



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

CASE NO.: 6248/2024

BEFORE THE HONOURABLE JUSTICE LANGA (J) e/t MALANGENI (AJ)

Date 2025: 26TH February 2026

In the matter between:

MONDLI INNOCENT ZUMA

APPELLANT

And

THE STATE

RESPONDENT

COURT ORDER

The Judge heard the matter on the 17th October 2025 and electronically circulated the judgment on the 26th February 2026, gave an order in paragraph "21" as follows:

I therefore propose the following order:

- 1 The appeal against the sentence is hereby dismissed.
- 2 The sentence of life imprisonment is hereby confirmed.



BY THE COURT


CHIEF REGISTRAR
M MOTHABO



IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG

CASE NO: A25/2020

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
27/02/2026 DATE	 SIGNATURE

In the matter between:

MONDLI INNOCENT ZUMA

APPELLANT

and

STATE

RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for the hand-down is deemed to be the 27 February 2026 at 10:00.

JUDGMENT

Malangeni AJ

Introduction

[1] The appellant appeared before the Ermelo Regional Court ("the Court *a quo*") facing the following counts:

1.1 Kidnapping.

1.2 Rape – read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the CLAA").

1.3 Rape – read with provisions of section 51(1) of the CLAA.

[2] He was convicted in respect of all counts and subsequently received the following sentences:

2.1 For Count 1, he was sentenced to five years' imprisonment.

2.2 For Count 2, he was sentenced to fifteen years' imprisonment.

2.3 For Count 3, he was sentenced to Life imprisonment.

2.4 The court *a quo* ordered the sentences imposed to run concurrently.

[3] The appellant hereby notes an appeal against the sentence in respect of Count three only.

Grounds of Appeal

[4] The appellant contends that an effective term of life imprisonment is strikingly inappropriate in that it is out of proportion to the accepted facts in mitigation.

[5] It is further contended that the court erred in over-emphasising the following factors:

5.1 The seriousness of the offence.

5.2 The interests of the society.

5.3 The retributive element of sentencing.

The Applicable Law

[6] It is trite that section 51(1) of the CLAA prescribes a sentence of life imprisonment for rape committed in the circumstances as in the present case. Section

51(3) of the same Act states that the court can deviate from imposing the minimum sentence if there are substantial and compelling circumstances.

[7] As to what is meant by “substantial and compelling circumstances”, it is not clearly defined. Each case will be decided on its own merits. What is of utmost importance is that deviation should not be granted under ordinary circumstances. In *S v Malgas*¹ the court held that the prescribed sentence is not to be departed from for flimsy reasons. The only instance in which departure would be justified is if the circumstances relevant to sentencing were substantial and compelling. The court went on to say the following:

“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.”²

[8] In the same breath, at paragraph 12, the same court stated that:

“... even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate Court would have imposed had it been the trial court is so marked that it can properly be described as ‘shocking’, ‘startling’ or ‘disturbingly inappropriate’.”

[9] The appeal court always respects a sentence imposed by the trial court on the basis that the sentencing is a matter for the discretion of the trial court. In *S v Rabie*³ the legal position was put as follows:

“1. In every appeal against sentence, whether imposed by a Magistrate or a Judge, the court hearing the appeal-

...

¹ *S v Malgas* 2001 (1) SACR 469 (SCA).

² *Ibid* para 25I.

³ *S v Rabie* [1975] 4 All SA 723 (A) 724; 1975 (4) SA 855 (A) 857 D-F.

(b) should be careful not to erode such discretion; hence the further principle that the sentence should only be altered if discretion has not been 'judicially and properly exercised'.

2. The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate."

[10] What has been stated above was restated in *S v Pillay*,⁴ where the court said:

"As the essential inquiry in an appeal against sentence, however, is not whether the sentence was right or wrong, but whether the Court in imposing it exercised its discretion properly and judicially, a mere misdirection is not by itself sufficient to entitle the Appeal Court to interfere with the sentence; it must be of such a nature, degree or seriousness that it shows, directly or inferentially, that the court did not exercise its discretion at all or exercised it improperly or unreasonably. Such a misdirection is usually and conveniently termed one that vitiates the Court's decision on sentence."

The Arguments

[11] In his heads of arguments, the legal representative for the appellant submitted that:

"The trial court misdirected itself in finding that the appellant's personal circumstances cumulatively do not constitute mitigating factors which constitute substantial and compelling circumstances and did not consider the below circumstances;

(a) That the appellant is still relatively young, at the age of 32 years.

(b) That there are a good prospect of rehabilitating the appellant without sentencing him to life imprisonment.

(c) That the appellant does not have a good educational background and this might have contributed to his conduct.

(d) That the failure to take into account the considerable period spent in detention is a further misdirection, entitling this court to interfere in the sentence imposed.

(e) That the court *a quo* emphasized the fact that the appellant committed the offences just three months after his release on parole for same offences. That made the court to impose the sentences in a spirit of anger.

⁴ *S v Pillay* [1977] 4 All SA 713 (A) 717; 1977 (4) SA 531 (A) 535 E-G.

(f) That the court *a quo* emphasised the seriousness of the offences and the interest of society (particularly the protection of women) over the personal circumstances of the appellant.

(g) That the court also emphasized the fact that the appellant did not show any sign of remorse. The court *a quo* did not give reasons on record justifying an inference that the appellant did not show any remorse.

(h) That the court misdirected itself in not finding that the sentence of life imprisonment has the effect of breaking the appellant."

[12] The State Counsel made the following written submissions:

"That the sentence imposed cannot be seen as shockingly inappropriate in the light of the following aggravating factors:

(a) The prevalence of the offences of rape throughout the country.

(b) The appellant threatened the complainant with a knife and said that if she tried to run, he would kill her. After he had raped her, he told her that he is HIV positive.

The appellant refused to take any responsibility for his actions and displayed no remorse. Nothing in the evidence showed that he accepted the seriousness of what he had done and intended to make such amends as lay in his power. It is quite clear that in the case currently before the court, there is no remorse, no regret and therefore no hope of rehabilitation. The appellant's continued denial of guilt is a strong indication of a lack of motivation to change and an unwillingness to take responsibility for the offence."

Analysis

[13] In imposing appropriate sentences, the sentencing court has to consider what was said in *S v Zinn*⁵ where the court said that in imposing a sentence, the court must consider "the triad consisting of the crime, the offender and the interests of society".

[14] The court must strike a balance among these three factors so that one factor may not be over-exercised at the expense of the other or others.

⁵ *S v Zinn* 1969 (2) SA 537 (A) at 540G.

[15] The trial court, in its judgment, mentioned having considered the accused's personal circumstances, the nature of the offence and the interests of society. It must be emphasised that when it comes to sentencing, there is no formula; each case must be decided on its own facts. It is trite that the appeal court's powers are limited and that sentencing is discretionary. In *S v Kgosimore*,⁶ it was held that:

"It is trite law that sentence is a matter for the discretion of the court burdened with the task of imposing the sentence. Various tests have been formulated as to when a Court of appeal may interfere. These include whether the reasoning of the trial court is vitiated by misdirection or whether the sentence imposed can be said to be startlingly inappropriate or to induce a sense of shock or whether there is a striking disparity between the sentence imposed and the sentence the Court of appeal would have imposed. All these formulations, however, are aimed at determining the same thing; viz whether there was a proper and reasonable exercise of the discretion bestowed upon the court imposing sentence. In the ultimate analysis this is the true enquiry. (Compare *S v Pieters* 1987 (3) SA 717 (A) at 727G-I). Either the discretion was properly and reasonably exercised or it was not. If it was, a Court of appeal has no power to interfere; if it was not, it is free to do so."

It is common knowledge that gender-based violence is the leading offence in the country. The appellant was on parole when he committed the other two rapes. In our country, there is no single day that passes without hearing about an offence of this nature. Women and children are not safe at all. They are deprived of their rights to equality, human dignity and bodily integrity. Rape is undoubtedly a repulsive crime which is humiliating, degrading and invasive of the privacy, dignity, and person of the victim. In *S v Chapman*⁷ the court stated the following in the often quoted passage:

" Rape is a profoundly serious offence, constituting as it does a humiliating, degrading, and brutal invasion of the privacy, the dignity, and the person of the victim. The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilization. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work,

⁶ *S v Kgosimore* 1999 (2) SACR 238 (SCA) para 10.

⁷ *S v Chapman* 1997(2) SACR 3 (SCA).

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”.

[16] Women are members of the community. They form part and parcel of a vulnerable group. It is then safe to say that gender-based violence negatively affects the community. In *S v Msimanga and Another*,⁸ the court held that violent conduct in any form can no longer be tolerated, and courts, by imposing heavier sentences, convey the message, on the one hand, to the prospective criminals that such conduct is unacceptable and, on the other hand, to the public that the courts take the restoration and maintenance of safe living conditions.

[17] It is on record that the appellant is 32 years old. He is single with no children. In 2009, he was sentenced to 15 years for a rape offence. He was released on parole a few months before the commission of these offences.

[18] From what was submitted by the legal representative for the appellant, I cannot find any element of remorse. The fact that he committed the rapes in question in three months' time whilst on parole for a rape charge is an aggravating factor. It further shows that he is a person who cannot change. He is a person who has completely lost respect for the rights of women. He is a person who deserves, rightly so, to be removed from society for the rest of his life for the safety of women. From his behaviour there appears to be no chance for the appellant to be rehabilitated. His conduct of committing two rape cases on the same day and three months after his release on parole rules out any rehabilitation and calls for substantial imprisonment.

[19] During the aggravation stage, the trial court engaged the state as to how many times the complainant was raped in respect of count 2; the state indicated that the evidence does not prove rape more than once. The court accepted that and sentenced the appellant to 15 years. The appellant is not a first-time offender, as he was once convicted of rape. He is a danger to society and is a candidate to be removed from society.

⁸ *S v Msimanga and another* 2005 (1) SACR 377 (OPD).

[20] I cannot find any fault, misdirection or irregularity in the sentence imposed by the trial court. It is proper in the circumstances. The magistrate exercised his discretion judicially.

Order

[21] I therefore propose the following order:

- 1 The appeal against the sentence is hereby dismissed.
- 2 The sentence of life imprisonment is hereby confirmed.



M MALANGENI

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

I agree, and it is so ordered



MBG LANGA

JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

For the Appellant: Advocate M.C Mavasa
Legal Aid of South Africa, Mbombela Local Office

For the Respondent: Advocate B.E Maoke
DPP's Office, Middelburg

Date heard: 17 October 2025

Date delivered: 27 February 2026