

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Not Reportable

Case No: A76/2026

In the matter between:

YONELA NGADA

Appellant

and

THE STATE

Respondent

Coram: Pangarker J et Barthus AJ

Heard: 29 May 2026

Delivered electronically: 20 August 2026

ORDER

On appeal from: The Regional Court, Blue Downs, against conviction and sentence:
the following order is granted:

The appeal against conviction and sentence is dismissed. The sentence is confirmed.

JUDGMENT

BARTHUS AJ (PANGARKER J concurring):

Introduction

[1] This appeal arises from the Appellant's conviction and sentence in the Blue Downs Regional Court. It is brought in terms of his automatic right of appeal under s 309(1)(a) of the Criminal Procedure Act 51 of 1977 ("the CPA"). The Appellant was convicted of contravening s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, read with s 51(1) and Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 ("the CLAA"), as follows:

- a) two counts of rape in respect of each of the two complainants.
- b) one count of kidnapping in respect of one of the complainants.

[2] In respect of sentence, counts 1 and 2 (rape) were taken together for purposes of sentence and life imprisonment was imposed. The Regional Magistrate imposed 5 years' direct imprisonment on count 3 (kidnapping). Counts 4 and 5 (rape) were taken together for purposes of sentence and life imprisonment was imposed. The sentences on counts 1, 2 and 3 were ordered to run concurrently with the life imprisonment on counts 4 and 5.

[3] In respect of the first complainant, Ms N[...] B[...] ("Ms B[...]"), who was 18 years old and a virgin at the time of the incident, the Appellant pleaded not guilty to counts 1 and 2 (rape) and count 3 (kidnapping), advancing a bare denial.

[4] In respect of the second complainant, Ms S[...] G[...] (“Ms G[...]”), the Appellant relied on a defence of consent to the charges of rape (counts 4 and 5). He asserted that they were acquainted and that she had made sexual advances towards him.

[5] The State successfully applied, in terms of s 86 of the CPA, to amend count 4 to include penile penetration. The amendment caused no prejudice to the Appellant and aligned the charge with the evidence adduced. There was no objection to the amendment, and the amendment was accordingly effected.

[6] The State called five witnesses in support of its case, namely the two complainants, Mr Nyongo, and Doctors Tokwayo and Ntoi.

Factual Background

First complainant:

[7] At the time of the offences, the Appellant was employed as a taxi driver. On 30 October 2021, at approximately midday, Ms B[...] boarded a taxi driven by the Appellant in Khayelitsha. Two other female passengers were initially present but were dropped off before reaching her destination.

[8] The Appellant informed the complainant that he would take a shortcut but proceeded to drive in a direction inconsistent with her intended route. When she queried this, he responded, “*I heard you lady*”, and continued to drive to an isolated open field.

[9] The Appellant then ordered Ms B[...] to undress, assaulted her by slapping and punching her, and forcibly penetrated her vaginally with his penis. During the assault, she pleaded with him not to harm her and informed him that she was a virgin. He thereafter moved the vehicle into nearby bushes, instructed her to turn around, and raped her again from behind, continuing to assault her during the attack.

[10] During the incident, Mr Nyongo, a security officer, approached the taxi after hearing a disturbance, including the sound of slapping. He knocked on the window and thereby intervened. He observed that Ms B[...] was partially undressed, distressed, and shaking. When he asked what was happening, the appellant stated that she was his girlfriend. Ms B[...] immediately exited the taxi, entered Mr Nyongo's vehicle, and reported that she had been raped and did not know the Appellant.

[11] The Appellant attempted to take Ms B[...] back to the taxi, but Mr Nyongo prevented him from doing so. The appellant then gave the complainant R50 for taxi fare and departed. The security officer contacted the police, after which B[...] was taken to the police station and later to hospital for a medical examination.

[12] Dr Lerato Ntoi examined Ms B[...] and completed a J88 medico-legal report. She observed blood stains on the complainant's jeans, a haematoma above her right eye and an abrasion on her neck. The genital examination revealed tears to the labia minora and hymen, consistent with forced penetration.

Second complainant:

[13] Ms S[...] G[...] ("Ms G[...]") testified that on 5 April 2020 at approximately 17h00, she boarded a taxi driven by the Appellant in Khayelitsha, travelling to Macassar.

[14] After dropping off other passengers, she remained alone with the Appellant. She became concerned when he deviated from the expected route, to which he responded that he was taking a shortcut.

[15] The Appellant drove to an open field and instructed her to move to the front of the taxi. Upon her refusal, he moved to the rear and penetrated her with his finger, followed by vaginal penetration with his penis. He then threatened to kill her. He briefly moved to the front of the taxi before returning to the rear to rape Ms G[...] a second time.

[16] Afterward he drove her to Macassar, apologised and gave her R200 in an attempt to dissuade her from reporting the offence. He also provided a contact number which proved to be false.

[17] When he dropped her off, her cousin was waiting outside the house. The Appellant immediately drove away at speed and, in doing so, nearly collided with the cousin, who was able to observe the identifying inscription on the taxi. This detail would later assist the complainant and her family in tracking down the Appellant.

[18] Ms G[...] reported the incident to her family and thereafter to the police. She was examined at approximately 02h00 on 6 April 2020 by Dr Tokwayo.

[19] The J88 completed by Dr Tokwayo recorded fresh genital injuries, including tears to the labia and hymen, consistent with forced penetration.

The defence

[20] The Appellant's account was riddled with contradictions. In respect of Ms B [...], he initially denied intercourse, later claiming limited consensual contact, and further alleging a romantic relationship with her.

[21] The Appellant did not meaningfully rebut the security officer's evidence. He explained that the security officers intervened because they did not believe that the woman he was kissing was his girlfriend.

[22] His claim that Ms B[...] was his girlfriend was undermined by his concession that neither knew where the other lived. This added to the implausibility of his testimony.

[23] In respect of Ms G [...], the Appellant alleged that she initiated consensual intercourse, yet his explanation for her distress and his conduct afterward was

improbable. He testified that the complainant cried only because she feared becoming pregnant since they had unprotected sex. He said he gave her money to have tests done and that he offered her his number so that they could keep in touch. This version does not logically flow with his assertion that Ms G[...] initiated sex.

[24] The Appellant's version put to the complainants materially differed from his oral evidence, and his explanation that the discrepancies resulted from a language barrier was unconvincing.

Conviction

[25] The Appellant argued that the *court a quo* erred in convicting him on four counts of rape because the acts involving each complainant were not sufficiently separated in time.

[26] The Appellant also argued that the State witnesses gave mutually destructive versions and relied on the cautionary rule for single witnesses. These submissions were not supported by the record.

[27] Evidence in a criminal trial must be assessed as a whole, or as a "mosaic of evidence", as stated in *Khumalo v S*¹ as follows:

'Considering all the circumstances of this case, I am of the view that the evidence tendered by the State weighs so heavily as to exclude any reasonable doubt about the applicant's guilt. Expressed differently, the mosaic of the evidence as a whole is, beyond reasonable doubt, inconsistent with the applicant's innocence.'

[28] In the present matter, the mosaic of evidence reveals a distinctive *modus operandi* in that both complainants have presented similar fact evidence. Both cases present striking similarities in that the Appellant exploited his position as a taxi driver to

¹ [2022] ZASCA 39 (4 April 2022) at para [19].

isolate his victims; he transported them to a secluded bush area; he subdued them by physical force and threats and claimed that they were romantically connected to him.

[29] The similar fact evidence was admissible because its striking similarities were relevant to the issues of identity, consent, and modus operandi. The evidence was not admitted merely to show bad character. In *Nduna v S*², the court stated that the ultimate test is, and must always be, the relevance of such similar fact evidence as the foundation for its admissibility against the accused person: the evidence will be admissible if it is relevant to an issue in the case. The similar fact evidence carried significant probative value because it demonstrated a consistent and distinctive modus operandi.

[30] The Appellant's submission that the rape convictions should be treated as one continuous act, rather than as two separate acts in respect of each complainant, cannot be sustained. In this regard the Appellant referenced the unreported judgment of *Ndumiso Mangaliso v The State*³. In this case the appeal court determined that the oral and anal rape of the complainant was closely linked in that there was "*no temporal or spatial separation of the acts*".

[31] In the present matter, the evidence shows that, in each instance, there were two distinct acts, separated by a fresh decision to repeat the offence. In respect of Ms B[...], the Appellant raped her at the back of the taxi while she pleaded for her life. When she told him that she is a virgin he stopped, went to the front of the taxi and drove into the bushes before raping her again. As for Ms G[...], the Appellant inserted his finger into her vagina before raping her. He went to the front of the taxi and then returned to the back of the taxi and raped her again. The convictions on separate counts were therefore justified.

² 2011 (1) SACR 115 (SCA) at par 18.

³ Case number A203/2025 (31 October 2025).

[32] The medical evidence in respect of both complainants recorded injuries consistent with forced penetration.

[33] Nyongo's independent observations of B[...]s condition when he interrupted the assault provided corroboration. The Appellant's contradictory and improbable evidence further undermined his defences.

[34] The *court a quo* correctly found that the evidence, viewed as a whole, proved the Appellant's guilt. No material misdirection has been shown, and the convictions should stand.

Sentence

[35] Where an accused is convicted of rape, life imprisonment is mandated in terms of section 51(1) of the CLAA, read with Part I of Schedule 2 upon conviction, unless in terms of section 51(3), substantial and compelling circumstances exist which necessitate the imposition of a lesser sentence than the prescribed sentence.

[36] The interpretation of the phrase "*substantial and compelling circumstances*" was met with approval by the court in *Director of Public Prosecution, Pretoria v Tsotesti*,⁴ where Copper AJA referred to *S v Malgas*⁵, where it was stated that even though "substantial and compelling" factors need not be exceptional, there must be truly convincing reasons or "weighty justification" for deviation from the prescribed sentence. The Court held that the minimum sentence is not to be deviated from lightly and should ordinarily be imposed. This approach was also confirmed in *S v Dodo*⁶ and explained in *S v Vilakazi*⁷.

⁴ [2017] ZASCA 83 (2 June 2017) para 27.

⁵ [2001] ZASCA 30 (19 March 2001) para 17.

⁶ [2001] ZACC 16; 2001 3 SA 382 (CC) para 11.

⁷ 2009 1 SACR 552 (SCA) para 14.

[37] The Appellant submitted that the *court a quo* erred in finding that no substantial and compelling circumstances existed to justify a deviation from the prescribed minimum sentence. The following factors were advanced:

- a) The Appellant was 24 years old at the time of the offences;
- b) He was a first-time offender;
- c) He was in a stable relationship and had one child;
- d) He had been in custody for approximately three years and seven months prior to sentencing.

[38] The State submitted that no substantial and compelling circumstances were present to justify interference with sentencing citing the following factors:

- a) The offences were violent and premeditated,
- b) The profound psychological trauma inflicted on the victims, one of whom was a virgin;
- c) The exposure of the complainants to pregnancy and/or sexually transmitted disease;
- d) The Appellant's abuse of his position of trust as a taxi driver;
- e) The prevalence of such crimes in the community and the need for deterrence;
- f) The absence of genuine remorse evidenced by the unrelenting false denials and fabrication of defences.

[39] The Appellant further submitted that the *court a quo* overemphasised the prevalence of rape and imposed a disproportionate sentence. He submitted that the sentences should be reduced to 10 years' imprisonment on each of the two counts of rape, with such sentences to run concurrently.

[40] Proportionality requires the Court to balance the seriousness of the offences, the Appellant's personal circumstances, and the interests of society. While the Appellant's mitigating factors have been considered, they do not outweigh the gravity of the repeated, violent offences committed against two complainants. The prescribed sentence of life imprisonment is therefore not disproportionate.

[41] The seriousness of rape and the care required in sentencing for such offences have been repeatedly emphasised by our courts. In *S v Vilakazi*⁸, the court cautioned that sentencing in rape matters requires careful reflection, as custodial sentences are not merely numbers and the consequences of life imprisonment are profound.

[42] In *Director of Public Prosecutions, KwaZulu-Natal v Ndlovu*⁹, the court reaffirmed that rape is a grave violation of the dignity, privacy, and bodily integrity of the victim, causing lasting emotional and often physical harm.

[43] The Constitutional Court has likewise recognised rape as a profound violation of dignity, bodily integrity and privacy. In *Tshabalala v S; Ntuli v S*¹⁰, it described rape as structural and systemic, and in *Masiya v Director of Public Prosecutions, Pretoria and Another*¹¹ it emphasised that rape is an expression of power through degradation, the effects of which continue to demand a firm and constitutionally grounded judicial response.

[44] Having regard to the grave and persistent violence against women and children in South Africa, courts must respond with appropriate seriousness and condemnation, while ensuring that the sentence remains proportionate to the offence, society's interests, and the offender's personal circumstances.

[45] On appeal, this court may interfere with sentence only where the court *a quo* materially misdirected itself, failed to exercise its discretion judicially, or imposed a sentence so disproportionate that no reasonable court could have imposed it¹².

[46] Although the Appellant was relatively young, a first offender, had family responsibilities, and had spent a substantial period in custody¹³ awaiting finalisation of

⁸ 2009 (1) SACR 552 (SCA) para 21.

⁹ (2024) ZASCA 23 para 73.

¹⁰ 2020 (2) SACR 38 (CC) at para 67.

¹¹ 2007(5) SA 30(CC) at para 51.

¹² *S v Bogaards* 2013 (1) SACR 1 (CC) at para 41.

the matter, these factors do not, whether individually or cumulatively, amount to substantial and compelling circumstances. The offences were grave, repeated and violent.

[47] The Appellant exploited his position as a taxi driver to isolate vulnerable female passengers, used force and threats, and thereafter advanced false and improbable defences. The impact on the complainants was severe, and the medical evidence confirmed injuries consistent with forced penetration. In these circumstances, the prescribed sentence of life imprisonment is not disproportionate to the offences, the interests of society, or the appellant's personal circumstances. There is accordingly no basis to interfere with the sentence imposed by the court *a quo* on each of the counts.

Conclusion

[48] Having considered the record and the submissions advanced, this court is satisfied that the convictions and sentences were correctly imposed.

Order

[49] In the result, I would grant the following order:

The appeal against conviction and sentence is dismissed. The sentence is confirmed.

V BARTHUS

ACTING JUDGE OF THE HIGH COURT

¹³ In *Radebe and Another v S* 2013 (2) SACR 165 (SCA), the court held that: “ *the test is not whether on its own that period of detention constitutes a substantial or compelling circumstance, but whether the effective sentence proposed is proportionate to the crime or crimes committed: whether the sentence in all the circumstances, including the period spent in detention prior to conviction and sentencing, is a just one*”.

I agree and it is so ordered.

M PANGARKER
JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for the Appellant:

Mr M Strauss

MarthinusS@legal-aid.co.za

Instructed by:

Legal Aid South Africa

Counsel for the Respondent:

Adv LJ Badenhorst

ljbadenhorst@npa.gov.za

Instructed by:

Director of Public Prosecutions: Western Cape