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

CASE NO: CC2/2025

(1) Reportable: No.

(2) Of interest to other judges: No

(3) Revised.

Date 17 October 2025

Signature

In the matter between:

THE STATE

and

BONGANI MASEMOLA

ACCUSED

1

DLOMO KABELO

ACCUSED

2

NTSAKO NGOBENI

ACCUSED

3

SIPHO MAPHOSA

ACCUSED

4

JUDGMENT ON SENTENCE

INTRODUCTION

- [1] This case arises from tragic episodes of mob justice — a grim reflection of a society driven to desperation by the very institutions meant to protect it. The events unfolded in Skierlik, a community gripped by fear and frustration. For months, its residents had been terrorized by a notorious gang known as *Amaphanga*, whose members brazenly broke into homes and shacks, robbing the inhabitants of their meagre possessions while wielding pangas as instruments of intimidation, violence, and murder.
- [2] Despite repeated reports and pleas for intervention, the police — entrusted with the duty to protect life and property — remained conspicuously absent. Their failure to patrol the area, investigate the spate of robberies, or respond meaningfully to the community's cries for help constituted a dereliction of duty so profound that it eroded public confidence in law enforcement. Their indifference allowed lawlessness to fester, leaving ordinary citizens to fend for themselves in an environment where the rule of law had effectively collapsed.
- [3] It was within this climate of fear and hopelessness that the residents of Skierlik took matters into their own hands. Disillusioned and abandoned, they organized community patrols, dividing themselves into shifts — from 18h00 to midnight and from midnight to 06h00 — in a desperate attempt to restore safety and order. During one such patrol, a man known as *Mdala* was apprehended as a suspected member of the *Amaphanga* gang. Under questioning, he implicated one *Matshaba* as an accomplice. Both men were subsequently captured by the enraged mob and subjected to severe assaults which culminated in their untimely deaths.
- [4] The court is now confronted not only with the brutality of these killings but also with the underlying causes — a failure of policing so grave that it drove a law-

abiding community to reclaim justice through unlawful means. While mob justice can never be condoned in a society founded on constitutional values, it is imperative to confront the uncomfortable truth that such acts often arise from the State's own neglect in fulfilling its constitutional obligations to safeguard the citizens.

- [5] The above information led to the four accused convicted of the two Murders read with the provisions of section 51(1) (d) of schedule 2, Part I of Act 105 of 1997 as same was committed by a mob.
- [6] The accused, in these sentencing proceedings, elected not to testify and did not call any witnesses in mitigation. However, their respective legal representatives placed their personal circumstances on record for consideration as mitigating factors, and as substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence of life imprisonment.
- [7] Pre-sentence reports were prepared for each of the accused. In respect of Accused 1, the report was compiled by Mr. Thokozani Mbatha, a social worker under the supervision of Ms. E. Bosch. The pre-sentence report for Accused 2 was prepared by Ms. Belezwa Tunzi, also employed by the Department of Social Development and supervised by Ms. Bosch. The report for Accused 3 was compiled by Ms. Vuyi Mabaso, a social worker employed by the Department of Social Development under the same supervision. The report for Accused 4 was likewise prepared by Mr. Mbatha under the supervision of Ms. Bosch.
All four social workers, in their respective reports, recommended that the accused be sentenced in accordance with the provisions of the Criminal Law Amendment Act 105 of 1997.
- [8] The State did not call any witnesses in aggravation of sentence but submitted several victim impact statements. In respect of the deceased, *Paulos Ntibane*,

statements were submitted by his sister, Ms. Welhemina Mahlangu; his son, Mr. Lazarus Themba; and his stepdaughter, Ms. Maria Mahlangu.

In relation to the second count of murder, concerning the deceased *Matshaba*, victim impact statements were presented by his father, Mr. Thomas Maluleke; his wife, Ms. L[...] M[...]; his 10-year-old son, A[...] M[...]; his 14-year-old son, H[...] M[...]; and his daughter, Ms. R[...] M[...]

- [9] All these victim impact statements echo the severe financial hardship now experienced by the families as a result of the deaths of the deceased persons. The children of the deceased have been left deeply traumatized by the void created in their lives, constantly reminded of the roles their fathers once played and the support they provided. They are unable to sleep properly and continue to suffer from emotional distress arising from these tragic events. It is evident from the victim impact statements that all affected family members are in need of counselling to assist them in coping with the sudden and violent loss of their fathers and, in some instances, their husbands.
- [10] Section 274 of the *Criminal Procedure Act* 51 of 1977 requires the trial court to obtain sufficient information to enable it to impose an appropriate and just sentence. The purpose is to ensure that the Presiding Officer is properly informed of the relevant personal circumstances of the accused, the interests of society, the impact of the offence on the victims, and any other factors that may assist the court in arriving at a just balanced sentence. This safeguard also ensures that the court does not impose sentence in anger or by considering only the merits of the case. Judicial officers are enjoined to approach sentencing with a humane and compassionate understanding of human frailties. In *S v Rabie* 1975 (4) SA 855 (A) at 866, Corbett JA (as he then was) remarked:
- “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 pressure of society which contribute to criminality. It is in the context of this attitude of mind that I see mercy as an element in the determination of the appropriate punishment in the light of all the circumstances of the particular case.”

- [11] In *S v Samuels* 2011 (1) SACR 9 (SCA) at para 8, Ponnann JA cited with approval the following passage from *S v Siebert* 1998 (1) SACR 554 (SCA) at 558j–559a: “Sentencing is a judicial function sui generis. It should not be governed by considerations based on notions akin to onus of proof. In this field of law, public interest requires the court to play a more active, inquisitorial role. The accused should not be sentenced unless and until all the facts and circumstances necessary for the responsible exercise of such discretion have been placed before the court.”

Accused personal circumstances

- [12] The personal circumstances of Accused 1 are as follows:

- He is a 34-year-old first offender with no previous convictions.
- He has completed Grade 12 and holds post-scholastic qualifications in Safety Management and Security (Grade C).
- He is single but in a committed relationship.
- He has three minor children; two reside with their mother and one with the paternal grandmother.
- He was gainfully employed at the time of his arrest.
- The mother of his children is unemployed, and he was the primary financial provider for the children.
- He paid regular maintenance for his children.
- He has been in custody as an awaiting trial prisoner for a period exceeding 19 months.

- He was raised in a stable family environment.
- He is in good health.
- It was also submitted that one of his close friends had been killed by members of the *Amaphanga* gang, an incident that fueled community anger and fear.

[13] The personal circumstances of Accused 2 are that he is 34 years of age and has passed Grade 10. He is single and has three children. He is a first offender with no previous convictions. At the time of his arrest, he was self-employed as a businessperson and had one employee, Mr. Enoch Sibanda. From the proceeds of his business, he was able to provide financially for his children.

He is in a stable relationship with Ms. Rendani Siphuma, with whom he has one child who currently resides with the maternal grandmother in Mpumalanga. The accused was regarded as a valuable member of his community, often assisting residents in recovering stolen property and returning it to the rightful owners. He actively participated in community crime-prevention efforts and was considered instrumental in combating crime within the area. The accused is in good health.

[14] The personal circumstances of Accused 3 are that he is 37 years old and a first offender with no previous convictions. He has completed Grade 12 and holds a Grade B Security Certificate, as well as licenses in forklifting and TLB operation. He is single and has three children.

He has been in custody for approximately 19 months pending the finalization of this matter. The accused was raised in a family that instilled in him values of hard work, respect, and discipline. He maintains a stable life for himself and his children, who reside both in Limpopo and in Mamelodi. He contributes financially to their upkeep.

The accused was previously employed as a security guard and also worked for a welding company and a tyre business. He operated a small enterprise under a CK certificate and occasionally subcontracted for tenders. He was also a landlord, owning six rental rooms. Additionally, he served as a Community Liaison Officer at a local primary school, was an active member of the ANC, and

participated in community outreach initiatives. He was employed at a forklift company until his arrest.

- [15] The personal circumstances of Accused 4 are that he is 30 years old and has completed Grade 12. He holds a certificate in Basic Electrical Skills obtained from the Germiston Skills Development Centre. He is single, with no previous convictions, and has one minor child. He is separated from the child's mother, who has custody of the child, but he provided financial support for the child prior to his arrest.

At the time of his arrest, the accused was employed by J & D Gardening Services and supplemented his income by purchasing goods at auctions for resale. He is in good health.

- [16] The interest of the victims, is that they all have been emotionally and financially traumatized by the death of their loved ones.

- [17] Counsel for Accused 1 submitted that the killing of a community member had incited the patrols which ultimately led to the apprehension of the deceased. It was therefore argued that substantial and compelling circumstances exist, justifying a deviation from the prescribed minimum sentence. Counsel contended that, such circumstances include the fact that the accused is a first offender with no previous convictions, is 34 years of age, was gainfully employed prior to his arrest, and has been in custody as an awaiting-trial prisoner for a period of 19 months. It was further submitted that the accused is a suitable candidate for rehabilitation. Counsel accordingly proposed that the court impose a sentence of ten (10) years' imprisonment on each count, to run concurrently, after a deviation from the minimum prescribed sentence of life imprisonment.

- [18] Counsel for Accused 2 argued that the cumulative effect of the accused's personal circumstances should be regarded as constituting substantial and compelling circumstances warranting a deviation from the minimum sentence.

She submitted that this matter arose out of an incident of mob justice committed by a community that had been terrorized and neglected by the police, and that such context should be treated as both mitigating and substantial. Counsel proposed that the court impose a sentence of ten (10) years' imprisonment, of which five (5) years be suspended in favour of the accused. She further submitted that the accused had contributed positively to the community by creating employment opportunities and that a sentence of life imprisonment would, in the circumstances, be disproportionate and unjust.

[19] Counsel representing Accused 3 and 4 submitted that the court should take into account the manner in which the events of this case unfolded. He emphasized the gross neglect by the police to exercise their statutory duty to protect the community, noting that the resultant anger and frustration among residents should be viewed as mitigating. Counsel argued that, had there been proper intervention by the police in response to the community's plight, these murders could have been avoided. He conceded, however, that the offences committed are serious and warrant custodial sentences. On the totality of the evidence, counsel submitted that substantial and compelling circumstances exist to justify a deviation from the minimum sentence but left the determination of the appropriate sentence to the discretion of the court.

[20] The State, on the other hand, argued that several aggravating factors should be considered in imposing a sentence. These include the trauma suffered by the deceased's family members, the burning of the deceased Paulos Ntibane's house, and the financial hardship endured by both affected families. The State further contended that the accused have shown no remorse, are not primary caregivers, and although they were breadwinners, no evidence was presented regarding the extent of their financial contributions to their families. The State also emphasized that the deceased, Paulos, was an elderly man. It was further submitted that there was no evidence proving that the deceased were among those terrorizing the community. However, this submission was inconsistent with

the evidence of the State's own section 204 witness, who testified that the deceased were caught in the act of committing a crime.

The State also contended that the police were unable to patrol the area due to poor road conditions in the informal settlement. It was therefore submitted that there are no substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence, and that the court should accordingly impose the minimum sentence of life imprisonment.

- [21] The State further argued that the imposition of the prescribed minimum sentence is appropriate under the circumstances; to send a clear message that communities cannot be permitted to take the law into their own hands. It was submitted that the accused should be declared unfit to possess a firearm. The State maintained that no substantial and compelling circumstances exist to justify otherwise.

The Legal Framework

- [22] It is trite that the court is required to balance the personal circumstances of the accused with the interests of the victims and society as well as the seriousness of the crime, not forgetting the merits of this case. It must then determine whether substantial and compelling circumstances exist to justify a departure from the prescribed minimum sentences, as contemplated in section 51(1) (d) of the *Criminal Law Amendment Act* 105 of 1997.
- [23] In *S v Malgas* 2001 (1) SACR 469 (SCA), the court held that the prescribed minimum sentences must be imposed unless substantial and compelling circumstances justify a lesser sentence. This framework was designed to ensure that serious offences are punished with the severity they warrant, while still allowing for judicial discretion in appropriate cases as stated in the case of *S v Malgas* and quoted with approval by the constitutional court on the case of *S v Dodo* (CCT 1/01) [2001] ZACC 16; 2001 (3) SA 382 (CC) where it was said that:

“A. Section 51 has limited but not eliminated the courts’ discretion in imposing sentence in respect of offences referred to in Part 1 of Schedule 2 (or imprisonment for other specified periods for offences listed in other parts of Schedule 2).

B. Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should *ordinarily* and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.

C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardized and consistent response from the courts.

D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.

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 that 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 the sentencing process.

G. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick (“substantial and compelling”) and must be such as cumulatively justifying a departure from the standardized response that the legislature has ordained.

H. In applying the statutory provisions, it is inappropriately constricting to use the concepts developed in dealing with appeals against sentence as the sole criterion.

I. If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.

J. In so doing, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed, paying due regard to the benchmark which the legislature has provided.”

[24] In *S v Kruger* 2012 (1) SACR 369 (SCA), Shongwe JA (with Harms AP and Plasket AJA concurring) confirmed that punishment must not be equated with revenge, but must incorporate all purposes of sentencing—namely, prevention, retribution, individual and general deterrence, and rehabilitation. The sentence must be blended with a measure of mercy according to the circumstances of the whole case.

Analysis of the Circumstances of the Case

[25] The court is now confronted not only with the brutality and senselessness of these killings but also with the underlying causes that gave rise to them — a

failure of policing so grave that it drove an otherwise law-abiding community to reclaim justice through unlawful means. While acts of mob justice can never be justified in a constitutional democracy founded on the rule of law, this case reveals the tragic consequences of the State's neglect of its constitutional duty to protect its citizens.

Common cause issues

[26] Common Cause Issues

1. Mob Justice Incident.

Both the State and the defense acknowledge that the killings arose from an act of mob justice by community members responding to alleged criminal activity in their area.

2. Police Negligence and Community Frustration.

It is common cause that the community, including the accused, had been complaining about police inaction and lack of protection against rampant criminal activities, which led to frustration and eventual vigilantism.

3. Seriousness of the Offence.

Both the State and defense agree that the offences are of a serious nature and warrant the imposition of custodial sentences.

4. Absence of Prior Convictions.

It is not in dispute that all four accused are first offenders with no previous criminal records.

5. Prolonged Pre-Trial Detention.

It is common cause that the accused have been in custody for an extended period (approximately 19 months) awaiting the finalization of the trial.

6. Employment and Financial Responsibilities.

It is accepted that the accused were gainfully employed prior to arrest and were financially supporting their dependents.

7. Community Role of the Accused.

It is undisputed that the accused were active and respected members of their community, involved in crime-prevention initiatives and other community activities.

8. Impact on Victims' Families.

It is common cause that the families of the deceased have suffered severe emotional trauma and financial hardship as a result of the deaths.

9. A custodial sentence is appropriate and inevitable given the gravity of the offences.

10. However, the dispute is whether substantial and compelling circumstances exist to justify a departure from the prescribed minimum sentence of life imprisonment under section 51(1) of the Criminal Law Amendment Act 105 of 1997.

[27] The question is whether these personal circumstances of the accused and merits of the case collectively amount to substantial and compelling circumstances.

Determination of Substantial and Compelling Circumstances

[28] In determining whether substantial and compelling circumstances exist to justify a deviation from the prescribed minimum sentence of life imprisonment, this court must consider the cumulative weight of all relevant factors — the personal circumstances of each accused, the seriousness of the offence, the interests of the victims, and those of society as a whole. Section 274 of the Criminal Procedure Act 51 of 1977 enjoins a sentencing court to obtain sufficient information to enable it to impose an appropriate and just sentence which in this case was done. Enough information has been provided to the court to arrive at an appropriate decision. Sentencing is not a mechanical exercise; rather, it is a judicial function demanding both balance and compassion.

[29] In *S v Rabie* 1975 (4) SA 855 (A) at 866, Corbett JA cautioned that a judicial officer should not approach punishment in a spirit of anger but must seek a “delicate balance between the crime, the criminal, and the interests of society.”

The learned judge emphasized that while firmness is necessary, the court must also act “with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.” The circumstances of this case vividly illustrate those societal pressures — the breakdown of policing, the escalation of violent crimes, and the desperation of a neglected community.

- [30] The evidence before this court reveals that the community of Skierlik was subjected to relentless terror by a gang known as *Amaphanga*, who committed violent robberies and home invasions using pangas as weapons. Despite repeated reports, the police failed to intervene, to patrol the area, or to respond meaningfully to the cries of the residents. This abdication of duty created an environment of lawlessness and fear, eroding the community’s confidence in the criminal justice system. The conduct of the accused must therefore be viewed within the context of collective frustration and despair, although such conduct cannot be condoned.
- [31] The Supreme Court of Appeal in *S v Malgas* 2001 (1) SACR 469 (SCA) held that courts must ordinarily impose the prescribed minimum sentence unless substantial and compelling circumstances justify a lesser one. However, as reiterated in *S v Dodo* (CCT 1/01) [2001] ZACC 16; 2001 (3) SA 382 (CC), the prescribed sentences are not to be applied blindly. The court retains a constitutionally protected discretion to ensure that justice is achieved in the individual case. If the imposition of the prescribed sentence would be unjust, disproportionate, or fails to serve the purposes of punishment, the court must depart from it.
- [32] In applying these principles, this court finds that several cumulative factors operate as substantial and compelling. All four accused are first offenders with no previous convictions. Each has demonstrated stable family backgrounds, consistent employment histories, and strong community ties. They were gainfully employed or self-employed before their arrest, provided financial support to their dependents, and have been in custody as awaiting trial prisoners for nearly two

years. Their conduct, while criminal, arose from a spontaneous and misguided response to a climate of fear and lawlessness created by police neglect.

- [33] The Constitutional Court in *S v Dodo* (supra) emphasized that the ultimate test is whether the prescribed sentence would be disproportionate to the crime, the offender, and the legitimate needs of society. In this case, imposing life imprisonment would not serve the interests of justice. It would disregard the broader social context in which the offences occurred, the role of police negligence in precipitating the events, and the otherwise law-abiding character of the accused.
- [34] Furthermore, the judgment in *S v Kruger* 2012 (1) SACR 369 (SCA) reminds us that punishment must not be equated with revenge. It must serve the four classical purposes of sentencing — deterrence, prevention, retribution, and rehabilitation — tempered with a measure of mercy. The court is satisfied that the accused, being first offenders and still of a relatively young age, remain capable of rehabilitation and reintegration into society after serving appropriate custodial sentences.
- [35] The court has also taken into account the severe emotional and financial trauma suffered by the families of the deceased, as reflected in their victim impact statements. While this harm is substantial and aggravating, it must be weighed against the systemic failure that contributed to these events. It would serve neither deterrence nor justice to impose life imprisonment where the crime, though serious, was born out of desperation in circumstances where the State had abdicated its duty to protect.
- [36] Having considered the totality of circumstances — the individual backgrounds of the accused, the context of police neglect, the community's despair, the gravity of the offence, and the legitimate expectations of society — this court is satisfied that the imposition of life imprisonment would be unjust and disproportionate in

the circumstances. The cumulative weight of these factors constitutes substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence.

[37] In the exercise of its judicial discretion, the court therefore finds that sentences of long-term imprisonment, though less than life imprisonment, will adequately reflect the seriousness of the offences, the interests of the victims, and the community, while still allowing the possibility of rehabilitation.

[38] Accordingly, the following sentence is deemed appropriate.

1. The accused on count 1 are sentenced to 10 years imprisonment each.
2. On count 2 the accused are sentenced to 10 years imprisonment each.
3. In terms of section 280 of the Criminal Procedure Act, the 10 years on count 2 will run concurrently with the sentence on count 1.

Ancillary orders

1. In terms of Section 103 (1) of the Firearms Control Act 60 of 2000, the court makes no order. This means accused are deemed unfit to possess a firearm.
2. In terms of section 103 (4) of the Firearms Control Act 60 of 2000, the court makes an order for search and seizure of accused's premises for firearms, ammunitions licenses and or competency certificate.
3. In terms of section 299A (1) of Act 51 of 1977, the court informs the complainants or the victims that they have a right to make representations to the Commissioner of the Correctional Services when placement of the prisoner on parole is considered, to attend any relevant meetings of the parole board, when the accused's parole is to be decided. This is subject to the directive issued by the Commissioner of Correctional Services under section 4 of the Correctional Services Act.
4. Accused have the right to appeal the conviction and sentences which were imposed on them today. You can request legal aid attorneys or an attorney where you pay out of your own pockets to assist you in bringing substantive

applications for leave to appeal the conviction and sentences within 14 days of this sentence. If your applications are later than 14 days, then you should apply for condonation, to be allowed an extension of time to file the applications for leave to appeal out of time.

M MUNZHELELE
JUDGE OF THE HIGH COURT
PRETORIA

Appearances:

Counsel For the State: Adv. Tshabalala

Counsel For Accused 1: Mr. Mphela

Counsel For Accused 2: Adv. Mzamane

Counsel For Accused 3 & 4: Adv. Maluleke