IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION – MAKHANDA]

CASE NO.: CC27/2024

In the matter between: -

THE STATE

and

NOMSA CAROLINE SEYISI **ACCUSED**

JUDGMENT ON SENTENCE

NORMAN J:

[1] This court found the accused guilty and convicted her on Counts 1 (Murder of one Mr. Thembinkosi Wambi) and Count 2 (Attempted Murder of Zukiswa Frans). She was acquitted on the charge of robbery. Mr. Engelbrecht represented the State and Mr. Stamper represented the accused.

[2] In the indictment, as indicated in the judgment on conviction, the Director of Public Prosecutions (DPP) mentioned that there are aggravating circumstances as defined in section 1(1)(b) of the CPA that were present in that the accused wielded firearms and grievous bodily harm was inflicted. In the event of a conviction the DPP indicated that in respect of Count 1, he would rely on the provisions of section 51(1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the CLAA) which prescribes a discretionary minimum sentence of life imprisonment in

that the murder was committed by a group of persons acting in the execution of or furtherance of a common purpose and the murder was premeditated.

[3] After conviction the defense requested that a pre- sentence report be obtained. Indeed, a report was compiled by the Social Worker, Mrs. Nomonde Precious Stamper (Mrs. Stamper) and submitted to court. Mr. Stamper indicated that he needed to question Mrs. Stamper about some of her findings. On 13 November 2024, Mrs. Stamper appeared in court. Her qualifications and expertise were not placed in issue. She confirmed that she compiled the report after assessing the accused and having interviewed her family members and her children. She was taken to task by Mr. Stamper on her findings that the accused did not seem to take responsibility and that she showed no remorse.

[4] It is apparent from her report that she had consulted with the accused's family members including her children. She consulted with the accused. In her opinion, she found that the accused lacked remorse and lacked insight and appreciation of the impact of the offences on the victims. That was one of the reasons that she recommended a custodial sentence which would expose the accused to all the rehabilitative programs that the correctional centers offer to offenders. She considered various other options, such as, payment of a fine, community corrections and suspended sentences.

[5] Having considered all that she was of the view that direct imprisonment would be suitable for the accused. She was cross- examined at length by Mr. Stamper on, inter alia, her opinion that the accused showed no remorse. It was put to her that a person may not show remorse if that person intends to appeal the decision of the court. Mrs. Stamper was adamant that remorse is linked to rehabilitation. She acknowledged the fact that a person has a right to appeal a conviction.

[6] She was of the view that a person needs to take charge of the offence and take responsibility. She further stated that when a person lacks insight into the offence, it means she does not understand the seriousness of the offence, or the damage or impact of the offence on the victims and that in turn increases the risk of re-offending. It is only when a person has a full understanding of the seriousness and

impact of the offence that he or she will start to feel remorse, she stated. She explained that the rehabilitative programs assist the candidate to identify the contributing factors to the offence. She stated that when a person is assessed that person is allowed to talk about the offence.

[7] When being asked by Mr. Engelbrecht about rehabilitation, she stated that it is like one saying she needed to see a doctor because he has a headache and when he gets to the doctor he tells the doctor that he has a stomachache. The medication given for a stomachache will not treat the headache. She stated that rehabilitation is focused on ensuring that a person will not re-offend, and it is therefore that a person takes responsibility for his or her actions.

[8] She explained that the purpose of rehabilitation is to address the cause or the problem that would make the person commit a particular offence and rehabilitation is to equip the person so that she does not re-offend. She stated that you do get offenders who deny the offence but later on accept and understand the impact of the offence.

[9] She stated that the session with the accused was from 11:30 until 14h20. She regarded that time as sufficient for her to formulate an opinion. She recommended direct imprisonment as an option that would benefit the accused as she would receive therapy and treatment. She stated that she recommended direct imprisonment because of the accused's present level of functioning that related to the risk of her not taking responsibility. She was of the view that direct imprisonment would prevent the accused from being exposed to society until such time that she is able to identify problem areas. She stated that the accused will receive treatment and various programs that will also open up dialogue between her and the victims. They will strengthen family ties. Those programs would cause her to realize the harm caused to the victims. She was excused from court.

[10] On 15 November 2024, during argument on sentence, Mr. Stamper raised an issue that the Court must not impose a sentence that would rupture family life if the accused as a primary caregiver of the children, is sent to prison. In this regard, he submitted that although there is reference in Mrs. Stamper's report to certain

programs, it is not very clear as to how this offence would impact on the children if the mother is imprisoned for a long time. He submitted that the report of Mrs. Stamper does not deal with that aspect. The court was of the view that since that aspect was not canvassed with Mrs. Stamper when she testified, she should be recalled. The matter was postponed to Monday, 18 November 2024 for that issue.

[11] Today, Monday, 18 November 2024 Mrs. Stamper attended court. She was asked about the impact that the incarceration of the accused on the children would have. I deal with her evidence later in this judgment.

Defense submissions

[12] The parties did not lead evidence in aggravation or mitigation. Mr. Stamper submitted that the court should deviate from the imposition of life imprisonment based on the following substantial and compelling circumstances:

(a) That in the indictment section 51(1) which makes reference to life imprisonment is relied upon by the State in respect of the murder charge. In count 2, however, there is no reliance on section 51(1). In this regard the court could impose its common law jurisdiction on sentences.

(b) The fact that the accused is a first offender, and in this regard, he relied on **State v Solomon[1].** He stated that a term of life imprisonment given the facts of the case would amount to disproportionate punishment. As a first offender that means that the accused has no previous convictions.

(c) The fact that a person is a primary caregiver would not be a substantial and compelling circumstance on its own. What the court needs to consider is a possibility of rupturing the family life. He referred, in this regard, to paragraph 20 in S *v M.* He submitted that the only way to avoid rupturing family life is by not imposing life imprisonment. If the court does not impose life imprisonment, he argued, the accused would benefit from the parole

[1] State v Solomon 2021 (1) SACR 533 (WC) at para 18.

system. He argued that life imprisonment is equivalent to death, and it will certainly rupture the family life of the accused's children. He emphasized the aspect of adequacy of imprisonment on a primary caregiver. The issue of an alternative form of punishment does not mean sentence must be imposed as if the person was not a caregiver. He also relied on **S v M**[2], where emphasis was placed on the provisions of section 28(2) of the Constitution. He argued that the fact that when a custodial sentence is an issue these provisions of the Constitution do not create a situation where an accused person would escape being imprisoned. The effects on children should be considered and courts are obligated to take into account the rights of a child. He argued that the issue is not the sentencing of the primary caregiver on its own but the fact that in the imposition of the sentence the court must have regard for the children.

(d) The accused was not a direct perpetrator. She was found guilty based on the doctrine of common purpose that she acted as a co-perpetrator. He argued that this aspect should count in her favor. The court must bear in mind that the doctrine itself bypasses causation. If the court takes all these factors into account, cumulatively, they do constitute substantial and compelling circumstances, he argued.

(e) That absence of remorse is not an aggravating factor. If remorse is expressed genuinely, it might be a mitigating factor. In this regard, he relied again on the *Solomon* judgment at paragraph 8.

(f) The accused has been in custody since 28 August 2023, a period of more than a year. That period should be taken into account. Relying on **State v Malgas**[3] he submitted that a court shouldn't impose a sentence that would render it unjust and disproportionate. Once the court has a feeling that the sentence is one that makes it uncomfortable, the court must weigh the interests of the accused, her character and her personality and impose a lesser sentence. In this regard, he made reference to the report of Mrs.

[2] S v M 2008 (3) SA 232 (CC); S v M 2007 (2) SACR 539 at para 32.
[3] State v Malgas 2001 (1) SACR 469 (SCA).

Stamper at paragraphs 12, 14, 15 and 16 which display the personality of the accused. He argued that the decision in **S v Vilakazi[4],** is instructive on the issue of disproportionate sentences[5].

(g) He argued that a sentence other than life imprisonment should be imposed.

State's submissions

[13] Mr. Engelbrecht, on the other hand, submitted that the court must not overlook the fact that the accused was found guilty on the basis that she was part of a pre-planned plot to kill the victims. She played an integral part in both the preparation and the execution of the offences. It makes no difference whether she pulled the trigger or not. There are factual findings made by the court that there must have been a substantial amount of planning and involvement in luring them away from their home to a place where they were going to be executed and the fact that they made sure that there were no witnesses.

[14] He argued that our courts have considered the maximum penalty for the cases where there is reliance on common purpose. In this regard he relied on **State v Monye[6]**. He argued that the facts in *Nduwana* case are more relevant to the case at hand because the court in that case also dealt with sentencing of a primary care giver. He also referred to **DPP, Gauteng v Totetsi[7]**. He submitted that the court has to send a clear message that this type of offence is an abomination and is corrosive to the foundation of justice, and people must know that if they commit these kinds of offences they will be severely punished. He referred the court to **S v M[8]** for the submission that a court should not allow a situation where children are used as a shield to avoid appropriate punishment. He submitted that there is no other alternative sentence.

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[4] S v Vilakazi 2009 (1) SACR 552 (SCA).
[5] S v Dodo 2001 (3) SA 382 (CC).
[6] S v Monye 2017 (1) SACR 329 (SCA) at para 19 & 21; S v Mlumbi (70/1990) [1990] ZASCA 153 (29 November 1990); S v Nduwana 2015 (JBR) 0751.
[7] DPP Gauteng v Totetsi 2017 (2) SACR 233 (SCA) at para 28.
[8] S v M 2008 (3) SA 232 (CC).

[15] He submitted that the accused's children are being taken care of. They reside with her sister. Their father contributes towards their well-being and their schooling. There is nothing to suggest that they would not be taken care of. The court is not obliged to go any further than that.

[16] On the issue of remorse, he submitted that absence of remorse has a very negative impact on the prospects of accused's rehabilitation. She persisted on a patently false defense that is a factor that weighs heavily against her on its own. She does not bode well for rehabilitation. He referred the court to S v *Matyityi*[9] judgment as a judgment that actually deals with the issue of remorse. He further argued that the fact that she has been incarcerated prior to trial is not a feature that can weigh enough to amount to substantial and compelling circumstances. He relied on *Malgas* that for an issue to constitute substantial and compelling circumstances in nature that issue needs weighty justification and the factors raised by counsel for the accused fall short of that standard. He argued that the State had asked for life imprisonment and that is justified in this case, it is not disproportionate considering the triad that the court has to apply. In these matters there would be no justification to deviate therefrom.

[17] On the attempted murder charge, he submitted that there are aggravating factors in relation to that offence. Ms. Zukiswa Frans was forced to lie down when she had been taken out of the safety at home, the terror that must have visited her at the time awaiting her death. Fortunately, she was struck on her hand and not on her head. He submitted that there was a clear intent to kill her, and a long term of imprisonment is the only reasonable one.

Discussion

[9] S v Matyityi (695/09)[2010] ZASCA 127; 2011 (1) SACR 40 (SCA)

[18] If there is one difficult task for the court in a criminal case is the imposition of sentence. The Court has to balance various interests, namely, those of the community, your interests as a mother with children and your personal circumstances, and the gravity of the offences that you committed. I have to consider the interests of your children. Is imposing a term of life imprisonment proportionate to the offences committed?

[19] In S v Malgas[10], the Supreme Court of Appeal stated:

> [25] What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the legislature's view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed. In summary –
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> A Section 51 has limited but not eliminated the courts' discretion in imposing sentence in respect of offences referred to in Part 1 of Schedule 2 (or imprisonment for other specified periods for offences listed in other parts of Schedule 2).
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> B Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should *ordinarily* and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.
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> C Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

[10] S v Malgas (117/2000) [2001] ZASCA 30; [2001] 3 All SA 220 (A) (19 March 2001), para 25 A to G

D The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.

E The legislature has however deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored.

F All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process.

G The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ("substantial and compelling") and must be such as cumulatively justify a departure from the standardised response that the legislature has ordained."

Are there substantial and compelling circumstances?

[20] Your personal circumstances as recorded by Mrs. Stamper are that: You are 47 years old. You have a matric, a certificate in paramedics, and a certificate in auxiliary social work. You worked for Sanlam Sky as a sales advisor. You had previously worked for Statistics SA and Gardmed, employment that terminated when you were arrested. You were married in 2010 and got divorced from your husband in 2021. You have two children born of the marriage. Your ex-husband continues to visit and support your children. He is currently not well. He pays for all the children's educational needs and the children also receive R3000 per month from him. Your sister, Neliswa, described you as an

extrovert. She told Mrs. Stamper that you are a good person who loves beautiful things. She stated that you love your children.

[21] You are a breadwinner, and you take care of every family member. You described yourself as having been good in academics when you were at school and that you were also a queen of majorettes. You told her that you are a good listener. You have a chronic illness which is being managed with treatment. You reported that you were of sound health. Prior to your arrest you were earning R9000.00 per month and your contract was about to end at the time of your arrest. You were born and bred here in Makhanda. Your parents are both deceased. You reside in a family home with your siblings and your children. The relationship between you and your siblings is sound. Your home has been described by Mrs. Stamper in her report as a conducive environment for raising children. You are a member of the Methodist Church. You were raised in a Christian environment, your family also observed and performed traditional cultural practices. You do not abuse any substances. You conveyed to Mrs. Stamper that your children are in good care by your sister, Neliswa. Neliswa also reported that this incident broke your family apart. The family finds it difficult to face the community. They feel that your absence has left a void at home. Your child who is at tertiary is continuing with therapy and his academics remain good.

[22] Mrs. Stamper also interviewed the families of the victims. They stated that they live in fear. Thembinkosi was described as a quiet person who was doing piece jobs and supporting his family. Zukiswa could not be interviewed as she was reported sick. Zukiswa has seven children and the last born is the one born out of the relationship with the deceased. Her children are receiving foster grants and are looked after by her siblings. She was described as a very helpful person. Her sister Nomthandazo informed Mrs. Stamper that after the incident she lost all function in one of her hands. She no longer visits her children because she fears for their lives. Family members have distanced themselves from her as they believe she would place their lives in danger. Zukiswa's children fear for their lives as they believe the attackers will come and shoot

them when their mother is at home. That fear was heightened by the thought of feeling unsafe around their mother.

[23] I have considered various factors that the defense Counsel listed as factors that, according to him, constitute substantial and compelling circumstances. I disagree with him for these reasons:

(a) The accused is a first offender and at the age of 47, this is the first time she came into conflict with the law, but she planned, facilitated and actively participated in the horrific murder of Thembinkosi and the attempted murder of Zukiswa. She committed the offence with people that had told her that they were 'wet' and needed to be 'cleansed', which in her version, meant that they had committed an offence. She associated herself with their actions throughout. These facts tower above the fact that she is the first offender. In the *Solomon* decision at para 18, relied upon by Mr. Stamper, Rogers J (as he then was) stated:

"[18] Neither accused has a previous conviction for violent crime. However, s 51(1), unlike s 51(2), does not draw a distinction between first and multiple offenders. The fact that an accused is a first offender may, in combination with other factors, lead a court to the conclusion that life imprisonment would be disproportionate punishment, but on its own it cannot have that effect."

(b) The accused concealed the identity of the two co – perpetrators from the police and from this court. She did not report the incident to the police for a period of two days. She only went to the police after she heard that the police were looking for her at her home. The consequences of concealing their identity, including the color of the motor vehicle they were driving, means that the police will not be able to apprehend them. She has protected them from the law enforcement agencies. That is sufficient reason, in my view, to protect our society from her.

(c) I disagree that the accused was not a direct perpetrator. I dealt with this aspect at length in my judgment on conviction. She went with her

perpetrators to look for Zukiswa. She lured Zukiswa and Thembinkosi into the vehicle of the co–perpetrators under false pretences that she needed to be taken to Black Cat. She told them to board the vehicle as it was her friend's vehicle. She made the vehicle to stop as she said she wanted to urinate. She pulled Zukiswa out when she refused to get out of the vehicle. Thembinkosi was also pulled out by Siya. They were made to lie face down and shot at close range. She put her foot on their backs to check whether they were alive as directed by one of the perpetrators. She, together with the co-perpetrators, boarded the vehicle and left the victims there for dead.

(d) Section 28 (2) of the Constitution enjoins the courts that in any matter involving children, their interests are of paramount importance. This section entrenches the rights of all children not just those of the accused persons. You and your co- perpetrators caused the death of Thembinkosi and now his child is without a father at the age of 7. He left his partner, Zukiswa who is sickly and unemployed. That was a family that was ruptured intentionally. This court must take into account that child's interests as well.

(e) The accused's children, on the other hand, have a father, although he is not well. According to Mrs Stamper's report, he ensures that their needs are met. He maintains them and pays for their schooling. You, on the other hand, chose to rupture your family. It cannot be that Thembinkosi's child whose father was killed in cold blood and his mother was nearly killed but was seriously injured by your actions and those of your co–perpetrators, should have his interests treated as being subservient to those of your children. All these children are innocent in all this, and they must be protected from harm wherever it may emerge. Mrs Stamper has informed the court that Lelona who is at tertiary is well aware of what is happening to his mother. He is doing well academically. He is undergoing therapy to deal with this situation. She referred to him as the support structure of the accused because he visits her often at the correctional centre. Mrs Stamper informed the court that his concerns are about visits because if his mother is sent far away, they will not be able to visit her. Mrs Stamper informed the court that she informed him that female offenders are kept in East London and not in Port Elizabeth.

In so far as the younger child, L, is concerned, he has not been informed by the family about the position of his mother. Mrs Stamper has started engaging in a process where social workers will engage the family on this issue so that the child may benefit from the parent-child programs offered at the facility. She informed the court that she has been informed by the class teacher that L, is doing very well at school and has received an award last week for academic achievements. The school also reported that the child is being well looked after. She further testified that the correctional facilities have family days to strengthen family ties. She also testified that she advised the accused to approach social workers for telephonic and physical contacts with the minor child which will be arranged for her. She stated that correctional services regard corrections as a societal responsibility. She acknowledged that separation from a parent will have a psychological impact on the child however there are various programs to address that. She made an example that such programs involve children taking their homework to their parents at the facility. She further stated that social workers will do a needs assessment of the child and address those. Having considered this evidence I am satisfied that the children will receive therapy when needed and there will be arrangements made to facilitate contact with their mother so as to strengthen the family unit. I am also satisfied that from the school report to Mrs Stamper the child is being taken good care of. The children's father is present in their lives and is supporting them financially as well. I am going to direct that Zukiswa, and her young children be afforded therapy to deal with, amongst others, the loss of a father to the youngest child and the fears that Zukiswa and the other children are experiencing.

(g) On remorse, Mrs Stamper is well experienced, and she formed an opinion that the accused showed no remorse. This was after she had assessed the accused. As aforementioned her expertise was not questioned. I accept her opinion in this regard. Both parties consented to her report being submitted in court as evidence. In Matyityi, Ponnan JA had this to say about remorse:

[13] . . . . . 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. Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question. It is to the surrounding actions of the accused rather than what he says in court that one should rather look. 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. Until and unless that happens the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions. There is no indication that any of this, all of which was peculiarly within the respondent's knowledge, was explored in this case."(footnotes omitted) [my emphasis]

(h) As indicated in the judgment on conviction, the accused did not take this court into her confidence. As stated in the *Matyityi* judgment genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. What the Supreme Court of Appeal stated herein corroborates the views of Mrs Stamper in this regard.

(i) In **S v Thebus**[11] , the trial court convicted the accused on a count of murder and two of attempted murder. The trial court had found that the State had made out a proper case to warrant a conviction of both appellants based on the common–law doctrine of common purpose. Appellants were each sentenced to eight years imprisonment suspended for five years on certain conditions. They launched appeals to the Supreme Court of Appeal against both convictions and sentence. The convictions were confirmed by the Supreme Court of Appeal. The State had filed a cross–appeal against the sentence imposed. The Supreme Court of Appeal upheld the appeal of the State against sentence and sentenced each of the appellants to fifteen years imprisonment. The facts of that case differ from this one. Here the accused

[11] S v Thebus 2003 (6) SA 474 CC at para 22.

was known to the victims. They trusted her. Zukiswa is related by blood to her. She literally facilitated their shooting. That differs from a random stray bullet hitting an innocent child as in *Thebus.*

(j) In **S v Nduwane**[12], the accused were charged with conspiracy to commit murder, kidnapping and murder. They pleaded guilty to kidnapping and murder and the charge of conspiracy to commit murder was withdrawn. They were convicted on their respective pleas of guilty. They had murdered a 42-year-old female, Ms Phumla Jim. The murder was procured to claim benefits under a funeral policy which *Ms Nduwane* had taken to cover the life of Ms Jim. When she ran into financial difficulties, she and her co–perpetrators planned to kill Ms Jim. She, just like in this case, had planned with her co- accused and lured Ms Jim to a 'braai' and that was how she met her death when she was shot at by her co-accused. At paragraph 12 and 13 , Goosen J (as he then was) stated:

> [12] Our society rightly regards murder, when committed for a fee or to secure some financial or economic gain, as a particularly horrifying manifestation of the crime. These so-called contract killings conjure in the mind of ordinary citizens the image of a callous predator who treats human life with utter disdain. It is for this reason that a court, faced with such a crime, will generally be inclined to show little mercy in meting out appropriate punishment. In deciding on what is an appropriate punishment however, it will consider carefully the motive for such a killing.
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> [13] In S v Ferreira **2004 (2) SACR 454** (SCA) Howie JA, at paragraph [33], said the following:
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> > As to the contract killing aspect, this is unquestionably a feature that in reported cases has been regarded as a severely aggravating circumstance. The moral blameworthiness of the procurer, however, must depend on the motive, and subjective state of mind with which a contract killer is engaged.

[12] S v Nduwane and Others (CC 26/ 2014) [2015] ZAECPEHC 22 (17 April 2015)

And at paragraph [70] Marais JA, in a minority judgment, stated:

> It is of course so that the motives which prompt the hiring of contract killers may vary from those which are undeserving of any sympathy whatsoever to those which evoke a great deal of sympathy. And these variations in motive are equally obviously highly relevant to the sentence to be imposed. But after all is said and done, a contract killing for reward is involved. That is, I believe, in the eyes of most reasonable people, an abomination which is corrosive of the very foundations of justice and its administration. While there is clearly room for differentiation of sentences even in contract killings because the degree of repugnancy of the motive in one case may be less than that in another, a court must face the fact that, whatever the motive, a remedy which society rightly regards as an abomination has been unlawfully resorted to by the accused."

(k) In *Nduwane* each of the accused persons were sentenced to life imprisonment in respect of the murder charge.

(l) In this case, the period of 14 months spent in custody awaiting trial is not an inordinately long period of time. In any event it does not, in and of itself, constitute a substantial and compelling circumstance. It is but one of the factors to be taken into account when a court considers substantial and compelling factors which would cause it to deviate from the prescribed minimum sentence.[13]

(m) The accused confirmed that the two men when they introduced themselves to Zukiswa and Thembinkosi they did not use the names that were known to her. To date she has not revealed their real identities. Those two co–perpetrators are roaming our streets. That on its own places, members of our society at risk.

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[13] S v Gcwala (295/13) [2014] ZASCA 44 (31 March 2014)

(n) At the time of the commission of the offence the accused was employed as a paramedic. A paramedic is a person that society entrusts with the lives of our people. She left both Zukiswa and Thembinkosi after they were shot. Thembinkosi's life could have been saved if she had called an ambulance to attend to them as she was expected to, as a paramedic. She could not even help her cousin Zukiswa. She lacked empathy for them.

(o) The victims were shot in cold blood, execution style. They had done nothing wrong. Every life matter, whether a person who was killed is rich or poor. The lives of people matter even more when their lives are to be terminated for insurance benefits. These types of offences, as submitted by the State, have become prevalent in our country. These crimes are brutal and callous. The accused and her co-perpetrators had displayed no mercy for the victims. We live in a country where the majority of the people live below the poverty line. The temptation to cover these people for funeral policies is rife for unscrupulous people. It is for that reason that a strong message must be sent to them that insurance companies, created an industry where it is possible to give everyone a decent funeral. That industry has been highjacked by those who have no regard for human life and have turned it into an illicit money-making scheme. Those who participate in those criminal activities must face the full might of the law. The time has now come for the insurance companies to revisit their processes and introduce some safeguards to protect the unsuspecting public from those who are abusing these policies for financial gain.

[24] I have examined your personal circumstances contained in the social workers' report, above, because you did not testify. I have also considered the interests of your children and the children of the victims. I have considered the value in keeping a family intact as submitted by your Counsel. I have examined the active role you played in the commission of the offences. In trying to balance the interests of society, your personal circumstances, your interests and those of the children, the seriousness of the crime itself, I could not find any factors

that constitute substantial and compelling circumstances so as to warrant a deviation from the prescribed minimum sentence of life imprisonment. I have also considered whether life imprisonment would be disproportionate and bring about an injustice, and I found that it would not. In so far as the attempted murder is concerned, Ms Frans sustained serious injuries on her hand and on the left side of her head. She was hospitalised and had to be operated on. As a result of the injuries sustained on her left hand she has lost all motor function in it. Those injuries are serious. Having considered the triad factors I am satisfied that a sentence of 15 years imprisonment will be proportionate to the offence committed in Count 2, attempted murder.

[25] Having considered all the factors mentioned above, I impose the following sentences:

ORDER

1. Count 1: Murder of Mr. Thembinkosi Wambi

   The accused is sentenced to LIFE IMPRISONMENT.

2. Count 2: Attempted Murder of Ms Zukiswa Frans

   The accused is sentenced to undergo 15 (FIFTEEN) YEARS IMPRISONMENT

3. The sentence in Count 2 shall run concurrently with the sentence in Count 1.

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T.V. NORMAN

JUDGE OF THE HIGH COURT

APPEARANCES:

For the STATE : **ADV ENGELBRECHT**

Instructed by : Director of Public Prosecutions

For the DEFENCE : **ADV STAMPER**

Instructed by : Legal Aid Board SA

Arguments on mitigation heard on : 13 November 2024; 15 November 2024 & 18 November 2024

Judgment on sentence delivered on : 18 November 2024