

SOUTH AFRICA / JUDGMENT

Mroloto and Others v S (CA&R 146/2014) [2015] ZAECHGC 1 (8 January 2015)

[2015] ZAECHGC 1

COURT

Eastern Cape High Court, Grahamstown

BEFORE

E Revelas, M Lowe

CASE / FILE NUMBER

CA&R 146/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE DIVISION – GRAHAMSTOWN

Case

No: CA&R 146/2014

In

the matter between:

MNCEBISI

MROLOTO.....First

Appellant

LUVUYO

DURUWE.....Second

Appellant

MONWABISE

NDAYI.....

Third Appellant

MSONDIZI

SIMANI.....

Fourth Appellant

and

THE

STATE.....

Respondent

JUDGMENT**REVELAS J**

[1] This is an appeal, with leave of the trial court (a magistrate sitting in the Regional Court, Port Elizabeth), against the convictions of the four appellants and the sentences imposed in respect of their convictions. The appellants were charged with and

pleaded not guilty to the following offences:

- (1) Conspiracy to commit robbery with aggravating circumstances in contravention of section 18(2)(a) of the Riotous Assemblies Act, 17 of 1956 (count 1).
- (2) Possession of a fully automatic firearm in contravention of section 4(1)(a) of the Firearms Control Act, 60 of 2000 (Count 2).
- (3) Possession of a semi-automatic firearm in contravention of section 3 of Act 60 of 2000 (Count 3).
- (4) Possession of ammunition in contravention of section 90 of Act 60 of 2000 (Count 4).

[2] After a long trial, partly due to its being postponed on several occasions, the four appellants were convicted as charged on 8 March 2013 and were sentenced as follows on 15 March 2013:

Count 1: Ten years' imprisonment.

Count 2: Fifteen years' imprisonment.

Count 3: Fifteen years' imprisonment.

Count 4: Two years' imprisonment.

The regional magistrate ordered the sentences to run concurrently to the extent that each appellant would serve an effective sentence of eighteen years' imprisonment.

The Evidence

- [3] The State called twenty witnesses in support of its case. It is not necessary to deal with each testimony in great detail, since a substantial part of the evidence was either common cause or not in dispute.
- [4] Miss Blondie Mnyaka, a former employee of Mrs Cheron Kraak, the owner of a popular clothes store in Jeffrey's Bay, testified that she received a phone call from a person, who later turned out to be the fourth appellant, on 13 August 2009. He had earlier come looking for her at the house of Steven Nemalengeni, her boy friend and the latter's sister confirmed this. It was not in dispute that the sister gave Mnyaka's cellphone number to the fourth appellant and that the fourth respondent later phoned Mnyaka.

- [5] Mnyaka testified that the fourth appellant requested her to assist him in pointing out a certain house for purposes of a robbery. The fourth appellant who stated that he contacted her for a different purpose denied this. A further telephonic exchange took place between them, this time on Steven Nemalengeni's cellphone, since Mnyaka had diverted her calls to his phone. She testified that she had saved the fourth appellant's cellphone number under the name "Bad Stranger" on her cellphone. The fourth appellant wanted to meet with her and she agreed. Both she and Nemalengeni wanted to find out more. Nemalengeni was Kraak's employee. Nemalengeni testified that because he was driven by curiosity and a bit of jealousy, he accompanied Mnyaka to a tavern where she had arranged to meet the fourth appellant.
- [6] At the tavern, the fourth appellant introduced himself as Soso. He was not known to either Mnyaka or Nemalengeni. During the conversation that followed, the fourth appellant told them that he was interested in breaking into the house of the former owner of Billabong (Kraak's clothes store) in Jeffrey's Bay. He said he had received a tip from a man named Mxi, that Mnyaka could lead him to that house. He was particularly interested in the safe kept in the house.
- [7] Nemalengeni testified that, while in conversation with the fourth appellant, he noticed that he was serious about the robbery. In fact, the fourth appellant said to him that he wanted to rob Kraak's house that very evening. Nemalengeni then proposed that since he was actually in the employ of Kraak, further dealings regarding the robbery should be with him and not Mnyaka. He told the fourth appellant that he was in a better position to assist with the plans later. He devised this delay in an attempt to warn Kraak, which he did that evening.
- [8] The telephonic contact made with Mnyaka and the meeting at the tavern between Mnyaka, Nemalengeni and the fourth appellant was common cause, but not its purpose. The fourth appellant denied that any robbery was discussed. According to him, he approached Mnyaka with the view to be put into contact with someone from whom he could buy drugs. Nemalengeni then stepped into the picture to assist him with finding a seller.
- [9] The case of the four appellants was that the first, second and fourth appellants had left Mthatha to buy drugs in Jeffreys Bay. The third appellant, who is a taxi driver by profession, denied that he knew the other appellants before he met them in Jeffrey's Bay around the time of his arrest and he denied further, that he had any knowledge of an intended drug purchase or robbery plans.
- [10] It was not in dispute that Kraak engaged the services of a firm of private detectives, Christiaan Botha Investigations, following a report made to her by Nemalengeni. According to Nemalengeni, the private detectives whom he later met at Kraak's home, devised a plan which envisaged that Nemalengeni would pretend to cooperate to the point where the robbery could be foiled and the perpetrators apprehended.

- [11] On 14 August 2009, Nenalengeni returned Kraak's home where, in the presence of two private detectives, Mr Swele Molokomme and Mr Darryl Els, he phoned the fourth appellant. According to Nenalengeni, they discussed the detail of the intended robbery at Kraak's house. The phone's loudspeaker mechanism was activated to ensure that the two detectives could eavesdrop on the telephone conversation. Nenalengeni managed once again to stall the robbery.
- [12] The risk to Nenalengeni was discussed and it was decided that Molokomme would pretend to be interested in participating in the intended robbery, and go along with it as an undercover agent. Nenalengeni would introduce Molokomme to the fourth appellant as his brother from Johannesburg. The following day, 15 August 2009, Nenalengeni phoned the fourth appellant again. As arranged with the detectives he suggested that someone else, his brother, a very experienced bank robber, should take his place because he had to attend a funeral of a relative. (It was in dispute whether he said it was his father's or his grandmother's funeral).
- [13] The fourth appellant fell for the ruse and accepted the suggestion. Molokomme then took the phone from Nenalengeni and introduced himself to the fourth appellant as Swele and they exchanged cellphone numbers.
- [14] According to Molokomme, the fourth appellant phoned him on two occasions that day and once the next day. Molokomme testified that on the second occasion they had spoken, he had asked the fourth appellant whether he had a "flywheel" (revolver) for him and he was given the assurance that there would be one. The robbery was fixed to take place on 17 August 2009. They had also arranged to meet at Nenalengeni's house on that day.
- [15] The fourth appellant admitted that conversations between himself and Molokomme took place but reiterated that the conversations were all concerned with an intended drug purchase. In particular, he disputed that there was any discussion about firearms. Molokomme and Els, who testified that they overheard the conversations between Nenalengeni and refuted this.
- [16] On 17 August 2009, Molokomme had arrived at Nenalengeni's house before his meeting with the fourth appellant and his friends (the first and second appellants), and secreted an audiotape in the lounge. The audibility of the recording of the subsequent meeting was very poor, but its translation was handed in as evidence, although the State relied mostly on the testimony of Molokomme with regard to what was said at the meeting.
- [17] According to Molokomme, the fourth appellant arrived at the house with the first appellant at about 18h00. The second appellant joined them after a short while. Molokomme testified that the four of them discussed the operation. The fourth and first appellants did most of the talking. Molokomme boasted that he regarded the operation as a rather small job, but that he would nonetheless assist them.

- [18] Molokomme testified that was asked questions by the fourth and second appellants such as whether there were security guards and dogs at the house, how much money there was in Kraak's safe and whether she lived alone. The fourth appellant indicated that any security guards present at Kraak's house would be "squashed".
- [19] The first, second and fourth appellants denied that any such discussions took place. According to them they only conversed with Molokomme about a purchase of drugs.
- [20] Upon realizing that they did not have transport to take them to their destination, which according to Molokomme was Kraak's house, the fourth appellant requested the first appellant to arrange transport. The third appellant (who had earlier dropped them off at the house) was requested to fetch them. When the third appellant arrived with his Toyota Quantum minibus, the four of them got into the minibus and the third appellant drove off in the direction of Jeffrey's Bay. According to Molokomme, they followed the route planned at the meeting. The appellants admit that they were in the minibus. Save for the third appellant, who said he was only present in the course of legitimate transport for remuneration purposes, the other three appellants maintained that the meeting and subsequent trip to Jeffrey's Bay in the minibus, was just about the purchase of drugs.
- [21] Before the meeting, the private detectives of Christiaan Botha Private Investigators unsuccessfully applied for authority in terms of section 252 A of the Criminal Procedure Act, 51 of 1977, from the Director of Public Prosecutions in Grahamstown, to conduct a trapping operation with a view to trap the robbers who were planning to rob Kraak and who would be using firearms in the execution of their plans.
- [22] The private detectives nonetheless approached the police with whom they planned beforehand, that the vehicle, in which Molokomme and the appellants would be travelling to Kraak's home, would be intercepted by the police.
- [23] Molokomme testified that no sooner had they left Nemalengeni's house, than the fourth appellant handed the third appellant a balaclava cap, which the latter placed between his knees. The minibus drove towards Jeffrey's Bay. On the way, several police vehicles, as prearranged, followed the minibus. After a short while, the presence of the police vehicles behind the minibus became evident with their blue lights flashing and sirens activated.
- [24] According to Molokomme, the third respondent increased the speed of the minibus. Adjutant Officer Le Roux and Constable Mange, who followed the minibus, corroborated this testimony. They testified that the driver of the minibus increased his speed despite the police presence behind him, even when traversing speed humps and ignored stop signs. Molokomme testified that once the police presence became obvious, the fourth appellant gave an order that the weapons be thrown out of the vehicle. Le Roux testified that he saw a brown object being tossed from the minibus, causing a dust cloud as it hit the road surface. He reported this observation to Adjutant Officer Mafojela, who was in one of the other police vehicles to the rear.

[25] Constable Trompetter, who was travelling with Mafojela behind the Canine Unit's police vehicle, confirmed that Le Roux requested them per radio to investigate what object had fallen from the minibus.

[26] Mafojela reported to Le Roux that they had found the object he saw being tossed from the minibus. A vehicle from the police's

Canine Unit, overtook the minibus, then turned around and stopped in front of it, preventing it from proceeding any further.

The passengers of the minibus (the four appellants and Molokomme) were ordered out of the minibus and the four appellants were arrested. Els confiscated all the cellphones found on the appellants.

[27] Inside the minibus two balaclava caps and a pair of gloves were found. The brown object which Le Roux and Mange saw being tossed out of the vehicle, turned out to be four firearms and some housebreaking implements wrapped in a military jacket secured with sticky tape. The DNA of the second appellant was found on the jacket and the DNA of the first appellant was found on the pair of gloves. The cellphone records pertaining to the confiscated cellphones of the appellants were used in evidence as proof of their whereabouts before their arrests.

Discussion

[28] It was not submitted on behalf of any of the appellants that they were reliable witnesses. The argument was rather that their versions were reasonably possibly true.

[29] The State proved beyond reasonable doubt, relying on the appellants' cellphone records and bank statements, that the four of them travelled from Mthatha to Jeffrey's Bay where they arrived on 11 August 2009, and before that and since then, they were in regular contact with each other.

[30] This evidence also proved that the third appellant's version, that he only arrived in Jeffrey's Bay on 13 March 2009 and did not know any of the other appellant before that time, was false. His phone records reflected that he had been in regular contact with the other three appellants before that, and that on 11 August 2009, he had made cash withdrawal in Jeffrey's Bay.

[31] The magistrate's finding that there were no material discrepancies in the testimonies of Nenalengeni, his sister and

Mnyaka, is not open to any criticism. The testimonies of Mnyaka, Nenalengeni, Els, and Molokomme, viewed together, support the convictions of a conspiracy to commit robbery. The evidence of the weapons wrapped in the jacket containing the second appellant's

DNA, supported the magistrate's further finding that the conspiracy was to commit robbery with aggravating circumstances.

[32] The State conceded that Molokomme's testimony contained contradictions, but submitted that other reliable evidence, such as the testimonies of Nemalengeni, Mnyaka, Els, Le Roux and Trompetter corroborated the most relevant parts of his evidence.

Molokomme's shortcomings as a witness are, however, relevant as far as the third appellant is concerned. I will return to this aspect later.

[33] The magistrate was entitled to reject the explanation proffered by the appellants, namely that the police had conspired to falsely implicate them in a conspiracy to commit robbery with aggravating circumstances by, inter alia, planting the weapons and ammunition on the side of the road. The magistrate observed that their theory of a conspiracy amongst the relevant members of the police and private detectives, does not explain why the items in question were found in a jacket containing

the DNA of the second appellant and why these items would have been treated so roughly and isolated from the rest of the exhibits found.

[34] The operation pursued by the private detectives and the many members of the police, involved much planning, effort and resources and was simply too elaborate to be a plot to falsely implicate persons who only wished to buy drugs.

[35] In rejecting the version of the first, second and fourth appellants, that they were only in contact with the State witnesses because they wanted to purchase drugs, the magistrate observed that on their way from Mthatha, the appellants had passed two of the Eastern Cape's greatest metropolitan areas (East London and Port Elizabeth). The magistrate made the point that it was most unlikely that the four appellants would have driven so far just to purchase drugs in Jeffrey's Bay, a relatively small sea resort, when they could have found drugs in the areas mentioned.

[36] The magistrate also found it improbable that the fourth respondent would have found it necessary to bring the other appellants with him on such a long journey if he only wanted to purchase drugs. To that proposition the magistrate added that, if Nemalengeni was indeed a drug supplier, it would be highly unlikely that he would have involved his employer in an elaborate scheme which required the engagement of private detectives as well as the police, for the apparent purpose of having them arrested for a different crime. That simply made no sense.

[37] The appellants were correctly found to be poor witnesses who contradicted themselves, each other, and also their versions at their bail hearings.

[38] Insofar as the first, second and fourth appellants are concerned, the State proved beyond reasonable doubt that there was a meeting of the minds of the three appellants to commit robbery with aggravating circumstances, thus establishing a conspiracy. I am of the view that their convictions are unassailable. However, with regard to the third appellant's conviction, I am of a different view.

[39] The third appellant was indeed an untruthful witness, as the magistrate found him to be. The cellphone records of the

appellants, to which reference was made above, disproved his assertion that he did not know the other appellants and had only provided transport to them for remuneration. His evidence was also wanting in other aspects.

[40] However, the third appellant was not present at any discussions in relation to the planned robbery and, more importantly, Molokomme met him for the first time on 17 August 2009, in the minibus. The evidence against him and upon which he was convicted was therefore purely circumstantial.

[41] A very important consideration in assessing the testimony of the third appellant is that it must not be examined in isolation, but against all the evidence lead as a whole. If it is reasonably possible that he might be innocent, he must be acquitted. (See: *S v Van der Meyden* SACR 1999 (1) 447 (W) at 449h-450b; *S v Van Aswegen* 2001 (2) SACR 97 at 101b-e). Despite the quality of the third appellant's testimony, the State was still obliged to prove its case against him beyond reasonable doubt.

[42] It is trite that an accused can be convicted on evidence which is purely circumstantial, provided that the test with regard to circumstantial evidence, based on two principles of logic, as enunciated in *S v Blom* 1939 AD 188 (at 202-203 is applied:

- (1) The inference sought to be drawn must correspond with all the proven facts. If not, the inference is impermissible.
- (2) The proven facts must be such, that they exclude every reasonable inference except the inference sought. If the proven facts do not exclude other reasonable inferences, then the correctness of the inference sought should be doubted.

[43] The magistrate relied on the following evidence in concluding it hat the third appellant was guilty as charged:

1. The evidence that the third appellant attempted to drive away when he became aware of the police presence behind him.
2. Molokomme's testimony that, on route to Kraak's house, the third appellant was given a Balaklava cap to wear by the fourth appellant, who was clearly implicated in the conspiracy.
3. The several phone calls between himself and the other appellant as proved by the relevant cellphone records.
4. The apparent ease with which the third appellant turned his vehicle around to fetch the other appellants, for no remuneration, as if he expected to be called.
5. The evidence that four weapons (one for each man in the minibus) and implements were found in a bundle that were in the minibus (before it was tossed from it onto the road).

- [44] The magistrate concluded that the third appellant must have known that these weapons and implements were inside his vehicle and therefore he must have known of the plan to rob Kraak.
- [45] In my view, the third appellant's failure to stop the minibus is not necessarily an indication of guilt on his part. There could be more than one explanation for a person's attempt to get away, when the futility thereof is obvious, when unexpectedly, he is being followed by several police vehicles, even if he is not guilty of that which he is suspected of. It is also reasonably possible that he did not know that he was driving his passengers to a destination where they would commit housebreaking and robbery. Based on Molokomme's evidence, the robbery was never discussed once they were in the minibus, only in Nemalengeni's house.
- [46] Molokomme testified that when they became aware of the police presence behind them, he (Molokomme) shouted at the third appellant
- "Gaan!" ("Go!"). It is not impossible that, given the prevailing circumstances, the third appellant, in a panic, possibly interpreted this to mean that he must increase speed.*
- [47] Ms Swanepoel, for the State, submitted that Molokomme's utterances were not meant as encouragement for the third appellant to flee, but were rather to ensure that he remained on the pre-planned route and makes the correct turn at the stop street to secure the planned apprehension further on down that road. Since Molokomme did not provide the magistrate with this explanation, it cannot be inferred from the record.
- [48] Molokomme's testimony about the passing of the Balaklava to the third appellant, is the only evidence which positively links the third appellant to the crimes in question. In this regard it becomes relevant that Molokomme was not a satisfactory witness. The State conceded that much. He contradicted himself and was prone to embellishment. The most relevant discrepancy in Molokomme's evidence as a whole was that he did not mention in his police statement that a Balaklava cap was given to the third appellant. Ms Swanepoel pointed out that at his bail hearing Christiaan Botha testified that Molokomme had mentioned the passing of the balaclava cap to the third appellant. The hearsay evidence of Molokomme's employer does not alter the position. This was crucial piece of evidence and its omission from Molokomme's police statement weakened Molokomme's testimony considerably.
- [49] Under cross-examination Molokomme also admitted that he did not actually see the balaclava cap, but only what appeared to be some knitted material in the fourth appellant's hand. He only assumed it was a balaclava cap.

[50] The magistrate held the view that Molokomme would not have lied about such a triviality. This piece of evidence was the only part of Molokomme's evidence that implicated the third appellant in the conspiracy. It could hardly be categorized as trivial evidence. Given Molokomme's other shortcomings as a witness, this evidence about the balaclava cap ought to have been treated with more circumspection.

[51] The finding that the third appellant was aware of the presence of the firearms and implements in his minibus was not supported by the proven facts. Firstly, these items were wrapped up in a military jacket and secured with sticky tape. In that condition it was no more than a bulky brown bundle of heavy objects. An outsider would not necessarily have assumed that the bundle contained firearms and implements by just looking at it. As a taxi driver by profession, the third appellant would not necessarily have looked inside the bundle to examine its contents. On Molokomme's version the bundle was also not opened inside the minibus after they got into it.

[52] To assume that the bundle had already been in the vehicle since before the third appellant came to fetch the other three appellants,

would also be incorrect. More importantly, the evidence in this regard was that at the meeting, before they left to rob Kraak, the third appellant who dropped them off, was not yet identified as the driver who was to transport them to Kraak's house. It was common cause that once they decided to carry out the robbery, the first appellant pointed out to Molokomme that they did not have transport to carry out the operation. The third appellant was phoned only thereafter. The ease with which he returned to fetch them does not take matters any further. The third appellant was a taxi driver by profession.

[53] The aforesaid evidence suggests strongly that the bundle could not have been in the minibus when the first, second and fourth appellants were dropped off at the house where the meeting with Molokomme was to take place. There is no indication that the plan to rob Kraak's house included the third appellant at that point.

[54] Molokomme's evidence was that after the first and fourth appellants entered the house for their meeting, the fourth appellant

requested Molokomme not to close the door yet, as another person was going to join them, and that person was the second appellant.

The second appellant who, on the accepted evidence, had the opportunity could have secreted the bundle of weapons outside the house.

[55] Molokomme's evidence tends to exclude the third appellant from the conspiracy and the possession of the contents of the bundle in question. A strong suspicion of the third appellant's complicity in the conspiracy may very well be justified, but the evidence presented does not go beyond a mere suspicion, if one applies the test set out in *S v Blom* and referred to above.

- [56] In the circumstances, the third appellant's convictions and the sentences imposed on him fall to be set aside.

Sentences of the First, Second and Fourth Appellants

- [57] The magistrate gave no reason for issuing the directive that the four sentences imposed on the appellants (the lengthiest of them being a term of fifteen years) should be served concurrently to the extent that a term of eighteen years' imprisonment is to be served by each appellant. In a case where an accused is convicted on more than one count, and t more than one prison sentence is imposed, the court may, under section 280 of the Act, order that the sentences run concurrently. The empowering part of the section provides for a convenient way to ensure that the cumulative effect of the different sentences imposed in the same hearing (and also where sentences have already been imposed in different hearings) are not too harsh.
- [58] When a court deems it appropriate that the effective term of imprisonment so imposed, should be lengthier, but still shorter than if served cumulatively, it may achieve that result by ordering that only certain of the sentences imposed run concurrently with others. This was not done in this case. It cannot be inferred from the reasoning of the magistrate on what basis he arrived at an effective term of imprisonment, which is lengthier (eighteen years) than the lengthiest term of imprisonment (fifteen years) he imposed on two counts in the same proceedings.
- [59] The State conceded that the portion of the magistrate's order directing that the sentences imposed should run concurrently in such a way, that the effective sentence to be served will be eighteen years' imprisonment, was premised on a misdirection. It follows that the aforesaid directive ought to be set aside.
- [60] It was argued on behalf of the appellants that the sentences imposed, over and above the impugned portion, particularly the two sentences relating to the possession of firearms (fifteen years' imprisonment) were harsh and induced a sense of shock. The minimum sentence legislation was not referred to in the charge sheets with regard to counts 2, 3 and 4. Accordingly, the sentences were imposed in accordance with the magistrate's general sentencing discretion and as such he imposed prison sentences equal to the maximum sentence prescribed by the legislature in respect of counts 2 and 3 (possession of firearms), despite finding the existence of compelling and substantial circumstances. It was also emphasized on behalf of the appellants that they were in custody awaiting trial, from 17 August 2009 until they were sentenced on 15 March 2013 and submitted that this aspect ought to have been taken into account by the magistrate.
- [61] It is trite that the imposition of sentence is within the prerogative of the trial court. To succeed in an appeal against sentence, an appellant must satisfy the court of appeal that the trial court exercised its penal discretion irregularly, unreasonably, improperly,

or in an unbalanced way, thereby vitiating the exercise of the discretion. Various tests have been formulated in relation to circumstances where a court of appeal may interfere with a sentence. These include whether the sentence is so startlingly inappropriate that it induces a sense of shock or whether there is a striking disparity between the sentence imposed and the sentence the court of appeal would have imposed (*S v Kgosimore* 1999 (2) SACR 238 (SCA) at 241).

[62] The appellants were convicted of very serious offences. The weapons in question, especially the fully automatic firearm, were of the most dangerous kind. Armed robberies have become so prevalent in our society that they are rightly deemed a scourge. In my view, the magistrate did not exercise his penal discretion in a manner that offended any of the aforementioned principles if one has regard to the sentences he imposed in respect of each count, in the circumstances of this case. The appellants were planning to rob a woman who lived alone and to invade the sanctity of her home with brutal force, motivated solely by greed. They intended to overcome any resistance from her or her security guards with firearms and “squash” them if need be. They also never showed any remorse for their actions.

[63] It does not appear from the magistrate’s judgment that the magistrate did not take into account that the appellants spent almost four years in prison awaiting trial. He was alive to that fact. If the magistrate gave insufficient regard thereto by adding three years to their sentences in the circumstances outlined above, that concern is addressed in the order set out below.

[64] Accordingly, there is no justification for an interference with the individual sentences imposed. However, the magistrate’s

directive, as discussed above, falls to be set aside.

[65] In the result, and for the aforesaid reasons, the following order is made:

The convictions of the third appellant and the sentences imposed upon him are set aside.

The appeal of the first, second and fourth appellants against their convictions and the sentences imposed in respect of each conviction,

is dismissed.

The directive imposed by the magistrate in respect of the effective term of imprisonment to be served by the first, second and fourth appellants is set aside and substituted with the following:

“The aforesaid sentences are ordered to run concurrently to the extent that an effective period of fifteen years’ imprisonment is served”.

E REVELAS

Judge of the High Court

Lowe J: I agree.

M LOWE

For the first and third appellants, Mr Daubermann instructed by the appellants.

For the second and fourth appellants, Adv Geldenhuys, instructed by Grahamstown Justice Centre.

For the state, Adv Swanepoel, instructed by Director of Public Prosecutions, Port Elizabeth

Date Heard: 17 November 2014

Date Delivered: 8 January 2015

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Prepared on 11 October 2026 · Esheria