



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

CASE NO: A114/2024

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
18/09/2025	
DATE	
[Redacted Signature]	
SIGNATURE	

In the matter between:

TUMELO PIET MOKOENA

APPELLANT

v

THE STATE

RESPONDENT

JUDGMENT

MAKAMU, J

- [1] The appellant was indicted with one count of murder and a second count of attempted murder in the Johannesburg High Court, before our brother Mabesele J. A legal representative represented the accused throughout the trial. He pleaded guilty to the charges preferred against him. The State did not accept the plea on a count of murder, read with section 51 (2) of the Criminal Law Amendment Act 105 of 1997. As a result, a plea of not guilty was entered

in terms of section 113 of the CPA 51 of 1977, as the State intended to prove that it was a premeditated murder read with section 51(1) of the Criminal Law Amendment Act 105 of 1997.

- [2] The appellant was subsequently found guilty of murder read with section 51(1) of the Criminal Law Amendment Act 105 of 1997 after the State led evidence in respect of the commission of the offences.
- [3] The appellant was sentenced to life imprisonment on count 1 (murder) and 5 years imprisonment on count 2 (attempted murder). The appellant was not offended by the conviction, but found the sentence to be too harsh, hence this appeal before the Full Court.
- [4] It is important to discuss the background of these offences. The appellant and the deceased had previously had a love relationship, according to the appellant. During their relationship, the deceased, according to the appellant, borrowed money from him. She borrowed an initial amount of R10 000, then small amounts of R1 500, R2 500, until the amount accumulated to approximately R20 000.
- [5] The appellant and the deceased cohabited together at the time, but the deceased decided to vacate their shared home and return to her own house. It seems like the deceased had ended their love relationship. This version was not confirmed by the two State witnesses, one of whom was the deceased's sister. The appellant tried to contact her, but she was not responding to his calls. He then went to trace her and found her with other people in a Toyota Quantum vehicle (a taxi) parked outside the deceased's house. He tried to pull

her out of the car. She asked "who is this pulling me," he then looked up and removed the hoodie he was wearing. He pulled out his firearm and shot her about twelve times, and one other passenger two times, on both his legs. He did not say a word, and there was no discussion between the accused and the deceased or other passengers in the Toyota Quantum vehicle.

- [6] According to evidence, she then collapsed leaning forward, but he made her sit upright and continued firing shots at her, resulting in eight entry wounds through the chest and abdomen. He also shot her in the neck and through her right wrist, and then twice through her left arm. He then walked away from the scene.
- [7] This background demonstrates that indeed the murder was premeditated in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997.
- [8] The trial court sentenced the appellant to life imprisonment for murder and five years for attempted murder. The appellant submitted that the fact that the trial court imposed five years' imprisonment for attempted murder, which has a prescribed minimum sentence of fifteen years' imprisonment, demonstrates that the trial court considered that substantial and compelling circumstances existed to justify a deviation from the prescribed minimum sentence. The argument was that if reason for deviation from the prescribed minimum sentence existed for the attempted murder, they logically also exist for the murder. It was submitted that the court did not properly consider these issues, and that the life sentence was therefore not appropriate. We are invited to find that the court a quo erred in imposing life imprisonment for the murder instead of a lesser term of imprisonment.

- [9] The appeal court should not interfere with the trial court's sentence just because it believes that it would have imposed a different sentence. In *Hewitt v S*,¹ the court stated that:

“It is a trite principle of our law that the imposition of sentence is the prerogative of the trial court. An appellate court may not interfere with this discretion merely because it would have imposed a different sentence. In other words, it is not enough to conclude that its own choice of penalty would have been an appropriate penalty. Something more is required; it must conclude that its own choice of penalty is the appropriate penalty and that the penalty chosen by the trial court is not. Thus, the appellate court must be satisfied that the trial court committed a misdirection of such a nature, degree, and seriousness that shows that it did not exercise its sentencing discretion at all or exercised it improperly or unreasonably when imposing it.” (footnotes omitted)

- [10] At this stage, it is difficult to find that the trial court erred or imposed an inappropriate sentence, which may require the appellate court to interfere with its sentence, when one applies the law to the facts in this case.

- [11] In *SMM v S*,² the SCA commented:

“Life imprisonment is the most severe sentence which a court can impose. It endures for the length of the natural life of the offender, although release is nonetheless provided for in the Correctional Services Act 111 of 1998. Whether it is an appropriate sentence, particularly in respect of its

¹ 2017 (1) SACR 309 (SCA), at paragraph 8

² 2013 (2) SACR 292 (SCA)

proportionality to the particular circumstances of a case, requires careful consideration. A minimum sentence prescribed by law which, in the circumstances of a particular case, would be unjustly disproportionate to the offence, the offender, and the interests of society, would justify the imposition of a lesser sentence than the one prescribed by law.”³

[12] The life imprisonment imposed by the trial court is prescribed by law and only if there are substantial and compelling circumstances may the trial court to deviate from that sentence. The appellant should demonstrate that such substantial and compelling circumstances exist. The court itself may also do a thorough scrutiny to conclude that such circumstances exist. If the court is unable to come to this conclusion, it is bound to impose the prescribed minimum sentence.

[13] Courts are cautioned not to deviate from the applicable prescribed minimum sentence for flimsy reasons. There should be substantial and compelling circumstances that justify such deviation, and the same should be recorded. The trial court did not find any and hence imposed the prescribed minimum sentence.⁴

[14] The appellant was 56 years of age at the time of the commission of the offence. The appellant was married and had seven children, working odd jobs and earning approximately R12,000 per month. All these are ordinary circumstances when one considers the seriousness of the offence and the

³ At para 19.

⁴ See *S v Malgas* 2001 (1) SACR 469 (SCA), endorsed in *S v Dodo* 2001 (1) SACR 594 (CC), 2001 (3) SA 382 (CC), 2001 (5) BCLR 423 (CC) at paragraph 40.

manner in which it was planned and committed in cold blood, regardless even of the risk to other people in the vicinity. It is a kind of murder described by many as the senseless killing of another person. The trial court mentioned that no amount of money owed could justify taking the life of another person.

[15] When one considers the facts in the context of the established authority, one finds that the trial court did not misdirect itself whilst imposing sentence. There was no other sentence that could have been appropriate regarding the murder.

[16] With regard to the count of attempted murder, the deviation from the minimum sentence may at first attract closer attention. However, one should bear in mind that when a sentence of life imprisonment is imposed together with any other term of imprisonment, the lesser sentence is subsumed within the life imprisonment, being served concurrently by operation of law and practicality, and the appellant would serve only life imprisonment. The question of why the court *a quo* deviated from the prescribed minimum to impose only five years is only academic.

[17] Therefore, after careful consideration, I make the following order:

1. The appeal against sentence is dismissed

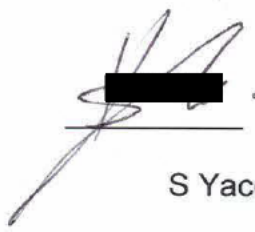


M S Makamu

Judge of the High Court of South Africa

Gauteng Division, Johannesburg

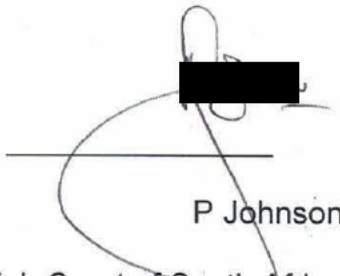
I agree


S Yacoob

Judge of the High Court of South Africa

Gauteng Division, Johannesburg

I agree


P Johnson

Acting Judge of the High Court of South Africa

Gauteng Division, Johannesburg

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 18 September 2025.

Appearances:

For the appellant: C Meiring, instructed by BDK Attorneys

For the respondent: V N Dube, office of the Director of Public Prosecutions

Date of hearing: 01 September 2025

Date of judgment: 18 September 2025