



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable
Case no: A175/2024

In the matter between:

TSELA ISAAC MOIYANE

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Moiyane v The State* (A175/2024) [2025] ZAFSHC 274 (29 August 2025)

Coram: Mbhele AJP *et* Benade AJ

Heard: 5 May 2025

Delivered: 29 August 2025

Summary: Criminal procedure – appeal against sentence – consideration of purpose of sentence by court imposing it – sufficient weight to be attached equally and consistently to all factors in sentencing phase.

ORDER

- 1 The appeal against the sentence is upheld.
 - 2 The sentence is set aside and replaced with the following:
'The accused is sentenced to ten (10) years' imprisonment in count 1 and eight (8) years' imprisonment in count 2. The sentences are to run concurrently.'
 - 3 The sentences are antedated to 26 April 2023.
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JUDGMENT

Mbhele AJP

Introduction

[1] This is an appeal against sentence. The appellant was, after his plea of guilty, convicted by the Regional Magistrate, Bloemfontein on 26 April 2023 for one count of arson and one count of attempted murder by setting fire to the house of the complainant while the complainant was inside the house. The complainant is his girlfriend's mother. He was sentenced to 15 years' imprisonment on count 1 and 10 years' imprisonment on count 2. The sentences were specifically ordered not to run concurrently with an effective prison term of 25 years. The appeal is with leave of this court.

[2] The offences took place on 27 December 2020. The appellant went to the complainant's house demanding to see his girlfriend with whom he had a quarrel earlier in the day. The girlfriend refused to come out, instead, her brother came out and assaulted the appellant. He thereafter left, went to his house where he indulged in an undisclosed inducing substance. He came back later and found his way into the house. Once inside the house, he burnt the corner of a bed that was placed in the dining room. Once it caught fire, he ran to his place of abode leaving the house filled with smoke.

[3] In his notice of appeal, the appellant contended that the court *a quo* erred in not taking into account the fact that he pleaded guilty and showed remorse for his actions. He submitted, further, that the trial court over emphasized the seriousness of the offences and the interests of society at the expense of his personal circumstances.

[4] The issue in this appeal is whether the trial court erred in imposing an effective prison term of 25 years on the appellant for arson and attempted murder. Before us, Ms Kruger, on behalf of the appellant, submitted that the sentence of 25 years is shockingly inappropriate in the circumstances of this matter. Mr Ontong conceded that the sentence is shockingly inappropriate and that there is a justification for interference with the sentences imposed by the trial court. They further submitted that the sentences be ordered to run concurrently.

[5] The sentencing powers are pre-eminently within the judicial discretion of the trial court. The court of appeal should be careful not to erode such discretion. The court sitting on appeal will interfere if the sentencing court exercised its discretion unreasonably or in circumstances where the sentence is adversely disproportionate.¹

[6] There is no doubt that the appellant has been convicted of a very serious offence. Although there is no evidence that the complainant sustained any physical injuries, the fact that her house was put on fire while she was inside could have had devastating consequences. The record shows that most of the complainant's movable assets were completely destroyed. He put the complainant's life in serious danger and the complainant could have died of burn wounds or smoke inhalation. The complainant and her family were rendered homeless and desolate as a result of the appellant's conduct. It is important to mention that the appellant's conduct was fuelled by the desire to control the complainant's daughter with whom he shares a child. When he could not get his way, he decided to burn the house down.

[7] In determining the sentence, the trial court rejected the appellant's evidence in mitigation, labelled him a liar and accepted the complainant's daughter's evidence tendered in aggravation of sentence. Although the complainant's daughter confirmed that the minor child born between her and the appellant stays with the appellant's mother and stepfather, where the appellant was staying while awaiting trial, the court rejected the appellant's version that he was staying with the minor child at his mother's place. The trial court went on to tell the appellant about facts of previous cases she dealt with where women died at the hands of their lovers. In these matters, no evidence was led to show

¹ *S v Rabie* 1975 (4) SA 855 (A) AT 857D-E; see also *S v De Jager and Another* 1965 (2) SA 616 (A).

similarities between those matters and the appellant's. Thus she forgot to treat the appellant as an individual with unique personal circumstances.

[8] In considering an appropriate sentence, the sentencing court must not only balance several competing interests, such as the interests of the accused person, the gravity of the offence and the interests of society, but must also bear in mind the purpose of sentence, namely retribution, personal and general deterrence and rehabilitation. No one factor must be over-emphasised at the expense of others. In *Opperman v The State*,² the Supreme Court of Appeal, quoting with approval *S v Dodo*,³ held as follows:

'Sentencing is about achieving the right balance (or, in more high-flown terms, proportionality). The elements at play are the crime, the offender and the interests of society or, with different nuance, prevention, retribution, reformation and deterrence. Invariably there are overlaps that render the process unscientific; even a proper exercise of the judicial function allows reasonable people to arrive at different conclusions.'

[9] Having considered the record, it appears that the trial court attached too little weight to personal circumstances of the appellant and over-emphasised the interests of society and the gravity of the offence. Had the trial court attached sufficient weight to the appellant's personal circumstances, I am of the view that a different sentence would have been imposed, viz: The appellant was 26 years of age at the time of sentencing, he was employed at Korporasie earning R2 000 per month, he went to the complainant and apologised for his unbecoming conduct, he expressed willingness to pay reparations for the damage he caused, he took an initiative to see a psychologist to deal with his problem of substance abuse and anger management and further that he shares a three year-old minor child with the complainant's daughter.

[10] In *Director of Public Prosecutions North Gauteng: Pretoria v Gcwala and Others*,⁴ the Supreme Court of Appeal held that:

'The questions have thus already been answered, not only in relation to cases where minimum sentences have been prescribed by the legislature, but also in all cases where a court is considering the justness of the sentence to be imposed: the sentencing court should consider in

² *Opperman v The State* [2010] ZASCA 83; 2010 (2) SACR 248 (SCA) para 30.

³ *S v Dodo* [2001] ZACC 16; 2001 (1) SACR 594 (CC); 2001 (3) SA 382; 2001 (5) BCLR 423; paras 35-38.

⁴ *Director of Public Prosecutions North Gauteng: Pretoria v Gcwala and Others* [2014] ZASCA 44; 2014 (2) SACR 337 (SCA) para 18.

all cases whether the period of imprisonment proposed is proportionate to the crime committed, taking into account, for that purpose, the period spent in custody awaiting trial.'

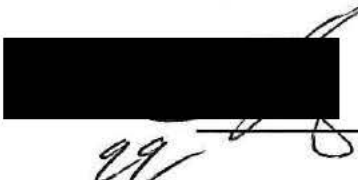
[11] Having considered all relevant facts, the appellant's personal circumstances in mitigation, the offence and interest of society, I am of the view that a sentence lesser than 25 years' imprisonment will serve the purpose of punishment in the circumstances of this matter. The appeal ought to succeed.

[12] In the circumstances I make the following order:

- 1 The appeal against the sentence is upheld.
- 2 The sentence is set aside and replaced with the following:
'The accused is sentenced to ten (10) years' imprisonment in count 1 and eight (8) years' imprisonment in count 2. The sentences are to run concurrently.'
- 3 The sentences are antedated to 26 April 2023.


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N M MBHELE
ACTING JUDGE PRESIDENT

I concur


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H J BENADE
ACTING JUDGE OF THE HIGH COURT

Appearances

For the appellant: S Kruger
Instructed by: Legal Aid South Africa
Bloemfontein

For the respondent: E Ontong
Instructed by: Director of Public Prosecution
Bloemfontein