



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CCD53/2025

In the matter between:

THE STATE

and

O[...] T[...] S[...]

Accused

JUDGMENT

HENRIQUES J

Introduction

[1] In the last 18 months I have dealt with a number of matters involving the murder of a woman in a domestic relationship by her husband/partner or former partner. Matters involving gender-based violence have reached endemic proportions in our society. South Africa's femicide rate is five times higher than the global average. Violence towards women continues unabated in this country, despite the introduction of the Criminal Law Amendment Act 105 of 1997 (the CLAA), the stricter provisions recently added to the domestic violence legislation and the media coverage of such crimes.

[2] I have also had access to statistics extracted from a report of the Human Sciences Research Council (HSRC) dated 21 November 2025, which were compiled from data emanating from all nine provinces over the period from July to September 2024, and which dealt with the prevalence of physical, sexual, emotional and financial violence. The statistics referencing gender-based violence showed a marked increase during this period. During such period, 957 women were murdered, 1 567 women survived attempted murder attempts, 14 366 women were subjected to assault with resulting grievous bodily harm and 10 191 rapes were reported. It is against this backdrop that one must also consider appropriate sentences for persons convicted of such crimes.

[3] On 12 February 2026, I convicted the accused, a policeman, of the murder of his wife, T[...] V[...] S[...] (the deceased), which occurred in the sanctity of the home they shared with her children at 4[...] F[...] Street, Woodhaven.

[4] It is common cause that the provisions of s 51(1) and Part I of Schedule 2 of the CLAA are applicable, in that the deceased died as a consequence of physical abuse contemplated in paragraphs (a) and (b) of the definition of domestic violence in s 1 of the Domestic Violence Act 116 of 1998 (Domestic Violence Act), by the accused, whom she was in a domestic relationship with, as defined in s 1.

[5] As a presiding officer, I find the imposition of sentence one of the most difficult tasks which I have to grapple with. I agree with the sentiments expressed that it is 'a painfully difficult problem' which involves the careful and dispassionate consideration of all factors.

[6] The court must consider the traditional factors referred to in *S v Zinn*,¹ namely, the interests of society, the personal circumstances of the accused and the nature of the offences that have been committed. The court must also consider the recognised

¹ *S v Zinn* 1969 (2) SA 537 (A) (*Zinn* triad).

objectives of sentencing, being prevention, rehabilitation, deterrence and retribution.

[7] The seriousness of the offences, the circumstances under which they were committed and the victim are also relevant factors in respect of the last element of the *Zinn* triad. The personal circumstances of the accused, including his age, education, dependants, his previous convictions (if any), his employment and other relevant conduct or activities call for consideration in respect of the second element. An appropriate sentence should also have regard to or serve the interests of society, as the first element of the *Zinn* triad, which is the protection of society's needs, and the deterrence of would-be criminals.

Issue

[8] The issue which concerns this court is whether to impose the prescribed minimum sentence of life imprisonment in respect of the murder conviction or whether to deviate from such sentence on the basis that there are substantial and compelling circumstances, which justify a departure therefrom. Or where they do not exist, having regard to the nature of the offence, the personal circumstances of the accused, the victim and the interests of society, whether it would be disproportionate and unjust not to do so.²

[9] In considering whether to deviate from the imposition of the prescribed minimum sentence, I must be mindful that the Supreme Court of Appeal has repeatedly indicated that the prescribed minimum sentences must not be departed from for 'flimsy reasons'³ and are a starting point when imposing sentence.⁴

What are substantial and compelling circumstances?

[10] Our courts have not attempted to define what is meant by 'substantial and compelling circumstances' and this is in keeping with the principle that the imposition of sentence is pre-eminently the domain of a sentencing court. A court must consider all the

² Section 51(3) of the CLAA; see also *S v Malgas* 2001 (1) SACR 469 (SCA) (*Malgas*); *S v Dodo* [2001] ZACC 16; 2001 (3) SA 382 (CC) (*Dodo*).

³ *Malgas* para 25.

⁴ *S v Matyityi* [2010] ZASCA 127; 2011 (1) SACR 40 (SCA) (*Matyityi*).

circumstances of the matter, including the many factors traditionally taken into account by courts when sentencing offenders. It needs to evaluate all the evidence, including the mitigating and aggravating factors to decide whether substantial or compelling circumstances exist. It must be conscious of the fact that the legislature has ordained a particular sentence for such an offence and that there must be truly convincing reasons to depart therefrom, which reasons must be stipulated on the record.

[11] For circumstances to qualify as substantial and compelling, they need not be 'exceptional' in the sense that they are seldom encountered or rare, nor are they limited to those which diminish the moral guilt of the offender. If a court is convinced that, after a consideration of all factors, an injustice would be done if the prescribed minimum sentence is imposed, then it can characterise such factors as constituting substantial and compelling circumstances and deviate from imposing the prescribed minimum sentence.

[12] In *S v Vilakazi*,⁵ the court explained that particular factors, whether aggravating or mitigating, should not be taken individually and in isolation as constituting substantial and compelling circumstances. Ultimately, in deciding whether substantial and compelling circumstances exist, one must look at traditional mitigating and aggravating factors and consider the cumulative effect thereof.

Mitigating and aggravating circumstances

The accused's submissions in mitigation of sentence

[13] The accused elected not to lead evidence in mitigation of sentence and Mr *Mlotshwa* made submissions from the bar to be considered by the court when sentencing the accused and which he submitted should be regarded as substantial and compelling circumstances.

[14] He submitted the following constitutes substantial and compelling circumstances warranting a deviation from the prescribed minimum sentence, namely:

(a) The accused does not have previous convictions or charges pending against him.

⁵ *S v Vilakazi* [2008] ZASCA 87; 2009 (1) SACR 552 (SCA).

- (b) He is 41 years old.
- (c) He is the father of a 17-year-old daughter in matric.
- (d) Although it is not suggested that alcohol intake on the night in question incapacitated him from understanding what he did and appreciating its wrongfulness, his mental capacity was to some extent diminished, as he would not have done what he did had he not taken liquor on the night in question.
- (e) There is no premeditation or planning of the incident and everything occurred quickly during the argument. In this regard, he submitted that in paragraph 10 of the accused's s 112(2) statement, which facts were accepted by the State, the accused indicated that 'during the argument I suddenly fetched a kitchen knife which I used to inflict multiple stab wounds in the chest and abdomen of the deceased' and indicated it all happened suddenly.
- (f) He has been in custody since July 2025.

[15] He acknowledged the seriousness of the offence and conceded that violence by men towards women is a serious problem in society and attracts the prescribed minimum sentence. He acknowledged that the deceased's daughter, A[...] H[...] M[...], testified in aggravation of sentence and placed facts before the court regarding the tumultuous relationship between the deceased and the accused.

[16] As a sign of remorse, he indicated that the accused pleaded guilty and did not subject witnesses to the secondary trauma of having to testify in court. The accused, in addition, apologised to the family of the deceased, neighbours as well as his own family. What is further indicative of the accused's remorse is the fact that during his appearance in the lower court, he informed detectives that he was abandoning his application for bail and wanted to tender a guilty plea.

[17] He indicated that although his erstwhile legal representatives wanted the matter to be finalised in terms of s 105A of the Criminal Procedure Act 51 of 1977 (the CPA), the State would not co-operate (this is disputed by Mr *Singh*, who appeared for the State). The accused consequently then changed his legal team, with a view to fast track the

finalisation of the matter without delay.

[18] After the incident, he had punished himself by stabbing himself in the chest and slitting his wrist and received, in total, 37 stitches. The nerves of his hand are permanently affected and the accused consults a physiotherapist for the serious hand injury. At the time of his arrest, he held the rank of constable in the Durban Metro Police. He further indicated that the family of the deceased have rented out his home and he does not receive rent from his tenants and that certain of his movable property has been sold.

[19] Mr *Mlotshwa* submitted that, when considering comparative sentences, this court ought not to rely on the decision in *S v Pillay*⁶ in imposing a similar sentence, as in such a matter there were more aggravating circumstances, as a firearm was used and a protection order existed against the accused. He further submitted that, taking into account the *Zinn* triad, and the objectives and purposes of sentence, an appropriate sentence will be one of 15 years' imprisonment.

The State's submissions

[20] In aggravation of sentence, the State led the evidence of A[...] H[...] M[...] (A[...]), the daughter of the deceased, who is currently 19 years old. She referred to the accused as her father, although he was her stepfather and she completed the victim impact statement in this matter, exhibit 'D'. She testified that on the night of the incident, she and her mother were at home when the accused returned from where he had been. She heard the kitchen lights come on and the accused walked to the room he shared with the deceased.

[21] She was still awake at the time and she heard her mother ask him where he had been. Her mother had been telephoning the accused, requesting him to come back home as he had her new car. She could hear the accused changing and her mother asking him 'Q what are you doing?'. She heard a noise and it sounded like her mother had fallen

⁶ *S v Pillay* 2018 (2) SACR 192 (KZD) (*Pillay*).

down and immediately then heard her mother cry out to her for help. She called out 'A[...]! A[...]! Help me!'. She went to the room and heard her mother scream loudly. Her mother was on the side of the bed and the accused was standing over her, stabbing her.

[22] After she had entered the room, she screamed out at the accused, and he stood up and looked at her. She went looking for help. When she left, her mother was lying on the floor, with the accused crouching over her. When she screamed, the accused had stopped stabbing her mother. She then went to call her brother, K[...], to help. When K[...] entered the room to help their mother, the accused stopped him, grabbed his shirt, held him and said to him 'go out or he was going to kill him'.

[23] She then ran to the neighbours looking for help. When she returned, they found that her father had barricaded himself in the bedroom door with her mother and was refusing to open the door. Every time someone went near the bedroom where her father was, he chased them away with the knife, saying that he would kill them. When the police eventually arrived, they took her and placed her mother on the veranda and that is when she realised that her mother had passed away. Although they tried to transport her mother to a hospital in the car, as the ambulance had not arrived, she knew that her mother had already passed on.

[24] After the paramedics arrived and declared her mother dead, she walked towards where the car was parked and heard the accused say to the police that the incident was her mother's daughter's fault. She testified that her mother had paid for her own funeral, as she had taken out her own policies and had received no assistance from the accused or his family, save for a lot of disrespect. She testified that the relationship between her mother and stepfather was good and bad but plagued by a lot of infidelity on his part.

[25] Sometimes he was good to her, especially when he wanted her to hide his affairs from her mother and not have her say anything. She testified that she had caught him cheating on her mother on three occasions and each time he would give her money so that she would keep quiet. She testified that her mother was in an emotional and abusive

relationship with her stepfather, as he was often physically abusive toward her and would often use hurtful words toward her mother when they fought and argued. Apart from testifying about the night's occurrence, she testified in detail about how her mother's passing had affected her.

[26] During the course of cross-examination of A[...], it became evident that she did not have a good relationship with her stepfather. The animosity she displayed toward him in open court was apparent, as was the animosity he felt toward her, which emanated from his instructions to Mr *Mlotshwa* during cross-examination. It also became clear that she was also au fait with the financial position of the deceased and the accused and the joint assets.

[27] Mr *Singh* submitted that this matter was a manifestation of gender-based violence, which pervades our society at present. He indicated that an aggravating feature of the matter was that the deceased, a 48-year-old attorney, was violently killed by the accused, her intimate partner, in the sanctity of her own home. The offence was one of extreme brutality, sustained aggression and callousness. In addition, he indicated that the deceased was a victim of ongoing domestic abuse, as confirmed by the evidence of her daughter and the victim impact statement.

[28] In addition, the manner in which the deceased was murdered demonstrated a clear and direct intention to kill by the accused, as he stabbed her repeatedly. In this regard, he relied heavily on the post-mortem report and the six stab wounds, specifically their location on the body of the deceased, specifically that of the first and second wounds, which penetrated the right ventricle of the heart of the deceased and the inferior vena cava, the body's largest vein. The number, depth and anatomical placement of these wounds, he submitted, were indicative of the accused's anger and aggression toward the deceased.

[29] He submitted that A[...] testified that during the course of the incident, prior to the stabbing of her mother, her mother cried out for help. When she entered the room to

render assistance to her mother, the accused threatened her, as a result of which she ran and fetched her brother. When they returned to the room and her brother K[...] tried to assist her mother, the deceased threatened him with a knife, and told him to leave, failing which he would be killed next. Even when the neighbours tried to intervene on the deceased's behalf to assist her, the accused barricaded himself and the deceased in the bedroom and refused to allow them entry to assist her.

[30] The accused's personal circumstances and the period in custody must recede into the background when one considers the gravity of the offence and the manner in which the deceased was killed. Relying on *Matyityi*, he submitted that the accused did not display genuine remorse and his actions were not impulsive but rather deliberate. He also disputed that the delay in finalising the accused's plea was as a consequence of the non-co-operation by the State, as he was the prosecutor assigned to the matter throughout.

[31] He submitted that the accused did not display true remorse and is incapable of being rehabilitated, as he was not truly repentant. Despite his age, and the fact that he is a first offender for these offences, retribution and deterrence must come to the fore in this matter. The deceased was a victim of domestic violence perpetrated by someone known to her.

[32] Consequently, he submitted that there are no substantial and compelling circumstances warranting a deviation from the prescribed minimum sentence nor is such sentence disproportionate when one considers the offence, offender and interests of society.⁷

[33] I now turn to the *Zinn* triad and the factors I have considered in determining an appropriate sentence.

Circumstances of the offence

⁷ *Dodo* para 40; *Malgas* para 25.

[34] As mentioned, the accused was convicted of murder, read with s 51(1) and Part I of Schedule 2 of the CLAA. The provisions of s 51(1) and Part 1 of Schedule 2 of the CLAA are applicable, in that the death of the victim resulted from physical abuse, as contemplated in paragraphs (a) and (b) of the definition of 'domestic violence' in s 1 of the Domestic Violence Act, by the accused who was in a domestic relationship, as defined in s 1 of the Domestic Violence Act, with the victim.

[35] The accused, who was legally represented by Mr *Mlotshwa*, pleaded guilty and filed a statement in terms of s 112(2) of the CPA. In his written statement, he indicated that he was in a domestic relationship, as defined in s 1 of the Domestic Violence Act, with the deceased, a 48-year-old attorney. They resided together at the matrimonial home. Their relationship was marked by repeated incidents of aggression and violence by both of them, as a result of which they divorced in November 2024. They, however, subsequently remarried in May 2025.

[36] On the night of the incident, being 25 July 2025, he was at a tavern socialising with friends, where he consumed four bottles of Brutal Fruit (an alcoholic beverage). The deceased and her daughter, A[...], were at home. He returned home shortly before midnight and an argument ensued between him and his wife. During the argument, he fetched a knife from the kitchen with which he inflicted multiple stab wounds to the chest and abdomen of the deceased. At that stage, he formed the intention to kill her. Neighbours and family members heard the deceased's screams for help and attempted to intervene. He prevented them from doing so by refusing them access into their home. He subsequently inflicted injuries on himself by slitting his wrist and stabbing himself in the chest area to end his life. He sustained serious injuries.

[37] Members of the South African Police Service arrived at the scene, arrested him and transported him to King Edward Hospital for medical treatment. He remained in hospital for four nights. The deceased died at the scene. He indicated that, although he did not plan or premeditate the killing of the deceased, he foresaw that his conduct would result in her death by repeatedly stabbing her and therefore had the necessary intention

to kill her. Despite the consumption of alcohol, he knew what he was doing was wrong, he appreciated the wrongfulness of his actions and was able to act in accordance with such appreciation.

Post-mortem report

[38] The post-mortem report completed by Dr Nonhlanhla Shamase was handed in by consent and admitted as true and correct by the accused in terms of his plea of guilty. The cause of death established by Dr Shamase was that of penetrating incised wounds of the chest and abdomen.

[39] The chief post-mortem findings were a penetrating incised wound to the chest, with a perforating incised wound to the large ventricle of the heart and associated haemopericardium and haemothorax, and penetrating incised wounds to the abdomen, with incisions of the stomach, inferior vena cava and associated haemoperitoneum. There were six penetrating stab wounds to the body of the deceased, two of which were fatal.

The offender: The personal circumstances of the accused

[40] The accused is 41 years old, the husband of the deceased, a father of a matriculant and a former Durban Metro policeman. He has been in custody since his arrest in July 2025, having abandoned his bail application. He is a first offender and has no pending charges or cases against him.

The interests of society

[41] Society demands that offenders be punished for their crimes. Given the nature of these offences, which have become endemic in our society, the legislature deemed it fit to enact the CLAA. I am aware of the public presence throughout this matter, especially by family members of the deceased and the accused. Despite this, however, the court must not over-emphasise one factor and, ultimately, a balance must be struck. In *S v Kruger*,⁸ the court remarked '[p]unishing a convicted person should not be likened to

⁸ *S v Kruger* [2011] ZASCA 219; 2012 (1) SACR 369 (SCA) para 11.

taking revenge'. In my view, every sentence imposed must be tempered with a degree of mercy, no matter the crime. In addition, the sentencing court must not overemphasise the public interest and general deterrence.⁹

The victim

[42] Our courts, when sentencing, have had regard to the circumstances of the victim. In this matter, the State relied on the oral evidence of A[...] and a victim impact statement. I am mindful of the effect of the offence on the family of the deceased, and that no sentence can fully compensate them for the loss of a loved one.

Analysis

[43] Section 51(1) of the CLAA requires me to sentence the accused to life imprisonment, unless there are substantial and compelling circumstances that justify a lesser sentence or to impose same would be disproportionate, having regard to the triad.

[44] In coming to an appropriate sentence, I am mindful that two families have been affected – that of the deceased but also that of the accused. I am also mindful that the accused will have to live with what he has done for the remainder of his life.

[45] I am also cognisant of the fact that it remains a court's duty to fearlessly impose an appropriate and fair sentence, even if the sentence does not satisfy public opinion.¹⁰

[46] I have, in deciding on an appropriate sentence, had regard to the submissions of the accused and the State. Having regard to the age of the accused, this, in itself, together with the personal circumstances of the accused, do not on their own constitute substantial and compelling circumstances, as submitted by Mr *Mlotshwa*. The accused is not young, being 41 years old, and the offence of which he has been convicted is one of the most serious. This conduct is not expected of a person in a domestic relationship, more so that of an experienced police officer.

⁹ *S v Scott-Crossley* [2007] ZASCA 127; 2008 (1) SACR 223 (SCA) para 35.

¹⁰ *S v Mhlakaza and Another* 1997 (1) SACR 515 (SCA) at 518e-f.

[47] As regards the pre-trial detention alluded to by Mr *Mlotshwa*, the law does not recognise that this is, in itself, a substantial and exceptional circumstance nor a basis upon which one can reduce the non-parole period which attaches to the penalty.¹¹ The approach adopted by our courts in respect of pre-trial detention is to consider it as one of the factors in determining whether substantial and compelling circumstances exist and whether, in all the circumstances, the sentence was a proportionate and just one.¹² In this particular matter, the accused elected to abandon his bail application, remain in custody and plead guilty.

[48] A further submission advanced by Mr *Mlotshwa* related to the accused's consumption of four Brutal Fruit on the night in question. He submitted that as a consequence of doing so, the accused acted in the manner that he did. This submission seems to suggest that the accused acted with some form of diminished capacity at the time of stabbing the deceased. Mr *Singh* acknowledged that where alcohol plays a role in the commission of the offence, this is a factor which the court needs to consider in arriving at an appropriate sentence, as courts have considered this a mitigating factor.¹³

[49] In this regard, however, for it to be a factor warranting consideration to satisfy a conclusion of diminished capacity, specific facts need to be pleaded and detailed circumstances set out in the plea explanation for a court to conclude this. It does not necessarily result in a court concluding that this constitutes a substantial and compelling circumstance on the conspectus of the evidence presented. In this regard, I draw on what was held by the court in *Director of Public Prosecutions, Grahamstown v Peli*.¹⁴ In his s 112 statement, the accused indicated that although he had consumed alcohol, he could appreciate the wrongfulness of the crime. The court held the following:¹⁵

¹¹ *S v Ngcobo* [2018] ZASCA 6; 2018 (1) SACR 479 (SCA) para 14.

¹² *S v Radebe and Another* [2013] ZASCA 31; 2013 (2) SACR 165 (SCA) paras 13-14.

¹³ *S v Latha and Another* 2012 (2) SACR 30 (ECG); *Klink and Another v S* [2011] ZAWCHC 508; *S v Busakwe* [2014] ZAECPHC 63.

¹⁴ *Director of Public Prosecutions, Grahamstown v Peli* [2018] ZASCA 40; 2018 (2) SACR 1 (SCA).

¹⁵ *Ibid* para 9.

'The fact that the respondent was a first offender and had consumed alcohol before committing the offence, which, however, did not affect his appreciation of the wrongfulness of his conduct at the time he committed the offence, pales into insignificance when the gravity of the offence, being the rape of a 6-year-old child, is considered. It is trite that, for intoxication to be considered as a substantial and compelling circumstance in mitigation, it must be shown that the consumption of alcohol had impaired or affected the respondent's mental faculties or judgment and thereby diminished the respondent's moral blameworthiness ... That the respondent appreciated the wrongfulness of his conduct and was accordingly able to distinguish right from wrong, but nevertheless proceeded to rape the complainant, cannot on the facts of this case serve to diminish his moral blameworthiness to the extent that it may be regarded as a substantial and compelling circumstance.'

[50] In this particular matter, the accused, in his s 112 statement, has not pleaded diminished capacity at the time of the incident. All he contents himself with is the fact that he consumed four Brutal Fruit, an alcoholic beverage, at a tavern and returned home. He does not indicate what effect, if any, it had on him or when during the course of the evening he consumed it prior to returning home and the incident occurring. In addition, it appears from the evidence of A[...] that he was able to drive himself home in the deceased's new vehicle. He also specifically indicated that 'despite consumption of alcohol, I acknowledge that I was capable of appreciating the wrongfulness of my actions and acting in accordance with such appreciation'. His consumption of the four Brutal Fruit, on his own plea, did not affect his capacity to appreciate the wrongfulness of his actions and act in accordance therewith.

[51] I have also carefully considered the evidence of A[...] and what emanated during cross-examination. Naturally, during Mr *Mlotshwa's* cross-examination of A [...], she was defensive and protective of her mother and I must view her evidence in that context, specifically in relation to the accused and the deceased's assets. Despite A[...] and the accused's apparent acrimonious relationship, what is, however, clear from her evidence is that she confirmed the acts of aggression and violence which occurred during the accused's and the deceased's relationship, alluded to by the accused in his s 112 statement. The accused did not seriously challenge her version of what occurred on the

night of the incident and Mr *Mlotshwa*'s cross-examination focussed on what had occurred after the deceased's death, the assets and her relationship with the accused prior to the incident.

[52] In determining an appropriate sentence, I have had regard to a number of cases involving sentences imposed for murder emanating from an act of domestic violence. I acknowledge that such sentences serve merely as a guide and each case must be determined on its own set of facts.

[53] In *S v Pitso (Sentence)*,¹⁶ it was not in dispute that the parties were in a domestic relationship and that the death of the deceased resulted from an act of domestic violence, thus rendering the CLAA and the prescribed sentence of life imprisonment applicable. In this matter, the court found the following substantial and compelling circumstances to be present: he was a first offender, the emotionally charged atmosphere, the murder was not pre-planned, and the accused was remorseful and took responsibility for his actions.¹⁷ On the issue of the killing of his life partner, the court held as follows:¹⁸

'It is convenient to deal with the conviction of murder first in this sentencing process. The accused has murdered his intimate life partner. Instances of femicide are far too prevalent in this court's jurisdiction. Whilst a sentence of life imprisonment may not serve justice on the facts of the present case, the need for a general deterrent for the crime of femicide must play a prominent role in sentencing the accused, but not at the expense of all the other considerations in passing a sentence on the accused. In all the circumstances of this case, a long period of direct imprisonment is certainly called for and is appropriate.'

[54] The court imposed a sentence of 20 years' imprisonment for the murder.

[55] In *S v HJW*,¹⁹ the accused was convicted of kidnapping and murder, as contemplated in s 51(1) of the CLAA, stemming from the murder of his wife. The court

¹⁶ *S v Pitso (Sentence)* [2025] ZANCHC 61.

¹⁷ *Ibid* para 37.

¹⁸ *Ibid* para 39.

¹⁹ *S v HJW* [2025] ZAECKMKHC 7.

held as follows with regard to the issue of domestic violence:

[11] Society demands that stern sentences be meted out in cases where a person's life is extinguished through the conduct of another. As Mr *Nohiya* argued, for the State, the offence of murder is extremely serious, constituting an irreversible violation of the constitutional right to life.

[12] Importantly, society's outrage at the senseless loss of life in the domestic setting has translated into a prescribed minimum sentence of life imprisonment for conduct of this nature. The relentless plague of gender-based violence, including so-called intimate femicide, is a cause for deep societal concern and anger. As the court held in *S v Robertson*:

"It is so easy to glibly use the phrases and terminology of femicide and gender-based violence, in part because of the relentless frequency of its occurrence in our society, communities and homes, that it hardly causes anyone to bat an eyelid or to raise an eyebrow ... this disease of gender-based violence and femicide ... permeates the psyche of our country.'" (Footnote omitted.)

And further:²⁰

'The judiciary is obliged to play its part in ensuring that prescribed minimum sentences, designed to reflect society's opprobrium towards murder linked to domestic violence, are not departed from without good reason. Prescribed minimum sentences are intended to contribute towards the deterrence of violent crime and, thereby, the protection of women, communicating to society that perpetrators must expect to face the full force of the law.'

And lastly:²¹

'Although it is true that murder in the context of domestic violence might justifiably warrant life imprisonment in most cases, each case must be carefully analysed and treated on its own merits.'

[56] In this matter, the consumption of alcohol had played a role in the commission of the offence and the accused was sentenced to 24 years' imprisonment for the murder.

[57] In *S v Hongwana (Sentence)*,²² the accused had been convicted of killing his wife. It was held that the facts 'disclose an extremely brutal and callous murder committed within a domestic setting — a context that aggravates rather than mitigates'.²³ The court

²⁰ Ibid para 16.

²¹ Ibid para 19.

²² *S v Hongwana (Sentence)* [2025] ZAGPPHC 1193.

²³ Ibid para 9.

held as follows:

[12] Society demands protection from those who commit acts of domestic violence, especially where such acts destroy families and traumatize children. The prevalence of femicide and intimate-partner murders in South Africa necessitates the imposition of stern sentences to send a strong message that such conduct will not be tolerated...

[13] Punishment must always be proportionate to the offence and the offender's degree of moral culpability. In this instance, the offence is among the most serious imaginable — the taking of a human life within a domestic setting, in the presence of children, with long-term psychological consequences....

[14] ... The murder of a spouse within the family home represents a profound betrayal of trust and a direct attack on the sanctity of family life.'

[58] The court imposed life imprisonment.

[59] In *S v Sejake (Sentence)*,²⁴ the accused was found guilty of murder, read with the provisions of s 51(2) of the CLAA. The accused and the deceased had been in a relationship for 15 years. The court held as follows:

[21] The accused gained nothing of worth for the perpetrating and inflicting of this terrible and horrific suffering on the deceased and her family. Gender Based violence, threatens every woman and particularly poor and vulnerable in our society. In our country, it occurs far too frequently that women are violated or murdered at the hands of their partners. The time has come to send a clear message that and anyone perpetrate these crimes against the most vulnerable in our society, does so at his peril and our Legislature, and the community at large, correctly expect our courts to punish perpetrators severely. Communities are outraged and if we fail to take account of that outrage, we risk encouraging the breakdown of law and order and communities taking the law into their own hands.

[22] Indeed ordinary law-abiding citizens in this country are at their wits end about these ongoing and senseless crimes involving violence against women and sight should not be lost of the fact that society view these crimes as heinous and abhorrent. Within this context, is there an injunction upon courts to protect women from these crimes.'

And further:²⁵

²⁴ *S v Sejake (Sentence)* [2022] ZAFSHC 266.

²⁵ *Ibid* para 30.

‘This court had regard to the degree and extent of the violence used in the commission of this heinous offences, the nature and weapon used, the brutality and cruelty of the attack when the deceased was asleep, the fact that the deceased were stabbed multiple times in the sanctuary of her own home at the hands of her partner, the nature and character of the deceased who was defenseless at the time, the fact that they were in a love relationship for a very long time, the fact that accused was in a position of trust, the fact that the offences were perpetrated for reasons known only to the accused, the physical, emotional and psychological trauma that the deceased family endures every day of their lives, and the loss of a mother and grandmother’s unconditional love.’

[60] The court ultimately imposed a higher sentence than prescribed and imposed 20 years’ imprisonment.

[61] In *S v Adoons (Sentence)*,²⁶ the court found substantial and compelling circumstances to be present to not impose life imprisonment and imposed a sentence of 20 years.

[62] In *S v Chauke (Sentence)*,²⁷ the court held as follows:

‘[10] The accused is facing serious offences that are prevalent countrywide. Count 1 is a true reflection of gender-based violence. Gender-based violence is at the forefront in the country; every day, we hear about cases of domestic violence. It is usually the husband or the boyfriend assaulting, raping and/or killing his partner. In all corners of the country, women are not safe. They are not safe in their homes (which is supposed to be the safest place), workplaces, places of entertainment or on the streets.

[11] The Legislature is trying its best to tighten the laws against gender-based violence. For example, the Criminal Law Amendment Act is currently inclusive of domestic violence. The state, in respect of count 1, has invoked the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997, read with section 1 of the Domestic Violence Act 116 of 1998. This then means that the prescribed minimum sentence is life imprisonment. It is trite that the courts should stick to the prescribed sentence unless substantial and compelling circumstances exist.

...

²⁶ *S v Adoons (Sentence)* [2025] ZAECKMKHC 95.

²⁷ *S v Chauke (Sentence)* [2025] ZAMPMHC 70.

[13] I regard the murder of a woman by her lover as a crime with the utmost gravity. A woman forms part and parcel of a vulnerable group. What disturbs me most is the fact that these offences were perpetrated by a person very close to the deceased's heart. The deceased believed in the love of the accused, and she allowed him to stay with her at her own place. Unbeknownst to her, she was allowing a murderer inside her house. The big question is where and when women will enjoy the comfort of love and the comfort of their homes. I raised this question as I had noticed that it has become common for women in our country to be killed by their lovers in their shelters.'

[63] The court imposed life imprisonment.

[64] I have also considered the submissions regarding the applicability of the decision in *Pillay*, which decision too, similarly, serves merely as a guide. I have had regard to all the abovementioned factors and I am also mindful of what our courts have said regarding incidences of domestic violence. In *Mudau v S* the court held as follows:²⁸

'[6] Domestic violence has become a scourge in our society and should not be treated lightly, but deplored and also severely punished. Hardly a day passes without a report in the media of a woman or child being beaten, raped or even killed in this country. Many women and children live in constant fear. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity. This was well articulated in *S v Chapman* [1997] ZASCA 45; 1997 (3) SA 341 (SCA) at 345A-B when this Court said the following:

"Women in this country have a legitimate claim to walk peacefully on the streets 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, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives."

See also *S v Baloyi* [1999] ZACC 19; 2000 (1) SACR 81(CC) at para 11.'

[65] In *Director of Public Prosecutions v Mngoma*²⁹ the following was stated:

'A failure by our courts to impose appropriate sentences, in particular for violent crimes by men against women, will lead to society losing its confidence in the criminal justice system. This is so because domestic violence has become pervasive and endemic. Courts should take due cognisance of the salutary warning expressed by Marais JA in *S v Roberts* 2000 (2) SACR 522

²⁸ *Mudau v S* [2014] ZASCA 43 para 6.

²⁹ *Director of Public Prosecutions v Mngoma* [2009] ZASCA 170; 2010 (1) SACR 427 (SCA) para 14.

(SCA) para 20 where he stated:

“It [the sentence] fails utterly to reflect the gravity of the crime and to take account of the prevalence of domestic violence in South Africa. It ignores the need for the courts to be seen to be ready to impose direct imprisonment for crimes of this kind, lest others be misled into believing that they run no real risk of imprisonment if they inflict physical violence upon those with whom they may have intimate personal relationships.”

Conclusion

[66] In determining an appropriate sentence, this court must take into consideration the plea of the accused, the undisputed facts and the circumstances under which the murder was committed. Two families have been affected by this tragedy, that of the accused and the deceased. Any sentence will be cold comfort to the family of the deceased and whilst it must be blended with a degree of mercy, it should also recognise the justifiable abhorrence invoked by the callousness of the offence.

[67] The accused may have been in a tumultuous relationship and the incident not planned or premeditated. But that is not what engages the provisions of the CLAA in this matter. The nature of his relationship with the deceased and the manner in which she was killed do. The accused, in addition, was a law enforcement official – he ought to have known better, as one holds them to a higher standard. He could have walked away from the situation, yet he elected not to.

[68] Instead, he chose to arm himself by fetching a knife from the kitchen, stab the deceased in places on her body which he knew would be fatal, not once or twice but six times. To compound matters, he then refused, despite her cries for help, to allow her children to assist her and threatened to kill her son. In addition, he then refused entry into the bedroom, where the deceased was, by neighbours when they came to assist, thereby allowing the deceased to bleed out and die from her injuries. He then attempted to take a cowardly way out and not face the consequences of his actions by entering the bathroom and deliberately cutting himself. His plea of guilty, as well, is not a true sign of remorse but rather what else could he do in the face of an open and shut case by the State? He was seen by the deceased’s children, one of whom saw him stabbing her and crouched

over her body with a knife in his hands.

[69] What has weighed heavily with me is that the accused prevented assistance being given to the deceased, despite her cries for help. At that stage, the accused could have come to his senses and allowed assistance to be given. He had three opportunities – the first when A[...] came in, the second when K[...] arrived and the third when the neighbours arrived. This is what distinguishes the matter from the matters I have referred to. I am of the view that there are no substantial and compelling circumstances nor is the imposition of life imprisonment disproportionate.

[70] It is for all the reasons aforesaid that I reach the conclusion I have done.

[71] In the result the following sentence is imposed.

The accused is sentenced to life imprisonment.

HENRIQUES J

CASE INFORMATIONAppearances

Counsel for the State	:	Mr R Singh
Instructed by	:	The National Prosecuting Authority Durban
For the Accused	:	Mr Mlotshwa
Dates matter heard	:	12 February 2026, 20 March 2026, 17 April 2026, 13 May 2026
Date of Conviction	:	12 February 2026
Date of Sentence	:	13 May 2026

