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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

Case number: **CC 13/2025**

In the matter between: -

THE STATE

And

L[...] L[...]

Accused

JUDGMENT ON SENTENCE

NONCEMBU J

[1] This court, having convicted the accused of the murder of his girlfriend, must now carry out the daunting task of sentencing him. This is, in my view, can easily be the most difficult part of a criminal trial.

2] The offence in question was committed in circumstances involving domestic violence in that the accused and the deceased were in a domestic relationship. By virtue thereof, it carries a prescribed minimum sentence of life imprisonment. Which means that this court does not have an unfettered discretion to impose any sentence it deems meet. The prescribed sentence can only be departed from if substantial and compelling circumstances justifying such a departure are found to exist.

[3] The Supreme Court of Appeal in *S v Matyityi*¹, affirming its earlier decision in *S v Malgas*,² has craftily put this as follows:

‘As *Malgas* makes plain courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and like other arms of state owe their fealty to it. Our constitutional order can hardly survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domains of power of the other arms of State. Here Parliament has spoken. It has ordained minimum sentences for certain specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as “relative youthfulness” or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer’s personal notion of fairness.’

[4] The sentencing court, therefore, must engage in an active exercise to establish whether or not substantial and compelling circumstances exist justifying a deviation

¹ *S v Matyityi* 2011 (1) SACR 40 (SCA), para 23.

² 2001 (1) SACR 469 (SCA).

from the prescribed minimum sentence. Absent such circumstances, the court is obliged to impose the prescribed minimum sentence.

[5] In embarking on the above exercise, the court must take cognisance of the objectives of sentencing, which entail deterrence, prevention, retribution and rehabilitation. At the same time, being mindful that these will not necessarily be applied equally in every case, as the circumstances of each case will determine which objective must be prioritised. In sentencing youthful offenders, for example, the primary objective to come to the fore would be rehabilitation, whilst retribution and deterrence will very often be prioritized in dealing with serious and violent crimes.

[6] Closely linked to the sentencing objectives is a balancing act which requires that a court takes into account competing interests. These being the personal circumstances of the offender, the gravity of the offence committed and the interests of society, colloquially known as the *Zinn* triad.³ A fourth consideration that has been adopted in this regard pertains to the rights of the victim. This is in line with the Service Charter for Victims,⁴ which entails that a just penal policy needs to be victim-centred.⁵

[7] The accused elected not to testify in mitigation of sentence, and the following personal circumstances were placed on record by his counsel: Currently he is 45 years old, with two children, one of them being an adult living in Cape Town. The minor child, who is 5 years old, stays with the grandfather as the mother has passed away. Although he has previous convictions, he shall be treated as a first offender for purposes of this sentence as the previous convictions are very old and unrelated to the offence he has been convicted for *in casu*. He receives a disability grant as he has an injury to one of his eyes.

[8] If there were degrees of domestic violence, the offence committed by the accused would certainly fall under the worst categories of domestic violence and

³ *S v Zinn* 1969 (2) SA 537 at 540 G.

⁴ Adopted by South Africa in 2007.

⁵ See *S v Matyityi* 2011 (1) SACR 40 (SCA).

femicide. The gruesome manner in which the deceased was stabbed repeatedly, brutally assaulted with a plank in circumstances where she was clearly helpless, gives a chilling picture of someone who was attacked by a vicious monster. The doctor who examined her body described the stab wounds that were on both her arms as defensive wounds, indicating that all she could probably do was use her arms to shield her face when she was being stabbed.

[9] Needless to say, this did nothing to assist or even minimise the brutal attack on her. Her entire body, including her face, was covered in open wounds, multiple bruises and burst lacerations. Over and above the various injuries inflicted on her, she sustained no less than 13 stab wounds, one of which was 15 cm in length, which penetrated up to her left lung, causing it to collapse. The photo album depicting the house where the deceased was killed depicts a very gruesome scene, with literally everything in the house covered in blood. Leaving one with a chilling imagination of someone who must have been banged and thrown all over the house.

[10] The right to life is the most sacrosanct of all the rights entrenched in the Bill of Rights. Not only did the accused violate the said right, he did so in the most inhumane, degrading, violent and cruel manner. After having brutally assaulted the deceased, he left her lying on the floor naked until the following morning, when she was viewed by every other person who came to view the scene of crime. Thus further desecrating her dignity as a woman and as a human being.

[11] Domestic violence is not only a serious scourge in our society, it was declared to be a second pandemic by the President of this Country during the COVID-19 pandemic. I dare say that it has killed far more women and children in this country than any pandemic ever has. Being part of the most vulnerable in society, women and girls continue to be victims at the hands of their partners. The killing of women by their intimate partners (also known as intimate femicide) is the most extreme form and

consequence of violence against women.⁶ The state referred this court to a judgment by Govindjee J in *S v Manyathi*⁷, where he referred to expert testimony revealing that intimate femicide was much more common in South Africa compared to other countries, with an average of almost 3 women killed by their intimate partners per day.

[12] Despite various efforts, including stricter penalty provisions in dealing with such offences, they do not seem to be abating. It is indeed quite ironic that not only was this offence committed in the month of August last year, being the National Women's month in this country, but that it had to be heard in court during the same month. Perhaps to serve as a stark reminder that, whilst many are going to be congregating in commemoration and celebration of Women's Month in a couple of days, for most women and girls who are victims of femicide, there is nothing to celebrate. That is certainly the case for the family of the deceased in this matter.

[13] Our courts have come to be the last port of hope for members of society, especially women and girls who, every day, find themselves becoming helpless prey to these predators. The only way that courts can protect them is by ensuring that they prioritise retribution and prevention when sentencing those convicted of these atrocities. This, in turn, will ensure that the rule of law is maintained, thus preventing members of society from resorting to self-help.

[14] One can certainly feel the palpable impact that this offence has had on the family of the deceased from the Victim Impact Statements submitted as evidence in court. That is a pain that the deceased's daughter is yet to experience throughout her lifetime. Much as she might not fully appreciate what the loss of her mother means at this stage due to her young age, there are trying years in the development of every child, especially a girl child (still to come in this case), when she realizes and feels the need for a mother.

⁶ S Matthews et al 'Every six hours a woman is killed by her intimate partner: A national study of female homicide in South Africa' *MRC Policy Brief* (No. 5) (June 2024).

⁷ 2025 (1) SACR 446 (ECMK) (24 January 2025), as referred to in *S v Kasongo* 2023 (1) SACR 321 (WCC) para 14.

[15] Although the deceased was not staying with her daughter, the evidence presented, both from the Victim Impact Statement (VIS) and the trial proceedings, reveals that she was a caring and loving mother. Even on the day she was killed, she had been to visit her daughter, probably never realising that that was to be her last visit. The entire family and the community are in a state of grief, understandably so. A loss of this nature carries with it not only the emotional and psychological trauma but a deep financial burden as well.

[16] The remaining question to be answered is whether it can be said that substantial and compelling circumstances exist, justifying a deviation from the prescribed minimum sentence of life imprisonment in this matter.

[17] Whilst acknowledging that a long term of imprisonment would be the only appropriate sentence on the circumstances of this matter, counsel for the accused implored this court to deviate from the prescribed sentence of life imprisonment, citing in particular that the community had effected some form of retribution when it assaulted the accused at the scene of crime on the day of the incident.

[18] I do take into account that the conduct of the community was ill-advised and unacceptable in this regard. I also take note, however, that on the evidence of the accused himself, it was actually one person who was a family member of the deceased, who had assaulted and even wanted to stab him out of anger. Whilst there can be no doubt that such conduct is totally unacceptable and needs to be deprecated, I think, though, that anyone who would have had the misfortune of seeing the scene of crime on that fateful morning would agree that such anger was justified. This court only had the displeasure of seeing photos of the crime scene, and cannot imagine what the real thing must look like.

[19] What must be commended, though, is that it was not the police who intervened and protected the accused from further assault, but members of the community

themselves, who, despite their own anger at what they had seen, exercised restraint in the hope that justice would take its course. This court, therefore, would be failing that community if it deviates, unless warranted in terms of the legislative prescripts.

[20] I find it significant that the accused has shown no remorse whatsoever throughout these proceedings. There is nothing out of the ordinary in his personal circumstances. If one takes into account the gruesome manner in which this offence was committed and the impact that it has had on the family of the deceased and the community at large, his personal circumstances pale in significance.

[21] I am therefore not persuaded that substantial and compelling circumstances justifying a deviation exist on the circumstances of this matter. In my view, the prescribed sentence is a just sentence proportionate to both the offence committed, the personal circumstances of the accused and the interests of society. The Supreme Court of Appeal set it out very clearly in *S v Malgas*⁸ that *'The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypothesis favourable to the offender, moulden sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation and the like considerations were equally obviously not intended to qualify as substantial and compelling circumstances.'*

[22] This was affirmed in *S v Matyityi*⁹ when Ponnann AJA stated, *inter alia*, that 'predictable outcomes, not outcomes based on the whim of the individual judicial officer, is foundational to the rule of law which lies at the heart of our constitutional order'. As I stated earlier in this judgment, communities look up to the courts as their last port for protection. Failure to apply the letter of the law in circumstances such as the present, where it is clearly warranted, will lead to people losing confidence in the justice system, this at a time when it is most needed to maintain the rule of law.

⁸ *S v Malgas* 2001 (1) SACR 469 (SCA);

⁹ n1, *supra*.

[23] In the circumstances, therefore, **the accused is sentenced to life imprisonment.**

[24] The following ancillary orders shall issue:

- a) **No otherwise order is made in terms of section 103(1) of the Firearms Control Act (Act 60 of 2000) (accused is deemed unfit to possess a firearm).**
- b) **In terms of section 299A of the Criminal Procedure Act (Act 51 of 1977), the victim's family is advised that they are entitled to make representations to the Parole Board or to attend any relevant meeting of the Parole Board where the placement of the accused on parole, day parole or correctional supervision is considered.**

V. P. NONCEMBU
JUDGE OF THE HIGH COURT

APPEARANCES

FOR THE STATE : *Adv Mc Kay*

FOR THE ACCUSED : *Adv Coertzen*

DATE HEARD: : 07 August 2025

DATE JUDGMENT DELIVERED : 07 August 2025