



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 22 April 2026

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Mokoele v The State (776/2018) [2026] ZASCA 57 (22 April 2026)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against a decision of the Gauteng Division of the High Court, Johannesburg (the high court), which dismissed the appellant's petition seeking leave to appeal his conviction by the Regional Court, Protea Court (the trial court).

The appellant, Mr Lebohang Mokoele, and his two former co-accused, Mr Thulani Dlamini (accused 1) and Mr Bafana Radebe (accused 2), were convicted by the trial court of two counts of robbery with aggravating circumstances. The robberies were both committed during the same evening, 28 June 2014, in Naledi Extension 2, Soweto. The first count relates to the robbery of Ms Philiswa Zukuswa Mabutho (Ms Mabutho) of her personal property, including a silver Volkswagen Polo Classic. The second relates to the robbery of Mr. Lwazi Nkomo (Mr Nkomo) and Ms Moiketsi Thato Mphuthi (Ms Mphuthi) of their motor vehicle, a Toyota Run X, as well as other personal properties.

The trial court concluded that the appellant and the two co-accused were among the assailants who committed the robberies. The appellant was sentenced to ten years' imprisonment on each count. The trial court granted him leave to appeal only the sentences. His petition to the high court in terms of s 309C(2) of the Criminal Procedure Act 51 of 1977 was unsuccessful. The appeal is with special leave granted by this Court.

The issue before this Court was whether leave to appeal should have been granted by the high court to a full bench against the appellant's conviction by the trial court. In its endeavour to discharge the onus upon it, the State had adduced the evidence of Mr Nkomo, Ms Mphuthi, Ms Mabutho and two policemen, Sergeant Justice Tevorabe Mawela (Sergeant Mawela) and the investigating officer, Sergeant Sello Agri Ladimo (Sergeant Ladimo). The appellant testified and he also called his mother, Hendrika Mokwele (Mrs Mokwele), in support of his alibi.

In examining the relevant evidence, this Court as per the majority judgment dealt with the identification of the assailants, particularly that of the appellant, in view of the alibi defence pleaded by him. It noted that the State relied on the direct evidence of the witnesses, dock identification, admissions and pointing out made by the appellant to prove the appellant's identity, including circumstantial evidence of the conduct of the appellant during his arrest, all of which pertain to the factual finding of the trial court, which cannot be easily overturned on appeal.

The majority judgment held that the law regarding identity issues is settled and highlights the need for courts to guard against conflating the reliability of such evidence with the credibility of the witness. Furthermore, that several critical aspects of the principles outlined in *S v Mthetwa* substantiate a positive

factual identification of the appellant by Mr Nkomo. The majority judgment noted that the admissions and the pointing out ruled admissible by the trial court stands, as they were not challenged.

The majority further held that the contradictions in Mr Nkomo's evidence were relatively immaterial as they pertain to peripheral issues rather than the appellant's identity. Furthermore, substantial corroborative evidence was presented concerning the identity of the appellant. Regarding the appellant's claim that Mr Nkomo's information from unnamed sources not called was hearsay, the majority disagreed, stating it cannot be classified as such. Moreover, the majority judgment reasoned, the appellant's concession about the conversation with Mr Nkomo regarding the robbery negates any perceived hearsay nature of that evidence.

The majority concluded that, when considering the evidence before the trial court in its entirety, it demonstrated that the alibi was false. The majority judgment emphasised that the testimony of the appellant's mother did not advance the appellant's case, given that police evidence demonstrated that she was untruthful when she said that he was not home when they asked about him, and that the room where he was discovered hiding behind a shower curtain was not used; it was a storeroom.

Consequently, the majority judgment agreed with the two judges who heard the petition in the high court that no other court would reasonably come to a different conclusion than the one reached by the trial court. As a result, the appeal against the order of the two judges dismissing the petition was dismissed.

The dissenting minority judgment held that, regarding the evaluation of evidence, there are some disquieting aspects in the evidence of the witnesses relied upon by the State and the trial court, which, at the level of reasonable prospects of success, could have had a bearing on the verdict. The minority listed the following instances: Ms Mabutho did not know the accused before court, although she gave a brief description of some of their clothing, she could not describe any facial features and she did not implicate any of the accused; Ms Mphuthi failed to describe any of the robbers and recorded that she would not be able to identify the people who had robbed them; her identifying the accused at court amounted to dock identification which generally carries no or little evidential weight; There could also be some doubt as to the reliability of any observation she could have made when the crime was committed; Mr Nkomo was a single witness in respect of the identification of the accused on count 2 and his evidence had to be approached with caution; the veracity of portions of his evidence was furthermore dependent on the truthfulness of third persons, who were not identified and not called to testify.

The minority held that there is a reasonable prospect of success that a full bench, considering whether the appellant's alibi should have been rejected, could come to a different conclusion from that of the trial court. As a result, the minority concluded that the appellant established reasonable prospects of success that the convictions could be set aside, when considered by a full bench and has satisfied the test for the appeal to succeed.

Lastly, both the majority and the minority judgments lamented the manner in which the State dismally failed to attend to this appeal.

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