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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION HELD AT PRETORIA

CASE NO: CC26/2025

DATE: 27.05.2026

DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: YES / NO (2) OF INTEREST TO OTHER JUDGES : YES / NO (3) REVISED

In the matter between

THE STATE

and

NTHABISENG TLALI AND LINEO RALITSA

SENTENCE

MATLAPENG, AJ: Ms Nthabiseng Tlali and Lineo Ralitsa, hereinafter accused 1 and accused 2 respectively, appeared before me on a charge of murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997.

[2] It is necessary to canvass the, circumstances that led to the murder of the deceased as described in section

112(2) statement of the plea of guilty. Accused 1 statement is marked EXHIBIT A, accused 2's is marked EXHIBIT B. The statements contain a detailed explanation of how and why the offence was committed. I am going to deal with the sentence on the basis that the murder of the deceased was planned or premeditated and apply the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1977 part 1 of schedule 2 of the Act.

[3] I must now consider what an appropriate sentence is and in the assessment of what an appropriate sentence is, the Court must have regard to and pay attention the triad mentioned in *S v Zinn* 1969 (2) SA 537 (A) that is the accused personal circumstances, the offence of which they have been convicted and the interest of the community and none of the triad mentioned in Zinn should be over emphasised at the expense of and to the exclusion of others.

[4] In the case of *S v Rabie* 1975 (4) SA 855 (A) it was held that punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances.

[5] A brief synopsis of the facts that led to the conviction of the two accused is essential. May I interpose to state that the accused were made aware by their legal representative before they pleaded of their Constitutional

rights contained in section 35 of the Constitution. Amongst others, the right to remain silent and not to incriminate oneself as well as the provision of section 51(1) of the Criminal Law Amendment Act colloquially referred to as the minimum sentence Act. The Court also apprised the accused of the provision of section 51(1) of the Minimum Sentence Act.

[6] Accused 1 is a 42 year old female who was married to the deceased in this matter and she has a child by the deceased. Accused 1 had moved out of their home when the deceased was killed.

[7] Accused 2 is a 39 year old Lesotho national. She is also married with a child. Accused 1 is her acquaintance.

[8] Some months before the deceased was killed, accused 1 informed accused 2 that the deceased was abusing her and that accused 2 should organise a hit man to kill him. Accused 2 acceded to the request. She contacted her ex-boyfriend and the latter organised two Lesotho nationals to kill the deceased.

[9] Accused 1 and accused 2 had several telephonic conversations with the two hit men and even met them between June and 12 August 2024 the day on which the deceased was killed.

[10] The two assassins spent a night at the accused 2' place of residence. Whilst they were there,

accused 1 phoned accused 2 to say that the deceased was on his way to his place of abode. Accused 2 communicated this message to the hit men who then proceeded to the deceased's place of abode.

[11] The deceased was accosted at the gate of his home by the two hit men who, where he was shot with a firearm.

[12] According to post mortem report, the deceased died of a gunshot wound to the head. Both accused admit the correctness of the post mortem report.

[13] Accused 1 paid the two hit men a sum of R60 000 to kill the deceased.

[14] Both accused admit that they were aware that their actions of planning the death of the deceased was wrong and punishable by law.

[15] The proper approach where minimum sentence is applicable was established by the Supreme Court of Appeal in the path finding and seminal judgment of *S v Malgas 2001 SACR 469 (SCA), 2001 (2) SA 1222 (2001) 3 All SA 22*. The summary of the approach is set out at paragraph 25 of the judgment:

The effect of which is that the prescribed sentence should ordinarily and in the absence of weighty considerations be imposed

In paragraph 1 of the summary it is stated that:

"The Court may impose a lesser sentence if on consideration of circumstances of a particular case, it 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 the sentence."

[16] The approach established in the case of *S v Malgas* Supra was approved by the Constitutional Court in the case of *S v Dodo* 2001 (1) SACR 594 (CC) as undoubtedly correct and the summary referred to above as having laid down a determinative test as to when the prescribed sentence may be departed from.

[17] Whether the prescribed sentence is proportionate and capable of being imposed, is a matter to be determined upon a consideration of the circumstances of a particular case.

[18] The approach established in the case of *Malgas* supra has been followed in a long line of cases. It sets out how the colloquially known as the minimum sentences Act should be approached and in particular how the enquiry into substantial and compelling circumstances should be conducted by a Court.

[19] It is not irrelevant to bear in mind that life imprisonment is the heaviest sentence that a person can be legally obliged to serve in our sentencing *juris prudence*. It was remarked in *Rammoko v Director of Public Prosecutions* 2003 (1) SACR 200 (SCA) 18 that:

"Where section 51(1) of the Act applies an accused must not be subjected to the risk that substantial and compelling circumstances are on inadequate reasons held to be absent. At the same time, the communities are entitled to expect that an accused will not escape the prescribed sentence of life imprisonment simply, because such circumstances are unwarrantedly held to be present."

[20] Every human being has the inherent right to life and no one shall be arbitrarily deprived of his or her right to life. Section 11 of the Constitution of the republic of South Africa at 108 of 1996 provides that:

"Everyone has the right to life."

[21] Closely akin to the protection of the right to life in the Constitution is the protection of ones right to freedom and security of the person. Section 12(1) of the Constitution provides that:

"Everyone has the right to freedom and

security of the person which includes the right a, not to be deprived of freedom, arbitrarily or without just cause. C, to be free from all forms of violence from either party of private sources. D, not to be tortured in any way."

[22] In terms of section 36 of the Constitution, the rights in the Bill of rights may be limited in exception of the right to life, which is an absolute right. The fundamental right to life of the deceased was infringed by the two accused in this matter. I convicted them of murder on 20 February 2026. The deceased was killed on 12 August 2024.

[23] The Constitutional Court in the case of *S v Makwanyana and another CCT3/94 (1995) ZACC 3, 1995 (6) BCLR 665, 1995 (3) SA 391, 195 (2) SACR 1* Judgment delivered on 6 June 1995 held as follows at paragraph 115 that:

"The need for a strong deterrent to violent crime is an end, the validity of which is not open to question. It is of a fundamental importance to the future of our country that respect for the law should be restored and that dangerous criminals should be apprehended and

dealt with firmly."

[24] In the case of *S v Ncgobo* 2018 ZACSA judgment delivered on 25 February 2018 the Court when dealing with the period spent in custody awaiting trial stated as follows:

"The test was not whether on its own that period of detention constituted substantial and compelling circumstances, but whether the effective sentence proposed was proportionate to the crime committed. Whether the sentence in all the circumstances including the period spent in detention, prior to conviction was a just one. Furthermore the period in detention presentence is but one of the factors that should be taken into account in determining whether the effective period of imprisonment to be imposed is justified."

See also *S v Vilakazi* 2012 (6) SA 353 (SCA).

[25] In the case of *Vilakazi* 2009 (1) SACR 552 (SCA) the following was stated:

"In cases of serious crimes the personal circumstances of the offender by themselves will recede into the

background. Whilst it becomes clear that the crime is deserving a substantial period of imprisonment, the question 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 the period should be and those seems to be flimsy grounds that Malgas said should be avoided. A material consideration is whether the accused can be expected to offend again."

[26] Mr Kgagara for accused 1 presented a pre-sentence report and also called the social worker Masego Nkoane. The social worker testified to the effect that the deceased and accused were not staying together when the deceased was killed and that accused 1 informed her that the deceased promised to kill her should she institute divorce proceedings. The social worker also testified to the effect that accused 1 only told her about two insurance policies. She testified further that she will ensure that her department take care of the needs of accused 1's child.

[27] Accused 1 also testified in mitigation of sentence and her evidence, in a nutshell is that she confirms the social worker's testimony that she was no more staying with

the deceased when the deceased was killed. She had moved out of their home, because the deceased was abusing her. It is accused 1's testimony further that the deceased was in possession of an unlicensed firearm and ammunition and police uniform and that the deceased at times sent the child to go and fetch this firearm from inside a vehicle and bring it to him in the house and that the deceased would also forcefully enter accused 1's workplace and demanded to see her, but that she did not lay a protection order against the deceased. She also did not lay any charge against the deceased, because she was afraid of him.

[28] It emerged during cross-examination by Adv Masilo for the state that accused 1 had about five insurance policies and that they did pay out after the death of the deceased.

[29] It was argued by Mr Kgagara for accused 1 that the following factors cumulatively taken into account should be found to constitute substantial and compelling circumstances justifying this court to deviate from imposing the prescribed sentence of life imprisonment, that the accused pleaded guilty, which in itself shows a sign of remorse on her part, that she did not waste the Court's time, that she is a first offender that she is a primary caregiver that she spent a year and 6 months in custody

awaiting trial. That she was employed and maintaining the deceased and their child. That she is suffering from depression, stress and insomnia and that she is a first offender.

[30] Accused 2 did not testify in mitigation of sentence. Adv Simpson called a probation officer and addressed the Court from the bar. Adv Simpson submitted that the Court should consider what follows to be substantial and compelling factors entitling the Court to deviate from imposing the prescribed term of life imprisonment. That accused 2 pleaded guilty to this charge and took responsibility for the crime and she was remorseful. That she is candidate for rehabilitation. That she is a first offender at the age of 39 years and that she has been in custody for a period of a year and 6 months awaiting trial. That the accused's role was of assisting in the logistics of the crime, but she did not benefit from the crime. It is submitted that a sentence of 15 and 20 years imprisonment will be an appropriate one under the circumstances. Adv Simpson further referred the Court to the case of *S v Prinsloo* CC10/2024 (2025 ZAGPP 8 C 33) judgment deliver on 24 March 2025, mention need to be made that the facts in Prinsloo's case are distinguishable from the facts of this case as it will appear later in the judgment.

[31] The state in aggravation of sentence called two witnesses, the investigating officer and the deceased's sister to with Mmalefu Moloi. The investigating officer Mr Radebe informed the court that after the death of the deceased he approached accused 1 on two different occasions with a view to enquiring if she does not know the people responsible for the death of the deceased and that on both these instances accused 1 denied any knowledge of the people who killed the deceased, the investigating officer Mr Radebe, should be applauded. His evidence is further that he took statements from accused 1 on both these instances when she denied knowledge of the people who killed the deceased.

[31] The investigating officer, Mr Radebe, testified further the ac to the arrest of the people who killed her husband.

[32] It was put to investigating officer by Adv Simpson, that the person who went to the radio station is accused 1's friend. Mention need to be made that even if it can be accepted for a moment that it was accused 1's friend who went to the radio station and requested members of the public to assist with information that can help the police to trace the perpetrators, the friend could not have gone to the radio station without the knowledge or permission of accused 1.

[33] Whether it was accused 1 or her friend who went

to the radio station and pleaded with members of the community to help the police with the information that would lead to arrest of the hit men who killed the deceased, does not make a difference. The question that forcefully come to the fore is, why did accused 1 go to the radio station or cause her friend to go to the radio station and requested for assistance when accused 1 knew very well that she and accused 2 planned the death of the deceased. The IO Mr Radebe, was at accused 1's place on two occasions, why did she not tell Mr Radebe I killed the deceased. I was with accused 2.

[34] The evidence of the deceased's sister to wit Mmalefu Moloi is that she is staying in Kroonstad and that accused 1, the deceased and their child used to visit her in Kroonstad and that accused 1 never informed her that the deceased was abusing her.

[35] Mmalefu Moloi testified further that accused 1 did not inform her and her family, about the death of the deceased. She testified further that the mother of the deceased was well before this incident, but that she fell ill after the death of the deceased, which means that the deceased's death affected her.

[36] It is common cause that the deceased was killed on 12 August 2024. The investigating officer Mr Radebe informed the Court that, the accused were arrested on 24

November 2024. That is 2 months and 13 days after the death of the deceased.

[37] Accused 1 and accused 2 started to plan the murder of the deceased in June 2024 and the deceased was killed on 12 August 2024. The insurance policies paid accused 1, she paid the killers R60 000 in October 2024.

[38] Accused 1 is insinuating that she killed the deceased, because the latter was abusing her. She testified further that she was afraid of the deceased, more especially, because the deceased had an unlicensed firearm and ammunition, but she did not lay charges against him.

[39] If accused 1 killed the deceased, because the latter was abusing her and she was afraid of him, one would have expected her to report him at the first available opportunity. The investigating officer approached her on two instances to enquire about who could have killed the deceased. She did not disclose this to the investigating officer. Mmalefu Moloi's evidence which was uncontested, is that at the funeral accused 1 said she does not know the people who killed the deceased. Accused 2 also kept quiet like a rock. She never came forward and say myself and accused 1 killed the deceased up to and until she was arrested in November, these are not the actions of people who show remorse or who are remorseful.

[41] Genuine remorse is a significant mitigating factor, particularly when an accused person takes full responsibility of his or her actions. In the present case, accused 1 and accused 2 have done nothing that demonstrates accountability. In the case of *S v Prinsloo* CC10/2024 (2025 ZAGPP C327) judgment delivered on 24 March 2017, it was said that the accused demonstrated accountability by expressing intent to make financial contributions for his estate to the child R[...] [spelt] (who had lost her mother). The Court found this aspect to be demonstrating genuine concern for the plight of the child.

[42] It is argued that accused 1 and 2 spent a year and 6 months in custody awaiting trial. In the case of the *Director of Public Prosecutions Gauteng Pretoria v Gcwale* 2014 (2) SACR 337 (SCA) the Supreme Court of Appeal said the following on the period spent in custody at paragraph 80 and paragraph 90:

"The question has already been answered. Not only in relation to cases where minimum sentences are being prescribed by the legislation, but in all cases where a Court is considering the justness of the sentence to be imposed. The sentencing Court should consider in all cases whether the period of

imprisonment proposed is proportionate to the crime committed taking into account for that purpose the period spent in custody."

The Court concluded that:

"The period spent in custody awaiting trial by an accused, is a factor to be taken into account in determining whether substantial and compelling circumstances exist such that a prescribes minimum sentence may be departed from. Each case must be decided having regard to all the circumstances that justify a lesser sentence."

[43] In the case of Ngcobo 2018 ZASCA a judgment delivered on 23 February 2018 the Court when dealing with time spent in custody awaiting trial stated as follows:

"The test was not whether on its own that period of detention constituted substantial and compelling circumstances, but whether the effective sentence proposed was proportionate to the ...[indistinct]. Whether the sentence in all the circumstances, including the

period spent in custody prior to conviction was a just one. Furthermore, the period in detention pre-sentencing is but one of the factors that should be taken into account in determining whether the effective period of imprisonment to be imposed is justified."

[44] It was stated in the case of *S v Di Blasi* 1996 (1) SACR (A) at paragraph 10 (f-g) that:

"The requirements of society demand that a premeditated callous murder such as the present, should not be punished too lightly. Less the administration of justice be brought into disrepute. The punishment should not only inflict a shock and indignation of interested persons and of the community at large and so serves as a just retribution for the crime, but should also deter others from similar conduct."

[45] It is so that accused 1 and accused 2 pleaded guilty to the charge preferred against them, which is a sign of remorse on their part. According to their legal representatives but the mere fact that both accused pleaded guilty to a charge, did not necessarily support the

conclusion that they are remorseful. As the plea of guilty could have been motivated by various factors. For example, they might have noticed that the evidence against them is overwhelming and that it would have been futile to plead not guilty to the charge.

[46] An accused person might well regret his or her conduct, but that does not without more translate to genuine remorse. The case in point is *S v Mokoena* 2009 (2) SACR 309 (SCA) at paragraph 9 where it was said that:

"Genuine contrition can only arise from an appreciation and acknowledgement of the extent of ones' error."

[47] Whether an accused person is sincerely remorseful for his or her actions, not simply feeling sorry for having been apprehended, is a factual question. An accused's actions should be considered in order to determine if he or she is remorseful and not his statement in court.

[48] The above exposition demonstrates that accused 1 and 2's actions do not translate into genuine remorse

[49] If it can be accepted for a moment that the deceased was killed, because he was abusing accused 1, one would have expected accused 1 to go to the law enforcement officers after the murder of the deceased and informed them that myself and accused 2 arranged that the

deceased be killed, because I was afraid of him, he was promising to kill me. I was afraid of him. That is why I killed him. Both of them, accused 1 and accused 2, were as quiet as a rock. They were arrested, because of the investigating officer Mr Radebe's investigations.

[50] Accused 2 is a Lesotho national. She decided to organise hit men from another country, Lesotho. It goes without saying that she did that to avoid detection. That is why the killers are still at large 2 years after the deceased was murdered and it is clear that, the two accused, planned the death of the deceased meticulously and with precision.

[51] It was contended that the accused are good candidates for rehabilitation. No facts has been placed before me to demonstrate any probability of rehabilitation.

[52] It appears that accused 1 had informers or people who were monitoring the movements of the deceased. I am saying so, because late at night on the night the deceased was killed, accused 1 phoned accused 2 who was with the assassins at her residential place. Accused 1 informed accused 2 that the deceased is on his way to his place of abode. Accused 2 communicated these messages to the hit men who were armed to their teeth. They immediately went to the accused's place and accosted the accused at his gate, shot and killed him.

[53] The murder of ones' spouse, is an extremely

serious offence and rife in the country. This type of offences, necessitate a deterrent approach.

[54] Now of late, we hear on radio stations, print media, we see on television that South African citizens are up in arms against undocumented foreigners who come here and commit serious crimes. Accused 1 and accused 2's case substantiate the assertion of these South Africans. I am saying so, because accused 2 a Lesotho national at the request of accused 1, employed the services of hit men from Lesotho and they did kill the deceased and 2 years after the murder of the deceased they are still at large.

[55] The fact that an accused person is a first offender does not justify the imposition of a lesser sentence. Mitigating factors must be assessed cumulatively.

[56] It is said that accused 1 is suffering from amongst others, depression. This factor must be considered together with other factors.

[60] It is said the accused spent a year and 6 months in custody awaiting trial. This factor must also be considered in conjunction with other circumstances. It is said that accused 1 is 42 years of age and accused 2, 39 and their ages should be taken into consideration. In the case of *S v JA* 2017 (2) SACR 147(MCK) the appellant was 59 years of age. He was convicted of having raped his 12

year old daughter and the Court found that his relatively advanced age did not warrant deviation from the prescribed sentence of life imprisonment.

[62] It came to light during cross-examination as I had indicated earlier, during cross-examination by Adv Masilo, that accused 1 benefited from the insurance policies after the death of the deceased and he paid the hit men R60 000, it is not known how much accused 2 benefitted for having organised the hit men. It is also not known how much accused 2's ex-boyfriend received for having organised the hit men.

[63] Accused 1 and accused 2 brought this tragedy on themselves. Whatever accused 1's distress was, the deceased did not deserve to die. The two accused had no justification to kill the deceased, but it appears from the facts of this matter that accused 1 killed the deceased for financial gain so that he should benefit from the insurance policies. That is why she kept her quiet from August after the deceased was killed, until November when he was arrested.

[64] Accused persons convicted of the same offence should receive equal punishment, unless there are circumstances that justify disparity in their sentences. It was argued by Adv Simpson on behalf of accused 2 that the accused's role was just of assisting in logistics of the crime,

I disagree. She organised the Lesotho nationals, they slept at her place. She and accused 1 met the assassins and made several calls to them between August and the August when the deceased was killed and the assassins, spent a night at accused 2's place. I therefore see no reason that justify a disparity in the sentences of the accused.

[65] The assassins are still at large. The accused 1 and 2 planned the death of the deceased more than 2 months before he was assassinated. The above expositions negate any basis for finding the existence of substantial and compelling circumstances. The crime of murder is a stubborn scourge and prevalent in this division and not only in this division, but all over the country. Prevalence of an offence in an area must be taken into account in the assessment of what an appropriate sentence is.

[67] After having considered all the relevant factors, the one against the other in an attempt to strike a balanced and or a just sentence, it is my considered view that there are no substantial and compelling circumstances. The aggravating factors in this case far outweigh mitigating factors. You may stand up.

[68] In conclusion, it is my considered view that the sentence that is going to be pronounced shortly is a just one under the circumstances. In the result I sentence accused as follows. Count 1, accused 1 premeditated

murder, life imprisonment. Accused 2, premeditated murder, life imprisonment. Accused 1 is declared unfit to possess a firearm. Accused 2 is also declared unfit to possess a firearm.

.....

MATLAPENG, AJ

JUDGE OF THE HIGH COURT

DATE: 27/05/2026

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

THE STATE // NTHABISENG TLALI AND NEO VALITA

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TRANSCRIBER : Liesellotte Renate Halse



36 Alkantrant Road, Lynnwood Manor, Block B
Pretoria

Gauteng | 0081

+27 12 426 7377 | +27 83 500 6612

✉: andre.davids1@inlexso.co.za | Website: www.inlexso.co.za