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

CASE NO: CC 63/2024

(1) Reportable: No.

(2) Of interest to other judges: No

(3) Revised.

Date 07 November 2025

Signature

In the matter between:

THE STATE

and

ZAKHELE BENNET HONGWANA

ACCUSED

JUDGMENT ON SENTENCE

Munzhelele J

- [1] The accused was convicted of the offence of murder of T[...] D[...] N[...], read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997, as amended. On Count 2, he was convicted of malicious damage to property, being a competent verdict on a charge of housebreaking with intent to commit a crime. On Count 3, the accused was convicted of pointing anything likely to lead a person to believe that it is a firearm, in contravention of section 120(6)(b) of the Firearms Control Act 60 of 2000.

[2] The accused elected not to testify in mitigation of sentence, and the State likewise did not call any witnesses in aggravation thereof. The evidence presented for purposes of sentencing emanated from a pre-sentence report compiled by Mr. Thokhozani Mbatha, a probation officer employed by the Department of Social Development, under the supervision of Mrs. Bosch.

The report was handed in by consent between the parties and marked as Exhibit “D”, and its contents were admitted into evidence. It contained information relating to the accused’s personal circumstances, family history and functioning, interpersonal relationships, relationship with the deceased, educational background, employment record, physical and psychological condition, and substance abuse (specifically alcohol).

The probation officer recommended that the accused be sentenced in terms of section 51(1)(a) of Act 105 of 1997. Which recommendation was rejected by the defense because the court had already made a determination that the sentence would fall under section 51(1) because the accused and the deceased were in a domestic abuse relationship, not based on premeditated murder.

In addition, Mrs. B.P. Tunzi, a social worker employed by the Department of Social Development, prepared a psycho-social report concerning C[...] L[...] A..., N[...] N[...] S..., and N[...] S..., being the deceased’s cousin and two minor children. This report, compiled under the supervision of Mrs. Bosch, was admitted into evidence as Exhibit “E”.

The defense counsel handed in two letters from the accused, which were addressed to the accused’s children and the family, apologizing for his conduct. These letters are exhibit ‘F1’ to ‘F2’.

Furthermore, handwritten victim impact statements by Ms. L[...] M..., Mr. N[...] N..., and Ms. M[...] N[...] were tendered and admitted into evidence as Exhibits “G1” to “G3”.

[3] The personal circumstances of the accused are as follows: He is 54 years of age, a first offender, and has no previous convictions. He was customarily married to the deceased, with whom he had two children, aged six and four years. He has

two additional children, aged 34 and 16, from previous relationships. All his children were financially dependent on him.

The accused matriculated from Jafta Mahlangu High School and, in the year 2000, obtained a Diploma in Traffic Management from Boekenhoutkloof Traffic College. He was employed as a traffic officer for 24 years until the date he voluntarily handed himself over to the police.

According to the report, the accused had a stable upbringing. His late father operated a dry-cleaning business that supported the family until his passing. The accused and the deceased had been married for six years before her death. Their two minor children currently reside with their cousin and the deceased's relative in Mamelodi.

The accused expressed remorse for his actions. He indicated that his relationship with the deceased had become strained due to marital disputes and his suspicions of infidelity, though he admitted having no concrete proof thereof. He also acknowledged that he was abusing alcohol over the weekend when he was stressed with his marital issues. But on the date of the offence, he was sober. The accused stated that he has been emotionally affected by the offence, particularly when thinking of the impact this offence has caused on his children.

[4] The social worker, Mrs. Tunzi, investigated the social circumstances of the deceased's family, who are direct victims of the murder. The deceased's two minor children and their cousin were present at the scene when the deceased was shot and killed. Their clothes were soaked in their mother's blood as they desperately tried to stop her bleeding and their attempt to wake her up.

The report records that the children were found traumatized, anxious, and frightened upon the arrival of their cousin, who had to calm them down. The children exhibit anger towards the accused for killing their mother. They experience insomnia, nightmares, and flashbacks of the incident. Both suffer from poor concentration and fatigue due to lack of sleep.

The minor child, S[...], has expressed a desire to become a doctor one day "to save lives," while their cousin has developed panic attacks and is undergoing

treatment. The children reportedly become frightened by loud noises and refuse to sleep at night due to nightmares in which they dream that the accused is coming to harm them.

The cousin, who is the primary caregiver and breadwinner for the deceased's children, faces challenges registering the children with her medical aid because she has not yet obtained legal guardianship, and the social worker has undertaken to assist in this regard.

It is evident that the murder of the deceased has had a profound and enduring psychological and emotional impact on the children and the extended family.

In her victim impact statement, L[...] C[...] L[...] expressed deep emotional pain and loss over the deceased's death. N[...] N[...] described experiencing persistent anxiety, fear, and social withdrawal, leading to loss of employment and increased alcohol consumption to cope with the trauma. M[...] N[...] stated that she has lost hope in life, as the deceased was her source of encouragement and spiritual strength.

- [5] Counsel for the accused submitted that the Court should take into consideration that there had been no prior incidents of abuse before the commission of the offence. However, this submission is not entirely correct. The evidence before the Court, particularly the reports of the probation officers, revealed that the marriage between the accused and the deceased was characterized by constant quarrels and physical altercations. As a result, the deceased, on several occasions, left the matrimonial home with the children.

The accused himself confirmed that there were ongoing disagreements regarding their 16-year-old child. The deceased desired that the child should reside with her mother, whereas the accused objected. This disagreement became a persistent source of conflict in their marriage, which ultimately culminated in the accused killing his wife.

Counsel for the accused further submitted that the personal circumstances of the accused should be considered cumulatively to arrive at an appropriate sentence, guided by the principles enunciated in *S v Malgas* 2001 (1) SACR 469 (SCA); *S v*

Zinn 1969 (2) SA 537 (A); S v Sikoti 2008 (1) SACR 177 (E); S v M 2007 (2) SACR 539 (CC); S v Skenjana 1985 (3) SA 51 (A); S v Dodo 2001 (3) SA 382 (CC); S v Abrahams 2002 (1) SACR 116 (SCA); S v Vilakazi 2009 (1) SACR 552 (SCA); S v Rabie 1975 (4) SA 855 (A); and S v Matyityi 2011 (1) SACR 40 (SCA).

Counsel contended that the accused has shown remorse, as he repeatedly requested forgiveness from the deceased's family and wrote letters to both the family and his children expressing his regret. It was submitted that the accused acted out of emotion and without premeditation.

Counsel urged the Court to consider all the circumstances collectively and cumulatively in determining whether substantial and compelling circumstances exist to justify a deviation from the prescribed minimum sentence. It was further submitted that the imposition of a life sentence would be disproportionate to the circumstances of this case and would induce a sense of shock.

Counsel conceded that the death of the deceased has left deep emotional scars on the victims, which only the passage of time may heal.

[6] The State, on the other hand, argued that there are no substantial and compelling circumstances present in this matter. The accused, being a law enforcement officer, a husband, and a father, was expected to uphold the law and protect his family. Instead, the family has suffered irreparable harm and disintegration as a result of his conduct.

The State further submitted that the accused has not demonstrated genuine remorse. He has shown regret for his actions. The assertion that he sent his sister to apologize to the deceased's family is not supported by evidence. The sister's decision to approach the family was made of her own accord and not at the instruction of the accused.

Accordingly, the State contended that in the absence of substantial and compelling circumstances, the only appropriate sentence is that of life imprisonment. It was further submitted that the sentences imposed on the remaining counts should run concurrently with the sentence of life imprisonment.

Evaluation and Analysis

Legal framework

[7] In *S v Swart* 2004 (2) SACR 370 (SCA), the court said:

'In our law, retribution and deterrence are proper purposes of punishment, and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead, proper weight must be accorded to each according to the circumstances. Serious crimes will usually require that retribution and deterrence come to the fore and that rehabilitation of the offender will consequently play a smaller role. Moreover, as pointed out in *S v Malgas* 2001 (1) SACR 469 (SCA), where the court finds that it is not bound to impose a prescribed sentence, the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the benchmark which the legislator provided.' This has also been echoed by the defense Counsel in his arguments.

In *S v Kruger* 2012 (1) SACR 369 (SCA), Shongwe JA (Harms AP and Plaskett AJA concurring) confirmed that punishing a convicted person should not be likened to revenge. It must have all the elements of, and purposes of, punishment, prevention, retribution, individual and general deterrence, and rehabilitation.

In the case of *S v Van Wyk* 1997 (1) SACR 345 (T) 366g-h and *S v Voges* 1975 (3) SA 88 (AD) 890E, and *S v ABT* 1975 (2) SA 214 (AD) 219H, it has been said that:

"Being a first offender does not mean that such effect should override all the other principles to be considered during the sentencing process. First offenders are therefore not entitled to non-custodial sentences merely because they are first offenders. So, the value of being a first offender should be considered by the trial Court against the other factors under consideration during the sentencing process."

In *S v Vilakazi* 2009(1) SACR 552 (SCA) at para 58, Nugent JA said that: in cases of serious crimes as these, the personal circumstances of the offenders by themselves will necessarily recede into the background, once it becomes clear that the crime is deserving of a substantial period of imprisonment.

In *S v Qamata* 1997 (1) SACR 479 (E) 483a, it was said that:

“An appropriate sentence actually means a sentence in accordance with the blameworthiness of every individual offender.”

Legal principles

[8] The accused has been convicted of murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997, as amended, because the accused and the deceased were involved in domestic violence. The prescribed minimum sentence for such an offence is life imprisonment, unless the court finds the existence of substantial and compelling circumstances justifying a deviation therefrom. The court must determine the presence of such circumstances after considering the totality of the evidence placed before it, both during the trial on the merits and during the sentencing proceedings.

In *S v Malgas* 2001 (1) SACR 469 (SCA), the Supreme Court of Appeal made it clear that “it is no longer business as usual”, the legislature intended that the prescribed sentences be imposed unless there are truly convincing reasons for departure. Courts are cautioned not to deviate for flimsy or speculative reasons, as this would defeat the deterrent and retributive objectives of the minimum sentence regime. And certainly, put the administration of justice into disrepute.

In *S v Swart* 2004 (2) SACR 370 (SCA), the court reaffirmed that retribution and deterrence must take precedence in cases of serious crimes, while rehabilitation, though relevant, must yield to the gravity of the offence. Similarly, *S v Vilakazi* 2009 (1) SACR 552 (SCA) held that in cases of serious violent crime, the personal circumstances of the offender recede into the background, and society’s interest in safety, deterrence, and retribution takes precedence. The State and the defense agree that the offence is of a serious nature, and that deterrence should take precedence. They further concur that a custodial sentence is

appropriate, considering the application of the law to the facts, as well as the mitigating and aggravating circumstances set out below.

Application of the law to the Facts

[9] The facts of this case disclose an extremely brutal and callous murder committed within a domestic setting — a context that aggravates rather than mitigates. The accused shot and killed his wife, T[...] D[...] N[...], in the presence of their two minor children, aged six and four. The children, innocent bystanders of a horrifying act of violence, were found soaked in their mother's blood as they desperately tried to stop her bleeding. The gravity of this act and its enduring psychological impact cannot be overstated.

The accused's conduct reveals a profound disregard for the sanctity of human life and for his responsibilities as a husband and father. The manner of the killing demonstrates a level of brutality and emotional detachment inconsistent with momentary loss of control. Instead, it reflects deliberate and violent intent to end the life of the deceased.

Aggravating Circumstances

[10] Several aggravating features of this case stand out:

1. **Commission of the offence in the presence of minor children:**

This factor alone weighs heavily against the accused. The children witnessed their mother's murder at the hands of their father — an event that has left them deeply traumatized, as recorded in the psycho-social report and victim impact statements. The children now live with persistent nightmares, anxiety, and fear that their father will return to harm them. The trauma inflicted upon them is long-term and irreversible.

2. **Violation of trust and domestic relationship:**

The deceased was killed by the very person who was meant to love and protect her. Domestic murders are an affront not only to the victim's rights but also to the foundational values of family and society. The Constitutional Court and the legislature have repeatedly condemned domestic and gender-based violence as

a scourge that has reached pandemic proportions in South Africa. The courts are enjoined to impose sentences that send a clear message of zero tolerance for such conduct.

3. Use of a weapon and deliberate action:

The murder was spontaneous. The accused armed himself with his service pistol and confronted the deceased, thereby showing intentional conduct to end the life of the deceased. The use of a weapon and the deliberate infliction of fatal injuries justify the classification of this offence as one warranting the harshest possible sentence.

4. Absence of genuine remorse:

Although the accused claimed to feel regret, the pre-sentence report and victim impact statements reveal that his remorse is self-centered rather than genuine. He portrays himself as emotionally wounded rather than taking full accountability for his actions. True remorse involves acknowledgment of wrongdoing, empathy for the victim, and an acceptance of the need for punishment — elements absent in this case. The accused is only showing regret for what he has done. Genuine contrition is absent from the facts.

5. Severe and continuing impact on the victims:

The psycho-social report and victim impact statements vividly illustrate the devastating emotional and psychological harm caused to the children and their extended family. The trauma, fear, and social stigma that now define their lives are direct consequences of the accused's actions.

Mitigating Factors Considered

[11] The court has duly considered the mitigating factors advanced on behalf of the accused:

- He is a first offender.
- He is 54 years of age.
- He has served society as a traffic officer for 24 years.
- He claims to have acted under emotional distress and suspicion of infidelity backed by no facts.

- He has four children, two of whom are minors.
- He has been awaiting trial for a year.

However, none of these factors — whether individually or cumulatively — is of such weight as to constitute substantial and compelling circumstances.

As it is held in *S v Vilakazi* (supra), in serious crimes such as murder, the personal circumstances of the offender necessarily recede into the background. The brutality and gravity of the offence and the severe trauma suffered by the two minor children and the family far outweigh these considerations [personal circumstances of the accused].

The accused's age and employment history demonstrate maturity and stability, not vulnerability or impulsiveness. His role as a law enforcement officer, in fact, aggravates rather than mitigates his culpability — he was expected to uphold the law, not violate it.

Alcohol consumption and marital discord cannot operate as mitigating factors. As observed in numerous authorities, including *S v Qamata* 1997 (1) SACR 479 (E), emotional tension or intoxication does not reduce moral blameworthiness where the offender acts with intent and persistence.

The Interests of Society

[12] Society demands protection from those who commit acts of domestic violence, especially where such acts destroy families and traumatize children. The prevalence of femicide and intimate-partner murders in South Africa necessitates the imposition of stern sentences to send a strong message that such conduct will not be tolerated.

As emphasized in *S v Swart* (supra), deterrence and retribution must assume prominence in sentencing for grave offences of violence. The court cannot ignore the broader societal need to protect women and children and to reaffirm the sanctity of human life.

Proportionality and the Purposes of Punishment

[13] Punishment must always be proportionate to the offence and the offender's degree of moral culpability. In this instance, the offence is among the most

serious imaginable — the taking of a human life within a domestic setting, in the presence of children, with long-term psychological consequences.

Rehabilitation, while important, carries little practical weight here. The accused's conduct reflects a fundamental moral breakdown and a disregard for both legal and moral boundaries. A lesser sentence would undermine the seriousness of the crime and diminish public confidence in the justice system.

As held in *S v Malgas* (Supra), courts should not lightly depart from the prescribed sentences. In the absence of truly compelling factors that would render life imprisonment disproportionate, the legislature's benchmark must be respected.

Conclusion

[14] Having carefully considered all the evidence, the pre-sentence report and victim impact reports, the submissions by counsel, and the applicable legal principles, the court finds that no substantial and compelling circumstances exist to justify a deviation from the prescribed minimum sentence of life imprisonment.

The offence was committed with brutality and disregard for human dignity, in the presence of the deceased's minor children, causing them lifelong trauma. The murder of a spouse within the family home represents a profound betrayal of trust and a direct attack on the sanctity of family life.

Accordingly, the only appropriate and just sentence that reflects the gravity of the crime, the interests of society, and the principles of proportionality and deterrence is that of life imprisonment.

Sentence

1. On Count 1 (Murder): The accused is sentenced to life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997, as amended.
2. On Count 2 (Malicious damage to property): The accused is sentenced to 5 years' imprisonment.
3. On Count 3 (Pointing of a firearm): The accused is sentenced to 2 years' imprisonment.

4. The sentences on Counts 2 and 3 shall run concurrently with that 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 the accused is 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 the accused's premises for firearms, ammunition licenses, and or competency certificates.
3. In terms of section 299A (1) of Act 51 of 1977, the court informs the complainants 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. The accused has the right to appeal the conviction and sentence that was imposed on him today. You can request legal aid attorneys or an attorney where you pay out of your own pocket to assist you in bringing a substantive application for leave to appeal the conviction and sentences within 14 days of this sentence. If your application is later than 14 days, then you should apply for the condonation to be allowed an extension of time to file the application for leave to appeal out of time.

M. MUNZHELELE

Judge of the High Court of South Africa

Gauteng Division, Pretoria

Heard: 04 & 07 November 2025

Delivered: 07 November 2025

Counsel for the State: Adv. Tshabalala

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