

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION – PORT ELIZABETH**

In the matter between:

THE STATE

and

SIMTHEMBILE NTLOKWANA

ACCUSED 1

SIYABULELA MRAJI

ACCUSED 2

JUDGMENT ON SENTENCE

MAKAULA J:

[1] On 18 June 2021, I convicted the accused as follows:

- 1.1 Count 1: Murder of Mlungisi Peter Sample
- 1.2 Count 3: Robbery with aggravating circumstances.
- 1.3 Count 5: Attempted Murder of Dumile Maxwell Mwrebo.
- 1.4 Count 6: Attempted Murder of Nombulelo Florence Totyi
- 1.5 Count 7: Robbery with aggravating circumstances.
- 1.6 Count 8: Possession of an unlicensed firearm.

1.7 Count 9: Possession of unlicensed ammunition.

[2] The offences were perpetrated on 24 December 2019, at No. 10 Higa Street, Zwile, Port Elizabeth. The deceased had a workshop, which he operated from the premises of fitting car Alarms and Radio styled Peter Sounds and Alarms. The facts indicate that Lubabalo Fumananenzi (Lubabalo) lost a car sound system. His investigations led to Kuhle Nobebe (Kuhle). Kuhle led Lubabalo to the deceased. The deceased denied that he bought a stolen sound system from Kuhle. Lubabalo and Kuhle left the deceased workshop and returned with the two accused. For no rhyme or reason, acting in concert, the accused shot and killed the deceased. They stole his Plasma television set and left the premises. Trying to facilitate their escape from the scene, they stopped the motor vehicle of Mr Mwrebo who at the time was in company of Ms Totyi. One of them fired gunshots and injured both Mr Mwrebo and Ms Totyi before they drove off in his motor vehicle.

[3] Lubabalo is deceased and his statement, which was admitted, in terms of the hearsay rule is not of any assistance as to how the accused came to shoot at the deceased. Kuhle lied to this court and I declared him a hostile witness. He denied the obvious, that the accused were the ones who killed the deceased. He too, could not tell the court as to how the accused came to be involved in the dispute between Lubabalo and the deceased to an extent of them deciding to brutally kill the deceased. The accused themselves elected to lie. They denied their involvement in killing the deceased. Similarly therefore, they did not assist me in this regard. I do

not know how and why they got involved in the killing of the deceased. I have not benefit of knowing the motive for killing of the deceased.

[4] All that is clear is that the deceased was merciless killed. One of the accused placed a gun against his head and shot him at close range. They even shot at him while he was lying on the ground. It was broad daylight and as alluded to for no apparent reason. The chief post-mortem findings by Dr Greg Ochabshi read:

- 2 gunshot wounds perforating through the head;
- Disruption of the brain;
- Projectile found at the end of the track; and he determined the cause of death to be "Gunshot head".

[5] Mr Mwrebo sustained an injury to his finger and he was treated at the scene. Ms Totyi was taken to the hospital for treatment. The medical report (J88) reveals that she sustained an injury to the right calf and left side of the foot.

[6] Accused 1 was born on 18 October 1991 and that makes him 30 years old. He is not married and has one child Ayabonga Mjoyi who turned 2 years on 17 January 2021. The child stays with his mother. He has two siblings 12 and 19 years respectively. His mother is still alive and is 47 years old. Accused 1 has two previous convictions of theft dating from the year 2011 and 2013. He was sentenced to 5 years' imprisonment for attempted murder which was committed on 18 October 2014. He worked as a taxi driver earning R1000.00 per week before his arrest.

[7] Accused 2 was born on 8 June 1994. He is 27 years old. His parents are still married. He has one sibling, a sister who is 21 years old. He dropped out of school in Grade 11 and is also a taxi driver earning R1300.00 per week.

[8] Mr Thyse for both accused, pleaded for a sentence which is borne out by a measure of mercy. He further urged the court to find substantial and compelling circumstances in the personal circumstances of the accused and recommended an effective term of imprisonment other than life imprisonment. He submitted that the accused are remorseful of what they did.

[9] Mr Makasana, for the State, submitted that the accused may be regretting their actions but they did not show any remorse throughout the trial. He submitted that they have not established substantial and compelling factors to necessitate departure from the minimum sentences prescribed.

[10] The truth is that the accused did not show any signs of remorse. The accused throughout the trial denied their involvement in the commission of these offences. The offences were committed in a callous and gruesome manner. The offences were committed during broad day light. People were still moving around doing their own businesses when the accused attacked the deceased, Mr Mwrebo and Ms Totyi hence large crowd immediately gathered at the deceased home after the incident.

[11] I find no substantial and compelling circumstances in this matter. The accused ages cannot be regarded as constituting such. They brazenly killed the deceased for no reason at all. The property that was allegedly stolen did not belong to them. They did not act as youth would when they killed the deceased and when they shot and robbed Mr Mwrebo's motor vehicle. Murder is prevalent. No human deserves to die the way the deceased died. Having regard to their personal circumstances, the interests of society and the crime itself. I find the following sentences to be appropriate.

[12] Consequently, I sentence the accused as follows:

Count 1: Both accused are sentenced to undergo life imprisonment each.

Count 3: Both accused are sentenced to undergo fifteen (15) years' imprisonment each.

Count 5: Both accused are sentenced to undergo ten (10) years' imprisonment each.

Count 6: Both accused are sentenced to undergo ten (10) years' imprisonment each.

Count 7: Both accused are sentenced to undergo fifteen (15) years' imprisonment each.

Count 8: Both accused are sentenced to undergo five (5) years' imprisonment each.

Count 9: Both accused are sentenced to undergo five (5) years' imprisonment each.

Effectively the accused are sentenced to undergo life imprisonment.

M MAKAULA
Judge of the High Court

Counsel for the State:	Adv V Makasana National Director of Public Prosecution Port Elizabeth
Counsel for Accused 1 and 2:	Adv J Thyse Port Elizabeth
Instructed by:	NE Mbewana Attorneys Mr K Nobuzana and Mr N Vusani Port Elizabeth
Date of judgment on sentence:	25 August 2021