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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 28/2022

(1) Reportable: No.

(2) Of interest to other judges: No

(3) Revised.

Date: 22 October 2024

Signature

In the matter between:

THE STATE

And

TUMELO OMPHILE MOKONE

Accused 1

O[...] S[...]

Accused 2

KAGISO LAWRENCE MOKONE

Accused 3

JUDGMENT

M Munzhelele, J

[1] The accused, Tumelo Omphile Mokone, O[...] S[...], and Kagiso Lawrence Mokone, have been found guilty of the following charges:

Count 1: Theft.

Counts 2-5: Murder of the following individuals: Solomon Raseleka

S[...], Matshepo Revelation S[...], Tshegofatso Millicent S[...], and O[...] Q[...] S[...]. This is in terms of section 51(1) of Act¹, in relation to accused 1 and 3, Tumelo Omphile Mokone and Kagiso Lawrence Mokone. In relation to accused 2, O[...] S[...], it is read together with Schedule 3 and Chapter 10 of the Child Justice Act².

Count 6: Robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act³, read with section 51(2)(a) of the Act, in relation to accused 1 and 3, and in relation to accused 2, it is read together with Schedule 3 and Chapter 10 of the Child Justice Act.

Count 7: Possession of a firearm without a license, in contravention of sections 3 and 90 of the Firearms Control Act⁴, read together with Schedule 4 of the Firearms Control Act.

Count 8: Possession of ammunition without a license, in contravention of section 90 of Act 60 of 2000, read together with Schedule 4 of the Firearms Control Act.

[2] This case involves the murder of accused 2's entire family and robbery where the vehicle and money belonging to accused 2's father were taken. At the time of these offences, accused 2 was a minor, 15 years of age, while accused 1 and 3 were adults. As a result, accused 1 and 3 will be sentenced in accordance with the minimum sentencing provisions, while accused 2 will be sentenced in terms of the Child Justice Act.

[3] During the sentencing hearing, the probation officers' reports were submitted as exhibits. Exhibit 'AA' was compiled by Masa Chauke for accused

¹ 105 of 1997

² 75 of 2008

³ 51 of 1977

⁴ 60 of 2000

1, Tumelo Omphile Mckone; exhibit 'BB' was compiled by R.H. Nel for accused 2, O[...] S[]; and exhibit 'CC' was compiled by Hitekani Tryphina Shivambu for accused 3, Kagiso Lawrence Mckone. A victim impact statement, compiled by Angelinah Llale, was also submitted as exhibit 'DD' on behalf of the S[...] family.

[4] The accused did not testify in mitigation of their sentences. The state did not call any witnesses to testify. They all relied on the pre- sentence reports which were read into the record.

[5] The personal circumstances of accused 1 are as follows: He is 25 years of age and is the third-born child of Noah Motsepe and Mankidi Mckone. He has no prior convictions. The accused has no relationship with his biological father. The accused has N2 obtained at Rose Teach College and a diploma in mechanical engineering. But maintains a loving relationship with his stepfather. He enrolled in N3 at Brilliant Minds College but did not complete his studies due to the lockdown. He became involved in the family business and enjoys playing soccer. He also assists with home repairs. His family describes him as loving, friendly, considerate, and humble. Accused 1 lives with his mother, stepfather, sister, younger brother, and niece. He has a girlfriend but is not married and has no children. He is unemployed but worked at the family business, and he is financially supported by his mother and stepfather.

[6] The personal circumstances of accused 2 are as follows: She was 15 years old when the offences were committed and was arrested at the age of 20. She is now 24 years old. Before her arrest, she lived with her paternal aunt until September 2018, after which she lived with Ester Brown. At age 17, she moved back to her family home, staying in the back room while her cousin lived in the main house. Accused 2 used to smoke marijuana and later became addicted to crystal meth. She completed Grade 12 and has been awaiting trial for two years. She receives R2,000 from her father's pension but has been unable to access it. Accused 2 is healthy, without chronic

illnesses, but alleges that the death of her parents traumatized her. She was referred to SANCA for drug treatment and also received counselling at Ga- Rankuwa Clinic, although she did not cooperate fully.

[7] The personal circumstances of accused 3 are as follows: He is 25 years old with no prior convictions. He is unmarried, has no children, and has two siblings. He has a girlfriend who is expecting a child. His mother is a domestic worker who returns home only on weekends, and accused 3 took care of his younger sister, performing all household chores. He completed Grade 12 and was employed as an operator, earning R1,800 per week.

[8] Victim Impact Statement - S[...] and Brown Family:

The family has been severely affected by the death of their brother. Signs of trauma, anger, disappointment, and hurt were evident during interviews. Discussing the event brought back painful memories, which were exacerbated by the knowledge that their relative, O[...], who was the child of the deceased, was actively involved in the murder of her own family. Accused 2's aunt now suffers from depression and anxiety, struggling with the realization that O[...] deceived the family into supporting her, unaware that she was responsible for their deaths. Lizzy Brown, who raised O[...] in Rustenburg, is deeply saddened by the loss, and Mr. Brown has also been affected, receiving psychological and psychiatric treatment at Legae Private Clinic for depression.

Arguments by the parties

Accused 1

[9] Personal circumstances should be taken into consideration. This should also be with a measure of mercy. The court will have to assess as to whether he can be re-engaged. Can he be rehabilitated. He was assisting as a driver. He contributed his participation. His capability to resist peer pressure. The court is granted discretion where the deviation

from minimum sentence can be ordered. Counsel agrees that there are aggravating circumstances. The substantial and compelling circumstances are those where the injustice will be done if the court does not consider the cumulativeness thereof. Therefore, If the accused is sentenced to rehabilitation, it may be on the basis that rehabilitation is feasible, given that the accused has not re-offended. The accused agrees that no sentence imposed today can match the pain the S[...] family is enduring. Counsel indicated the following in respect of the sentence for the accused; 5 years' imprisonment on Count 1. Count 2-5; 15 years' imprisonment, count 6; 10 years' imprisonment, count 7; 5 years' imprisonment and count 8; 3 years' imprisonment. Section 280 on count 2 to count 8 to run concurrently. The sentence of 20 years of which 5 years suspended for 10 years.

Accused 2

[10] The court should impose the shortest number of years. The offences are heinous. The court should impose section 77(4)(a) of the child justice act.

Accused 3

[11] The accused influenced one another. They did not have a foresight in committing their offences. The issue of youthfulness and first offender. There is no need to make distinctions as far as the role is concerned.

The state

[12] They did not show any remorse. The ultimate impact is that there are no compelling circumstances. The suggested sentences proposed by counsel for accused 1 amounts to a mere slap on the wrist. The viciousness of his deeds exceeds the youthfulness immaturity. Taking into account *Matjijtj's* case accused 1 and 3 minimum sentences should be imposed. Accused 2' actions were of serious in nature. This is a matter of utmost seriousness, involving the tragic events and criminal acts committed by the accused. These accused have been found guilty on the

above counts, and the power to impose a sentence on a convicted offender is the domain of the courts. In *S v Tsotetsi*⁵ Myburgh AJ said that:

'(a) The sentence must be appropriate, based on the circumstances of the case. It must not be too light or too severe.

(b) There must be an appropriate nexus between the sentence and the severity of the crime; full consideration must be given to all mitigating and aggravating factors surrounding the offender. The sentence should thus reflect the blameworthiness of the offender and be proportional. These are the first two elements of the triad enunciated in *S v Zinn* [1969 (2) SA 537 (A)].

(c) Regard must be had to the interests of society (the third element of the Zinn triad). This involves a consideration of the protection society so desperately needs. The interests of society are reflected in deterrence, prevention, rehabilitation and retribution.

(d) Deterrence, the important purpose of punishment, has two components, being both the deterrence of the accused from reoffending and the deterrence of would-be offenders.

(e) Rehabilitation is a purpose of punishment only if there is the potential to achieve it.

(f) Retribution, being a society's expression of outrage at the crime, remains of importance. If the crime is viewed by society as an abhorrence, then the sentence should reflect that. Retributions also expressed as the notion that the punishment must fit the crime.

(g) Finally, mercy is a factor. A humane and balanced approach must be followed.'

⁵ 2019 (2) SACR 594 (WCC) at [29]

[13] In relation to accused 2 who was a child at the time of commission of the offences section "69 lays down the Objectives of sentencing and factors to be considered;

69(4) When considering the imposition of a sentence involving imprisonment in terms of section 77, the child justice court must take the following factors into account:

(a) The seriousness of the offence, with due regard to- (i) the amount of harm done or risked through the offence; and(ii) the culpability of the child in causing or risking the harm;

(b) the protection of the community;

(c) the severity of the impact of the offence on the victim;

(d) the previous failure of the child to respond to non-residential alternatives, if applicable; and (e) the desirability of keeping the child out of prison."

Further Section 77(3)(a) of the Child Justice Act 75 of 2008, which reads:

77 (3) A child who is 14 years or older at the time of being sentenced for the offence may only be sentenced to imprisonment, if the child is convicted of an offence referred to in-

(a) Schedule 3;

(4) A child referred to in subsection (3) may be sentenced to a sentence of imprisonment-

(a) for a period not exceeding 25 years;

(5) A child justice court imposing a sentence of imprisonment must take into account the number of days that the child has spent in prison or a child and youth care centre prior to the sentence being

imposed. It is indeed so that Section 77 (5) of Child Justice Act (CJA) provides that: "A child justice court imposing a sentence of imprisonment must antedate the term of imprisonment by the number of days that the child has spent in prison or child and youth center prior to sentence being imposed"

Section 28 (g) of the Constitution provides

(g) a child should not be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time."

[14] In assessing the personal circumstances of the three accused, the gravity of their offenses, the interests of society, and the significant impact on the victims must all be carefully considered in determining an appropriate and just sentence.

1. Personal Circumstances of the Accused

- Accused 1: Tumelo Omphile Mokone (25 years old 18 years old at the time of the crime)
 - He has no prior convictions and comes from a family where his biological father is absent. However, he has a loving relationship with his stepfather. He enrolled in an N2 in Rose Tech college doing mechanical engineering. He was unemployed, though he helped out with the family business. His family describes him as a loving and considerate person.
 - Of Significance: Accused 1 is an adult with some level of family support and no prior criminal history, which could be viewed in his favour as a mitigating factor. However, he has to show substantial and compelling circumstances for the court to deviate from the minimum sentence.

- Accused 2: O[...] S[...] (24 years old, 15 years old at the time of the crime)
- Accused 2 was a minor when the offences were committed. Her family's murder, left her without any immediate relatives. She became involved in substance abuse, using marijuana and crystal meth. Despite completing Grade 12, she was unemployed. she had been in custody for two years awaiting finalization of this case. She claims to have been traumatized by the loss of her family but did not fully cooperate with rehabilitation programs.
- Of Significance: As a minor at the time of the offence, accused 2's sentencing will be guided by the Child Justice Act, which prioritizes rehabilitation over punishment. Her vulnerability as a child at the time, combined with her troubled background and substance abuse, will play a significant role in her sentence.
- Accused 3: Kagiso Lawrence Mokane (25 years old and 18 at the time of crime)
- Like Accused 1, Accused 3 has no prior convictions. He has a girlfriend who is expecting a child. His personal circumstances show a sense of responsibility, as he cared for his younger sister while their mother worked as a domestic worker away from home during the week. He was employed as an operator, earning R1,800 per week, which suggests he was trying to support himself financially.
- Of Significance: Accused 3's age, lack of prior convictions, and sense of familial responsibility may mitigate his sentence, though, as an adult, he faces more serious consequences under the minimum sentencing and would have to show substantial and compelling circumstances for the court to deviate from minimum

sentence.

2. Seriousness of the Offence

The gravity of the crimes committed by all three accused cannot be overstated. The murder of four individuals, including two parents and two children, constitutes a heinous and grievous act of violence. The fact that accused 2, a family member, was complicit in the murder of her own parents and siblings where her sister was eight months pregnant adds an element of betrayal and emotional devastation that heightens the seriousness of the crime.

Additionally, the crimes involved theft, robbery with aggravating circumstances where a motor vehicle was taken, and possession of illegal firearms and ammunition. These acts collectively constitute a grave threat to public safety, making the offences particularly severe.

- **Aggravating Factors:** The premeditated nature of the murders, the use of a firearms, and the involvement of a minor as the master mind in these crimes significantly aggravate the seriousness of the offences.

3. Interest of Society

The societal interest in this case is twofold:

- **Punishment and Deterrence:** Society expects that those who commit violent and premeditated crimes, particularly crimes as serious as murder and robbery, will face severe punishment. This serves to deter similar conduct and reinforces the principle that unlawful acts will be met with appropriate consequences.
- **Rehabilitation:** In the case of accused 2, society has an

interest in seeing young offenders rehabilitated, particularly those who were minors at the time of their crimes. The Child Justice Act emphasizes the need to reintegrate young offenders back into the society, with the hope that they can lead productive and law-abiding lives.

The community's interest also demands that law-abiding citizens should feel safe in their homes and that the justice system is perceived as fair, both in terms of holding criminals accountable and in offering those deserving a second chance.

4. Impact on the Victims and Their Families

The impact on the victims' families has been devastating. The S[...] family's victim impact statement reveals profound grief, trauma, and betrayal. Family members have struggled with mental health issues, including depression and anxiety, stemming from the brutal murder of their relatives. The fact that accused 2, a member of the family, actively participated in the killings only intensifies their pain.

- **Emotional and Psychological Damage:** The surviving family members have suffered emotionally and psychologically. Several have sought psychiatric help, with all family members suffering from depression due to the knowledge that their relative, O[...], was involved in the crime.
- **Betrayal and Trust Issues:** The trust that the family placed in accused 2, only to find out that she was complicit in the murder, has left deep emotional scars. This betrayal has caused immense emotional conflict and has led to feelings of anger, confusion, and heartbreak within the family.

[15] In weighing the personal circumstances of the accused against the

seriousness of the crime, society's interests, and the impact on the victims, it is clear that the punishment must be just and proportional to the crime. The court must balance these factors carefully, ensuring that society's need for justice and deterrence is met, while also considering the possibility of rehabilitation of the accused, particularly for accused 2. The severe nature of the offence, the overwhelming harm caused to the victims, and the societal demand for accountability must be weighed alongside the mitigating personal circumstances of each accused. This court faces the critical task of imposing sentences that serve the interests of justice while acknowledging the personal factors that will warrant leniency in certain cases.

[16] Accused 1 and 3 were young offenders as they were still 18, at the time of committing the offence, the court will consider this as a mitigating factor. A person who is just over 18 may still be considered relatively immature and capable of rehabilitation, thus warranting a deviation from the minimum sentence. However, through the assessment of facts of the case it is evident that the immaturity played no role and that the accused showed no remorse for what they have done. They showed meticulous planned robbery and murder. That's why they had to have a firearm which is a dangerous weapon to show that they are even ready to use the firearm in case of need. And that's what they did. All these accused did not show remorse nor capability for rehabilitation. Counsel for accused 1 said that because accused 1 did not reoffend when he was out on bail then he is a candidate for rehabilitation. The court should assess the personal circumstances of accused 1 holistically in order to find that he might be rehabilitable.

[17] There has been no evidence that shows that the immaturity played a role. Accused 2 did not cooperate during psychological counselling which was a first step towards rehabilitation. However, the court will take into consideration that accused 2 (O[...] S[...]) was a minor (15 years old) at the time of the offence, and as such, she would be sentenced-under

section 77 of the child justice act.

1. First-Time Offenders:

- o Where an accused is a first-time offender with no previous convictions, the court may take this into account as a mitigating factor. The lack of a prior criminal record suggests that the accused may be less likely to reoffend, and therefore, a lighter sentence might be more appropriate.
- o Both Accused 1, 2, and 3 are first-time offenders, which may be considered strong mitigation in favour of the accused.

2. Personal Circumstances:

- o Social and Family Background: If an offender grew up in difficult or dysfunctional family circumstances, the court may take this into account. For example, if the offender experienced abuse, neglect, or extreme poverty, it could mitigate the sentence.
- o Accused 1 had an absent biological father, and though he had a supportive stepfather, the lack of a relationship with his biological parent might be a mitigating factor. However, these circumstances are often insufficient on their own unless combined with other mitigating factors. Accused 2 grew up in a stable family. Accused 3 grew up with only a mother and an absent father. But that did not become a problem for him, he started working and supporting himself.

3. Mental or Emotional State:

- o An offender's mental health, emotional state, or trauma at the time of the offence could be substantial and compelling. This includes factors like mental illness, extreme emotional distress, or trauma.
- o Accused 2 claims to have been traumatized by the loss of her

family, which may be a significant factor in her emotional and psychological state leading up to the offence. However, her lack of cooperation in counselling might affect the weight the court gives to this argument.

4. Minor or Lesser Role in the Crime:

o It has been factually established that all three accused actively planned the occurrence of this offences. Even on the date of the offence all three participated. Accused 2 opened the gate accused 1 and 3 entered the yard.

Accused 1 waited at the car and accused 3 entered into the house and killed the people while accused three pretended to be busy outside when the deed was complete then accused 1 drove the car away together with accused 3. They all equally participated.

5. Rehabilitation Potential:

o All the accused do not show genuine remorse or demonstrates a strong potential for rehabilitation, as a result this has an influence on the reason for not deviating from minimum sentence or rehabilitation of the minor. Accused 2 could not cooperate when the family wanted her to undergo counselling as a result it is doubtful if accused 2 will be rehabilitated as stated under the Child Justice Act. Accused 1 and 3's family circumstances cannot be taken as substantial and compelling circumstances such that they could be presented as signs of potential rehabilitation in order to deviate from minimum sentences.

Interest of Justice and Society

[18] While these personal circumstances of the accused may be present, the court must also consider whether a deviation from the minimum sentence based on such personal circumstances of the accused serves the interests of justice. The seriousness of the crime, societal

interest in deterrence, and the profound impact on the victims will sometimes weigh heavily depending on facts of each case. In particular, this was heinous offences, so however strong the personal mitigating factors of the accused may be they are not enough to justify a departure from the minimum sentence. In this regard the fact that accused 1 and 3 were young when these offences occurred as compared to the seriousness of the offence, the youthfulness will take the back seat. Their family plight will also take a back seat. The fact that they are first time offenders will also take a back seat. Accused 1 and accused 3 are first-time offenders with clean criminal records, and their youth and family responsibilities might be argued as mitigating factors. However, given the gravity of the crimes (involving premeditated murder and robbery), the court will have to carefully assess whether these personal circumstances are sufficient to deviate from the prescribed minimum sentences. The court did not find substantial and compelling circumstances to deviate from the minimum sentences.

[19] Accused 2 (O[...] S[...]): Being a minor at the time of the offence automatically places her outside the strict application of the minimum sentencing act, as the Child Justice Act will govern her sentencing. Her age, potentially for rehabilitation, and possibly the trauma she experienced might provide grounds for leniency and her sentence will be in terms of section 77(3) and (4) of the child justice act.

[20] The following sentences are imposed;

1. Accused 2

Count 1 ,7 and 8 are taken together for purpose of sentence. The child is sentenced to 5 years' imprisonment.

Count 2-5 are taken as one for the purpose of the sentence. The child is sentenced to 25 years' imprisonment.

Count 6 the child is sentenced to 10 years' imprisonment:

In terms of section 77(5) of Act 75 of 2008 the sentence will be ante dated to the date of 16 December 2021 when the accused was arrested.

In terms of Section 280(2) of Act 51 of 1977 the court directs that the sentences imposed in respect of all these counts shall run concurrently with the sentence on count 2-5.

2. Accused 1

Count 1, 7 and 8 are taken as one for the purpose of sentence and the sentence is 5 years.

Count 2 -5 are taken as one for the purpose of sentence and the sentence is life imprisonment.

Count 6 the sentence is 15 years' imprisonment.

In terms of Section 280(2) Act 51 of 1977 the court directs that the sentences imposed in respect of all these counts shall run concurrently with the sentence for life imprisonment.

3. Accused 3

Count 1, 7 and 8 are taken as one for the purpose of sentence and the sentence is 5 years.

Count 2 -5 are taken as one for the purpose of sentence and the sentence is life imprisonment.

Count 6 the sentence is 15 years' imprisonment.

In terms of Section 280(2) Act 51 of 1977 the court directs that the sentences imposed in respect of all these counts shall run

concurrently with the sentence of life imprisonment.

[21] ***Auxiliary orders***

Leave to Appeal accused 2

1. In terms of section 84 of Act 75 of 2008, your rights regarding appeal are as follows:

1.1 You have the right to apply to this court to appeal against the conviction and/or resultant sentence and/or order of this court.

1.2 You may lodge the appeal personally or appoint a legal representative for this purpose. If you cannot bear the costs of a legal representative, you may apply to Legal Aid South Africa for the appointment of a legal representative free of charge.

1.3 If you elect to note an appeal, you can apply to this court for leave to appeal against the conviction and/or sentence and/or order of the court immediately or within fourteen (14) days. The period of fourteen (14) days can be extended on request, but good cause will have to be shown why the prescribed period should be extended.

1.4 Your application for leave to appeal must set forth clearly and specifically the grounds upon which you wish to appeal. If you verbally apply for leave to appeal immediately after the passing of the decision or order you must state, the grounds upon which you wish to appeal so that it can be recorded and form part of the record.

Accused 1, 2, and 3

1. In terms of Section 103 (1) of firearms control act 60 of 2000 the

court makes no order. This means all the accused are deemed unfit to possess a firearm.

2. In terms of section 103 (4) of firearms controls act 60 of 2000.

The court makes an order of search and seizure of accused's premises for firearms, ammunitions licenses and or competency certificate.

3. In terms of section 299A (1) of Act 51 of 1977 the court informs the complainants that they have a right to make representations to the commissioner of the correctional services when placement of the prisoner on parole is considered, to attend any relevant meetings of the parole board, when the accused's parole is to be decided. This is subject to the directive issued by the commissioner of correctional services under section 4 of the correctional services Act.

4. accused 1 and 3 have the right to appeal the convictions sentences which were imposed on them today. The accused may request the assistance of legal aid attorneys or retain a privately appointed attorney, at their own expense, to assist in bringing a substantive application for leave to appeal the conviction and sentence, to be filed within 14 days from the date of this sentence. If the application is submitted later than fourteen (14) days, the applicants must apply for condonation in order to seek an extension of time to file the application for leave to appeal out of time.

M Munzhelele J

Judge of the High Court, Pretoria

Heard On: 22 October 2024

Delivered On: 22 October 2024

APPEARANCES:

For the State: Adv E. V Sihlangu

Instructed by: The National Director for Public Prosecutions

For the First Accused: Adv N Khoza

Instructed by: Private Counsel

For the Second and Third Accused: Adv O. K Matshego

Instructed by: Legal Aid South Africa