

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG
HELD AT PALM RIDGE**

Case No: SS 77/2024

DPP Ref: 10/2/11/1-2024/52

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

14 AUGUST 2025

In the matter between:

THE STATE

V

M[...], J[...] K[...]

Accused

JUDGMENT ON SENTENCE

MAHOMED J:

INTRODUCTION

[1] The accused is found guilty of murder, read with section 51(1) and Part II schedule 2 of the Criminal Law Amendment Act 105 of 1997, and further read with

sections 258 and 270 of Act 51 of 1997. I found that the murder was premediated. The accused is further found guilty of assault with intent to do grievous bodily harm, read with section 51(2) and part III of schedule 2 of the Criminal Law Amendment Act 105 of 1997. On the night of 25 February 2024, the accused murdered his girlfriend with a kitchen knife and brandished that same knife at her minor child and cut his hand when the child tried to disarm him of the knife.

[2] When sentencing the convicted person, the court is to consider the offender, the offence and the interest of society. See *S v Zinn* 1969 (2) SA 537 (A). The accused pleaded guilty to the charges, he stated in his plea explanation that he was of diminished capacity at the time as he and the deceased were in a heated argument at the time. However, the state refused to accept his plea explanation and the state at the trial proved beyond reasonable doubt that the murder was premediated.

THE LAW

[3] Section 51 of Act 105 of 1997 provides that, notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person:

- (a) If it has convicted a person of an offence referred to in Part 1 of Schedule 2, or
- (b) ...shall sentence the person to imprisonment for life.

[4] Subsection 3 (a) of the Act provides that 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, the court shall enter those circumstances on the record of the proceedings and must then impose such lesser sentence. The court is permitted to exercise a discretion, however there is no definitive answer to what are substantial and compelling circumstances. The court must have regard to the facts of the case in the particular circumstances of the accused which would convince a court that it may deviate from the prescribed sentences. The Act's purpose is to mete out effective punishment in relation to the crime committed, it aims at combatting serious crimes. In *S v Vilikazi* 2009 (1) SACR 552, the court explained that the

particular factors whether mitigating or aggravating, should not be taken individually and in isolation as being substantial and compelling. The court must look at the cumulative effect of those factors to be considered. The Supreme Court of Appeals has, however stated that the court may not move away from imposing the minimum sentence on “flimsy reasons”. Therefor the imposition of the mandatory minimum sentence must be approached with caution. Courts are enjoined to adopt the proportionality test, having regard for the offence, the offender and the interest of society.

[5] In an appeal against a sentence of life imprisonment, the court in *S v Malgas* 2001 (1) SACR 469, the court stated,

" the circumstances in which the crime was committed are undoubtedly such as to render it necessary to impose a sentence of imprisonment for life unless substantial and compelling circumstances justify a lesser sentence. The court held that the 'shooting was premeditated and planned'. The fact that the planning and premeditation occurred not long before the deed was accomplished cannot alter that. It was also carried out in the execution of a common purpose to kill the deceased. Giving all due weight to the enormity of the crime and the public interest an appropriately severe punishment being imposed for it, the court considered that the personal circumstances of the accused (her relative youth, her clean record and her vulnerability to Carol's influence by reason of her status as a resident in the latter's home at the latter's pleasure) and the fact that she was dragooned into the commission of the offence by a domineering personality are strongly mitigating factors. "As a fact she gained nothing from the commission of the crime. Her remorse cannot be doubted and her spontaneous confession which brought to light the commission of a crime which would otherwise have gone undetected is deserving of recognition in a tangible sense. She is young enough to be rehabilitated and there is a real prospect even after a long period of imprisonment. These circumstances, cumulatively regarded, satisfied the court that a sentence of life imprisonment would be unjust. They qualify therefore as substantial and compelling circumstances within the meaning of the provision. None the less, it remains a particularly heinous crime of the kind which the legislature has singled out for severe punishment and the sentence

to be imposed in lieu of life imprisonment should be assessed, paying due regard to the benchmark which the legislature has provided."

[6] In *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 58, Nugent JA said the following: *In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment are in themselves largely immaterial to what that period should be, and those seem to be the kind of flimsy grounds that S v Malgas case said should be avoided. But they are nonetheless relevant in another respect.*" It is also important to consider whether the accused can offend again and what chances if any are there of his rehabilitation.

Substantial and Compelling Circumstances

[7] It is ultimately a court's task to achieve a balance against all the competing factors to arrive at a just sentence. Mr. Ngxumza submitted that the court must consider the personal circumstances of the accused and have regard to the conspectus of the evidence in arriving at the sentence to be imposed, he contended that there are good grounds for this court to move away from imposing the maximum sentence of life imprisonment. Counsel submitted that the accused is 40 years old and when the incident occurred, he was employed as a truck driver with a company he had worked for 5 years. The accused completed grade 12 and the court must note that he lost his father when he was 6 years old. He earned R6 000 per month, with which he supported his elderly mother, his two sisters who were unemployed and his 10 children, who were from different mothers. I noted the factors and that no other evidence to support his personal circumstances was placed before this court. The deceased's sister testified at sentencing that since her sister's murder, she had taken over care of Owami, who was the accused's child he had with her sister, and she received no monies since her sister's death, from the accused or his family on behalf of Owami, who was 6 years old. According to her, after the minor child lost his mother he has suffered serious emotional challenges and has on occasion told her daughter that when he grows older he will kill his father who had murdered his

mother and caused him such distress. She testified that the school has complained to her that he often cried and falls off to sleep during his classes. Although she has enrolled him for therapy, she did not see much improvement in his condition. Counsel for the state disputed that the accused was a primary caregiver and referred this court to the decision in **S v Chetty 2013 (2) SACR 142 (SCA)** where the court stated that a primary caregiver is understood to be someone who lived with the child and did normal parenting duties for the child. The children testified that the accused only occasionally visited their mother, at their home. He cannot be said to have been their primary care giver.

[8] Having regard to the offense, Counsel submitted that his client had played open cards with the court and admitted guilt, he argued that his client and the deceased were in an argument about her having an affair, and the accused felt cheated and upset, he 'found a knife in the kitchen sink' and instinctively stabbed at her. The children, who corroborated one another, testified that they heard their mother shout out to the accused, to call the person with whom he suspected she was having an affair. The accused made no call, instead he chose to resort to violence to resolve his dispute. According to the children's testimony they heard them argue in the dining room, the deceased was found dead on the kitchen floor, it is a reasonable to infer that he moved toward the kitchen to find the knife with which he killed her. The photographs are taken in the kitchen, with the cutlery draw is on the floor, alongside the deceased's body, this confirms that the accused looked for a knife, the events continued in the kitchen where he was sure to find a knife and knew that he would succeed in his plan to kill the deceased. He lied that he found a knife in the kitchen sink and instinctively used it to kill the deceased.

[9] The children's evidence is that they heard their mother plead with the accused not to hurt her and she shouted out to Lethabo to seek help. The security guard testified that the neighbours reported to him that they heard a lot of noise from their deceased's home and alerted him to investigate. Obviously, the children and the deceased were shouting out in fear and for help, they were under threat. The accused shouted out he was going to kill the deceased, he called the children out of their room and they corroborate one another, that he told them that he was going to kill their mother and himself and further traumatised them by telling them they would

be left to fend for themselves. The forensic report recorded 15 stab wounds on the deceased upper body. The photographs demonstrate she was lying in a pool of blood, partially dressed and her hair all ruffled. It is reasonable to infer that there was struggle and as argued by the state, the deceased was dragged to the kitchen, where a knife could be found and she was be killed. This is a premeditated and brutal murder of a woman, the accused's submissions that he was of diminished capacity stands to be rejected, he had much time to withdraw and review his actions and his mindset, the events as they unfolded demonstrate a person with full knowledge of his actions, having a presence of mind and on mission to execute his plan, as he advanced to the kitchen.

[10] He "chose" not to resolve his problem by making a call to clarify the facts, instead he chose to destroy several lives, including that of his own child, of 5 years old. Counsel for the accused referred to various cases, some of which predated our constitution, when life sentences were reduced. I noted the facts and reasons in the judgments, however the facts in this case juxtaposed to the options available to the accused at the time, and the brutality, which the children also suffered, I find no substantial and compelling circumstances to move away from the imposition of the maximum sentence of life imprisonment.

[11] I agree with counsel for the state, that there are no extra ordinary facts to justify a move away from the mandatory sentence, the accused lied that he found a knife in the kitchen sink, by all accounts he went to find his knife and brutally murdered the deceased in the presence of her three minor children. They were all helpless victims; the children are left with the indelible scar of a bloodied murder of the mother they loved and relied on for their security and comfort. Our people are crying out to the courts and the police services to help restore their faith in humanity and help build a better future for all, violence destroys the fabric of our society and forces even minor children, as in this case, to "seek revenge" for their justice. The children saw their mother injured and gasping for breath, she was still alive but the accused assaulted her again, and finished off his plan.

[12] On that fateful night, Lethabo, the deceased's minor child who tried to disarm the accused, was injured when the accused cut his hand, as he brandished the knife,

he used to kill his mother with, at him. The further evidence is that he tried to prevent the security guard from assisting them, as he ordered Lethabo to block the door and to prevent anyone from entering their home.

[13] The Criminal Law Amendment Act 105 of 1997 prescribes a variety of minimum sentences to be imposed by our courts in respect of a wide range of serious and violent crimes. In terms of schedule 2 part 1 of Act 105, the count of murder with premeditation, attracts a sentence of life imprisonment. Having regard to the facts of this case and the corroborated evidence of the brutality involved, the impact on several lives and the nature of the crimes, the sentence of life imprisonment is appropriate. The evidence is that the deceased was an ambitious person, with a stable job and was still pursuing further studies to improve her qualifications. She was compassionate and responsible, she even took over the care for Letabo, her late sister's son. The victim impact reports demonstrate the sad reality that the children face, without their mother and they are scarred for life with the memory of watching her on the floor, in her blood, begging not to be injured, struggling to find help from the security at the door, gasping for breath, until she was robbed of her life. The children miss her, remember what she had done for them, she provided a strong foundation to all three of them, they have lost her and even one another, as each now lives with different members of the family in different parts of the country. The evidence is that their studies have been compromised, they live with deep psychological scars and are forced to adapt to their new environment, in their short lives. Lethabo, as counsel for the accused conceded is 15 years old, and is being cared for by his "third mother".

[14] He wrote, *"I was a happy boy.. I still dream of the incident... I no longer receive gifts...my school results are dropping... I miss her so much that I can fight justice for M[...] L[...] M[...]."* The deceased's sister who testified on sentence, a member of the public and society whom the court must consider, was still emotional about her sister's death after the many months. She testified that the accused showed no remorse, none of his family sympathised with her or even Owami. She testified that she was happy to carry his expenses herself, but was adamant that the accused must be held to full account for her sister's brutal and untimely death.

[15] Advocate Phatlanyane submitted that the court ought not to be swayed by the fact that the accused pleaded guilty to the charges, it cannot be a mitigating factor in this case. She submitted that no previous convictions were recorded against this accused, he is a first offender, but the court must note that he was caught “red handed”, both literally and figuratively, his guilty plea was his only option. She submitted that the brutality of the offense cannot be ignored, the scourge of gender-based violence in our society, has destroyed its very fabric, the society is looking for justice and its children are looking for a future. Counsel referred the court to *S v Vilikazi*, supra, and submitted that the court stated that once it is established that the crime is deserving of the sentence, a first offender, a parent to two or three children, and the usual factors often advanced in mitigation can only be “flimsy grounds”. She argued this was a brazen and brutal attack on the deceased and a life destroying experience of the lives of the three minor child, who were present in the home and forced to live every aspect of this incident, they could do nothing to assist their loved one. In my view the accused had no regard for this very critical fact, he could hear them and the deceased shouting to stop. The state submitted the accused must be given a sentence of life imprisonment. On an analysis of facts before me, I agree, I find no substantial and compelling circumstances to justify a deviation from the prescribed sentence.

[16] Accordingly, the accuse on a charge of premediated murder (read with the provisions of s51(1) of the Criminal Law Amendment Act 107 of 1997), is hereby sentenced to life imprisonment.

[17] Furthermore, the accused on a charge of assault with intention to do grievous bodily harm, read with s 52 is sentenced to 15 years imprisonment, the sentences are to run concurrently.

Mahomed J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Judgment: 4 August 2025

Date of Sentence: 14 August 2025

Appearances

For the state: Adv Phatlanyane

For the defense: Adv Ngxuma

Legal Aid