

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case number: KS 16/2025

In the matter between:

MONNAPOLA MPHETE MABOGOLE

APPLICANT

and

THE STATE

RESPONDENT

Neutral citation: *Mabogole v The State* (KS 16/2025) 20 March 2026

Coram: Stanton J

Decided on the papers as per agreement

Delivered: 20 March 2026

Summary: Application for leave to appeal – Sentences of 15 years for robbery with aggravating circumstances and life imprisonment for two counts of murder read with the provisions of s 51(1) of the Criminal Law Amendment Act 105 of 1997, as amended – First time offender and a plea of guilty – Whether the trial court over-emphasised the seriousness of the crime – Whether the trial court under-emphasised the personal circumstances of the applicant – No reasonable prospects of success – Application for leave to appeal dismissed.

ORDER

1. The application for leave to appeal against the sentences imposed in respect of counts two, three and four, is dismissed.

Stanton J

JUDGMENT

Introduction:

- [1] This is an application for leave to appeal against the sentence of 15 years in respect of the applicant's conviction of robbery with aggravating circumstances and the two sentences of life imprisonment in respect of the conviction on two counts of murder.

Relevant background:

- [2] The applicant stood accused of the following four offences:-
 - 2.1 Housebreaking with the intent to commit an offence unknown to the prosecutor, read with the provisions of s 95(12) and s 262(2) of the Criminal Procedure Act 51 of 1977 ("the Act");
 - 2.2 Robbery with aggravating circumstances;
 - 2.3 Murder, read with the provisions of s 51(1) of the Criminal Law

Amendment Act 105 of 1997 ("the CLAA"); and

2.4 Murder, read with the provisions of s 51(1) of the CLAA.

- [3] The first count of housebreaking was withdrawn.
- [4] The applicant pleaded guilty to the three remaining offences and provided a written statement in terms of section 112(2) of the Act, which written statement was admitted into evidence as exhibit A, after acceptance thereof by the State.
- [5] According to the written plea, the applicant, *inter alia* pleaded guilty to the three remaining offences, and more specifically that the two murders were committed with the intent of *dolus directus*. In essence, the applicant admitted that he stabbed Lerato Agnes Gaebidiwe ("Lerato"), who was preparing a meal for him at the time, several times in her throat as she refused to give him money. He thereafter stabbed Refentse Gaebidiwe ("Refentse") in the same manner to quiet him when he returned home after buying cigarettes for the applicant. The medico-legal post-mortem report concluded that the wounds on both deceased were caused by repetitive stabs to their necks.
- [6] The applicant was accordingly found guilty and convicted on the three counts.
- [7] It was not disputed that the count of robbery with aggravating circumstances fell within section 51(2)(a) of the CLAA, read with Part 2 of Schedule 2 and the two counts of murder fell within section 51(1) of the CLAA, read with Part 1 of Schedule 2, as:
 - 7.1 Lerato's death was caused by the applicant in committing or attempting to commit or after having committed robbery with aggravating circumstances as defined in section 1 of the Act; and
 - 7.2 Refentse was a person under the age of eighteen years.

- [8] The applicant and his legal representative, Mr. P Fourie, both confirmed that the prescribed minimum sentences as set out s 51(2) of the CLAA (in respect of the second count of robbery with aggravating circumstances, 15 years imprisonment) and the prescribed minimum sentences set out s 51(1) of the CLAA (imprisonment for life in respect of the two counts of murder) were explained to the applicant, as well as the fact that the minimum sentences should be imposed, unless substantial and compelling circumstances are present.
- [9] The applicant advanced the following personal circumstances in mitigation: (a) He is 27 years old and unmarried; (b) His highest level of education is Grade 9; (c) He has two minor children, a son aged 11 and a daughter aged 7 who reside with their respective mothers who are their primary caregivers; (d) He is unemployed; (e) He has no previous convictions; (f) He has been in custody since 28 January 2025; and (g) The incident was unplanned.
- [10] On 27 January 2025, the following sentences were imposed:
- 10.1 15 years' imprisonment in respect of count 2 (robbery with aggravating circumstances);
 - 10.2 Life imprisonment in respect of count three (murder, read with the provisions of s 51(1) of the CLLA); and
 - 10.3 Life imprisonment in respect of count four (murder, read with the provisions of s 51(1) of the CLLA).
- [11] An order was made that the sentences shall run concurrently; and the applicant was declared unfit to possess a firearm.

Application for leave to appeal:

- [12] On 29 January 2025, the applicant filed an application for leave to appeal against the sentences imposed in respect of counts 2, 3 and 4.

[13] The following grounds of appeal were listed, namely that:-

13.1 I erred in finding that no substantial and compelling circumstances exist to deviate from imposing the prescribed minimum sentences;

13.2 Another court, on appeal, may find that the sentences of 15 years' imprisonment in respect of the count of robbery with aggravating circumstances and life imprisonment in respect of the two counts of murder are shockingly harsh and disproportionate to the offence;

13.3 I overemphasised the seriousness of the offences and the interests of the community;

13.4 I underemphasised the personal circumstances of the applicant; and

13.5 I erred in finding that the applicant cannot be rehabilitated.

Applicable law:

[14] Section 17 of the Superior Courts Act 10 of 2013, in part, provides:

'17. Leave to appeal

(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a)(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;'

[15] In *S v Smith*,¹ Plasket AJA stated:-

'What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law, that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote, but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success, that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.'

Arguments by counsel:

[16] Mr. P Fourie, whilst conceding that the deaths of Lerato and Refentse had an impact on their family members, submitted that:-

16.1 The general note of caution in *S v Mhlakaza and Another ("Mhlakaza")*,² that a court should not satisfy the public opinion in its sentence, but serve the public, was not heeded;

16.2 The absence of premeditation and/or planning should have been considered as a strong mitigating factor when the seriousness of the offence was considered; and

16.3 The applicant showed true remorse and took full responsibility for his actions by pleading guilty, despite the fact that he had the constitutional right to plead not guilty.

[17] Mr. Q Hollander, on behalf of the State, contended to the contrary that there is no probability that another court would come to a different conclusion on the facts, and that no substantial and compelling circumstances were present as:

¹ 2012 (1) SACR SCA 667 at para 7.

² 1997 (1) SACR 515 (SCA).

17.1 The applicant killed Lerato while she was peacefully preparing food for him in her home; and thereafter he waited for Refentse to return home and killed him too;

17.2 After the killings, in an attempt to avoid responsibility for his actions, he closed the house in a way that would create an impression that no one was home. He went to sleep and later spent the money he withdrew with the stolen bank guard; and

17.3 He only decided to cooperate with the police after he was caught in possession of the stolen property, the bloody clothes and the murder weapon, which is indicative that the applicant does not have true remorse nor good prospects of rehabilitation.

Evaluation and conclusion:

[18] I fully embrace the convictions of our Supreme Court of Appeal as *inter alia* set out in *S v Matyityi* ("Matyityi")³ and *S v Malgas*⁴ ("Malgas") to the effect that the minimum sentences have been ordained by the legislature and should be imposed, unless there are truly convincing reasons for departing from them.

[19] The only instance on which a court may deviate from this is when there are substantial and compelling circumstances. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.⁵ Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is

³ 2011 (1) SACR 40 (SCA) at para 23.

⁴ 2001 (1) SACR 469 (SCA).

⁵ *S v Malgas* 2001 (1) SACR 469 (SCA) at 470H-J.

married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of "flimsy" grounds that *Malgas* said should be avoided. The fact that the applicant is unmarried, unemployed and has two children are indeed flimsy reasons which does not withstand scrutiny and do not qualify as substantial and compelling circumstances.

[20] Remorse was said to be manifested in him pleading guilty. It has been held, quite correctly, that a plea of guilty in the face of an open and shut case against an accused person is a neutral factor. The remorse which was suggested, lacks credibility for the simple reason that the applicant failed to take the court into his confidence and explain exactly what had happened and why he acted in the way he did. True remorse must not be confused with self-pity.⁶

[21] It is not clear from the submissions made as to what the court should read about the offender being 27 years old that should count as substantial or compelling circumstances. In *Matyityi*,⁷ Ponnann JA said the following in respect of the offender who was aged 27:

'In my view a person of 20 years or more must show by acceptable evidence that he was immature to such an extent that his immaturity can operate as a mitigating factor. At the age of 27 the respondent could hardly be described as a callow youth. At best for him, his chronological age was a neutral factor. Nothing in it served, without more, to reduce his moral blameworthiness.'⁸

[22] The following remarks of Nugent JA in *S v Swart*⁹ are applicable to the possibility of an accused's rehabilitation:

'..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

⁶ *Matyityi* at para 13.

⁷ *Matyityi* at para 14

⁸ 2011 (1) SACR 40 (SCA) at para 14.

role.'

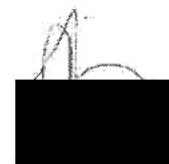
[23] In view of the above, I am not persuaded that another court, acting reasonably, may find that the sentences imposed are not warranted

[24] Consequently, I cannot find that the applicant's case is arguable and that there are reasonable prospects of success. The application for leave to appeal thus stands to dismissed.

Order

Therefore, the following order is made:

1. The application for leave to appeal against the sentences imposed in respect of counts two, three and four, is dismissed.



STANTON J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

On behalf of the applicant:

Mr. P Fourie

On instructions of:

Legal-Aid South Africa

On behalf of the respondent:

Mr. Q Hollander

On instructions of:

The Director of Public Prosecutions