



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

Case No.: CC 64A/2024

Reportable	YES/NO
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In the matter of:

THE STATE

versus

DYABANA ODWA

ACCUSED 1

NGANGELIZWE LUTHANDO

ACCUSED 2

QHAYISO SISEKO

ACCUSED 4

SENTENCE

Cengani-Mbakaza AJ

[1] On 30 May 2025, this court convicted accused 1,2 and 4 on the following charges:

Counts 2, 6,7,8 and 9- Kidnapping

Count 3- Robbery with aggravating circumstances as defined in section 1(1)(b) of the Criminal Procedure Act 51 of 1977.

Count 4-Pointing of a firearm in contravention of section 120(6) read with section 1,121 and Schedule 4 of the Firearms Control Act 60 of 2000.

Count 5- Attempted murder

Counts 25,27,28,29 and 30-Unlawful possession of a firearm in contravention of section 3(1)(a), read with sections 1, 120 (1),121 and Schedule 4, of the Firearms Control Act 60 of 2000.

Count 34- Unlawful possession of ammunition in contravention of section 90, read with sections 120 (1), 121 and Schedule 4 of the Firearms Control Act, 60 of 2000.

[2] In addition, accused 1 was convicted of the following charges:

Count 23- Culpable homicide

Count 24- Reckless driving in contravention of section 63 (1), read with section 89 (1) and 89 (5) (a) of the National Road Traffic Act No. 93 of 1996.

[3] It is important to mention that accused 3 was found not guilty and discharged in respect of all charges. Pursuant to the application by the parties, I granted an adjournment to allow them an opportunity to prepare for sentencing proceedings. The following outlines the parties' respective submissions on mitigation and aggravation.

[4] All accused persons have no previous convictions. They share similar circumstances being 27, 30 and 32 years respectively. Their legal representatives submitted that their youthfulness may have contributed to their poor judgment leading to the commission of the crimes. Although no submissions were made regarding remorse, it was emphasized that all accused are parents of the minor children.

[5] Accused 1 has one son, accused 2 has one son and accused 4 has three children. Despite the children being supported through social grants, so they argued, the accused' contribution to their children's well being should be considered in

mitigation. Another significant point that was highlighted is that accused 1 and 2 have been in custody since February 2024. A disparity is noted in pretrial detention of accused 1, 2 and 4 because accused 4 was arrested more recently in 2025 before the start of this trial.

[6] The parties submitted that considering the accused' youthfulness and lack of previous convictions, they have a genuine opportunity for rehabilitation. Additionally, it was argued that the charges committed demonstrate a single course of conduct allowing the court, in its discretion to ameliorate the sentences by ordering that some counts run concurrently or be taken together for sentencing purposes.

[7] Counsel for the state acceded to the application, but emphasized the gravity of the offences particularly the brazen nature of the daylight robbery, which demonstrates a blatant disregard of the victims' human rights. Furthermore, the state highlighted the severe impact of accused 1's conduct on the victims. Ms Matross, one of the passengers, lost her limb, while Mrs Fokeni tragically lost her life. The state submitted that Mrs Fokeni's death had a profound effect on her family specifically her adult children, resulting in a significant change to their well-being and home life.

[8] It is worth noting that sentencing is not governed by rigid rules. Notably, many sentencing authorities agree that expertise in sentencing is largely acquired through experience and some guidelines.¹ The court's approach regarding sentencing was well articulated by DuToit AJ in *S v Thonga*²(Thonga). This approach is paraphrased thus, the primary function of a criminal court is to promote peaceful coexistence among the members of the society by dispensing justice that protects life, limb and property. When imposing punishment the trial court must carefully balance its discretion, avoiding raw revenge or emotional responses in favour of a reasonable, objective and balanced exercise of its penal powers. Judicial impartiality is essential to prevent vigilantism and ensure that courts do not succumb to emotional retribution on behalf of outraged society, instead upholding the rule of law.

¹ "Sentencing General Principles" by BJ King, Justice College, January 2008.

² 1993 (1) SACR 365 (V) at 370(c)-(f).

[9] Du Toit AJ further emphasised that sentencing is not done in isolation but within the context of society's values, laws and moral standards.³ A court serves as a vital component of society, balancing both the community and the offender. In a civilised society, punishment should reflect not only the need for justice and accountability but also the offender's own interests and rehabilitation. In summary, according to *Thonga*⁴ a suitable sentence should meet the four criteria: reasonableness, balance, consistency and the judicial officer's discretion.

[10] Apart from the guidelines set out in *Thonga*⁵, the principles governing sentencing have long been settled. In *S v Zinn*⁶ the court expounded what is commonly known as a triad approach consisting of the nature and seriousness of the offence, the personal circumstances of the offender as well as the interest of the society. The Supreme Court of Appeal (SCA) in *S v Matyityi*⁷ took a significant step by emphasising the importance of considering the interests of the victims in sentencing. The SCA reinforced the principle that we are all equal before the law and equal protection of the law. Although all these factors are equally important, it is worth mentioning that a balanced approach is required where each factor is accorded its due weight without overemphasis or underemphasis.

[11] With these principles in mind I now deal with an appropriate sentence. There is no doubt that the accused committed violent crimes. Violence is intolerable in our courts, and to deter would-be offenders, the court must impose sentences that are sufficiently severe, while also restoring the dignity of those affected. It is well established that in cases of violent crimes, while sentencing considers various circumstances, the retributive aspect of punishment often takes precedence, reflecting the society's demand for accountability and justice.

[12] This case serves as a learning opportunity on how the South African Police Service (SAPS) and other law enforcement agencies can effectively collaborate to

³ Ibid

⁴ Ibid.

⁵ *Supra*.fn 2.

⁶ 1969 (2) SA 537.

⁷ 2001 (1) SACR 269 (SCA).

combat the scourge of crime. The community members' involvement in the pursuit and investigations of these offences exemplified their commitment to uphold the law, as they refrained from vigilantism despite the brutal circumstances, instead deferring the SAPS to handle the matter.

[13] Several aggravating circumstances are evident in this case. The offences were planned, as demonstrated by the accused 'calculated actions, which begun with a deceitful trick about purchasing dogs. The victims were shown no mercy, subjected to torture, and had their freedom of movement violated. The severity of the injuries including emotional trauma as exhibited during the proceedings can hardly be over-emphasised. Despite the fact that accused 1 was convicted of culpable homicide, the loss of life is a profound and irreversible consequence that has far-reaching consequences impacting on the family, community and the society as it did in this case.

[14] The role of farming in South African economy cannot be diminished by criminal actions. Farming has made significant contributions to South Africa's food security, job creation and yielding positive outcomes over the years. It is common cause that the complainant had over 200 employees during the incident. One of the complainant's employees who witnessed these criminal activities advised the court that he had been working in the farm before the complainant was born. When he presented his testimony before court one could see that he was still in distraught and his loyalty to the proprietary was obvious.

[15] The question that arises is what would have happened to the employees if the complainant was killed, considering the fact that the accused attempted to do so? Would they be in a position to find another job? In light of the high unemployment rate in the country, the chances are slim. Although, it is not easy to list all the aggravating factors due to the brazenness of the crimes committed, it is crucial to mention that the items stolen at the farm cost over two million rand with some having recovered.

[16] The complainant's Landcruiser was written off as a result of accused1's reckless driving who indicated before court that he possessed no driver's licence.

The substantial loss did not affect the complainant only but rather the insurance company which had to re-imburse his property. The family had to pay an excess amount of R100 000 signalling the long-term consequences of accused 1's actions.

[17] The theft of firearms raises serious concerns especially given South Africa's high rate of gun violence. It suggests that the accused had malicious intentions, potentially posing risk to public safety. Our country will not be labelled as a crime scene due to criminal actions as long as our justice system and community work effectively together as seen in this case. Considering all the circumstances cumulatively, it is fair to conclude that the accused showed no remorse for their conduct. Despite the overwhelming evidence, namely being caught at the scene, the fingerprints and Id parades they pleaded not guilty.

[18] In considering the mitigating factors, I have taken into account that the accused have no previous convictions against them. This suggests lack of previous engagement in serious criminal behaviour. Although they are not primary caregivers, they all have minor children who may be affected by the outcome of the case. Although some jewellery was not recovered, some items were recovered including the Toyota bakkie which was still in good condition.

[19] Notably, the offences of robbery with aggravating circumstances and attempted murder carry a minimum sentence of 15 years' imprisonment each. This is prescribed by the provisions of the Criminal Law Amendment Act 105 of 1997, as amended (the Act). The question is whether the accused have shown the existence of substantial and compelling circumstances as prescribed by Section 51 (3) of the Act. The SCA in *S v Malgas*⁸, held:

'[9] ...the specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubt about the efficacy of the policy implicit in the amending

⁸ (117/2000)[2001]ZASCA30; [2001] 3 All SA 220.

legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances.'

[20] In this case, the nature and seriousness of the offences outweigh the accused' personal circumstances. Furthermore, no substantial and compelling circumstances were presented to warrant a departure from the minimum sentence for the charges of robbery with aggravating circumstances and attempted murder. Instead, neutral factors were submitted, including the period spent by the accused in pre-trial detention.

[21] Notwithstanding this analysis, it is necessary to invoke the provisions of section 280 of the CPA which deals with cumulative or concurrent sentences. This section provides:

'280 Cumulative or concurrent sentences

- (1) When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.
- (2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently.'

[22] Consequently the accused are sentenced as follows:

Sentences in respect of accused 1,2 and 4:

1. Counts 2, 6, 7,8 and 9- Kidnapping- Each accused is sentenced to undergo 7 years' imprisonment (all counts are taken as one for purposes of punishment).
2. Count 3- Robbery with aggravating circumstances as defined in section 1(1)(b) of the Criminal Procedure Act 51 of 1977- Each accused is sentenced to undergo 15 years' imprisonment.

3. Count 4-Pointing of a firearm in contravention of section 120(6) read with section 1,121 and Schedule 4 of the Firearms Control Act 60 of 2000- Each accused is sentenced to undergo 12 months imprisonment. This sentence shall run concurrently with the sentence in count 3 which is robbery with aggravating circumstances.
4. Count 5- Attempted murder – Each accused is sentenced to undergo 15 years' imprisonment. This sentence shall run concurrently with the sentence in count 3 which is robbery with aggravating circumstances.
5. Counts 25,27,28,29 and 30-Unlawful possession of a firearm in contravention of section 3(1)(a), read with sections 1, 120 (1),121 and Schedule 4, of the Firearms Control Act 60 of 2000- Each accused is sentenced to undergo 2 years' imprisonment (all counts are taken as one for purposes of punishment).
6. Count 34- Unlawful possession of ammunition in contravention of section 90, read with sections 120 (1), 121 and Schedule 4 of the Firearms Control Act, 60 of 2000- Each accused is sentenced to undergo 12 months imprisonment.

Sentences in respect of accused 1 only:

7. Count 23- Culpable homicide- The accused is sentenced to undergo 5 years' imprisonment.
8. Count 24- Reckless driving in contravention of section 63 (1), read with section 89 (1) and 89 (5) (a) of the National Road Traffic Act No. 93 of 1996- The accused is sentenced to undergo 2 years' imprisonment. It is ordered that the sentence in count 24 shall run concurrently with the sentence in count 23.

Effective term of imprisonment:

9. Accused 1 shall serve an effective term of 30 years' imprisonment.
10. Accused 2 and 4 shall serve an effective term of 25 years' imprisonment.
11. In terms of the section 103 (1) of the Firearms Control Act 60 of 2000, which provides for the automatic unfitness to possess a firearm, I make no further order as the accused are deemed unfit to possess firearms by operation of law.

N CENGANI-MBAKAZA
JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

Counsel for the state : Adv A. Nohiya
DPP, Makhanda

Counsel for accused 1 : Adv A. C. Erasmus
Instructed by : Legal Aid-SA

Counsel for accused 2,3 and 4 : Adv L. Mgudlwa
Instructed by : Legal Aid-SA

Dates Heard : 01 July 2025
Date Delivered : 02 July 2025