

SOUTH AFRICA / JUDGMENT

S v Molefi (SS83/2022) [2023] ZAGPJHC 919 (14 August 2023)

[2023] ZAGPJHC 919**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Dosio

CASE / FILE NUMBER

SS83/2022

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Policy**REPUBLIC OF SOUTH****AFRICA****IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG LOCAL****DIVISION, JOHANNESBURG****CASE NUMBER:**

SS83/2022

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

REVISED

14.08.23

In the matter between:

THE

STATE

And

RAPOOEI

MOLEFI

Accused

JUDGMENT

DOSIO J:

Introduction

- [1] The accused is arraigned on the following six counts. Count one and count two are charges of murder read with the provisions of s51(1) of The Criminal Law Amendment Act 105 of 1997 ('Act 105 of 1997'). In respect to count one it is alleged that the accused murdered Tsele Nkoroane on 29 September 2021 near Anglo Deep ERPM Mine Commission road, Reiger Park. In respect to count two it is alleged that the accused murdered Lasi Max Siweya on 26 March 2022 at Mozikinya Hostel, Reiger Park in the district of Boksburg. Count three is a charge of attempted murder in that it is alleged he attempted to kill Oupa Sydney Mabasa on 26 March 2022 at the Mozikinya hostel, Reiger Park, in the district of Boksburg. Count 4 and 5 are charges of robbery with aggravating circumstances. In respect to count four it is alleged that the accused robbed Lasi Max Siweya of his service pistol, aggravating circumstances being that a firearm was used. In respect to count 5 it is alleged that the accused robbed Oupa Sydney Mabasa of his HUAWEI P20 PRO cellular phone, aggravating circumstances being that a firearm was used. Count six is a charge of contravening s49(1) of Act 13 of 2002 in that it is alleged that the accused remained in the Republic of South Africa without being in possession of any lawful document or permit authorizing the accused to be in the Republic of South Africa.
- [2] Prior to the accused pleading, the court apprised the accused of the provisions of the minimum prescribed sentence of life imprisonment in respect to count one and count two, as well as the minimum prescribed sentence of 15 years imprisonment on count 4 and 5. The accused understood. The court also apprised the accused of his right to have an assessor, as count one and two is a charge of murder, however, the accused elected to proceed without an assessor.
- [3] The accused is represented by Advocate Mzamane and the State is represented by Advocate Ryan. The accused understood all the charges and pleaded not guilty to counts 1 to 5 and guilty in respect to count 6.
- [4] A s112 plea explanation in terms of the Criminal Procedure Act 51 of 1977 was made in respect to count 6 in that the accused admitted freely and voluntarily that he intentionally and unlawfully contravened section 49(1)(a) of Act 13 of 2002 in that on 31 March 2022 he was in the Republic of South Africa without any lawful document or permit authorizing him to be in the Republic of South Africa. He admitted that he entered South Africa on 31 August 2017 at the Ficksburg border post and was issued with a visa until 30 September 2017. He admitted that he was supposed to leave South Africa on or before 30 September 2017 but because he did not leave, he became illegal in South Africa. The Court was satisfied that he understood all the elements of the offence on count 6 and he was found guilty as charged.

- [5] In respect to counts 1 to 5, the accused made a s115 plea explanation. The contents are as follows:

The accused states that there was a group of zama zama miners looking for gold in the mines. The accused and his brother, Kgeola, were part of this zama zama group. There were leaders of the zama zama group and some of the leaders were Oupa, Ma 10, Ken and others. All these leaders were working together with the police since they had to give them a share. The group led by Oupa, Ma 10, Ken and others were about 300 people. Things started to be bad since there was not enough gold anymore in that mine. Kgeola suggested to the leaders that they must leave that mine and go look somewhere else. The leaders refused because according to them there was still enough gold in that mine. Kgeola spoke to some members of zama zama influencing them to break away from the main group and to join him to go look for gold in a new mine. The group agreed. About 50 people joined him and Kgeola then became their leader. The leaders of the big/main group saw that Kgeola and his group were doing well. They started to become rivals of Kgeola and his team whereupon Kgeola's group were killed and their shacks burnt down. Mafifi and Oupa shot and killed Kgeola. Oupa

and Ma 10 also shot the accused in 2021 around August/September 2021 whereupon the accused was hospitalized for about two weeks. After his release from hospital he went to Carltonville to stay with his sister. The accused was a threat to the leaders of a big/main group because they feared that the accused will take over the leadership of the small group after his brother died. The mines where the small group were working had more gold than the mines of the big group. The intention of the big group was to take over the mines of the small group, thereby eliminating any threat in their way. The leaders of the big group conspired to falsely implicate the accused with murders and attempted murders since they failed to kill him. The accused has bullets in his body and an operation as a result of the shots that he sustained in 2021. The accused did not commit any of the charges against him.

- [6] At the inception of the trial, formal admissions in terms of s220 of Act 51 of 1977 were handed in by agreement and marked as exhibit C. The s220 admissions are the following:

- (a) That the first deceased is the person named in count 1 of the indictment, to wit Tsele Nkoroane and that he died on 29 September 2021 at Anglo Deep ERPM Mine. His body did not sustain any further injuries from the time when the wounds were inflicted on 29 September 2021 until the post-mortem examination was conducted by Dr Zanele Patience Msiza ('Dr Msiza') on the deceased on 8 October 2021. Dr Msiza concluded that the cause of death was 'Multiple Gunshot wound.' The findings are recorded on EXHIBIT 'D'. The facts and findings on the post mortem examination as recorded on EXHIBIT "D"

by Dr Msiza are correct.

- (b) That on 29 September 2021, Constable BJL Mogano from the Local Criminal Record Centre, Springs, attended a scene of crime at Anglo Deep ERPM Mine, Reiger Park and compiled a photo album, EXHIBIT "E", which correctly reflects the scenes of crime.

- (c) That the second deceased is the person named in count 2 of the indictment, to wit Lasi Max Siweya who died on 26 March 2022 at Mozikinya Hostel Reiger Park. The body of the deceased did not sustain any further injuries from the time when the wounds were inflicted on 26 March 2022 until a post mortem examination was conducted by Dr. Msiza on 31 March 2022. Dr Mziza concluded that the cause of death was 'Perforating Gunshot Wound To The Head And Abdomen.' Dr Msiza recorded her findings on Exhibit 'F'. That the facts and findings on the post mortem examination as recorded on Exhibit 'F' by Dr Msiza are correct.
- (d) That on 26 March 2022, Warrant Officer Magaboke Simon Sekuba from the Local Criminal Record Centre, Johannesburg, attended a scene of crime at Mozikinya Hostel, St Anthony Road, Reiger Park Boksburg. He compiled a photo album, EXHIBIT "G", which correctly reflects the scenes of crime.
- (e) That on 31 March 2022, Sergeant Thabo David Masemola from the Local Criminal Record Centre, Germiston, attended a Post Mortem examination, conducted by Dr. Zanele Patience Mziza. The post mortem examination was conducted on the body of the second deceased Lazi Max Siweya. He compiled a photo album, EXHIBIT "H", which correctly reflects the post-mortem examination.
- [7] An additional admission was made on 6 March 2023, namely exhibit 'M' whereby the accused admitted that on 3 April 2022 he took Captain Salemane to Mozikinya Hostel at Reigerpark Boksburg and that they travelled in a white car with registration number [...]. He was the one who directed them to the Mozikinya Hostel. He admitted the photos depicted on exhibit L, namely photographs 1-2, 3-11, 56-61, 62-69, and 78 – 85 of Exhibit "L".
- [8] The exhibits are labelled as follows:
- (a)'A' is a statement in terms of s 115 of the Act 51 of 1977.
- (b)'B' is a statement in terms of s 112 of Act 51 of 1977.
- (c)'C' are the admissions made at the inception of the trial.
- (d)'D' is the post-mortem of the deceased named Tsele Nkoroane.
- (e)'E' is a photo album of the scene at Anglo Mine in respect to the incident that happened on 29 September 2021.
- (f) 'F' is the post-mortem in respect to the deceased named Lasi Max Siweya.
- (g)'G' is a photo album of the scene at Mozikinya Hostel in Reiger Park on 26 March 2022.
- (h)'H' is the post-mortem photos of the deceased Lasi Max Siweya.
- (i)'J' is the statement in terms of s212 of Act 51 of 1977 regarding the legality of the accused.
- (j)'K' is the photo album of an ID parade conducted on 13 July 2022.

(k) 'L' is a photo album of points that were indicated to the photographer Bhekumuzi Simon Shongwe.

(l) 'M' is admissions made by the accused on 6 March 2023 as amended on 17th of July 2023.

(m) 'N' is a notice of rights explained to the accused.

(n) 'O' is the notes compiled by captain Salemane in respect to a pointing out made by the

(o) 'P' is copies of the occurrence book register.

(p) 'Q' is the charge sheet of the Boksburg Magistrate Court.

(q) 'R' is a copy of the SAP13 register

(r) 'S' are the notes compiled by Captain Salemane in the pointing out.

The evidence

[9] The following witnesses were called by the state namely, Lillo Chitya, Kahlolo Chabana, Oupa Sydney Mabasa, sergeant Thabo David Masemola, Warrant officer Magaboke Simon Sekuba, Doctor Zanele Patience Msiza, Mashudu Phathela, Captain Sizwe Reezer Sibeko. A trial within-a-trial then ensued and the witnesses in the trial-within-a-trial were Captain Sizwe Reezer Sibeko, sergeant Shongwe and captain Salemane. The accused also testified in the trial-within-a-trial. This Court ruled that the pointing out was freely and voluntarily made. Captain Salemane was then called in the main trial to testify about the pointing out. The State closed its case and the accused came to testify. The accused also called his sister, Ms Rapooe as a witness. At the end of the defence's case the court re-called captain Sibeko and sergeant Khoza. The defence then reopened their case and called sergeant Ntsako.

Lillo Chitya

[10] This witness testified that an incident occurred on 29 September 2021 at the mine situated in Reiger Park. This witness was in the company of Tsekiso and Whitey, they were busy hustling around the mining area and doing recycling. Tshehla appeared and he was in possession of a firearm and Tshehla fired a shot towards him. This witness ran away in the direction of the shacks and whilst running he came across Motsamai, Posetso, Tiger and Pakwe who were also carrying firearms and walking in the direction of Whitey. He was afraid and believed these men wanted to kill him. This witness states there was no bad blood between his companions and the companions of the accused. He still to this date does not know why they wanted to kill him. He however managed to evade them. No one else was in possession of firearms. He knew all these four men as they all lived together. This witness then found some people and he returned to the scene where shots were fired towards him and he found Whitey had been shot and was dead. This witness stated that it was Tiger, Tshehla and Motsamai who had shot Whitey. Tiger is the accused in court. Tiger is also the

man who fired a shot towards this witness which missed this witness. This witness knew the brother of the accused who was called Kgeola. This witness attended an identification parade and pointed out the accused as being the man who shot towards him.

Kahlolo Chabana

- [11] This witness stated that on 26 March 2022 he was together with Sibusiso Qhojeng at a tavern close to the squatter camp. They met a police officer by the name of Mr Max Siweya nearby the Elephant tavern and Mr Siweya told this witness and Sibusiso to get into his white VW Golf motor vehicle. Mr Siweya was in the company of his cousin. They got into the motor vehicle and Mr Siweya asked him where the Basotho people who were causing fights in the informal settlement lived. This witness knew most of the Basotho people as he lived with them at the hostel. He told Mr Siweya to drive to the hostel and Mr Siweya dropped this witness and Sibusiso at the gate of the hostel. He then heard the sound of shots being fired from guns and then Mr Siweya's car was seen coming back to the gate of the hostel at a high speed. This witness had a clear and unobstructed view when he saw the vehicle of Mr Siweya being driven at a high speed followed by a group of men. Mr Siweya's car collided with the wall of a building of the hostel. Photo 4 of exhibit G depicts the stationary vehicle car of Mr Siweya after it had collided into the wall. After the collision the group of people ran up to this car and Tiger, the accused, was the first person to arrive at this motor vehicle followed by Tshehla and then Motsamai and others whom he did not know. The accused climbed on top of the car and his one foot was on the boot and his other foot was on the roof of Mr Siweya's car. The accused was firing shots on the side where the driver was sitting. This witness saw the accused firing two shots. Tshehla went to the side of the passenger but this witness is not certain if he fired shots. The accused then climbed off the car and went to open the driver's door. This witness heard a coloured lady asking the accused why he had shot a police officer. This witness then fled the scene. Whilst running away he heard more shots being fired, but he does not know who fired those additional shots. This witness ran to a shack in the squatter camp. After a while police vehicles arrived at the scene and they went back to the scene of the shooting. A police officer by the name of Mr Ntsako introduced himself to this witness and Sibusiso and they told him what had happened. The policemen took them to the police station to take down their statements.

Oupa Sydney Mabasa

- [12] This witness testified that he is the cousin to the deceased Max Siweya on count
2. On 26 March 2022 he was together with the deceased when the deceased received a phone call from an informer. The deceased who was a member of the SAPS, received a call from an informer. They then proceeded by car to the shacks so that the deceased could meet with this informer. When they arrived the deceased pointed out the two men at the tuckshop that he had come to see. The two men entered the deceased's car and spoke to him about the case he was investigating. These men mentioned the names of Tiger, Motsamai and Tshehla whom the deceased was looking for and informed him that the men could be found at the

tavern at the hostel. The two men alighted and the deceased made a u-turn and stated that he wanted to drive past to see how these men were seated. They were a distance of a soccer field and a quarter from the hostel. They drove into the hostel premises where the deceased pointed out the men. They were five men. The deceased then took a left turn, made a u-turn and turned back. At this point the men who were seen from a distance were

now standing at the spot which the deceased's vehicle had to pass. The accused was standing 5 meters away from the deceased's

vehicle when the accused asked the other men 'is this Max' and the other men responded by saying 'yes it is Max'.

The accused then turned around, faced the car of the deceased and his hand went towards the buckle of his belt and he then pulled out a firearm, pointed it at the deceased and then fired a shot. This witness told the deceased to drive away and then the accused fired a second shot. At this point the deceased had stepped on the accelerator and whilst driving towards the exit, the deceased's

car collided with a precast wall. Gunshots continued and this witness feared for his life. When the car came to a standstill this witness was facing down on his seat and he heard a voice inside the car saying 'where is the firearm'. At this point he felt the deceased's body falling on top of him. The accused was the person who was asking where is the firearm and he was standing at the deceased's door but he does not know how he got there as there wasn't space to stand there. The door was then opened on his side and he heard a voice saying 'this one is still alive'. He was then turned around, searched and his cell phone, a HUAWEI P20 PRO cellular phone, which had fallen on the ground was taken. The phone is valued at R13000-00. He then heard a woman's voice saying 'Tiger, why did you shoot at Max knowing fully well he was a police officer'. The police took a long time to arrive at the scene and when they did the deceased had already passed on. This witness did sustain injuries in that he was grazed by three bullets on his left leg. This witness was not sure if anything was taken from the deceased, however, the deceased was in possession of one phone on the day when he was shot. He also did not know if the accused took a firearm from the deceased.

[13] This witness attended an ID parade on 13 July 2022 where he identified the accused before court who was standing at position 3 on the ID parade. This ID parade was handed in as exhibit 'K'. This witness stated that he did not know the accused before 26 March 2022.

Sergeant Thabo Masemola

[14] This witness is stationed at the Germiston local criminal record centre and he stated that he was present and took photos when the post-mortem was completed. The photos are exhibit 'H'. He stated that on photo 4 and 5 of exhibit 'H' it depicted an exit wound of a gunshot and that photo 13 and 14 depicted the entrance wound. He stated that the bullet entered the right side of the head of the deceased and exited the left side of his head above the ear. His opinion was that the shooter must have been very close, less than a meter and further that

the shot must have come from above the deceased's head. This witness pointed with his hand facing downwards. Photo 9 was depicted as the entry and exit of a bullet on the deceased's stomach. The entry wound was smaller and the exit wound was larger. The entry wound was on the upper left side and exited on the bottom left side of the stomach which means the firearm was to the right of the deceased and was pointing to the upper side of the body of the deceased pointing downwards. On photo 17 the thin part of the instrument depicted on this photo showed the entrance

wound and the thicker part showed the exit wound.

Magaboke Simon Sekuba

[15] He testified that he is a warrant officer based at the provincial management office in Gauteng and that he has been in the SAPS for 12 years. He has attended numerous courses as depicted on exhibit G which qualifies that he is an expert when it comes to forensic analysis and crime scene management. On 26 march 2022 at 17h15 he attended an alleged scene of crime at Mozikinya hostel, St Anthony Road, Reiger Park, Boksburg. He stated that photo 6 showed a vehicle which had collided with a precast wall. Photo 6 showed the distance between the vehicle and the precast wall which this witness measured as being 60cm. Photo 11 depicted a bullet hole in the motor vehicle on the lower side of the back right hand passenger door. Photo 12 depicted a dent which this witness confirmed was caused by a bullet which did not penetrate the body of the vehicle. The bullet merely grazed the body of the vehicle. Photo 13 depicted a scratch caused by the impact of a bullet on the top of the motor vehicle just above the drivers

position. This witness stated that the scratch mark was caused by the shooter being at the back of the motor vehicle firing towards the front part of the car. The shooter must have been higher than ground level as the roof of the motor vehicle sloped down towards the front of the vehicle, therefore the bullet would not have gone into the car. As a result, he confirmed that the shooter must have been elevated. On a question from the State advocate whether the shooter could have been on the boot of the car when this shot was fired, this witness answered that it was most likely. Photo 14 and 15 depicted two bullet holes on the left side of the motor vehicle on the left side front fender. Photo 16 depicted a bullet hole on the dashboard. This witness stated that the shooter would have had to be at the right side of the vehicle at the driver's door when the shot was fired. Photo 19 depicted a shoe print on the boot, above the emblem of the car. Photo 35 depicted a cartridge case and fragments which had fallen into the vehicle during the shooting. This witness stated that the shooter must have been shooting in the vehicle at this point. Photo 36 depicted a cartridge which had fallen between the two front seats which means that the firearm must have been fired inside the motor vehicle.

Doctor Zanele Patience Msiza

[16] This witness is employed at the Gauteng Provincial Government mortuary and she completed the post-mortem on 31 March 2022 in respect to Max Siweya which was marked as exhibit 'F'. As regards the external injuries, she stated that A1, depicted on page 3 of the

post-mortem report, is an entrance wound measuring 5mmx8mm localized on the right temporal-parietal region with abrasion collar measuring 10mmx12mm. A2 (as seen on photos 13 and 14 of exhibit 'H'). A2 depicted an exit wound measuring 10mmx20mm localized on the left temporal-occipital region as seen on photo 4 of exhibit 'H'. This witness stated that one can determine the range from where the shot was fired by looking at the features of the gunshot wound. She stated that as regards the entrance wound there were central defects with abrasion collar and there was no tattooing, blackening or searing of the wound. She stated that if it was a handgun that was used the distance would be 65cm and if it was a rifle, the distance would be 1cm to 1 meter. She classified this gunshot wound as a distance range gunshot wound and that it was shot at a range of 65cm. The path of the bullet to the head travelled from the top going downwards. As regards the gunshot wound to the abdomen she stated that the instrument depicted on photo 17 was used to show the direction of the bullet. The thinner part depicted the entrance wound and the thicker part depicted the exit wound. She stated the cause of death was the gunshot wound to the head and not the gunshot wound to the abdomen.

Mashudu Phathela

- [17] This witness testified primarily in respect to count 4. He stated that the firearm of officer Siweya was retrieved, which means by implication that there is no evidence against the accused on count 4.

Captain Sizwe Reezer Sibeko

- [18] He stated that he is a captain in the police services and is based at the directorate for priority crime investigation and he has 31 years experience in the SAPS. There was a warrant of arrest for the accused and he went to fetch the accused in Kroonstad and brought him to Germiston. He was the one responsible for taking down the warning statement. The accused gave him an address in the squatter camp in Reiger Park. He did not verify this address. The accused told him he wanted to point out the crime scene.
- [19] At this point, the counsel for the accused objected and a trial-within-a-trial proceeded. The Court made an interlocutory finding that the pointing out was freely and voluntarily made and the Court makes a final finding in this regard that it was freely and voluntarily made. As part of the pointing out a confession was also made by the accused.
- [20] The State never recalled captain Sibeko in the main trial after the trial within a trial was held. The only witness that the State called in the main trial after, the trial-within-a-trial had ended was captain Salemane. In terms of section 186 of the Criminal Procedure Act, the court recalled Captain Sibeko and he stated that the accused told him that he lived at 71 block 1, St Anthony's hostel. He does not know where the number 91 block 1 came from. He also confirmed that the accused never brought a bail application as he was an illegal immigrant so the purpose of the pointing out was never to do an address verification. He confirmed that he asked captain Salemane to bring the accused for a pointing out and not an address verification. He also confirmed that the accused never handed in keys to the room at

the hostel when he was arrested.

Captain Johnson Salemane

- [21] He testified that he is stationed at the vehicle investigation crime unit and he has thirty-one years' experience in the SAPS of which twenty-seven years he worked as a detective. On 2 April 2022 captain Salemane was asked by warrant officer Sibeko to attend to a pointing out. Prior to the pointing out he was not aware of the facts of this matter. The accused was brought to his office. The witness knows Si-Sotho as it is his mother tongue. He spoke to the accused in Si-Sotho and no interpreter was required. This witness explained to the accused what the purpose of the pointing out was and the accused understood and was willing to point out the scene. This witness explained to the accused that he was a justice of the peace and that he could testify about the pointing out and that whatever the accused pointed out could be used against him in a subsequent trial. This witness also explained that he had nothing to do with the investigation of the matter. He explained to the accused that whatever the accused said would be noted down but that the accused had a right to remain silent, a right to legal representation and that he was not obliged to make a confession or an admission. As regards legal representation, the accused told captain Salemane that he had asked his sister to find him a lawyer, but that he did not need a lawyer for purposes of the pointing out.
- [22] Captain Salemane asked the accused why he wanted to do the pointing out and the accused replied that he was present on 26 March 2022 at 15h00 at the scene and he wanted to point out the scene to the police. The accused told this witness that he was not threatened or assaulted by anyone to point out the scene. The accused did however point out to this witness an old scar on his forehead and stomach. Captain Salemane asked the accused how he had sustained those injuries and he told this witness that he had sustained them when he was shot by Langa and other leaders, namely Malefetsane and Ma 10. The accused told captain Salemane that he had not been influenced by anyone to do the pointing out.
- [23] The hand-written notes that captain Salemane wrote, were handed in as exhibit 'R'.
- [24] The accused took captain Salemane to the residential area at the Mozinkinya hostel. The accused also explained to him how the vehicle of the police hit the wall. Throughout the entire pointing out the accused was comfortable and they understood each other. Captain Salemane stated that he never asked the accused to point out a door. This witness stated he would not waste all this time to do a pointing out if it was merely for a verification of an address.
- [25] Of significance on exhibit 'R' is the entries made at 12h09 and 12h15. The entry at 12h09 states 'Stop. This is a place where I started shooting together with other guys shooting at police man accompanied by other person.' The entry at 12h15 states 'Stop. This is where the police vehicle came and from and also where I reside Block 1 room 91.'

- [26] Captain Salemane stated that photos 40-46 on exhibit 'K' is where the accused asked him to stop to point out where the shooting had occurred.
- [27] As regards the photo where the accused was standing and pointing at a door, this witness stated that the accused would go and chill in that room with his friends. This witness stated that he merely told Sergeant Shongwe to take pictures of what the accused was pointing to. When confronted with the entry in respect to photos 56 to 61, where it is noted 'indicates the place where the suspect stays', to this, captain Salemane replied that it is the place where the accused said he would chill with his two friends. This witness stated that it is Sergeant Shongwe who wrote and compiled the album so he did not write down this sentence. This witness was adamant that the wall which was damaged by the car colliding into it was not far from where this door

was. This witness denied that the accused told him he wanted a legal representative before the pointing out started. If that was the case, this witness stated that he would not have commenced with the pointing out. If his sister was going to get an attorney for the accused, he would not have commenced the pointing out. This witness was adamant that he completed exhibit "O" with the assistance of the accused. The witness persisted with the version that the accused had plenty time to inform him if he had been assaulted.

- [28] That ended the State's case.

The accused

- [29] The accused testified that he was arrested 31 March 2022 in Kroonstad. He was on his way to collect money from his colleagues. He did not reach his destination. He stated he is Sotho national and he does not have a passport. The police brought him from Kroonstad to the Germiston SAPS. His rights were never explained to him. He was locked into the cells and one night Captain Sibeko took him from the cells and he was taken to a another room where there was a black bin and 20L of water. He was ordered to remove his clothes, whereupon he was then assaulted. He was put into the bin and a 20L of water was poured over him. When he tried to get out of the bin he was hit with a stick. Water was once again poured over him from a hose pipe. They continued assaulting him with sticks and slapping him with hands. He was slapped on his ears. One of the men saw that he was injured and that he had an operation scar on his stomach. He was then taken back to the cells. The accused developed problems with his eardrum as a result of the assault. When he tried to report this injury the officer at the cells said 'leave it you are not injured'. He then went back into the cells. At a later stage he was able to speak to his sister using Captain Sibeko's phone. He told his sister to contact the lawyer at Carltonville. He appeared in court on 4 April 2022. He stated that his address was number 91 block 1. The accused stated that he told captain Salemane that he had asked his sister to arrange for a legal representative. He also told captain Salemane that he had been injured but captain Salemane stated they must proceed.

[30] The accused stated that Captain Salemane did not explain all his rights to him. He admitted that captain Salemane asked him his name and where he resides. When he took off his clothes Captain Salemane saw his old wounds and the accused stated they were inflicted by Langa and Malefetsane. He told captain Salemane that he had been assaulted by officers in Germiston which had caused an ear drum problem for the accused. When he told captain Salemane about his injuries, he received the same answer from Captain Salemane as the officer in Germiston. He then left with Captain Salemane and a photographer. There were other motor vehicles following their vehicle. They drove to where he lived for purposes of his bail application. He could not open the door to his house because his keys had been taken when he was arrested. He denied saying to Captain Salemane that he had shot a policeman whilst in the company of other guys. He also denied having said to Captain Salemane that the police vehicle had come to a standstill where he resided at room 91. He stated that there was another vehicle that made a U-turn and a person in that vehicle pointed to Captain Salemane where all these things had happened. Captain Salemane then told them to get out of the car and point these places out. The photographer was called and he took photographs. The accused was adamant that he did not freely and voluntarily point out anything as he had no knowledge of where the incident had taken place as he had left to go and stay in Cartonville in 2021 during the 9th or 10th month due to the injuries he had sustained in Boksburg. The injuries were to his left arm and stomach. The accused was adamant that he was told what to point out. He stated that on his first appearance in court on 4 April 2022, he did not have a legal representative. He could not remember whether he told the magistrate that he had been assaulted by the police on 31 March 2022. The accused's version is that all these people who testified against him were seeking revenge. He stated that after Langa, Ma 10 and Malefetsane had killed his brother Kgoele, they were afraid that the accused would take over the leadership of the smaller group of zama zamas. A misunderstanding had arisen between the accused's brother and Ma 10 which resulted in the accused's brother leaving the group of 300 zama zama's and creating his own group of 100 men. Ma 10 came to look for the accused brother, together with

Oupa and they were in a fighting mood. Oupa also came with the police officer Siweya. Ma 10 was paying the police officer money so that the police officer would bring him bullets.

[31] The accused denied killing the deceased on count one on 29 September 2021 or the deceased on count two on 26 March 2022. He stated that on 20 September 2021 he was in Burgersdal and on 26 March 2022 he was staying with his sister in Carltonville. He maintained his version that all these allegations have been made against him because Ma 10 and Oupa were afraid that he would avenge the death of his brother. He denied wanting to kill Oupa. He also denied that he jumped up on the car to kill Siweya because his operation would prevent him from stretching in that manner as the bullet had gone into his stomach and had lodged in his spinal chord.

Mateis Rapoee

- [32] The accused's sister testified that in October 2021 the accused was injured and she went to fetch him and he stayed in Carltonville. She fetched him from the OR Tambo hospital and took him to the Carltonville hospital where he stayed for two weeks. When the accused was arrested in March 2022 he was still staying with her in Carltonville. She stated that although the accused asked her to get him a lawyer on 31 March 2022, she had no money to do this.
- [33] At the end of the state and the defence's case, the court in terms of section 186 of the Criminal Procedure Act called Sergeant Sibeko and Sergeant Khoza. Sergeant Sibeko confirmed that the accused never brought a bail application as he was an illegal immigrant. He also confirmed that when he called Captain Salemane, it was not for Captain Salemane to do an address verification of the accused, but instead it was for the accused to do a pointing out. Captain Sibeko stated that the accused's keys to his room were not booked into the SAP 13 register.
- [34] Sergeant Khoza stated that he was responsible to verify the address of the accused. He was shown photos 56 and 57 on exhibit 'L' and he stated that this is not the address where the accused stayed as he went to verify the place and the number on the door was 71, which is a different address to that depicted on photos 56 and 57. This witness confirmed that the accused signed the warning statements himself and he confirmed that he did explain all the rights to the accused.
- [35] The defence called a witness after the court had recalled Captain Sibeko and sergeant Khoza in terms of s186 of the Criminal Procedure Act. This witness was sergeant Ntsako who confirmed that he did compete the warning statement marked 'Ti' and that he did explain all rights to the accused.

Evaluation

[36] In the matter of Stellenbosch Farmer's Winery Group Ltd and Another v Martel & Cie SA and others 2003 (1) (SA)11(SCA) paragraph 5 the Supreme Court of Appeal held that:

'The technique generally employed by the courts in resolving factual disputes of this nature may be conveniently summarized as follows: To conclude on the disputed issues, a court must make findings on (a) credibility of the factual witnesses, (b) their reliability and (c) the probabilities. As to (a) the court's findings on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as:

- (i) The witness's candour and demeanour in the witness box,
- (ii) His bias, latent and blatant,
- (iii) Internal contradictions in his evidence,
- (iv) External contradictions with what was pleaded on his behalf or with established fact or with

his own statements or actions,

- (v) The probability or improbability of particular aspects of his own version,
- (vi) The calibre and cogency of his performance compared to that of other witnesses testifying about the event or incident.

As to (b), a witness's reliability will depend, apart from the factors mentioned under (a) (ii), (iv) and (v) above; on opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c) this necessitates an analysis and improbability of each party's version on each of the disputed issues. In the light of (a), (b) and (c), the court will then, as a final step determine whether the party burdened with the onus of proof has succeeded in discharging it'.

[37] When considering a criminal case, it is important to consider the totality of the evidence and then to assess the probabilities emerging from the case as a whole. The court must evaluate the evidence of the State and the defence.

[38] During cross-examination, this witness stated that he knew Mafifi as they lived in the same location but he was not a close friend. He denied being a leader of the zama zama, however he agreed his nickname is Ma

10. He also denied that he and Mafifi were leaders of the zama zama. He also denied being involved in illegal mining and maintained that he was involved with collecting and recycling scrap metal in the mining area. He stated that the police who wrote down in his statement that he was doing illegal mining made a mistake and mistakenly assumed he was a zama zama.

[39] This witness did not impress the court. There is no way that he could know that the accused was part of the zama zama's if he himself was not part of the zama zama as well. This court finds the police officer who wrote his statement did not make a mistake.

[40] In respect to count one, there is one witness who testified. His evidence has to be treated with caution as the evidence of a single witness has to be satisfactory in all material aspects. His evidence has improbabilities and is unsatisfactory for the following reasons:

- (a) this witness testified that five people fired shots at him and they approached him from all angles. He said these five people were very close to him when they fired shots at him. He said they were about plus minus 2 meters away from him. He was asked whether when these 5 people fired shots at him whether bullets were discharged from the firearms, and he said yes. If this is the case it is highly unlikely that he would not have been shot from any of the five men firing shots. He testified that he did not personally see the accused inflicting the fatal wound, and that he was informed by Tsikiso that Whitey had passed on. This is not sufficient.

[41] The court notes that there was no count of attempted murder in respect to this witness. The State counsel argued that it was an oversight on the part of the State and a bona fide mistake of the prosecution not to include such a charge. This Court disagrees. It was not an oversight. It is clear that this allegation of being shot at was probably not in the statement of this witness otherwise such a charge would have been put to the accused. Due to this fact and due to the fact that this witness did not see the accused firing a shot towards the deceased on count one, there is no conclusive evidence on the basis of common purpose that he was at all part of the group who actually fired a shot and killed the deceased on count one. It is clear that there were two groups of zama zama miners and that they were rivals. It is clear that the two groups were fighting over the illegal mining and under these circumstances, it is also probable that this witness came to court to falsely implicate the accused for the sins of the others who possibly were responsible for shooting the deceased on count one.

Kahlolo Chabana

[42] This witness stated during cross-examination that he and the accused were part of a group involved with illegal mining and that they were all part of the same group but that they no longer live together. He knew that Ma 10 (namely Lillo Chitya) as they all did illegal gold mining. He agreed that there were now two groups and in his group was Mafifi, Ma 10 (Lillo) and Himself. He agreed that he himself was part of the 'Bagarezi' who hustle for iron and gold. He agreed that there were fights between the two groups after the formation of the second group. This witness knew that the man who was killed was a police officer as they were staying close to the police station. This witness was unaware that the police were involved with the gold hustlers and getting a share from the hustlers. He was also unaware that the accused was shot and hospitalised. He denied the version put

to him that he and his friends fired shots towards the accused. He was adamant that he saw the accused firing shots towards the

Volkswagen polo and that inside the car was the driver and the passenger. He repeated his version in his evidence in chief that the accused climbed on top of the vehicle after it crashed into the wall. One foot was on the roof of the car and the other foot was on the boot and whilst he was in this position he fired shots towards the deceased. According to this witness the accused did not open the window or door of the car whilst he was on top of the car. This witness disagreed with the accused's counsel that the accused is a short person and that it would be improbable for the accused to have had his one foot on the roof of the car and his other foot on the boot of the car. In fact, he stated the accused is a tall person and he was adamant that he did see the accused standing on the motor vehicle of the deceased. At this point during the cross-examination, the accused was asked to step out of the accused bench and he was asked to stretch his legs apart, which he did. The distance between his legs was measured as being 1,03 meters from one foot to the other. The witness's height as well as the accused's height was measured and the measurements were 1.59 meters and 1.79 meters respectively.

- [43] This witness agreed there were fights between the two groups however he denied that he was falsely implicating the accused and he was adamant that he saw the accused killing the deceased on count two, namely, Max Siweya.
- [44] This witness added that amongst the people chasing the car of the deceased, he saw Tshehla, Motsamai, Nine and others who were unknown to him. He knew Tshehla, Motsamai and Nine prior to 26 March 2022 as they lived at the hostel but he did not know their exact addresses. Tshehla, Motsamai and Nine had broken away from the group he was in and were now part of the group formed by the accused. When he saw the accused shooting at the deceased he ran away. This witness was unsure whether the deceased had already been shot prior to his car colliding with the pre-cast wall.
- [45] It was argued by the defence counsel that it is strange that this witness hid the fact that he had an appointment with the police. The fact that he did not want to tell the truth in court about their appointment is an indication that he is capable of fabricating more facts in his testimony to achieve whatever he wanted to achieve. This Court disagrees. It is Oupa Mabasa who stated that he believed that the deceased on count two had an appointment with Mr Chabana. The deceased was probably the only person who knew whether he had made an appointment with Mr Chabana or not. As a result, this Court cannot find that this is such a material contradiction between the evidence of Mr Chabana and Oupa Mabaso to reject either of their evidence. This witness impressed this Court. The photos that were handed in also corroborate his version of the events that unfolded that day.
- [46] The defendant's counsel argued that it is improbable that the accused could have climbed on top of the car and have had his one foot on the boot and the other one on the roof of the car as there is a windscreen in between. The court does not find that so unreasonable. In court the accused was able to move his legs more than a meter apart which shows notwithstanding that he had past injuries, he was still able to part his legs with ease.

Mr Oupa Mabaso

- [47] This witness stated that he knew nothing about gold hustling and he denied being part of the hustlers. He also denied knowing the accused, Tshehla, or Motsamai prior to 26 March 2022. He also denied being one of the main leaders of the group who were hustling for gold or that he was working with the police. He stated that he works at Srixon Sport. He repeated that it was the accused who fired shots and that it was the accused who asked 'is this Max'. This witness had no answer as to why the accused did not kill him too. He was confronted with the version that the previous witness Mr Chabana stated that they coincidentally met this witness and Max Siweya, however, this witness stated the deceased had received a phone call and an appointment was made to meet the two informers. He once again stated he had no reason to falsely implicate the accused. It was then put to him that the version put to the first state witness was that Oupa and Ma 10 (Lillo Chitya) had killed the accused's brother, to which this witness stated he knew nothing about that and that had he not got into the deceased's vehicle on 26 March 2022, he would not be testifying in court. This witness also

knew nothing about the version put to him that on 26 March 2022 the accused was at his sister's house in Carltonville. This witness impressed this court.

Sergeant Thabo Masemola

[48] Only one question was posed to this witness in cross-examination and that is that he was not the pathologist who conducted the post-mortem, to which he agreed.

Magaboke Simon Sekuba

[49] This witness stated that it would not be possible for the shooter to have fired the shot which grazed the top of the roof as the roof of the car slopes downwards and if the car was moving it would have been impossible for the bullet to have hit this spot. This witness impressed this Court with his observations.

Doctor Zanele Patience Msiza

[50] This witness impressed the court. During cross-examination she did not comment to the version put to her that the firearm could have been fired to the head whilst the firearm was pointed inside the car. She stuck to her observations made on the day that the post-mortem was held and she did not try to make assumptions on what was put to her by the defence counsel.

Mashudu Phathela

[51] This witness impressed the court.

[52] This court found no reason to find the evidence of Captain Sibeko as not credible. His version was corroborated by Sergeant Khoza he stated that when he completed the warning statements marked 'Ti' and 'Tii' the accused gave his address as being 71 and not 91. These witnesses impressed this court.

Captain Salemane

[53] Captain Salemane has many years of experience in the SAPS. This court finds it highly unlikely that he would take time out of his busy schedule to do a verification of the accused's address, when this is a function of the investigating officer. The court finds it also highly unlikely that all the information on exhibit "O" was completed without the accused's input. If that is the case, how would captain Salemane know about the accused having asked his sister to get him an attorney, or that the old scar on the stomach of the accused was caused by Langa, Malefetsane and Ma 10. It is clear to this court that this information could only be obtained if the accused had given captain Salemane this information. This court accepts that Captain Salemane was telling the truth when he stated that he would not have proceeded with the pointing out had the accused told him the police had assaulted him. As regards the entry noted at 12h09 this witness stated he would never have written that the accused told him that is where he started shooting, had it not been the case. This witness also denied that there was another police vehicle that came and that the occupants pointed out various

points. This witness also stated that the TRT members did not point out various points to him. This witness was adamant that where the accused was pointing to a door on photos 56, 57 and 58, that this is where the accused told him he would chill with his friends. This witness also denied that the accused had given him his sister's

phone number, because if the accused had given him that number he would have phoned the sister. This witness was adamant the accused

did not want legal representation prior to commencing the pointing out. Even if the form he completed stated the accused wanted legal aid, this witness stated the accused changed his mind and stated he wanted to proceed without legal representation. This is confirmed by the accused's sister who testified she had no money to get a lawyer for the accused. This witness also denied assaulting the accused. This witness denied that the accused merely did an address verification. This witness agreed that instead of writing 'this is where you reside' on the pointing out, it should have been written 'this is where I chill with my friend'.

[54] The surrounding circumstance in this matter is that the accused took Captain Salemane to the scene where the deceased, Siweya, was shot and killed. This was also the scene where there was an attempt at the life of Mabasa. The cause of death was determined to be a perforating gunshot wound to the head and abdomen of the deceased. The surrounding circumstances indicate that the shooting by the accused at the "police man" and the "other man" resulted in the death of the deceased. The statement made by the accused to captain Salemane amounts to a confession.

[55] The accused states that he was never at the scene where the deceased Siweya was killed. This Court rejects this as false and not reasonably true for the following reasons:

- (a) It is highly improbable that there would be a collusion between Mr Chabana, Warrant Officer Magaboke Sekhuba, Dr Msiza and Sergeant Thabo Masemola.
- (b) The witnesses confirmed the evidence of Mr Chabana as to the way the shooting and eventual killing of Siweya materialised. For instance, Mr Chabana testified that the accused and the other shooters ran behind the vehicle and kept on shooting. The accused then jumped on top of the vehicle and shot from above the vehicle. Mr Sekhuba confirmed that according to Photo 13 on Exhibit "G" the scratch was caused by a bullet, suggesting that the shooter was at the back of the motor vehicle.
- (c) The scratch indicates that the shooter was elevated from the ground. The scenario that the accused was on top of the boot of the vehicle was put to Mr Sekhuba and he confirmed that it would be likely that, that scenario is correct.
- (d) Photo number 19 on Exhibit "G" further shows a shoeprint on the left side on the motor vehicle, above the number plate. This further confirms the evidence of Mr Chabana that the accused jumped on top of the vehicle and had one foot on the boot and one on the roof.

- (e) Mr Chabana further testified that the accused got off from the vehicle and went to the right side of the vehicle. This is confirmed by the evidence of Oupa Mabasa that he recognised the voice of the man who was at the right side of the vehicle and didn't recognise the voice of the man who came to his side of the vehicle.
- (f) Mr Chabana's evidence regarding the uttering of a lady shouting at the accused saying "Tiger why did you shoot Max, you know that he is a Police Officer" is confirmed by Oupa Mabasa.
- (g) Dr Msiza testified that both gunshot wounds sustained could be classified as distant range gunshot wounds which means that the shooter was approximately 65cm away from the deceased. The path of the bullets was further downwards. The fatal wound was the gunshot wound to the head.
- (h) Mr Sekhuba confirms the evidence of Dr Msiza in respect of the distance of the shooter. He testified that Photo 35 and 36 on Exhibit "G" are particularly important as it clearly shows that the firearm was used inside the vehicle. The cartridge casing fell into the vehicle which meant that the hand of the shooter firing the firearm, was inside the vehicle.
- (i) Sergeant Thabo Masemole, who has been attached to the LCRC for 15 out of his 16 years of service with the SAPS, was the photographer who attended the postmortem of the deceased, Siweya. He also confirmed that in his experience the gunshot wound to the head of the deceased was in his opinion, one that was shot from no more than 1 meter away and the person who was shooting was elevated. The deceased was sitting in the motor vehicle and the shooter was standing above the head of the deceased. The person shooting was further shooting

from the right-hand side towards the left.

- (j) It is highly unlikely that all the witnesses colluded to corroborate each other and falsely implicate the accused.

[56] The accused was not a good witness. During cross examination it was put to Mr Mabaso that he colluded with Mr Chabana to falsely implicate the accused, it was further stated that Mr Mabaso and no longer Mr Chabana was the person who killed his brother. The accused further stated that had he been at the scene, Mr Mabaso would have been shot and killed by the accused, to avenge the death of the brother of the accused. At a later stage, during cross examination, it was stated that Mr Mabaso and Mafifi killed the brother of the accused. Mr Mabaso denied ever knowing the accused prior to the day in question. He further denied being part of the zama zama's. The accused kept on adding people to the list of who killed his brother. His version did not remain consistent in this regard. The accused does not know who shot and killed his brother. He informed Mr Ndawonde, as per his statement to the police, that a group of 30 people came and started shooting. The accused is using the death of his brother in an attempt to falsely implicate the witnesses and diminish their credibility. The accused shot and killed the deceased, Mr Siweya. The evidence in this regard is overwhelming and the witnesses corroborate each other on all material respects.

[57] The version of the accused is one that is littered with bitterness and an intense need for revenge. Although he denied seeking revenge for the death of his brother during the cross-examination, the Court rejects this version as false and not reasonably possibly true. It is clear that this need for revenge materialised when he shot the deceased Siweya. The accused is a single witness regarding his absence from both the scenes of murder. As regards the version that the state witnesses wanted to falsely implicate him because he was going to become a leader after his brother had been killed is rejected as false. It is clear that the accused would be working underground and this was not a position reserved for a leader. In addition, after he was shot the accused went to hide by his sister in Carltonville. Therefore, he was no longer a threat. The accused also went to live in Burgersdal after his brother was killed. The accused had no answer to this when he was questioned by the State. As regards the version that the accused left to go and live with his sister in Carltonville is rejected by this Court as false and not reasonably possibly true.

The accused could not give an adequate explanation how his clothes ended up at his sister's place. The accused stated a friend of his brought these clothes, however this friend was never called to testify.

[58] As regards the robbery of the cell phone of Mr Oupa Mabasa, Mr Mabaso testified that he was in possession of the said cellphone as he and Siweya were going to register their children at the soccer club. He testified that after the vehicle had come to a standstill his cellphone had fallen in the car next to the door. When his door was opened the person noticed that he was still alive, according to Mr Mabaso he didn't recognize the voice of that person. He testified that the accused then gave the instruction 'to finish him off'. The person then took his cellphone and left. This Court finds that the accused had a common purpose with the other men who were present and who robbed Oupa Mabaso of his cell phone.

[59] The accused's version is that he was taken by Captain Salemane to point out his address for purposes of verification. This version is improbable and not reasonably possibly true for the following reasons:

(a) The accused was an illegal immigrant in the country and would not be granted bail. In addition, he never brought a bail application. The evidence of sergeant Khoza, Captain Sibeko and Captain Salemane all corroborated each other that the accused was not booked out for an address verification.

(b) Sergeant Khoza testified that he and Sergeant Ntsako, interviewed the accused on 1 April 2022 and he supplied them with an address as indicated on Exhibits 'T(i)' and 'T(ii)'. They then visited the address on 2 April 2022. At the said address they met a lady named Mpho. Mpho, who resides at 71 Mozikinya hostel, Joe Slovo Reigerpark and who confirmed that the accused resides in the same room with her and her boyfriend.

(c) Captain Salemane stated that he was not part of the investigation team in this case and he would not have wasted all the time to do a mere address verification.

- (d) The photographer sergeant Shongwe, testified that no officer from LCRC is involved in address verifications.

The evidence of Mr Chabane and Mr Mabaso

[60] The version of the accused not being present at the scene of the offence where the deceased Siweya was killed is rejected as false and not reasonably possibly true for the following reasons:

- (a) The correct approach, or the locus classicus with regard to identification, is set out in *S v Mthetwa*[1] where the Supreme Court of Appeal held that:

‘Because of the fallibility of human observation, evidence of identification is approached by courts with some caution’. It is not enough for the identifying witness to be honest: the reliability of his observation must be tested. This depends on various factors such as lighting, visibility, and eyesight; the proximity of the witness, his opportunity for observation; both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene, corroboration, suggestibility; the accused’s face, voice, build, gait, and dress; the result of identification parades, if any, and, of course, the evidence by or on behalf of the accused, the list is not exhaustive. These factors, or such of them as are applicable in a particular case are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities.’

- (b) Although the accused stated categorically that he knows, and is known by Mr Mabasa, the version of the state remains that the accused was not known by Mr Mabasa prior to the incident. His honesty and reliability of the identification of the accused must therefore be tested.
- (c) Mr Mabasa’s identification of the accused is corroborated by Mr Chabana who places the accused on the scene. In actual fact, Mr Chabana alerted the deceased to the presence of the accused on the scene, prior to the deceased entering the premises. It was the information given by Mr Chabana regarding the accused’s presence there, that the deceased went to verify.
- (d) Mr Mabasa testified that he had a good opportunity to observe the accused. He further heard the voice of the accused. The incident occurred during the day, lighting and visibility was not an issue, neither was it an issue addressed by the defence. Mr Mabasa never stated that they were driving excessively fast or slow after they saw the accused and then made a U-turn to exit the premises. As a result, there was indeed a proper opportunity for observation.
- (e) The identification of the accused was reliable and honest and is accepted by this Court as a proper and correct identification of the accused.

[61] The version of the accused that he was living with his sister when the incident pertaining to the killing of Mr Siweya took place is also rejected as false and not reasonably possibly true for the following reasons:

- (a) Ms Rapoee, the accused's sister was called to verify the version of the accused that he was in Carltonville at the time of the incident. However, this witness could not take the matter any further as she works during the day and her sister Dilello, (who had been mentioned and who would be able to corroborate the version of the accused), and who was with the accused during the day and who could confirm his whereabouts on the day of the incident, was not called. The defence did not lay the basis why the accused's sister Dilello was unavailable to come to court. As a result, this Court draws a negative inference from the failure of the accused to call this witness.

Findings

[62] In respect to count one the accused is acquitted.

In respect to count two the accused is found guilty of murder in terms of s51(1) of Act 105 of 1997. In respect to count three Mr Mabaso testified that he himself sustained injuries as he was grazed by 3 bullets. Photo 14 on Exhibit "L" shows bullet holes on the left side of the vehicle. The accused and his accomplices were shooting in such a fashion as to kill both occupants of the vehicle. They attempted to kill Mr Mabaso by shooting at him. The accused is

found guilty of attempting to murder Oupa Mabaso.

In respect to count four, Mashudu Phathela testified that the firearm of the deceased Siweya was circulated, as they believed that he was robbed of the said firearm by the accused. On 28 March 2022 the firearm was however found in the office of the deceased, therefore the accused is acquitted on count 4. In respect to count five the accused is found guilty of robbery with aggravating circumstances. In respect to count six the accused is found guilty of contravention of s49(1) of Act 13 of 2002.

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JUDGE OF THE HIGH COURT

JOHANNESBURG

Date Heard: 02 August 2023

Judgment handed down: 14 August 2023

Appearances:

On behalf of the State:

Adv C. Ryan

On behalf of the Accused:

Adv M. Mzamane

[1] S v Mthetwa 1972 (3) SA 766 (A) 768.

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