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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A285/2024

JUDGMENT HEARD ON: 17 MARCH 2026

JUDGMENT: 16 April 2026

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

DATE : 16 April 2026

SIGNATURE

In the matter of:

MAITE ABRAM MOGALE

APPELLANT

AND

THE STATE

RESPONDENT

JUDGMENT

Strijdom, J

INTRODUCTION

1. The appellant was charged in the regional court at Atteridgeville with rape in contravention of section 3 read with sections 1, 56(1), 57, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Act)¹ read with section 51(1) of Act 105 of 1997.
2. The appellant was legally represented during the trial and pleaded not guilty to the charge of rape. Despite his plea of not guilty, he was convicted as charged.

¹ Act 32 of 2007

3. The appellant was informed of the minimum prescribed sentence of life imprisonment which could be imposed in terms of Act 105 of 1997.
4. On 14 March 2022 the appellant was sentenced to life imprisonment.
5. The appellant has an automatic right of appeal in terms of section 309 of the Criminal Procedure Act 51 of 1977, read with section 10 and 43(2) of the Judicial Matters Amendment Act 42 of 2013.

THE SALIENT FACTS

6. In the notice of appeal, the appellant appeals only against sentence.
7. The complainant a 5-year-old girl testified that in March 2017 on a date she does not remember she was brushing her teeth behind her grandmother's house when appellant called her to go and buy "Simbas". She went to buy and upon her return the appellant said she must enter Jack's house. Jack is the appellant's friend and the complainant's neighbour. He said she must enter the bedroom where he instructed her to undress and face the wall. She did so and he told her to climb onto the bed. He then inserted his penis into her anus and vagina. She felt pain but did not cry nor did she scream or call anyone.
8. When he was done, he said she must dress up and he told her not to tell anyone as it is between them. She told her grandmother.
9. S[...] C[...] testified that whilst sleeping, the complainant had a nightmare in which she was shouting that she would kill the appellant when she grows up. She woke the complainant up and tried to calm her down. The complainant explained to her what the appellant had done to her.

GROUND OF APPEAL

10. It was submitted on behalf of the appellant that the sentence imposed is shockingly harsh and inappropriate.
11. It was further argued that the court a quo erred by not finding substantial and compelling circumstances to depart from the prescribed life imprisonment.

THE SENTENCE

12. It is trite that the court of appeal will only interfere with the conviction and/or sentence of the lower courts if there is a substantial misdirection as to the law or fact or if the sentence induces a sense of shock or is manifestly inappropriate.²
13. In *S v Vilakazi*³, Nugent AJ, interpreted the determinative test as set out in *S v Malgas*⁴ as justifying the view that any sentence considered to be disproportionate to the offence committed would be justification for the imposition of a lesser sentence. This is irrespective of whether substantial and or compelling circumstances exist or not.
14. In *S v Malgas* 2001 (2) SA 499 (SCA) guidelines for what constitutes substantial and compelling factors had been set out in *S v Ntsheno*, *S v Dlamini* and *S v R*,⁵ the court was of the view that substantial and compelling factors are all the factors taken in account in sentencing or all “everyday factors”.
15. It was submitted on behalf of the appellant that the following factors considered cumulatively may be construed as substantial and compelling.
 - 15.1 The appellant was 35 years old at the time of sentencing
 - 15.2 He is the father of 3 minor children.

² *S v Obisi* 2005 (2) SACR 350 (WLD)

³ 2009 (1) SACR 552 (SCA)

⁴ 2001 (2) SA 469 (SCA)

⁵ 2010 (1) SACR 295 (GSJ)

15.3 He is a first time offender.

15.4 He was unemployed but made a daily commission of R100 from selling drinks. He applied this money towards the maintenance of his children.

15.5 The appellant can be rehabilitated.

16. The following factors can be regarded as aggravating factors:

16.1 Rape is a serious offence and is prevalent in the whole country.

16.2 The appellant showed no remorse for his actions.

16.3 The victim of this offence was a minor (5 years old), a member of society considered vulnerable.

16.4 The appellant betrayed the trust relationship that existed between himself and the complainant. He was taken not only as a neighbour, but as someone who could be trusted with the safety of the victim.

16.5 The trauma suffered by complainant was immediately evident as she had nightmares.

16.6 The appellant has violated the complainant's constitutional right to privacy and bodily integrity.

17. Rape is a serious offence. It offends against the victim's rights to personal freedoms, strips their dignity off, violates their privacy and dehumanizes them.

18. In ***S v Mudau***⁶ it was stated that rape is "a degrading, humiliating and brutal invasion of a person's most intimate private space. The very act itself, even absent any accompanying violent assault inflicted by the perpetrator, is a violent and traumatic infringement of a person's fundamental right to be free from all forms of violence and not to be treated in a cruel inhumane or degrading way."

⁶ 2013 JDR 0938 (SCA) See also ***S v Zikhali*** 2023 JDR 4304 (GP)

19. I conclude that, taking into account the circumstances of this case, the nature of the offence and its impact on the victim and the society, there was no misdirection on the part of the trial court imposing life imprisonment.
20. Taking into consideration the mitigating and aggravating circumstances, the sentence imposed is not disproportionate to the crime, the offender, the victim and the interest of society.
21. In the result, the following order is made:
1. The appeal against sentence is dismissed.

I agree,

Strijdom JJ
Judge of the High Court, South Africa
Gauteng Division, Pretoria

Mzuzu AJ
Acting Judge of the High Court, South Africa
Gauteng Division, Pretoria

Appearances:

For the applicant:	Adv S Simpson
Instructed by:	Legal Aid South Africa
For the first respondent:	Adv EM Mafunisa
Instructed by:	Director of Public Prosecutions