



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

In the matter between:

CASE: CC 02/2025

THE STATE

and

JOHN MMOLOTSI

ACCUSED

Coram: Reddy J

Date enrolled: 5 May 2026

Judgment reserved: 5 May 2026

Delivered: This judgment was handed down on 7 May 2026 at 14h00 at the Klerksdorp Circuit, and was uploaded to CaseLines and released to SAFLII on 12 May 2026 at 10h00.

Summary:

Criminal law — Sentence — Murder — Premeditation — Section 51(1) of the Criminal Law Amendment Act 105 of 1997 — Accused convicted of two counts of premeditated murder — Prescribed minimum sentence life imprisonment — Personal circumstances — Accused aged 35 years, unmarried, father of three minor children aged 12, 9 and 3 years — Active role in children's lives, providing emotional and financial support — Not primary caregiver — Permanently employed as painter and general

construction worker — Grade 12 education — First offender — Pre-trial detention since December 2023 (approximately two and a half years) — No genuine remorse — Absence of remorse undermines rehabilitation, which presupposes acknowledgement of responsibility — *S v Matyityi* 2011 (1) SACR 40 (SCA) applied — Verbal threats by deceased against accused accepted as common cause for sentencing purposes — Threats incapable of affording substantial mitigation given gross disproportionality of response — Deceased Ivy Mbese, aged 42 years, stabbed eighteen times, cause of death multiple stab wounds — Deceased Palesa Mbese, aged 23 years, stabbed five times, cause of death multiple stab wounds — Victim impact statements presented by Mxolo Beauty Mbese and Mmabatho Christina Mbese — Pre-trial detention one factor in proportionality enquiry, not free-standing substantial and compelling circumstance — *S v Radebe and Another* 2013 (2) SACR 165 (SCA); *S v Ludidi and Others* (983/2022; 056/2024) [2024] ZASCA 162; 2025 (1) SACR 225 (SCA) applied — First-offender status alone insufficient — *S v Malgas* 2001 (1) SACR 469 (SCA) applied — No substantial and compelling circumstances found — Life imprisonment imposed on each count, sentences to run concurrently — Accused *ex lege* unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000 — Section 299A notification ordered.

JUDGMENT

REDDY J

Introduction

[1] The accused, John Mmolotsi, has been convicted on two counts of murder, this court being satisfied in each instance that the murder was

planned and premeditated as contemplated in section 51(1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the CLAA). It is now the duty of this court to impose an appropriate sentence. The determination of an appropriate sentence is universally recognised as one of the most arduous and exacting duties a judicial officer must undertake, demanding profound reflection and a meticulously balanced mind.

[2] In deciding what that sentence should be, this Court must bear in mind three main factors. These are the personal circumstances of the accused, the seriousness of the crimes of which he has been convicted, and the interests of society.¹ Although these interests may at times be in tension with one another, it is expected of this court to maintain a fine balance between them and not to over or underemphasise any one of them.

[3] On the question of mercy, I can do no better than to quote the celebrated passage of Holmes JA in *S v Rabie*² where the following was posited:

"To sum up, with particular reference to the concept of mercy (i) it is a balanced and humane state of thought; (ii) it tempers one's approach to the factors to be considered in arriving at an appropriate sentence; (iii) it has nothing in common with maudlin sympathy for the accused; (iv) it recognises that fair punishment may sometimes have to be robust; (v) it eschews insensitive censoriousness in sentencing a fellow mortal, and so avoids severity in anger; (vi) the measure of the scope of mercy depends upon the circumstances of each case."

¹ *S v Zinn* 1969 (2) SA 537 (A) as at 540[G-H].

² *S v Rabie* 1975 (4) SA 855 (A) at 862[D-F].

Personal circumstances of the accused

[4] I turn to address the first pillar of the triad, the personal circumstances of the accused. He is an adult male, thirty five (35) years of age. He is unmarried and the father of three minor children, aged twelve (12), nine (9), and three (3) years, respectively. Although he is not their primary caregiver, it was placed before this court that he has played an active and meaningful role in their lives, providing both emotional and financial support.

[5] The accused holds a Grade 12 certificate, which he completed notwithstanding the financial constraints that precluded him from pursuing the tertiary education in agriculture and technology to which he aspired. At the time of his arrest, he was permanently employed as a general construction worker at Sanwes. He has no previous convictions and is a first offender.

[6] The accused was arrested on 2 December 2023 and has remained in custody throughout these proceedings, a period of approximately two and a half years.

[7] The accused maintained his innocence throughout the trial, advancing a version of events this court found elaborate and contrived. Following his conviction, no genuine expression of remorse was forthcoming. The absence of genuine remorse is an aggravating factor relevant to his moral blameworthiness and, as this court further addresses below, it fundamentally

undermines any meaningful prospect of rehabilitation, since one cannot rehabilitate what one refuses to acknowledge.³

The seriousness of the crimes

[8] The second pillar concerns the seriousness of the crimes. Murder is one of the most serious crimes that any person can commit. The right to life is enshrined in section 11 of the Constitution of the Republic of South Africa, 1996, and is foundational to our entire constitutional order. As was enunciated in *S v Chapman*⁴, courts are under a duty to send a clear message that they are determined to protect the dignity and physical integrity of every person. Notwithstanding that these remarks were made in *Chapman*, which concerned a rape conviction, those principles apply with no less force to premeditated murder.

[9] It is common cause, for purposes of sentencing, that verbal threats against the life of the accused were made by the deceased prior to the events of 2 December 2023. This court takes note of those threats and accepts that they formed part of the background against which the events of that day unfolded. To the extent that they provide context, they have been considered. They are, however, incapable of affording the accused any substantial mitigation. Verbal threats, however alarming, do not license the response that followed.

[10] Our law does not recognise self-help of the kind inflicted on Ivy and Palesa Mbese that day. Moreover, the nature of the accused's response, which included scaling a fence, pursuing two fleeing women into their home,

³ *S v Matyityi* 2011 (1) SACR 40 (SCA) at para 13.

⁴ *S v Chapman* 1997 (3) SA 341 para [4].

and inflicting eighteen stab wounds on one and five on the other, was grossly disproportionate to any threat that had been expressed as to deprive those threats of any meaningful mitigating force. What stands out is that the accused did not act to protect himself, but with the clear intention to murder.

[11] On 2 December 2023, the accused deliberately decided to scale the fence separating his property from that of Ivy Mbese and her daughter, Palesa Mbese. He pursued them as they fled into their home. He followed them inside and subjected each of them to a sustained and vicious attack. Palesa Mbese, aged 23 years, sustained five stab wounds and was declared dead at the scene. The post-mortem examination established that the cause of her death was multiple stab wounds.

[12] Ivy Mbese, aged forty two (42) years, sustained eighteen stab wounds. Notwithstanding the severity of her injuries, she survived the initial attack, was transported to the hospital, and succumbed to her wounds on 6 December 2023. The post-mortem examination established that the cause of her death was multiple stab wounds. The number and severity of the wounds inflicted on each of the deceased are not consistent with a single impulsive act. They speak to a sustained and deliberate assault, visited upon two defenceless women with deeply disturbing ferocity. The accused thereafter returned to his own property and sought forgiveness from his partner, brother, and uncle. Thereafter, the accused voluntarily surrendered to the police, conduct wholly consistent with deliberate, premeditated action.

[13] One cannot imagine the terror Ivy and Palesa Mbese experienced as they fled to the sanctuary of their home, only to be found and killed there. It follows that, as a result of the accused's conduct, their families have been

permanently deprived of their love, friendship, and companionship. It bears underscoring that nothing this court can say or do today can properly comfort those families for the tragic and irreversible loss they have suffered.

The interests of society

[14] I move to the interests of society, the final pillar of the triad. Afore addressing the legislative framework governing this sentencing process, this court must place on record that two written victim impact statements were presented during the sentencing proceedings. The first was presented by Mmabatho Christina Mbese, the mother of the deceased, and the second by Mxolo Beauty Mbese, the surviving daughter and sister of Palesa. Their statements are profoundly moving, and this court has taken full cognizance of their contents.

[15] Mmabatho Christina Mbese described the emotional devastation of losing her firstborn child and her grandchild in a single act of violence. She states that she has no peace in her life, that she lives in fear, and that the shock of learning of the deaths of her daughter and grandchild revisits her every day. She stated that seeing the accused in court deepened her pain to the point where she no longer wished to live. She described persistent crying since the killings, attending counselling without finding relief, and being unable to accept their deaths.

[16] In her statement, she disclosed that she prefers to die because she sees no point in living without them and that she is heartbroken. This has changed her irrevocably. She further placed on record the financial devastation occasioned by the murders. As a pensioner, she was wholly unprepared for

the cost of burying two family members, and her daughter had no life policy in place at the time of her death.

[17] She also described the secondary trauma experienced by other family members, including her son, Lucky Mbese, the deceased's brother and uncle, who is receiving counselling at Tsepong Hospital, and the surviving granddaughter, Mxolo Beauty Mbese, who is struggling to come to terms with the loss of her mother and sister. She concluded with a simple plea for justice for the deceased and peace.

[18] Mxolo Beauty Mbese, the surviving daughter, addressed the accused directly in her written statement. She posed several rhetorical questions, questioning whether the accused had considered what would become of her, who she would live with, what she would eat, and whether she would be well, and concluded that the accused had not thought of any of it. She described the accused as selfish and stated that she despised him for what he did to her mother and her sister.

[19] She stated that her life is no longer contented, that she blames the accused for everything, and that she wants him to be banished to jail for what he has done. She placed before this court a deeply personal account of the academic consequences of the trauma she suffered. Towards this end, in 2024, while completing her Grade 12, she was unable to cope and failed her trial examinations as a direct result of the trauma occasioned by the events of 2023. She stated in plain terms that she will never forgive the accused.

[20] These statements speak to the full and irreversible extent of the harm caused by the accused's conduct. They show that the consequences of what

occurred on 2 December 2023 extend far beyond the deaths of Ivy and Palesa Mbese. An entire family has been shattered. A mother has lost the will to live. A daughter has lost her academic footing. A son is in counselling. A grandchild is struggling to comprehend these unrequited circumstances. The interests of society demand a sentence that properly reflects the totality of that harm.

[21] Society has a compelling interest in protecting life and in the deterrent effect of sentences imposed for the most serious crimes. In enacting section 51 of the CLAA, Parliament expressed a clear legislative choice that premeditated murder must attract a sentence of life imprisonment unless substantial and compelling circumstances justify a lesser sentence. As Ponnann JA stated in *S v Matyityi*:⁵

"Parliament has spoken. It has ordained minimum sentences for certain specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them."

Aims and purposes of punishment

[22] It would be well to remind ourselves that, within the context of the sentencing triad as enunciated in *Zinn*, proper consideration and application of the aims and purposes of punishment are apposite. Punishment in our law serves four recognised purposes, namely deterrence, prevention, rehabilitation, and retribution. In *S v Banda and Others*⁶ it was held that a court must impose a sentence that properly reflects all of these purposes, though the circumstances of a particular case may require that emphasis be

⁵ *Matyityi* at para 23.

⁶ 1989 (4) SA 519 (BG),

placed on one or more of them at the expense of others, depending on the trilogy of pillars that constitute the triad.

[23] Deterrence operates on two levels. It discourages the individual offender from future offending, and signals to the broader community that conduct of this nature will attract the most severe sanction known to our law. Prevention speaks to the protection of society from an offender who has demonstrated both the capacity and the willingness to commit serious violence. Rehabilitation, whilst always a legitimate consideration, presupposes a foundation of genuine remorse and an acknowledgement of wrongdoing, without which its prospects are necessarily limited. The weight to be accorded to each of these purposes must be determined having regard to the totality of the circumstances, including the nature of the offences and the personal circumstances of the accused.⁷

[24] As regards retribution, it represents society's moral condemnation of conduct that violates the most fundamental of all rights, the right to life. The constitutional validity of prescribed minimum sentences has been confirmed by the Constitutional Court,⁸ and reflects a considered legislative choice that certain categories of serious offending must attract prescribed sentences unless there are truly convincing reasons for departing from them. I will return to how these purposes bear upon the particular circumstances of this matter.

⁷ *S v Swart* 2004 (2) SACR 370 (SCA) at 378C–D.

⁸ *S v Dodo* 2001 (3) SA 382 (CC) at para 38.

Whether substantial and compelling circumstances exist

[25] The approach to substantial and compelling circumstances is set out in *S v Malgas*.⁹ The sentencing court must approach the question conscious that the minimum sentence has been ordained by the legislature as that which should ordinarily be imposed. Deviation is not for flimsy or sentimental reasons. Simply put, the test is whether, viewed cumulatively, the circumstances of the case satisfy the court that the prescribed sentence would be disproportionate to the crime, the criminal, and the needs of society, so that an injustice would be done by imposing it.

[26] This court has carefully considered all the accused's personal circumstances. He is a 35 year old first offender, unmarried, the father of three minor children in whose lives he played an active role providing both emotional and financial support. He holds a Grade 12 certificate, was permanently employed at the time of his arrest, and has been in pre-trial detention since 2 December 2023, a period of approximately two and a half years. These circumstances, taken together with the total absence of genuine remorse, have been weighed. The first three categories carry some mitigating weight. The absence of remorse is aggravating.

[27] The period of pre-trial detention has been taken into account as one factor in the broader proportionality enquiry, as required by *S v Radebe and Another*¹⁰ and confirmed by the Supreme Court of Appeal in *S v Ludidi and Others*¹¹ and by this Division in *Radebe and Others v S (Sentence Appeal)*¹²

⁹ *S v Malgas* 2001 (1) SACR 496 as at para 25.

¹⁰ *S v Radebe and Another* 2013 (2) SACR 165 (SCA) at paras 13–14.

¹¹ *S v Ludidi and Others* (983/2022; 056/2024) [2024] ZASCA 162; 2025 (1) SACR 225 (SCA)

¹² *Radebe and Others v S (Sentence Appeal)* [2026] ZANWHC 18 at para 4.

and *Molema v S*¹³ As the Supreme Court of Appeal confirmed in *Ludidi*,¹⁴ a period of pre-trial detention, even when substantial, does not automatically justify deviation from a prescribed life sentence. In the present matter, a period of two and a half years cannot render the sentence disproportionate on the facts.

[28] In *S v Matyityi*¹⁵ Ponnann JA drew a sharp distinction between regret and genuine remorse, describing the latter as a gnawing pain of conscience for the plight of another that can arise only from a true appreciation and acknowledgement of the extent of one's error. Notwithstanding the accused having testified in mitigation, none of that appreciation was demonstrated before this court. The absence of genuine remorse is not only an aggravating factor, but it also fundamentally undermines any meaningful prospect of rehabilitation. This is because one cannot rehabilitate what one refuses to acknowledge.

[29] Viewed cumulatively and weighed against the gravity of deliberate, premeditated murders committed against two women who were fleeing into the sanctity of their own home, these factors do not constitute substantial and compelling circumstances. In sum, the period of pre-trial detention does not render a sentence of life imprisonment shockingly disproportionate, the Supreme Court of Appeal confirmed as much in *Ludidi*¹⁶ even in respect of a period of five years and eight months. A period of two and a half years cannot achieve that outcome. Being a first offender, in the absence of other truly exceptional personal circumstances, does not, in itself, tip the scales.

¹³ *Molema v S* [2023] ZANWHC 209 at paras 19–21 and 29.

¹⁴ Op cit fn 11 at para 15.

¹⁵ *Matyityi* Op cit fn 3 at para 13.

The absence of remorse forecloses any ground for greater leniency on that basis.

[30] This court can find no substantial and compelling circumstances, whether individually or cumulatively, that would justify the imposition of a lesser sentence than that prescribed by s 51(1) of the CLAA.

[31] Given that the accused is a first offender, this court cannot entirely rule out the possibility of future rehabilitation. It is hoped that the accused will avail himself of such rehabilitation programmes as are offered within the correctional system, as this can only be to his long-term benefit.

[32] In conclusion, I would like to thank both Advocate Goloda and Mr Semino for the way in which they presented their case and for the assistance they gave me in a very serious and traumatic matter.

Order

[33] In the premises, the accused is sentenced as follows:

[1] On Count 1 :

Life imprisonment, the court was satisfied that the murder of Xoliswa Ivy Mbese was premeditated as contemplated in section 51(1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

[2] On Count 2:

Life imprisonment, the court was satisfied that the murder of Nomsa Palesa Mbese was premeditated as contemplated in section 51(1) read

with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

- [3] No order is made directing that the sentences imposed in terms of counts 1 and 2 run concurrently. By virtue of section 39(1) of the Correctional Services Act 111 of 1998, all sentences of imprisonment imposed upon an offender who has been sentenced to life imprisonment are subsumed into and merge with the life sentence by operation of law. A separate concurrency order is therefore neither necessary nor appropriate.
- [4] In terms of section 103(1) of the Firearms Control Act 60 of 2000, the accused is *ex lege* unfit to possess a firearm.
- [5] In terms of section 299A of the Criminal Procedure Act 51 of 1977, the victims' next of kin are to be informed of the date upon which the accused becomes eligible for consideration for placement on parole, or any other form of release, so as to afford them the opportunity to make representations to the relevant authority.

A REDDY

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES

For the State:	Advocate Goloda
Instructed by:	Director of Public Prosecutions North West Province
For the Accused:	Mr. Semino
Instructed by:	Legal Aid South Africa
Date of hearing:	5 May 2026
Date of sentence:	7 May 2026
Revised :	11 May 2026