

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NUMBER: AR53/2024

IN THE MATTER BETWEEN:

SAMSON NKANYISO NGELEKA

APPELLANT

Versus

THE STATE

RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J: (SIBISI AJ CONCURRING)

[1] Appellant was convicted on a count of murder and sentenced to fifteen (15) years imprisonment.

[2] With leave of the court *a quo* he now appeals against the sentence.

[3] The personal circumstances of Appellant are that he is 33 years of age, has two minor children and was employed at Leach Landscaping earning R 4 600.00 per month. He also supports his mother and was a first offender.

[4] The question that arises is whether there are substantial and compelling circumstances that justify a deviation from the prescribed minimum sentence of fifteen (15) years imprisonment.

[5] Appellant was convicted of assault with the intention of causing grievous bodily harm in 2016 and sentenced to eighteen (18) months imprisonment which was wholly suspended for a period of five (5) years.

[6] On the evening in question Appellant was at a tavern having a beer when he was confronted by the deceased who was not known at the tavern.

[7] Appellant pleaded not guilty and denied stabbing the deceased.

[8] The state witnesses testified that Appellant was on top of the deceased who was lying on the floor stabbing him. An empty crate was used to hit Appellant to stop him from stabbing the deceased. Appellant then ran away and was later found sleeping in his room with his blood-stained clothes next to the bed. From the evidence it appears there was an argument between the deceased and Appellant about a beer.

[9] Appellant refused to stop assaulting the deceased when requested to do so and only stopped after being hit with the plastic crate.

[10] Appellant and like-minded people must understand that in a civilised society disagreements are not resolved by resorting to violence. More so in this case when the deceased was in actual fact killed because of an argument over a beer.

[11] The taking of a life is a very serious offence as life is sacred. The conduct of Appellant on the day in question was unacceptable.

[12] The fact that Appellant was employed and cared for his mother, in my view, are normal neutral factors that do not amount to substantial and compelling circumstances.

[13] The learned Magistrate considered all the factors in determining the sentence. There was no misdirections nor did he err in any way.

[14] The personal circumstances of Appellant nor any facts as at the time of the incident amount to substantial and compelling circumstances. As was held in *S v Matyityi* 2011 (1) SACR 40 (SCA) at 53 E-F. Courts are obliged to impose the minimum sentences unless there are truly convincing reasons for departing therefrom.

[15] As set out above I am unable to find such reasons.

[16] The appeal against sentence is dismissed.

P C BEZUIDENHOUT J.

I agree.

SIBISI A.J.

JUDGMENT RESERVED:

25 APRIL 2025

JUDGMENT HANDED DOWN:

9 MAY 2025

COUNSEL FOR APPELLANT:

T TENGWA

LEGAL AID SOUTH AFRICA

JUSTICE CENTRE

COUNSEL FOR RESPONDENT:

N A KHANYILE

DPP PIETERMARITZBURG