

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No: SS74/2022

(1) Reportable: NO
(2) Of interest to other judges: NO
(3) Revised.

11 May 2023

MHE Ismail

In the matter between: -

THE STATE

and

MASEMOLA SILAS

Neutral Citation: *The State v Masemola Silas* (Case No: SS74/2022 [2023]
ZAGPJHC 461 (11 May 2023))

SENTENCE

Ismail J:

- [1] The accused was convicted of murder in terms of the provisions of section 51(1) of Act 105 of 1997, in that he killed his girl-friend. He was represented by Mr. Musekwa from the Legal Aid Board Johannesburg.
- [2] The accused was a policeman at Johannesburg Central police station up to his arrest. The deceased was shot whilst she was in the bathroom with the accused service pistol.
- [3] The accused told the his senior and the staff at the clinic that the deceased shot herself with his firearm. This version was challenged by the prosecution who called a ballistic expert who gainsayed the accused version as being extremely improbable and in the expert view of the witness to be impossible. The accused version was rejected as not being reasonably possibly true and he was convicted of pre-mediated murder.
- [4] Accused testified in mitigation of sentence and he stated that he was employed by the SAPS since 2019. He matriculated in 2008 and he worked at various firms from 2008 until he joined the police force. He is the father of a 4-year-old boy who he maintained. The mother of the child is unemployed and she does not receive a child grant. The accused has no previous convictions and this is his first brush with the law.
- [5] Mr. Musekwa submitted that the accused was remorseful for his actions and that he was capable of rehabilitation. These factors coupled with the fact that

he is a first offender taken together equates to substantial and compelling circumstances which would permit the court to impose a lesser sentence than the preordained minimum sentence.

[6] The state called the deceased mother, Mrs. Mary Khumalo to testify in aggravation of sentence. Mrs. Khumalo testified that the accused called the family when the deceased was shot and told them that she shot herself. She was of the opinion that the accused showed no remorse or contrition because he persisted with his version of blaming the deceased for shooting herself and he took no responsibility for his actions. She remarked that he failed to approach her or her family to express his regret and condolences for his actions and that he now says he is sorry merely to get sympathy for himself in the hope that he would get a lenient sentence. Mrs. Khumalo alluded to the fact that the deceased was a person who supported her and others in their family, and since her demise they were struggling both financially and emotionally.

[7] To date the accused has not told us why the deceased was shot apart from his version that the gun was accidentally discharged. He was asked why he says he is remorseful. He could not say that he was remorseful for having killed the deceased.

[8] In *S v Matjietjie* 2011 (1) SACR 45 SCA at paragraph [13] at 47a-b Ponnar JA dealt with the issue of remorse and regret.

“There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate

to genuine remorse. Remorse is the gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from the appreciation and acknowledgment of the extent of one's errors. Whether the offender is sincerely remorseful and not simply feeling sorry for himself...

- [9] Murder has always been regarded as a serious offence as it is an irreversible act. Where the crime is perpetrated against a defenseless women or vulnerable child it makes the act more aggravating. From the evidence presented during the trial you threatened to kill the deceased if she were to leave you. It would appear that you carried out your threat by ending her life.

- [10] The crime you were convicted of falls within the minimum sentence legislation and it is punishable by a prescribed minimum sentence of life imprisonment unless the court finds substantial and compelling circumstances which would permit it to deviate from the prescribed sentence. See *S v Malgas* 2001 (1) SACR 469 SCA and *S v Matjietjie*, *supra*.

- [11] The question which needs to be answered is whether there are substantial and compelling circumstances in your cases or not. In doing so I will take all circumstances traditionally taken into account as suggested in other cases amongst others *S v Vilakazi* 2009 (1) SACR 552 SCA.

The only issue which the court finds in your favour is that you have no previous convictions. You have not taken the court into your confidence by telling us the truth of what happened, leading to the deceased death. The court therefore

does not know the answer to the all-important question which was referred to in *S v Martin* 1996 (1) SACR 172 W at 176 j-177b namely “why did they do it.”

“To determine sentence, particularly for a more serious crime, there is not a more important question than, ‘why did you do it?’ It is hardly excusable to ask an accused how many children he has and to omit the crucial question Why did he do it? Only in an exceptional case will the answer to that question not be dominant in getting to understand the influences on the accused and generally to discover the true degree of moral reprehensibility. With no known answer to the question the accused is at risks of having acted without reason and to deserve the harshness which accompanies wanton criminality which is executed without anything which reduces moral reprehensibility. An accused assumes some risk by failing to testify in that there is then often a preclusion of opportunity to give an answer to that crucial question. Counsel’s speculation without factual basis is not an equivalent.”

[12] Your so called remorse and expression thereof is not sincere in that it is done in order for the court to feel sorry for you and thereby to impose a lighter sentence. You verbalized your regret yet you did not say to the victim’s family that you sought their forgiveness for your actions. In fact, Mrs. Khumalo is quite correct that you lied to them regarding what happened hoping that you would get away with your dastardly act.

[13] In “Denial: The danger in rejecting reality” Dr Ford Shabaaz writes:

“one of western society’s biggest problems is rooted in the defense mechanism theorized by the psychoanalyst Sigmund Freud who postulated”: “That denial is unconsciously choosing to push back on

factual truths because to admit them would be too psychologically uncomfortable and require facing the unbearable”.

[14] I must take into account that this is an offence which was perpetrated against a woman, it is a gender base crime. This type of offence is prevalent within this court's jurisdiction and society demands that the courts treat this type of violence against women in our society seriously and meets out appropriate sentences.

[15] In *Malgas* at paragraph 25 where Marais JA stated that the legislature has left it to those who are to determine whether there are substantial and compelling circumstances. In doing so the courts are warned that it is not 'business as usual' and that one does not start off with a clean slate but rather that the prescribed sentence would ordinarily be applied unless there are truly convincing reasons to depart therefrom. The courts are reminded not to depart from the pre- ordained sentences 'lightly or for flimsy reasons'.

[16] Applying the principles laid out by the authorities in *Malgas*, *Matjietjie*, *Vilakazi* and other reported cases I am of the view that there are no substantial and compelling circumstances which would permit me to deviate from the prescribed minimum sentences ordained by the Legislature.

[18] In the overall purview of the facts in this matter I am of the considered view that the following would be an appropriate order:

18.1 The court finds that there are no substantial and compelling

Circumstances. Accordingly, you are sentenced as follows:

18.2 Life imprisonment

18.3 You are not permitted to possess a firearm – in terms of section 103 of the Firearms Control Act 60 of 2000

A handwritten signature in black ink, appearing to read 'MHE ISMAIL', is written above a horizontal line.

MHE ISMAIL

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

11 MAY 2023