



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

**IN THE HIGH COURT OF SOUTH AFRICA
GARIEP DIVISION, UPINGTON**

Case No: K/S20/2024
Heard on: 16/04/2026
Delivered on: 17/04/2026

In the matter between:

THE STATE

and

JOHN IVAN FRANCIOUS MOUTON

Accused

JUDGMENT ON SENTENCE

MAMOSEBO J

- [1] The irresponsible use of firearms in violent crimes in this country is disconcerting what this court must address in this matter. Its impact on society is immense. Families lose their loved ones in a matter of seconds. This case is a classical example of how an accused should not have behaved at an accident scene.

[2] On 15 April 2026 the accused was convicted of two counts of premeditated murder read with the provisions of s 51(1) of the Criminal Law Amendment Act, 105 of 1997 (CLAA) with *dolus directus* as the form of intent and four counts of attempted murder read with the provisions of s 51(1) of the CLAA.

[3] The instructive remarks in *Mudau v The State*¹ bear repeating:

‘Courts must therefore always strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, has regard to the nature of the crime and take account of the interests of society. Sentencing involves a very high degree of responsibility which should be carried out with equanimity, as Corbett JA put it in *S v Rabie* [1975 (4) SA 855 (A) at 866 A – C]:

“A judicial officer should not approach punishment in a spirit of anger, because, being human, that will make it difficult for him [or her] to achieve that delicate balance between the crime, the criminal and the interest of society which his [or her] task and the objects of punishment demand of him [or her]. Nor should he [or she] strive after severity; nor, on the other hand, surrender himself [or herself] to misplaced pity. While not flinching from firmness, where firmness is called for, he [or she] should approach his [or her] task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.”

[4] The State proved one previous conviction which was admitted by the accused: on 26 February 2010 he was convicted of a contravention of s 65(2)(B) of Act 93 of 1996, occupying the driver’s seat of a motor vehicle of which the engine is running while the concentration of alcohol in the blood exceeded the prescribed limit. He was sentenced to R3,000.00 or six months imprisonment wholly suspended for four years

¹ (764/2012) [2012] ZASCA 56 (9 May 2013) para 13

on specified conditions. This is a very old conviction, and I will keep the lid closed thereby treating him as a first offender.

[5] It has become settled since the classic case of *Zinn*² that for this court to impose an appropriate sentence it must consider the triad consisting of the personal circumstances of the accused, the seriousness of the offence as well as the interests of society. Punishment should, as espoused in *Rabie*,³ fit the criminal as well as the crime, be fair to society, and blended with a measure of mercy according to the circumstances. Furthermore, regard must be had to the main purposes of punishment, which are, deterrence, prevention, reformation/rehabilitation and retribution.

[6] The personal circumstances of the accused were placed on record from the bar as follows: that the accused was born on 8 December 1975 and is 50 years old. He was 47 years old during the commission of the offence. He is married with three children aged 24, 21 and 9 years old. The family resides in Upington. His wife is employed as an administrator, and their youngest child is in Grade 4. After completing his matric he attained a diploma as a medical technician. Before the incident he was running his own electrical shop, but the shop has since been closed due to affordability to rent the business space. For the past two years he has been working from home as a building contractor. His current project involves building rooms for the local old age home. He has ten employees in his work establishment, among them, his two sons. He earns about R10,000 per month depending on the availability of projects. He admitted his previous conviction. He suffers from the following ailments: diabetes, high blood pressure and cholesterol for

² S v Zinn 1969 (2) SA 537 (A)

³ S v Rabie 1975 (4) SA 855 (A) at 862G - H

which he is taking medication. He is a member of the Congregational Church. He is the third of six siblings. Both his parents are deceased.

- [7] Ms April, for the accused, relied on *Mahomotsa*⁴ in her submission that the mere fact that an offence falls under the ambit of s 51(1) of Act 105 of 1997, does not necessarily mean that life imprisonment should follow. Counsel raised the following as mitigating circumstances: that the accused has lost his vehicle permanently because it was written off after colliding with the grey Fortuner on the day of the incident; he did not discharge the firearm immediately after the collision and his interaction with the other driver, Mr Joshua Rock; and that after the shooting incident he handed himself and the firearm over to the South African Police. Counsel urged the Court to consider the circumstances of this case in its determination. Counsel, conceding the seriousness of the crime of murder, further argued that the accused's personal circumstances coupled with the surrounding circumstances would amount to substantial and compelling circumstances warranting a deviation from the prescribed minimum sentences.
- [8] Counsel further submitted that a suitable form of punishment would be a substantial term of imprisonment, however, should the court sentence the accused to imprisonment for life, his chances of rehabilitation may be affected because he will be permanently incarcerated. The SCA having remarked in *Director of Public Prosecutions, KwaZulu-Natal v Ngcobo and Others*⁵ that it is optimistic in the extreme to assume that there are always effective rehabilitation programmes in place, it further articulated that traditional objectives of sentencing include retribution, deterrence and rehabilitation. It does not necessarily follow that a shorter

⁴ S v Mahomotsa 2002 (2) SACR 435 (SCA)

⁵ 2009 (2) SACR 361 (SCA) para 21

sentence will always have a greater rehabilitative effect. Furthermore, the rehabilitation of the offender is but one of the considerations when sentence is being imposed. Surely, the nature of the offence related to the personality of the offender, the justifiable expectations of the community and the effect of a sentence on both the offender and society are all part of the equation? Pre- and post-*Malgas* the essential question is whether the sentence imposed is in all the circumstances, just.⁶

- [9] In as far as the attempted murder convictions are concerned, counsel submitted that because none of the complainants sustained physical injuries a non-custodial sentence would be appropriate. However, should the court not be with her in that regard, whichever custodial sentence the court imposes should run concurrently with the murder sentence in order to curb the cumulative effect of the sentence.
- [10] Mr Shadrack Dube, the deceased in count 1, died of multiple gunshot wounds. I only reiterate the two gunshot wounds that took the deceased's life. What is perturbing about this conduct is that the accused had aimed at the deceased's upper body, his head and chest, and literally blew the deceased's head off as recorded by Dr Surtie in the postmortem report at paragraph 4 (a) and (e). At (a) it was a 13 x 8mm elliptical gunshot entrance wound with 8 x 7mm inferior medial tract and surrounding abrasion, blackening (burning) that does not wipe off and black smudging that does wipe off left temporal area. Underlying 25 x 20mm inward bevelling skull⁷ defect with multiple fractures radiating from it. Tract continuing inferior medially through brain and exiting skull through $\pm$ 20x20mm fractured area in anterior medial left

⁶ Ibid para 22

⁷ Inward (or internal) bevelling of the skull is a key forensic marker indicating the entry point of a high-velocity projectile, such as a bullet).

sphenoid bone⁸ with fractures radiating from it. Tract continuing with structural damage to exit right cheek with 20 x 8mm lacerated exit wound. At (e) 10 x 8mm entrance gunshot wound with abrasion rim left lateral anterior chest 190mm from midline and 10mm below sternal notch⁹ with inferior medial posterior tract entering chest cavity through 4th intercostal space with fracture of 4th rib. Tract continuing through left lung and exiting chest through 7th intercostal space next to spine with fracture of 8th rib. 15 x 7mm exit wound with small lacerations left central back. 500ml blood left chest.

[11] The same applies to the deceased, Bophelo Khumalo. Although he was struck by one bullet, it was also on his upper body, his chest to be precise. During this shooting two people died and four, of which the accused was convicted of attempted murder, had to flee the scene. They are lucky to live to tell the tale. Ms Engelbrecht, for the State, urged the Court to regard this incident as callous and even execution style following what Dr Surtie had said that the firearm could either be loose contact or barely touched Dube's head when it was fired, and shortly after eliminating him, struck Khumalo and was short of a massacre with the remaining complainants. The accused was clearly running amok with his firearm notwithstanding his brother's advice to put the firearm back in its holster.

[12] Murder is unquestionably an atrocious offence, taking away the right to life that is constitutionally entrenched.¹⁰ The collision was unexpected and made the accused angry. It is the extent of his anger that got him in this situation. Damage to a vehicle is repairable. A vehicle is even

⁸ The sphenoid bone is an unpaired, butterfly-shaped bone at the base of the skull (often called the wasp bone) that forms part of the cranial floor and eye sockets. It acts as a keystone, anchoring surrounding bones, housing the pituitary gland, and forming part of the sphenoidal sinuses.

⁹ The sternal notch, or suprasternal notch, is a large, visible, and palpable depression at the superior border of the manubrium of the sternum, located between the clavicles at the base of the neck

¹⁰ Section 11 of the Constitution of the Republic of South Africa, 108 of 1996

replaceable unlike life. No amount of anger can justify taking a life or attempting to take a life. Everyone is equal before the law and has the right to equal protection and benefit of the law¹¹. The interests of the society demand the imposition of appropriate sentences to maintain public confidence in the courts and to prevent lawlessness where people will resort to taking the law into their own hands.

- [13] The SCA in *Matyityi*¹² advocates for victim-centred sentences. The Court in that case reasoned that by accommodating the victim during the sentencing process the court will be better informed before sentencing about the after-effects of the crime. The court will thus have at its disposal information pertaining to both the accused and victim, and in that way hopefully a more balanced approach to sentencing can be achieved. Absent evidence from the victim, the court will only have half of the information necessary to properly exercise its sentencing discretion. It is thus important that information pertaining not just to the objective gravity of the offence, but also the impact of the crime on the victim, be placed before the court. That in turn will contribute to the achievement of the right sense of balance and in the ultimate analysis will enhance proportionality, rather than harshness.¹³

- [14] Ms Engelbrecht presented five Victim Impact Statements marked exhibits “K”, “L”, “M”, “N”, and “O”. In sum their contents are the following:

- (a) Exh “K” is the statement of Ms Nosisi Maria Khumalo. She is the mother of the deceased, Bophelo Khumalo. Deceased assisted her financially. He also contributed towards the

¹¹ Section 9(1) of the Constitution.

¹² *S v Matyityi* 2011 (1) SACR 40 (SCA) para 16

¹³ *Ibid* para 17

community by uplifting the computer literacy skills of the youth. He was also a lay preacher in their church. The family is left with the trauma of losing him.

- (b) Exh “L” is the statement of Ms Caroline Dube. She is the maternal aunt of the deceased, Shadrack Dube. She says the deceased was her late brother’s only child. The family expected the Dube lineage to grow from him. His death in December has robbed his fiancé of a future as plans of their marriage were underway with a date already issued for February 2023, a mere two months away. The deceased was the family peacemaker. He played several instruments including keyboard and guitar which skills he transferred to the youth in his family and in the community. His death has just left everyone traumatised.
- (c) Exh “M” relates to Mr Kealeboga Gaolehelwe, one of the complainants in the attempted murder count. He came to Upington in pursuit of a better life for himself and his family in August 2022. The tragic incident occurred in December of the same year where he lost two of his friends, Khumalo and Dube. He no longer enjoys partying, has lost his confidence and was on the verge of committing suicide. The sound of gunshots, even on television, frightens him. Seeing the Khumalo family saddens him because he is unable to assist them emotionally or financially.
- (d) Exh “N” pertains to Ms Ranchiya Nokayi. She is a member of the South African Police Service. The incident has affected her personally and officially. She even had to undergo psychological counselling. She could not bear the sound of guns whereas her job requires her to attend a shooting range annually. Her

boyfriend, Mr Alfred Mogorosi had difficulty coping with the loss of his two friends, which puts her in a difficult position because she does not know what to say or do under the circumstances.

- (e) Exh “O” is Mr Alfred Mogorosi. Losing two friends who had become brothers in the same incident and almost losing his and his girlfriend’s lives is very traumatic. The aftermath of such an event had adverse consequences for his security company because he lost employees and clients. He lost his confidence and his work performance was affected. The deceased had contributed meaningfully to help him build his company and losing them has left a traumatic void in his life.

[15] Every family and friends deserve closure after the loss of a loved one. The pain and loss they suffered cannot be gainsaid. They are all grieving the loss in their own ways. The ghastly sight in which the four complainants saw Dube at the shooting scene will continue to linger in their minds. It must have been unimaginable to them to celebrate a year end function with their colleagues and friends not knowing that it was their last. However, there is no punishment that can replace the loss of life.

[16] Pertaining to the enquiry into substantial and compelling circumstances the SCA said the following in *Matyityi*¹⁴:

‘...*Malgas*¹⁵, which has since been followed in a long line of cases, set out how the minimum sentencing regime should be approached, and in particular how the

¹⁴ Ibid para 11

¹⁵ S v Malgas 2001 (1) SACR 469 (SCA)

enquiry into substantial and compelling circumstances is to be conducted by a court. To paraphrase from *Malgas*: the fact that Parliament had enacted the minimum sentencing legislation was an indication that it was no longer 'business as usual'. A court no longer had a clean slate to inscribe whatever sentence it thought fit for the specified crimes. It had to approach the question of sentencing, conscious of the fact that the minimum sentence had been ordained as the sentence which ordinarily should be imposed, unless substantial and compelling circumstances were found to be present.'

[17] The circumstances in which the murders against Dube and Khumalo were perpetrated undoubtedly render it necessary to impose a sentence of life imprisonment unless substantial and compelling circumstances justify a departure from the prescribed sentence. I have already found that the shooting was premeditated. I have also dealt with the fact that the premeditation occurred shortly before the shooting. The personal circumstances of the accused must recede into the background¹⁶ and retribution and deterrence must come to the fore.¹⁷ The fact that the accused handed himself and the firearm to the police after the shooting is a mitigating factor because, in any event, he was known and seen by eyewitnesses, the complainants in the attempted murder cases and his brother. Therefore, the police would have found him anyway.

[18] Of the accused's three children, one is still a 9-year-old minor. The accused and his wife lived with their three children. The accused's wife is employed as an administrator, and the children will be in her care. They shared the primary residency. I have noted the ailments suffered by the accused, namely, diabetes, high blood pressure and cholesterol. However, it is necessary to point out that his mere say so, without more, does not entitle him to escape incarceration. The Department of

¹⁶ S v Vilakazi 2009 (1) SACR 525 (SCA) para 58

¹⁷ S v Swart 2004 (2) SACR 370 (SCA) para 12

Correctional Services has hospital facilities for medical care and it would be expected from them to offer him proper medical services.

[19] What I find most perturbing is the fact that the accused is a holder of a valid firearm licence. He was supposed to know better in terms of the handling of that firearm. This country is bleeding violent crime mainly with the use of firearms. My remark is not meant to sacrifice the accused at the altar of deterrence. However, the murders of both Dube and Khumalo were unjustified and could have been avoided. The accused had the direct intention to kill both deceased. In fact, the seriousness of these two murders negates whatever factors considered singularly or cumulatively to constitute substantial and compelling circumstances justifying a departure from the prescribed minimum sentence of life imprisonment.

[20] In as far as the four counts of attempted murder are concerned, the State's submission was that because in the indictment the offence is read with s 51(1) of the Criminal Law Amendment Act, 105 of 1997, I must also sentence the accused to imprisonment for life. I do not agree. The SCA in *Malgas*¹⁸ pronounced:

'I. 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.'

I am of the view that life imprisonment under the circumstances would render the sentence unjust. I would not by any stretch of imagination diminish or undermine the fear they must have gone through when

¹⁸ Ibid at 482e at para 25 I

dodging bullets. They could have died. The shots were fired in all directions and they were lucky to have escaped death. The evident scars on them show the lingering trauma. No-one wishes to experience a near death situation. An injustice would ensue if an appropriate sentence is not meted out in these counts.

[21] In the result, the following sentences are imposed:

1. In respect of count 1: premeditated murder (*dolus directus*) r/w s 51 (1) of the Criminal Law Amendment Act 105 of 1997 – the accused is sentenced to life imprisonment.
2. In respect of count 2: premeditated murder (*dolus directus*) r/w s 51 (1) of the Criminal Law Amendment Act 105 of 1997 – the accused is sentenced to life imprisonment.
3. In respect count 3 of attempted murder: the accused is sentenced to 10 years imprisonment.
4. In respect count 4 of attempted murder: the accused is sentenced to 10 years imprisonment.
5. In respect count 5 of attempted murder: the accused is sentenced to 10 years imprisonment.
6. In respect count 6 of attempted murder: the accused is sentenced to 10 years imprisonment
7. The sentences in counts 2, 3, 4, 5, and 6 are ordered to run concurrently with the sentence in count 1.

MAMOSEBO J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the State
Instructed by:

Adv MZC Engelbrecht
Office of the Director Public Prosecutions

For the Accused:
Instructed by:

Ms B April
Justice Centre, Kimberley