



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA
(GRAAFF-REINET CIRCUIT COURT)**

NOT REPORTABLE

Case no: CC33/2025

In the matter between:

THE STATE

and

FABIAN ROMEO LIESING

Accused

JUDGMENT ON SENTENCE

Govindjee J

[1] The accused has been convicted of murder as contemplated in s 51(1) of the Criminal Law Amendment Act, 1997.¹ As the death of the victim resulted from

¹ Act 105 of 1997 (the CLAA), as read with Part I of Schedule 2 of the CLAA.

physical abuse, as contemplated in s 1 of the Domestic Violence Act, 1998,² the discretionary minimum sentence prescribed is imprisonment for life.³

Nature of the crimes and surrounding circumstances

[2] Mr Liesing and the deceased had lived together for eight months prior to the incident. They were known to be a happy couple. The two started drinking with friends on 1 November 2024, into the night and again early the following morning. When Mr Liesing left the deceased, she continued drinking heavily. Upon his return, motive unknown, he administered a single stab wound to the upper chest with an Okapi knife. With no assistance forthcoming, this caused her to exsanguinate and pass away. According to Dr De Beer, the deceased's blood alcohol level corresponded with severe intoxication, to the point that she may not even have realised that she had been stabbed and would die from blood loss. Mr Liesing was convicted of murder based on *dolus eventualis*. The evidence revealed that he had consumed a large quantity of alcohol in the 24 hour period prior to the incident and was moderately intoxicated at the time he stabbed the deceased.

The accused

[3] Mr Liesing is 44 years of age. He left school aged 18, without matriculating and has, through his endeavours, managed to obtain an income, mainly as a driver and co-owner of a taxi, for much of the time since then. He has two children aged 12 and 13, who reside with their mother and grandmother, and contributes R1000 to their maintenance and to school uniform costs. He also supports his parents. He has been in custody for 13 months.

² Act 116 of 1998.

³ S 51(1): 'Notwithstanding any other law, but subject to subsections (3) and (6) ... a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.' S 51(3)(a): 'If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence...'. Part I of Schedule 2 includes murder, when 'the death of the victim resulted from physical abuse or sexual abuse, as contemplated in paragraphs (a) and (b) of the definition of "domestic violence" in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998), by the accused who is or was in a domestic relationship, as defined in section 1 of that Act, with the victim'.

[4] Mr Liesing is treated as a first offender, with two prior convictions both pertaining to road traffic offences involving alcohol consumption. The evidence revealed a sad narrative of alcohol use or abuse by many of those members of the community that featured in the case. Although he demonstrated no remorse, it may be said that Mr Liesing and the deceased's companionable relationship has, in effect, been ended by the scourge of alcohol abuse. The deceased has lost her life, and Mr Liesing is now forced to pay the price for his conduct, which is rooted in the lowering of his inhibitions, directly linked to his abuse of alcohol in the hours preceding the incident.

The interests of society

[5] As Ms *Bosman* argued, for the state, society demands that stern sentences be meted out in cases where a person's life is extinguished through the conduct of another. The offence of murder is extremely serious, constituting an irreversible violation of the constitutional right to life.

[6] Importantly, society's outrage at the senseless loss of life in the domestic setting has translated into a prescribed minimum sentence of life imprisonment for conduct of this nature. The relentless plague of gender-based violence, including so-called intimate femicide, is a cause for deep societal concern and anger. As the court held in *S v Robertson*:⁴

'It is so easy to glibly use the phrases and terminology of femicide and gender-based violence, in part because of the relentless frequency of its occurrence in our society, communities and homes, that it hardly causes anyone to bat an eyelid or to raise an eyebrow ... this disease of gender-based violence and femicide ... permeates the psyche of our country.'

[7] The Domestic Violence Act, 1998, recognises that domestic violence is a serious social evil, that there is a high incidence of domestic violence within South African society and that victims of domestic violence are among the most vulnerable members of society.⁵ In *S v Rohde*,⁶ the court expressed itself as follows:

⁴ *S v Robertson* [2022] ZAWCHC 104; 2023 (2) SACR 156 (WCC) para 2.

⁵ Preamble to the Domestic Violence Act, 1998.

⁶ *S v Rohde* 2019 (2) SACR 422 (WCC) para 54.

'Crime based on gender is an affliction in our society. Crimes against women are a social ill and efforts by government and society are increasing in light of a steady increase in these types of offence. The rate of murder of women in South Africa is alarmingly high, compared to the global average. Attitudes to women determine how women are treated in society. It is the lowered perception of women as human beings, all of whom are entitled to human dignity and equality, which results in the unhealthy social paradigm that they can be victims, and in fact end up as victims of crime because they are women. The judiciary must guard against such perceptions and creating the impression that the lives of women are less worthy of protection.'

[8] I must add that it appears to me to be in the interests of society that communities, such as the one from which the witnesses in this case were drawn, and who have attended these proceedings, must themselves introspect. Many of those who testified had either consumed alcohol the day before the incident, or planned to do so on the day of the incident. This is suggestive of the central role played by alcohol and begs the question whether enough is being done, within the community itself, to educate members about the associated risks and realities.

Analysis

[9] The killing of women by intimate partners (also known as intimate female homicide or intimate femicide) is the most extreme form and consequence of violence against women.⁷ In *S v Kasongo (Kasongo)*, expert testimony revealed that intimate femicide was much more common in South Africa compared to other countries.⁸

[10] The judiciary is obliged to play its part in ensuring that prescribed minimum sentences, designed to reflect society's opprobrium towards murder linked to domestic violence, are not departed from without good reason. Prescribed minimum sentences are intended to contribute towards the deterrence of violent crime and, thereby, the protection of women, communicating to society that perpetrators must expect to face the full force of the law.

⁷ S Mathews *et al* 'Every six hours a woman is killed by her intimate partner: A national study of female homicide in South Africa' *MRC Policy Brief* (No. 5) (June 2004). The following paragraphs are drawn from this court's judgment in *S v HJW* [2025] ZAECKMHC 7.

⁸ *S v Kasongo* [2022] ZAWCHC 224; 2023 (1) SACR 321 (WCC) (*Kasongo*) para 15.

[11] To determine an appropriate sentence, the court must weigh and balance the nature and seriousness of the crime, the interests of society and the personal circumstances of the accused carefully, without unduly emphasising any of these factors.⁹ The court must not approach its task in a spirit of anger or a deliberate attempt to demonstrate severity or set an example to satisfy public opinion. The object of sentencing is to serve the public interest.¹⁰ Where possible, and if the circumstances justify this, the sentence must be blended with a measure of mercy.¹¹

[12] The court must also be alive to the purposes of sentence, which, in general terms, are retribution, prevention, deterrence and rehabilitation.¹² That being the case, more serious cases clearly require severity with a certain moderation of generosity where appropriate, for the appropriate balance to be struck. As alluded to above, where minimum sentences have been prescribed by the legislature, these should be viewed as generally appropriate for the offences concerned and are not to be departed from lightly or for flimsy reasons, or based on misplaced pity.¹³

[13] It is accepted that none of the factors highlighted by Ms *McCallum*, for the accused, on their own constitute a substantial and compelling circumstance justifying deviation from the prescribed minimum sentence. Although it is true that murder in the context of domestic violence might justifiably warrant life imprisonment in most cases, each case must be carefully analysed and treated on its own merits.¹⁴ It remains incumbent upon this court, before it imposes the prescribed sentence, to assess, upon a consideration of all the circumstances of the case, whether this sentence is indeed proportionate to the offence.¹⁵

[14] In *Sigwahla*, Holmes JA noted that in considering the relevance of intoxicating liquor to extenuating circumstances the approach of a trial court should be 'one of

⁹ *S v Zinn* 1969 (2) SA 537 (A) (*Zinn*) at 540G–H.

¹⁰ *S v Mhlakhaza and Another* [1997] 2 All SA 185 (A) at 189. Also see *S v M* (Centre for Child Law as *amicus curiae*) 2007 (2) SACR 539 (CC).

¹¹ *Zinn* above n 9.

¹² *S v Rabie* 1975 (4) SA 855 (A).

¹³ *S v Matyityi* 2011 (1) SACR 40 (SCA) para 23.

¹⁴ Cf *Kasongo* above n 8 para 37.

¹⁵ *S v Vilakazi* 2009 (1) SACR 552 (SCA) paras 14–15.

perceptive understanding of the accused's human frailties, balancing them against the evil of his deed'.¹⁶ Somewhat ironically, then, given the earlier remarks, the potential exists for the alcohol consumption to serve as a mitigating feature when the offender's blameworthiness is regarded as diminished. It may be accepted that the accused's state of mind was affected by his consumption of alcohol. Rather than being a premeditated act, this served as the catalyst for the single stab of his knife on the body of his partner.¹⁷ As in *Sigwahla*, this court may also consider the fact that the murder was not committed with *dolus directus*.¹⁸ The result is that the court has accepted that Mr Liesing had no direct intent to cause the deceased's death. As a full bench has explained, the concomitant thereof is that the moral turpitude of the heinous deed was ameliorated.¹⁹ To that may be added the accused's clean record. I am also mindful that he has for much of his adult life remained in employment and seemingly contributed to the upkeep of his children, and to his parents.

[15] It is appropriate to consider the accused's behaviour accordingly, bearing in mind that any factors that are not too remote or too faint or too indirectly related to the commission of a crime, which bear upon the accused's moral blameworthiness in committing it, should not be ruled out from consideration.²⁰ Considered cumulatively, I am satisfied that there is justification to enhance the prospect of rehabilitation by departing from the prescribed sentence and imposing a lesser sentence.²¹

[16] This is not to suggest that a sentence other than a lengthy period of direct imprisonment will suffice. The deceased's life was extinguished through a violent act caused by a knife applied to her body. Despite her condition, it must be accepted that she called for help from Mr Liesing, suffering the indignity of experiencing excessive blood loss in the sanctity of her own bathroom. And rather than assisting

¹⁶ *S v Sigwahla* 1967 (4) SA 566 (A) (*Sigwahla*) at 571D–E; *S v Ndhlovu* (2), 1965 (4) SA 692 (A) at 695–696.

¹⁷ Cf *S v Peloele* 2022 (2) SACR 349 (SCA) para 24, 26. This decision may also be distinguished based on the SCA's rejection that the appellant was intoxicated.

¹⁸ *Sigwahla* above n 16 at 571H: trial courts, in their conspectus of possible extenuating circumstances, should not overlook the fact (if it be such) that it is a case of *dolus eventualis*; while it cannot be said that this factor must necessarily be an extenuating circumstance, in many cases it may well be so, either alone or together with other features, depending on the particular facts of the case.

¹⁹ *S v Moos* 2017 JDR 0300 (NCK) para 4.

²⁰ *R v Fundakubi and Others* 1948 (3) SA 810 (A) at 818 cited with approval in *Sigwahla* above n 16 at 571H–572A. Also see *S v Tafeni* 2016 (2) SACR 720 (WCC) (*Tafeni*) para 11.

²¹ *Tafeni* above n 20 para 9 and the authorities cited there.

her in any reasonable way, Mr Liesing, albeit under the influence of alcohol, failed to obtain any meaningful assistance for her. This is an aggravating feature in the present circumstances. He also failed to take the court into his confidence. In addition, instead of her home being a safe-haven, it became the site of the deceased's passing. Punishment that reflects the deterrent and retributive dimensions of sentencing, proportionate to the interests of society and the circumstances of the crimes, must be imposed. As explained in *Kasongo*:²²

'The Judiciary should speak such that we demonstrate that we are not cold, aloof and far removed from the contemporary challenges. Where circumstances permit, we should show that we heed the public's constitutional call to make the punishment of crimes against women, especially their brutal, cruel and unnecessary killing more severe as part of the overall responsibility of the Republic of South Africa to provide a conducive environment for women to live and love without fear of physical, psychological, economic and sexual abuse and violence. The increase in the involvement of ex-partners, spouses, partners and boyfriends in the woman's experience of violence needs effective initiatives beyond policy-making and [calls] for the judiciary to be the leading force and voice.'

[17] These are matters of weighty concern to the court. I have considered the period in excess of a year already spent in custody and surveyed reported cases involving similar features, bearing in mind the dangers of doing so.²³ When all these factors are weighed cumulatively, a sentence of twelve years' imprisonment strikes the necessary balance between the gravity of the offence, involving domestic violence, and the diminished moral blameworthiness associated with the seemingly impulsive, single-blow committed without direct intent, while under the influence of alcohol, by a first offender.

Order

[18] The accused is sentenced as follows:

The accused, Fabian Romeo Liesing, is sentenced to twelve (12) years' imprisonment for murder.

²² *Kasongo* above n 8 para 36.

²³ See, for example *S v Moos* above n 19; *Jantjies v S* [2014] ZASCA 153; *Sighwala* above n 16.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 28 November 2025

Delivered: 28 November 2025

Appearances:

For the State: Adv F Bosman

Instructed by: Director of Public Prosecutions

For the Respondent: Adv H McCallum

Instructed by: Legal Aid South Africa