



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

CASE NO.: A35/23

BEFORE THE HONOURABLE JUSTICE LANGA (J) e/t MALANGENI (AJ)

Date: 18TH February 2026

In the matter between:

THABO LUKHELE

And

THE STATE

GISTRAR OF THE HIGH COURT OF SOUTH AFRICA MPUMALANGA LOCAL DIVISION, MIDDELBURG	
Private Bag X1822, Middelburg 1050	
2026 -02- 18	
MLD-MID-002	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA MPUMALANGA DIVISION, MIDDELBURG	
COURT ORDER	

APPELLANT

RESPONDENT

The Judge heard the matter on the 17th October 2025 and electronically circulated the judgment on the 18th February 2026, gave an order in paragraph "26" as follows:

In the result, I make the following order:

1. The appeal against sentence is dismissed.
2. The sentence of fifteen (15) years imprisonment is hereby confirmed.

BY THE COURT

REGISTRAR
NP MAGAGULA



IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

Case Number: A35/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

18/02/2026
DATE


SIGNATURE

In the matter between:

THABO LUKHELE

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

Malangeni AJ et Langa J

Introduction

[1] The appellant appeared before Piet Retief regional court ("the Court *a quo*")
facing the following counts:

- a. Robbery with aggravating circumstances read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997, ("the CLAA").
- b. Malicious damage to property and
- c. Contravention of section 49(1)(a) of the Immigration Act 13 of 2002 (Illegal Immigrant).

[2] He was convicted in respect of all counts and subsequently sentenced as follows:

- a. Count 1: 15 years' imprisonment.
- b. Count 2: 2 years' imprisonment.
- c. Count 3: 3 years' imprisonment.
- d. The trial court ordered the sentences imposed on counts 2 and 3 shall run concurrently with the sentence in count 1.

[3] The appellant hereby notes an appeal against sentence in respect of count 1 only.

Grounds of appeal

[4] The appellant contends that in sentencing the appellants, the court *a quo* erred in the following respects:

- a. The sentence of fifteen (15) years imposed by the court *a quo* was harsh and disproportionate to the offence committed.
- b. The court misdirected itself by not infusing a measure of mercy into the sentence.
- c. The court erred by not considering the total value of the robbed items, being two mobile phones valued at R850.00 before sentencing.

The Law

[5] It is trite that section 51(2) of CLAA prescribes a mandatory sentence of 15 (Fifteen) years for a first-time offender in the case of robbery with aggravated circumstances. However, section 51(3) of the same Act empowers the court to

deviate from imposing the minimum sentence if there are substantial and compelling circumstances.

- [6] It is trite that there is no clear definition of the concept of substantial and compelling circumstances. What is of utmost importance is that deviation should not be granted on ordinary circumstances. In *S v Malgas*¹ the court gave very useful guidelines and pointers to be considered in determining whether substantial and compelling circumstances are present. It also emphasised that the prescribed sentences are not to be departed from for flimsy reasons.
- [7] The only instance in which departure would be justified is if the circumstances relevant to sentencing were substantial and compelling. In this regard, the court in *S v Malgas* observed:

“if the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence”.²

- [8] It is further trite that sentencing is a matter for the discretion of the trial court. In *S v Rabie*³ the law in this regard was put as follows:

“In every appeal against sentence, whether imposed by a Magistrate or a Judge, the court hearing the appeal:

(a) Should be guided by the principle that the punishment is “pre-eminently a matter for the discretion of the trial Court”;

and

(b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been “judicially and properly exercised”.

¹ 2001 (1) SACR 469 (SCA).

² *Id* at para 25.

³ 1975 (1) SA 855 (A) 857 D-F.

The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate.”

- [9] The above principles were confirmed in *S v Pillay*⁴ where the court held as follows:

“The essential inquiry in an appeal against sentence is not whether sentence was right or as wrong but whether the court in imposing sentence executed its discretion properly or judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with sentence. It must be of such a nature, degree of seriousness that it shows directly or inferentially that the court did not exercise its discretion at all or exercised it improperly or unreasonably. Such a misdirection is usually and conveniently termed one that vitiates the court’s decision on sentence.”

Submissions on appeal

- [10] The appellant submitted that the trial court misdirected itself in finding that the appellant’s personal circumstances cumulatively did not constitute substantial and compelling circumstances which would have justified the court to deviate from prescribed sentence of 15 years’ imprisonment and impose lesser sentence than the prescribed sentence.

- [11] Furthermore, the trial court misdirected itself in finding that the personal circumstances of the appellant, cumulatively considered, are not sufficient to constitute substantial and compelling circumstances. To this end, the appellant contended that the trial court failed to consider the following circumstances:

- (a) That the appellant is still relatively young, at the age of 31 years;
- (b) He was first offender;
- (c) That the appellant has 5 minor children even though their respective ages could not be ascertained. It was also argued that even though, there is no evidence that the appellant is a primary caregiver, the court

⁴ 1977 (4) SA 531 (A) 535 F-G.

should not have ignored that he may be contributing to the financial needs of these children.

[12] The appellant disagreed that he did not show any sign of remorse and also argued that the trial court ignored the fact that the stolen items were recovered through the conduct of the appellant who returned them the following morning.

[13] On the other hand, the state argued that the trial court did not misdirect itself in imposing the sentence of fifteen years imprisonment for the following reasons:

- (a) The court considered all factors that are mentioned in mitigation.
- (b) The offence was gruesome; the court was compelled to impose sentence that would send a message to other would be offenders.
- (c) Violence committed by males against woman in our country has gone out of proportion.

[14] Lastly, the State submitted that the trial court exercised its discretion properly. There is no misdirection. Further, that the sentence imposed is just and does not induce any sense of shock. The State argued therefore that there are no prospects of another court coming to a different conclusion on sentence.

Analysis

[15] In imposing sentence, the court must strike a balance between competing factors. In *S v Zinn*⁵ the court stated that in imposing a sentence the court must consider "the triad consisting of the crime, the offender and the interests of the society."

[16] The trial court in this matter mentioned having considered the accused's personal circumstances and the nature of the offence and its prevalence. It also referred to the outcry. I take that to be the public's outcry; therefore, it means that it considered the interests of the society.

⁵ 1969(2) SA 537 (A) at 541G:

[17] It must be emphasised that when it comes to sentencing, there is no formula, each case must be decided on its own facts. In *S v Letsoalo*⁶ the court observed:

“The court must consider the personal circumstances of the accused, the nature of the offense that has been committed and the interest of society. It must forever consider the recognized objectives of sentencing which are prevention, rehabilitation, deterrence and retribution.

The seriousness of the offense, the circumstances under which they were committed, and the victims are all relevant factors that must also be considered. The personal circumstances of the accused including his age, education, dependents etc, his previous convictions if any, his employment and other relevant conduct or activities also call for consideration in respect of the possibility of rehabilitation.

An appropriate sentence should also have regard to and serve the interest of society and the protection of its needs and the deterrence of the would-be criminals.”

[18] It is true and correct that gender-based violence is rife in our jurisdiction and countrywide. To me, it is one of the troubling offences. The appellant was and/or is the lover to the complainant. He stabbed the complainant and took away her cellphones. No evidence was adduced to the effect that the complainant was armed. I therefore take that she was defenceless. There was no reason advanced for or towards this stabbing, I therefore take that the stabbing was without any apparent reasons.

[19] In *Kekana v the State*⁷ it was stated that:

“Domestic violence has become a scourge in our society and should not be treated lightly. It has to be deplored and also severely punished. Hardly a day passes without a report in the media of a woman or a child being beaten, raped or

⁶ [2023] ZAGPJHC 452 (10 May 2023) at paras 4-6.

⁷ *Kekana v the State* [2014] ZASCA para 20.

even killed in this country. Many women and children live in constant fear for their lives. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and boldly integrity”.

[20] It is then safe to say that gender-based violence negatively affects the community and mostly women. In *S v Msimanga and Another*⁸ the court held that violent conduct in any form can no longer be tolerated, and courts, by imposing heavier sentences, convey the message, on the one hand, to the prospective criminals that such conduct is unacceptable and, on the other hand, to the public that the courts take seriously the restoration and maintenance of safe living conditions.

[21] It is on record that accused is the father of five children. The record is silent about the mother or the mothers of his children. It is further silent on whether he is the sole breadwinner or the primary caregiver. The Constitution of the country (Act 108 of 1996) caters for the rights of children. Section 28 (2) of the Act provides that “A child’s best interests are of paramount importance in every matter concerning the child”.

[23] Children cannot be used as tools to escape incarceration. In *Director of Public Prosecution: Gauteng, Pretoria v Mtshali*⁹ the court stated that:

“It is clear from the authorities that sentencing officers cannot always protect children from the consequences of direct imprisonment. The relationship between an accused, convicted of serious crimes, and his children are merely one of the factors to be weighed up in each given case in determining a proper sentence. Children cannot be used as an excuse to avoid incarceration. See *S v Chetty* 2013 (2) SACR 142 (SCA) ([2013] ZASCA 6) para 13. The trial court has the duty to satisfy itself that, should imprisonment be imposed, the children will be taken care of. It appears to me that the trial court allowed the interests of the children to override all the other aims of sentencing”.

⁸ 2005(1) SACR 377 (A).

⁹ 2016 (2) SACR 463 (GP) at para 8.

Conclusion

[24] From the evidence of the appellant, I cannot find any element of remorse. The fact that he returned the items belonging to the complainant is not a sign of remorse. He did not take responsibility of his actions instead insisted with his denial of guilty.

[25] I cannot find any fault or misdirection or irregularity on the sentence imposed by the trial court. It is proper in the circumstances. The magistrate exercised his discretion judicially.

Order

[26] In the result, I make the following order:

1. The appeal against sentence is dismissed.
2. The sentence of fifteen (15) years imprisonment is hereby confirmed.



M MALANGENI

**ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDLEBURG**

I agree, and it is so ordered



MBG LANGA

**JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDLEBURG**

Appearances

For the Appellant : Advocate M.Moloi
Legal Aid of South Africa

For the Respondent : Advocate B.E. Maoke
DPP's Office, Middelburg

Date of the hearing : 17 October 2025

Date of the Judgement : 18 February 2026