

**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Case Number: 28/2022

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

THE STATE

versus

MOLEFI SOLOMON SEJAKE

Accused

HEARD ON: 12 SEPTEMBER 2022

CORAM: AFRICA AJ

DELIVERED ON: 16 SEPTEMBER 2022

SENTENCE

[1] Mr. **MOLEFI SOLOMON SEJAKE**, you have been found GUILTY of one count of Murder, read with the provisions of section 51(2)¹ of the Criminal Law Amendment Act 105 of 1997, ('the CLAA'), as amended².

This country is currently engulfed in a sea of violent crimes ravaging vulnerable sections of our society like women, with a never-ending scourge of femicide and GBV³, which continues to plague South Africa. It is now the unenviable but necessary task of this court to impose an appropriate sentence.

[2] In deciding on an appropriate sentence, the court must consider the "triad consisting of the crime, the offender and the interest of society"⁴ "The elements of the triad contains an equilibrium and tension. The court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of or the exclusion of others. What is necessary is that the court shall consider, and try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concern"⁵

[3] The infliction of punishment is pre-eminently a matter for the discretion of the trial Court and it is a cherished principle that courts should, as far as possible, have an unfettered discretion in relation to sentence; which calls for constant recognition. This is the hallmark of an enlightened criminal justice system.

The statutory mandatory minimum sentencing regime is applicable to certain serious offenses but the trial courts are permitted to depart from the prescribed minimum sentences whenever they find "*substantial or compelling circumstance*" warranting a

¹ Part 2 of Schedule 2.

² Also read with sections 92(2), 256, 258, of the CPA 51 of 1977.

³ Gender Based Violence.

⁴ S v Zinn 1969 (2) SA 537 (A) at 540g.

⁵ S v Banda and others 1991 (2) SA 352 (B) 355.

departure. This court is mindful that a criminal sentence cannot, in the nature of things, be a matter of precise calculation.⁶

[4] It is however commonly accepted that there are many purposes of sentencing. Firstly, is the desire to punish a person who is the wrongdoer and who has offended against society and caused harm to others. Secondly is the intention to prevent the wrongdoer from committing a similar offence again. Thirdly is to send a message to other would be offenders not to engage in this kind of activity and Lastly is the aspect of rehabilitation.

[5] Another factor to be borne in mind is the question of mercy.⁷

[6] The individualization of punishment requires proper consideration of the individual circumstances of each accused person. This principle too is firmly entrenched in our law.⁸ Punishment must fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.

MITIGATION OF SENTENCE

[7] In mitigation of sentence, the defence submitted that the accused is aged 53 and his highest level of education is standard 7. It is common cause that the accused and the deceased cohabited for 15 years, with no children born of the relationship.

The accused has 3 adult children and was employed at MPI construction, prior his incarceration. He earned R3500 per fort night as a general worker and maintained the household. He at present suffers with a chronic illness and is on medication.

⁶ Crime and punishment in South Africa 1975 pg 150

⁷ S v Rabie 1975 (4) SA 855 (AD) at 862:

⁸ S v Rabie 1975 (4) SA 855 (A) at 861D; S v Scheepers 1977 (2) SA 154 (A) at 158F – G

The defence further submits that the following factors constitutes substantial and compelling circumstances, warranting a departure from the minimum prescribed sentence.

1. The period spent incarcerated awaiting the finalisation of this matter.
2. The last previous conviction is older than 14 years.
3. The degree of seriousness of the offence in comparison to other murder cases.
4. The deceased did not suffer before passing as it happened quickly.
5. The pain and suffering as experienced by the family of the deceased cannot be described as outstanding in comparison to other murder cases.
6. This court must strike a balance between the mitigating and aggravating factors.
- 7.

[8] This court being referred to the case of *S v Rabie* was asked to blend its sentence with mercy as sentence is not aimed at breaking the accused but also to assist with rehabilitation. The defence argued that rehabilitation can be obtained with a shorter period of imprisonment. This court was also referred to the cases of *Malgas* and *Matyityi* and the defence conceded that this court is not to deviated from the prescribed sentenced, for flimsy reasons. The defence asked this court to deviate based on the substantial and compelling factors listed.

[9] In respect of section 103 of the Firearms Control Act 60 of 2000, no address.

AGGREVATION OF SENTENCE

[10] In aggravation of sentence, the state handed in a Victim Impact statement as complied by Agnes Molo, the daughter of the deceased. She states that the family is saddened by the death of the deceased and are their lives no longer easy. They struggle to be in relationships and this offence has brought fear into their lives. As a family they suffer with trust issues as this crime was committed by someone they knew

for a long time. At times they relive where the deceased was lying in a pool of blood and the pain gets worse. As a family, they have lost their mother of was their pillar. She was the woman who kept the family together and provided for them. They have lost unconditional love and inner peace. They feel embarrassed to talk about what happened to their mother and George especially has lost himself. This crime hit him the hardest because of the plans he had with his granny.

[11] The state further argued that indeed this court should deviate from the prescribed sentence, but stated that the circumstances of this case warrants this court to increase the prescribed sentence. The state argued that life is a person's biggest commodity and no sentence can bring back the deceased to her family. The state submitted that violent crimes in this country has reached epidemic proportions, indicative of the lawlessness reigning in this country at the moment. Especially violent crimes against women and children has escalated to the extent that the month of August dedicated to no violence against women and children, had no impact whatsoever.

[12] This court was referred to the case of *Mudau v The State*⁹ where it was stated that:

“Domestic violence has become a scourge in our society and should not be treated light, but deplored and also severely punished. Hardly a day passes without a report in the media of a woman or a child being beaten, raped or even killed in this country. Many women and children live in constant fear. This is in some respects a negation of many of the fundamental rights such as equality, human dignity and bodily integrity”

[13] The state argued that this court must be mindful of the following factors:

1. In the present matter, the accused and deceased was in a relationship for 15 years.

⁹ (547/13) [2014] ZASCA 43 (31 March 2014).

2. The accused as the man of the house should have protected the deceased, instead he took her life.
3. The court must take account of the manner in which the murder was committed, namely that the deceased was asleep at the time of death and had no chance to defend herself.
4. Eleven (11) stab wounds were administered.
5. The PM Report shows that all the stab wounds were administered to vulnerable places, hence the finding of *dolus directus*.
6. There were no problems between them and the accused was in a position of trust.
7. The manner in which the murder was committed fills one with shock especially because it was done to his wife.
8. The accused failed to take responsibility for his actions and did not take this court into his confidence to testify in mitigation.

[14] The state further argued that the accused is not a first time offender and despite the fact that his last conviction are old, 11 previous convictions demonstrates the type of person the accused is, namely someone who has learnt nothing from his previous incarcerations.

[15] The court was referred to the case of *Omar v Government of the Republic of South Africa and Others*¹⁰ where the constitutional court said:

“Domestic violence brutally offends the values and rights enshrined in the Constitution. According to section 1, non-sexism is a founding value of our state. In addition, human dignity, the achievement of equality and the advancement of human rights and freedoms are recognised as founding values. Section 12(1)(c) provides that everyone has the right to freedom and security of the person, which includes the rights to be free from all forms of violence from public or private sources. This right must be understood in conjunction with the rights to

¹⁰ 2006 (2) SA 286 (CC) para 17.

dignity, life, equality and privacy. This court has recognised the constitutional requirement to deal effectively with domestic violence. In *Carmichele*, the court furthermore pointed out that South Africa also has a duty under international law to prohibit all gender based discrimination that has the effect or purpose of impairing the enjoyment by women of fundamental rights and freedoms and take reasonable and appropriate measures to prevent the violation of those rights”

[16] The state submits that the community is sick and tired of femicide and the sentence imposed by this court, should reflect their outrage. The deceased family is severely effected by this crime as they did not expect it, bearing in mind that the accused showed the deceased no mercy.

[17] This court is mindful of the case of *S v Makudu*¹¹ where it was stated that the behavior of an accused during trial may be indicative of a lack of repentance or intended future defiance of laws by which society lives and therefore be a relevant factor in considering sentence...”

[18] As argued by the state, ccourts indeed have a role to play in the promotion and development of a culture that is founded on the recognition of human rights, in particular with regard to those rights which are enshrined in our Constitution.

[19] The accused and the deceased was in a love-relationship and was he a father figure to her children. In *S v Abrahams* it was stated that the attitude of the accused reflected an approach to women as objects or chattels to be used at will. This rings true in the present case where the gravity of violence unleashed on the unsuspecting deceased made it seems like she was simply a thing to be discarded and not his wife of 15 years.

¹¹ 2003 (1) SACR 500 (SCA).

[20] Goldstein J in the case of *S v Ncheche*¹², stated:

“I now deal with the interest of society. The unprecedented spate of violence, and especially ...against women and children, is escalating at an alarming rate. Helpless, defenceless women feel unsafe, even in the sanctity of their own homes, and look to these courts to protect their interests and the courts can protect these interests by meeting out harsh sentences.”

[21] The accused gained nothing of worth for the perpetrating and inflicting of this terrible and horrific suffering on the deceased and her family. Gender Based violence, threatens every woman and particularly poor and vulnerable in our society. In our country, it occurs far too frequently that women are violated or murdered at the hands of their partners. The time has come to send a clear message that and anyone perpetrate these crimes against the most vulnerable in our society, does so at his peril and our Legislature, and the community at large, correctly expect our courts to punish perpetrators severely. Communities are outraged and if we fail to take account of that outrage, we risk encouraging the breakdown of law and order and communities taking the law into their own hands.

[22] Indeed ordinary law-abiding citizens in this country are at their wits end about these ongoing and senseless crimes involving violence against women and sight should not be lost of the fact that society view these crimes as heinous and abhorrent. Within this context, is there an injunction upon courts to protect women from these crimes.

[23] In *R v Karg*¹³ it was stated that Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role. Society’s sense of outrage and the deterrence of the offender and other potential offenders deserve considerable weight, in cases of this nature.

¹² 2005 (2) SACR 386 (W) @ page 391, 395.

¹³ 1961 (1) SA 231 (A) at 378-379.

[24] In an effort to curb the wave of violent crimes which threatens to destroy our society, the legislature enacted section 51 of the Criminal Law Amendment Act 105 of 1997. Courts are reminded in *Malgas*¹⁴ that when considering what sentence to impose, emphasis was to be shifted to the objective gravity of the type of crime and public's need for effective sanctions against it.

[25] The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny.¹⁵ Traditional mitigating factors *alone* cannot be considered to be substantial and compelling circumstances.¹⁶

[26] This court is also mindful in assessing the proportionality of the prescribed sentence in a particular case; the sentencing court must determine what a 'proportionate' sentence would be, considering all the circumstances traditionally relevant to sentencing. The proportionality of a sentence cannot be determined in the abstract.

[27] Sadly, in 2021, Statistics South Africa released a report, *Crimes Against Women in South Africa*, indicating that one in five women had experience physical violence by a partner. Therefore, an unambiguous message needs to be sent to offenders who participate in gender-based violence and crimes.

[28] In *S v Ganga*¹⁷ it was stated that, a court must still seek to differentiate between sentences in accordance with the dictates of justice. Seeking guidance in *Malgas*, it was stated that the greater the sense of unease a court feels about the imposition of a prescribed sentence, the greater its anxiety will be that it may be perpetuating an injustice. That can only be because it is satisfied that the circumstances of the particular

¹⁴ 2001 (1) SACR 469 (SCA).

¹⁵ *Malgas* supra "Speculative hypothesis favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances."

¹⁶ *S v Obisi* 2005 (2) SACR 350 (W).

¹⁷ 2016 (1) 600 (WCC).

case render the prescribed sentence unjust or, disproportionate to the crime, the criminal and the legitimate needs of society.

[29] In *S v Vilakazi*¹⁸ Nugent JA said the following:

“In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of “flimsy” grounds that *Malgas* said should be avoided.”

[30] This court had regard to the degree and extent of the violence used in the commission of this heinous offences, the nature and weapon used, the brutality and cruelty of the attack when the deceased was asleep, the fact that the deceased were stabbed multiple times in the sanctuary of her own home at the hands of her partner, the nature and character of the deceased who was defenseless at the time, the fact that they were in a love relationship for a very long time, the fact that accused was in a position of trust, the fact that the offences were perpetrated for reasons known only to the accused, the physical, emotional and psychological trauma that the deceased family endures every day of their lives, and the loss of a mother and grandmother’s unconditional love.

[31] In *S v Rohde*¹⁹ the following was held:

“It is the lowered perception of women as human beings, all of whom are entitled to human dignity and equality, which results in the unhealthy social paradigm that they can be victims, and in fact end up as victims of crime because they are women. The judiciary must guard against such perceptions

¹⁸ 2009 (1) SACR 552 (SCA) para 58.

¹⁹ 2019 (2) SACR 422 (WCC) para 54.

and creating the impression that the lives of women are less worthy of protection.”

[32] In *Matyityi* it was stated that remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence.

[33] In the present matter the accused has not shown remorse or an appreciation of the consequences of his actions.

[34] On a balanced consideration of the totality of the evidence, this court finds no substantial and compelling circumstances to deviate from the minimum sentence and accords with the state that a harsher sentence is called for under the circumstances of this case, which in the view of this court will be proportionate to the crime, the criminal and the legitimate needs of society.

[35] The accused is sentenced to Twenty (20) years direct imprisonment.

[36] Ancillary Orders:

- ☐ In terms of section 103(1) of the Firearms Control Act 60 of 2000, the accused will remain *ex lege*, unfit to possess a firearm.
- ☐ Notice in terms of section 299A explained to the family of the deceased.
- ☐ Appeal rights explained and understood.