



**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION: MTHATHA]**

CASE NO. CC06/2025

In the matter between:

THE STATE

Vs

SIPHO TOLE MDEKAZI

Accused

SENTENCE

JOLWANA J

[1] The accused has been convicted of the murder of the deceased in respect of which the State indicated in the indictment, its intention to ask for the imposition of the minimum sentence of life imprisonment as provided for in section 51(1) of the Criminal Law Amendment Act 105 of 1997 (the Act). It is now incumbent on this Court to consider and pass an appropriate sentence.

[2] Section 51(1) of the Act provides:

“Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part 1 of Schedule 2 to life imprisonment.”

[3] Part 1 of Schedule 2 reads thus:

“Murder when –

(a) It was planned or premeditated.”

[4] Section 51(3)(a) of the Act, in part, reads:

“If any court referred to in subsections (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.”

[5] The accused testified in mitigation of sentence. His evidence was that he was born at Engcobo in 1981. His parents were not married as a result of which he was raised by a single mother. His father only featured in his life when he was 11 years old when his took him from his mother. He went to school up to grade 10 at which stage he dropped out. He had no particular reason for dropping out of school. After dropping out of school, he stayed at home and would get odd jobs here and there. Both of his parents are no longer alive.

[6] He is not married. He had two children but one of them passed on. The second child is a boy born on 9 August 2020 and is therefore five years old now. The said child stays with his mother who looks after him. The mother of this child is unemployed and therefore the child depends on child support grant provided by the State. Accused testified that at the time of his arrest he was working for ZARA and based at Groote Schuur Hospital. During the main trial, his evidence was that he worked at Groote Schuur Hospital as a porter under the employ of ZARA. He financially contributed in the upbringing of his child with about R1000.00 in a good month.

[7] He testified that he is not young anymore and is concerned about his future. He would also like to be involved in the life of his child and would therefore like the court to give him a second chance so that he can look after his child. He was asked by his

counsel how he felt about the family of the deceased. He testified that he understands that it is painful for them to lose a loved one and that this incident does not sit well with him. When he was asked that given a chance, what he would say to the widow of the deceased, he testified that he would say to her that he did not kill the deceased. Under cross-examination he went on further to ask where the weapon with which he was said to have used in killing the deceased is. He said that he has been convicted only because of a fingerprint.

[8] In aggravation of sentence, the State called Mrs Mdani, the wife of the deceased to testify. Her evidence was that she and the deceased got married in 1997. Until the deceased was killed, they had been living together at their homestead at Cabazana Locality. They have five children two of whom were born of their marriage. The other three children have different mothers. Their first child from their marriage was born on 19 May 1998. This child is in the taxi industry operating his father's taxi. The second child was born on 8 May 2002. He is doing his third year of tertiary education at Walter Sisulu University in Queenstown.

[9] She testified that her late husband's first child was born in 1991. He is unemployed and does odd jobs. His second child was born in 1992. She is also unemployed. The last child was born in 2005 and is doing grade 11. Mrs Mdani testified that when the deceased was still alive, he looked after all his children and even the ones that were not born of their marriage would come to their homestead from time to time. After the death of her husband, her eldest son, Bandile, had to step up and take over his father's responsibilities in running the deceased's taxi business. This included taking responsibility for many things like ensuring that the vehicles are roadworthy and drivers are paid. Her observation is that Bandile has become aggressive, and he does not like talking which was not the case before the incident.

[10] Their second child, Yongama was at school when the incident occurred. She testified that Yongama was very close to his father and since this incident, he has not been attending court. He likes isolating himself and is very reserved with the result that she does not know how he feels about the incident. About herself, Mrs Mdani testified that her husband was very supportive and doing everything at home

to ensure that their home was always warm. Subsequent to the incident, she has become very fearful with the result that after 18:00 she wants to be indoors. She spent the whole year being unable to go to their bedroom where the incident occurred. Even now, when she exits the bedroom into the veranda, she feels like she is going to see the assailant that she saw on the date of the incident. There was a tree near the window through which the assailant's gained entry. She instructed her children to cut that tree because it felt like she was seeing a person.

[11] She is unable to enjoy basic amenities like watching television because when stories involving gunshot incidents are played, she becomes very scared and switches it off and covers herself. Their home is now always locked including the gates and has been fitted with burglar bars. When she is not at home after 18:00, she becomes afraid and feels like someone is following her and has to phone and ask to be fetched. She explained that all of this was a result of the trauma subsequent to the killing of her husband. She testified that she was surprised when the accused testified that he did not know Cabazana Location when his fingerprint was found there. She feels that the accused has still not told the truth and even the firearm he asked about was known by him as he was the one who killed her husband.

[12] All of this evidence brings me back to section 51 of the Act to which I referred earlier. The approach to the consideration and application of discretionary minimum sentences was explained as followed in *Malgas*¹:

“What stands out quite clearly is that courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect and not merely pay lip service to the Legislature's view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed. In summary –

¹ S v Malgas 2001(1) SACR 469 (SCA) at 481 f-j to 482 a-f.

- A. Section 51 has limited but not eliminated the court's discretion in imposing sentence in respect of the offences referred to in Part 1 of Schedule 2 (or imprisonment for other specified periods for offences listed in other parts of Schedule 2).
- B. Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.
- C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.
- D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypothesis favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.
- E. The legislature has however, deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored.
- F. All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process.
- G. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick (substantial and compelling) and must be such as cumulatively justify a departure from the standardised response that the Legislature has ordained.
- H. In applying the statutory provisions, it is inappropriately constricting to use the concepts developed in dealing with appeals against sentence as the sole criterion.

- I. If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.
- J. In doing so, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the bench mark which the Legislature has provided.”

[13] This is a particularly very serious offence which, regrettably, has become too prevalent in this country. This is the killing of people who are either waylaid on their way to or from work; when they arrived at home; when they leave home; and many other instances of faceless people who clearly plan their criminality very carefully and execute it with astonishing brazenness. In this case the deceased had been discharged from hospital about two weeks or so before the incident where he had undergone an operation. This means that he was not even able to defend himself or even run due to his health condition at the time of the attack. He was at home with his wife where they had every right to consider themselves safe. Unbeknown to them, they were attacked with high calibre firearms including a rifle. After the deceased was killed, the assailants left without taking anything. That is the clearest indication that the purpose of the attack was the killing of the deceased and not, for instance, robbery. The reason for the deceased to be killed is unclear. The post mortem report compiled by Dr Nkanyuza who conducted the post mortem examination of the body of the deceased indicates that the deceased sustained numerous gunshot wounds to the upper body.

[14] This is evidently a very serious offence which has resulted in the devastatingly traumatic experience that the deceased's family suffered. The actual long term consequences of the actions of the accused will never be known. With this type of violent crime which has reached alarming proportions, the society is justified in expecting courts to mete out sentences that take into account the society's abhorrence of this violent criminality. The evidence of the accused was more about himself and his desire to be given a second chance. He said nothing about being

remorseful. On the contrary, even after the conviction, he sought to maintain his innocence to the extent of making light of the fact that he was linked to this case by a fingerprint. He asked where the weapon was that he would have used in committing the offences. This is a clear indication of an unrepentant criminal with no regard at all for the human life that he took for reasons known only to him.

[15] The accused has, in all these circumstances, failed to establish the existence of substantial and compelling circumstances that would justify this Court's departure from the prescribed minimum sentence of life imprisonment.

[16] In the result the accused is sentenced as follows:

1. In respect of count 1, housebreaking with intent to commit an offence, the accused is sentenced to 3 years imprisonment.
2. In respect of count 2, the murder of Mahlubandile Churchill Mdani, the accused is sentenced to life imprisonment.
3. In respect of count 3, the unlawful possession of a firearm, the accused is sentenced to 5 years imprisonment.
4. In terms of section 103 of the Firearms Control Act 60 of 2000, the accused is declared unfit to possess a firearm.

M.S. JOLWANA
JUDGE OF THE HIGH COURT

Appearances

Counsel for the state : C Mkentane
Instructed by : NDPP
Mthatha

Counsel for the accused : S T Kekana

Instructed by : Legal Aid Board South Africa
Mthatha

Date heard : 4 August 2025

Date delivered : 6 August 2025