



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A161/2024

In the matter between

MANDLA ARTHUR MSIBI

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Msibi v The State* (A161/2024) [2026] ZAFSHC 39 (3 February 2026)

Coram: VAN ZYL, CHESIWE *et* OPPERMAN JJ

Heard: 23 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 3 February 2026 at 16h00.

Summary: Criminal Procedure – sentence – cumulative effect – concurrency – appeal against an effective sentence of 43 years' imprisonment for kidnapping, murder, and escaping from lawful custody. Appellant already serving a 60-year sentence for similar prior offenses – s 280 of the Criminal Procedure Act 51 of 1977.

ORDER

1 The application to condone the late filing of the heads of argument by the appellant is granted.

2 The appeal against sentences is upheld to the limited extent set out below:

2.1 The effective sentence of forty-three (43) years' imprisonment imposed upon the appellant is confirmed.

2.2 It is ordered that twenty-three (23) years of the said sentence shall run concurrently with the sentence imposed on appeal upon the appellant under case A930/2000 on 23 May 2001 which order is backdated to 6 April 2001 .

3 Save as aforesaid, the sentence imposed by the court *a quo* remains unaltered.

JUDGMENT

Opperman J (Van Zyl et Chesiwe JJ concurring)

[1] The appellant was sentenced as accused 2 in Case No. 83/2000 on 6 April 2001. The appellant and his co-accused were arraigned in the then Supreme Court of South Africa, Orange Free State, sitting as a Circuit Court at Parys, on the following charges: Count 1: Kidnapping; Count 2: Murder; Count 3: Escaping from lawful custody; Count 4: Contravention of s 2 of Act 75 of 1969 (unlawful possession of a firearm); Count 5: Contravention of s 36 of Act 75 of 1969 (unlawful possession of ammunition).

[2] The offences of which the appellant was convicted were committed during April 1997. Prior to judgment, the State abandoned counts 4 and 5 on the basis that there was insufficient evidence to sustain those charges, and the appellant and his co-accused were accordingly found not guilty and discharged on those counts.

[3] On 4 April 2001, the appellant and his co-accused were convicted on counts 1, 2 and 3. They were sentenced as follows:

'Accused 1: (i) Counts 1 and 3, taken together for purposes of sentence: Eight (8) years' imprisonment; (ii) Count 2: Forty (40) years' imprisonment.

Accused 2 (the Appellant): (i) Counts 1 and 3, taken together for purposes of sentence: Three (3) years' imprisonment; (ii) Count 2: Forty (40) years' imprisonment.'

[4] The appellant was sentenced to an effective term of forty-three (43) years' imprisonment, coupled with an order that twenty (20) years be served before he becomes eligible for consideration for parole (the non-parole order). The appellant's application on 29 November 2023 to have the non-parole order set aside was successful. On 26 August 2024, condonation for the lodging of the application for leave to appeal outside the prescribed time limit and leave to the full bench of this division against the sentences imposed in this case, were granted.

[5] This appeal is confined solely to the sentences imposed with specific focus on the cumulative effect of sentencing. Apart from the above, the appellant was sentenced on similar offences committed on 23 October 1993 to an effective sentence of sixty (60) years' imprisonment with a non-parole period of 30 years' imprisonment in case number A930/2000. The sentence was imposed on appeal on 23 May 2001.

[6] This Court has carefully considered the submissions advanced on behalf of both the appellant and the respondent, together with the record of proceedings, the reasons for sentence furnished by the court *a quo*, and the applicable legal principles governing appellate interference in matters of sentence. The power of a court of appeal to interfere with sentence is circumscribed. Interference is warranted only where the sentence is vitiated by a material misdirection, is disturbingly inappropriate, or where the disparity between the sentence imposed and that which this Court would have imposed is so marked as to warrant the conclusion that the discretion of the court *a quo* was not judicially exercised.

[7] The respondent has correctly emphasised the seriousness of the offences, the appellant's antecedents, the planned escape from lawful custody, and the absence of remorse. These are weighty aggravating considerations which the court *a quo* was entitled, and indeed obliged, to take into account. At the same time, this Court is enjoined to consider the cumulative effect of the sentences imposed, particularly where the appellant was, at the time of sentence in this matter, already serving a substantial term of imprisonment in respect of similar offences. The principle that punishment must be

blended with a measure of mercy remains a guiding consideration, even in cases involving grave crimes.

[8] The effective term of forty-three (43) years' imprisonment imposed in this matter, when viewed in conjunction with the sentence already being served by the appellant, results in an aggregate period of incarceration which is, in practical terms, tantamount to (one hundred and three) 103 years' imprisonment. While the seriousness of the offences cannot be gainsaid, this Court must guard against a cumulative sentence that is disproportionate.

[9] In these circumstances, and without detracting from the legitimacy of the respondent's concerns regarding precedent and procedural discipline, this Court is satisfied that a limited measure of appellate intervention is warranted, not by setting aside the sentence imposed, but by ameliorating its cumulative effect through the appropriate application of concurrency. Such an approach recognizes both the seriousness of the offences and the need to avoid a sentence that is, in its totality, unduly crushing and devoid of a realistic prospect of rehabilitation and eventual reintegration into society.

[10] This Court, under s 280 of the Criminal Procedure Act 51 of 1977, will order partial concurrency, mindful of the established principle that sentences must be considered not only individually, but also in their cumulative effect. This is the order:

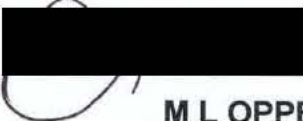
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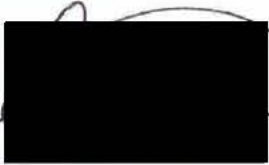
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M L OPPERMAN
JUDGE OF THE HIGH COURT

I concur and it is so ordered.


C VAN ZYL
JUDGE OF THE HIGH COURT

I concur.


S CHESIWE
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

Instructed by:

A Simpson

Martins Attorneys,
Bloemfontein

For the respondent:

Instructed by:

DW Bontes

Director of Public Prosecutions,
Bloemfontein.