

**IN THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SOUTH AFRICA
(BRAAMFONTEIN)**

CONSTITUTIONAL COURT CASE NUMBERS: CCT 148/14 and 149/14

NORTH WEST HIGH COURT CASE NUMBER: CC 164/03

In the matter between:

BOSWELL JOHN MHLONGO

Applicant

AND

THE STATE

Respondent

In the matter between:

ALFRED DISCO NKOSI

Applicant

AND

THE STATE

Respondent

APPENDIX A: SUMMARY OF FACTS

KINDLY NOTE THAT the respondent hereby files the following summary of the facts:

The crime

1. During the day of 3 August 2002 a group of men ('the Group'), which included accused 1, 3, 7 and 8, met.
2. One or more of the members of the Group were armed with a firearm or firearms.

3. The Group was travelling together in one vehicle ('the getaway car') with the intention to rob a bakkie.
4. On the evening of 3 August 2002 Warrant Officer Johannes Dingaan Makuna, the deceased, arrived at his house in Motholung.
5. The deceased was carrying his service pistol on his waist.
6. A bakkie and a Toyota Camry were parked on the deceased's premises. On travelling past the deceased's premises, the Group saw the deceased's bakkie and decided to rob it.
7. The Group parked the getaway car at an unspecified distance from the deceased's premises.
8. A number of the members of the Group ('Subgroup A') went to the deceased's premises on foot, while the remainder of the Group ('Subgroup B') waited at and/or in the getaway car.
9. One or more of the members of Subgroup A were armed with a firearm or firearms.
10. The deceased and his daughter, Ms Keith Mpolokeng Makuna, were standing on his premises outside his house when Ms Makuna saw two men, both armed with firearms, enter the premises. She alerted her father (the deceased) and took cover behind him.
11. Ms Makuna witnessed one of the men firing a shot at her father, the deceased.
12. Ms Makuna then fled inside the house, and saw through a window how the same man fired a second shot at the deceased.
13. Both shots wounded the deceased. (Because one of the bullets re-entered the deceased's body, there were three gunshot entry-points on

his body.) The deceased later died in hospital as a direct result of these gunshot wounds.

14. While Ms Makuna, the deceased's daughter, was hiding in the house, the Toyota Camry's alarm went off. However, none of the cars were taken.
15. At the scene of the shooting, a member of Subgroup A took the deceased's firearm.
16. About five minutes after the shooting, Subgroup A fled the scene and returned to where Subgroup B was waiting at and/or in the getaway car. The whole Group then drove away from the area.
17. Ms Makuna, the deceased's daughter, did not see the deceased's assailants flee the premises. However, the deceased's neighbour, Mr Modikwe, saw two men fleeing the deceased's premises.

The investigation

18. On 30 October 2002 accused 1 contacted Inspector Mojalefa Johannes Nkosi, the investigating officer, from prison.
19. On 31 October 2002 accused 1 made a statement to Roelof Jacobus van der Merwe, a magistrate stationed at Brits.
20. This statement was admissible against accused 1 as it complied with all the requirements of section 217 of the Criminal Procedure Act 51 of 1977 (hereinafter referred to as CPA) whilst he was aware of his Constitutional rights and he was author of this statement.
21. On 31 October 2002 accused 1 made a statement and did a pointing out to Captain Daniel Ncube, a police officer stationed at Marikana.

22. This statement was admissible against accused 1 as it complied with all the requirements of section 218 and 219A of the Criminal Procedure Act 51 of 1977 (hereinafter referred to as CPA), whilst he was aware of his Constitutional rights, and he was author of this statement.
23. On 7 November 2002 accused 2 (applicant 1) made an extra-curial exculpatory statement to the investigating officer after he voluntarily surrendered himself to the police.
24. On 18 November 2002 accused 3 made a statement to the investigating officer at Brits Police Station.
25. This statement was admissible against accused 3 as it complied with all the requirements of section 219A of the CPA, whilst he was aware of his Constitutional rights, and he was author of this statement.
26. After his arrest accused 4 (applicant 2) made an extra-curial exculpatory statement to the investigating officer.
27. On 16 January 2003 Ms Makuna, the deceased's daughter, attended an identification parade where she pointed out two persons who were not accused in the trial.
28. On 19 February 2003 accused 5 made an extra-curial exculpatory statement, indicating he had an alibi, to the investigating officer.
29. On the same day, accused 6 made an extra-curial exculpatory statement, indicating that he was not involved in the crimes, to the investigating officer.
30. Also of the same day, accused 7 made a statement to EL Bodigelo, a magistrate stationed at Ga-Rankuwa.

31. This statement was admissible as it complied with all the requirements of section 217 of the CPA, whilst he was aware of his Constitutional rights, and he was author of this statement.
32. The next day, 20 February 2003, accused 7 made a statement and did a pointing out to Superintendent Dibetso Stephen Diale, a police officer stationed at Phokeng.
33. This statement was admissible against accused 7 as it complied with all the requirements of section 218 and 219A of the CPA, whilst he was aware of his Constitutional rights, and he was author of this statement.
34. Also on 20 February 2003, accused 8 made a statement to Victor Zondile Moye, a magistrate stationed at Brits.
35. This statement was admissible against accused 8 as it complied with all the requirements of section 219A of the CPA, whilst he was aware of his Constitutional rights, and he was author of this statement.
36. On 7 March 2003 Ms Makuna, the deceased's daughter, again attended an identification parade where she pointed out two persons who were accused 7 and 8 in the trial.