IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

APPEAL CASE NO: CA75/2018

REGIONAL MAGISTRATES

CASE NO: RC 1/93/15

Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

In the matter between:

KAITSHEKA THAPELO STEPHEN **APPELLANT**

and

THE STATE **RESPONDENT**

Coram: Petersen J & Williams AJ

Date heard: 27 November 2023

Date handed down: 28 February 2024

ORDER

On appeal from: The Regional Court Stilfontein, North West Regional Division, (Regional Magistrate Senekal siting as court of first instance):

1. The appeal against conviction on counts 1 and 2 is dismissed.

2. The appeal against sentence on counts 1 and 2 is upheld and the sentence imposed is replaced with the following sentence:

   Count 1: Fifteen (15) years imprisonment in terms of section 51(2) of the Criminal Law Amendment Act 105 of 1997.

   Count 2: Fifteen (15) years imprisonment in terms of section 51(2) of the Criminal Law Amendment Act 105 of 1997.

3. In terms of section 103(1) of the Firearms Control Act 60 of 2000, the appellant shall remain unfit to possess a firearm.

4. The sentences are ante-dated to 27 March 2018."

JUDGMENT

THE COURT

[1] The appellant was tried before the Regional Court, North West, at Stilfontein. He was convicted on two counts of murder read with the provisions of section 51(1) and Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 ('CLAA'), on the basis that the murders were alleged to be premeditated. On 27 March 2018 he was sentenced to two terms of life imprisonment and declared

unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000. The appellant appeals his conviction and sentence on both counts and comes before this Court by virtue of an automatic right of appeal.

[2] The appellant advances numerous grounds for the appeal on conviction on both counts. The grounds of appeal against conviction are essentially that the trial court erred in accepting that the State proved the appellant's guilt beyond a reasonable doubt and in particular that the appellant murdered the deceased; that the trial court erred in its evaluation of the evidence by finding that the contradictions in the state case were not material and failed to deal with them; that the trial court erred in accepting the version of the state and rejected the version of the appellant; and that the trial court erred in finding that the appellant had killed the deceased with premeditation.

[3 On sentence the appellant contends that the trial court erred in imposing a sentence of life imprisonment by failing to give sufficient weight to the personal circumstances of the appellant; and erred in over emphasizing the seriousness of the offence and the interests of the society. If this Court sets aside the finding that the murders were premeditated, the sentences of life imprisonment will axiomatically fall away and this Court will have to consider sentence afresh.

Summary of evidence for the State

Count 1

[4] On count 1, the State alleges that the appellant on 30 October 2014 at or near Buffelsfontein Shaft 3, with premeditation, murdered Lekomela James Hlasa ("the deceased"). The State relied on the evidence of five witnesses: Mr Petrus Boi Mazanzane, Mr Mokhele Eric Mokhalanyane, Mr Jeremia Goitsemang Motobe, Mr Thabang Monoketsi and Dr Shalendra Lala. Ballistic Evidence related to gunshot primer residue and the firearm used by the appellant was adduced and admitted in terms of section 212(4)(a) of the Criminal Procedure

Act 51 of 1977. The findings are not in issue as the appellant admits to using the firearm and firing a shot from it. Photograph evidence was adduced of the scene of the crime (Exhibit “B”). The evidence on count 1 may be succinctly summarized as follows.

Mr Mazanzane

[5] According to Mr Mazanzane, who worked for a company called Shedza Security as a security guard, he was on duty on the afternoon of 30 October 2014 at Buffelsfontein Mine Shaft 3. He was in the company of four of his colleagues, Mr Mokhalanyane, Mr Motube, Mr Mapusega and Mr Mauto. They were in the process of handing over the guarding of the Eskom substation (“the substation”) at the mine, to a new security company, Saduma Security. The appellant, whom he met for the first time that day, was employed by the new security company, and present at the hand over.

[6] As they were showing Saduma Security around, they noticed two men entering the substation. When they approached the two men, these men ran from the substation. Mr Mazanzane, the appellant, Mr Mauto and Mr Mokhalanyane gave chase on foot, as these men were not allowed in the substation. Messrs Motube and Mapusega gave chase with a white Isuzu bakkie (“the bakkie”). Mr Mazanzane and the appellant drew their firearms as the site was dangerous, and they suspected that the two men were running to draw them closer to the rest of the people they were with. They also feared that the men might be armed.

[7] When the bakkie cut off the two men, they wanted to turn back but the security officers were in pursuit on foot, behind them. The two men were apprehended and ordered to lay on the ground. Mr Mazanzane holstered his firearm when the two men complied. One of the two men who were apprehended, was the deceased, and a Thabang Monoketsi (“Monoketsi”).

[8] Mr Mazanzane instructed the two men to get onto the back of the bakkie, which did not have a canopy. Mr Monoketsi obliged and got onto back of the bakkie, but the deceased put up a struggle. It is only after Mr Mazanzane got onto the back of the bakkie that the deceased obliged. Mr Mazanzane noticed that the deceased was armed with a knife and dispossessed him of the knife. The deceased and Mr Monoketsi who were seated on the back of the bakkie with their backs to the cabin, were instructed to lie down on their stomachs, and they refused. As the security officers continued arguing with the two men, the appellant and Mokhalanyane arrived and stood on the ground, at the back of the bakkie.

[9] Mr Mazanzane handed over the knife to the appellant. In the process of climbing from the back of the bakkie, Mr Mazanzane heard a gunshot. At that time his attention was focused on the appellant who shouted out *"I got him"*. The appellant had his firearm in his hand pointing in the direction of the deceased and Monoketsi. Mokhalanyane was standing behind the appellant and Maposega and Motube were inside the cabin of the bakkie at the time the gunshot rang out. Following the gunshot, Mr Mazanzane observed the deceased bleeding. The deceased who was still alive, was talking to Monoketsi.

[10] They drove to the front of the substation where the control room phoned for the police and an ambulance. All the dramatis personae as aforesaid stood close to the deceased, waiting for the police and ambulance to arrive. Whilst waiting for the police and the ambulance, the deceased passed on. According to Mr Mazanzane when the police eventually arrived, they took possession of the knife seized from the deceased, and the firearm used by the appellant. Mr Mazanzane was unable to explain under cross examination, when referred to photographs of the scene, why the knife was under the left hand of the deceased and how if it was in possession of the appellant, it got back to the deceased.

Mr Monoketsi

[11] According to Mr Monoketsi he was with his friend (“the deceased) on the fateful day. Whilst walking on a gravel road passing the back of the substation, they noticed two security officers armed with firearms, running towards them. They stopped and as they stood there the security officers arrived, pointed their firearms at them and instructed them to lie on the ground. One of the security officers holstered his firearm but the other kept his firearm in his hand. A white Isuzu bakkie without a canopy arrived, and the security officers instructed them to stand up and get onto the back of the bakkie.

[12] Mr Monoketsi did as instructed and got onto the back of the bakkie, where a security officer who was at the back of the bakkie with him, searched him. The deceased got on the bakkie, and he too was searched. A knife, about 40cm in length with a blue handle and a long blade, was found on the deceased. Mr Monoketsi knew the deceased to be a member of a gang and he always had a knife on him to defend himself against attacks from other gangsters. The knife taken from the deceased by the security officer who searched him, was kept by the said security officer. At that time there were two other security officers and no occupants in the cabin of the bakkie. The appellant, whom he met for the first time that day, was the driver of the bakkie.

[13] The deceased questioned the reason for their detention as they were just walking by on their way to Khuma. As Mr Monoketsi and the deceased sat at the back of the bakkie, the security officer who searched them got off the bakkie in possession of the knife. He started looking around on the ground. The appellant told the deceased that he was talking too much, took out his firearm and shot the deceased who was still seated at the back of the bakkie.

[14] After the appellant shot the deceased, the security officers got onto the bakkie, and the appellant drove to the front of the substation. While they were driving the deceased tried to talk to him. Mr Monoketsi took his woolen hat and pressed it

against the neck of the deceased to stop the bleeding. When they arrived at the front of the substation, other security officers arrived and enquired about what had happened, and who had shot the deceased. An ambulance was summoned.

[15] When the ambulance arrived, the deceased was declared dead. The police were then phoned. Whilst waiting for the police, the appellant took the knife from the security officer who had searched them and placed it back in the hand of the deceased. When the police arrived, Mr Monoketsi was questioned and pointed out the appellant as the one who shot the deceased.

[16] According to Mr Monoketsi the appellant was not one of the two security officers who came running towards them and those two security officers were unknown to him.

Mr Motobi

[17] Mr Motobi was employed by Shedza Protective Services. Between 15h00pm and 16h00pm that fateful day, he was on duty. He was with his colleague Mr Maposega as a passenger in an Isuzu bakkie without a canopy, patrolling the substation at Shaft 3 when they met the appellant and a white male who was driving a white Nissan MP200 bakkie. Six of his co-workers were with the appellant who worked Saduma Security. One of his co-workers saw two men at the opposite side of the substation. The appellant, Mr Mazanzane and Mr Mokhalanyane decided to run after the men. Although he remained with Mr Maposega, Mr Mazanzane called out to them to assist.

[18] When arrived where Mr Mazanzane was, he had already ordered the two men to lie on the ground on their stomachs. Mr Mazanzane was alone with the two men. Mr Mazanzane ordered them to get onto the back of the bakkie. Messrs. Motobi and Maposega remained seated in the cabin of the bakkie. The appellant emerged from the bushes making his way towards them. Mr Motobi did not see

Mr Mokhalanyane at that stage. He took out his occurrence book and noted the incident. Mr Maposega reversed the bakkie slightly. The appellant at this stage was close by but still making his way towards them. Whilst Mr Motobi was still noting the incident in his occurrence book, he heard a gunshot. The bakkie stopped and Mr Maposega alighted. Mr Maposega shouted out that the person who was seated behind him on the bakkie was shot in the neck. As he looked at Mr Mazanzane and the appellant, he noticed that the appellant had a firearm which was pointed at the ground. The appellant at that stage uttered the words *"I got him"*. The appellant uttered these words three times. From his observation the appellant was angry. Mr Mokhalanyane emerged from the bushes making his way towards them.

[19] The appellant instructed them to move the bakkie, still visibly angry. They drove off and stopped at the front of the substation. Mr Matobi could not recall who phoned the police as the incident transpired a long time prior to his evidence, and he was in shock on that day since the deceased was seated behind him on the back of the bakkie and if the shot missed the deceased, it could have struck him. The police arrived after some time. Mr Monoketsi who was with the deceased was still on the back of the bakkie with the deceased. The police enquired who shot the deceased and the appellant confirmed that it was him. The appellant handed over his firearm to the police.

[20] According to Mr Matobi he did not see when Mr Mazanzane searched the deceased and Mr Monoketsi as he and Mr Maposega remained seated in the cabin of the bakkie, as he was filling in his occurrence book. He was not present when the knife was found and only saw the knife, which looked like a butchers' knife with a blue handle when Mr Mazanzane gave the knife to the appellant. Before the police arrived, the appellant placed the knife in the hand of the deceased. None of the security officers confronted the appellant when he did that, as they afraid of him and his angry disposition.

[21] It is Mr Matobi's evidence that he did not hear any of his colleagues shout *"watch out"* to the appellant to warn him of any danger.

Mr Mokhalanyane

[22] According to Mr Mokhalayane he was on duty as a security officer for Sedza Security at Shaft 3 at the Eskom substation. When the Eskom workers left, he remained with a white male and the appellant. A colleague Mr Marumagaye saw two men on the opposite side of the Substation. Mr Mokhalayane, Mr Mazanzane and the appellant decided to investigate who the two men were and the reason for their presence at the substation. They proceeded on foot. When they got closer the two men started running and hid in the bushes where they could no longer see them. They split up and took different directions. Mr Mokhalayane heard Mr Mazanzane screaming out that they found the men. He turned and walked towards them.

[23] On his way to his colleagues he heard a gunshot. When he reached his colleagues, he saw Mr Mazanzane and the appellant who had his firearm in his hand pointed to the ground. A bakkie was on site and he saw Messrs. Maposega and Motobi in the bakkie. He noticed two black males on the back of the bakkie, with one bleeding from the neck. The appellant told him that he shot the man. Mr Mazanzane was holding his head and looked afraid. Mr Mazanzane said that it was not safe there and that they should drive to the front of the substation where there were other people. Mr Mokhalayane did not get on the bakkie but walked to the front of the substation. The appellant walked behind the bakkie. When they arrived at the front of the Substation, he got into another bakkie as he was shocked. He remained in the bakkie until the ambulance and the police arrived. He did not see the knife.

Dr Lala

[24] Dr Lala holds a MBChB from the University of Natal. He has no other qualifications. He has been in private practice for 20 years and, the past five years he has assisted the Department of Forensics with post- mortem examinations. He is registered with the National Medical Board of South Africa. He performed the post-mortem examination of the deceased.

[25] Dr Lala testified that the entrance of the bullet was above the sternum notch which is the bone in the centre of the front of the chest. The entrance wound measured 1 x 1 centimetre in diameter. The bullet was located slightly to the left of the sternum notch and not in the centre. The bullet exit wound was on the back left hand side of the deceased, 4 centimetres to the left of the midline of the back or the spine in the space between ribs number 4 and number 5. He concluded that from the wounds, the trajectory of the bullet was from front to back angled slightly to the left and slightly downwards. Which means the trajectory of the bullet was from top to bottom.

[26] Two scenarios were put to him. The first scenario was that the deceased was standing upright on the back of the bakkie and that the person firing the shot was standing on the ground. His evidence was that this scenario is unlikely, as it did not correspond with his findings on the entrance and exit wounds found on the deceased. According to Dr Lala, if the deceased was standing upright on the back of the bakkie and the person shooting was on the ground at the back of the bakkie, the trajectory of the bullet would be from bottom to top. The person shooting would be on a lower level and therefore the trajectory of the bullet would be from bottom to top.

[27] The second scenario was that the deceased was sitting, and the person shooting was standing on the ground at the back of the bakkie. His evidence was that from the wounds of the deceased, the scenario would be that the person firing the shot, or the gun was either at a slightly higher level than the deceased or equal to. The trajectory of the bullet was from top to bottom. According to Dr Lala, the

scenario that the deceased was sitting is more consistent with the injury of the deceased and therefore more likely or probable.

[28] The photographs taken by the police of the wounds of the deceased confirm Dr Lala's report on the entrance and exit of the bullet. The cause of death of the deceased was found to be consistent with excessive blood loss due to gunshot injury of the great vessels of the neck and the chest.

The evidence of the appellant on count 1

[29] The appellant does not dispute that the deceased died of a single gunshot fired himself at the deceased. The appellant, however, raises self-defence as a ground of justification.

[30] The appellant testified in his defence with no other witnesses called. The appellant was employed by Saduma Security Company as an area manager and at the time of the incident he had been employed in that capacity for five years. On 30 October 2014, he was on duty at Harties Shaft 3 in possession of a company firearm, a .38 special revolver. Saduma Security was handing over the protection services of the substation to a company called Shedza. Also present on site was a security company, SSG Security.

[31] Whilst in site, he observed two men on the premises of the substation. This was observed by security officers from the other two companies as well. The responsibility of detaining any persons vested with these security companies. A joint effort was made to detain the two men. He proceeded on foot, accompanied by one of the security officers of Shedza Security. The other Shedza Security officers drove with a vehicle to the substation. Upon arrival at the Substation, the appellant found the two men already detained and seated on the back of the bakkie, which had no canopy. The Shedza security officers suggested that they move the bakkie to the front of the substation, as there was a veld close by and

since they could not see, there was a possibility of others hiding in the veld. The reason for detaining the two men was because of the problem with cable theft at the substation.

[32] They all proceeded to the front of the substation. Upon arrival they entered the substation to investigate if something was amiss with the cables, since they did not know if any cables had been stolen. They could not enter the room where the transformers are housed as it was locked, and they did not have the keys for the room. They went back outside and proceeded to the bakkie where the two detained men were. According to the appellant he stood about 2 to 2.5m from the flap of the back of the bakkie (loading bin as he called it), talking to one of the security officers from SSG Security whose surname he could not recall. His back was towards the two men on the back of the bakkie. The SSG security officer yelled at him in the words *"Letseka"*, look back. As he turned and looked back, he saw one of the two men walking on the edge of the loading bin with a knife raised over his head. It is the version of the appellant that when he shot the deceased, the deceased was standing. He drew his firearm and pulled the trigger shooting the said man below his neck. The man, identified as the deceased, fell backwards in the loading bin of the bakkie and went to sit with his back leaning against the loading bin with the knife still in his left hand. The security guard from SSG security that he was talking to told him that he said that he was fortunate or lucky.

[33] According the appellant when he fired the shot, it was not his intention to kill the deceased, but to defend himself. He went on to explain that that when he turned around the deceased was close to him, he would not have been able to move away, and the deceased would have stabbed him on his left shoulder. Also, he maintained, there was no way for him to move away because the site was a mine with lots of trees and rocks and stones around. When he saw the deceased with a knife, he could not shoot him on any other part of his body as the deceased

was close to him. The appellant maintained that he was under stress or pressure and afraid at the time.

[34] According to the appellant he instructed the security officers who were with him, not to touch the deceased. He called the police, an ambulance, and his wife. The last time he saw the knife was when the deceased had the knife in his left hand.

Summary of evidence for the state

Count 2

[35] On count 2, the State alleges that the appellant on 20 March 2015 at or near Buffelsfontein Shaft 2, with premeditation, murdered Thobani Mpondweni ("the deceased"). The State relied on the evidence of five witnesses: Mr Bongani Dube, Mr Petrus Mothibedi, Mr Bafunali Shadrack Leshowe, Dr Sefanyetso and Constable Joseph Mokoena. The evidence on count 2 may be succinctly summarized as follows.

Mr Dube

[36] According to Mr Dube, on 20 March 2015 at around 13h00, he was with his friend Thobani ("the deceased") in the Harties Shaft 2 area. They were busy collecting scrap metal removed from the ground by mineworkers at the mine who were cleaning up the area and disposing of the scarp metal. There were about nine other people also collecting scrap metal and they were all doing so to make some money for themselves. They were working in different groups scattered around the area. None of them were employed by the mine or any contractor. They had no permission to be in the area but the mineworkers knew that they were only there to collect scrap metal to sell and make a living.

[37] Whilst busy collecting scrap metal, he noticed the other scrap metal collectors running away. When he and the deceased saw the appellant coming, they also

ran away. He knew the appellant from the Salvage mine, where he used to see him chasing people. The appellant, however, was a security guard at the Vuselela College ("the college") opposite the Salvage mine.

[38] When he saw the appellant on the day of the incident, the appellant was about 40 metres from them, standing in front of a VW Golf ("the VW") which was parked next to the tar road. The appellant was alone. About 20 to 30 metres behind the VW was a white Ford Bantam ("the Bantam"). While he and the deceased were running away, the appellant shot the deceased in his back and the deceased fell to the ground. He only heard one shot being fired. When the shot was fired the man from the Bantam was also outside his vehicle with a firearm pointed to the ground. That man, however, was not the one shooting at them. When the appellant fired the shot, the man from the Bantam was on his way towards them. After the shot the man went back to the Bantam and drove to where the VW was parked.

[39] Mr Dube ran to the shaft to call the security guards from SSG Security. The appellant in the meantime, went to the deceased. The appellant looked at the deceased, returned to his car and drove away. The man with the Bantam remained behind. When the appellant returned to the scene, he was accompanied by security guards from SSG Security. The police were already on the scene when the appellant returned, and the police arrested him. The police obtained statements from them and retrieved the appellant's firearm from underneath the front of the driver's seat of his VW. At that time, the appellant was already detained.

Mr Mothibedi and Mr Leshowe

[40] The evidence of Messrs. Mothibedi and Leshowe is essentially the same. They testified that on 20 March 2015, they were on duty at Vuselela College working for the Saduma Security Company. The appellant was their manager. The appellant requested them to accompany him to the petrol station to put petrol in

the Bantam and his VW. The appellant left in his VW and they followed him in the Bantam. When they reached shaft 2, they saw many illegal miners. The area where the illegal miners were working, does not resort under their protection services, as they only worked at the college. They heard a gunshot and stopped the Bantam. They did not see the appellant firing the shot, but when they saw the appellant, he was standing outside the VW next to the driver's door with the driver's door open. After the shot was fired all the illegal miners ran away in different directions. Mr Leshowe alighted from the Bantam and walked in the direction of a mine dump. Mr Mothibedi remained at VW and Bantam as the cars were open.

[41] Mr Mothibedi saw one person crawling on his knees on the ground. The appellant was walking to this person and when he got to him, he was lying still on the ground. The appellant was calling out to Mr Leshowe. When Mr Leshowe came around the mine dump he found the appellant standing at the deceased. They heard the appellant screaming at the illegal miners that they must leave and that the police were on their way. When Mr Mothibedi and Leshowe approached the appellant, he was walking towards them. The appellant instructed them to leave because he had to attend a meeting with his managers. When they got back to the cars, the appellant requested them to assist him to look for the used cartridge. Mr Mothibedi found the cartridge on the ground in front of the VW on the passenger side. Mr Mothibedi gave the cartridge to the appellant, they got into their cars and drove to Keurboom petrol station. They left without asking any questions because the appellant was the kind of person who only speaks once.

[42] When they left the petrol station the appellant instructed them to take a different route back to the College as he was afraid that they might cross paths with the illegal miners. At a fourway stop in Stilfontein the appellant was stopped by a security officer from another company. Messrs. Mothibedi and Leshowe continued to drive to the College. After a while the appellant arrived at the college

and asked Mr Leshowe to give him a firearm. The appellant took a silver 38 Special revolver and signed for it. The appellant was always in possession of a company 9mm firearm marked with serial numbers 9[...] which was booked out to the appellant permanently. When the appellant took the silver 38 Special, there were no bullets in it. The appellant took bullets from Mr Mothibedi and loaded the silver 38 Special. It was around 11h00am when the appellant took the silver 38 Special, but he signed 06h00am in the firearm register as the time that he took the silver 38 Special. After the appellant took the silver 38 Special and the bullets, Mr Leshowe drove to Khuma location to fetch bullets from his house. The appellant also drove to Khuma location. Mr Leshowe returned to the campus and gave Mothibedi the bullets to replace the ones that the appellant took from Mr Mothibedi.

[43] After a while the appellant returned to the campus accompanied by the police. The appellant changed into short sleeve shirt, as he was previously wearing a long sleeve shirt. The police requested to inspect the firearms of Mr Leshowe and the appellant. The appellant handed over the silver 38 Special for which he had just signed. Mr Leshowe handed over his Sportsman firearm, which is a smaller caliber than a 9mm pistol. The police requested the appellant and Mr Leshowe to accompany them to the scene. At the scene the police asked the illegal miners to identify the person who shot the deceased, and they pointed out the appellant. The police inspected the hands of Mr Leshowe and the appellant for gunshot residue. After a while the police arrested the appellant.

[44] The appellant phoned Mr Mothibedi and requested him to get rid of the 9mm firearm marked 9[...]. The appellant told Mr Mothibedi that he threw the 9mm firearm in the grass next to a tap at the guardhouse. Mr Mothibedi went to the guardhouse and found the firearm in a small black plastic bag. Mr Mothibedi did not open the bag but could feel that it was a firearm and threw the firearm on the roof of the guardhouse. Mr Mothibedi phoned Mr Leshowe the next day and told

him about the firearm, where to find it and that the appellant asked him to get rid of the firearm.

[45] Mr Leshowe informed Mr Mokoena, a police officer about the firearm. Mr Mothibedi was not with the police when they found the 9mm firearm on the roof of the guardhouse. When Messrs. Mothibedi and Leshowe were shown the photo album of the firearm, they confirmed it as the company 9mm firearm that the appellant was always using. They confirmed that the 9mm firearm was booked out permanently to the appellant and that the firearm register could confirm that.

Dr Sefanyatso

[46] Dr Sefanyatso has a Bachelor of Medicine and Surgery and a diploma in Forensic Pathology. She started practicing as a pathologist in Klerksdorp in January 2015. She worked as a medical officer in forensic pathology for two years, whereafter she went to GaRankuwa Forensic Pathology Services where she was a registrar for five years working as a medical officer in forensic pathology. She is still registered with the Medical Board of South Africa.

[47] Dr Sefanyatso testified that the entry and exit bullet wounds of the deceased measured 120 cm above the heel. The entry wound is on the back of the deceased and the exit wound is on the front of the deceased's body. The entry bullet wound of the deceased measured 9 millimeters. The wound was perfectly round and had no fragments from a secondary surface. The entry wound of the deceased did not have the shape of a wound caused by a bullet that ricocheted as a bullet that ricochets causes a specific entrance wound where the wound would be jiggered and bizarre and normally a bigger wound which can be bigger than the original bullet with rugged markings. If a bullet hits a surface and ricochets there will be fragments from the surface around the entrance wound. Based on the above she concluded that the chances are very slim that the wound of the deceased was caused by a bullet that ricocheted.

[48] The bullet that hit the deceased caused damage mostly to his lungs and his heart. An injury to the heart is almost always fatal and can cause instant death.

Constable Mokoena

[49] He was the investigating officer in the matter. He received the company firearm register from the colleagues of the appellant. He made copies of the register and returned it. According to the firearm register the 9mm firearm was only booked out once to the appellant. It was never booked in after the appellant signed for it. The 38 Special was booked out for the first time to the appellant on 20 March 2015 when the appellant gave the police the 38 Special. The 38 Special was not the weapon that killed the deceased. The 9mm pistol that was always in the possession of the appellant was linked as the weapon that killed the deceased. They found the 9mm pistol which is registered in the name of the Saduma Security Company on the roof of the guardhouse. During his investigation he tried to get hold of the owners of the Saduma Security Company without success.

The evidence of the appellant on count 2

[50] According to the appellant he was on duty on 20 March 2015 at Harties No 2 at Vuselela College, where he is employed by the Saduma Security Company. He was on patrol doing round checks, in possession of a nickel 38 Special revolver with six rounds in it. That morning, he called all the security officers to inspect the firearms to see if they were in a working condition. The company had 6 firearms, two 9mm firearms and 4 38 Special revolvers. On his version he only had the 9mm marked with serial number 9[...] in his possession when he was inspecting the firearms.

[51] When he was done patrolling on his rounds, he requested asked Messrs. Mothibedi and Leshowe to accompany him to the petrol station to fill the Bantam and his VW. He drove ahead in his VW. As he approached Shaft 2 at the substation, he saw people running, some in front of his car and some behind his car. Since he was not driving fast, he applied the brakes. The manner the people were running created the impression that they were running from something or something was chasing them. He stopped, opened the driver's door and as he opened the door, he heard a shot being fired. He took cover behind the car's door and retrieved his firearm and fired two rounds into the ground, once satisfied that there was no one around and that it was clear of people when he fired the shots. He fired those shots because with 10 years working experience at the mines, he knew that the people at the mines carried rifles and guns. He further explained that he fired the shots because he wanted to follow where the initial shot was coming from.

[52] After firing the two shots there was silence, and only the sound of people crossing the tar road. He put his bullet proof vest on and stood on the tar road. He did not follow these people who were running into the bush. After he put on his bullet proof vest his colleagues came and parked behind him. Both got out of the Bantam with their firearm sin hand and told him that they heard shots being fired. He told them that the people ran into the bush and that he had fired two shots. At that time, they were the only people there. They checked the area and were told to leave as the appellant still needed to go to Klerksdorp and Potchefstroom.

[53] The appellant maintained that he used a revolver, which keeps cartridges. On his version he called the Stilfontein police station and reported the incident as per his version above. The police informed him that they would send a patrol vehicle to scene of the incident. The appellant explained that he went home on that day to address a personal issue with his wife, and he did not deem it appropriate to discuss the matter over the phone. He was on his way to Klerksdorp from his house when he found SSG security at the four way stop. The manager of SSG

Security asked him to pull over and informed him that someone was shot at the mine and that people were saying that he shot the person. The manager asked him to accompany him to the scene because the police were already waiting there. The manager got in his car with him. They drove to the scene and the manager asked him to see his firearm. When they arrived the police told him that the people are saying that he is the one that shot and killed the person that was lying a distance from them. The Captain asked for his firearm which he handed over. It had four bullets with two used cartridges in the chamber of the firearm. He maintains that he did not change his clothes, and that he only had a 38 Special revolver in his possession on that day.

The test on appeal - conviction

[54] It is trite that a court of appeal will not overturn a trial court's findings on fact unless they are shown to be vitiated by material misdirection or are shown by the record to be wrong. See *S v Francis* 1991 (1) SACR 198 (A) at 204 c-e.

Discussion (Conviction)

Count 1

[55] The appellant's defence on count 1 is that he acted in self-defence when he shot and killed the deceased. This version was put to all the State witnesses. It was therefore incumbent on the State to disprove beyond a reasonable doubt the appellant's ground of justification of self-defence (private defence).

[56] *Snyman, Criminal Law* defines private defence as:

"A person acts in private defence, and her act is therefore lawful, if she uses force to repel an unlawful attack which has commenced, or is imminently threatening, upon her or somebody else's life, bodily integrity, property or other interest which deserves to be protected, provided the defensive act is necessary to protect the

interest threatened, is directed against the attacker, and is reasonably proportionate to the attack."

See *S v Engelbrecht* 2005 2 SACR 41 (W) paragraph 228; *S v Steyn* 2010 1 SACR 411 (SCA) paragraph 16 and *Ernest v S* (AR66/2020) [2020] ZAKZPHC76; 2021 (1) SACR 324 (KZP) (10 December 2020) at paragraph 15.

[57] The requirements for private defence are twofold, first there are requirements with which the attack, against which a person acts in private defence, must comply; and second, requirements with which the defence must comply.

[58] *Snyman* very succinctly sets out the requirements for both groups, relevant to the present appeal, as follows:

"3 Requirements of the attack

(a) The attack must be unlawful. A person cannot act in private defence against lawful conduct.

(b) The attack must be directed at an interest which legally deserves to be protected Most often a person acts in private defence in protection of her life or bodily integrity, …

(c) The attack must be imminent but not yet completed.

…

4 Requirements of the defence

(a) It must be directed against the attacker.

(b) The defensive act must be necessary.

(c) There must be a reasonable relationship between the attack and the defensive act.

It is not required that there be a proportional relation between the weapons or means used by the attacker and the weapons or means used by the attacked party. If the person attacked may not defend herself with a different type of weapon from the one used by the attacker, it follows that the attacker has the choice of weapon, and such rule would obviously be unacceptable.56 X may ward off an attack on her by Y by shooting and killing Y even though Y has no weapon, because one person is capable of killing another merely by using her hands. This is especially the case if Y is young and strong whereas X is physically relatively weak.

(d) The attacked person must be aware of the fact that she is acting in private defence."

[59] It is against these requirements that the factual findings of the court *a quo* must be tested. The evidence of Mr Motobi in a nutshell was that he did not hear any of his colleagues shout out to the appellant to watch out to warn him of any danger; that all he heard was the gunshot and the appellant at that stage utter the words *"I got him"* three times. What is telling about his evidence is that he did not see Mr Mazanzane searching the deceased and Mr Monoketsi and the finding of the knife, but only saw the knife when Mr Mazanzane handed the knife to the appellant; and the appellant placing the knife in the hand of the deceased before the police arrived. On his version none of the security officers confronted the appellant when he did that, as they were afraid of him and his angry disposition. Particularly telling about his evidence is that the deceased was seated on the back of the bakkie with his back against the cabin of the bakkie where he Mr Mothobi was seated. This troubled Mr Mothobi since he could have been shot of the bullet missed the deceased.

[60] The evidence of Mr Monoketsi which cannot be overlooked is that the deceased and him himself were searched by a security officer and a knife was found in possession of the deceased. That knife, however, he testified was kept by that security officer, who is not the appellant. That he contradicted evidence that the appellant was the driver of the bakkie and that there were no occupants in the front of the bakkie at the time is given but is not material to the shooting incident. It would provide no explanation why Mr Mothobi would claim that he could have been killed by the very bullet that claimed the life of the deceased. On his evidence the deceased was questioning the reason for their “arrest”/detention and remonstrating with the security officers. Evidence is that the appellant before shooting the deceased told him that he was talking too much.

[61] The evidence of the state witnesses with contradictions and inconsistencies must be considered as a whole with the version of the appellant, and not in isolation to establish the probabilities. In that regard the material evidence of Mr Monoketsi that the deceased was seated at the back of the bakkie against the cabin when he was shot by the appellant who told him he was talking too much before shooting him, with the knife which a security officer found when searching the deceased being handed over to the appellant; must be considered against the evidence of Mr Mothobi that the deceased was seated against the cabin at the back of the bakkie after the shot was fired and that the appellant had the knife in his possession which he placed in the left hand of the deceased before the police arrived, with his evidence that the security officers were scared of the disposition of the appellant. Against this the photographic evidence of where the deceased was when the photos were taken and Dr Lala’s evidence which accords with the deceased being seated when shot and not standing, is pivotal to the factual findings on the defence of private defence raised by the appellant.

[62] The photo album of the crime scene, “Exhibit B” and photographs marked 6 to 10 shows the position of the deceased when the photographs were taken. The deceased is seen seated with his back against the loading bin. Mr Mothobi and

Mr Monoketsi testified that the deceased was seated against the cabin of the bakkie. The photographs show the deceased sitting with his back against the loading bin. This raises the question whether the deceased was moved from where he would have been seated against the cabin of the bakkie on the evidence of Mr Mothobi and Mr Monoketsi to the loading bin. That the trial court did not deal with this issue is clear. Does that, however, lend credence to the version of the appellant that the deceased was standing with a knife held up in his hand ready to stab (attack) when he shot the deceased.

[63] Adv Cowley for the appellant contended at the hearing of the appeal that if the deceased was sitting when he was shot, it is probable that the bullet would have hit the bakkie. And since there is no evidence that the bullet hit the bakkie, it is likely that the deceased was standing up in the loading bin of the bakkie when he was shot. He submitted that it was incumbent on the State to procure ballistic evidence to deal with the question whether the deceased was standing or sitting when he was shot. Since there is no evidence before the trial court about what happened to the bullet after it passed through the body of the deceased, the submission was that the question about the bullet remains unanswered.

[64] The trial court relied on the evidence of Dr Lala that it was more likely that the deceased was sitting down when he was shot. Dr Lala's expertise was not disputed. The evidence of Dr Lala was not gainsaid by any other expert evidence that from the wounds, the trajectory of the bullet was from front to back angled slightly to the left and slightly downwards. Which means the trajectory of the bullet was from top to bottom.

[65] In fact, Dr Lala was confronted with two scenarios as to the likelihood of how the deceased was shot. The first scenario being that the deceased was standing upright when shot and the second that he was seated. Dr Lala rejected the first scenario which did not accord with his findings on the trajectory of the bullet wound which was top to bottom; and not bottom to top. On the appellant's own

version as to where he was standing when he fired the shot, it does not accord with his version that the deceased was standing when he shot him.

[66] The version of the appellant, whether on the basis found by the trial court or the probabilities of the evidence considered as a whole, with the contradictions inherent in the evidence, is improbable. The versions of Mr Mothobi and Mr Moneketsi accords with the probabilities that the deceased was seated when he was shot. It would further accord with the evidence of Mr Monoketsi that the deceased was shot simply because he was talking too much, or because of his remonstrating with the security officers over their detention.

[67] The implication of these probabilities and findings is that on the requirements for an attack relevant to private defence, that the version of the appellant was correctly rejected as there was no attack on him to justify shooting the deceased. The evidence demonstrates that the appellant without justification and clearly perturbed by the deceased questioning the authority of the security officers in detaining him, shot the deceased at point blank range in the sternum, where the probability of death was inevitable.

[68] The appeal on conviction on count 1 must accordingly fail on the facts alone. The only question which remains on count 1 is whether the facts speak to premeditated murder. This aspect is dealt with later as it impacts count 2 as well.

Discussion (Conviction)

Count 2

[69] The appellant assails his conviction on count 2 on the allegation that the State failed to prove that he shot the deceased; and that the trial court erred in finding that the state witnesses testified honestly and truthfully while ignoring that it was clear that they were falsely incriminating the appellant.

[70] Two of the state witnesses Messrs. Mothibedi and Leshowe, were employed by the same security company as the appellant. The trial court found that the evidence of Messrs. Mothibedi and Leshowe corroborated each other in all material aspects. The evidence of Dube, a friend of the deceased was uncontested that he knew the appellant who appears to have developed notoriety in the area. Dube saw the appellant firing the shot that killed the deceased. Dube's evidence confirmed the evidence of Messrs. Mothibedi and Leshowe.

[71] If the version of the appellant were to be accepted that he stopped his car to avoid colliding with the illegal miners, it is inexplicable why he would fire shots. There was no imminent threat to him. On his version, he heard a gunshot and *"he shot because he wanted to follow where the shot was coming from"*. The trial court found this explanation so farfetched that no reasonable court would believe it. In particular, the appellant admitted his presence at the scene where on his version he fired two shots into the ground with a 38 Special revolver belonging to the security company he worked for, which he booked out that morning. He denied shooting the deceased with a 9mm pistol which the firearm register of the security company shows was booked out to him only once and never returned. In fact, Messrs. Mothibedi and Leshowe testified that the appellant was always in possession of the company 9mm firearm. The appellant was at pains to explain why he only signed the register for the 38 Special that morning but never before. The appellant arrived at the office, booked out the 38 special revolver at around 11h00am and recorded in the register that he booked it out at 06h00am. The only inference that can be made is that he signed for another firearm that day to cover up the fact that he shot and killed the deceased with the 9mm firearm.

[72] The evidence of his colleagues that they were requested to search for a cartridge case at the scene which was found and handed to the appellant was damning. The proverbial nail in the coffin is that he instructed Mr Mothibedi to get the 9mm pistol where he had disposed of it at the office and to get rid of it. Mr Mothibedi found it in a plastic bag and threw it on the roof of the guardhouse where the

police would later find it, after being told by Mr Leshowe who learnt about it from Mr Mothibedi.

[73] The evidence of the pathologist confirmed that the wound of the deceased was caused by a 9mm bullet. It confirms the evidence of the investigating officer that in terms of his investigation, the firearm that killed the deceased was not the 38 Special, but the 9mm that he found on the roof of the guardhouse. It further corroborates the evidence of Dube that they were running, and that the deceased was shot in the back.

[74] All the state witnesses confirmed that there were illegal miners in the vicinity of the scene, seeing the appellant standing outside next to the driver's door, hearing only one shot. The appellant's version that the state witnesses wanted to falsely implicate him was correctly rejected by the trial court as being without any merit.

[75] The appeal on conviction on count 2 also stands to be dismissed. What remains as with count 1 is whether the murder was premeditated.

Premeditation – counts 1 and 2

[76] In *Benedict Moagi Peloeole v The Director of Public Prosecutions, Gauteng* (740/2022) [2022] ZASCA 117 (16 August 2022), the SCA re-affirmed the decisions of the SCA on the question of pre-meditated murder, as follows:

"[9] Murder is and remains a common law offence, with all its elements of intent, unlawfulness and the act of killing of a human being (actus reus.) It is thus trite that in order for the State to secure a conviction on a murder charge, it must prove all the common law elements of the offence, including the element of intent (dolus)… The phrase 'planned or premeditated' is not an element of murder. It is a phrase introduced by the minimum sentence legislation (the Act), as one of the aggravating factors in the commission of murder… The question whether the

murder was planned or premeditated is thus relevant for sentencing, and not for conviction. Though the perpetrator in his state of mind may have both the intent and premeditation to commit the crime, the intent has to be present during the commission of the crime, while premeditation is, as a matter of logic, limited only to the state of mind before the commission of the crime… There is therefore, a symbiotic relationship between the two concepts, in that they both relate to the state of mind of the perpetrator.

…

[15] The question whether the crime was premeditated requires a consideration of the factual matrix of each case, in order to establish the state of the perpetrator's mind before the crime was committed. 6 This Court considered the question whether the murder was premeditated in two decisions, namely Kekana v S, 20147 (Kekana 2014), and Kekana v S, 20188 (Kekana 2018). In Kekana 2018 this Court held: 'In summary therefore, it was for the appellant to lay a factual foundation for a conclusion that the murders were not premeditated, and the issue was one for the trial court to decide. In coming to a decision, the court would have had regard to all the circumstances of the murders, including the appellant's actions during the relevant period. Anything short of this could not bind the court to the sentence in terms of s 51(2) of the CLAA.'

[17] The argument in relation to how long it took for premeditation to manifest was also raised in Kekana 2014, where the appellant had murdered his wife by pouring petrol on the bed, lighting it and locking her in the room. The wife died a few days later in the hospital. The appellant in that case pleaded guilty to the charge of murder, read with s 51(1) of the Act. Having found no substantial and compelling circumstances, the trial court sentenced him to life imprisonment for the murder count and five years' imprisonment for the arson count. The full court dismissed his appeal but this Court granted him special leave to appeal against the sentence of life imprisonment. As in casu, the appellant in Kekana 2014 was

aggrieved that the trial court had found that the murder was premeditated. He had contended that he acted in the ‘heat of the moment and that he had not conceived any plan to burn the house with the deceased inside.’ 10 At paras 12 and 13 of the judgment, this Court stated as follows: ‘Another argument advanced on behalf of the appellant was based on S v Raath, where it was held that to prove premeditation, the State must lead evidence to establish the period of time between the accused forming the intent to murder and the carrying out of his intention. In the present matter there is no evidence as to how much time passed between the appellant’s admitted decision to kill the deceased and when he doused the bed with petrol and set it alight. But a consideration of the appellant’s evidence suggests that it was a matter of a few minutes, at the least. In my view it is not necessary that the appellant should have thought or planned his action a long period of time in advance before carrying out his plan. Time is not the only consideration because even a few minutes are enough to carry out a premeditated action.’ (Footnotes omitted.) [18] Similarly, in Kekana 2018, this Court also found that the murders were committed with premeditation. In that case, the appellant faced 4 counts of murder read with s 51(1) of the Act, having killed his own children by cutting their throats. He also had a stormy marriage with their mother. The appellant in that case had, indicated 10 Footnote 7, para 5. 10 that he pleaded guilty to all counts ‘in terms of s 51(2) of the Act’, apparently to avoid a finding that the murders were either planned or premeditated as envisaged in s 51(1) of the Act. He was convicted and sentenced to 20 years’ imprisonment on each count of murder, 10 years’ imprisonment of the sentence on counts 2, 3 and 4. By operation of law, all sentences were ordered to run concurrently with the sentence on count 1. As regards the question of the period required for one to premeditate, Makgoka JA in Kekana 2018 held: ‘It was also submitted that the appellant’s conduct occurred on the spur of the moment, and that his actions were not premeditated. I disagree. The appellant’s overall conduct puts paid to that suggestion. It all began with the argument he had with his wife, after which he decided to commit suicide. He rationalised to himself that his children would suffer in his absence.

He killed the first child, after which he instructed one of the children to call his wife. He called his wife to listen to the horror of the killing. This conduct, to my mind, points to pre-planning or premeditation. In this regard, one must bear in mind what this court said in S v Kekana [2014] ZASCA 158 at para 13, that premeditation does not necessarily entail that the accused should have thought or planned his or her action for a long period of time in advance before carrying out his or her plan. This is because 'even a few minutes are enough to carry out a premeditated action.'11 [19] This Court, in both Kekana 2014 and Kekana 2018, has rejected the notion of determining whether the murder was premeditated one with reference to time. For the appellant's counsel to attempt to measure the time it took the appellant to murder his wife and daughter by estimating it as a matter of seconds (as opposed to a few minutes as stated in the two Kekana matters) is really clutching at straws; This submission is simply not borne out by the evidence. On his own version, which he still maintains, the appellant is hardly able to estimate the period it took to execute the murders. As late as 2019, before he was sentenced, the appellant persisted in accusing his nephew of the murders, even after that version was rejected by the high court."

Count 1

[77] On count 1, the evidence is that the appellant had his firearm in his hand, at all material times. Immediately before firing a single shot at the deceased, he told the deceased that he was talking too much. There are no other facts demonstrative of any tension or altercation between the appellant and the deceased before the shot was fired. The peculiar facts of the matter do not speak to premeditation when the authorities are considered. The conviction on count 1 therefore falls within the ambit of section 51(2) and not section 51(1) of the CLAA for purposes of sentence.

Count 2

[78] At the hearing of the appeal, *Adv Mabudisa*, for the respondent conceded that the murder was not premeditated. The trial court made a finding of premeditated murder on the following reasoning: *"There was no reason for the accused to stop at this area, this area did not fall under his jurisdiction. There was no form of provocation from the illegal miners during the incident thus the Court find that the accused while driving past the area and seeing the illegal miners he premeditated in killing the deceased."* There is no evidence justifying this drastic finding by the trial court on the peculiar facts of the matter, in circumstances where the appellant stopped his VW on seeing alleged illegal miners running in the vicinity and across the road. The fact that he alighted from his VW and fired a shot which killed the deceased does not speak to premeditation.

[79] The finding that the murder on count 2 was premeditated is a misdirection on the part of the trial court. The conviction on count 2 similarly falls within the ambit of section 51(2) and not section 51(1) of the CLAA for purposes of sentence.

Sentence

[80] The sentences imposed on counts 1 and 2 vitiated by misdirection on the finding of premeditation calls on this Court to revisit the sentences imposed. The CLAA prescribes a sentence of imprisonment of fifteen years for a first offender of any such offence. A court may however depart from the prescribed sentence if there are substantial and compelling circumstances that justify the imposition of a lesser sentence. In assessing whether the mandated minimum sentence is justified a court will consider any aggravating factors, mitigating factors and the nature and extent thereof.

[81] The appellant was 41 years old at the time that he was sentenced. He was married and had three children aged 15, 14 and 2 years old. The appellant was employed as an area manager before his incarceration. He was the only breadwinner and earned a salary of R15000.00. The appellant was in custody

since his arrest on 20 March 2015. He had a previous conviction of assault with intent to do grievous bodily harm and was sentenced on 25 May 2010 to R3000.00 or 8 months imprisonment wholly suspended for a period of 5 years on certain conditions.

[82] The murders were unprovoked and callous. There was no imminent or pending threat of harm to the appellant when he shot and killed the deceased in the two separate incidents. Section 11 of the Constitution of the Republic of South Africa, 1996 enshrines that:

"*Everyone has the right to life".*

The right to life was visited very early in our nascent democracy by the Constitutional Court in *S v Makwanyane* 1995 (3) SA 391 (CC) where Justice O'Regan said:

"... The right to life was included in the Constitution not simply to enshrine the right to existence..., but...to live as a human being, to be part of a broader community, to share in the experience of humanity. This concept of human life is at the centre of our constitutional values... The right to life is the most primordial right which humans have. If there is not life there is no human dignity."

[83] The trial court correctly considered the circumstances of the murders and made several observations, which are apposite for purposes of sentence. The appellant was a security officer in a managerial "authoritative" position. The second murder was committed five months after the first whilst the appellant was on bail awaiting trial on the first murder. The appellant manipulated the crime scene on count 1 by placing the knife initially found in possession of the deceased, in his hand after cold-bloodedly shooting the deceased. On count 2, the appellant destroyed exhibits by disposing of the fired cartridge from the 9mm pistol which was in his possession and used to shoot the deceased, he changed his clothing after the incident, booked out a different firearm from the arsenal held by his employer and

manipulated the firearm register when doing so, and persuaded his colleague Mr. Modibedi to get rid of the murder weapon.

[84] Sadly, no evidence was led or victim impact statements adduced by the prosecution in the trial court, for this Court to appreciate who the deceased were and the impact of their murders on their families.

[85] On a full conspectus of the personal circumstances of the appellant, the circumstances of the offences and the interests of society, there is nothing substantial nor compelling about the personal circumstances of the appellant when weighed against the circumstances of the murders and the interests of society, to justify a deviation from the mandated sentence.

[86] On each of counts 1 and 2, the mandated sentence of fifteen years imprisonment is merited. Since the murders were separated in time, and having regard to the aggravating factors inherent in the murders no justification exists for an order that the sentences either run concurrently or that a part of the sentence on count 2 should run concurrently with the sentence on count 1.

Order

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

1. The appeal against conviction on counts 1 and 2 is dismissed.

2. The appeal against sentence on counts 1 and 2 is upheld and the sentence imposed is replaced with the following sentence:

Count 1: Fifteen (15) years imprisonment in terms of section 51(2) of the Criminal Law Amendment Act 105 of 1997.

Count 2: Fifteen (15) years imprisonment in terms of section 51(2) of the Criminal Law Amendment Act 105 of 1997.

3. In terms of section 103(1) of the Firearms Control Act 60 of 2000, the appellant shall remain unfit to possess a firearm.

4. The sentences are ante-dated to 27 March 2018."

A H PETERSEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Z WILLIAMS
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Appellant:	Adv HH Cowley (Acting Pro Deo)
Instructed by:	Moroenyane Attorneys Leeuw Law Chambers Kanana 2576 Tshepo Street, Klerksdorp
For the Respondent:	Adv I Mabudisa
Instructed by:	The Director of Public Prosecutions, Mahikeng Mega City Complex, East Gallery 3139 Sekame Road, Mmabatho