



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: CC39/2022

Delete whichever is not applicable

(1) Reportable: No.

(2) Of interest to other judges: No

(3) Revised.

18 October 2024
Date


Signature

In the matter between:

THE STATE

and

WALTER MAKHULU MALESELA MASHOTLHA
KLAAS OSCAR MASILELA

Accused 1
Accused 2

SENTENCE JUDGMENT

Munzhelele J

[1] Accused 1 has been found guilty of count 8 (murder), count 9 (murder), count 10 (attempted murder), count 11 (attempted murder), count 14 (possession of an unlicensed firearm), and count 15 (possession of ammunition). Counts 8 and 9 are

read with the provisions of section 51 (1) of the Criminal Law Amendment Act¹.

[2] Accused 2 has been found guilty of count 1 (murder), count 2 (murder), count 8 (murder), count 9 (murder), count 10 (attempted murder), count 11 (attempted murder), count 14 (possession of an unlicensed firearm), and count 15 (possession of ammunition). Counts 1, 2, 8, and 9 are read with the provisions of section 51(1) of the Criminal Law Amendment Act. During this sentencing trial, both accused represented themselves. Their attorneys had withdrawn as attorneys of record. The accused were afforded an opportunity to secure new legal representation; however, their request for legal aid was denied, and they were unable to secure attorneys at their own expense.

[3] Before passing sentence, section 274 of the Criminal Procedure Act², requires the trial court to obtain sufficient information to enable it to impose an appropriate and just sentence. The purpose is to ensure that the judge is well-informed about the relevant facts of the case, the circumstances of the accused, and any other factors that may affect sentencing. In *S v Mokela*³, Bosielo JA stated (at [14]):

"There is the hallowed principle that, in order to arrive at a fair and balanced sentence, it is essential that all facts relevant to the sentence be placed before the sentencing court. This duty extends to the point where the sentencing court may be obliged, in the interests of justice, to inquire into circumstances, whether aggravating or mitigating... This is consistent with the principle of a fair trial."

[4] In *S v Olivier*⁴, Majiedt AJA remarked as follows (at [8]):

"It is trite that, during the sentencing phase, formalism takes a back seat, and a more inquisitorial approach, aimed at gathering all relevant information, is adopted. The purpose of this approach is to provide the court with as much information as possible regarding the offender, the circumstances of the offence, and the victim's situation, including the impact the offence had on the victim. The prosecutor, defense counsel, and the presiding officer all have a duty to complete the picture as thoroughly as possible during the sentencing stage. Material factual assertions made during this

¹ 105 of 1997

² 51 of 1977

³ 2012 (1) SACR 431 (SCA)

⁴ 2010 (2) SACR 178 (SCA)

phase of the trial should generally be proven on oath.”

[5] Sentencing the accused is within the discretion of the trial court. In *S v Karan*⁵ where Davis AJ (Erasmus J concurring) relied on the following statements by Terblanche A Guide to Sentencing in South Africa 3rd ed (2016) at 15:

‘That the power to impose a sentence on a convicted offender is the domain of the courts, the judicial authority in South Africa, is widely accepted. This principle is so deeply imbedded in our common law that it is difficult to find any source containing a statement to this effect.’

[6] During the sentencing proceedings, the following evidence was presented: information regarding the accused’s prior convictions, pre-sentence reports pertaining to the accused, and victim impact statements. Additionally, the accused testified and called witnesses to testify.

[7] Accused 1 has no previous convictions, whereas accused 2 has the following previous convictions, as recorded in SAP 69, marked Exhibit ‘EE’.

7.1 Attempt to escape from lawful custody where he was sentenced to 9 months’ imprisonment on 30 October 2000.

7.2 Escape from lawful custody where he was sentenced to 12 months’ imprisonment on 17 April 2002.

7.3 Escape from lawful custody where he was sentenced to 18 months’ imprisonment on 11 December 2003.

[8] The pre-sentence reports, compiled by probation officers and marked as Exhibit ‘GG’, were submitted by the state. These reports covered a wide range of matters relevant to the sentencing of both accused, including the impact of the crime on the victims, absence of remorse on the part of the convicted accused, the personal circumstances of the accused, and motivated sentencing recommendations. Onicah Nhlapo compiled the pre-sentence report for Walter Makhulu Malesela Mashotlha and also testified during the sentencing proceedings. Ayanda Ndala compiled the pre-

⁵ 2019 (2) SACR 334 (WCC) at [21]

sentence report for Klaas Oscar Masilela and likewise testified during the proceedings. The probation officers recommended that both accused 1 and 2 be sentenced in terms of section 276(1)(b) of the Criminal Procedure Act.

[9] Accused 1, Walter Mashotlha, testified that he is self-employed as a painter and also engages in drawing, as well as selling water and chickens. He completed Grade 12 and is 33 years of age. He is unmarried but has two children, aged 17 and 8, from different mothers. Neither of the mothers is employed, and the children reside with their mothers. Prior to his arrest, the accused was responsible for providing R8,000 monthly for the maintenance of each child, in addition to the government grants the children were receiving. He testified that he earned approximately R70,000 per month from his work and presented Exhibit 'SS,' which shows various houses he had painted. Accused 1 was the proprietor of a company that employed six individuals. After his arrest, the employees found jobs with other companies, although some are no longer working. The accused was actively involved in community initiatives, including an orphanage project to which he donated approximately R20,000 per month. He was also a member of a WhatsApp group that reported crimes in the village. His sister, Florida, testified that the accused is a kind and respectful person who loves people. She confirmed that he is a painter.

[10] Accused 2, Klaas Oscar Masilela, has been unemployed since 2003, except for a brief period in October 2019. He resides with his aunt in Suncity. He is 41 years of age, unmarried, and has a 23-year-old child who resides with his mother, an elderly woman. Accused 2 and the child's mother separated in 2004, and he does not know her current whereabouts. The child is employed in road maintenance. Since 2019, accused 2 has supported himself. His aunt, Monica Mthombeni, testified that she has lived with accused 2 since 2019, after his release on parole. She described him as a handyman who also engages in electrical projects, mechanics, and soccer coaching. She further testified that when accused 2 had money, he would contribute to the household by purchasing necessary supplies.

[11] The information regarding the victims was gathered from the pre-sentence

reports submitted by the probation officers. One victim, Katlego, stated in his victim impact statement that, due to threats he received, he built a high wall and installed security cameras around his house. He frequently changes his residence, which has resulted in a loss of income. He was previously the primary breadwinner for his family. Siphwe also constructed a high wall and installed security measures, stating that he lives in constant fear for his life.

[12] Zanele Mamba, the sister of the deceased Vincent Mamba, informed the probation officer that her brother was the breadwinner for the family. She is currently unemployed, and the children in her care receive child support grants. She is now responsible for her own children as well as her late brother's child, relying on SASSA grants for their survival.

[13] Jabu Mbatha, the mother of the deceased Jabulani Kekana, expressed that her son's death was a tragic loss for her. She stated that her family continues to receive threats, forcing some of her children into hiding. The entire family is living in constant fear. Similarly, Sara Pelo, Maria Makhannu, and George Mahlangu reported that their families live in fear following the death of Tshepo Mahlangu. Mashikinya, the father of the deceased Motheo Makau, informed the probation officer that he is struggling to cope with the loss of his son.

[14] During arguments, both accused submitted that they could not argue for any sentence, as they regard the conviction as erroneous, maintaining their innocence. They assert that they were wrongfully convicted by this court. Accused 1 stated that he does not even know accused 2 and that his phone had been lost in 2020, prior to the commission of the offences. He argued that the individuals who should have been arrested were not apprehended. Accused 2 contended that he was not afforded the opportunity to be heard during the trial on the merits and, therefore, should have been acquitted and discharged of all the offences.

[15] The state, on the other hand, argued that the accused displayed no remorse. The offences for which they were convicted are of a serious nature. Accused 1 was

found guilty of two counts of murder, while accused 2 was found guilty of four counts of murder. These murder convictions carry mandatory minimum sentences, and, in terms of section 51(3), substantial and compelling circumstances must be present to justify a deviation from the prescribed minimum sentences. The state submitted that no such substantial or compelling circumstances exist and, accordingly, accused 2 should be sentenced to life imprisonment on counts 1 and 2, as well as on counts 8 and 9, and accused 1 should be sentenced to life imprisonment on count 8 and 9. Additionally, the state recommended 10 years' imprisonment for the attempted murders of Katlego and Sipiwe, and 5 years' imprisonment for the charges related to the possession of firearms and ammunition.

[16] In *S v Tsotetsi*⁶ Myburgh AJ said that:

'(a) The sentence must be appropriate, based on the circumstances of the case. It must not be too light or too severe.

(b) There must be an appropriate nexus between the sentence and the severity of the crime; full consideration must be given to all mitigating and aggravating factors surrounding the offender. The sentence should thus reflect the blameworthiness of the offender and be proportional. These are the first two elements of the triad enunciated in *S v Zinn* [1969 (2) SA 537 (A)].

(c) Regard must be had to the interests of society (the third element of the Zinn triad). This involves a consideration of the protection society so desperately needs. The interests of society are reflected in deterrence, prevention, rehabilitation and retribution.

(d) Deterrence, the important purpose of punishment, has two components, being both the deterrence of the accused from reoffending and the deterrence of would-be offenders.

(e) Rehabilitation is a purpose of punishment only if there is the potential to achieve it.

(f) Retribution, being a society's expression of outrage at the crime, remains of importance. If the crime is viewed by society as an abhorrence, then the sentence

⁶ 2019 (2) SACR594 (WCC) at [29]

should reflect that. Retributions also expressed as the notion that the punishment must fit the crime.

(g) Finally, mercy is a factor. A humane and balanced approach must be followed.'

[17] In *S v Kruger*⁷ Shongwe JA (Harms AP and Plaskett AJA concurring) confirmed that '[p]unishing a convicted person should not be likened to revenge. It must have all the elements of and purposes of punishment, prevention, retribution, individual and general deterrence and rehabilitation'.

[18] Our courts have consistently viewed contract killings as most grave and particularly heinous, see *S v Mlumbi en 'n ander*⁸. Any decent member of society', said Goldstone JA in *S v Dlomo & others*⁹, 'will instinctively condemn the hired killer'. The court in *S v Ferreira & others*¹⁰ confirmed the sentences of life imprisonment imposed on appellants two and three, the two hired killers. Unanimously finding no substantial and compelling circumstances to be present, the court noted that 'the condemnation expressed in previous cases of contract killing applies unrestrictedly to them' (at [53]).

[19] In *S v Monye & another*¹¹ the two appellants, both contract killers, appealed against their sentences of life imprisonment. The murder by the two appellants, said Schoeman AJA at [18], 'was a callous and cruel deed, committed purely for greed'. The appellants had shown no real remorse and had only come clean after conviction, because they wanted to 'benefit themselves' (at [23]). The court found no substantial and compelling circumstances to be present, *inter alia* because 'the elements of deterrence and retribution . . . are so important' in dealing with hired killers (at [24]; see also *Director of Public Prosecutions, Gauteng v Tsotetsi*¹².

⁷ 2012 (1) SACR 369 (SCA)

⁸ 1991 (1) SACR 235 (A) 251g-h

⁹ 1991 (2) SACR 473 (A) 477i

¹⁰ 2004 (2) SACR 454 (SCA)

¹¹ 2017 (1) SACR 329 (SCA)

¹² 2017 (2) SACR 233 (SCA) at [28]

[20] In the present case, we find ourselves at a critical juncture, where the pursuit of justice and the interests of society must be balanced against the personal circumstances of two individuals who stand convicted of some of the most serious offenses in our legal system: murder, attempted murder, and possession of firearms and ammunition. The accused, Walter Mashotlha and Klaas Oscar Masilela, have been convicted of heinous crimes that resulted in the deaths of four young men. These were not merely breadwinners, but the lifeblood of their families and communities, as reflected in the pre-sentence reports. These young men were gunned down in cold blood, during broad daylight, in the presence of bystanders. Their families, are now left to bear the unbearable weight of their loss. Their families now find themselves without the support and love they once relied upon.

[21] The seriousness of these crimes committed necessitates a firm response from this court. However, it is equally crucial to consider the personal circumstances of the accused, the nature of the offenses committed, and the broader interests of society and the victims, in order to arrive at an appropriate and just sentence.

[22] Walter Mashotlha, the first accused, is 33 years old. He is a father to two children, aged 17 and 8, both of whom depend on him financially. Before his arrest, he was a self-employed painter, earning a significant monthly income of R70,000, and running a company that employed six people. He was not only responsible for his children's welfare, providing each of them with R8,000 monthly, but also played an important role in his community. He contributed R20,000 a month to an orphanage project and was part of a community crime-reporting group. His sister describes him as a kind and respectful person who loves people and was highly engaged in his work, contributing positively to society through his skills and charitable efforts.

[23] The second accused, Klaas Oscar Masilela, is 41 years old and has struggled with unemployment for many years. Since 2019, he has been staying with his aunt and has worked sporadically as a handyman, mechanic, and soccer coach. He is also the father of a 23-year-old child, who now supports himself through piece jobs. While he may not have had the same level of financial stability as the first accused, he has

demonstrated a willingness to help his family and his community with coaching young boys whenever he could, despite his own limited means.

[24] Both men have personal histories and responsibilities that make their circumstances unique. Walter Mashotlha, a father and community leader, once provided jobs to others and made significant contributions to society. Klaas Masilela, though less financially stable, still contributed where he could and supported his family. These are mitigating factors that the court will consider in determining the appropriate sentence. It is clear that both men have played roles in their families and communities that go beyond the actions that have led to their conviction today.

[25] However, the crimes for which they have been convicted of are not crimes that can be viewed lightly because these are hired killer contracts. These are planned crimes. In *S v Peloeole*¹³, Makgoka J noted, in a minority judgment with reference to 'planned criminality', [(murder)my emphasis] he said that planned criminality is morally more reprehensible than unplanned, impulsive acts'. They had a devastating consequences to the surviving family members.

[26] These killing spree indeed devastated the families of the deceased. The victims were also pillars of their families. Their loss has created a void that can never be filled. The families of the deceased will never see their loved ones again, and the emotional, psychological, and financial damage is immeasurable. The lives of four young breadwinners were taken, not for any personal grievance or accident, but because of greed and the desire for profit in a world where tenders, contracts, and money seem to outweigh human life. In *S v Mahlangu & others*¹⁴ the 'combined impact' of all relevant factors—ranging from the youth of the accused to the brutal and vicious nature of the murder—compelled the court to conclude that there were no substantial and compelling circumstances to justify a deviation from the prescribed life imprisonment (377i–378b).

¹³ 2022 (2) SACR 349 (SCA) at [41]

¹⁴ 2012 (2) SACR 373 (GSJ)

[27] It is undeniable that the accused have responsibilities and personal circumstances that will be affected by their sentencing. Their children will grow up without their fathers' presence, and their communities will lose contributors. However, I must balance their personal circumstances against the severity of the crimes for which they have been convicted. Their actions were deliberate and premeditated. In *S v PM*¹⁵, Thulare AJ found that the murder of a child, nearly four years old, was premeditated (at [41]): the accused did not act 'in a moment of rage or impulsively on the spur of the moment,' but had rationally calculated the timing and circumstances, leading to the child's murder after a 30-minute walk to an isolated place, aimed at avoiding detection (at [40]). The same applies to these accused; their actions in killing the deceased were calculated. The Welbekend murders occurred after the deceased were lured to an office under the pretense of handling paperwork, only to be gunned down. The Bronkhorstspuit murders followed after the accused were seen taunting the deceased with their vehicle before proceeding to Bronkhorstspuit, where they carried out the killings.

[28] The accused were hired to execute these murders and did so without any regard for the families they devastated. In *Director of Public Prosecutions, Gauteng v Tsotetsi* 2017 (2) SACR 233 (SCA), the court addressed a similarly grave and callous case of murder, where the respondent had been planning the killing of her husband 'long before the fateful day of his death' (at [20]). The court held (at [30]):

"Compared to the nature and seriousness of each of the two murders, the factors put forward to justify a lesser sentence than the minimum—such as the respondent's age, clean record, the period of incarceration awaiting trial, her background, and educational achievements—do not, either individually or cumulatively, constitute substantial or compelling circumstances that would render the minimum sentence of imprisonment unjust. The trial court therefore misdirected itself in concluding that substantial and compelling circumstances were present."

This case resulted in life imprisonment for each murder conviction. Similarly, given the deliberate nature of the killings in this case, a comparable sentence is warranted.

¹⁵ 2014 (2) SACR 481 (GP)

[29] Walter Mashotlha may have been a good father, an employer, and a charitable member of society, but that does not erase the fact that he participated in a murder for hire—a crime that reflects the worst kind of disregard for human life. Klaas Masilela, though struggling with personal hardship, also chose to engage in this violent act. Both men had a choice, and they chose to take the lives of others for financial gain.

[30] It is vital that this court's sentence sends a clear message to society: that the value of human life cannot be measured in money or contracts. Justice must be served not only for the victims and their families but also to show that those who choose to take lives for profit will face the full consequences of their actions. While I acknowledge the personal hardships and contributions of both accused, these factors cannot diminish the gravity of their crimes. The sentence must reflect the seriousness of their actions. It must serve both as punishment and deterrence, ensuring that others understand that the unlawful taking of innocent lives, irrespective of motive, will not be tolerated. Rehabilitation is not a consideration in this case, as the accused have demonstrated no remorse. See *S v Kaywood*¹⁶, the potential rehabilitation of the appellant was not an issue, but Dambuza JA referred to *S v Solomon & Another*¹⁷ in making the following point: 'The appellant's personal circumstances pale against the abhorrent nature and level of cruelty with which he committed the crimes . . .' (at [15]).

[31] The court has taken into account the full extent of the loss suffered by the families of the four victims, the nature of the crimes committed, the personal circumstances of the accused, and the interests of society in order to impose a sentence that reflects not only the personal circumstances of the accused but also the irreparable harm they have caused. This is to ensure that the administration of justice is upheld and not brought into disrepute. The sentence must promote respect for the law and the protection of society, thereby discouraging vigilantism. The sentence will serve to deliver justice for the victims, their families, and the broader community, and to prevent the accused from contemplating further criminal conduct.

¹⁶ [2016] ZASCA 179 (unreported, SCA case no 394/16, 28 November 2016)

¹⁷ 2008 (2) SACR 149 (E)

[32] For the four murder convictions, the legislature has prescribed minimum sentences which are applicable. In the absence of substantial and compelling circumstances, the court is required to impose the sentences as prescribed by the Act.

[33] However, the accused must not be sacrificed on the altar of deterrence. The essence of this principle was stated as follows by Ackermann J in *S v Dodo*¹⁸:

'Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others bears no relation to the gravity of the offence . . . the offender is being used essentially as a means to another end and the offender's dignity assailed.'

The gravity of the offences for which the accused have been convicted is overwhelming. Accordingly, I find no substantial and compelling reasons to depart from the prescribed minimum sentences.

[33] In *S v Makhakha*¹⁹ the severity of the crimes (murder) was such that substantial and compelling circumstances were found absent despite the accused's relatively young age, clean record and time spent in prison awaiting trial. Same applies to these accused I have not found any substantial and compelling circumstances to deviate from the minimum sentence as I have already said above. Their personal circumstances are common place therefore on murder charges the minimum sentence will be imposed as this were premeditated murders. In *S v Shongwe*²⁰ Cillie J held that 'substantial and compelling circumstances' would not include circumstances which are normally thought of as mitigating circumstances.

[34] In *S v Solomon & Another* 2008 (2) SACR 149 (E) a full bench agreed that even where a person can be a suitable candidate for rehabilitation, this potential for rehabilitation does not in itself mean that life imprisonment cannot be imposed (at [17] and [24]). '[T]he potential for rehabilitation,' said Froneman J at [25], 'must yield to the

¹⁸ 2001 (1) SACR 594 (CC) at [38]

¹⁹ 2014 (2) SACR 457 (WCC)

²⁰ 1999 (2) SACR 220 (O)

demand that the crime of murder in the present case is of such an abhorrent nature and degree, to the extent that a finding of compelling and substantial circumstances to warrant a sentence lesser than life imprisonment is not justified.' The same applies to the offenses of attempted murder and possession of firearms and ammunition. These offenses were committed during the commission of the planned murder. Therefore, the gravity of these offenses is significant and justifies custodial sentences.

[35] In the results the following sentences are pronounced.

1. Accused 1 on count 8 and 9 of murder, is sentenced to life imprisonment on each count;

1.1 On count 10 and 11 of attempted murder accused is sentenced to 8 years' imprisonment on each count;

1.2 On count 14 and 15 of possession of unlicensed firearm and ammunitions accused is sentenced to 5 years on each count.

1.3 In terms of section 280 of the criminal procedure act 51 f 1977 all these sentences will run concurrently with the sentence for life imprisonment.

2. Accused 2 on count 1, 2, 8 and 9 of murder, is sentenced to life imprisonment on each count;

2.1 On count 10 and 11 of attempted murder accused is sentenced to 8 years' imprisonment on each count;

2.2 On count 14 and 15 of possession of unlicensed firearm and ammunitions accused is sentenced to 5 years' imprisonment on each count.

2.3 In terms of section 280 of the criminal procedure act 51 of 1977 all the sentences will run concurrently with the sentence of life imprisonment.

Auxiliary orders

1. In terms of Section 103 (1) of firearms control act 60 of 2000 the court makes no order. This means all the accused are deemed unfit to possess a firearm.
2. In terms of section 103 (4) of firearms controls act 60 of 2000. The court makes an order of search and seizure of accused's premises for firearms, ammunitions licenses and or competency certificate.
3. In terms of section 299A (1) of Act 51 of 1997 the court informs the complainants that they have a right to make representations to the commissioner of the correctional services when placement of the prisoner on parole is considered, to attend any relevant meetings of the parole board, when the accused's parole is to be decided. This is subject to the directive issued by the commissioner of correctional services under section 4 of the correctional services Act.
4. Accused are both having the right to appeal the convictions sentences which were imposed on them today. You can request the legal aid attorneys or an attorney where you pay out of your own pocket to assist you in bring a substantive application for leave to appeal the conviction and sentences within 14 days of this sentence.



M Munzhelele J

Judge of the High Court, Pretoria

Heard On: 14-15 October 2024

Judgment Delivered On: 18 October 2024

Appearance:

For the State: Adv L More

Instructed by: The National Director of Public Prosecutions