



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

Case No.: CC22/2026

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED YES/NO
DATE 15 September 2026
SIGNATURE MALANGENI AJ

In the matter between:

THE STATE

and

MDUDUZI VICTOR NKWAMBE

ACCUSED

JUDGEMENT

MALANGENI AJ

Introduction

[1] The accused has already been convicted of murder read with the provisions of section 51(1)-(g) of the Criminal Law Amendment Act 105 of

1997 after his guilty plea that was tendered on 22 July 2026. At the request of his legal representative, the matter was postponed for a pre-sentence report to 14th of September 2026.

[2] On the 14th of September, the defence presented a pre-sentence report compiled by Ms Thandiwe Sithole. The state presented the victim impact statements in the names of P[...] D[...] M[...], A[...] P[...] M[...] and B[...] P[...] M[...]. By consent between the parties all these documents were exhibited as “D”, “E”, “F” and “G” respectively. These documents in conjunction with other submissions made herein helped this court in making an informed decision.

Mitigating and aggravating circumstances

[3] For a better understanding of which are those factors that constitute mitigating and aggravation circumstances, the court has to consider the traditional factors referred to in *S v Zinn*¹. Such being the nature of the offence, the interests of society and the personal circumstances of the accused. In respect of these 3 (three) factors, the court must strike a balance so that one factor may not be overemphasized at the expense of the other or the others.

[4] In mitigation of sentence, the legal representative for the accused referred this court to the pre-sentence report (Exhibit “D”). I am so grateful to the compiler of this comprehensive report. In brief, the contents of the report deal

¹ *S v Zinn* 1969 (2) SA 537 (A) 540G-H.

with accused's personal circumstances, how the offence affected the family and the nature of the offence generally.

[5] The document in question reflects that accused was born on 2 January 1981, therefore he is 45 years old. He attended Hlanganani Secondary School up to standard 6 when he experienced academic difficulties causing him to fail the same class 3 (three) times. He later improved but could not pass standard 10.

[6] In 2008, he worked as an operator for Cruise Construction and later joined Kliepfontein Sand and Stone during the same year. In 2013, he was employed by Tiger Business Enterprise as a supervisor. From 2018 to 2021, he worked for Selengwe Ready as an operator and in 2021, he joined Timangweni where he worked as a foreman. He has 4 (four) children with the deceased.

[7] He and deceased were experiencing a continuous domestic conflict. In 2021, deceased issued a protection order against him.

[8] What is aggravating is that as per Exhibit "C" (Postmortem Report) he stabbed the deceased multiple times resulting in penetration of both chest cages, liver and ascending aorta. The cause of death being multiple stab wounds to the body.

[9] From Exhibit “E to G”, it is clear that the departure of the deceased is a deep loss to her family and her kids. Ms P[...] D[...] M[...] (Exhibit “E”) explains the following:

“the person who killed my sister did not only take her life, he left our family with immense pain, sorrow and responsibilities that we were never prepared for in life. It’s been almost 5 years since my sister passed away but the pain of her death is still fresh upon our heart[s]. My mother S[...] M[...] has also been deeply affected by my sister’s death. Since the incident, she has never recovered emotionally. She has [been] bedridden, and we now have to take turns as a family caring for her. The trauma of losing her daughter in such a manner left her in bad health. We as a family are struggling financially and cannot afford to employ a caregiver or even purchase a wheelchair to make her life more comfortable. Watching our mother suffer has added to the pain in our family”.

[10] Ms A[...] M[...] (Exhibit “F”) indicated that she is the first daughter of the deceased. The trauma of losing their mother has affected them deeply, especially her younger siblings, who witnessed the incident and watched their mother dying. That memory continues to haunt them. They often wish that their mother was still alive.

[11] B[...] P[...] M[...] (Exhibit “G”) mentioned that she is the second daughter of the deceased. Everything that happened that day left her with so much anger and confusion. To this day, she still cannot understand why he would do such a terrible thing, especially in their presence. Since the incident, there are days

where she isolates herself from everyone because she feels overwhelmed by the pain of losing her mother.

[12] The legal representative for the accused submitted that in as far as substantial and compelling circumstances are concerned, she leaves that in the hands of the court. Whereas the state prosecutor indicated that the accused does not show any remorse, she referred this court to the well-known case of *S v Matyityi* 2011 (1) SACR 40 (SCA). In short, she indicated that there are no substantial and compelling circumstances existing in these proceedings.

The seriousness of the offence

[13] Murder will remain a serious offence as one's life has been lost. In the proceedings under consideration, an innocent life of a defenseless woman has been taken by a person who claimed to love her. Love and killing cannot go together. One who loves cannot kill his or her lover. The position is supposed to be where there is love, there is peace. The minute one murders his or her lover, it then means that there has been no love from the beginning.

[14] In the true sense, the offence of murder means the taking of another person's life. This is an infringement of a fundamental right articulated in section 11 of the Constitution. This section provides that everyone has the right to life. It is the main duty of courts to make sure that community members are being protected from all those who are determined to take the lives of innocent people. Murder is rightly regarded as an offence of the most gravity.

[15] This court has noticed that the commission of murders within domestic relationships is an offence that is highly prevalent in our country. There is no day that goes by without hearing about a crime of this nature.

[16] The prevalence of this offence within this Division is evidenced by the number of cases we have on our roll, term by term. This term started on 20 July 2026 and will end 18 September 2026, this court alone has listened to +- 5 cases of murder within a domestic relationship. In *Kekana v The State*² Mothopo AJA (as he then was) stated that: “Domestic violence has become a scourge in our society and should not be treated lightly. It has to be deplored and also severely punished...”

[17] The prevalence of this offence is a true reflection of the fact that some women are not safe in their love relationships. Surely, they fear for their lives. For the full protection of victims of domestic violence, the legislature passed the Criminal Law Amendment Act 105 of 1997. In Section 51(1) of the same Act, paragraph (g) of Part I of Schedule 2 prescribes life imprisonment for murder taking place within a domestic relationship. It is trite that the court may only deviate from the application of the prescribed sentence in the absence of substantial and compelling circumstances, indicating that a lesser sentence is warranted.

² *Kekana v The State* [2014] ZASCA158 at para 20.

[18] There are guidelines set out by the court to determine the existence or non-existence of substantial and compelling circumstances to justify the departure from the prescribed sentence. In *S v Malgas*³ the court raised the following as those issues to be considered:

“A. Section 51 has limited but not eliminated the courts' discretion in imposing sentence in respect of offences referred to in Part I of Schedule 2 (or imprisonment for other specified periods for offences listed in other parts of Schedule 2).

B. Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular 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.

C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.

E. The Legislature has however deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence.

While the emphasis has shifted to the objective gravity of the type of crime and the

³ *S v Malgas* 2001(1) SACR 469 (SCA) at para 25.

need for effective sanctions against it, this does not mean that all other considerations are to be ignored.

F. All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process.

G. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ('substantial and compelling') and must be such as cumulatively justify a departure from the standardised response that the Legislature has ordained.

H. In applying the statutory provisions, it is inappropriately constricting to use the concepts developed in dealing with appeals against sentence as the sole criterion.

I. 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.

J. In so doing, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the bench mark which the Legislature has provided."

[19] For serious offences, rehabilitation will play a relatively smaller role. In *S v Swart*, the Judge stated that "The serious crimes will normally require that the

retribution and deterrence come to the fore and that rehabilitation will play a relatively smaller role.⁴” Given the circumstances and the manner in which these horrific offences were committed by the accused, this is one of those cases where retribution and deterrence comes to the fore and the rehabilitation of the accused takes a backseat. It must give expression to the relative gravity of the offence, the prevalence of domestic violence, which culminates in the murder of woman and act as a deterrent for would be offenders in domestic partnership that such conduct will not be countenanced.⁵

The interest of society

[20] Society demand that perpetrators of gender-based violence must be punished as prescribed by law. The law applicable to gender-based violence, reference is made to Criminal Law Amendment Act 105 of 1997. Section 51(1)(g) of the Act prescribed a life imprisonment. When it comes to considering the type of sentence to be imposed, courts have to consider the public interest not the public opinion. However, the members of the society do not have a right to suggest to court as to which sentence to impose.

[21] Members of the community generally have invested their hopes to the courts for their protection against acts of domestic violence including those happening within domestic relationships. The courts are the last hope of victims of these kinds of crimes. The court has a duty by imposing an appropriate

⁴ *S v Swart* 2004 (2) SACR 370 (SCA) at para 12

⁵ *S v T.F* [2026] ZAECMHC 18 at para 7.

sentence to convey a message to the community out there that the crime will never be tolerated.

Personal circumstances of the accused

[22] Accused's personal circumstances are tabled at length in exhibit 'D'. It is common cause that accused committed murder which is a serious offence. In *S v Vilakazi*⁶ the court stated that:

“The personal circumstances of the appellant, so far as they are disclosed in the evidence, have been set out earlier. In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. 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 me to be the kind of ‘flimsy’ grounds that Malgas said should be avoided.”

Evaluation

[23] I am alive to the fact that each case has to be decided on its own merits. In *S v Mudau*⁷, Madjiet JA, as he then was stated as follows:

“I hasten to add that it is trite that each case must be decided on its own merits. It is also self-evident that sentence must always be individualised, for punishment must always fit the crime, the criminal and the circumstances of the case. It is equally important to remind ourselves that sentencing should always be considered and passed dispassionately, objectively and upon a careful consideration of all relevant factors.

⁶ *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 58.

⁷ *S v Mudau* 2013 JDR 0938 (SCA) at para 13.

Public sentiment cannot be ignored, but it can never be permitted to displace the careful judgment and fine balancing that is involved at arriving at an appropriate sentence. Courts must therefore always strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, has regard to the nature of the crime and takes account of the interests of society. Sentencing involves a very high degree of responsibility which should be carried out with equanimity.”

I am further alive to the fact that life imprisonment is the heaviest sentence that can be imposed.

[24] From the Victim Impact Reports, it is clear that the death of deceased is something that the family is struggling to cope with. The death has opened a wound that if healed, will take time to do so. Nothing that can be done to bring back the loss life of the deceased. Accused does not show any sign of remorse. If he was remorseful, he would not have fled the scene, evade arrest until March 2025.

[25] Accused used a knife (which is a dangerous weapon) in taking the innocent life of a defenseless and harmless member of the vulnerable group (a woman). What is contained in the pre-sentence report in terms of personal circumstances of the accused as substantial and compelling circumstances is just ordinary circumstances. The aggravating circumstances outweigh the mitigating circumstances. I would be doing injustice in these proceedings if I deviate from the prescribed sentence. The circumstances of the case require that the accused for all practical purposes be permanently removed from society. The only

appropriate option would be to impose life imprisonment. The accused used violence in killing the deceased.

Order

[26] After careful consideration of what has been presented before me, I am of the view that substantial and compelling circumstances are absent in the proceedings under consideration and as such I issue the following order:

1. That accused is sentenced to life imprisonment.
2. That in terms of section 103 (1) of the Firearms Control Act 60 of 2000, no order is made.

MALANGENI M
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION

Appearances

Counsel for the State: Adv Msibi

Instructed by: NPA

Counsel for the Accused: Adv Erasmus E

Instructed by: Legal Aid South Africa

Date of hearing: 14 September 2026

Date of judgment: 15 September 2026