

REPUBLIC OF SOUTH AFRICA



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

- (1)

REPORTABLE: NO
- (2)

OF INTEREST TO OTHER JUDGES: NO
- (3)

REVISED: NO

Case No: SS 77/2024

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

5 SEPTEMBER 2025

DATE

SIGNATURE

MAVUSO, JAN KHOMOTSO

Appellant

V

The State

Respondent

APPEAL JUDGMENT

MAHOMED J:
BACKGROUND

- [1] On 4 August 2025 I found the appellant guilty of premeditated murder and guilty of assault with the intent to do grievously body harm. On 14th August I sentenced him to life imprisonment on court 1 and 15 years on court 2, with both sentences to run concurrently. He murdered his girlfriend the mother of three children one night whilst in their home by stabbing her with a kitchen knife 15 times whilst the children were in their rooms listening to their mother begging for mercy and assistance.
- [2] Counsel for the appellant argued that there were exceptional circumstances which I failed to consider in the sentence. He argued that I overemphasised the seriousness of the crime and I failed to consider that other courts have reduced sentences in crimes of passion such as the one in *casu*. It was furthermore submitted that I did not pay much heed to the personal circumstances of the appellant, more particularly in that he is a first-time offender.
- [3] I considered that the appellant had completed his schooling at a time in our socio-political history, when women's challenges were finally "featuring" in the bigger picture of the society we need to be. He could never be unaware of the disease of gender-based violence that has infected our society. I considered that apart from little Owami, the child he had with the deceased, there were two other children, future leaders of our society, whose lives were destroyed in a matter of minutes, and he could clearly tell how his behaviour was going to impact on the children, the society was are called to consider in the *Zinn* case. I also understood the submission from counsel that he had been responsible for no less than 10 children of his own, from various women, and that he

supported his two sisters and his mother, all women of this society we call home.

- [4] I did indeed consider these personal circumstances and am of the view, this appellant simply had no regard for any of the responsibilities he had on his shoulders before he committed his crime. He had a choice to withdraw and make a call to clarify the affair she was allegedly involved in; he chose not to, he chose violence over resolution. The forensic report recorded 15 stab wounds, to the upper and mid body, of the deceased, who obviously was in full view of the appellant, this did not deter him. The fact of the presence and innocence of the three children in the next room, whom he knew were all awake, did not deter him.
- [5] The deceased sister who gave evidence at sentence, testified that she was looking after the appellant's child, he is extremely traumatised without his mother. She testified that neither the appellant nor his family have contacted her after the incident in regard to little Owami, she was happy to look after him but was adamant that the appellant showed no remorse and must face the full might of the law for the children of experience justice and themselves respect for the law.
- [6] I also considered that the appellant failed to testify and to take the court into his confidence. No version was before this court or the for the state to assist on the aspect of sentence. I agree with counsel for the state the appellant only faced the law because he was caught red handed. He showed no remorse, and as was stated in the article by, Jamil D Mujuzi 2008 South African Criminal Justice p 1-21, a comment on S v Nkomo, "the *Department of Correctional*

Services has failed to meet rehabilitation targets and stated that the prospect of rehabilitation in South Africa remains a speculative hypothesis.”

- [7] Has he shown any remorse? Remorse includes a “*gnawing pain of conscience for the plight of another.*” I found no evidence to support that argument the deceased’s sister testified that all three children have even lost one another as they now reside with different persons in different parts of the country, this murder was gruesome, with far reaching consequences for many. I found no exceptional and compelling circumstances to move away from the imposition of the minimum sentences as legislated. In *S v Malgas*¹, Marias JA stated:

“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 doubts as to the efficacy of the policy implicit in the amending legislation, and the like considerations were equally obviously not intended to qualify and substantial and compelling circumstances.”

- [8] Whilst other judgments in other cases are certainly a guide, each case must be decided on its own facts, in casu the appellant had choices and chose only himself. Again, having regard to his family and other children, he chose himself. I am not persuaded that another court will arrive at a different conclusion, I regard the sentence as appropriate in the circumstances.

Accordingly, I make the following order

1. Leave to appeal is refused.

¹ 2001 (1) SACR 469 (SCA) para 9 (477d-e)



Mahomed J

JUDGE OF THE HIGH COURT

JOHANNESBURG

Date of hearing: 4 August 2025

Date of Sentencing :14 August 2025

Date of Judgment: 5 September 2025

Appearances

For the state:

Adv Phatlanyane

For the defense:

Adv Ngxuma