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IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

CASE NO: CC32/2014

DATE: 2014-11-21

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ NO.

(3) REVISED. ✓

DATE: 4/02/2015

SIGNATURE Mabebele

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In the matter between

THE STATE

and

LETUKA JEFFREY & 7 OTHERS

Accused

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JUDGMENT

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20 MABESELE, J: The accused are facing charges of conspiracy to murder and murder, read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997.

Each accused pleaded not guilty to both counts. Accused 8 gave a plea explanation in terms of Section 115 of the Criminal Procedure Act 51 of 1977. The plea was read into the record of the proceedings and is marked Exhibit 'AA'. Each accused made

admissions in terms of Section 220 of Act 51 of 1977. The admissions were read into the record and are marked Exhibit 'B'.

The evidence is that in the early hours of the morning of 14 December 2012 the deceased's wife namely, Ms Patricia Chika, opened the gate for the deceased to drive the vehicle into their home yard. The deceased drove in and parked the vehicle in front of the door of the house. After the deceased had alighted from the vehicle he informed Patricia that he noticed a shadow of someone around the wall of the house.

10           Subsequently the deceased, according to Patricia, walked around the wall to see who the person was. Shortly thereafter Patricia heard a gunshot. She quickly ran around the wall to see what was happening. Upon arrival she saw someone jump over the wall. The deceased was lying on the ground. She noticed a gunshot wound on the abdominal part of the deceased's body. The deceased was rushed to the hospital. He was certified dead shortly after arrival.

The deceased was the Regional Secretary of the African National Congress, (ANC) in Dr KK Kaunda district Municipality.

20           More witnesses testified in respect of count 1 in so far as it relates to accused 1, 2, 3, 4, 5, 6 and 8. Save the evidence of Simphiwe Mphandana and Tlhako, the evidence of the rest of the witnesses in the said count does not advance the State case. Therefore I need not repeat such evidence in this judgment.

          However I need to mention that the evidence of Ms Regina Muchwari that accused 8 attended a meeting in Mafikeng in the morning

of 13 December 2012 is contradicted by accused 8 in his bail application. In his bail application accused 8 mentioned that on 13 December 2012 he left home at 09:00 and reached his office 15 minutes later. He left the office at midday and went to the ANC offices. He left ANC offices at 16:30 to attend PEC meeting that evening.

The evidence of the police officers who took down the statement of accused 1 and 7 and conducted pointing out of these accused is important and will be given attention. The same applies to the evidence of the police officers who testified about the exhibits that were collected  
10 from accused 7's home in Kwa-Zulu Natal and sent to the Forensic Laboratory in Pretoria.

I now turn to the evidence of Mphandana. He knows accused 3, 4, 2, 5, 6 and 8. His uncontested version is that on 13 December 2012 between 10:00 to 11:00 he met accused 3, 5 and 6 in shop called Shoprite in Klerksdorp. During his discussion with accused 6 in connection with the arrangements regarding Manguang conference accused 6 told him that the deceased must come out. He testified that prior 13 December 2012 he once travelled in a kombi with accused 3, 5, 6 amongst others. On their way home the police stopped them at a  
20 road block. Accused 5 took out his firearm and gave it to someone in the kombi to hide it from the police.

Accused 7 made admissions in terms of Section 220 of the Criminal Procedure Act 51 of 1977 admitting amongst others the following.

- (i) He possesses a licensed firearm.

- (ii) A bullet was found on the body of the deceased during a post mortem examination which was conducted on the body of the deceased.
- (iii) The ballistic results that a bullet which was contained in the evidence bag with number PA6800485N was discharged from his firearm. However he disputed that a bullet found on the body of the deceased was discharged from his firearm. The dispute resulted in the State calling witnesses.

10 The police officers Kgorane and Kutumela confirmed that they collected the accused firearm and other exhibits from the accused's place of residence in Kwa-Zulu Natal. The firearm with a serial number on it and other exhibits were booked in the SAP13 in Klerksdorp. Later on the exhibits, including the firearm were sent to the Forensic Science Laboratory in Pretoria.

The police officer Thamae visited Tshepong Government mortuary to take photos of the deceased. The examination of the deceased's body was conducted in his presence. His uncontested version is that the doctor removed a bullet from the deceased's body  
20 and gave it to him. He put the bullet inside evidence bag number PA6407504I and sealed the bag. He subsequently took the same bag, still sealed, to the Forensic Science Laboratory in Pretoria. He said the bag was never tampered with.

The police officer Seanego is employed at the Forensic Science Laboratory in Pretoria. He confirmed that he received a fired bullet

which was contained in the evidence bag number PA6407504I. He took the bullet out of the bag and put it in the laboratory bag number PA68485N.

Ms Thlaku is a member of the African National Congress. She resides at Jouberton. She testified under police protection due to threats and intimidation. She knows accused 1, 2, 3, 4, 5, 6 and 8. She knew the deceased too. All the accused and the deceased were members of the South African National Congress, she said. Save accused 4 she had known the other accused for a long time. She  
10 knows their names.

She knew accused 4 for the first time on 11 December 2012 during violent demonstrations by members of her community. The demonstrations were about the demolition of the shacks of members of the community by the police. She took part in the demonstrations. At some stage she and a group of people went to sit under a tree at a place called Motebong. Present amongst them were accused 1 and Petete. Accused 1 was serving food and alcohol.

The purpose of the meeting under the tree was to strategise about the way forward. Accused 4 was amongst them. She heard  
20 people refer to him as Molebatse. At the meeting under the tree she said accused 4 informed them that Lulu, Lopang, Khauwe and the deceased were supposed to be killed. She asked accused 4 why should he utter such words. Accused 4 did not respond, she said. Instead, accused 4 stood up and left the meeting.

In the morning of 12 December 2012 between 10:00 and 11:00

het met accused 1, 3, 4, 5 and 6 in the street in the vicinity of motebong. She did not spend much time with them after she had greeted them. During a short period within which she had a discussion with them accused 4 told accused 1 that they were to meet with accused 8 at River Lodge on 13 December 2012 to finalize the plan to kill the deceased. The witness said that on 13 December 2012 in the morning, Montsheng came to fetch accused 1 from Joutberton to River Lodge. Montsheng was driving a red Golf owned by accused 2. She was in the company of accused 1 when Montsheng came to fetch him.

10 She drove together with accused 1 to River Lodge. The reason for driving with them was that she wanted an outing. Petete joined them. Upon arrival at River Lodge they alighted from the vehicle and walked to the pool. On the way to the pool she walk passed a room with open slide doors. She was walking slowly. In the room she saw accused 2, 3, 4, 5, 6 and 8 standing in a circle. She did not hear what the accused were discussing about. She and accused 1 and Petete waited at the pool.

20 Shortly thereafter, said the witness, a gentleman with dreadlocks came from the room to fetch accused 1 from the pool. Accused 1 and that man went into the room wherein the meeting was held. After a few minutes accused 1 came out. Accused 1 and Montsheng transported her and Petete back to Jourberton.

The witness said that around 22:00 accused 1 found her at Jane's place of residence in Jourberton. The accused was driving the vehicle of accused 2. She and accused 1 stood behind the vehicle

outside the premises of Jane's house. She asked accused 1 whether there was news to tell her about. She said that accused 1 told her that at a meeting held at River Lodge accused 6 promised him money to kill the deceased because the previous hit man did not want to cooperate. She said that accused 1 told her that accused 5 said that he would give him his firearm for use to kill the deceased.

The said firearm, according to what accused 1 told the witness, was hidden from the police by accused 5 during the road block when they (including accused 1) were travelling in the kombi. The witness  
10 said that she warned accused 1 not to accept money from accused 6. Accused 1 said that he wanted money. A few minutes later accused 1 left Jane's premises with the same vehicle. On 14 December 2012 the witness was in a taxi on her way to Rustenburg. Along the way she received a cell phone call from accused 1. She said accused 1 told her to listen to the radio and watch television to be updated of the deceased's death and that they were finished with the deceased.

The witness insisted under cross-examination by counsel for accused 1 and 4, that the accused were present at the meeting at River Lodge and that on 12 December 2012 accused 4 told accused 1 in the  
20 presence of accused 3, 5 and 6 about the finalization of the plan at River Lodge to kill the deceased. The witness was confronted with hospital records of accused 2 marked Exhibit 'N25' and was put to him that accused 2 was admitted in the hospital from the 11<sup>th</sup> to 14<sup>th</sup> December 2012. It was put to her that accused 2 requested permission to leave the hospital on 13 December 2012 from 13:40 and was back at

14:30 because the accused needed a break. In response the witness said that she saw accused 2 at River Lodge at the meeting around lunch on 13 December 2012. Both counsel for accused 3 and 5 and 6 respectively put to the witness that accused 3, 5 and 6 left Jourberton to Vereeniging on 12 December 2012 at 10:00 and returned to Jourberton around 17:00. The witness insisted that she saw the accused in Jourberton around 10:00 to 11:00 in the company of accused 4 and 1.

The State called the police to testify about the statement alleged to have been made to them by accused 1. The legal representative of  
10 accused 1 contested admissibility of the statement on the following grounds.

1. Accused 1 did not make a statement. He was instructed to sign the statement which was already prepared.
2. Accused 1 was assaulted by the police a day before the statement was signed.

The objection to admissibility of the statement resulted in the trail-within-a-trial. After evidence was led I made a ruling that the statement be admitted for the following reasons. The police corroborated one another that accused 1 was not assaulted and that the accused made the  
20 statement freely and voluntarily. The version of accused 1 on the other hand is not reasonably possibly true. For instance the accused said that the police made him to sign the statement which was already prepared.

On the other hand the accused say that the police assaulted him severely forcing him to provide them with information (which according



to accused 1) was already in their possession. It does not make sense to me that the accused was forced to provide information which was already in possession of the police, according to the accused.

The accused admitted that he provided the police officer with his personal details during interview. This demonstrates clearly that the accused did not just sign documents which were unknown to him. For these reasons I ruled in favour of the State. The admissibility of evidence of pointing out alleged to have been made by accused 1 was contested also on the basis that the rights of the accused were not explained to him and that the accused was instructed by police officer Lebodi to point certain scenes.

After I had heard evidence and argument I ruled in favour of the State for the following reasons.

- (i) The version of the police officer Ramakosi that he explained the rights of the accused to him in preparation of the pointing out was not challenged.
- (ii) Ramakosi booked accused 1 out of the cells and interviewed him. Thereafter Ramakosi, Mswazi (who was the driver) drove in the same vehicle with accused 1 to the places where the accused was going to point out to them. Nthandi (who was a photographer) followed them behind in his own vehicle.

The witnesses corroborated one another that two vehicles were involved as opposed to the evidence of the accused that the police drove in three vehicles to the scene. The witnesses disputed, correctly so, the version of accused 1 that Lebodi was present at the various

scenes where pointing out took place and was instructing the accused to point out the scenes. It would not make sense that Lebodi should attend the scene whereas he did not interview accused 1 in preparation for pointing out. For these reasons I ruled in favour of the State.

Accused 7 contested the admissibility of the pointing out and the statement alleged to have been made by him on the following grounds.

(i) His rights were not explained to him before pointing out was made.

(ii) The police directed him to the place where pointing was made.

10 Upon arrival the police showed him various scenes or points to be pointed by him.

(iii) He is not the author of the said statement. He was made to sign the statement which was already prepared.

After I had heard evidence and arguments I rejected the version of accused 7 as not being reasonably possibly true for the following reasons.

(i) The accused did not dispute the version of the police officer Letsile that he was present when Nkosi read the rights of the accused to him in English.

20 (ii) The accused confirmed the version of Nkosi that Nkosi possessed a document when he interviewed him. According to Nkosi rights were read from the same document. More over the evidence of Nkosi that the accused understood English despite the presence of the Interpreter was not disputed. I accepted therefore that the rights were explained to the accused before

pointing out was made.

(iii) The version of the accused that the Interpreter said that he would direct the police to the place where pointing out was to be made was not put to the Interpreter when he testified. Therefore the version of the Interpreter that he did nothing else other than interpreting conversation between the accused and Nkosi stands.

(iv) The version of the driver that the accused gave him directions to the place where pointing out was made is corroborated by Nkosi and Giya.

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For these reasons I ruled in favour of the State.

Accused 7's version that he was made to sign the statement which was already prepared was rejected as not being reasonably possibly true for the following reasons. In his own version the accused said that Nbotho read the statement to him. Thereafter he (accused) confirmed knowledge of the contents of certain paragraphs. It stands to reason therefore that accused 7 is the author of the statement. As a result I ruled in favour of the State.

20 Mr Alex Lebodi read into the record the contents of the statement of accused 1 marked Exhibit 'N31'. Lebodi was not cross-examined. The accused said in his statement, amongst others, that Happy promised them R50,000 if they could kill the deceased. Evidence of pointing out made by accused 1 as presented by Ramakosi was not properly conducted. Therefore it is rejected.

The evidence of Nkosi regarding the pointing out by accused 7

was not contested. Nkosi referred to photos 23, 24, 25, 26, 27, 28 and 29 in the photo album marked Exhibit '34A'. The photos depict spots where the accused stood in the deceased's premises as well as the wall which the accused jumped over after he shot the deceased.

Mr Mbotho read into the record the statement of accused 7 marked 'N35'. Mbotho was not cross-examined. The accused mentioned in his statement, amongst others, that while he waited for the deceased around the wall of the house, the deceased suspected that there was someone inside the premises. As a result the deceased  
10 moved towards his direction to check who could be inside the premises. It was at the time that he shot the deceased and ran away. His version is confirmed by the deceased's wife.

At the close of the State case the question was whether there was a possibility of convictions of the accused other than if the accused entered the witness box and incriminate themselves. Reference was made to the case of State v Lubaxa 2001 (2) SACR 703 (SCA).

Accused 2 and 8 were discharged on count 1 on the basis that there was insufficient evidence against each of them that they agreed with others that the deceased be murdered. There was no evidence  
20 linking each of them to murder of the deceased on count 2. Accused 7 was acquitted on count 1 in that there was no evidence linking him to the said count.

The application for discharge of accused 3 was dismissed on the basis that the State has a *prima facie* case against him. Accused 1, 4, 5, and 6 did not seek to be released in terms of Section 174 of Act 51 of

1977.

Accused 1 took the stand. He knows Tlhako. On 11 December 2012 he was part of the group of people who seated under the tree around Motebong. That was shortly after violent demonstrations by members of the community. The accused said that alcohol and food were served to the group under the tree. He said that Tlhako stood with other members of the community approximately 12 metres away from the tree. There was no talk of the deceased's murder under the tree, he said. On the night of the same date he and Petete as well as Tlhako  
10 slept over at Ketele's place of residence. He parted ways with Tlhako on the morning of 12 December 2012 when they all left Ketele's home. He never saw Tlhako again, he said. He denied being in the company of accused 4, 3, 5 and 6 on 12 December 2012. He denied also that he ever attended a meeting at River Lodge on 13 December 2012. He denied that he met Tlhako on the night of 13 December 2012. He said he spent the whole day at his home on 13 December 2012.

When his legal representative asked for his comment on Tlhako's version that he phoned her on 14 December 2012 to inform her to listen to the news in the radio about the death of the deceased, he  
20 said that he does not use a cell phone. This answer, to my understanding, does not dispute the version that he phoned Tlhako and informed her to listen to the news in the radio about the death of the deceased and that they are finished with him.

Mr Teboho Moleta "Petet'e and Mr Matsheng Moaludi testified on behalf of accused 1. I should mention at this stage that the legal

representative of accused 1 conceded that Tlhako was not informed that these witnesses would be called to testify and dispute her version that she drove with them to River Lodge, on 13 December 2012. Importantly, legal representatives of each accused conceded after they had cross-examined Tlhako that her evidence that she visited River Lodge on 13 December 2012 and did see people in the room, remained unchallenged.

Each of the legal representatives maintained the defence of alibi, that none of the accused was at River Lodge on 13 December 10 2012. Moleta testified that on 11 December 2012 he was with accused 1 at Motebong. Tlhako was in their company. He and accused 1 joined the group of people who sat under the tree and had food and alcohol. Tlhako was at first standing with others at a distance of approximately 20 metres from the tree. She later joined them at the tree for three minutes. Later that night Tlhako joined him and accused 1 to Ketele's place of residence. The three of them slept over at Ketele's place.

They parted ways with Tlhako in the morning of 12 December 2012. He never met Tlhako again, he said. He denied that he travelled with Tlhako to River Lodge on 13 December 2012.

20 Mr Matsheng Moaludi testified that he was in possession of accused 2's vehicle on 13 December 2012. He denied that he transported Tlhako to River Lodge on 13 December 2012. He testified that he did not give accused 2's vehicle to anyone to drive on 13 December 2012.

Accused 3 took the stand. He testified that on 12 December

2012 at 10:00 he left his home to fetch accused 5 and 6 from their respective places of residence. Thereafter they drove to Sebokeng to fetch accused 6's brother-in-law. They came back late that evening. He said that on the 13<sup>th</sup> December 2012 in the morning he left home to town in Klerksdorp. He was accompanied by his wife. He came back home from town at approximately 15:00. He left home at 16:00 for Sandton. He was attending a meeting. He came back home at midnight. He denied that he visited River Lodge on 13 December 2012.

Accused 4 testified that on 11 December 2012 he was around  
10 Motebong with a friend. He drove passed a tree under which a group of people had gathered. He saw Molomonyane in the group. He then stopped the vehicle, alighted and walked to the group to meet Molomonyane. Upon arrival at the tree he heard people complaining about their shacks which were demolished by the police. He stayed at the meeting for 15 minutes. He does not know Tlhako. He saw her for the first time in court. He denied that he told people at the meeting that the deceased and others should be killed. He denied being in the company of accused 1, 3, 5 and 6 on 12 December 2012 around 11:00. He never saw Tlhako on 12 December 2012. He denied visiting the  
20 River Lodge on 13 December 2012. He could not remember where he was on 13 December 2012.

Accused 5 testified that accused 3 fetched him from home on 12 December 2012 around 10:00. They then drove to accused 6's place of residence. Upon arrival they took accused 6 and left for Sebokeng. They came back home around 19:00. On 13 December 2012 around

11:00 and 12:00 he had meetings with business persons regarding transport to carry people to Mangaung. After the meetings he went back to his place of residence. He left home between 15:30 and 16:00 to a taxi rank. Upon arrival he took a taxi to River Lodge. He was going to make arrangements for a trip to Mangaung. He denied that he was in the company of accused 4 and 1 on 12 December 2012. He denied also that he attended a meeting at River Lodge on 13 December 2012. He slept at River Lodge on 13 December 2012.

Accused 6 confirmed the version of accused 3 and 5 that they  
10 fetched him from his place of residence to Sebokeng on 12 December 2012. He denied that he met accused 1 and 4 on 12 December 2012. He denied also that he met Mphandana on 13 December 2012 at Shoprite. However he was confronted by the State counsel with the version which was put to Mphandana on his behalf that he had conversation with Mphandane at Shoprite on 13 December 2012 in the morning. He was reminded again of his bail application which forms part of the formal admissions wherein he stated that he visited River Lodge on 13 December 2012.

Accused 7 said that he did not know how it came about that the  
20 bullet which was removed from the body of the deceased was found to have been fired from his licensed firearm. He denied that he made a statement and pointing out to the police in connection with the murder of the deceased. This is despite the fact that evidence of the statement and pointing out was not challenged when it was presented.

The State relies on the evidence of a single witness to secure



convictions of accused 1, 3, 4, 5 and 6 on count 1. Evidence of the statements and pointing out made by accused 1 and 7 respectively, will be considered together with all the evidence presented. Section 208 of the Criminal Procedure Act 51 of 1977 makes provision for a conviction following from the evidence of a single witness. The section reads:

“An accused may be convicted of any offence on a single evidence of any competent witness.”

In *Mock v State* 2008(4) All SA 330 (SCA) it was held that evidence of a single witness should be clear and satisfactory in all material respects to secure conviction. (See also *R v Mokwena* 1932 OPD 79 at 80). It is trite law that such evidence should be treated with caution. McDonald AJ P in *R v J* 1966(1) SA 88 (SRA) expressed a view that cautionary rules are no more than guides.

I am mindful of the fact that the witness was part of the people who participated in the violent demonstrations against the demolition of the shacks belonging to members of the community. When the witness made a statement to the police she was amongst the people that the police were looking for in connection with the said demonstrations and other acts involving violence. It is against this background that I evaluate the evidence of this witness to ascertain firstly, whether her evidence is clear and satisfactory in all material respects. Secondly whether the truth was told.

The uncontested evidence of the witness as previously conceded by all legal representatives after cross-examining the witness is that in the afternoon of 13 December 2012 the witness was at River

Lodge and saw people gathered in a certain room. It was not disputed that the people who had gathered in the room were known to her. Except accused 7, each accused raised an alibi. When the defence of alibi is raised there is no burden on the accused to prove his alibi. (See S v Tshabalala 1986(4) SA 734(A)). The onus rests on the State to show that the alibi raised by the accused is false.

The witness testified that on 13 December 2012 at approximately 22:00 she met accused 1 at Jane's place. Accused 1 updated her about the discussions which took place at the meeting  
10 which was held at River Lodge that afternoon. The accused, according to the witness, was prompted by the request she made to him to tell her news. The exact words used by the witness were, 'what's up?' She said accused 1 then told her the following:

- (i) At the meeting at River Lodge accused 6 promised him money to kill the deceased because previous hit man did not want to cooperate.
- (ii) Accused 5 said that he would provide him with a firearm which accused 5 once gave to him to hide the day the police stopped their kombi at the road block.
- 20 (iii) The incident of a road block during which accused 5 gave his firearm to one of the occupants in the kombi to hide from the police was related by Mphandana during his testimony. Mphandana was in the same kombi.

The witness was unaware of the road block. Therefore I accept the witness' version that accused 1 mentioned the incident of the road block

to her. Secondly accused 1 mentioned in his statement marked Exhibit 'N31' that accused 6 promised them money to kill the deceased. This again corroborates the witness' version that during the conversation accused 1 told her that he was promised money to kill the deceased because the previous hit man did not want to cooperate. Therefore the version of accused 1 that he never spoke to the witness on 13 December 2012 is false. The result is that accused 1's version that he spent the whole day on 13 December at his place of residence is rejected as not being reasonably possibly true.

10 He visited Jane's place of residence in accused's vehicle as correctly testified by the witness. Therefore the version of Moaludi that he never lost possession of accused's vehicle on 13 December 2012 is false. The same applies to the version of Moleta that the witness was not transported to River Lodge in accused 2's vehicle.

The version of the witness that she was at River Lodge in the afternoon of 13 December 2012 is accepted for the following reasons.

- (i) Accused 1 updated her about the discussions which took place at the meeting.
- (ii) The fact that the witness knew that on 13 December 2012  
20 accused 2's vehicle was driven by someone else, be it Montsheng or Mantsheng strengthens her evidence that the said vehicle transported her to River Lodge in the afternoon of 13 December 2012.
- (iii) The concessions made by all the legal representatives of the accused that after the witness was cross-examined her

evidence remained unchallenged that she was at River Lodge strengthens the evidence of this witness that she was transported to River Lodge in accused 2's vehicle.

(iv) Her version that she saw accused 5 and 6 amongst others at River Lodge is corroborated by accused 5 and 6 (in his bail application) that they visited River Lodge on the said date despite their defence of alibi.

I will come back to the events of 13 December 2012 at River Lodge.

Accused 3, 5 and 6 corroborate the evidence of the witness that  
10 they were together on 12 December 2012 around 10:00. The version of each of them that they were travelling to Vereeniging is rejected. The reason, amongst others is that none of them explained how it could have been possible for the witness to have seen them in the vehicle but not at Motebong as the witness alleged. Therefore I accept the version of Tlhako that she saw the three accused together at Motebong in the company of accused 1 and 4.

I accept Tlhako's version that accused 4 told accused 1 in the presence of accused 3, 5 and 6 that he and accused 1 were to meet  
20 accused 8 at River Lodge to finalize the plan to kill the deceased. I say so because accused 1 mentioned in his statement that an offer was made to him to kill the deceased. The undisputed evidence of Mphandana is that he met accused 3, 5 and 6 in town at Shoprite on 13 December 2012 around 11:30. Therefore the version of the accused that they were elsewhere around 11:30 and were in the company of other people, is rejected as not being reasonably possibly true. Two to

three hours later (from 11:30) the accused were seen at River Lodge by Khato. Accused 4 too attended the meeting.

I am aware that the witness made four statements in addition to her initial statement. The contents of the four statements differ from the initial statement. The witness gave explanation that the police approached her on numerous occasions and asked her to make other statements in order to clarify certain issues which were not clear to them in her initial statement. For an example the initial statement consists of 17 paragraphs whereas other statements contained 3 to 4 paragraphs  
10 emphasising the presence of certain accused persons at the meeting which was held at River Lodge on 13 December 2012. The witness testified that she stands and fall by her initial statement which to a large extent corroborates her evidence-in-chief.

Mr Schoeman who represented accused 8 raised a concern about the interference by the investigating officers with the statements of the witnesses. His concern was shared by Mr Mokwena during closing arguments. I am concerned too. As a result of the concerns raised by the legal representatives of the accused the discrepancies in the statements were not vigorously pursued by the legal  
20 representatives. It is not known why the police interfere with the statements of witnesses except to create false impression that witnesses contradict themselves. To my understanding a second statement may be sought from the witness if the first statement is lost or damaged or the witness voluntarily approaches the police and ask for permission to make a second statement. For these reasons I am

unable to come to a safe conclusion that the witness contradicted herself in her statements.

Assuming I came to that conclusion I would then accept the witness' explanation that in the additional four statements she was providing the police with the only information which the police specifically required from her as opposed to her initial statement which contains the whole information which she wanted the police to know. The witness testified under police protection due to threats and intimidation directed to her. However she was impressive and answered questions frankly. Her evidence is undoubtedly accepted.

This brings me to the requirements on a charge of conspiracy. Conspiracy involves an agreement, express or implied to commit an unlawful act. In *Libazi and Another v State* 2011 Volume 1 All SA 246 (SCA) it was held that for a conviction on a charge of conspiracy to be achieved the commission of the offence must be the focal point of the agreement between the perpetrators. Boshoff J in *S v Cooper and Others*, 1976(2) SA 876T at 879 mentions three stages of conspiracy. Namely,

- (i) Making or formation.
- (ii) Performance or implementation.
- (iii) Discharge or termination.

The evidence is that on 12 December 2012 accused 4 told accused 1 in the presence of accused 3, 5 and 6 that he and accused 1 were to meet at River Lodge on 13 December 2012 to finalize the plan to kill the deceased. On 13 December 2012 accused 4 and accused 1 attended

the meeting at River Lodge as planned, thus demonstrating clearly an agreement between them to come with a plan to kill the deceased. Accused 3, 5 and 6 attended the same meeting after they had heard of it (and its purpose) on 12 December 2012. Quite clearly the conduct of each of them demonstrates agreement with accused 4 and 1 that the deceased must be killed.

Importantly on 12 December 2012 accused 4 did not specify time and the room in which the meeting was going to be held. However accused 3, 5 and 6 made an effort to know the time and room in which  
10 the meeting was held. Again, it would not make sense for accused 3, 5 and 6 to attend the meeting (after knowing its purpose) with the intention to oppose. If the intention was to disassociate themselves from the agreement one would not have expected them to attend the meeting. The plan that was agreed upon according to the statement of accused 1 was to employ the services of a hit man to kill the deceased. This plan, as it will become clear hereafter, was ultimately implemented. Therefore accused 1, 3, 4, 5 and 6 are guilty on count 1.

This brings me to count 2. Accused 7 mentioned in his statement marked Exhibit 'N35' that people gave him money to shoot  
20 the deceased. He was approached at 16:00 on the day before he shot the deceased (being 13 December 2012). The reason, according to accused 7 in his statement, was to prevent the deceased from attending conference in Mangaung.

Evidence of the State links accused 7's licenced firearm to the murder of the deceased. More over accused 7 made pointing out at the

deceased's place of residence. Therefore accused 7 is guilty of murder as charged.

Counsel for the State argued that an inference be drawn that accused 1, 3, 4, 5, and 6 gave accused 7 money to kill the deceased. It was argued further that the accused acted in furtherance of a common purpose. Watermeyer JA in R v Blom 1939 AD 188 at 202 pointed out the following cardinal rules of logic which should be considered when reasoning by inference,

- 10
- (i) The inference sought to be drawn must be consistent with all the proved facts.
  - (ii) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

In the afternoon of 13 December 2012 accused 1, 3, 4, 5 and 6 suggested amongst themselves that the services of a hit man be sought to shoot the deceased. In the early hours of 14 December 2012 a hit man namely, accused 7 shot and killed the deceased. It was after he was approached on 13 December 2012.

20 Therefore accused 1, 3, 4, 5 and 6 engaged the services of accused 7 to implement their plan that the deceased be killed. They clearly acted in furtherance of a common purpose. Therefore each of them is guilty on count 2 as charged. In the result the following order is made.



**ORDER**

1. Accused 1 is guilty on counts 1 and 2.
  2. Accused 3, guilty on counts 1 and 2.
  3. Accused 4, guilty on counts 1 and 2.
  4. Accused 5, guilty on counts 1 and 2.
  5. Accused 6, guilty on counts 1 and 2.
  6. Accused 7 is guilty on count 2 only.
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iAfrica Transcriptions (Pty) Limited

IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

CASE NO: CC32/2014

DATE: 2014-11-26

10

<p>DELETE WHICHEVER IS NOT APPLICABLE</p> <p>(1) REPORTABLE: <del>YES</del>/NO.</p> <p>(2) OF INTEREST TO OTHER JUDGES: <del>YES</del>/NO.</p> <p>(3) REVISED. ✓</p> <p><u>DATE</u> : 4/02/2015</p> <p><u>SIGNATURE</u> Mabebele</p>
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In the matter between

THE STATE

and

LETUKA JEFFREY AND 7 OTHERS

Accused

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SENTENCE

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20 MABESELE, J: The accused are guilty on charges of conspiracy to murder and murder read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997.

Accused 7 is guilty of murder only, read with the provisions of Section 51(1) of the said Act. He was acquitted on the charge of conspiracy to murder.

The evidence is that on 11 December 2012 accused 4

suggested to the group of people who had gathered under a tree at Motebong in Jourberton during violent demonstrations that the deceased and others should be killed. The deceased was a Regional Secretary of African National Congress (ANC) in the district of Doctor KK Kaunda.

On 12 December 2012 accused 1, 3, 4, 5 and 6 agreed that a meeting be held on 13 December 2012 to finalize the plan to kill the deceased. At the meeting the accused suggested that the services of a hit man be sought to shoot and kill the deceased. The reason for the  
10 killing of the deceased was to prevent him from attending a conference at Mangaung which was organised by the ANC.

In the afternoon of 13 December 2012 accused 7 (hit man) waited for the deceased near his home for almost eight hours. The deceased arrived home in the early hours of 14 December 2012. Upon arrival at home the deceased was shot in the presence of his wife by accused 7.

The object of sentencing is not to satisfy public opinion, but to serve the public interest (State v Mhlakaza 1997 Volume 1 SACR 515 (SCA)). In State v Khumalo 1973(3) SA 697 (A) it was held that  
20 punishment must fit the criminal as well as the crime, be fair to the society and be blended with a measure of mercy according to the circumstances. Having said so, in State v Msimanga and Another 2005 Volume 1 SACR 377 (OPD) at 381 F - I wherein it was held that violent conduct in any form can no longer be tolerated, and courts, by imposing heavier sentences convey the message on the other hand to the

prospective criminals that such is unacceptable and on the other hand to the public that the courts take seriously the restoration and maintenance of safe living conditions. It is beyond debate that murder is a serious offence particularly when committed in private homes in the presence of family members.

Accused 1, 3, 4, 5 and 6 conspired to murder the deceased and carefully planned his death. Accused 7 on the other hand waited patiently for the deceased to arrive home to be shot, thus demonstrating premeditation. Therefore all the accused are facing life imprisonment  
10 sentence on a charge of murder.

The sentence can be departed from if substantial and compelling factors exist justifying such a departure. Marais JA in *State v Malgas* 2001 Volume 1 SACR 469 (SCA) warned that prescribed minimum sentences should not be departed from lightly and for flimsy reasons and those marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded. In *State v Abrahams* 2002 Volume 1 SACR 116 (SCA) it was held that where factors of substance do not compel the conclusion that the application of the prescribed sentence would be unjust that sentence must be  
20 imposed.

Accused 1 is 32 years old. He is single. He was doing part time jobs before he was arrested. He has a previous conviction of robbery for which he was sentenced to 18 months imprisonment. He has two minor children. The children are under the care of their mother. These factors, in my view, do not justify departure from the prescribed

minimum sentence on count 2.

Accused 3 is a first offender. He is 31 years old. He is married. The marriage was blessed with three minor children. He is currently serving as a whip in the North West Provincial Legislature and is the principle coordinator of the Economic Freedom Fighters Party (EFF) in the North West province. He served as a provincial chairperson of the ANC in the North West province from 2011 to 2013. There is no doubt that accused 3 made valuable contribution to the parties which he served and to the community. These factors cummulatively persuade  
10 me to deviate from the prescribed minimum sentence.

Having said so, accused 3 disappointed the political parties which elevated him to the said positions to serve the community diligently and to maintain the good reputation and image of the said parties. I have no doubt that the said political parties saw qualities of leadership and a bright future in accused 3 in the field of politics. Accused 3 nevertheless chose to dig a grave and burry himself.

Accused 4 has a clean record since he was born 51 years ago. He has a stable family and a fixed property. He is currently serving in the Matlosane Local Government as a Councillor, thus making a  
20 positive contribution to his community. These factors justify a departure from the prescribed sentence. However, I am mindful of the fact that accused 4 initiated the killing of the deceased. It is unacceptable that accused 4 being part of government plans the murder of a member of the community with other members of the community which he is expected to serve with dignity and pride. This is an aggravating factor

which should be weight against the weighty personal circumstances of accused.

Accused 5 is 49 years old. He is single. He has five children born from different mothers. There is no evidence that he maintains these children. He has a previous conviction of robbery for which he was sentenced to 10 years imprisonment. He was recently employed by the EFF as a field worker with a salary of R5,000 per month. His personal circumstances do not justify a lesser sentence than the one prescribed.

10           When accused 5 entered the courtroom from the police cells on Monday, he shouted a slogan *amandla*, apparently to his followers. The response was positive. I wish to bring to the attention of accused 4 that such slogan was used by the real and self respect politicians who did not commit robbery and murder but liberated the majority of the people of this country from oppression. I sincerely hope the time will come when some of the people of this country will disassociate themselves from those who commit criminal acts while they pretend to be politicians.

20           Accused 6 is 38 years old. He is married. He has four children. He is a first offender. His taxi business collapsed after he was arrested. These factors do not justify a departure from the prescribed sentence.

Accused 7 is 40 years old. He has a clean record. He has six children from different mothers. Some of the children are staying with his common law wife in Kwazulu-Natal. The accused shot the deceased at his home in the presence of his wife. In view of his personal

circumstances and the manner in which he killed the deceased I am unable to deviate from the prescribed sentence.

In the result, I make the following order.

**ORDER**

1. Accused 1 is sentenced to 8 years imprisonment on count 1. Life imprisonment on count 2.
2. Accused 3 is sentenced to 8 years imprisonment on count 1. 12 Years imprisonment on count 2. 5 Years of 8 years imprisonment sentence on count 1 should run concurrently with the sentence on count 2. Therefore accused 3 is sentenced to an effective term of 15 years imprisonment.
3. Accused 4 is sentenced to 8 years imprisonment on count 1. 15 Years imprisonment on count 2. 5 Years of 8 years imprisonment on count 1 should run concurrently with the sentence on count 2. Therefore accused 4 is sentenced to an effective term of 18 years imprisonment.
4. Accused 5 is sentenced to 8 years imprisonment on count 1. Life imprisonment on count 2.
5. Accused 6 is sentenced to 8 years imprisonment on count 1. Life imprisonment on count 2.
6. Accused 7 is sentenced to life imprisonment on count 2. He is declared unfit to possess a firearm.

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In the matter between

LETUKA JEFFREY AND 7 OTHERS

Appellant

and

THE STATE

Respondent

---

J U D G M E N T

[LEAVE TO APPEAL]

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MABESELE, J: The accused are convicted of conspiracy to murder and murder read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997. Their sentences are between 15 years imprisonment to life imprisonment.

The accused now appeal against convictions and sentences as



follows.

- (i) Accused 1, 5, 6 and 7 appeal against convictions and sentences on both counts.
- (ii) Accused 3 and 4 appeal against convictions only on both counts.

The argument raised in respect of convictions is that the State failed to prove its case beyond reasonable doubt in that the evidence of a single witness was not reliable and evidence of pointing out of accused 7 and were wrongly admitted. It was argued on behalf of accused 1, 5, 6 and 10 7 that the sentences imposed on them are harshly inappropriate.

I have considered the arguments raised by both legal representatives of the accused and the State counsel and I am of the view that none of the accused has prospects of success on appeal both on convictions and sentences.

Therefore leave to appeal in respect of each accused, both on convictions and sentences is refused.

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