

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case Number: CC55/23

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 20 February 2026

SIGNATURE

In the matter between:

STATE

and

J[...] N[...]

SENTENCE

MORE AJ:

[1] The accused has been found guilty of murder, read with the provisions of Section 51(1), read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997. On 28 January 2023, he murdered his wife, M[...] T[...] N[...]. He has also been found guilty of robbery with aggravating circumstances.

[2] The accused is 55 years old and was married to the deceased. They have three children and two grandchildren. He was doing piece jobs at the time of his arrest, and he has previous convictions. He has been in custody since 30 January

2023. It is true that he has been convicted of very serious offences. At the time before his arrest, he was able to support his family, but now he does not know who is supporting his family.

[3] He indicated that he regretted that about what he had done and asked the Court to show mercy and that he is remorseful about it.

[4] It is trite that when the Court decides on the appropriate sentence, all factors should be given due weight. Punishment must fit the criminal act as well as the crime, be fair to society, and be blended with a measure of mercy. When sentencing an accused, the Court is required to consider the four objectives of punishment, namely deterrence, prevention, rehabilitation and retribution.

[5] This has been well indicated in the well-known case of *S v Zinn*,¹ these factors are the:

- a) Personal circumstances of the accused, including his character, conduct in life and personally and his personality and everything that influenced the commission of the offence.
- b) The nature and the seriousness of the offence committed; and
- c) The interests of the community including the necessity for a level of uniformity in sentencing.

[6] In *S v van Loggerenberg*,² Willis J held that a sentence has five important functions:

“It must act as a general deterrent, in other words, it must deter other members of the community from committing such act or thinking that the price of wrongdoing is worthwhile. It must act as a specific deterrent, in other words, it must deter the individual from being tempted to act in such a manner ever again. It must enable the possibility of correction unless this is very clearly not likely. It must be protective of the society, in other words, society must be protected from those who do it harm. It must serve society's desire for retribution, in other words society's outrage at serious wrongdoing must be placated.”

[7] The state contended that the accused displayed no remorse. His post-murder behaviour should also be taken into account when one assesses whether or not the accused is remorseful.

¹ *S v Zinn* 1969 (2) SA 537 (A).

² *S v van Loggerenberg* 2012 (1) SACR 462 (GSJ) at para 6.

[8] In *S v Matyityi*,³ it was held that there is moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct but that does not, with our more, translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another.

[9] This genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question.

[10] It is to the surrounding actions of the accused rather, rather than what he says in court that one should rather look at. In order for the remorse to be a valid consideration the pertinence must be sincere and the accused must take the Court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined, after all before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of inter alia what motivated the accused to commit the deed, what has since provoked his or her change of heart and whether he or she does indeed have a true appreciation of the consequences of those actions.

[11] Taking into account the type of offences he has been convicted of, the provisions of section 51(1) of Act 105 of 1997, the minimum sentence is applicable.

[12] Judicial officers are enjoined to approach sentence with a humane and compassionate understanding of the human faculties. In *S v Rabie*,⁴ Corbit JA as he then was, remarked as follows:

"A judicial officer should not approach punishment in the spirit of anger because being human that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of the society, which his task and the objects of punishment demand of him nor should he strive after severity, no. On the other hand, surrender to misplaced pity. While not flinching from the firmness where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and pressure of the society which contribute to criminality."

[13] It is in the context of this attitude of mind that I see mercy as an element in the determination of the appropriate punishment in the light of all the circumstances of the particular case.

³ *S v Matyityi* [2010] 2 All SA 424 (SCA) at para 13.

⁴ In *S v Rabie* 1975 (4) SA 855 (A) at para 866.

[14] The deceased in this matter died a very violent, painful and brutal death. When one looks at the pictures of the photo album you can see that the brutality which was applied on her. She was hit many times on the head with a broomstick, thereafter hit with a spade to a point that the injuries she sustained, even the accused was unable to identify her when the photo album was handed to him.

[15] The actions of the accused were callous, heartless and cold. This shows heartlessness and brutality on the part of the accused. The deceased was a defenceless woman who, when attacked, ran to the bedroom of her seven-year-old grandson K[...], and it is very sad that K[...] had to witness such brutality at his tender age.

[16] The deceased was taking care of her children and her grandchildren; the accused deprived her children of a mother and the grandchildren of their grandmother.

[17] In this country gender-based violence is very prevalent, the statistics are growing every day about the murder of intimate partners. The constitution gives everyone a right to life, but women and children are no longer safe in this country. Women and children are not safe in their own homes. Women are killed every day by their partners who, at some stage told them I love you; I want you to be my wife, but a day will come when they kill them brutally. The courts need to protect them.

[18] The legislature realised that the crime is out of control in South Africa and passed the Minimum Sentence Act in 1997. The aim was to try to curb the spiralling offences it mentioned in the Act.

[19] As stated in *S v Makhadu*,⁵ it was stated that despite all these valiant efforts by government, we are not winning the war against these crimes. In *S v Malgas*,⁶ the court held that the prescribed minimum sentence must be imposed unless substantial and compelling circumstances justify a lesser sentence. The framework was designed to ensure that serious offences are punished with severity they warrant while still allowing for judicial discretion in appropriate cases.

[20] In *S v Kruger*,⁷ Shongwe JA with Harems AP and Plaskett AJA concurring, confirmed that punishing a convicted person should not be likened to revenge, it

⁵ *S v Makatu* 2014 (2) SACR 539 (SCA) at para 31.

⁶ *S v Malgas* 2001 (1) SACR 469 (SCA) at para 3(a).

⁷ *S v Kruger* 2012 (1) SACR 369 (SCA) at para 11.

must have all the elements of and purposes of punishment, prevention, retribution, individual and general deterrence and rehabilitation.

[21] The Court has to evaluate all the aggravating and mitigating circumstances to decide whether substantial and compelling circumstances exist in this matter to justify the departure from the prescribed minimum sentence.

[22] The Court must be alive to the fact that the legislature has ordained a particular sentence for the offences committed by the accused. In line with *S v Matyityi* at paragraph 23, the Supreme Court Appeal emphasised that the prescribed minimum sentences should not be departed from lightly or for flimsy reasons. Life imprisonment is the ultimate penalty that the courts can impose and should not be imposed, departed from lightly.

[23] The question is whether the personal circumstances and other circumstances, substantial and compelling circumstances of the accused amount to such.

[24] It was held in *S v Vilakazi*,⁸ that it is clear from the terms in which the test was framed in *Malgas* and endorsed in *Dodo* that it is incumbent upon the court in every case, before it imposes a prescribed minimum sentence, to assess, upon a consideration of all the circumstances of a particular case, whether the prescribed minimum sentence is indeed proportionate into that particular offence.

[25] The Constitutional Court made it clear that what is meant by the offence in the context, and that is the sense in which I will use the term throughout this judgment unless the context indicates otherwise, consists of all the factors relevant to the nature and seriousness of the criminal act in itself as well as all the relevant personal and other circumstances relating to the offence, which could have a bearing on the seriousness of the offence and the culpability of the offender. If a Court is indeed satisfied that a lesser sentence is called for in a particular case, this justifying a departure from the prescribed sentence then it hardly needs saying that the Court is bound to impose that lesser sentence.

[26] That was also made clear in *Malgas*, which said that the relevant provisions in the Act vests the sentencing court with the power indeed, the obligation to consider whether the particular circumstances of the case require a different sentence to be imposed and a different sentence must be imposed if the Court is satisfied that substantial and compelling circumstances which justify it.

⁸ *S v Vilakazi* [2008] 4 All SA 396 (SCA) at para 15.

[27] Given the high level of violent crimes in this country as stated above, emphasis must be placed on retribution and deterrence. In *Kekana v S*⁹:

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

[28] This was well articulated in *S v Chapman*,¹⁰ when this court said the following:

"Women in this country have the legitimate right to walk peacefully on the street, to enjoy their shopping and their entertainment, to go and come from work and to enjoy the peace and tranquillity of their homes without the fear of apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives."

[29] The accused person, when he killed the deceased, his wife, did not show that he has regard to human life. For a partner to be so heartless and coldblooded towards his wife of so many years, more than 30 years to be exact, is scary. It is therefore the duty of the courts to protect citizens this country and the society at large, from the scourge of these violent offences and to send a clear message that this behaviour is unacceptable and will not be tolerated.

[30] Society has a legitimate expectation that criminal activities as displayed by the accused should be punished. After the accused testified in mitigation and the state handed the victim impact statement, both counsels addressed the Court.

[31] Both counsels addressed the Court in mitigation and in aggravation of sentence. On behalf of the accused, the counsel on behalf of the accused, he acknowledged that the accused has previous convictions and that the last one was committed back in 2008. He has a number of previous convictions and during cross-examination in mitigation it was put to him that why is he committing these offences and his response was that he was influenced by his friends at the time.

[32] Then the question will be if then he was influenced by the friends, the one, the present offence where he has been committed, who was influencing him to commit such. The counsel on behalf of the accused informed the Court that there are substantial and compelling circumstances. In short, he mentioned them as follows.

⁹ *S v Kekana* [2014] ZASCA 158 at para 20.

¹⁰ *S v Chapman* [1997] (3) SA 341 (SCA) at para 5.

[33] That the accused made some incrimination admissions he consumed liquor so this diminished his blameworthiness. The history of violence between the accused and the deceased, the period he spent in custody and also that the incident happened in the spur of the moment. It was further argued that the Court should consider the above and deviate from the prescribed minimum sentence.

[34] The state also addressed the Court and asked the Court to sentence the accused to life imprisonment and 15 years respectively. The state also handed in a victim impact statement by the daughter of the accused and the deceased and it was marked EXHIBIT H and it was handed in by consent.

[35] In the statement the victim C[...] M[...] detailed how her life has changed since the passing of her mother. She indicated that her mother was a Godfearing woman who was taking care of her the other siblings and the grandchildren. She indicated that since her mother is no longer available, she has now taken over the household responsibilities as she is the only one with a stable employment. She indicated that this has negatively affected all of them especially his brother, to a point that he started drinking heavily and now he is doing drugs.

[36] The incident, according to her, it is also affecting her personal relationships. She further said that that the passing of her mother gave her nothing but grief and trauma.

[37] The state indicated that there was no remorse on the part of the accused as the accused did not take the Court into confidence because even after the first blow he did not stop. When the deceased was running away from the accused, he followed her. The deceased ran to K[...]’s room and later to the bathroom, calling for help, but the accused continued with hitting her with the broomstick and later a spade. This the state informed the Court that shows that there was no remorse at all.

[38] The following are aggravating circumstances. The nature and the gruesomeness of the injuries, the fact that the accused left after the incident and locked the doors and the gate, which shows that he wanted the deceased to die without getting help. He did not report the matter to the police or call an ambulance or to anyone who might be of assistance.

[39] Even though he initially pleaded guilty, that does not show remorse because he is not completely honest with the Court. He took the phones belonging to K[...] and the deceased after when he left, meaning that he did not want K[...] or anyone to

call for help. By committing an offence in front of a 7-year-old K[...], by violating the protection order which was in place, killing her like an animal, the impact on the victims.

[40] As already indicated in *S v Matyityi*,¹¹ a plea of guilty is not a sign of remove *per se*, it may demonstrate a sign of feeling pity for oneself. The Court is of the view that the aggravating circumstances far outweigh the mitigating circumstances.

[41] All the evidence proved that the accused murdered the deceased gruesomely. To show her vulnerability she was kneeling in front of the deceased, according to Keleso, and never fought back.

[42] Even the family intervention which was arranged by his daughter did not assist. Even the protection order did not stop him from committing this offence. It is clear that the accused is not the kind to be deterred by the law as one looks at his long history of his previous convictions. Although the previous convictions are old but they show the kind of person he is.

[43] He is definitely the kind of person who needs to be removed from the society as the society needs to be protected from someone like him. The fact that he was under the influence of alcohol cannot be found to be a substantial and compelling circumstance.

[44] This is clearly set out in in the case of *Director of Public Prosecutions Grahamstown v TM*,¹² read with *S v Qamata*¹³ where the Court stated as follows:

"An appropriate sentence actually means a sentence in accordance with the blameworthiness of every individual offender. The punitive sanction should be proportionate in severity to the degree of blameworthiness or the seriousness of the conduct."

[45] In *S v Vilakazi*,¹⁴ Nugent JA said that:

"In cases of serious crime such as this, the personal circumstances of the offenders by themselves will necessarily recede in the background once it becomes clear that the crime is deserving of a substantial period of imprisonment."

[46] Having considered all the relevant facts, submissions by counsel and applicable legal principles, the Court finds that there are no substantial and compelling circumstances to justify a lesser sentence in this matter. The manner in

¹¹ *S v Matyityi* [2010] 2 All SA 424 (SCA) at para 13.

¹² *Director of Public Prosecutions Grahamstown v TM* [2020] ZASCA 5.

¹³ *S v Qamata* 1997 (1) SACR 479 at para (E) 483a.

¹⁴ *S v Vilakazi* [2008] 4 All SA 396 (SCA) at para 58.

which the deceased was killed was brutal and shows disregard to human life in the presence of a 7-year-old, which will create a lifelong trauma for the little one.

[47] The Court looked very closely at his personal circumstances and all the other factors cumulatively but did not find any substantial and compelling circumstances. In the result the Court finds the following against the accused:

[48] Murder, on the count of murder, read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 you are sentenced to life imprisonment.

[49] On the count of robbery with aggravating circumstances as intended in section 1 of the Criminal Procedure Act 51 of 1977, read with the provisions of section 51(2) and Part 2 of the Schedule 2 of the Criminal Law Amendment Act 105 1997, you are sentenced to 15 years imprisonment.

[50] The accused is also declared unfit to possess a firearm in terms of Section 103(1) of the Firearms Control Act 60 of 2000.

**MORE AJ
JUDGE OF THE HIGH COURT
PRETORIA**

Date of Judgment : 20 February 2026

Appearances:

For the State: Adv Sivhidzho

Instructed by: Director of Public Prosecutions

For the accused: Adv Matshego

Instructed by: Legal Aid South Africa

