



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No.: CC32/2025

Reportable	Yes/No
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In the matter between:

THE STATE

versus

XOLISA LUKAS

ACCUSED

JUDGMENT ON SENTENCE

Cengani-Mbakaza AJ

[1] This court is aware, as demonstrated by the evidence, that there was a volatile situation in Jansenville following the accused's arrest and his associate. The community members gathered at accused's home, threatening to kill him and following the police van to the station. This prompted the police to employ strategies to manage the situation and maintain law and order.

[2] It is therefore essential to preface this judgment by stating that self-help, which was nearly resorted to in this case is not condoned at all. Self-help can lead to chaos and create more problems than it solves. It can also result in violence, damage to property and potentially severe legal consequences.

Moreover, it by-passes due process and can undermine the rule of law leading to unfair outcomes.

[3] Having said this, now that the accused has been convicted, he must be sentenced accordingly. The convictions are based on the serious crimes of housebreaking with intent to rob and murder, robbery with aggravating circumstances and murder.

[4] The two offences namely murder and robbery with aggravating circumstances, fall under the provisions of the Criminal law Amendment Act 105 of 1997 (“the CLAA”). Pursuant to s 51(1) read with Part 1 of Schedule 2 of the CLAA, the mandatory sentence for murder in circumstances where the death of the victim was caused in committing robbery with aggravating circumstances as defined in s 1 of the Criminal Procedure Act 51 of 1977 (“CPA”) is life imprisonment. Furthermore, in relation to the offence of robbery with aggravating circumstances the mandatory sentence is fifteen years’ imprisonment.

[5] According to s 51 (3) of the CLAA, the court has a discretion to deviate from the minimum sentence prescribed on condition that the offender has shown the existence of substantial and compelling circumstances. The provisions of s 51(3) of the CLAA provides:

‘(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 a lesser sentence...’

[6] To determine an appropriate sentence, this court is empowered by the guiding principles relevant to sentencing. The landmark case of *S v Zinn*¹ established the “*triad*” of sentencing: the crime, the offender and the interests of the society. This balanced approach is consistently endorsed by the Constitutional Court (CC) and other courts to ensure fair and individualised punishment.

[7] Although in the past there had been arguments for and against the consideration of victim centred approach during sentencing, the SCA’s decision in *S v Matyityi*² has effectively settled this debate.

[8] In *Matyityi*³, the SCA per Navsa and Ponnann JJ and K Pillay AJA, held:

‘[16] An enlightened and just penal policy requires consideration of a broad range of sentencing options from which an appropriate option can be selected that best fits the unique circumstances of the case before court. To that should be added, it also needs to be victim-centred... The Service Charter for Victims of Crime in South Africa seeks to accommodate victims more effectively in the criminal justice system...’

[9] The Constitution⁴ as the supreme law, reinforces these principles by guaranteeing equality before the law and equal protection of the law. Basically, the Constitution guarantees victims’ rights, entitling them to protection against crime, and ensuring that they are treated with dignity⁵ and respect, with a voice in the justice system.

¹ 1969(2) SA 537 (A).

² (695/09) [2010] ZASCA127 (30 September 2010); 2011 (1) SACR 40 (SCA); [2010] 2 A11 SA 424 (SCA) (30 September 2010).

³ Ibid.

⁴ Act 108 of 1996 (The Constitution).

⁵ Section 10 of the Constitution guarantees human dignity.’ Everyone has inherent dignity and the right to have their dignity respected and protected.’

[10] The photographs show that the deceased was running a thriving business, selling stock for a living. The state witnesses described him as a generous person who helped his community by offering credit sales. While the community's actions after the accused's arrest are not justified, they on the other hand, reflect a deep hurt and the sense of betrayal they feel. In this instance this court is reminded of what was stated in *S v Banda*⁶,

‘The court fulfils an important function in applying the law in the community. It has the duty to maintain law and order. The court operates in society and its decisions have an impact on individuals in the ordinary circumstances of daily life. It covers all possible ground. There is no space in life it does not include. The court must also by its decisions, and imposition of sentence, promotes respect for the law, and in doing so must reflect the seriousness of the offence, and provide just punishment for the offender while taking into account the personal circumstances of the offender. The feelings and requirements of the community, the protection of society against the accused and other potential offenders must be considered, as well as the maintenance of peace and tranquillity in the land needs to be taken into account.’

[11] In the context of our justice system the right to life⁷ is absolute and applies to everyone regardless of nationality. In *S v Makwanyane*⁸, which dealt with constitutionality of the death penalty, the CC described the right to life and dignity as the most important of all human rights, and the source of all other personal rights in [the Bill of Rights]. The CC added that by committing ourselves to a society founded on the recognition of human rights, we are required to value these two rights, above all others.⁹

⁶ 1991 (2) SACR 325 (B).

⁷ The Constitution provides:

‘11 Everyone has a right to life.’

⁸ 1995(3) SA 391 CC.

⁹ See The Bill of Rights Handbook, IAIN CURRIE & JOHAN DE WAAL, sixth edition p 258.

[12] The Constitution also guarantees freedom and security of the person. Section 12 of the Constitution provides:

‘(1) Everyone has the right to freedom and security of the person, which includes the right-

...

(c) to be free from all forms of violence from either public or private sources...’

[13] In this instance, the accused disregarded all these fundamental rights. The brutal attack perpetrated on the deceased is unimaginable. Despite the screams, the accused had no mercy. His egregious actions continued unabated. The scenes captured in the photographs tell a horrific story: a chaotic room, a pool of blood, the deceased lying helpless and naked.

[14] The photographs raise more questions than answers, leaving a haunting sense of what is not said. The extensive injuries inflicted on the deceased indicate, *inter alia*, a direct intention to kill. In other words, the accused was not content with gaining entry to the premises and committing robbery.

[15] Although most items were recovered, the photographs show that they were left in an unusable condition. This further underscores the aggravating circumstances surrounding the crimes. While the accused has a constitutional right to plead not guilty and not incriminate himself, the overwhelming evidence against him raises questions about his remorse for the crime.

[16] In *Matyityi*¹⁰, the SCA emphasised the importance of courts considering factors like the accused’s motivations and whether he truly understands the consequences of his actions before a court can find that an accused is genuinely remorseful. Although, the court in *Matyityi*¹¹ dealt with a guilty plea, this

¹⁰ Fn 2 supra, at para 13.

¹¹ Ibid.

principle remains relevant as this court must consider all the surrounding factors during sentencing.

[17] In my assessment, the accused demonstrates a lack of remorse for his actions. Instead, there is an indication of planning and deliberation in the commission of the crimes, as evidenced by his being spotted holding a firearm in a firing position. His actions suggest defiance rather than remorse.

[18] While deterrence, prevention, rehabilitation and retribution are all key considerations, our courts tend to prioritise retribution in violent crimes, like the present case. In *S v Swart*¹², the SCA per Streicher, Nugent JJA, (Southwood, Van Heerden & Motata AJJA) stated:

‘[12] What appears from those cases is that 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 should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role...’

[19] I have taken the accused’s personal circumstances as presented by his counsel into account. Notably, counsel argued that he is a first offender, relatively young (aged 26), had partaken in liquor, has been in custody for over a year and has two minor children. Counsel added that I should take all these factors cumulatively and conclude that they constitute substantial and compelling circumstances.

¹² 2004 (2) SACR 370 (SCA).

[20] Fortified by the SCA in *S v Malgas*¹³(Malgas), it is my opinion that the circumstances listed by the defence counsel do not constitute substantial and compelling circumstances. In *Malgas*¹⁴, the SCA cautioned that deviation from the prescribed sentences should not be based on frivolous or flimsy reasons. In this regard, the SCA's stance is that speculative hypothesis favourable to the offender, sympathy, aversion to imprisoning first-time offenders and personal doubts about the efficacy of the sentencing policy are all irrelevant considerations.

[21] In the present matter, the best interests of the minor children are well catered for. The minor children are at their mother's respective places, indicating that the accused is not a primary care-giver. Moreover, the fact that the accused spent over a year in custody cannot be taken in isolation. He has presented no evidence to illustrate the effect of his incarceration before trial. Similarly, from his narration of events, it is clear that despite having partaken in liquor earlier that day, his mental faculties were not affected. Thus, he could appreciate his actions and its consequences.

[22] Resultantly, the accused is sentenced as follows:

- 1. Count 1, housebreaking with intent to rob and murder- the accused is sentenced to 3 years' imprisonment.**
- 2. Count 2, robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act 51 of 1977, read with the provisions of section 51 (2) of Part 11 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997- the accused is sentenced to 15 years' imprisonment.**

¹³ [2001] ZASCA 30.

¹⁴ Ibid.

3. Count 3, murder- read with the provisions of Section 51(1), Part 1 of Scheduled 2 of the Criminal Law Amendment Act 105 of 1997- the accused is sentenced to life imprisonment.
4. By operation of the law, the sentences in counts 1 and 2 shall run concurrently with the sentence in Count 3. Therefore, the accused shall serve an effective term of life imprisonment.
5. In terms of section 103 (1) of the Firearms Control Act 60 of 2000, the accused automatically remains unfit to possess a firearm.

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the state	:	Adv Obermeyer DPP, Makhanda
For the accused	:	Adv Charles Legal Aid-SA, Makhanda
Date Heard	:	28 January 2026
Date Delivered	:	29 January 2026