

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

24 APRIL 2026

DATE

SIGNATURE

CASE NUMBER: SS29/2025

In the matter between:

THE STATE

and

MOYO CLIFFORD

Accused 1

NCUBE NHLANHLA

Accused 2

SENTENCE

DOSIO J:

Introduction

[1] Accused one has been found guilty of the following offences:

- (a) Five counts of murder, read with the provisions of s51(1) of the Criminal Law Amendment Act 105 of 1997 ('Act 105 of 1997'), in respect to counts four, five, eight, nine and thirteen.

- (b) Three counts of robbery with aggravating circumstances in respect to counts one, three and seven.
- (c) Two counts of possession of an unlicensed firearm, (a contravention of s3 of the Firearms Control Act 60 of 2000), in respect to counts ten and fourteen.
- (d) Two counts of unlawful possession of ammunition, (a contravention of s90 of the Firearms Control Act 60 of 2000, 'Act 60 of 2000').
- (e) One count of assault with intention to do grievous bodily harm (count 6).
- (f) One count of a contravention of s49(1)(a) of the Immigration Act 13 of 2002, ('Act 13 of 2002').

[2] Accused two has been found guilty of the following offences:

- (a) Three counts of murder, read with the provisions of s51(1) of Act 105 of 1997 in respect of counts eight, nine and thirteen.
- (b) Four counts of robbery with aggravating circumstances in respect to counts one, two, three and seven.
- (c) Two counts of possession of an unlicensed firearm, (a contravention of s3 of Act 60 of 2000).
- (d) Two counts of unlawful possession of ammunition, (a contravention of s90 of Act 60 of 2000).
- (e) One count of a contravention of s49(1)(a) of Act 13 of 2002.

[3] For purposes of sentence, this Court has taken into consideration the personal circumstances of the accused, the seriousness of the offences for which they have been found guilty and the interests of the community.

The personal circumstances of the accused

Accused one

- [4] Accused one is 39 years old with three children aged 19, 7 and 4 years old respectively. He has a matric and was working for a construction company doing paint and plaster work. The accused is married but his wife and children live in Zimbabwe and are maintained by the family of his wife.
- [5] Accused one has been in custody for more than one and a half years awaiting trial.

- [6] As regards whether this court should find substantial and compelling circumstances, accused one's legal representative has left this in this court's hands.
- [7] Accused one does have previous convictions, namely of housebreaking and possession of presumably stolen property, for which he was convicted in 2012.

Accused two

- [8] Accused two is 32 years old in that he was born on 17 September 1993 in Zimbabwe.
- [9] His father died in 2008, and he had to quit school to look after his mother and siblings. He accordingly only completed standard seven. He came to South Africa, from Zimbabwe, to look for work in 2018. He started working as a panel beater and earned R180-00 per day which was sufficient to support his family and a seven-year-old child. After this job, he then worked as a builder until the date of his arrest.
- [10] Accused two is married and has a previous conviction of a contravention of s49(1)(a) of Act 13 of 2002, for entering the republic in contravention of this Act.
- [11] Accused two is in good health and was 30 years old at the time of his arrest.
- [12] The legal representative of accused two has indicated that the role the accused played in these matters must be regarded as substantial and compelling factors to depart from the minimum prescribed sentences, and that even though accused two has shown no sign of remorse it is his constitutional right to test the case. In addition, although he is not young, that this court must take into consideration that accused two was supporting his family.

The seriousness of the offences

- [13] In respect to the murder counts four, five, eight and nine, all these deceased were killed in a very short span of time. The accused entered the house at 1[...] D[...] Street, T[...] and killed these deceased in a senseless way. With the exception of one deceased, all others were shot in the head.
- [14] As regards the murder count in respect to count thirteen, this also was a senseless killing.

- [15] It is clear to this court that the accused have no regard to the value of life and that these deceased were killed mercilessly.
- [16] Murder is the most serious of crimes. Not only does it end the life of a loved family member, but it leaves many unanswered questions and pain for the remaining family members.
- [17] The deceased in counts four and five were in their eighties. They were in the comfort and sanctity of their home having completed watching a rugby match on tv when these accused entered their house, killed them and robbed them. The deceased on count five was sickly and frail and clearly did not even attempt to disarm or try to fight back, yet he was still shot in cold blood. The granddaughter, Nompumelelo was exposed to extreme trauma when she witnessed her own grandmother being shot. So too did Fikile suffer extreme trauma having to listen to her mother, namely, the deceased on count four praying not to be shot.
- [18] It is true that accused two told accused one to leave, in that Proud was not there, however, he did not attempt to disarm accused one and he definitely did not go out of this house to disassociate himself by what was going on. In fact, he clearly partook in everything else that was going on and benefitted from the robbery.
- [19] To date none of the items have been recovered and none of the R12000-00 cash stolen from Esther Nzimande has been retrieved.
- [20] Due to the fact that both accused had jobs its clear they acted out of greed and not need.

Interests of the community

- [21] In respect to the interests of the community, this court has taken note of the fact that the community observes the sentences that courts impose, and the community expect that the criminal law be enforced and that offenders be punished. The community must receive some recognition in the sentences the courts imposed, otherwise, the community will take the law into their own hands. If a proper sentence is imposed, it may deter others from committing these crimes. Due to the fact that murder of helpless and

innocent victims has reached high levels, the community craves the assistance of the courts.

- [22] In *S v Msimanga and Another*¹, the Court held that violence in any form is no longer tolerated and our Courts, by imposing heavier sentences, must send out a message both to prospective criminals that their conduct is not to be endured, and to the public that Courts are seriously concerned with the restoration and maintenance of safe living conditions and that the administration of justice must be protected.
- [23] Section 51(1) of Act 105 of 1997 dictates that if an accused has been convicted of an offence referred to in part 1 of schedule 2, he shall be sentenced to life imprisonment.
- [24] Life imprisonment is accordingly applicable in respect to counts four, five, eight, nine and thirteen.
- [25] In respect to counts one, two, three and seven, they fall under the provisions of schedule 2 part two offences and the minimum prescribed sentence for a first offender of robbery with aggravating circumstances is 15 years imprisonment.
- [26] Section 51(3) of Act 105 of 1997 states that if any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in this subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.
- [27] In the matter of *S v Malgas*,² the Supreme Court of Appeal held that:
 ‘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.’³

¹ *S v Msimanga and Another* 2005 (1) SACR 377 (A)

² *S v Malgas* 2001 (1) SACR 469 SCA

³ *Ibid* para i

- [28] Notwithstanding the application of the prescribed minimum sentences this court has considered other sentencing options, however, direct imprisonment is the only suitable sentence as the accused are a danger to the community.
- [29] This court cannot only consider the accused's personal circumstances, but must also consider the interests of the community as well as prevention and deterrence. To focus on the well-being of the accused to the detriment of the interests of the community would result in a distorted sentence.
- [30] In the matter of *S v Matyityi*,⁴ the Supreme Court of Appeal held that:
 'Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation continues to be alarming...one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest of reasons... As *Malgas* makes plain courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences...Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as 'relative youthfulness' or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer's notion of fairness.'⁵
- [31] The accused have not shown any remorse in this matter. They decided to plead not guilty, which although it is their constitutional right, they had the choice to come to the witness bench and plead mercy knowing that they had been found guilty of killing these deceased, yet they persist with their belief that they are innocent. As a result, this Court finds no remorse on the part of the accused or any possibility of rehabilitation. They are dangerous and need to be removed from the community.
- [32] This court has considered the fact that the accused are in their thirties, however, as stated in the matter *S v Matyiti*⁶, the Supreme Court of Appeal held that 'at the age of 27 the respondent could hardly be described as a callow youth. At best for him his chronological age was a neutral factor'. As a result, this Court finds there are no substantial and compelling circumstances present in respect to the accused on any of the murder counts that warrants a departure from the minimum prescribed sentences.

⁴ *S v Matyityi* 2011 (1) SACR 40 SCA

⁵ *Ibid* para 24

⁶ *Matyityi* (note 4 above)

[33] The accused have been in custody for more than a year, but as stated in the matter of *DPP v Gcwala*⁷, the Supreme Court of Appeal held that the period in detention pre-sentencing is but one of the factors that should be taken into account in determining whether the effective period of imprisonment to be imposed is justified and whether it is proportionate to the crimes committed. It was further stated in this case that the test is not whether on its own that period of detention constitutes a substantial and compelling circumstance, but whether the effective sentence proposed is proportionate to the crimes and whether the sentence in all the circumstances, including the period spent in detention prior to conviction and sentence is a just one. This Court finds the sentences of life imprisonment in respect to counts four, five, eight, nine and thirteen are a just sentence in the circumstances of this case. There are varying amounts and items robbed in the many robberies with aggravating circumstances, and in this regard, this court does find substantial and compelling circumstances in respect to those counts.

[34] Accordingly, the accused are sentenced as follows:

Accused one

Count 1: eight (8) years imprisonment
 Count 3: fifteen (15) years imprisonment
 Count 4: life imprisonment
 Count 5: life imprisonment
 Count 6: three (3) years imprisonment
 Count 7: eight (8) years imprisonment
 Count 8: life imprisonment
 Count 9: life imprisonment
 Count 10: ten (10) years imprisonment
 Count 12: eight (8) years imprisonment
 Count 13: life imprisonment
 Count 14: ten (10) years imprisonment
 Count 16: eight (8) years imprisonment
 Count 18: three (3) months imprisonment

⁷ *DPP v Gcwala* (295/13) [2014] ZASCA 44 (31 March 2014)

Counts one, three, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, sixteen and eighteen are all to be served concurrently with the sentence of life imprisonment imposed on count four.

In terms of s103(1)(g) of Act 60 of 2000, the accused is declared unfit to possess an arm.

Accused two

Count 1: eight (8) years imprisonment

Count 2: six (6) years imprisonment

Count 3: fifteen (15) years imprisonment

Count 7: eight (8) years imprisonment

Count 8: life imprisonment

Count 9: life imprisonment

Count 11: ten (10) years imprisonment

Count 12: eight (8) years imprisonment

Count 13: life imprisonment

Count 15: ten (10) years imprisonment

Count 16: eight (8) years imprisonment

Count 17: three (3) months imprisonment

Counts one, two, three, seven, nine, eleven, twelve, thirteen, fifteen, sixteen and seventeen are all to be served concurrently with the sentence of life imprisonment imposed on count eight.

In terms of s103(1)(g) of Act 60 of 2000, the accused is declared unfit to possess an arm.

D DOSIO
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

ON BEHALF OF THE ACCUSED:

Mr Davids (for accused 1)

Instructed by Legal Aid SA, Johannesburg

Adv Ngxumza (for accused 2)

Instructed by Legal Aid SA, Johannesburg

ON BEHALF OF THE STATE:

Adv. Adonis

Instructed by the Office of the National

Director of Public Prosecutions, Johannesburg

ARGUED ON:

22 April 2026

JUDGMENT HANDED DOWN:

23 April 2026