

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Case No.: A52/2014

In the matter of:

**TSHEPO HAROLD TABILE**

Appellant

and

**THE STATE**

Respondent

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**CORAM:** MOLEMELA, J *et* TSATSI, AJ

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**JUDGEMENT BY:** MOLEMELA, J

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**HEARD ON:** 11 AUGUST 2014

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**DELIVERED ON:** 06 NOVEMBER 2014

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[1] On the 15<sup>th</sup> May 2013 the appellant was convicted on one count of murder read with section 51(2) of the Criminal Law Amendment Act 105 of 1997 and sentenced to 15 years imprisonment by the Regional Court sitting in Bothaville. The appellant is now appealing, with leave of this court, against his sentence.

[2] The appellant's charge related to an incident in which one Ntholeng Morapeli ("deceased") was stabbed to death with a

knife. On the night of the incident the deceased's father had, upon discovering that the deceased was not at home, decided to go and look for him at a tavern. He was accompanied to the tavern by the deceased's girlfriend and two boys. Upon arrival at the tavern they realised that the deceased was involved in an altercation with some people. The deceased's father intervened by standing between the deceased and the rest of the group. He and the deceased's girlfriend then led the deceased away from the tavern.

- [3] As they were walking home he noticed that they were being followed by the four people who had been involved in an altercation with the deceased at the tavern. The group was aggressive and wanted to attack the deceased. He heard the appellant asking one of his friends to give him a knife. The deceased's father pleaded with the group to leave the deceased alone. The appellant stabbed the deceased with a knife on his shoulder, on the head and on the chest. The deceased's father eventually managed to escort the deceased home. Shortly after their arrival at home he heard a noise outside. He went out to investigate what was going on and saw the appellant and his companions standing in the

street, threatening to “finish the deceased off” and to set his home alight. The deceased died shortly thereafter.

[4] The appeal is directed only against sentence and is premised on the ground that the trial court erred in finding that there were no substantial and compelling circumstances that justified imposing a lesser sentence than the mandatory sentence of 15 years’ imprisonment, as contemplated in section 51(2) of the Criminal Law Amendment Act 105 of 1997.

[5] In the course of determining whether there were substantial and compelling circumstances that warranted deviation from the applicable sentence, the trial court in its judgment stated that the appellant’s personal circumstances could not be regarded as “exceptional circumstances”. This finding evidently flies in the face of the principle laid down in the case of **S v Malgas** 2001 (1) SACR 469 SCA at paragraph [10], where the court stated as follows:

“Equally erroneous, so it seems to me, are dicta which suggest that for circumstances to qualify as substantial and compelling they must be “exceptional” in the sense of seldom encountered or rare. The frequency or infrequency of the existence of a set of circumstances is logically irrelevant to the question of whether or not they are substantial and compelling.”

[6] Counsel for the appellant submitted that the trial court erred when it found that the appellant’s personal circumstances did

not constitute substantial and compelling circumstances. It was contended that the trial court's reference to "exceptional circumstances" served as proof of its misdirection. I agree that a reference to "exceptional circumstances" in relation to a determination of substantial and compelling circumstances constitutes a misdirection. The question is whether it is a misdirection that warrants the setting aside of the sentence.

- [7] Counsel for the appellant contended that the misdirection committed by the trial court was material and thus warranted the setting aside of the trial court's sentence and a fresh consideration thereof by this court. I disagree with this contention and am fortified in this view by the court's remarks in the case of **S v Pillay** 1977(4) SA 531(A) at 535 E-F, where the court stated as follows:

"Now the word "misdirection" in the present context simply means an error committed by the court in determining or applying the facts for assessing the appropriate sentence. As the essential inquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the court, in imposing it, exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature, degree, or seriousness that it shows, directly

or inferentially, that the court did not exercise its discretion at all or exercised it improperly or unreasonably. Such a misdirection is usually conveniently termed one that vitiates the court's decision on sentence".

I echo the same sentiments.

[8] I am of the view that a proper determination as to whether the trial court's misdirection was material or not necessitates a consideration of the circumstances of the case as presented to the trial court.

[9] The appellant's mitigating factors as presented to the trial court were the following:- The appellant was 27 years old at the time of commission of the offence and had one child that was dependent on him for support. He was gainfully employed. He had no previous convictions.

[10] The aggravating factors are as follows: - The seriousness and prevalence of the offence. Murder is a violent crime that entails a loss of life. Life, once taken, can never be replaced. Unfortunately this capital offence has become rampant in our society. Statistics show that violent crimes are on the rise. The many senseless killings that are frequently committed are a clear indication of just how cheap human life has

become in this country despite the protection afforded by the constitution. This undesirable situation cannot be allowed to persist. The courts thus have a role to play to stem the tide of violent crimes by consistently imposing heavy sentences that will serve as a deterrent. The trial court correctly regarded the seriousness and prevalence of this offence as serious aggravating factors.

- [11] A further aggravating factor is the callous manner in which the appellant and his companions conducted themselves on the night of the incident. They behaved like hyenas despite the repeated intervention of the deceased's father, who had the misfortune of witnessing the brutal killing of his son just when he thought he had managed to save him from the grave consequences that usually result from a brawl at a tavern. As if this was not enough, the appellant and his companions followed the injured deceased to his home, wanting to inflict more injuries and even threatening to burn down his home. The deceased was not given any chance of survival.

[12] Another aggravating factor is that the deceased was murdered at the prime of his life and his four year old child was unnecessarily robbed of the love and support of a father. At no stage did the appellant show any remorse for his actions. This lack of remorse impacts negatively on the appellant's chances of rehabilitation.

[13] The trial court correctly considered the interests of the society. Courts must by their decisions and sentences, promote respect for the law. The feelings of members of society must be taken into account and their entitlement for protection against violent crimes must be considered. The need for the maintenance of peace and tranquillity in the community must also be taken into account. See **S v Banda** 1991 (2) SACR 325 (BGD).

[14] Having considered all the facts of the case, I am not inclined to agree with the submission that the appellant's personal circumstances, cumulatively viewed, constituted substantial and compelling circumstances that warranted a departure from the applicable minimum sentence of 15 years' imprisonment. The trial court's conclusion that there were no

substantial and compelling circumstances is clearly correct. The misdirection it committed does not fall under the category of material misdirections that warrant the setting aside of the sentence.

[15] I am satisfied that there is no basis for tampering with the minimum sentence imposed by the trial court, as the appellant's personal circumstances, cumulatively viewed, did not constitute substantial and compelling circumstances that warranted imposition of a lesser sentence. It follows that the appeal must fail.

[16] In the result, the appeal against sentence is dismissed.

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**M. B. MOLEMELA, J**

I concur.

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**E. K. TSATSI, AJ**



On behalf of the applicant: S. Kruger  
Instructed by:  
Justice Centre  
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On behalf of the respondent: Adv. K. G. Mashamaite  
Instructed by:  
Die Director: Public Prosecutions  
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