



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

Case No.: CC38/2025

Reportable	Yes/No
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In the matter between:

THE STATE

versus

MORIS CHAMUNORWA

ACCUSED

SENTENCE

Cengani-Mbakaza AJ

[1] There is a concerning trend. This court has been sitting in East London circuit court for only two weeks. In that short span and on different occasions in both weeks, a report came before this court in the form of an indictment, stating allegations of a woman being killed by her partner. This reinforces the need to raise awareness about domestic violence and its consequences. Although the Legislature has made significant inroads in curbing the scourge, the ongoing awareness remains essential. The Domestic Violence Amendment Act 14 of 2021 (DVA) emphasises the responsibility to inform complainants about their rights and applicable remedies. This is crucial given the dire consequences of abuse including death. Constant public awareness can potentially prevent the

plague, encourage victims to seek help and promote a culture of respect and empathy.

[2] What is even more concerning is that in both cases the women were killed in the presence of their minor children, which is a particular disturbing aspect. Under the DVA as amended, exposing a child to domestic violence is prohibited. Exposing a child to domestic violence, as demonstrated by the facts of this case, is defined as intentionally causing a child to see or hear domestic violence or experience its effect. This means that the new amendment strengthens the protection for children. The child's best interests concept is further underscored.

[3] I am highlighting these aspects to illustrate the alarming prevalence of gender-based violence in our communities. Despite the alarming rate of gender-based violence, this court must remain collected in its approach on sentencing. Certain responsibilities are guided by the precedent and these must be observed. A well-balanced approach is crucial during sentencing to ensure that justice is served.

[4] Therefore, this court will consider not only the prevalence of the crime, its nature and seriousness, the accused's personal circumstances and the interests of the society warrant a thorough scrutiny.¹ In line with *S v Matyityi*,² consideration will also be given to the impact the offence has caused on the victims in particular the deceased and the minor child (the 07-year-old girl). This court will also keep the purposes of punishment in mind. These purposes were described in *R v Swanepoel*³ as deterrent, preventative, reformatory and retributive. In *S v Rabie*⁴ reference was made to Gordon, Criminal Law of

¹ *S v Zinn* 1969 (2) SA 537 (A).

² 2011 (1) SACR 40 (SCA) para 16-17.

³ 1945 AD 444 at 455.

⁴ 1975 (4) SA 855 (A) at 862 A-B.

Scotland, (1967) at 50 where it was stated that: *"The retributive theory finds the justification for punishment in a past act, a wrong which requires punishment or expiation... The other theories, reformative, preventive and deterrent, all find their justification in the future, in the good that will be produced as a result of the punishment"*.

[5] As pointed out in *R v Karg*⁵, the deterrent effect remains important. However, as far as the retributive effect of punishment is concerned, it is equally important in serious violent crimes in that, if sentences are too lenient, the administration of justice will fall into disrepute, and the injured may be inclined to take the law into their own hands.

[6] The circumstances of this case are that the accused had a suspicion that the deceased was involved with another man after he saw a male person exiting their home. Driven by jealousy, a common factor in these types of cases, the accused confronted the deceased about the man, but the deceased did not respond. It was during this confrontation that the accused started assaulting the deceased, resulting in her death. With the deceased lying helplessly, the accused had no option but to call her mother the following day and inform her about the situation.

[7] It is common cause that during the brutal assault, the deceased experienced physical trauma in the form of at least 23 injuries all over the body and head. As already noted in the *ex-tempore* judgment, the physical injuries coupled with the change of weapons from a broomstick to a pick handle exhibit a direct intention to kill. This is further exacerbated by a finding of two causes of death, namely a crush syndrome and blunt force to the head.

⁵ 1961 (1) SA 231 at 236 A-B.

[8] While it is acknowledged that the accused made certain admissions, his denial of the element of intention to kill was contradicted by the medical analysis, the type of weapons used and the photographs depicting the injuries suffered by the deceased during the assault. Consequently, he was convicted of murder as contemplated under s 1(1) Part 1 of Schedule 2 of the Criminal Law Amendment Act, 105 of 1997 (the CLAA). The reliance on this provision emanates from the fact that the death of the deceased resulted from physical abuse, as contemplated in paragraph (a) of the definition of DVA, 116 of 1998.

[9] Commenting on the scourge of domestic violence and its impact, the Supreme Court of Appeal (SCA) in *Mudau v State* said:

‘[6] Domestic violence has become a scourge in our society and should not be treated lightly but deplored and also severely punished. Hardly a day passes without a report in the media of a woman or child being beaten, raped or even killed in this country. Many women and children live in constant fear. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity. This was well articulated in *S v Chapman* 1997 (3) SA 341 (SCA) at 345A-B when this Court said the following:

‘Women in this country have a legitimate claim to walk peacefully on the streets to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives.’

[10] I now deal with the personal circumstances of the deceased and her 07-year-old child. The deceased’s vulnerability extends beyond being a woman, she was a defenceless and physically disabled human being. Her disability affected her limbs. She grew up in a low-income household, dependent on her disability grant. She had one child whom she was nurturing exceptionally well, as evident from the social worker’s report. This report notes that before the ordeal, the child was an extroverted individual who expressed her feelings confidently and performed well academically, completing all her tasks.

[11] However, after the incident, the girl is reported to be struggling psychologically. The trauma she endured is detailed in the social worker's report, which notes that she experiences nightmares and sleep talking, during which she shouts the accused's name. Additionally, she exhibits forgetfulness often forgetting minor issues and appears absent-minded staring at objects without reason until her name is called.

[12] She is struggling to keep up with her school tasks. Her guardian, whom she resides with was once summoned to the school due to concerns from teachers about changes in her behavioural patterns. Despite the challenges, her guardian takes care of her, she receives a social grant and is still attending school.

[13] The accused is a 45-year-old man, originally from Zimbabwe. He is married but had separated from his wife for a long time. He has had his own personal struggles, which began when his two minor children died in a fire after being left unattended by his estranged wife. Following this incident, he started a relationship with the deceased. Throughout his adult life he has worked odd jobs and also earned income as a traditional healer. Growing up in Zimbabwe, he passed form 4 which is equivalent to grade 11 in terms of South African academic gradings.

[14] The last leg of *Zinn* approach needs no overemphasis. The courts are duty-bound to protect the interests of society. The court operate within society, and its decisions have impact on individuals in the ordinary circumstances of daily life.⁶

⁶ S v Banda 1991 (2) SA 325 (BG).

[15] The CLAA has been amended further to include life imprisonment for these cases, placing a responsibility on the offender to show the existence of substantial and compelling circumstances. Now that all the surrounding circumstances are before court, the crucial inquiry is whether the accused has demonstrated the existence of substantial and compelling circumstances.

[16] The substantial and compelling circumstances are not defined by the statute, however, the SCA in *S v Malgas*⁷ held:

‘[25] 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 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 sentencing process. G The ultimate impact of all 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...’

[17] In its assessment of substantial and compelling circumstances, the SCA in *Malgas*⁸ (para 25D) explained that deviation from the prescribed sentences should not be based on frivolous or flimsy reasons. In this regard, the SCA’s stance is that speculative hypothesis favourable to the offender, sympathy, aversion to imprisoning first-time offenders and personal doubts about the efficacy of the sentencing policy are all irrelevant considerations.

[18] Counsel for the defence argued that the accused’s personal circumstances, taken cumulatively, constitute substantial and compelling circumstances. In

⁷ [2001] ZASCA 30.

⁸ Fn 8 above.

contrast, counsel for the state emphasised the absence of substantial and compelling circumstances, particularly in light of the facts of this case and relevant case law. In her motivation, the defence counsel reflected on and emphasised the accused's emotional state, his consumption of liquor, the admissions he made, as well as the fact that there was no pattern of abuse or violence between the accused and the deceased prior this incident.

[19] The argument positing that these factors constitute substantial and compelling circumstances is in my view not persuasive, given the following: The jealousy that triggered the accused's emotional state is considered a controlling behaviour which is prohibited by the DVA. Many women in this country have lost their lives at the hands of their partners due to this possessive behaviour.

[20] The accused had the option to simply leave the deceased, especially if he had lost trust in her. What is also concerning is that he suspected the man he saw near his house to be in a relationship with the deceased, yet instead of doing enquires from the man, he opted to brutally assault the deceased, taking advantage of her vulnerable state in particular her disability. Furthermore, after he assaulted her to his satisfaction, he left her lying helplessly and only to attend to her the following morning. This conduct is unacceptable.

[21] Although it was submitted that he was under the influence of liquor, there is no evidence to suggest that his mental state was diminished as a result of alcohol consumption. Notably, he elected not to testify under oath during sentencing, and there is no evidence regarding the amount of alcohol he consumed. The DVA particularly with its recent amendments, has broadened the definition of domestic violence, such that a single act of abuse is sufficient to constitute domestic violence, rather than requiring a pattern of abuse.

Therefore, the argument that there was no prior history of violence between the two parties is not compelling.

[22] This court acknowledges that the accused has a constitutional right to challenge evidence and plead not guilty, however, his attempts to minimize the assault and its consequences demonstrate a lack of remorse. Furthermore, his insistence on denying the element of intention to kill despite the overwhelming medical and other evidence underscores this fact.

[23] Commenting on sentencing and gender-based violence cases, the Supreme Court of Appeal in *S v Maila*⁹ per Mocumie JA (with Carelse and Mothle JJA and Mjali and Salie AJJA concurring) held:

‘[59] Taking into account *Jansen, Malgas, Matyityi, Vilakazi* and a plethora of judgments which follow thereafter as well as regional and international protocols which bind South Africa to respond effectively to gender-based violence, the courts should not shy away from imposing the ultimate sentence in appropriate circumstances, such as this case... Courts should, through consistent sentencing of offenders who commit gender-based violence against women and children, not retreat when duty calls to impose appropriate sentences, including prescribed minimum sentences... When the legislature has dealt some of the misogynistic myths a blow, courts should not be seen to resuscitate them by deviating from the prescribed sentences based on personal preferences of what is substantial and compelling and what is not. This will curb, if not eradicate, gender-based violence against women and children and promote what Thomas Stoddard calls ‘culture shifting change.’ [certain words and footnotes omitted].

[24] Upon consideration of all the facts presented, I conclude, as already noted that there are no substantial and compelling circumstances in this case. Instead, the nature and seriousness of the offence, the interests of the victims as well as

⁹ (429/2022) [2023] ZASCA 3 (23 January 2023).

the interests of the society weighs more heavily than the accused's personal circumstances.

[25] Consequently, the following sentence is imposed:

1. In terms of sections 51(1), Part 1 of Schedule 2, of the Criminal Law Amendment Act 105 of 1997, the accused is sentenced to life imprisonment.
2. In terms of section 103(1) of the Firearms Control Act 60 of 2000, the accused remains unfit to possess a firearm by operation of law.

N CENGANI-MBAKAZA
JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

For the State	:	Adv Mondliwa DPP, Makhanda
For the Accused	:	Adv Mtini Legal Aid-SA, Makhanda
Date Heard	:	03 September 2025
Date Delivered	:	04 September 2025