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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC66/2024

DATE: 27.03.2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED

In the matter between

10 THE STATE

and

ALBERT TSEBO MOSIKILI

Accused

S E N T E N C E

MATLAPENG, AJ: Mr Tsebo Mosikili appears before me,
convicted of the following counts.

Count 1: Kidnapping.

Count 2: Premeditated murder, read with the
20 provisions of section 51(1) of the Criminal Law Amendment
Act 105 of 1997.

Count 3: Rape.

[1] The Court must now consider what an appropriate

sentence is and in the assessment of what an appropriate sentence is, the Court must have regard to and pay attention to the trite mentioned in the case of *R v Zinn* 1969 (2) SA 537 (A). That is, the accused, his personal circumstances, the offences of which he has been convicted and the interest of the community. None of these factors should be overemphasised at the expense of, and to the exclusion of others.

[2] In the case of Rabie, *R v Rabie* 1975 (2) SA 855 (A),
10 it was said that punishment should fit the criminal, as well as the crime, be fair to society and be blended with a measure of mercy, according to the circumstances.

[3] The crimes against the accused took place against the following factual background. On the night of 1 March 2024, N[...], Karabo Jonas and the deceased in this matter to wit, Rabobohile Mofokeng were at a tavern in Evaton. The accused and his girlfriend, Sibongile found them at the tavern. It was decided that the entourage should proceed to Jonas' place, situated at Beverly Hills,
20 Evaton.

[4] In the morning on the same day, at about 6, the deceased left for her parental place. After her departure, it was said that money an amount of R2 000 is missing and that the deceased should be approached and asked about the missing money.

[5] According to Karabo, this money was in his trouser pocket and this trouser was in a boot of Jonas's vehicle.

[6] The accused was amongst the people who went to the deceased's place. He forcefully grabbed and put the deceased into his girlfriend's car. He proceeded back to Jonas's place of residence and upon their arrival at Jonas's place, in the dining room, the accused set up a Kangaroo court.

[7] The accused confronted the deceased about the
10 money alleged to have been missing. The latter denied knowledge of this money.

[8] The evidence is that after a lengthy interrogation and assault, the deceased confessed to having taken the money. It is worthy to mention that persons would often forcefully admit guilt in order to escape pain or further injury.

[9] The accused killed the deceased by putting a plastic over her head, thereby suffocating her. He first put a plastic over N[...]s head. The latter teared it. He is fortunate that he was not charged with attempted murder of
20 N[...].

[10] The evidence is that Karabo and Jonas were reprimanding the accused, but the latter did not want to listen.

[11] The evidence presented is that the accused uttered the words, to the effect, following before he killed the

deceased. “You produce the money or I will kill you and nobody is going to stop me, I am unstoppable.” These utterances are clear, specific and tangible, they demonstrate that the accused preplanned the murder of the deceased. On unfounded allegations of theft of a mere R2 000. The words referred to illustrates that the accused was behaving like a bull in a China shop. He illegally convicted the deceased of theft, sentenced her to capital punishment and executed the death penalty.

10 [12] As if this was not enough. After the deceased was manhandled and/or molested, N[...], the complainant in count 3, entered the room wherein the deceased was, with a view to checking on the deceased, the accused raped her.

[13] It must be borne in mind that the accused’s evidence is that he was sober at the time of the incident, because he had slept for some hours before he was woken up at 6 in the morning and informed about the missing money.

[14] The court in the case of *S v Malgas* 2001 (1) SACR 469 (SCA) established that the fact that Parliament
20 had enacted the minimum sentence legislation, is a clear indication that it is no longer business as usual and that the courts must approach the question of sentencing, conscience of the fact that the Minimum Sentence Act had been ordained as the sentence which should ordinarily be imposed, unless the Court can find that there are

substantial and compelling circumstances. The court held further that the legislature was aiming at and ensuring that severe sentences are imposed and to be deviated from, only when there are convincing reasons to do so.

[15] Every human being has the inherent right to life and no one shall be arbitrarily deprived of his or her right to life. Section 11 of the Constitution of the Republic of South Africa Act 108 of 1996 provides that:

“Everyone has the right to life.”

10 [16] Closely akin to the protection of right to life in the Constitution, is the protection of one’s right to freedom and security of the person. Section 12(1) of the Constitution provides:

“That everyone has the right to freedom and security of the person, which includes;

- (a) the right not be deprived of freedom arbitrarily, or without just cause;
- 20 (c) to be free from all forms of violence, from other public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in

a cruel, inhuman or degrading way.”

[17] In terms of section 36 of the Constitution, the rights in the *Bill of Rights* may be limited in exception of the right to life, which is an absolute right.

[18] The fundamental human rights to life was infringed upon by the accused in this matter. On 3 February 2026, I convicted him of murder of the deceased in this matter.

[19] In the case of *Jabulani Tshabalala v The State, Ntuli v The State* (2019 ZACC 41) it was held that:

“Rape at its core is an abuse of power expressed in a sexual way. It is characterised with power on one side and this empowerment and degradation on the other. Without more been said, we know which gender falls on which side.”

[20] The Supreme Court of Appeal in the case of *S v Chapman* (1997 ZASCA 45) 1997 (3) SACR 341 (SCA) held that”

20 “Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.”

[21] Accused did not testify or call witnesses in mitigating

of sentence. Adv Simpson on his behalf addressed the Court from the bar. Adv Simpson argued that the following factors cumulatively taken into account, should be found to constitute substantial and compelling circumstances justifying this Court to deviate from imposing the prescribed sentence of life imprisonment on the murder count.

(a) Accused is 31 years of age. He has three children aged 11, five and four years old respectively. He is a first offender. He has been
10 in custody awaiting sentencing for nearly two months. He has a tendency to suffer from depression. Accused had consumed alcohol on the day of the incident and before the murder of the deceased.

[22] The evidence demonstrated that they were on a drinking spree from the tavern up to and until they reached Jonas's place before the deceased departed this planet earth on the morning of 2 March 2024.

[23] The probation officer to wit, Phindiwe Tyuwa compiled
20 a presentence report, which was handed in as EXHIBIT G. She states in the report that the accused does not show a sign of remorse. That he informed the probation officer that he had consensual sex with N[...], even though his girlfriend Sibongile was present.

[24] According to the probation officer, the accused is

refusing to take accountability and acknowledge his wrongdoing, even though the evidence is overwhelming against him. The probation officer states that such individuals become problematic when rehabilitation process is initiated in the Correctional Facility. The probation officer recommended a period of imprisonment in terms of section 276(1)(b) of the Criminal Procedure Act 51 of 1977, regard been had to the circumstances under which these offences were committed.

10 [25] Adv Simpson referred the Court to the case of Peloele 2022 (2) SACR 249 (SCA) where it was held that lack of remorse is a neutral factor.

[26] Adv Simpson also referred the Court to the unreported full court decision of the Western Cape in the case of *S v Ngcukana*, judgment delivered on 18 August 2017. Where the court held that the Supreme Court of Appeal has taken the prospect of rehabilitation into account, despite the fact that the accused pleaded not guilty and maintained his innocence throughout the trial.

20 [27] Adv Simpson argued further that the Court should find that there are substantial and compelling circumstances that will enable this Court to impose a lesser sentence. She holds the view that a sentence of less than 20 years will be an appropriate one under the circumstances.

[28] The state handed in a victim impact report in respect

of N[...] M[...], who is the mother of the deceased in this matter. It is the version of the deceased's mother that the deceased had a sibling. The father died when the deceased was still young. It is the mother's version further that the family is experiencing emotional stress because of the loss of the deceased. That the family is struggling to cope and remain deeply affected by the loss. The mother states further in the report that the deceased has left a void in the family, that they are traumatised and struggling to cope.

10 [29] A victim impart report of N[...], the complainant in the rape count was also handed in as EXHIBIT J. It is stated in the report that N[...] is currently psychologically vulnerable and continues to suffer from emotional consequences of the incident. It states further that N[...] suffers from post-traumatic-stress-disorder.

[30] This Court must sound a warning and it is requesting the members of the public present in court today to convey the message to the public in general, that anyone convicted of rape in future will be severely sentenced. Men should
20 respect women. If a woman says no to sexual intercourse, she means it and a no, is a no. They must not mistake a no for a yes.

[31] The accused is convicted of serious offences, which are rife in the jurisdiction of this court. No amount of words can describe the seriousness of the offences of which the

accused has been convicted. But I am in agreement with Adv Simpson for the defence that the personal circumstances of the accused, coupled with the fact that liquor played a part that cumulatively taken into account, constitute substantial and compelling circumstances entitling this Court to deviate from imposing the prescribed sentence of life imprisonment.

[32] After having considered all the relevant factors, the one against the other in an attempt to strike a balanced
10 sentence, the Court is of the view that the sentence to be pronounced shortly is proportional to the crimes committed and that in all the circumstances it is a just one. In the result the accused is sentenced as follows:

Count 1: Kidnapping, 5 years' imprisonment.

Count 2: 20 years' imprisonment.

Count 3: 15 years' imprisonment.

It is ordered that 5 years of the sentence imposed in count 3 and the sentence imposed in count 1 should run concurrently with the sentence imposed in count 2. The
20 effective term is 30 years' imprisonment.

The accused is declared unfit to possess a firearm.

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MATLAPENG, AJ

JUDGE OF THE HIGH COURT

DATE:



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