

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appeal case number: A005/2021

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u> <u>YES/NO</u>
(3)	<u>REVISED.</u>
.....	.....
DATE	
SIGNATURE	

In the matter between:

**NKOSI MABUSO**

Appellant

And

**THE STATE**

Respondent

**Mabesele J et Mdalana-Mayisela J**

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**J U D G M E N T**

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**MABESELE, J:**

[1] This is an appeal against conviction on a charge of attempted murder for which the appellant was sentenced to a period of 10 (ten) years imprisonment. The *court a quo* ordered that 5 years of the 10 years imprisonment sentence should be served concurrently with any other sentence that the appellant is serving.

[2] The evidence is that the appellant and two others were driving in a vehicle that was chased by the police. After they were arrested and brought to court on a charge of attempted murder for shooting at the police, the appellant's co-accused namely; Themba Motau, appealed his conviction. His appeal was upheld by this court on 28 November 2022; firstly, due to failure by the state to prove beyond reasonable doubt that the shots that were fired from the said vehicle were directed at the police. Secondly, failure by the state to prove beyond reasonable doubt who, amongst the occupants of the vehicle fired shots, since the state did not allege that they acted in furtherance of a common purpose.

[3] Therefore, it is logical that the appeal of the appellant against his conviction be upheld.

[4] In the result, the following order is made:

4.1 The appeal against conviction is upheld.

4.2 The conviction and sentence are set aside.

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**M.M MABESELE**

(Judge of the High Court Gauteng Local Division)

I concur

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**M.M.P MDALANA-MAYISELA**

(Judge of the High Court Gauteng Local Division)

Date of hearing : 13 February 2023

Date of Judgement : 13 February 2023

Appearances

On behalf of Appellant : Adv Smith

Instructed by : Legal Aid Board South Africa

On behalf of the Respondent : Adv Masina

Instructed by : Director of Public Prosecutions