



**In the High Court of South Africa  
(Western Cape Division, Cape Town)**

**Case No: A80/2025**

In the matter between:

**MABHUTHI NDEVU**

**APPELLANT**

And

**THE STATE**

**RESPONDENT**

**Neutral citation:** *State v Mabuthi Ndevu* (Appeal Case no A80/2025) [2026]  
ZAWCHC (22 June 2026)

**Coram:** LEKHULENI J *et* LOUW AJ

**Heard:** 15 June 2026

**Delivered:** 22 June 2026

**Summary:** Criminal Law: Appeal on sentence – Section 51(3) of Criminal Law Amendment Act 105 of 1997 – Remorse vis-à-vis regret – No compelling and substantial circumstances proven – Appeal on sentence dismissed.

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## JUDGMENT

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### **LEKHULENI J ( LOUW AJ Concurring):**

#### **Introduction**

[1] This is an appeal against the sentence of 15 years' imprisonment imposed by the Caledon Regional Court on the appellant, after he was found guilty of Murder read with section 51(2) of the Criminal Law Amendment Act 105 of 1997 (*'CLAA'*). At the commencement of the trial, the court explained to the appellant the sentencing provisions envisaged in section 51(2) of the CLAA and the relevant competent verdicts in terms of section 256 of the Criminal Procedure Act 51 of 1977 (*'the CPA'*) and the appellant confirmed that he understood. The appellant was legally represented throughout the trial. On 19 August 2024, the charge was put to the appellant. He pleaded not guilty to the charge and raised private defence as his ground of justification for stabbing the deceased with a knife.

[2] After tendering his plea, the appellant made formal admissions in terms of section 220 of the CPA. In those admissions, the appellant admitted the identity of the deceased; that the deceased died on 4 March 2023 at Riviersonderend, within the regional division of the Western Cape as a result of a stab wound to the neck extending into the chest; and that the deceased sustained no further injuries from the time of the incident until the completion of the post-mortem examination on 6 March 2023. In addition, the appellant admitted the contents and correctness of the post-mortem report.

[3] The State alleged that the appellant was guilty of the crime of Murder in that upon or about 4 March 2023 and at near Riviersonderend in the regional division of the Western Cape, the appellant unlawfully and intentionally killed a male person by stabbing him with a knife and or a similar object and that the provisions of section 51(2) Part II, Schedule 2 of the CLAA as amended was applicable. Simply put, the prescribed minimum sentence under the CLAA for the charge against the appellant was 15 years' imprisonment, unless substantial and compelling circumstances existed as envisaged in section 51(3) of the CLAA warranting a deviation from the prescribed minimum sentence.

[4] At the conclusion of the trial, the Regional Magistrate, Ms Gxashe, convicted the appellant on the charge of Murder and found no substantial and compelling circumstances meriting a deviation from the prescribed minimum sentence. Subsequent thereto, on 14 April 2025, the Regional Magistrate imposed a sentence of fifteen (15) years' imprisonment as envisaged in section 51(2) of the CLAA and further made relevant ancillary orders.

[5] In terms of section 103(1)(g) of the Firearms Control Act 60 of 2000 (*Firearms Control Act*), the trial court ordered that the appellant is deemed unfit to possess a firearm. In terms of section 103(4) of the same Act, the Court ordered for the immediate search and seizure of all computers, certificates, licences or authorisations issued to the appellant in terms of this Act and for the seizure of all firearms and ammunition in his possession. The court also made an ancillary order in terms of section 299A of the CPA. The Court directed that the family of the deceased present at the proceedings be advised of their rights to make representations when the placement of the appellant on parole or under supervision is considered to attend any relevant meeting of the parole board.

[6] Aggrieved by this decision, on 30 July 2025 the appellant applied for leave to appeal against sentence before the court a quo in terms of section 309B of the CPA. In the application, the appellant essentially contended that the court a quo erred in failing adequately to take into account that he had no relevant previous convictions. The appellant further submitted that the court a quo erred in not sufficiently considering that alcohol had probably played a role and contributed to the commission of the offence.

[7] Additionally, the appellant argued that the court a quo misdirected itself by placing too much emphasis on the interests of society and the severity of the offense while palliating the appellant's personal circumstances. The appellant further contended that the trial court erred in finding that no substantial and compelling circumstances existed to deviate from the prescribed minimum sentence of 15 years' imprisonment. After considering the application, the court a quo granted the appellant leave to appeal and noted that another court might come to a different decision when it comes to the sentence it imposed on the appellant.

## **Facts**

[8] To fully understand the key issues in this appeal, it is essential to provide a brief overview of the material facts. The State called three witnesses in a quest to prove the appellant's guilt beyond a reasonable doubt. The appellant testified and called no witnesses in his defence. Several documentary exhibits, inclusive of the warning statement of the appellant, the medical expert report, photographs of the crime scene, and various other documentary evidence, were, by agreement, admitted into evidence at the trial. Where necessary, I will refer to the exhibits admitted during the trial.

[9] On 4 March 2023, the appellant and the deceased were consuming alcohol at Isaac's Tavern. An argument ensued between them while they were inside the Tavern. As a result of the altercation, the appellant and the deceased exited the Tavern and proceeded outside. Once outside, the appellant slapped the deceased and took his beer. Thereafter, the appellant produced a knife and stabbed the deceased in the neck. The deceased immediately collapsed and was subsequently declared dead at the scene.

[10] The appellant admitted to having fatally stabbed the deceased but raised private defence as a ground justification for his conduct. According to the appellant, the deceased was the aggressor. The appellant testified that while he left the Tavern to go home, the deceased called him back. The deceased slapped him with an open hand and placed his right hand in his back pocket; subsequently, the appellant took out a knife from his pocket and pushed the deceased with his knife, turned around and left. When he got home, a small boy came to tell him that the deceased was dead.

[11] The appellant contended that his actions were lawful under the circumstances. According to him, the deceased was intending to take something from his back pocket and he in turn produced a knife and pushed the deceased away from him. The magistrate rejected the appellant's defence of private defence and accepted that the State proved the guilt of the appellant beyond a reasonable doubt. The trial court found that the appellant acted with the requisite intention when he stabbed the deceased in the form of *dolus eventualis*.

### **Principal submissions by the parties**

[12] At the hearing of this appeal, Ms Kuun, who appeared on behalf of the appellant, submitted that the appellant's personal circumstances, considered

cumulatively, constituted substantial and compelling circumstances. Ms Kuun argued that the appellant's lack of formal education and his unsophisticated background ought to weigh heavily in his favour. Ms Kuun further contended that the appellant had demonstrated remorse, in that he played open cards with the trial court by explaining what transpired between himself and the deceased. Counsel submitted that, absent the appellant's explanation, the State would have faced difficulty in proving the guilt of the appellant beyond a reasonable doubt, as none of the witnesses who testified had observed the stabbing.

[13] In addition, Ms Kuun emphasised that the court a quo convicted the appellant on the basis of *dolus eventualis* rather than direct intention, which, she argued, should also weigh in favour of the appellant and constitutes substantial and compelling circumstance when considered cumulatively.

[14] Mr Mchunu, on the other hand, counsel for the State, submitted that the trial court was correct in imposing the prescribed minimum sentence. Counsel argued that the appellant was not remorseful. According to Mr Mchunu, the appellant gave two conflicting versions before the trial, which negates any genuine contrition. Mr Mchunu contended that the first version that the appellant gave was that of a putative self-defence, namely that the appellant believed that the deceased was going to stab him. He produced the knife and stabbed the deceased in defence. The second contradictory version that the appellant articulated was that he pushed the deceased and did not intend to stab him. Mr Mchunu refuted the submission that the appellant played open cards with the court by explaining what happened between him and the deceased.

[15] In counsel's view, circumstantial evidence was overwhelming and connected the appellant to the crime. Even if the appellant remained silent, the circumstantial evidence against the appellant was overwhelming in that he was

seen having an altercation with the deceased. He went out with the deceased, and subsequently the deceased was found lying on the ground bleeding with the appellant nearby. Counsel submitted that the evidence against the appellant that he stabbed the deceased was overwhelming. Mr Mchunu concluded his submission by contending before the court that the appellant has failed to learn from his past mistakes. The appellant knows that it is wrong to commit a crime. He received a wholly suspended sentence in the past. Notwithstanding this, he failed to learn from the leniency previously afforded to him.

### **Issues to be decided**

[16] The issue for determination in this appeal is whether the sentence imposed by the trial court is inappropriate and evokes a sense of shock.

### **Discussion**

[17] It is trite law that sentencing is pre-eminently a matter of the trial court's discretion. An appellate court may not interfere with this discretion merely because it would have imposed a different sentence.<sup>1</sup> It is also well established that a court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, assess the appropriateness of the sentence as if it were the trial court and then alter the sentence arrived at by that court, simply because it disagrees with it. To do so would be to usurp the sentencing discretion of the trial court. But where material misdirection has been demonstrated, an appellate court is not only entitled, but is also duty-bound, to consider the question of sentence afresh to avoid an injustice.<sup>2</sup>

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<sup>1</sup> *S v Hewitt* 2017 (1) SACR 309 (SCA) para 8.

<sup>2</sup> *S v Phillips* 2017 (1) SACR 373 (SCA) para 5.

[18] Simply put, interference with a sentence on appeal is not justified in the absence of a material misdirection or irregularity, or unless the sentence imposed is so startlingly inappropriate as to create a sense of shock.<sup>3</sup> Thus, an appeal court will only interfere with a sentence on appeal if it appears that the trial court has exercised its discretion improperly or unreasonably.<sup>4</sup>

[19] In the present matter, the enquiry is whether the court a quo in imposing the sentence of 15 years' imprisonment had exercised its discretion judicially and properly. It was argued on behalf of the appellant that the trial court failed to cumulatively consider the personal circumstances of the appellant properly and erred by failing to find substantial and compelling circumstances to deviate from the prescribed sentence.

[20] In passing sentence, the court a quo had regard to the material provisions of the CLAA, in terms of which the legislature saw fit to prescribe minimum sentences for serious offences, including Murder unless a court is satisfied that there are substantial and compelling circumstances justifying the imposition of a lesser sentence. In considering the appropriate sentence to be imposed, the court below stated that it had considered the decision of the SCA in *S v Matyityi*,<sup>5</sup> defining remorse as a gnawing pain of conscience for the plight of another. The court considered the locus classicus case of *S v Malgas*,<sup>6</sup> ("*Malgas*") which sets out how the enquiry into substantial and compelling circumstance is to be conducted and found that there were no compelling and substantial reasons to depart from the prescribed minimum sentence and accordingly imposed the sentence of 15 years' imprisonment.

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<sup>3</sup> *S v Moosajee* [1999] 2 All SA 353 (A) para 8.

<sup>4</sup> *S v Gerber* [1998] 4 All SA 315 (NC) at 320.

<sup>5</sup> 2011 (1) SACR 40 (SCA).

<sup>6</sup> 2001 (2) SA 1222 (SCA).

[21] It is apposite to remind ourselves that courts are required to approach the imposition of sentence for crime falling within the purview of the CLAA conscious that the Legislature has ordained the prescribed period of imprisonment as the sentence that should *ordinarily*, and in the absence of weighty justification, be imposed for the listed crimes in the specified circumstances.<sup>7</sup> The specified sentences are not to be departed from lightly and for flimsy reasons.<sup>8</sup> In *Rammoko v Director of Public Prosecutions*,<sup>9</sup> the SCA thought it fit to re-emphasise what was stated in *Malgas*, namely that a departure from the prescribed minimum sentence is justified if, in imposing it, an injustice would result. The court stressed that the imposition of a prescribed sentence need not amount to 'a shocking injustice'.<sup>10</sup> If imposing the minimum sentence would be an injustice it *should* be departed from.

[22] Against this backdrop, I now turn to the central issue in the present appeal, namely whether, given the facts of this case, the trial court was correct in its conclusion that there were no substantial and compelling circumstances as contemplated in section 51(3) of the CLAA, to warrant a deviation from the prescribed minimum sentence of 15 years. It is necessary, at this stage, to consider the personal circumstances of the appellant cumulatively and to determine whether they constitute substantial and compelling circumstances warranting a departure from the prescribed minimum sentence.

[23] The personal circumstances of the appellant were succinctly set out in the Probation Officer's Report and by the appellant's legal representative during her address in mitigation of sentence. The appellant was 25 years old when the offence was committed, and not married. He is a father of one child who was 7 years old during sentencing. The biological mother of the child is the primary

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<sup>7</sup> *Malgas* paras 8 and 25(B).

<sup>8</sup> *Malgas* para 25(D).

<sup>9</sup> 2003 (1) SACR 200 (SCA) para 14.

<sup>10</sup> *Malgas* para 23.

care giver of the child. The appellant did not attend school at all and is unable to read and write and attributes this to financial difficulties. He was raised by both parents who all passed away in 2024. At the time of his arrest, he was employed as a general labourer. He worked on a farm at Ashton for a period of eight months and earned a salary of R1500 per fortnight.

[24] The appellant indicated through his attorney that he supported his child with an amount of R1000 per month. The appellant informed the Probation Officer that he is using chronic mediation for the past five years. The Probation Officer noted in her pre-sentence report that the family of the appellant mentioned to her that the appellant was a good person, but his behaviour changes when he is under the influence of drugs. It was also mentioned that the appellant caused a lot of stress on his grandmother while she was still alive because he was stealing from people in the community. The Probation Officer also noted that the appellant's girlfriend and mother of his child informed her that the appellant was very violent in their relationship. The Probation Officer recommended that the appellant be sentenced to direct imprisonment in terms of the CPA.

[25] As stated above, this court is enjoined to consider this appeal conscious of the fact that the legislature has ordained 15 years' imprisonment as the sentence which should 'ordinarily' be imposed for a conviction on a charge of Murder. I am mindful of the appellant's personal circumstances. However, I hold the view that the sentence imposed by the trial court is beyond reproach. The appellant entered Isaac's tavern carrying a knife and, in an act of aggression, inflicted a stab wound to the left base of the deceased's neck. The postmortem reports records that 'a fatal, penetrating stab wound and track is present to the left base of the neck with penetration into the chest cavity'. The

report further records that ‘the stab wound penetrated the deceased’s body into the apex of the upper lobe of the left lung’.

[26] From the objective facts, the stabbing of the deceased was carried out with a significant degree of intentionality and aggression. This incident underscores the severity of the appellant's violent behaviour. Ms Kuun argued on behalf of the appellant that the appellant was remorseful for the offence he committed and that this should have weighed in his favour during sentencing. I do agree that remorse is considered mitigating if the offender is remorseful about the committed crime. However, in my view, remorse is strongly mitigating when the offender is deeply and genuinely remorseful.<sup>11</sup> In this case, the submission that the appellant was remorseful is not borne out by the objective facts. The appellant regrets that he was caught. It must be stressed that regret is far from remorse.<sup>12</sup>

[27] In examining whether the appellant was truly remorseful, one looks at his conduct after the offence and during the trial. As stated above, I do not agree that the appellant is remorseful. The appellant in this case failed to take the trial court into his confidence. In fact, he never mentioned during the trial that he was remorseful, neither did he testify during mitigation of sentence and revealed why he killed the deceased. Instead, he gave two contradictory versions during the trial, which are mutually destructive. He took away the life of the deceased and violated the deceased’s rights to life in terms of section 11 of the Constitution. The appellant also violated the deceased’s right to freedom and security of the person in terms of section 12(1)(c) of the Constitution, which included the right to be free from all forms of violence from either public or private sources.

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<sup>11</sup> See S S Terblanche *Guide to Sentencing in South Africa* (2007) 2 ed at 203; *S v Mtsi* 1995 (2) SACR 206 (W) at 207I.

<sup>12</sup> *S v Matyityi* 2011 (1) SACR 40 (SCA); *S v Limo* 1995 (1) SACR 404 (O) at 407I-J.

[28] The appellant, in my view, is simply feeling sorry for himself for having been caught and convicted of the crime he committed. As stated in *S v Martin*,<sup>13</sup> remorse connotes repentance, an inner sorrow inspired by another's plight or by a feeling of guilt, eg because of breaking the commands of the higher authority. The appellant did not exhibit genuine contrition. Even after his conviction, he continued to protest his innocence when consulting with the Probation Officer. As Mr Mchunu argued, after stabbing the deceased the appellant made no attempt to render assistance or seek medical help. Instead, he left the scene, walked up and down the street, and displayed a complete disregard for the life and well-being of the deceased. The appellant simply walked away as though he had stabbed an animal. He observed that the deceased was in excruciating pain, yet did not even bother to call an ambulance.

[29] What compounds the difficulty for the appellant is that the deceased was 50 years old and unarmed. The absence of any weapon on the deceased excludes any realistic suggestion that he posed a serious or imminent threat to the appellant. The use of aggressive force against a person in such circumstances reflects a marked imbalance between the parties and substantially elevates the gravity of the offence. What further aggravates the offence is that the Murder was perpetrated against a deceased who was unarmed and posed no imminent threat whatsoever to the appellant.

[30] From the evidence of the State witnesses, the altercation arose after the appellant had unlawfully dispossessed the deceased of his beer, and the deceased's only interaction thereafter was an attempt to retrieve his property. Despite this, the appellant stabbed the deceased in the neck, a vulnerable and vital part of the body inflicting a fatal wound that penetrated deeply into the

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<sup>13</sup> *S v Martin* 1996 (2) SACR 378 (W) at 383h.

lungs. The nature and location of the injury give rise to a compelling reasonable inference of extreme violence and considerable suffering that the deceased endured prior to his death.

[31] Society demands that those who commit heinous crimes be punished, bearing in mind the primary purposes of punishment.<sup>14</sup> The public looks to the courts to impose suitable and stiff sentences upon offenders who perpetrate serious crimes such as Murder. In cases of this nature, society expects the courts to impose sentences that serve not only to punish but also to deter would be offenders. Moreover, it is incontestable that crime statistics, particularly those relating to violent crime including Murder, remain at an alarmingly high level in this jurisdiction and throughout the country.

[32] In *S v Vilakazi*,<sup>15</sup> the SCA held that in cases of serious crime, the personal circumstances of the offender, by themselves, will necessarily recede into the background. The court held that once it becomes clear that the crime is deserving of a substantial period of imprisonment, the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to be the kind of ‘flimsy’ grounds that *Malgas* said should be avoided. But they are nonetheless relevant in another respect.

[33] Finally, at the hearing of this appeal, the issue relating to the abuse of alcohol was raised. It was suggested that alcohol could have played a role in the commission of this offense. I do not agree. The appellant's reliance on alcohol is unsustainable as there was no evidence that intoxication diminished his moral blameworthiness to the degree required for a finding of substantial and compelling circumstances. As was stated in *Director of Public Prosecutions*,

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<sup>14</sup> See *R v Swanepoel* 1945 AD 444 at 455.

<sup>15</sup> 2009 (1) SACR 552 (SCA) para 58.

*Grahamstown v Peli*,<sup>16</sup> the fact that the appellant 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 murder, is considered.

[34] 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 appellant's mental faculties or judgment and thereby diminished the appellant's moral blameworthiness.<sup>17</sup>

## **Conclusion**

[35] Upon conviction on Murder read with section 51(2) of the CLAA, the court a quo was bound to impose the prescribed sentence unless there were substantial and compelling circumstances warranting a deviation from it. There was none. To the contrary, there are serious aggravating factors that militated against deviating from the prescribed minimum sentence. The trial court considered the personal circumstances of the appellant, the time he spent in custody and found that they do not constitute substantial and compelling circumstances.

[36] If one has regard to the seriousness of the offence and the interest of the community, which far outweighs the appellant's personal circumstances, there are no compelling reasons to disturb the trial court's judgment, which is both thorough and thoughtfully articulated.

[37] In the circumstances, given all these considerations, I am of the view that the appeal on sentence must be dismissed.

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<sup>16</sup> 2018 (2) SACR 1 (SCA) para 9.

<sup>17</sup> *S v Cele* 1990 (1) SACR (A) at 254*h-i*; *S v Eadie* 2002 (1) SACR 663 (SCA) at 673*j-674f*.

## **Order**

[38] In the result, the following order is granted.

38.1 The appellant's appeal on sentence is hereby dismissed.

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**LEKHULENI JD**  
**JUDGE OF THE HIGH COURT**

**I agree:**

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**LOUW M**  
**ACTING JUDGE OF THE HIGH COURT**

## **APPEARANCES**

For the Appellant: Ms Kuun

Instructed by: Legal Aid South Africa

For the Respondent (State): Adv Mchunu

Instructed by: Director of Public Prosecutions