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

CASE NO: CC 03 / 2025

In the matter between

THE STATE

and

N[...] M[...]

JUDGMENT ON SENTENCE

Ngoqo AJ

[1] On the 5th of March 2025 this court convicted Ms. N[...] M[...] for having committed the following offences:

- i. Housebreaking with intent to commit an offence read with sections 250 and 262(1) of the Criminal Procedure Act 51 of 1977 as amended.

- ii. Murder read with the provisions of section 51(1) and Schedule 2 Part 1(a) and (g) of the Criminal Law Amendment Act 105 of 1997 as amended by Act 12 of 2021.
- iii. Murder read with the provisions of section 51(1) and Schedule 2 Part 1(a) of the Criminal Law Amendment Act 105 of 1997 as amended by Act 12 of 2021.

[2] She pleaded guilty to all three charges that the state had proffered against her. However, before the sentencing proceedings could ensue, Ms. M[...]’s legal representative, Mr. Hanise, asked the court to request a probation officer’s report as Ms. M[...] is a primary care-giver to her children. He submitted that such a report would put the issue of her being a primary care-giver into perspective. The court has since been favored with the said report which forms part of the record as Exhibit E.

[3] Of course, any sentence, particularly one of direct imprisonment, imposed on an accused person profoundly infringes upon his or her basic human rights, *inter alia*, his or her 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.¹ It thus goes without saying that this infringement of his or her constitutionally guaranteed right must be justified.

[4] I am also mindful of the fact that sentencing, being a complex process, requires of any judicial officer to not approach sentencing with a spirit of anger and vengeance but with fairness and firmness at the same time, while not deviating from the traditional guiding principles as enunciated in the case of **S v Zinn**.² These traditional guiding principles which are now known as the triad, are:

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

¹ Act 108 of 1996

² 1969 (2) SA 537(A).

[5] Taking this further, Ponan JA, as he then was, in the case of **Samuels v The State**³ 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**.⁴)

[6] In my quest to do what is just and fair in this matter, I shall also be guided by the principles set out in the cases mentioned herein above. I shall also take cognizance of the addresses by both the state and the defence as well as the evidence of Ms. Nkwatani. I shall also take guidance and counsel from the report compiled by the probation officer who clearly not only just interviewed Ms. M[...] for purposes of just having a report to present to this court but also investigated and interrogated the history behind what today has brought us before this court.

[7] Ms. M[...] did not testify before sentence. Her legal representative addressed the court on her behalf in mitigation of sentence. In his address, Mr. Hanise conceded that the offences for which the accused has been convicted are not only serious but also prevalent nationally, including the area of jurisdiction of this court. He further submitted that what makes these offences even more serious is the fact that the deceased in count 2 and Ms. M[...] were in a domestic relationship, which was abusive as extensively dealt with in the Probation Officer’s report.

[8] Mr. Hanise bemoaned the fact that two families had lost their loved ones and that no matter what the sentence might be, it will never bring the two lost lives back to life. He further submitted that the national outcry over the prevalence of these offences has led to various amendments to various legislations including Act 105 of 1997,⁵ an indication that these offences are very serious. Mr. Hanise could not imagine the emotional or psychological trauma that the murders have had on the

³ 2010 ZASCA 113 (22 September 2010).

⁴ 2000 (2) SACR 255 (CPD)

⁵ Criminal Law Amendment Act

families of the deceased and the financial burden that they had to incur as Ms. M[...] and her family did not contribute towards their burial costs.

[9] Mr. Hanise further arguing in mitigation of sentence, made the following submissions on behalf of Ms. M[...]:

- a. That she is a first offender.
- b. She is a divorcee who is 40 years old.
- c. She has four children, two of whom are from a previous marriage.
- d. The children are 18, 16, 11 and 6 years old respectively.
- e. She shares the last born with her deceased boyfriend.
- f. All the children reside with Ms. M[...] and her parents.
- g. All the children depend on the accused financially even though the accused receives Government Child Support Grant in respect of each of these children with the exception of the eldest child who is now 18 years old.
- h. All the children are schooling and they are in the following grades;
 1. The 18-year-old child is repeating Grade 12 in an attempt to improve his or her marks,
 2. The 16-year-old is in Grade 10,
 3. The 11-year-old is in Grade 5 and
 4. The lastborn, 6 years old, is in Grade 1.
- i. Ms. M[...] passed grade 11 in 2015 and did not enroll for her Grade 12 due the fact that she had gotten married to her husband at the time. The husband refused her permission to go to school.
- j. Ms. M[...] has four siblings and all of them are unemployed. They all depend on the Old Age Grant of both their parents.
- k. Ms. M[...] receives Government Pension Grant due to ill-health.
- l. She is epileptic and is on treatment for same. She is also on treatment for High Blood Pressure and is also on ARV treatment.
- m. The deceased in count 2 and the accused had a history of physical abuse between them and criminal cases were opened and withdrawn at times as evidenced by the Probation Officer's report. The deceased would promise to change after the cases had been opened by Ms.

M[...] hence their withdrawals. Hence the body of the accused is full of stab wounds.

[10] Mr. Hanise pleaded with the court to deviate from the prescribed minimum sentences because the parties were in an abusive domestic relationship. He further submitted that in respect of count 3, Ms. M[...] never admitted premeditation or planning the murder in her section 112(2) Act 51 of 1977 statement. There is therefore no evidence of same on record. Mr. Hanise asked the court to deviate from the prescribed minimum sentences in respect of the second and third counts.

[11] Mr. Methuso submitted that Ms. M[...] committed serious offences in respect of counts 2 and 3. The deceased in the second count was at his home where he should have been safe when the uninvited murderer pounced on him. He was brutally stabbed three times. The deceased in the third count was Ms. M[...]’s aunt, who was apparently at the wrong place at the wrong time. Both deceased persons were stabbed deep penetrating wounds.

[12] Mr. Methuso further submitted that both deceased’s right to life was unlawfully cut short by Ms. M[...]. Both their families lost their loved ones for good. The deceased in the third count left a 15 years old girl who is now being raised by her father, while the deceased in the second count left three young children behind. The three children are 9, 6 and 4 years old respectively. Their father’s death has negatively affected them financially as he was the one who provided for them through his odd jobs.

[13] Arguing further in aggravation of the sentence, Mr. Methuso submitted that Ms. M[...] found the two deceased in a locked house. She could have simply left and gone home to sleep. Instead, she chose to break the door open, entered the house and brutally killed the two deceased. She now has no aunt and no boyfriend and all because she could not control her anger.

[14] Mr. Methuso further submitted that the Probation Officer’s report paints a bleak picture of the background of the accused. According to the report, Ms. M[...] has encountered quite a lot in her life. She has survived abusive relationships where at

times she was physically abused. According to the Probation Officer, Ms. M[...] can benefit from professional intervention like counselling because her experiences and trauma have resulted in her being unable to control her anger and abuse of alcohol.

[15] Mr. Methuso submitted, however, that Ms. M[...] did express her remorse in her section 112(2) statement. In addition to that, after stabbing the two deceased, she immediately reported the incident to her parents and siblings. As if that was not enough, upon her arrest she confessed her crime to a magistrate. Even here in court, Ms. M[...] admitted her guilt and never wasted the court's time.

[16] The state, however, submitted that in this case there are substantial and compelling grounds which warrant that this court should deviate from the prescribed minimum sentences. The state further submitted that there are prospects of Ms. M[...] being rehabilitated. The state further submitted that Ms. M[...] was angered by the fact that she found her boyfriend having sexual intercourse with another woman who, in this case, happened to be her aunt. The state further submitted that while the conduct of Ms. M[...] cannot be condoned, it can at least be understood from a moral point of view.

[17] Disturbing about this case, is the fact that none of what happened on the fateful evening of the 19th of May 2024 ought to have happened. Under normal circumstances one would have expected of Ms. M[...], based on her previous experiences with her deceased boyfriend, to have quietly left and gone home. But instead, like an enraged bull on its path of destruction, she bulldozed her way into the house of her deceased boyfriend and once inside, mercilessly and indiscriminately stabbed her boyfriend and his lover who, by the way, offered no resistance. In a matter of minutes, she left them lying in a pool of blood.

[18] However, judicial officers are not 'wise Solomons after the event.' And I am not about to pretend to be one. Mine is to look at the merits and demerits of the case in front of me and then pass an appropriate sentence. In the case of **State v Qamata**⁶ the court said the following;

⁶ 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.”

[19] It is an undeniable fact that Ms. M[...] and her deceased boyfriend were in a very difficult and abusive relationship. In paragraph 9.5 of Exhibit E, the probation officer describing the relationship between the deceased boyfriend and Ms. M[...] wrote:

“Therefore, the interpersonal relations between the accused and her boyfriend (the deceased man) resembled a toxic relationship. Subsequent to that the accused could not express herself freely, instead when she voiced out her opinion physical infliction of pain was exerted on her.”

[20] In paragraph 9.7 of Exhibit E, Ms. Nkwateni, the probation officer further goes on to say;

“Srilall (2024) is of the idea that, there is a treacherous line where love, power, jealousy and fear are intertwined in the realm of toxic relationships, and when crossed these emotions can drive even the most loving moments into tragic outcomes. The intimate relationship of the accused and her boyfriend (the deceased) had an element of the said emotions. For so many times (including non-reported incidents), it had caused harm to the accused, however, it escalated to death of her boyfriend – which is considered as the tragic outcomes.”

[21] That domestic violence is a scourge in our society is a fact that no South African citizen can deny. It has left many a man and women without partners, and a lot of times, women being casualties thereof. This fact was acknowledged and

recognized in the case of **S v Mudau**⁷ where Mathopo AJA as he then was said the following;

“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.”

[22] In the most recent years, in the case of **State v Gregory**⁸ the court restating the above position 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.”

[23] In silence, Ms. M[...] has suffered for so many years while in a relationship with her deceased boyfriend. In paragraph 9.6 of the Probation Officer’s report, the author of the report states that even the mother of the deceased attested to the abusiveness of the relationship between the deceased and Ms. M[...]. In spite of the fact that she is epileptic and is receiving treatment for her other ailments, that did not deter the deceased from abusing her physically.

[24] However, 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. The general public’s expectation is that the criminal conduct displayed by the accused should not be left undetected and unpunished. It demands and commands that the courts send out a clear and strong message that gruesome criminality has no place in our society.

⁷ 2014 JDR 0641 (SCA); (547/13) [2014 ZASCA 13 (31 MARCH 2014) at paragraph 6

⁸ 2023 ZAGPJHC 358 (21 APRIL 2023)

[25] *In casu*, the state in respect of counts 2 and 3 invoked the provisions of section 51(1) of Act 105 of 1997 (the CLAA). This section provides;

“(1) Notwithstanding any other law, but subject to subsections 3 and 6, a regional court or High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.

(2) . . .

(3) (a) If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence: Provided that if a regional court imposes such lesser sentence in respect of an offence referred to in Part 1 of Schedule 2, it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years.”

[26] In the case of **Malgas v The State**⁹ the Supreme Court of Appeal enjoined the courts to approach sentencing conscious that the legislature has ordained specific sentences when it comes to certain serious offences when it said;

“These specified sentences are not to be departed from lightly and for flimsy reasons.”

[27] In a plethora of cases, our courts have made it clear that each case must be looked at based on its merits. Having done so, the court can then be in a position to impose a well-considered sentence. In the case of **State v Rabie**¹⁰ the court had the following to say;

“Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.”

⁹ [2001] ZASCA 30

¹⁰ 1975 (4) SA 855

[28] The question that I have to answer is whether in the present case, looking at its merits, I can find that substantial and compelling grounds do exist which justify a lesser sentence than that prescribed by the legislature in section 51(1) of the CLAA. The following factors in answering this question cannot be overlooked, namely;

- a. Ms. M[...] pleaded guilty in this matter from the first day that she appeared before this court. This was preceded by her having gone to the police to report the matter herself after informing her family members of the incident immediately after murdering the deceased.
- b. She confessed to a magistrate about what she had done and never tried to evade responsibility for her actions by trying to use technicalities when it comes to her confession.
- c. She is a first offender.
- d. She is a sickly person whose ailments have been extensively documented in the probation officer's report.
- e. She is a mother of 4 children.
- f. Before committing the offences for which she has been convicted, she was a subject of physical abuse by her late boyfriend who accorded her absolutely no respect, instead treating her like an object. This can be seen from the fact that he refused her permission to go and study further after her matric.
- g. Enraged by the treacherous behavior of her late boyfriend, blinded by the fury of seeing him with her and on their bed, she lost control of herself and while in that state acted in the manner in which she did, killing both her aunt and boyfriend in an instant.
- h. The prosecutor conceded that Ms. M[...] has shown signs of someone who can be rehabilitated.

[30] The circumstances of this case are so unique and invoke a sense of mercy in the court. Dealing with the concept of mercy, the court in the case of **S v Rabie**¹¹ through Holmes JA had the following to say;

¹¹ Supra

“[. . .] 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,
- 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.”

[31] Irrational behavior does breed irrational conduct. It was not considerate of Ms. M[...]’s late boyfriend to take his mistress to a place which they called their home. Such conduct could only invoke a feeling of betrayal and scorn in Ms. M[...]. I cannot even begin to imagine the feeling of betrayal that Ms. M[...] must have felt when she realized that her late boyfriend’s mistress was her aunt. That must have cut deep, hence she was blinded by fury that evening.

[32] But this court still has a duty to punish Ms. M[...] for her conduct that evening. Sad about this case is the fact that two lives were lost. Sad about this case is the fact that more than eight children were orphaned that evening. And sad about this case is that Ms. M[...]’s children will now grow up without their mother, and only because she could not control her anger.

[33] In paragraph 11.1 of her report, after looking at all the types of sentences that this court can impose on Ms. M[...], the Probation Officer recommends direct imprisonment as provided for in terms of section 51(1) of the CLAA. For the reasons mentioned herein above, while I agree that a sentence that will send a clear message to the public out there is warranted in this case, I am not of the opinion that a very long term of imprisonment in the form of life imprisonment is called for. I am of the opinion that substantial and compelling grounds that justify a deviation from the prescribed minimum sentences are present in this case.

[34] With that said, the sentences are as follows:

- a. Count 1: 8 (Eight) years imprisonment
- b. Count 2: 15 (Fifteen) years imprisonment.
- c. Count 3: 15 (Fifteen) years imprisonment.

In terms of section 280(2) of the Criminal Procedure Act 51 of 1977, the court orders that the sentences in counts 1 and 2 shall run concurrently with the sentence in count 3.

Pursuant to the provisions of section 103(1)(g) of the Firearms Control Act 60 of 2000 the accused is deemed unfit to possess a firearm.

D NGOQO

ACTING JUDGE OF THE HIGH COURT

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