



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

CASE NO: CC41/2024

(1)	REPORTABLE: YES ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES ☒ NO
(3)	REVISED.
21/9/2026 DATE	
 SIGNATURE	

In the matter between:

THE STATE

And

RASIE HLABIRWA NKUNE

Accused 1

MOTHIBE JACOB CHEGO

Accused 2

JUDGMENT ON SENTENCE

MAKAMU J

Introduction

The accused 1 has been convicted of several counts, amongst others including two counts of contravening Section 18(2) of the Riotous Assemblies Act 17 of 1956 (Conspiracy to commit murder), two counts of murder, two counts of robbery with aggravating circumstances, four counts of kidnapping, defeating the ends of justice and fraud. Accused 2 has been convicted of two counts of contravening Section 18(2) of the Riotous Assemblies Act 17 of 1956 (Conspiracy to commit murder), two counts of murder, kidnapping and fraud.

Personal circumstances of the accused

[1] The accused 1 was approximately 38 years of age at the time of arrest; he is currently 40 years of age. He has a previous conviction for possession of a firearm without a license or permit or authorization and unlawful possession of ammunition.

He is not married and has three minor children, aged 13, 9, and 3. He is self-employed in the construction business, and he is qualified as a boilermaker. He was incarcerated on unspecified charges shortly before committing these crimes. After committing these crimes, he was on the run for approximately 2 years.

[2] The accused, 2, is 44 years of age. At the time of arrest, he was employed as a police officer in Mbombela, attached to the VICU, and served as an investigating officer. He has since been discharged from active police service. He is married and has three children, one from his relationship before he got married; she is 24 years of age. He has two children, aged 14 and 9, respectively. His wife had a child before they married, whom he raised as his own; she is 25 years of age, so technically he has four children.

The deceased and victims of crime

[3] The deceased, Mr. Mogashoa and his deceased wife Mrs. Mogashoa were 35 years and 34 years respectively at the time of their deaths. They were married and had two children and were expecting a third.

[4] The deceased were self-employed at the time of their deaths, leaving two minor children.

Factors to be considered

[5] The court should take into account the triad as set out in ***S v Zinn 1969***¹, consisting of the seriousness of the crime, the personal circumstances of the accused, and the interests of society, and also add the interests of the victims.

[6] This is one of the heinous crimes committed by the accused for no acceptable explanation except greed and because he felt he could do it. There was no reason whatsoever why a young couple's lives could be cut short in such a brutal manner.

[7] The accused planned the crimes and executed the murder in a very brutal manner. The charge of conspiracy to murder carries the same sentence as actual murder. In ***S v Mokoena and Others***², Moleleki AJ stated:

"Conspiracy to commit robbery is an extremely serious offense, which carries the same penalty as the substantive crime of robbery itself."

[8] The accused 1 stated emphatically that he is not remorseful, as he maintains that he is not guilty of any offense; accordingly, I am not going to deal with the question of remorse. Accused 2 also did not express remorse in his mitigation of sentence.

[9] Expression of remorse does not translate to the admission of guilt but is described in ***S v Matyityi 2011***³ Ponan JA stated:

"There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not, without more, translate into genuine remorse. Remorse is gnawing pain of conscience for the plight of another. Thus, genuine contrition can only come from appreciation and

¹ S v Zinn 1969 (2) SA 537 (A)

² S v Mokoena and others (CC25/24) [2026] ZANPMBHC 36

³ S v Matyityi 2011 (1) SACR 40 (SCA)

acknowledgment of the extent of one's error. Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question. It is to the surrounding actions of the accused, rather than what he/she says in court, that one should look."

Application of the minimum prescribed sentence

[10] The charges of conspiracy to commit murder, murder and robbery with aggravating circumstances attract the prescribed minimum sentence, in terms of section 51(1)⁴ and 51 (2)⁵ of the Criminal Law Amendment Act, unless the accused are able to demonstrate substantial and compelling circumstances that would persuade the court to deviate from such a sentence.

[11] In ***S v Malgas 2001***⁶, it is stated that:

"Section 51 has limited but not eliminated the court's discretion in imposing sentence in respect of offences referred to in Part 1 Schedule 2 for imprisonment for other specified periods for offences listed in other parts of Schedule 2. 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 specified circumstances. 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, standardized and consistent response from the courts. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypothesis 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

⁴ Criminal Law Amendment Act, 105 of 1997, s51 (1)

⁵ Criminal Law Amendment Act, 105 of 1997, s51 (2)

⁶ *S v Malgas 2001* (1) SACR 469, para g-h

personal circumstances or degrees of participation between co-offenders are to be excluded.”

[12] Both accused adduced personal circumstances that are not sufficiently substantial or compelling to warrant a deviation from the prescribed minimum sentence; however, the court has a duty to check whether any factors may be considered substantial and compelling to warrant such a deviation.

[13] In **S v Obisi 2005**⁷, the court stated 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.”

[14] The fact that accused 2 was not proved to have been at the scene is insufficient, as the doctrine of common purpose suggests that he aligned himself with the overall plan. The plan was to eliminate any challenge to the vehicle's ownership by the actual owner, Mr. Mogashoa. In **R v Blom 1939**⁸, the court stated:

“In reasoning by inference, there are two cardinal rules of logic which cannot be ignored:

1. The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

2. The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct”.

This is the only inference that one can draw as to the reason why the accused decided to kill the deceased.

⁷ S v Obisi 2005 (2) SACR 350 (WLD), para 15

⁸ R v Blom 1939 AD, p 202-203

[15] The plan was carefully orchestrated and executed so that no one could later come and claim the vehicle, as it was already in the possession of the accused 1's girlfriend, Pretty Mazibuko.

[16] I considered the reports from two clinical psychologists regarding accused 1 and the probation officer's report regarding accused 2. Accused 1 told Ms. Thabiso Mercy Ntshangase and Ms. Favourite Selepe that he would not cooperate with them in compiling his reports. Whereas accused 2 cooperated with the probation officer.

[17] Both clinical psychologists classified accused 1 as extremely dangerous and needing to be removed from society, and even the probation officer recommended that accused 2 be sentenced in terms of the minimum sentence.

[18] The victims and family members of the victims murdered in this matter wrote statements expressing the loss and the tragedy of losing the loved ones under terrible circumstances. The deceased were still young, trying to build their nuclear family without forgetting where they came from.

[19] Both the deceased had ambitions to grow in business and professionally. They intended to grow in their careers; unfortunately, their lives had to be terminated in the most gruesome and brutal manner, having done nothing to deserve such death.

[20] The accused were not directly charged for the death of the baby who was still in her mother's womb. The medical assessment indicated that she was already a recognizable person who could have survived if she had been born at that stage. The State ought to have charged the accused with murder of the unborn child too. The Court's hands are tied and cannot impose a sentence on the charge that was not preferred against the accused persons.

[21] The death caused a division between Mogashoa and Zwane families, where there was a conflict regarding the burial of Ms. Mogashoa. The families of Mogashoa and Zwane will almost certainly not survive the trauma of losing their loved ones in such a violent manner. There was no psychological assessment of the parents of family members, except that they expressed themselves in their statements, which statements are devoid of professional articulation of their pain, loss and sorrow.

[22] The little TM who witnessed the killing suffered extreme trauma as he watched the parents' lives taken away violently. Only God knows how he will guide him away from violence due to his experience. He stated that the loss affected him at school; his grades started to drop, and he had to attend extra lessons.

[23] The little sister was too young to acknowledge the trauma, but she will grow up not knowing her parents, although I do not doubt that the grandparents are doing their best to minimize the pain of the loss.

[24] Dumisane Zwane, the father of Ms. Mogashoa, expressed his loss in his victim impact statement. He felt the loss and described how his grandchildren would be raised without knowing their parents. He started to use supplements to survive the trauma. He explained how he had a legal battle with the Mogashoa family to be allowed to bury his daughter. He also suffered serious financial loss in that battle.

[25] He raised his murdered daughter in church, where she developed as a singer in a praise and worship band and keyboard player, and he also bought Mr. Mogashoa digital drums to encourage them as worshippers in church.

[26] Rachel Zwane, the mother of the deceased Ms. Mogashoa, was a practicing midwife at the time of the incident. She was running her own practice, which suffered tremendously. She, like her husband, survived on supplements to cope with the loss. She developed health issues as a result of the loss. She suffered financially as her turnover was radically reduced. She also reported that TM started to wet his blankets a tendency which he did not have prior to the death of his parents. This can be attributed to the trauma he suffered.

[27] The death of the couple caused massive disruption in the two families. The mother of Mr. Lucky Mogashoa also had a business which could not proceed after Lucky's death. She fell into depression, and now she is on chronic medication. The siblings of Mr Lucky Mogashoa and Mrs Sabelisiwe Mogashoa were assisted by them to go through their education respectively, but they had to drop out due to a lack of funds, as the couple's death left the well dry.

[28] The deceased Mr Lucky Mogashoa was busy building a house for his parents, but that came to a standstill due to his passing, so his death had a ripple effect in the entire family of Mogashoa and Zwane.

[29] Lydia Puseletso Mokoena, the sister of the deceased Lucky Mogashoa, expressed her loss in the victim impact statement. She stated that Lucky Mogashoa was a caring brother who was shouldering the responsibility of raising his siblings and helping them experience a better life, and that all those dreams had just been extinguished.

[30] The court has a duty to impose an appropriate sentence fearlessly, and that should not be influenced by the opinions of society. In **S v Mhlakaza**⁹ 1997, Harms JA stated:

"Although these views, as formulated, cannot be criticized, it is necessary to express a general note of caution. The object of sentencing is not to satisfy public opinion but to serve the public interest...A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the court's duty to impose fearlessly an appropriate and fair sentence even if the sentence does not satisfy the public. In this context the approach expressed in S v Makwanyane and Another 1995 (2) SACR 1 (CC) at 38-39, paras 87-89 (per Chaskalson P) applies mutatis mutandis: public opinion may have some relevance to the enquiry, but, in itself, it is no substitute for the duty vested in the court; the court cannot allow itself to be diverted from its duty to act as an independent arbiter by making choices on the basis that they will find favour with the public."

[31] The public may hold its views on the sentence to be imposed, but based on the reasoning of the SCA and the Constitutional Court, it would be a flawed policy to follow.

[32] The court should impose as follows, as cited in **S v Kumalo** 1973¹⁰:

"Punishment must fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances."

⁹ S v Mhlakaza 1997 (1) SACR 515 (SCA), p 158 at para e-f

¹⁰ S v Kumalo 1973 (3) SA 697 (A)

[33] The accused 2 provided a correctional supervision report that suggests that indeed accused 2 has a support structure for him to be sentenced to correctional supervision; however, the correctional officer does not dwell on the gravity of the offence committed to suggest any other form of punishment or sentence, but that is provided for by the probation officer.

[34] In a very serious and heinous crime like the present, correctional supervision is way off the mark of an appropriate sentence. As stated in **Mhlakaza**¹¹:

“Given the current levels of violence and serious crimes in this country, it seems proper that, in sentencing especially such crimes, the emphasis should be on retribution and deterrence. Retribution may even be decisive.”

[35] The accused 1 has been in custody since 12 April 2024, and that was solely because of this case; as such, that period cannot be counted in the accused’s favor.

[36] As stated, the court must find substantial and compelling circumstances to deviate from the prescribed minimum sentence; so far, nothing has been found from both accused, even when the court embarked on a search for the same. There are no substantial and compelling circumstances to deviate from the prescribed minimum sentence.

[37] I think it is worth mentioning the dedication of the young investigating officer, Sergeant Mathenjwa, who did a sterling job in tying the knots together to link the perpetrators to the crimes. He has outdone himself, and it is the breed that is scarce in our current police service. He can be compared to the late Piet Beyleveld, a respected, dedicated police officer who became known nationwide for his excellent service. He must be encouraged to keep up his good work to save this country from the rot.

[38] I therefore have concluded that the following sentence will be appropriate...

¹¹ S v Mhlakaza 1997 (1) SACR 515 (SCA), p 519 at para a-e

Order

I hereby make the following order:

Accused 1

1. Count 1 – 2: (Conspiracy to commit murder), contravening section 18(2)(a) of the Riotous Assemblies Act 17 of 1956, sentenced to life imprisonment on each count.
2. Count 3 - 4: Murder read with the provisions of section 51(1) and read with Part 1 of Schedule 2 (sub-par (a), (b)) of the Criminal Law Amendment Act, 105 of 1997 as amended, sentenced to life imprisonment on each count.
3. Count 5 – 8: Kidnapping, five (5) years imprisonment on each count.
4. Count 9 – 10: Robbery with aggravating circumstances, sentenced to fifteen (15) years imprisonment on each count.
5. Count 11: Fraud, five (5) years imprisonment.
6. Count 12: Defeating and/or obstructing the course of justice and/or the administration of justice, sentenced to five (5) years imprisonment.

In terms of section 280(2) of the Criminal Procedure Act, 51 of 1977, the court orders that sentences on counts 5 to 12 run concurrently with the sentence on count 4.

In terms of section 103 of the Firearms Control Act 60 of 2000, the court makes no order; as such, the accused remains unfit to possess a firearm.

Accused 2

1. Count 1 – 2: (Conspiracy to commit murder), contravening section 18(2)(a) of the Riotous Assemblies Act 17 of 1956, sentenced to life imprisonment on each count.
2. Count 3 - 4: Murder read with the provisions of section 51(1) and read with Part 1 of Schedule 2 (sub-par (a), (b)) of the Criminal Law Amendment Act, 105 of 1997 as amended, sentenced to life imprisonment on each count.
3. Count 5 - 8: Kidnapping, sentenced to five (5) years' imprisonment on each count.
4. Count 11: Fraud, sentenced to five (5) years' imprisonment.

5. Count 12: Defeating and/or obstructing the course of justice and/or the administration of justice, sentenced to five (5) years' imprisonment.

In terms of section 280(2) of the Criminal Procedure Act 51 of 1977, the court orders that the sentences in counts 5-8 and 11-12 run concurrently with the sentences in counts 1- 4.

In terms of section 103 of the Firearms Control Act 60 of 2000, the court makes no order; as such, the accused remains unfit to possess a firearm.

A handwritten signature in black ink, appearing to be 'M S Makamu', is written over a horizontal line. The signature is partially obscured by a black rectangular redaction box.

M S MAKAMU

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Appearance on behalf of the State

Adv T. Sekhonyana

Appearance on behalf of Accused 1

Ms. A Simpson (Legal Aid)

Appearance on behalf of Accused 2

Adv De Necker