

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A385/2017

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/ ☒ NO
06/11/2025 DATE  SIGNATURE	

In the matter between:

LEHLOHONOLO JAMES HEELA

Applicant

vs

THE STATE

Respondent

JUDGMENT

MATLAPENG, AJ (Kooverjie J concurring)

Introduction

- [1] The applicant in this matter was convicted in the Regional Court sitting at Fochville on a count of murder. The State relied in the provisions of section 51 (1) of the Criminal Law Amendment Act 105 of 1997 hereinafter for convenience

referred to as the Minimum Sentence Act in terms of which a sentence of life imprisonment is prescribed as the murder was preplanned unless the trial court finds that there are substantial and compelling circumstances justifying it to impose a lesser sentence.

- [2] The learned Regional Magistrate in this matter found no substantial and compelling circumstances and sentenced the appellant to life imprisonment. The appellant has an automatic right of appeal in terms of section 309 (1) of the Criminal Procedure Act 51 of 1977.
- [3] The appellant was legally represented during the trial and pleaded not guilty to the charge but notwithstanding his denial of the charge he was convicted as charged and sentenced to the prescribed sentence of life imprisonment.
- [4] The appellant is now lodging an appeal against both conviction and sentence.
- [5] The facts that led to the conviction of the appellant are briefly as follows; On the night of the 2nd June 2016, the two state witnesses, the accused and the deceased were residing in the same area. The accused started looking for a knife. When it was enquired why he wanted a knife he replied that he wanted to stab the deceased who was asleep in his room at the time.
- [6] It is the first state witness' testimony that the appellant ultimately found the knife in a locker, he was reprimanded. The appellant went to the deceased's room, and kicked the door open. The deceased fled from his room. The appellant pursued him. The witness followed them and found the deceased on the ground facing upwards, with the appellant on top of him stabbing him with a knife.
- [7] The second state witness' evidence is that his room is next to that of the deceased. The deceased went to sleep on the night in question, sometime thereafter this witness heard a sound as if a door was being kicked. He heard the deceased calling him, but he did not respond. After about 15 to 20 minutes the appellant arrived at the witness' room. He was in possession of a knife and demanded that the witness should open the burglar door because he wanted to kill him. The burglar door was locked at the time. It is this witness's testimony that

the appellant's hands had blood stains. The police arrived and hereafter arrested him.

- [8] The appellant's version is that he stabbed the deceased in self-defence.
- [9] The cause of death was determined to be multiple stab wounds with large volume of blood loss.
- [10] It is trite law that the onus rests on the State to prove the guilt of the accused beyond reasonable doubt if the accused's version is reasonable possibly true he is entitled to his acquittal.¹
- [11] It is further settled principle in our law that the determination of guilt in a criminal case rest upon the evaluation of the totality of the evidence, including the credibility of witnesses, the consistency and coherence of their accounts, and whether their version is possibly true when weighed against the inherent probabilities and other objective evidence as articulated in the case of *S v Chabalala*² where it was held that the correct approach is not to consider the evidence of the State and the defence in isolation but to weigh them together in determining where the balance of probabilities lies.
- [12] It must be borne in mind that the approach to be adopted by the court of appeal when it deals with the factual finding of the trial court is informed by the collective principle laid down in the pathfinding and seminal judgment of *R v Dhlumayo and Another*³ where it was held that:

"The trial court has advantages which the appellate court cannot have in seeing and hearing the witnesses and being steeped in the atmosphere of the trial, not only has the trial court had the opportunity of observing their demeanour of the witnesses can hardly ever place the appeal court in as good a position as it was. Even in the drawing inferences the trial court may be in a better position than the appellate court, in that is probable or improbable in relation to the particular people whom it has

¹ *S v V* 2000 (1) SACR 453 SCA at 455

² *S v Chabalala* 2003 (1) SACR 134 (SCA) para 15

³ *R v Dhlumayo and another* 1948 (2) SA 677 (A) at 705 – 706 see also *S v Robinson & another* 1968 (1) SA 666 (A) at 675 G-H

observed at the trial. The appellate should not seek anxiously to discover reasons adverse to the conclusions of the trial court. Where the appellate court is constrained to decide the case purely on the record, the question of onus becomes all important. In order to succeed the appellant must satisfy an appellate court that there has been some miscarriage of justice or violation of some principle of law or procedure”

- [13] When considering a matter on appeal the court has to be mindful that it is not at liberty to depart from the trial court's findings of the fact and credibility unless they are initiated by irregularity or an examination of the record reveals that those findings are patently wrong⁴ as a result this court's power to interfere with the findings of the trial court is limited.
- [14] The Supreme Court of Appeal in the case of *S v Monyane and others*⁵ explained that in the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong.
- [15] It is the appellant contention that he stabbed the deceased with a knife in self-defence. The postmortem report handed in as an exhibit, page 3 of the report reveals that the deceased sustained stab wounds. The first state witness' evidence is that the appellant was on top of the deceased stabbing him with a knife, Mr Kgagara for the appellant correctly so conceded that there are no merits to attack the conviction.
- [16] The examination of the record of the proceedings does not reveal that the findings of the learned Regional Magistrate are wrong, in fact it appears that he analysed the evidence in meticulous detail and precision.
- [17] The cumulative effect of the evidence supports the trial court's finding that the State succeeded to prove its case beyond reasonable doubt.

⁴ *S v Fransic* 1991 (1) SACR 198 (A) at 198J

⁵ *S v Monyane* 2008 (1) SACR 543 (SCA) para 15

- [18] The trial court was justified in rejecting the appellant's assertion that he was acting in self-defence if regard being had to the number of stab wounds he inflicted on the deceased.
- [19] On these facts and applying *R v Dhlumayo* and related principles, there is no indication that the trial court misdirected itself.
- [20] I therefore find no merit in the appeal against the conviction. I now turn to sentence.
- [21] The appellant did not testify in mitigation of sentence. His legal representative addressed the court from the bar and the following was motivated heavily that he is 26 years of age, he is not married but has one child and that he is first offender. Mr Kgagara's argument is that not much was placed before the trial court before sentence was imposed, I disagree.
- [22] It is trite that the imposition of sentence is pre-eminently a matter within the judicial discretion of a trial court. The appeal court's power to interfere with a sentence is circumscribed to instances where the sentence is vitiated by an irregularity, misdirection or where there is a striking disparity between the sentence and that which the appeal court would have imposed had it been the trial court. See *S v Petkar*⁶, *S v Snyder*, *S v Sadler* and *Director of Public Prosecutions, KZN v P*
- [23] The murder brought the sentencing within the purview of section 51(1) of the Minimum Sentences Act as the appellant preplanned the murder. This is prescribed and not a mandatory sentence in that the court may impose a lesser sentence if it finds that there are substantial and compelling circumstances. In the present matter the trial court found no such circumstances and accordingly imposed the prescribed sentence of life imprisonment.
- [24] The proper approach where minimum sentences are applicable was established by the Supreme Court of Appeal in the seminal judgment of *S v Malgas*⁷. The

⁶ *S v Petkar* 1988 (3) SA 571 (A), *S v Snyder* 1982 (2) SA 694 (A), *S v Sadler* 2001 SACR 331 (SCA) and *Director of Public Prosecutions, KZN v P* 2006 (1) SACR 243 (SCA) para 10

⁷ *S v Malgas* 2001 (1) SACR 469 (SCA) 2001 (2) SA 1222 [2001] 3 All SA 200

summary of the judgment is set out in paragraph 25 of the judgment the effect of which is that the prescribed minimum sentences should ordinarily and in the absence of weighty consideration be imposed. In paragraph 1 of the summary, it is stated that the court may impose a lesser sentence if on consideration of circumstances of a particular case it is satisfied that they would 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.

- [25] The approach in *S v Malgas*⁸ supra was endorsed by the Constitutional Court in the case of *S v Dodo*⁹ as undoubtedly correct.
- [26] When the sentence imposed by the trial court is considered on appeal, the court of appeal must remain alive to the fact that sentencing falls pre-eminently within the jurisdiction of the sentencing court. The Supreme Court of Appeal in *Botha v The State*¹⁰ stated that where a trial court imposed the prescribed minimum sentence the appeal court must find substantial and compelling circumstances justified the imposition of a lesser sentence that escaped the trial court's attention.
- [27] In the present case the appellant was looking for a knife in order to stab the deceased, he was reprimanded, he ultimately armed himself with a knife, he broke open the deceased door, the latter fled, he gave chase, caught up with him and stabbed him many times. The appellant's personal circumstances were placed before the court and the trial court took them into account, the fact of the matter is that the aggravating factors far outweigh the personal circumstances.
- [28] The Regional Magistrate considered the mitigating circumstance cumulatively and concluded that they do not constitute substantial and compelling circumstance.

⁸ *S v Malgas* supra

⁹ *S v Dodo* 2001 (1) SACR 594 (CC)

¹⁰ *Botha v The State* 546/2001 (2001) ZASCA 87, 8 June 2002 at para 10

[29] I am satisfied on the application of the determinative test set out in the case of *S v Malgas*¹¹, that the totality of the circumstances of this case did not render life imprisonment unjust.

[30] It is my considered view that on the facts of this case it cannot be said that the sentence imposed is disturbingly inappropriate or vitiated by misdirection.

[31] In the result the following order is made:

1. The appeal against conviction is dismissed
2. The appeal against sentence is dismissed.



S MATLAPENG
ACTING JUDGE OF THE HIGH COURT
PRETORIA

I agree



H KOOVERJIE
JUDGE OF THE HIGH COURT
PRETORIA

¹¹ *S v Malgas supra*