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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: CC25/2023

(1) REPORTABLE: YES / **NO**

(2) OF INTEREST TO OTHER JUDGES: YES/**NO**

(3) REVISED: YES

DATE: 25/09/2025

SIGNATURE

In the matter between:

STATE

V

RUDA JOAO MUGADUI

ACCUSED

SENTENCE

MOSOPA J

[1] On the 20 June 2025, the accused was convicted of murder in terms of section 51(1) and Part 1 of Schedule 2 of Act 105 of 1997, after pleading guilty to the charge levelled against her.

[2] The accused in these proceedings is still represented by Mr Botha from the Legal Aid, South Africa. The state is represented by Mr Lalane from the Director of Public Prosecutions, Pretoria.

- [3] The trial occasioned a number of postponements at the instance of both the state and the defence. Initially the state sought a report to confirm if the accused herself was a victim of human trafficking, taking into consideration the manner that she was brought into the country. Such report was never presented to this court and the trial of the accused commenced. Before the conviction of the accused, the defence expert witness relocated and went back stay in Canada. That also delayed the finalisation of the matter.
- [4] The accused did not testify in mitigation of sentence. The defence led the evidence of an expert witness Professor Gerard Labuschagne, a Clinical Psychologist. The witness testified through a link from Canada, after both the state and the defence agreed that his evidence can be obtained in that manner.
- [5] Professor Labuschagne confirmed to have compiled a report in 2024, but it was dated 15 October 2025, which was a typing error, and was supposed to read 15 October 2024. The report was admitted into evidence and marked as Exhibit 'C'. In the report it was stated that the accused was born on 13 November 2004 in Chibavar District, Mozambique. She lived there until she came to live in South Africa in June 2021. Her parents are still alive residing in Mozambique. Her father was in the military and is now a pensioner and her mother is a housewife.
- [6] They made ends meet through subsistence farming. She is the second eldest of six children born to her parents. Her older brother passed away, even though no year specified. Her four younger siblings all reside in Mozambique. Her home language is Ndaue which is similar to Shona language. She grew in a household without electricity or running water. Her family house was a mud structure with grass or thatch roofing. Her family home consisted of three huts, one for her parents, the other one for her and the other for her siblings.
- [7] She completed primary school and went immediately to high school. She failed grade 10 twice, and it was during her third attempt that she came to South Africa for marriage purposes. Her high school was an hour walk away from their residence. She reported no disciplinary problems at school and indicated that

the reason she failed grade 10 twice was because she struggled with Mathematics and English. She does not have any health problems and does not consume alcohol. She does not have previous convictions.

- [8] She entered illegally in the country by crossing the boarder into the country. She was transported by a taxi to Tembisa and that is when she met the deceased for the first time. The deceased told her that he has 5 wives and 19 children and grandchildren, and he was also a traditional healer. She describes her marriage relationship as one characterized by conflict, which included verbal fights, threats of harm towards her including threats to be killed and assaults. The deceased would regularly consume alcohol, and the fights will occur within the drinking context.
- [9] Under the nature of interpersonal violence, with the following risk factors, intimidation, threats, physical harm, sexual harm, severe intimate partner violence, chronic intimate partner violence, and intimate partner violence related- supervision violence, the presence of risk factor was found under chronic intimate partner violence by the accused. It is further indicated under this risk factor that, "while there is a history of intimate partner violence in the relationship, it appears that the deceased was the instigator of this, and the accused the victim thereof.
- [10] It was also found that the accused has none of the risk factors associated with a concern future intimate partner violence and that the likelihood for reoffending is low considering the significant absence of risk factors.
- [11] In cross-examination, Professor Labuschagne conceded that the "Buttered Woman Syndrome is not applicable *in casu*. He further conceded that what the accused did was avoidable as that was not the only option, of killing the deceased. She could have for example run away. She was young at that stage, and some other psychological aspects could have played a role. He maintained that the accused is a suitable candidate for rehabilitation. The accused closed her case after the testimony of Professor Labuschagne in mitigation of sentence.

- [12] The state in aggravation of sentence led the evidence of M[...] S[...] S[...] who is the child of the deceased. She did not physically meet with the accused but used to see her photographs and was seeing the accused for the first time at court. She stays in Tembisa, South Africa. She read into record the Victim Impact Statement that she prepared, wherein she said the following, that she misses the memories she had with the deceased. When she was told that her father was murdered, she felt that it was a lie. She was shattered inside, and she could not bear it. The deceased did not get time to meet his grandchildren, and they also did not get a chance of meeting him. She misses her father's morning telephonic calls, when he will enquire if everything was fine with her.
- [13] On court's questions she contradicted the Clinical psychological report about the number of wives his father married. According to her, her father was married to four wives, and the accused was the fourth wife, as opposed to five wives. They never as a family received any letter from the accused apologising in relation to her conduct which resulted in the killing of her father. After the evidence, the state closed its case.
- [14] It is trite that in sentencing an offender the point of departure is to consider the offender, the offence and the interests of society. (*S v Zinn* 1969(2) SA 537 (A))
- [15] I determined the age of the accused at the time of the commission of the offence as 18 years and 2 months. This means that when she arrived in the country she was 17 years in June 2021. I still find it peculiar when accused failed to inform us of her correct age which necessitated the age to be determined by court. She gave Professor Labuschagne her correct age in 2024 when the report was compiled and also the fact that she had to repeat grade 10, on two occasions. But when she appeared before Dr Lukhozi in 2025, she only informed her of the date and month she was born. This conduct, Professor Labuschagne, deem it as an act of dishonesty.
- [16] The accused was very young and of a school going age when she was forced into a marriage by her family and the family of the deceased. She was brought

into the country illegally. The accused after meeting with the deceased, realised for the first time that her husband is not of her age but a person who qualifies to be her grandfather. She was isolated from her family, and her freedom of movement was restricted by the accused. She suffered a series of assault at the hands of the deceased, and her neighbours saw injuries on her occasioned by such assaults.

[17] The deceased was excessively using alcohol, and such assaults will occur in the context of alcohol consumption. Her right to communicate with the outside world, more especially with her family was curtailed by the deceased in that he did not allow her to possess a cell phone. She initially lied as to what happened after murdering the deceased to the deceased's son, but did not persist with such lie in this court as she fully took responsibility of her actions. The deceased did not want the accused to have friends, and she could not visit her family members. She only realised that she was pregnant with the child of the deceased after her arrest. She has since given birth to that child, who is now with her family in Mozambique. The accused was denied a right to raise her own child due to her incarceration.

[18] The murder was a result of the accused answering the phone belonging to the deceased, a conduct which the deceased did not appreciate. The accused assaulted her several times with an iron bar. The chief post-mortem findings on the body were, three lacerations frontal area, one is 8cm and penetrates the frontal lobes of the brain with the two other blows 3cm wide. The pathologist was of the view that, axe was possibly used as an attack weapon. The skull is fractured, frontal bone left and right and linear fracture of the right parietal bone. The brain is lacerated with diffuse subarachnoid bleeding present. The cause of death was found to be head injury by sharp trauma-unnatural.

[19] The injuries sustained by the deceased as can be gleaned from scene photo album, which was admitted into evidence and post-mortem findings, is an indication that the deceased died a brutal and painful death. The section 112 statement does not indicate the time of his death, whether the deceased was

under the influence of alcohol or not. What we know is that he has just used the bathroom before he was murdered.

[20] According to the photographer who took scene photographs, he received a request to attend a scene of murder at 2am and arrived there at 02:35am. Taking into account these timelines, it is possible that this murder occurred in the early hours of the morning under the thickness of darkness, when majority of people were sleeping. According to the accused he fell on the bed, and she covered her with blankets. However, scene photo album tells a different story, and shows a person sleeping inside the blankets. There is not much emphasis which can be placed on this aspect by this court as the state accepted the circumstances of the murder as outlined by the accused in the section 112 statement.

[21] The death of the deceased had a negative impact on the life of his family. He was married to various wives, but the court did not have the benefit of hearing how it impacted on the lives of the wives and other children of the deceased. What also shocked this court is the fact that the daughter of the deceased did not visit her father after getting married to the accused and was seeing the accused for the first time here at court. This is surprising taking into account that her mother was in a polygamous marriage with the deceased and she is not the first wife.

[22] This murder is the kind that can be classified under Gender Based Violence crimes. The Government annually highlights the dangers of Gender Based Violence crimes, but majority of the people choose not adhere to this calling. According to Professor Labuschagne this is one of the murders that could have been avoided by the accused, by for example running away from the deceased. Based on the findings by Professor Labuschagne, the contention by Mr Botha that the accused as a young person, not speaking any of the languages in South Africa and her movement restricted, is with no merit. There were many times when the accused could be with the neighbours, and this will be in the absence of the accused as she was not allowed to leave the house. This could have been a perfect time for her to flee the abuse she was suffering at the

hands of the accused. Her uncle according to Professor Labuschagne report, was domiciled in the country.

[23] Gender Based Violence crimes is a serious thorn in the flesh of the government. Legislature has now amended Act 105 of 1997, to prescribe imprisonment for life if murder is in the context of domestic relationship. Actions of the deceased when assaulting the accused cannot be condoned as that, also amounted to Gender Based Violence crimes. It is not clear as to why the accused neighbours did not report such abuse to the police, as the law makes it mandatory to report such if someone had witnessed such abuse taking place. Marriages within the customary context involves the families. The abuse suffered by the accused persisted for a very lengthy period of time, but there was no intervention from both the family of the deceased and that of the accused.

[24] When sentencing an offender, the court need also to cater for the interests of society. The society expects serious crimes to be punished severely, and this in my view is a reasonable expectation taking into account a high rate of commission of violent crimes in this country. In ***S v Mhlakaza* [1997] 2 ALL SA 185 (A)**;

“The object of sentencing is not to satisfy public opinion but to serve the public interest. A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the court's duty to impose fearlessly an appropriate and fair sentence, even if the sentence does not satisfy the public. In this context the approach expressed in *S v Makwanyane & Another* 1995 (2) SACR 1 (CC) par 87-89 (per Chaskalson P) applies mutatis mutandis: public opinion may have some relevance to the enquiry, but, in itself, it is no substitute for the duty vested in the court; the court cannot allow itself to be diverted from its duty to act as an independent arbiter by making choices on the basis that they will find favour with the public.”

Further that;

“Given the current levels of violence and serious crimes in this country, it seems proper that, in sentencing especially such crimes, the emphasis should be on retribution and deterrence.”

[25] In **S v Karg 1961 (1) SA 231 (A)** it was said that, if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may inclined to take the law into their own hands.

[26] The court in **S v SMM 2013 (2) SACR 292 (SCA)** at para 13, when dealing with sentence stated,

“I hasten to add that it is trite that each case must be decided on its own merits. It is also self-evident that sentence must always be individualised, for punishment must always fit the crime, the criminal and the circumstances of the case. It is equally important to remind ourselves that sentencing should always be considered and passed dispassionately, objectively and upon a careful consideration of all relevant factors. Public sentiment cannot be ignored, but it can never be permitted to displace the careful judgment and fine balancing that are involved in arriving at an appropriate sentence. Courts must therefore always strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, has regard to the nature of the crime and takes account of the interests of society. Sentencing involves a very high degree of responsibility which should be carried out with equanimity. As Corbett JA put it in *S v Rabie*:

'A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.'

[27] At verdict stage, I made a pronouncement that the murder in this matter falls squarely within the purview of section 51(1) in that the deceased was in a domestic relationship with the accused when he was murdered. Murder *in casu*, was committed in January 2022. The Act was amended on the 05 August 2022 to include persons killed in a domestic relationship. The amendment does not pronounce itself to be retrospective, meaning that the amendment is with effect from 05 August 2022.

[28] In ***Veldman v Director of Public Prosecutions, Witwatersrand Local Division 2007 (3) SA 210 (CC) para 26***, Mokgoro J stated;

“[26] Generally, legislation is not to be interpreted to extinguish existing rights and obligations. This is so unless the statute provides otherwise or its language clearly shows such a meaning. That legislation will affect only future matters and not take away existing rights is basic to notions of fairness and justice which are integral to the rule of law, a foundational principle of our Constitution. Also central to the rule of law is the principle of legality which requires that law must be certain, clear and stable. Legislative enactments are intended to “give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.”

[29] Section 35(3)(n) of Constitution makes the following provision;

“35(3) Every accused person has a right to a fair trial which includes the right-

(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing”

[30] At the time of commission of this murder, there was no prescribed sentence for killing a person who you are with, in a domestic relationship. But the offender could still be sentenced to life imprisonment if the murder is premeditated or planned, committed by a group of people in furtherance of common purpose. The constitutional implication to the finding I made, is basically that the accused

cannot be sentenced to life imprisonment as at the time of murder there was no prescribed sentence for such.

[31] In argument, I was called upon by Mr Botha to consider the circumstances under which the accused was brought into the country, arranged marriage, age of the accused, abuse at the hands of the deceased, as admitted by the state in the accused's guilty plea. The state is of the view that the accused ought to be sentenced to the ultimate penalty, life imprisonment.

[32] It is trite that age of the accused at sentencing stage plays a critical role, as a teenager is *prima facie* to be regarded as immature and that the youthfulness of an offender will invariably be a mitigating factor, unless it appears that the viciousness of his or her deeds rule out immaturity. (See *S v Matyityi* 2011(1) SACR 40 (SCA)).

[33] It cannot be ignored that the accused was robbed the enjoyment of her youth by her family and that of the deceased. After being married to the deceased, she stopped with her schooling and became a housewife. Things that are normally done by people of her age, she could no longer do them. Deceased forced her to have a child which she did not want. The distance between her new home and family speaks volumes and she could neither communicate with them. The deceased subjected her to, what one can refer to as "life of a slave". However, her actions in killing the deceased are not justified.

[34] Accused made it a point when killing the deceased that he does not wake up alive, looking at the injuries sustained by the deceased. Despite there being a struggle between the accused and the deceased before his death, the accused did not sustain any injuries. The timing of the death, the fact that it happened at night, leaves much to be desired. Accused was at one stage wrestling on the floor with he deceased until she managed to reach out to the weapon she used to kill the deceased with, and in my view, such was a perfect time for her to run away. But accused instead repeatedly assaulted the deceased with the iron bar on his head.

[35] What also puzzled me, given the circumstances of this murder, is to why did the accused not plead a defence of self-defence. This can be construed to be that accused knew that there was no justification for her actions. However, all these circumstances in my considered view, excludes the imposition of life imprisonment.

[36] This does not mean that the accused can escape imprisonment. I am also considering the fact that accused has been in custody since her arrest in January 2022, which is now 3 years and 8 months awaiting finalisation of her trial matter. I cannot apportion delay in finalisation of the trial matter to any party, but delay was occasioned by systemic issues.

[37] The accused must take this opportunity and empower herself and finish her matric and most probably proceed to tertiary level. Accused must also find in herself to apologise to the family of the deceased, for murdering the deceased. It is unfortunate that she was also a victim, but she could not lay criminal charges against the deceased for her to get justice. Her status in the country could have been one of the elements that prohibited her from doing that or her age. But all this is speculation as accused refused to testify.

[38] Having regard to all these factors, I will proceed to sentence the accused as follows;

1. Murder: accused is sentenced to 20 years imprisonment.

M.J. MOSOPA
JUDGE OF THE HIGH
COURT, PRETORIA

APPEARANCES:

For the State : Advocate S. Lalane
Instructed by : Director of Public Prosecutions
For the accused : Mr M. Botha
Instructed by : Legal Aid South Africa