

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A156/2025

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: NO

DATE: 06 March 2026 SIGNATURE

A black rectangular box redacting the signature of the judge.

In the matter between:

KITJA JOHN MATHE

Appellant

And

THE STATE

Respondent

Coram: **MOSOPA J, MUNZHELLE J AND KEKANA AJ**

Heard on: **19 JANUARY 2026**

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 06 March 2026.

JUDGMENT

KEKANA AJ (MOSOPA J AND MUNZHELELE J CONCURRING)

Introduction and Background

- [1] This is an appeal against the sentence handed down by Sardiwalla J on 24 August 2018. The appellant was convicted of the following counts:
- i) Murder (read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997); and
 - ii) Defeating the cause of justice.
- [2] The Appellant was convicted on both counts on 21 June 2018 and sentenced by Sardiwalla J on 24 August 2018 as follows¹:
1. *That the accused is sentenced to life imprisonment in terms of section 51(1)(a) and (e) of the Criminal Procedure Amendment Act, 105 of 1997;*
 2. *He is also declared a dangerous criminal in terms of section 286(1) of the Criminal Procedure Act (CPA) 51 of 1977. In terms of section 286(1)(b), the accused is sentenced to undergo imprisonment for an indefinite period, and it is directed that the accused shall be brought before this Court on the expiration of a period of 25 years to enable this Court to reconsider the sentence as contemplated in terms of section 286(b)(2).*

¹ Judgment by Sardiwalla J.

3. *The registrar of this court is herewith directed to furnish the head of the prison to which the accused is sent with a copy of the Court's judgment.*
4. *The accused is found to be unsuitable to work with children and old aged people.*
5. *The accused is found unsuitable to hold a firearm.*
6. *The registrar of the court must in terms of section 221 of the Children's Act, notify the Director General, Department of Social Development in writing the findings of this Court in terms of section 120(4) of the Children's Act, that the accused is unsuitable to work with children and old people for the Director to enter the name of the accused as contemplated in terms of section 120 Part 2, in the register.*

Submissions by the parties

Point in limine

- [3] The Appellant raised a point *in limine* that the record is incomplete in that the entire evidence of the sentencing proceedings, the addresses by the defence on mitigation, as well as the aggravating factors by the state, were not recorded, hence they do not appear on the record.²
- [4] The Respondent, however, submitted that the appeal against the sentence can proceed even without the said records, as they will not have an impact on the current proceedings.³
- [5] The Appellant opted to abandon the point *in limine* initially raised, and since the issue is now moot, this court will not adjudicate nor make any ruling thereon but focus only on the substance of the matter before it, which is the sentencing of the Appellant.
- [6] The argument by the Appellant as regards the sentence can be summarised as follows:

² Para 5 of the Appellant's heads of argument.

³ Para 2.2 of the Respondent's heads of argument.

- 6.1 that the sentence of life imprisonment is disproportionate to the circumstances of the case;
- 6.2 that the trial court erred in not taking into account the personal circumstances and mitigating factors of the Appellant;
- 6.3 that the trial court erred in declaring the Appellant a dangerous criminal in terms of section 286(1) of the CPA, in that section 286(1) pertains exclusively to habitual criminals, not dangerous criminals;
- 6.4 that the court committed a material misdirection by invoking an incorrect statutory provision;
- 6.5 that the court failed to comply with section 286A (2) (a) and (b) which states that if it appears to a court referred to in section 286(1) that an accused is a dangerous criminal, the court may after conviction direct that the matter be enquired into and reported on in accordance with the provisions of subsection (3);
- 6.6 that the trial court failed to comply with the mandatory duty to warn the accused as required by section 286A(2)(b); and
- 6.7 that the trial court committed a procedural irregularity in not imposing a sentence in relation to count 2.

[7] The Respondent's contentions are that:

- 7.1 the sentence for life imprisonment is not at all disproportionate to the circumstances of the case, as there were no substantial and compelling circumstances found for the Court *a quo* to deviate from the prescribed minimum sentence.⁴
- 7.2 the Court *a quo* correctly made the orders stipulated in paragraphs 3 – 6 of the sentence.⁵

[8] The Respondent concurs with the Appellant on the following:

- 8.1 that the trial court did not utilise the correct statutory framework as provided for by the legislature in section 286A of the CPA. The Appellant could therefore not be sentenced to a second period of

⁴ Para 4.4 of the Respondent's heads of argument.

⁵ Para 4.7 of the Respondent's heads of argument.

imprisonment for an indefinite duration after being sentenced to life imprisonment;⁶

8.2 that the trial court did not sentence the Appellant on count 2⁷; and

8.3 submits further in relation to the same count 2 that since Sardiwalla J has retired, the Respondent will not have any objection if the sentence of the Appellant on count 2 runs concurrently with the life imprisonment sentence in terms of Section 280 of the CPA.⁸

Legal principle and analysis.

Imposition of the sentence of life imprisonment

[9] The argument by the Appellant regarding the disproportionality of the life sentence imposed by the court *a quo*, that the trial court failed to take into account the personal circumstances of the Appellant and overemphasised the seriousness of the offence, cannot be sustained. As regards the former, records show that the court did consider the personal circumstances of the Appellant,⁹ and those were outweighed by aggravating factors, and hence the trial court found no reason to deviate from the prescribed minimum sentence. As regards the latter, it cannot be correct that the court overemphasised the seriousness of the offence, as the crime committed was a very heinous one; cutting the deceased's body into pieces cannot be less serious, and it was found to have been committed with premeditation. That it was committed with premeditation has not been disputed.

[10] The Appellant relied on the case of ***S v Malgas***¹⁰ that courts must consider whether, viewed cumulatively, the personal circumstances of the accused, together with the specific facts of the offence, justify a lesser sentence.¹¹ It is in the same ***Malgas*** where the Supreme Court of Appeal (SCA) ruled that these circumstances must be truly convincing and not based on trivial factors. In ***S v***

⁶ Para 4.6 of the Respondent's heads of argument.

⁷ Para 5.1 of the Respondent's heads of argument.

⁸ Para 5.2 of the Respondent's heads of argument.

⁹ Record Vol 3 p247.

¹⁰ 2001 (1) SACR 969 (SCA).

¹¹ Para 11 of the Appellant's heads of argument.

Jonas and Others¹², the court ruled that being a first-time offender or having dependents did not automatically constitute exceptional circumstances. The SCA also reaffirmed in **S v Matyityi**¹³ that departures from mandatory sentences require significantly different circumstances beyond standard mitigating factors, reinforcing the high threshold required for deviation.

- [11] Records show that the trial court went at length to consider the personal circumstances.¹⁴ The Appellant's argument that personal circumstances were ignored cannot be sustained. It is trite that the individual circumstances of the offender must be considered, but they are subordinate to, and must be balanced against, the seriousness of the offence and the need for proportional punishment.
- [12] Factors stated by the appellant that they amount to substantial and compelling circumstances have no merit. The argument raised by the appellant that the appellant is a first offender cannot stand as such a factor¹⁵. It cannot be correct that when the offence was committed the appellant was not in his normal cognitive and emotional state, reference should be made to Weskoppies' report where the appellant was found to be of sound mind at the time of the commission of the offence. The period spent in custody on its own is not a substantial and compelling circumstance.¹⁶
- [13] Personal circumstances cannot override the seriousness of the crime. The crime set the tone, and looking at the nature of the crime, the gravity thereof and the conduct of the Appellant after committing the crime, not showing any remorse and going at length to hide the deceased's body, I am not persuaded that there are compelling and substantial factors to warrant deviation from the minimum sentence. The conclusion is strong that the crime was premeditated.
- [14] In the circumstances, the argument by the Appellant that the sentence of life imprisonment was disproportionate has no merit. I am of the view that the sentence of life imprisonment was warranted and correctly imposed. The

¹² 1998 (2) SACR 677 (SE).

¹³ 2011 (1) SACR 40 (SCA).

¹⁴ Record Vol 3 p239 - 255.

¹⁵ *S v Vilakazi* 2009 (1) SACR 552 at para 58.

¹⁶ *S v Radebe* 2013(2) SACR 165 (SCA) .

sentence of life imprisonment arose consequent upon the trial court's proper assessment of evidence and the exercise of its discretion. I do not have a basis to interfere with the decision of the court *a quo*.

Declaring the Appellant a dangerous criminal

[15] Section 286(1)¹⁷ states that:

'Subject to the provisions of subsection (2), a superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person habitually commits offences and that the community should be protected against him, declare him an habitual criminal, in lieu of the imposition of any other punishment for the offence or offences of which he is convicted'.

[16] Section 286A(1)¹⁸ states that:

'Subject to the provisions of subsections (2), (3) and (4), a superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person represents a danger to the physical or mental well-being of other persons and that the community should be protected against him, declare him a dangerous criminal'.

[17] The trial judge relied on section 286(1) in declaring the Appellant a dangerous criminal¹⁹ while it is clear from the reading of the two provisions above that the relevant section that deals with declaring an accused 'dangerous criminal' is section 286(A), section 286(1) was wrongly relied on by the trial judge as it deals with declaring an accused a 'habitual criminal'. It is therefore concluded that the trial judge erred when relying on an incorrect legal framework in declaring the Appellant a dangerous criminal.

¹⁷ Criminal Procedure Act 51 of 1977 (as amended).

¹⁸ *Ibid*.

¹⁹ Record Vol 3 p257.

Imposition of another sentence in terms of section 286B of the Criminal Procedure Act

[18] A person cannot be sentenced twice for the same offence. If a person is formally convicted on only one count in a court of law, then the court can only impose one sentence for that single count. The constitutional right against double jeopardy and the related common-law principles makes it illegal for the state to punish an individual twice for the same offence.²⁰

[19] In the case of **S v Rabie**²¹, it was stated by Holmes JA that:

" in every appeal against a sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal -

- i) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court"; and*
- ii) 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."*

[20] It is incorrect for a judicial officer to pass two separate substantive sentences in respect of a single formal count of conviction. Having found that it was warranted and proper for the trial court to impose a sentence of life imprisonment on a charge of murder, it then became improper for the trial court to again impose another sentence of an indefinite period under section 286B. In the premises, this court would be justified in interfering with the discretion of the trial court.

[21] Moreover, no enquiry was conducted as provided by that subsection (2). The trial court also exercised the power that it did not possess by ordering that the appellant be found unsuitable to work with children and old age people, as this is only applicable where an offender is convicted of sexually related offences. There is also no need for the head of prison to be furnished with a copy of the trial court judgment at this stage.

²⁰ Section 35(3)(m) of the Constitution.

²¹ 1975 SA (4) 855 (A).

Imposition of the sentence on count 2 by the appeal court

- [22] The trial judge did find the Appellant guilty of both charges²² however, no sentence was imposed on count 2. Both the Appellant and the Respondent are *ad idem* on this court imposing a sentence on count 2, and also that the said sentence should run concurrently with the life imprisonment sentence in terms of section 280 of the CPA. I agree with the submissions made by the parties that this court impose a sentence which should run concurrently with the sentence of life imprisonment.

Conclusion

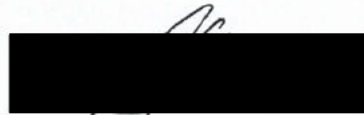
- [23] It is my view that the trial judge erred in declaring the Appellant a dangerous criminal in terms of section 286(1) of the CPA, as the said provision applies to habitual criminals and not dangerous criminals.
- [24] By imposing life imprisonment and again imposing a sentence of an indefinite period under section 286B, the trial judge punished the Appellant twice for the same offence. Having found that the imposition of the sentence under 286B was wrong and incorrect, this court concludes that it was improper for the trial court to impose another sentence under section 286B.

Order

- [25] In the premises, the following order is made:
1. The appeal against the sentence is upheld in part.
 2. The sentence imposed in respect of count 1 is confirmed, but to read as follows:
 - 2.1 That the accused is sentenced to life imprisonment in terms of section 51 (1) of the Criminal Law Amendment Act 105 of 1997.
 3. The Appellant is sentenced to six months' imprisonment in respect of count 2.

²² Records Vol 3 p232.

4. The sentences imposed on count 2 will run concurrently with the sentence imposed in respect of count 1.
5. The sentence is antedated to 24 August 2018.



KEKANA AJ

Acting Judge of the High Court



MOSOPA J

Judge of the High Court



MUNZHELELE J

Judge of the High Court