapa”.

- [46] On the conspectus of the evidence as it appears on record, I am of the view that the trial court properly evaluated the facts before it and correctly followed all the above legal principles as it had correctly pointed out that it had to consider the totality of the evidence before it.

- [47] Accordingly, I find that the trial court did not misdirect itself in rejecting the evidence of the third appellant and Ms Magula as not being reasonably possibly true. In respect of the remainder of the appellants, I find that the trial court properly applied the legal principles and did not misdirect itself in convicting the appellants and finding that the respondent proved its case against the appellants beyond a reasonable doubt.
- [48] Having given proper and due consideration to all the circumstances of this case, I concur with the findings of the trial court, and I am of the view that the trial court did not misdirect itself. In the absence of any misdirection by the trial court, I cannot find any justification why this court should interfere with the trial court's findings. Accordingly, the appeal on conviction stands to be dismissed.
- [49] With regards to sentence, it was submitted on behalf of the appellants that the sentences imposed on all the appellants is strikingly inappropriate and induces a sense of shock because the trial court misdirected itself in not considering other sentence options and failing to balance between the crime, the criminal, and the legitimate interest of society. It was further submitted that the trial court erred in overemphasizing the interests of the community above those of the appellants.
- [50] In order to deal with the alleged misdirection by the trial court, it is important to restate the legal principles on sentencing. It is trite that sentencing remains pre-eminently within the discretion of the sentencing court, and the appeal court therefore does not enjoy *carte blanche* to interfere with the sentence which has been properly imposed by a sentencing court[9]. However, appeal court is only entitled to interfere with the sentence imposed where such a sentence is disturbingly inappropriate or vitiated by misdirection of a nature which shows that the trial court did not exercise its discretion reasonably[10]. The principle was expressed by the SCA in *S v Malgas*[11] as follows:
- "A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court"*.
- [51] It is evident from the reading of the judgment that in determining an appropriate sentence, the trial court had due regard to the applicable legal principles and the triad factors in *S v Zinn*,[12] which includes a consideration of the personal circumstances of the appellants – which the appellants allege were ignored. A further reading of the judgment reveals that the trial court was also mindful of the purposes of punishment which were expressed by the court in *S v Rabie*. [13]

- [52] The trial court gave a detailed background of the personal circumstances of the appellants which I will not repeat herein, because they are already on record. It is clear from a thorough reading of the record that in determining the appropriate sentence which is just and fair, the trial court also took into account the aspect of rehabilitation, and expressed that in applying balance to all the factors to be considered during the sentencing stage, none of the circumstances should be over or under emphasised to the detriment of the other.
- [53] The trial court referred to a large number of ammunition and quite a number of dangerous firearms found from the appellants, and with that in mind, what appears to be an aggravating factor against the first appellant is the fact that he has serious previous convictions involving violence including murder, robbery, theft of motor vehicle, fraud, possession of stolen property and housebreaking.
- [54] A further consideration which is more concerning is the fact that the fourth appellant has a previous conviction of possession of unlicensed firearm which he committed while on parole.
- [55] It is on this basis that the respondent submitted that the sentence imposed on the appellants is commensurate with the gravity of the offences and does not in any way evoke a feeling of shock.
- [56] In light of the circumstances of this case, and in applying the above principles, and further having considered the submissions made on behalf of the appellants - that the sentence imposed by the trial court is shockingly inappropriate and disproportionate to the offence for which it was imposed,
- cannot stand.
- [57] Having given proper and due consideration to all the circumstances of this case, I am of the view that the trial court considered all the factors when imposing the sentence appealed against. This court cannot find any fault in the decision of the sentencing court, nor can it be said that the sentence imposed is excessive or unjust. Consequently, I cannot find any misdirection in the trial court's finding, and the appeal on sentence cannot succeed.

[58] In the circumstances, the following order is made:

1. The appeal against conviction and sentence on behalf of all the appellants is dismissed.

PD. PHAHLANE

JUDGE OF THE HIGH COURT

I agree,

FRANCIS-SUBBIAH

JUDGE OF THE HIGH COURT

APPEARANCES

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Heard on

: 24 July 2024

Date of Judgment : 6 June 2025

[1] The Constitution of the Republic of South Africa Act 108 of 1996.

[2] R v Dlumayo and Another 1948 (2) SA 677 (AD) at 705-6.

[3] See: S v Hadebe and Others 1997 (2) SACR 641 (SCA) at 645e-f; S v Monyane and Others 2008 (1) SACR 543 (SCA) at para 15; and S v Francis 1991 (1) SACR 198 (A) at 204e.

[4]

[2000] ZACC 25; 2001 (1) SACR 1 (CC); 2001 (1) BCLR 36; 2001 (1) SA 912 at para 24.

[5] 1998

(11) BCLR 1362 (CC); 1998 (4) SA 1224 (CC).

[6] 2003 (1) SACR 134 (SCA) at para 15

[7] 1939 AD page 188.

[8] 1998 (1) SACR 284 W at 286 h -I

[9] Mokela v The State 2012 (1) SACR 431 (SCA) at para 9.

[10] S v Salzwedel 1999 (2) SACR 586 (SCA) at 591F-G; See also: S v Kgosimore 1999 (2) SACR 238 (SCA).

[11] 2001 SACR 496 at para 12 (SCA).

[12] S v Zinn 1969 (2) SA 537 (A) at 540G.

[13] 1975 (4) SA 855 (A).

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