

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

Cases CCT 148/14 and CCT 149/14

In the matter between:

**BOSWELL JOHN MHLONGO**

Applicant

and

**THE STATE**

Respondent

And the matter between:

**ALFRED DISCO NKOSI**

Applicant

and

**THE STATE**

Respondent

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**APPLICANTS' STATEMENT OF DISPUTED FACTUAL FINDINGS**

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**PURSUANT TO THE DIRECTIONS** dated 5 December 2014, the applicants hereby file a statement setting out the factual findings of the High Court that are disputed by the applicants.

[1] The applicants deny any involvement in the crime (as they have done consistently for over ten years since they were originally charged in this case).

[2] Accordingly, the applicants dispute the overall factual construction of the crime by the trial court (accepted by the full bench) insofar as it includes the applicants in the common purpose to commit a robbery at the deceased person's house,<sup>1</sup> and insofar as it places the applicants together with the other accused persons at the crime scene.<sup>2</sup>

[3] Subject to paragraph [2], the applicants do not dispute the overall factual construction of the crime by the trial court (accepted by the full bench) in general.

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<sup>1</sup> The trial court held: 'I make a finding that all the accused before the Court were present at the time when the deceased was killed.' (Record p972.)

<sup>2</sup> The trial court held: 'I make a finding that all the accused had a common purpose to commit robbery in the premises of the deceased.' (Record p972.)

**FURTHER PURSUANT TO THE DIRECTIONS** dated 5 December 2014, the applicants hereby file those portions of the record that the applicants consider relevant, namely:

[1] Testimony by Captain Ncube.<sup>3</sup>

[2] Testimony by Magistrate van der Merwe.<sup>4</sup>

[3] Testimony by Mr Modikwe.<sup>5</sup>

[4] Argument and ruling regarding the admission of extra-curial statements by some of the co-accused against other co-accused.<sup>6</sup>

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<sup>3</sup> Record pp488–496.

<sup>4</sup> Record pp512–515.

<sup>5</sup> Record pp555–561.

<sup>6</sup> Record pp567–578.