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**IN THE REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: SS96/2025

(1)	<u>REPORTABLE: YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
..... DATE	 SIGNATURE

In the review of the following matters:

THE STATE

V

MAKHAVU VINCENT

JUDGEMENT ON SENTENCE

MALI J

[1] On 30 July 2026 the accused pleaded guilty and was found of the following eleven counts.

1.1 **COUNT 1:** RAPE of L[...] S[...] S[...]

1.2 **COUNT 2:** ROBBERY WITH AGGRAVATING CIRCUMSTANCES

1.3 **COUNT 3:** UNLAWFUL POSSESSION OF A FIREARM

- 1.4 **COUNT 4:** RAPE of N[...] E[...] B[...]
- 1.5 **COUNT 5:** UNLAWFUL POSSESSION OF A FIREARM
- 1.6 **COUNT 6:** UNLAWFUL POSSESSION OF AMMUNITION
- 1.7 **COUNT 7:** ROBBERY WITH AGGRAVATING CIRCUMSTANCES
- 1.8 **COUNT 8:** RAPE of V[...] K[...]
- 1.9 **COUNT 9:** UNLAWFUL POSSESSION OF A FIREARM
- 1.10 **COUNT 10:** RAPE of M[...] M[...]
- 1.11 **COUNT 11:** UNLAWFUL POSSESSION OF A FIREARM

Background

- [2] He used the same modus operandi. He lied, claiming to be a prophet, and the victims came to his place seeking spiritual assistance. That was when he would pounce on them, rape them, and rob them of their belongings, using a firearm.
- [3] The accused has already been convicted on 4 other counts of rape and has not yet been sentenced. Section 51 of the Criminal Law Amendment Act 105 of 1997, read with Part 1 of Schedule 2 (a) (iii) (bb), provides that an accused who has been convicted by the trial court of two or more offenses of compelled rape should be sentenced to a prescribed minimum sentence, which is a life sentence.
- [4] It is trite that, in determining and imposing sentence, a court should take into account three important factors, namely the offense, the interests of society, and the accused's personal circumstances. This court is enjoined to analyse the three factors, give them equal weight, and, having done so, distil what, in its view, is an appropriate sentence. It is trite law that, in weighing the three factors, the court should avoid over- or underemphasizing any one of them at the expense of the others.

- [5] Having analysed all the three factors, a court must still establish the purpose of the sentence about to be imposed. The purpose of the sentence may be retributive, preventative, rehabilitative, and deterrent. It must be understood that sentencing is an integral part of punishment system. Its purpose is not so much to please the community as it is to serve the interests of the society.
- [6] The courts exist through the will of the people and therefore are expected to mete out justice according to the will of the society; nevertheless, within legal parameters. People of this democratic country wish to see justice done. When the courts carry out their mandate appropriately, the exercise helps to avoid people taking law into their own hands.
- [7] The purpose of sentencing is usually considered to be threefold: firstly, to punish the wrongdoer; secondly, to deter or discourage both the wrongdoer and society generally from offending; thirdly, to rehabilitate the offender so that he turns away from crime.
- [8] In order to achieve these purposes in determining the appropriate sentence we usually take into account the following factors: the nature and the details of the crime which has been committed, the personal circumstances of the accused, and the needs of and the response of the society generally.

Nature and Details of Crime

- [9] In *S v Obisi* 2005 (2) SACR 350 (W) at para 13 is held that:

'The nature of the crime, the brazenness, the callousness and the brutality of the appellant's conduct show that he attaches no value to other people's lives or physical integrity or to their dignity.'

- [10] All the crimes the accused is found guilty of are very serious crimes in particular Rape and Robbery with aggravating circumstances.

Personal Circumstances

[11] In mitigation the following was submitted. Firstly, the accused pleaded guilty, he did not waste the time of the court.

[12] He is 37 years old and has one dependent child and father who is emotionally attached to the child.

Passed grade 12; went to tertiary: Dip Plumbing

Grew up with both parents, and they are still alive.

Found guilty of various sentences

[13] There are compelling and circumstantial factors. He pleaded guilty, which never wastes the court's time, and accepted that he had a firearm. The court should consider having the sentences run concurrently because he is already serving life. The robbery and each rape should run concurrently.

[14] In **S v VILAKAZI**¹ it is held that personal circumstances of the offender may become immaterial when they are flimsy. In the present matter as alluded above the court is persuaded to depart from the imposition of minimum sentences only on the basis of accused's personal circumstances. There is nothing more.

[15] I now turn to aggravating circumstances. The state led the evidence of the victims of the crimes as follows:

15.1 E[...] B[...] who testified that she was married at the time of the incident and is still married. The whole ordeal affected her marriage negatively in that her husband once told her to go to her parents' place. She attended the clinic for treatment and was given treatment to prevent HIV. The side effects from the HIV prevention treatment were unbearable; they caused her to be sicker. Furthermore, she is not in a good emotional state, especially when she thinks about the day her children would be grown-ups and learn about

¹ 2009(1) SCA

the fact that she was a victim of rape. She think the accused deserves a harsher sentence. He cannot live in the community.

15.2 K[...] V[...]

She testified that she was too traumatized and felt violated. She no longer feels safe. She is even concerned about her family members' safety. She had a difficult time taking medication to prevent HIV because the side effects made her sicker. She is embarrassed that if some of her family members knew about the rape, they might view her differently.

She stated that he is dangerous to the nation/community he should get life imprisonment.

15.3 M[...] M[...]

What happened on 4 February 2021 was very painful. She is still affected. She has children, she does not know how she is going to tell them. Even in her family, they are not happy anymore. Even when she quarrels with her husband, he always reminds her of this incident.

She wants the law to take its course she is only lucky to be alive. She took HIV-prevention medication and was affected side effects, vomiting, etc. He must receive a life sentence.

[16] In **S v MATYITYI²** at paragraph 23 the following is stated:

"...Courts are not free to subvert the will of the legislature by resorting to vague, ill-defined concepts such as 'relative youthfulness' or other equally vague and ill-founded hypothesis that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, is foundational to the rule of law which lies at the heart of our constitutional order."

² 2011 (1) SACR 40 (SCA)

Society Considerations

[17] In **S. ROSLEE**³ at page 545 i the court had this to say:

“The public requires effective sanction against the perpetrators of such savagery.”

[18] Accordingly, as a sentencing court, I am obliged to take into account all relevant factors and consider their combined impact to determine whether they are convincing enough to justify a deviation from the prescribed minimum sentence. Having heard the victims of crime who went to you seeking spiritual healing and were instead afflicted with these heinous crimes, the aggravating circumstances far outweigh the mitigating factors. You are not fit to live within the community; you deserve to be removed from society permanently. Following the Supreme Court of Appeal case in Kekana above, I exercise my discretion as follows:

[19] There are no substantial and compelling circumstances justifying a lesser sentence of imprisonment.

ORDER

1. Accordingly accused you are sentenced to Life Imprisonment in respect of Count 1 that of Rape
2. Count 2: Robbery you are sentenced to 15 years imprisonment
3. Count 3: Unlawful possession of firearm you are sentenced to 15 years imprisonment
4. Count 4: Rape you are sentenced to Life imprisonment
5. Count 5: of unlawful possession of firearm you are sentenced to 15 years imprisonment

³ 2006 (1) SACR 537 SCA

6. Count 6: unlawful possession of ammunition you are sentenced to 5 years imprisonment
7. Count 7: Robbery you are sentenced to 15 years imprisonment
8. Count 8: Rape – Life Imprisonment
9. Count 9: Unlawful possession of firearm -15 years imprisonment
10. Count 10: Rape -Life Imprisonment
11. Count 11: Unlawful possession of firearm 15 years imprisonment
12. In terms of section 103 (1) of the Firearms Control Act 60 of 2000, you are declared unfit to possess a firearm or a muzzle-loading firearm.
13. All sentences are to run concurrently for the purposes of serving.

N.P. MALI

JUDGE OF THE HIGH COURT

For the state: Adv de Clerk (NDPP)

For the defence: Ms Qoqo (Legal Aid South Africa)

Delivered: 31 August 2026

