

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : A69/2008

In matter between:-

THEKISO PETER BACELA

Appellant

and

THE STATE

Respondent

HEARD ON: 17 MAY 2010

JUDGMENT BY: CILLIÉ, J ET EBRAHIM, J ET MOLOI, J

DELIVERED ON: 27 MAY 2010

JUDGMENT

MOLOI, J

[1] This is an appeal against the sentence of 25 years imprisonment imposed by the trial court for the murder of one Ezariel Mpasi. The trial court had granted leave to appeal only against the sentence.

- [2] The deceased was living with one Elizabeth Moloi in Virginia. The appellant was having an illicit love relationship with the said Elizabeth Moloi. The deceased was shot and killed in his house in Virginia by the appellant. The reason for this killing was to get monies that were due to the deceased in order to acquire a vehicle to be used for taxi operations. The body of the deceased was thereafter disposed of by the appellant by dumping it in a veld.
- [3] The trial court, in considering an appropriate sentence, found the existence of substantial and compelling circumstances allowing it to deviate from the imposition of the prescribed minimum sentence of life imprisonment as provided for in section 52 of Act 105 of 1997. The trial court considered the seriousness of the offence, the interests of the community and the personal circumstances of the appellant as well as the objectives of sentencing. On appeal it was argued that the trial court did not balance the triad of sentencing factors in that it over-emphasised the nature and seriousness of the offence and the interests of the community while under-emphasising the personal circumstances of the appellant resulting in the imposition of a sentence that was shockingly

inappropriate. The personal circumstances of the appellant that were not given sufficient consideration, it was argued, were that he was 53 years old, had passed standard 2 at school, he was married and had a 15 year old daughter, he had no income at the time as he had lost his taxi vehicle in an accident and was therefore in financial difficulties.

[4] It is trite that a court of appeal can interfere with the sentencing discretion of a trial court only in limited circumstances e.g. where the trial court misdirected itself or exercised its discretion improperly. **S v Jiminez** 2003 (1) SACR 507 (SCA) at 517g-h or where the sentence imposed is shockingly excessive.

[5] Considering how the unsuspecting deceased was killed, the endeavours made to dispose of his corpse and the motivation of gain for his killing, in my view, one cannot find fault with the sentence imposed. In fact the trial court bent over backwards to impose what seems a lenient sentence on the appellant. In consequence whereof I am of the view that the appeal ought to be dismissed. The appeal is therefore dismissed and the sentence imposed is confirmed.

MOLOI, J

I concur.

EBRAHIM, J

I concur.

CILLIÉ, J

TO: S Kruger
Attorneys for the Appellant
Bloemfontein Regsentrum
2de Vloer, St Andrews Sentrum
St Andrews Straat 113
BLOEMFONTEIN
Ref: S Kruger/pl/x147696508

AND TO: The Director of Public Prosecution
3rd Floor, Waterval Centre
Aliwal Street
BLOEMFONTEIN
Ref: 9/2/5/1-139/09

