

SOUTH AFRICA / JUDGMENT

Tumelo Donald Maketekete and Others v The State (A84/2023)

[2025] ZAFSHC 198 (25 June 2025)

[2025] ZAFSHC 198

COURT

Free State High Court, Bloemfontein

BEFORE

Chesiwe, Deane

CASE / FILE NUMBER

A84/2023

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IN THE HIGH COURT OF
SOUTH AFRICA
FREE STATE DIVISION,
BLOEMFONTEIN
Reportable / Not
reportable
Case number: A84/2023
In

the matter between:

TUMELO
DONALD MAKETEKETE
FIRST
APPELLANT
TSHEPO
LETSOAKA
SECOND
APPELLANT
KARABO
PHAMOLI
THIRD
APPELLANT
And
THE
STATE
RESPONDENT
Neutral
citation: Tumelo Donald Maketekete
and Others v The State (A84/2023)

[2025] ZAFSHC 198 (25 June 2025)

Coram: Chesiwe J et

Deane AJ

Heard: 26 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII.
The date and time for hand-down is deemed to be 13h00 on 25 June 2025.
Summary: Appeal
application against conviction – Premised on a petition for leave to appeal conviction denied by the trial court –
Conviction on charges of Public Violence and contravening the provisions of section 12 (1) (e) of the Regulation of Gatherings Act
205 of 1993 - Appellants were subsequently convicted on one of the counts and were sentenced in terms of section 276 (1) of the Criminal Procedure Act 51 1977 to 18 months correctional supervision.
ORDER

1

The Appeal against the conviction
of all the three (3) Appellants is
dismissed;

2

The conviction of the trial court
is confirmed;

3

The sentence imposed by the trial
court on the 12 January 2023 is
confirmed.

JUDGMENT

Chesiwe J (Deane AJ concurring)

- [1] This is an appeal application against conviction. The Appellants, petitioned the Judge President of this Division for leave to appeal against their conviction as their appeal was denied by the trial court. The application is opposed by the State (Respondent)
- [2] The Appellants were charged of two counts, namely a charge of public violence and contravening the provisions of section 12 (1) (e) of the Regulation of Gatherings Act 205 of 1993. The Appellants were subsequently convicted on one of the counts and were sentenced in terms of section 276 (1) of the Criminal Procedure Act 51 of 1977 (hereafter referred to as the CPA) to 18 months correctional supervision.

- [3] The Appellants grounds of appeal are as follows: the trial court erred in finding that the state proved its case beyond reasonable doubt; that there were no improbabilities in the state's case; that the state witnesses gave evidence in a satisfactory manner; not taken into consideration the contradictions of the state's case; the rejection of the version of the Appellants as not being reasonably and possibly true; accepting the evidence of the state witnesses; not considering the contradictions between the Appellants and the state witnesses and; that the court did not apply the cautionary rule to the single witness.
- [4] The issue for determination by this Court is whether the Appellants were correctly identified by the state witnesses and whether the trial court has misdirected itself in convicting the Appellants.
- [5] During oral submissions, counsel for the Appellants submitted that, she stands by the written head of argument in that the appeal against conviction be upheld. Counsel for the respondent submitted that the trial court did not misdirect itself and the identification of the Appellants was correctly applied by the trial court and that the appeal against conviction ought to be dismissed.

[6] It is trite that the state bears the onus of proving the guilt of an accused person beyond reasonable doubt. The crux of the issue in this appeal is the identity of the Appellants and if the State has pertinently proven its case beyond reasonable doubt including the identification of the Appellants as the persons that were involved in the protesting.

The relevant legal principles on identification

- [7] It is trite that evidence on identification must be approached with caution. The dangers of an incorrect identification are well-known.

The pointing out of a wrong person by witnesses who act in good faith has led to notorious cases of injustice. The evidence of identifying the accused because of the ever-present possibility of an honest mistake being made by witnesses, evidence of identification

has to be treated with caution. In the *S v Mthethwa* [1], Holmes JA stated that:

"Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also 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." [2]

- [8] Identification is often a central question in a trial, and courts attach value to an identification parade. The identification parade is a safety mechanism. However, the dangers of identification are compounded when a witness is asked to point out the accused in court and it has been submitted in *S v Mdlongwa* [3], that:

“Generally, a dock identification carries little weight, unless it is shown to be sourced in an independent preceding identification.” [4]

- [9] In *Magadla v S* [5], the court was of the view that:

“The fact that a witness failed to provide a description of the accused does not always assist him or her in the event where the witness was in a situation where he or she had ample opportunity to make a proper and reliable observation of the perpetrator, especially where the witness did not have any reason to falsely implicate the perpetrator [6].”

- [10] The Appellants were all arrested on the 9 of August 2018 by the members of the Public Order Police Unit of the SAPS (South African Police Services). At the time of the arrest of the Appellants, there was a public unrest and protesting going on in Meloding (Virginia). Tyres were set alight, rocks were rolled on to the road to disrupt traffic, stones and bottles were thrown at the police.
- [11] According to the first state witness, Mr Labothe, a police officer who was part of the Public Policing Unit was focused for more than 30 minutes on one particular protester who rolled a big rock on to the road. [7] This person was wearing a red top with pink on the upper part of the top and blue jeans. He chased after this person that he has been targeting. The person ran into a house. The door was opened by a lady who came out and informed him that a male person had run into her house and that she said she does not know this person. The person's hands were smelling of burnt tyres. Labothe arrested the person and questioned him whereupon the person stated that his name was Tumelo [sic] Makelekele. [8] In court, Labothe could not identify the person but could only recall his name as Tumelo [sic] Makelekele.
- [12] According to the transcribed records the second state witness, Mr Matebesi, was in the nyala when he saw the suspect throwing stones at it. He alighted out of the nyala and chased after the suspect. He had marked the suspect with the clothes that he was wearing. Matebesi arrested the suspect inside the shack that was behind the shop. The owner of the shack informed Matebesi that he did not know the suspect. At the Police station, the suspect said he name is Tshepo [sic] Lusaka [9]. Matebesi was able to identify the suspect with the clothes he was wearing as he had observed him for more than 30 minutes.

[13] According to the State's third witness, Mr Magwele also a police officer, he also identified the suspect throwing stones and had been observing for 30 minutes by his clothes. According to Magwele, the suspect was wearing a top which was written New York with sky blue pants and a black beanie with black shoes. He had a beard on his face, and he was light in complexion. Magwele arrested the suspect, whereupon the suspect gave his name as Karabo [sic] Poludi. [10]

[14] It is not in dispute that none of the witnesses gave any facial description of the protestors. The Public Order Police Unit were able to identify all three Appellants with their clothes that they wore on the day of the unrest and arrested them immediately

after chasing them. The police officers do not know the Appellants and are indeed trained on public unrest and on how to identify

suspects. Even if there were over 40 protestors, they were focused on certain individuals. Further that the Appellants gave the police officers their names. This are the same names that were used in the charge sheet as well as at the trial court, that is accused 1 – Tumelo Donald Maketekete; Accused 2 – Tshepo Letsoaka, Accused 3 - Karabo Phamoli. The Appellants were arrested immediately during the unrest and protest. Thus, the identification of the Appellants by the state witnesses who are public order police, was reliable and the trial court had no reason to doubt their evidence, nor did the police had any reason to implicate the Appellants.

[15] In the evaluation of the evidence on identification, the trial court correctly applied the correct legal principles and was mindful

of the cautionary rule and pertinently sought to seek some safeguard to eliminate the risk of a wrong conviction. Therefore, the trial court correctly evaluated and analysed the evidence of the state in respect of identification of the Appellants and settled the issue of identification.

Single witness – Cautionary Rule

[16] According to the transcribed record, there is no evidence the police officers were posted in the same vehicle or at the same position during the unrest. The evidence is clear that they were posted in different vehicles and at different positions. And for obvious reason their observations of the situation would be different. The trial court correctly applied s 208 of the CPA which

states that the court can convict on a single witness who is competent, credible and reliable. The Appellants were not credible in the evidence as to why out of a group of over 50 protestors the police would target and implicate them.

[17] Courts of appeal are generally hesitant to interfere with the credibility findings of a trial court. (See *S v Hadebe and Others* 1997 (2) SACR 641 (SCA0 at 645 E- F, *J v S ALL SA* 1998 (2) SA 271 (A))

[18] An appeal court will only tamper with the trial court's findings if it is shown that the findings made were clearly wrong. It has not been submitted that the trial court committed any misdirection of the facts. Furthermore, when consideration is

paid to all inconsistencies and improbabilities, there is no reason to doubt the correctness of the credibility findings made by the trial court. I am satisfied that the state at the trial court proved its case beyond reasonable doubt. Moreover, the trial court correctly found the Appellants to be untruthful witnesses and correctly rejected their version as false beyond reasonable doubt. In my view the trial court correctly convicted the Appellants and there is no reason to tamper with the trial court's findings on the conviction. [11]

[19] Accordingly, the following order is made:

1 The appeal against the conviction of all the three appellants is dismissed.

2 The conviction of the trial court is confirmed.

3 The sentence imposed by the trial court on 12 January 2023 is confirmed.

S CHESIWE J

I concur

T DEANE AJ

Appearances On behalf of the Appellants: S Kruger Instructed by: Legal Aid South Africa On behalf of the Defendant: J Harrington Instructed by: Director of Public Prosecutions

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

[2] S v Mthetwa above at 768 A-E. See also S v Khumalo en Andere [1991] ZASCA 70; 1991

(4) SA 310 (A) at 328E – G; S v Mlati 1984(4) SA 629 (A) at 632F – 633C.

[3] S v Mdlongwa 2010 (2) SACR 419 (SCA).

[4] S v Mdlongwa above para [8]; (See also S v Tandwa and Others 2008 (1) SACR 613 (SCA) at 617B-D.

[5] Magadla v S (80/2011)

[2011] ZASCA 195 (16 November 2011).

[6] Magadla v S above para [9].

[7] Page 37 line 9 of the Transcribed Record.

[8] Transcribed record page 41 line 1.

[9] Page 59 line 17 of the transcribed record.

[10] Page 86 line 12 of the transcribed record.

[11] See *S v Francis* 1991 (1) SACR 198 (A) 198j -199g.

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