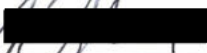


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Appeal Case Number: A344/2017

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
17/09/2025	
DATE	SIGNATURE

In the matter between:

MOKOENA MANDLA PHILEMON

Appellant

and

THE STATE

Respondent

JUDGMENT

STRYDOM, J

- [1] The appellant was indicted in the High Court of this Division on two counts of murder, read with the provisions of section 51(1) of Act 105 of 1997, in that it was alleged that the appellant acted with premeditation and after planning his actions.

- [2] The appellant was convicted on both counts of murder. The trial court found that the murders were planned and/or premeditated.
- [3] The appellant was sentenced to two life imprisonments, but effectively to one life imprisonment.
- [4] The appellant was granted leave to appeal to the Full Court against sentence only. A further attempt by the appellant to obtain leave to appeal against the finding that the murderers were not executed after planning and/or premeditation was unsuccessful.
- [5] Thus, this Court will be required to consider whether the sentence of life imprisonment was inappropriate and excessive. This Court will have to consider whether the trial court misdirected itself in arriving at the sentence imposed. Put differently, the Court will have to decide whether the trial court was wrong in its finding that the appellant was unable to demonstrate the existence of substantial or compelling circumstances that would justify deviating from the prescribed minimum sentence.
- [6] The appellant, a police officer serving in the Flying Squad division of the South African Police Service, went to the place of residence of his ex-girlfriend ("the second deceased") with his official firearm in his possession. Before he went there, he had already phoned a colleague of the second deceased twice, informing her that he was going to kill the second deceased and her new boyfriend. On his arrival, an argument ensued between him and the second deceased. The boyfriend, Getron Ndlovu ("the first deceased"), was also there, but he went to his VW motor vehicle. A friend of the second deceased, Ms. Fridah Maroka ("Ms. Maroka"), tried to intervene to stop the argument as the appellant was apoplectic with rage due to his perceived idea that the second deceased was cheating on him by engaging in a relationship with the first deceased.
- [7] The first deceased left the room, got into his vehicle and drove away for some distance. He remained seated in his parked vehicle. The second deceased followed him, with the appellant again following her. When the appellant arrived at the vehicle, he discharged shots through the open passenger window of the first deceased's vehicle. The shots were fatal. He then proceeded to shoot the

second deceased. In total, he discharged 12 shots, many of which hit the two deceased. This resulted in the demise of the second deceased.

- [8] The second deceased had been in a relationship with the appellant. The relationship ended at the behest of the appellant. On the fateful day of the demise of the two deceased, the appellant called the landlord where the second deceased rented accommodation. He informed the landlord that he was on his way to sort the deceased out, and she should bid them goodbye.
- [9] As far as the sentence of the appellant is concerned, it was argued before us that the trial court should have found the existence of substantial and compelling circumstances to deviate from the prescribed sentence of life imprisonment. This sentence was imposed following a decision that the appellant acted with premeditation.
- [10] Before us, emphasis was placed on the fact that the appellant was a first offender; it was also argued that the Trial Court was dealing with a crime of passion. The personal circumstances of the appellant were highlighted. He was 38 years old at the time of sentencing. He was married with five children. He was employed but was dismissed because of this incident.
- [11] It was submitted on his behalf that he showed remorse for the deaths of his girlfriend and her new partner. He, however, persisted in his version that he was not legally responsible for the deaths of the two deceased as he was acting in self-defence when he shot the first deceased. This version was correctly rejected by the trial court. The first deceased, also a policeman, had a firearm in his possession, but there was no evidence that this firearm was pointed at the appellant or that shots were fired from this firearm. The firearm held by the first deceased fell to the floor of the vehicle where he sat in the driver's seat. There was no reliable evidence that he pointed the firearm at the appellant, which would have introduced the element of a threat to the appellant. The first deceased did not have an opportunity to point his firearm at the appellant. The appellant's version was that he unintentionally shot the second deceased in the process of a struggle is discounted by the trajectory of the bullets. Where the appellant avers that he was engaged in a physical struggle with the second deceased, the

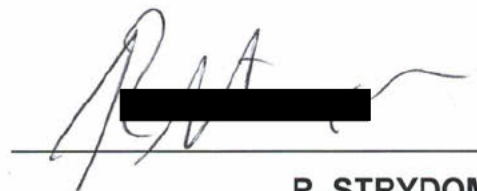
number of shots and the entry and trajectory of the bullets do not lead to the conclusion that the shooting was an accident. This version was also correctly, in my view, rejected by the trial court. The version of the appellant was not reconcilable with the evidence contained in the post-mortem report. The appellant failed to explain why 12 shots were fired by him. The trajectory of the bullets discharged by the appellant through the open window of the vehicle of the first deceased indicates that the first deceased did not have an opportunity to discharge his firearm to shoot at the appellant.

- [12] The submission on behalf of the appellant was that the two murders which he committed were crimes of passion and that the appellant was caught in a love-triangle. Now this version is not reconcilable with the rejected version of the appellant. But even if it is accepted, on the proven facts of this matter, that the appellant shot the two deceased because he was caught in a love-triangle, does not render the appellant less morally blameworthy. He went to the home of his ex-girlfriend already with the intention to kill her and her new boyfriend. This must be considered in the context that the appellant ended his relationship with the second deceased. He could not accept that the second deceased, even after he ended his relationship with her, should be allowed to engage in a relationship with someone else. This was a selfish reason. An aggravating circumstance is that the appellant also shot and killed the first deceased, who had done nothing to him. He had ample time to reflect on his intended action and to desist from his plan to kill the deceased. Instead, he informed the deceased's friend and the landlady that he was going to kill the two deceased.
- [13] The Court was referred to cases where sentences, less than life imprisonment, were imposed pursuant to findings that the murders were committed in circumstances of so-called crimes of passion. In the matter of *S v Maroga 2017 JDR 0170 (GP)* the appellant was sentenced to 20 years imprisonment for the murder of his ex-girlfriend who had previously broken up their relationship. He could not accept that, and without provocation, fired several shots at her, which killed her. It is trite that each case must be considered on its own merits. *In casu*, the appellant not only shot his ex-girlfriend, he also shot her new boyfriend. This in my mind, renders the case of the appellant much more serious.

- [14] The remorse which was suggested the appellant displayed lacks credibility for the simple reason that the appellant failed to take the court into his confidence and explain exactly what had happened and why he acted in the way he did. True remorse must not be confused with self-pity. In *S v Matyityi 2011 (1) SACR 40 (SCA)* Ponnann JA stated the following, about genuine remorse of an offender:

“... In order for the remorse to be a valid consideration, the penitence must be sincere, and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; whether he or she does indeed have a true appreciation of the consequences of those actions.”

- [15] When substantial and compelling circumstances are considered, the submission that it was a crime of passion and the appellant's belated indication of remorse are not substantial and compelling circumstances. The trial court was correct in rejection this. Considering all the factors that were taken into account by the trial court, there is no indication that the court erred in imposing a sentence of life imprisonment.
- [16] The appellant's right to be treated with mercy must be weighed against the deceased's rights to free association and to be free of harm. Considering the high levels of gender-based violence in this country, the suggestion that the appellant should be treated with mercy rides roughshod over the second deceased's right to life, to be free from harm and her choice to associate freely.
- [17] Having regard to the above, there is no basis to conclude that the sentence imposed by the trial court is shocking and inappropriate or that there was any misdirection. There is no basis on which to interfere with the sentences imposed by the trial court. The sentences imposed were ordered to run concurrently.
- [18] Order
- a. The appeal against the sentence of appellant is dismissed.

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R. STRYDOM

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

I agree,

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S. MIA

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

I agree,

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S. MAKAMU

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Heard on: 18 August 2025

Delivered on: 17 September 2025

Appearances:

For the Appellant: Adv. E. Guarneri

Instructed by: Legal-Aid South Africa (Johannesburg)

For the Respondent: Adv. C.E. Britz

Instructed by: National Prosecuting Authority