



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION: MTHATHA)**

CASE NO: CC 01 / 2025

In the matter between

THE STATE

and

SIMAMELE TIMOTI

Delivered on 17 March 2025

JUDGMENT ON SENTENCE

NGOQO AJ

[1] Sentencing is a process that not only requires of a judicial officer to show maturity and good temperament but also a process that requires of him to show fairness and firmness at the same time without deviating from the traditional guiding principles of

sentencing. These principles, which are now known as the triad, were enunciated in the case of **S v Zinn**¹ and they are;

- a) The accused's personal circumstances,
- b) The seriousness of the offence and
- c) The interests of society.

[2] Taking this further, in **Samuels v The State**² Ponan JA had the following to say;

“An enlightened and just penal policy requires consideration of a broad range of sentencing options from which an appropriate option can be selected that best fits the unique circumstances of the court..... To that should be added, it also needs to be victim-centered.” (See also the case of **S v Blaauw**³)

[3] Of course, any sentence will profoundly infringe upon the accused's basic human rights, *inter alia*, his constitutionally protected right to freedom of movement which is provided for in terms of section 12 (1) of Chapter 2 of the Bill of Rights in our Constitution.⁴ It thus goes without saying that this infringement of his constitutionally guaranteed right must be justified.

[4] My approach in considering an appropriate sentence in this case will in no way be different from the guiding principles set out in the cases mentioned above. If anything, it will be similar. Mr. Timoti chose not to testify under oath in mitigation of sentence. His legal representative, Mr. Hanise made the following submissions on his behalf:

[5] The accused is a first offender. He was born on the 7th of February 1991. He is now 34 years old. He was 33 years old at the time of the commission of the offence. He is single. He has no children. He was arrested on the 5th of June 2024 and has been in

¹ 1969 (2) SA 537 (A).

² 2010 ZASCA 113 (22 September 2010).

³ 2000 (2) SACR 255 (CPD).

⁴ Act 108 of 1996.

custody since then. Before the accused was arrested, the accused was a self-employed builder in the Construction Industry since 2015.

[6] From this business the accused made on average, about R5000 per month which he used to look after himself and his homestead. He is the only child at home. He does not know his father. His mother before passing away during the year 2003 was not married. The accused was raised from a very young age by his grandmother who passed away around 2014. He dropped out at school in standard seven due to financial difficulties.

[7] Addressing the court further, Mr. Hanise conceded that the offence for which the accused has been convicted is very serious and that there is a national outcry on the femicide cases and the society seeks refuge from the courts and expects the courts to impose appropriate sentences. While submitting that each case should be dealt with according to its merits, Mr. Hanise conceded that the sentence to be meted out should serve as a deterrent not only to the offender but the would-be offenders as well.

[8] Mr. Hanise asked this court to take the following factors into consideration, which he believed are sufficient enough for this court to deviate from the prescribed minimum sentence:

- a) The upbringing of the offender, literally with no parent except his grandmother who passed on in 2014;
- b) The complete absence of a father figure in his upbringing, at home;
- c) His positive contribution to the society as a builder in his community;
- d) His first offender status and
- e) The role played by alcohol in the commission of this offence.

Mr. Hanise was, however, of the opinion that a lengthy term of imprisonment remains an appropriate sentence. He further conceded that the accused should be deemed unfit to possess a firearm.

[9] Mr. Methuso for the state submitted that the offence is serious. A life has been lost. The deceased's sin was her pregnancy and for that she was killed by the accused who had impregnated her. The state further submitted that the accused carefully planned and executed the murder of the deceased whom he first isolated from her friends and to whom he pretended like all is well between them.

[10] According to the state, the deceased has left behind two children who are 13 and 7 years old respectively. She was twenty-four weeks pregnant during the time of her death in the hands of the man who claimed to love her. Not even the unborn child survived the wrath of the merciless killer who is the accused, his own father, that evening.

[11] Mr. Methuso further referred this court to the case of **S v Scott Crossley**⁵ where the court said the following:

“Plainly any sentence imposed must have deterrent and retributive force. But of course, one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishment, they are not the only ones, or for that matter, even the overriding ones. Against that must be weighed the appellant's prospects of reformation and rehabilitation..... It is true that it is in the interest of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.” [Sic]

[12] Mr. Methuso further submitted that the deceased was in a love relationship with the convicted accused. He stated that murders of women by their partners have become a daily occurrence in our country and they need to be curbed. He further referred this court to the unreported judgment of **S v Mudau**⁶ where Mathopo AJA as he then was said the following;

⁵ 2008 (11) SACR 223 (SCA) at 241 paragraph 35.

⁶ 2014 JDR 0641 (SCA); (547/13) [2014] ZASCA 43 (31 March 2014) at paragraph 6.

“Domestic violence has become a scourge in our society and should not be treated lightly, but should be deplored and also severely punished. Hardly a day passes by without a report in the media of a woman or child being beaten, raped or even killed in this country. Many women and children live in constant fear. This is in some respect a negation of many of their fundamental rights such as equality, human dignity and bodily integrity.”

[13] The court in the case of **S v Gregory**⁷ made the following observation;

“The scourge of Femicide and Gender-Based violence is reaching astronomical heights and is referred to as a pandemic in our country. It must be addressed and curbed. Many women and children in this country are almost daily faced with such violent crimes where they fall prey and suffer in silence.”

[14] The general public views serious violent crimes with revulsion. This is so because violence seems to be the order of the day in our country and is eating away on the moral fiber of our society. Murder and Rape have become national sports in our country where children and women are brutally raped and murdered by people who, in most cases, are known to them.

[15] Society has a legitimate expectation that the apprehensible criminal activities as displayed by the accused before court should not be left undetected and unpunished. Society demands and commands that the courts send out a clear and strong message that gruesome criminality has no place in our society and that it is viewed with revulsion.

[16] In the case of **S v Qamata**⁸ the court said the following;

⁷ 2023 ZAGPJHC 358 (21 April 2023).

⁸ 1997 (1) SACR 497 (E) at 483A.

“An appropriate sentence actually means a sentence in accordance with the moral blameworthiness of every individual offender. Therefore, any sentence that the court imposes must reflect the seriousness of the offence and provide just punishment for the offender while taking into consideration the personal circumstances of the offender, the feelings and requirements of the community, the protection of society against individuals like the accused, the impact on the victim and the maintenance of peace and tranquility.”

[17] In the case of **S v Mhlakaza**⁹, the court through Harms JA said the following,

“the objective of sentencing is not to satisfy public opinion but to serve the public interest.... Given the current levels of violence and serious crimes in this country, it seems proper that in sentencing especially for such crimes, the emphasis should be on retribution and deterrence.”

[18] The level of violence meted out on the deceased by the accused was beyond barbaric. It was inhumane and repulsive. Like a hyena pouncing on a hopeless antelope, so did the accused torture, possibly raped and murdered the hopeless and helpless deceased whose only hope of safety was the accused himself, the father of her unborn child.

[19] The accused through his legal representative asked the court to be lenient and show him some measure of mercy. Dealing with the concept of mercy in the case of **S v Rabie**¹⁰ Holmes JA said the following;

“[...] with particular reference to the concept of mercy-

- (i) It is a balanced and humane state of thought,
- (ii) It tempers one’s approach to the factors to be considered in arriving at an appropriate sentence,

⁹ 1997 (1) SACR 515 SCA.

¹⁰ 1975 (4) SA 855 (AD).

- (iii) It has nothing in common with maudlin sympathy for the accused,
 - (iv) It recognizes that fair punishment may sometimes have to be robust
 - (v) It eschews insensitive censoriousness in sentencing a fellow mortal, and so avoids severity in anger, and
- The measure of the scope of mercy depends upon the circumstances of each case.”

[20] Section 12 (c) of the Constitution¹¹ provides that everyone has a right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources. This right must be safely guarded by the courts. As the courts we are, therefore, enjoined to see to it that violations such as these are curbed and never thrive under our watch.

[21] Our courts are no longer at liberty to just impose any sentence they like nor are they at liberty to just deviate from the sentences prescribed by the legislature. In the case of **Malgas v The State**¹² it was held that “*The specified sentences are not to be departed from lightly and for flimsy reasons.*” The courts are enjoined to approach sentencing conscious that the legislature has ordained specific sentences.

[22] In the case of **S v Siluale en Ander**¹³ the court said the following:

“If the circumstances of a case require that an offender should receive a sentence which for all practical purposes removes him permanently from society, life imprisonment is the only appropriate sentence. It is intended to be the most severe sentence that can be imposed.”

[23] In the case of **S v Obisi**¹⁴ where the accused was charged with murder in the course of robbery, the court held that the nature of the crime, the brazenness, the

¹¹ Supra.

¹² [2001] ZASCA 30.

¹³ 1999 (2) SACR 102 (SCA) at 103.

¹⁴ 2005 (2) SACR 350 (WLD).

callousness and the brutality of the appellant's conduct show that he attaches no value to other people's lives or physical integrity or to their dignity. Same as the case at hand, the accused held the aforementioned disregard for the life of the deceased. His conduct on the day reflects the value he attaches to human life.

[24] The sad reality that this court is sitting with, is the fact that the accused never even once showed any remorse in this matter. He maintained throughout these proceedings that he is innocent. Of course, that is his constitutionally guaranteed right. However, with the merits and facts that were presented before this court, one would have expected that some level of decency is shown by the accused by taking responsibility for what he has done.

[25] The fact that the accused is a first offenders is not here nor there when it comes to sentencing in this case. The sentences prescribed by the legislature are meant even for those who are first offenders as well. Nowhere in the Criminal Law Amendment Act¹⁵ (the CLAA) is there said that the prescribed minimum sentences are for repeat offenders.

[26] The accused person can hardly be said to be youth. He is an adult at 34 years old whose actions in this case show beyond any shadow of a doubt that he is. In **S v Matyityi**,¹⁶ the court said;

“It is trite that a teenager is *prima facie* to be regarded as immature and that the youthfulness of an offender will invariably be a mitigating factor, unless it appears that the viciousness of his deeds rules out immaturity. . . a court will in general not punish an immature young person as severely as it would an adult. . . thus whilst someone under the age of 18 years is to be regarded as naturally immature, the same does not hold true for an adult. In my view a person of 20

¹⁵ Act 105 of 1997.

¹⁶ [2010] 2 ALL SA 424 (SCA).

years or more must show by acceptable evidence that he was immature to such an extent that his immaturity can operate as a mitigating factor.”

[27] On the issue of partaking in the consumption of alcohol by the accused, that being a factor that the defence says should be taken into consideration in deviating from the prescribed minimum sentence, it must be remembered that from the proved and accepted facts, the court found that the accused had carefully planned the murder of the deceased. It is clear that the alcohol consumption by the accused was only for Dutch courage as during the trial it became very clear that the accused remembered every little detail of what happened that fateful night. So, that argument is a mute factor in this case, to say the least.

[28] The unfortunate reality in this case is that the deceased cannot be brought back. There is no type of sentence that can bring her back. Her peers, family and community can only hope that justice is done today and the accused gets punished for her murder. The question that I have to answer is whether there are any substantial and compelling grounds which warrant a deviation from the prescribed minimum sentence. In other words, should he be sentenced in line with the provisions of section 51 (1) of the CLAA or should the court deviate from the prescribed minimum sentence as envisaged in section 51 (3) of the CLAA?

[29] It would be absurd for this court to find that there are substantial and compelling grounds that warrant a deviation from the prescribed minimum sentences in this matter. The contrary prevails. There was clearly pre-meditation on the part of the accused. The seriousness of the offence committed by the accused far outweighs his personal circumstances. This is one of those cases in which the court has to display its disapproval of the accused’s conduct while showing firmness in sentencing the accused.

[30] In the result, the accused is sentenced as follows:

- a) The accused is sentenced to a term of life imprisonment.
- b) Pursuant to the provisions of section 103 of the Firearms Control Act 60 of 2000, both accused are deemed unfit to possess a firearm.

D Ngoqo
Acting Judge of the High Court

Delivered on: 17 March 2025

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