

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
SOUTH GAUTENG HIGH COURT**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

8/2/2022
DATE

SIGNATURE

CASE NUMBER : SS25/2021

In the matter between:

THE STATE

and

SAMSON MOYO

ACCUSED

JUDGMENT-SENTENCE

DOSIOJ

SENTENCE

[1] The accused have been found guilty of two counts. Count one is the crime of murder read

with the provisions of section 51(1) and Part 1 of schedule 2 of Act 105 of 1997 ('Act 105 of 1997'). Count two is a charge of attempted murder.

- [2] For purposes of sentence this court has taken into consideration the accused's personal circumstances, the seriousness of the offences and the interests of the community. The court has borne in mind the main purposes of sentence which is deterrence, retribution, reformation and prevention.

PERSONAL CIRCUMSTANCES OF THE ACCUSED

- [3] The personal circumstances of the accused are as follows;

He is 29 years old and is a Malawian citizen. He came to South Africa in 2014. Since 2014 he has been doing work as a gardener and also renovating properties. He would earn approximately R15000-00 per month. He has two children aged one-years old and six years old respectively. The children live with their paternal grandmother in Malawi. Prior to his incarceration he would send money every month to maintain his children.

SERIOUSNESS OF THE OFFENCES

- [4] In respect to the seriousness of the offences this court would like to state as follows:

These crimes were committed in the early morning whilst Mrs Rosa Pereira was opening the room for the accused and his co-perpetrator to change their clothes. Although the accused was not charged for robbery with aggravating circumstances it is clear from the evidence of Mrs Rosa Pereira that there was money missing which she kept in her wardrobe as well as a bag of R5 coins in her side drawer near her bed. A ring of hers was missing, as well as her husband's watch. The murder falls within the definition of Schedule 2 of part 1 of Act 105 of 1997, in that it was planned and premeditated. Furthermore, the death of the deceased was caused during the commission of a robbery and both count one and two were committed by a group of two persons in the furtherance of a common

purpose. It is in the accused's favour that a charge of robbery was not added to the two counts upon which the accused is arraigned. The reasons why a charge of robbery with aggravated circumstances was not added is unknown to this court.

The post-mortem report in respect to the deceased shows that the cause of death is 'Multiple blunt force injuries to the head and face'. This means many blows with a hammer were inflicted to the deceased's head and face

- [5] The State called no witness in aggravation of sentence, namely Mrs Rosa Pereira. She stated that the assaults to her body caused her to be in hospital from 23 to 28 August 2020. She stated that because she was in hospital she could not even attend her husband's cremation and that this broke her heart. She stated that on the 3rd of August 2020 she merely wanted to help Jafta who had no food. As a result of these offences she had to move out of her house and is now living with her daughter. She stated that the death of her husband broke all four her children as well as her grandchildren, as the deceased was very close to his children and grandchildren.
- [6] It is clear that Mrs Rosa Pereira as well as her family suffered terribly as a result of the loss of a husband, father and grandfather.
- [7] This country has witnessed an ever-increasing wave of violence. Murder with the use of a hammer is increasing. Innocent and defenceless victims continue to fall prey to these types of offences. In this instance, two elderly pensioners were attacked whilst trying to assist an impoverished co-perpetrator whom to date has still not been caught. The accused is young and strong. For him to have attacked such elderly people is despicable.
- [8] Murder is the most serious of crimes. It not only ended the life of the deceased but it left

much pain for the family members left behind.

INTERESTS OF THE COMMUNITY

- [9] In respect to the interests of the community, this court has taken note of the fact that the community observes the sentences that courts impose and the community expect that the criminal law be enforced and that offenders be punished. The community must receive some recognition in the sentences the courts impose, otherwise the community will take the law into their own hands. If a proper sentence is imposed it may deter others from committing these crimes. Due to the fact that murder of helpless and innocent victims have reached high levels, the community craves the assistance of the courts.
- [10] In *S v Msimanga and Another* 2005 (1) SACR 377 (A), it was held that violence in any form is no longer tolerated, and our Courts, by imposing heavier sentences, must send out a message both to prospective criminals that their conduct is not to be endured, and to the public that Courts are seriously concerned with the restoration and maintenance of safe living conditions and that the administration of justice must be protected.
- [11] In respect to the murder count, section 51 (1) of Act 105 of 1997 dictates that if an accused has been convicted of an offence referred to in part 1 of schedule 2, he shall be sentenced to life imprisonment. Section 51 (3) of Act 105 of 1997 states that if any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in these subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.
- [12] As stated by the learned Marais JA in the case of *S v Malgas* 2001 (1) SACR 469 SCA, paragraph 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.'

- [13] The court has notwithstanding the application of the prescribed minimum sentences, in respect to count 1 considered other sentencing options. This court does not find a suspended sentence or correctional supervision is appropriate in these circumstances.
- [14] This court cannot only consider the accused's personal circumstances, but must also consider the interests of the community as well as prevention and deterrence. To focus on the well-being of the accused to the detriment of the interests of the community would result in a distorted sentence. The accused is a danger to the community.
- [15] Even though Mrs Rosa Pereira was present in court whilst the accused testified in respect to sentence, the only thing the accused said was "since I have been convicted I ask my mother to look after my children". He also stated he feels down as a result of being convicted. No genuine remorse for the hardships of the family of Mrs Rosa Pereira were expressed by the accused.
- [16] The accused was self employed prior to committing this act and was earning a good salary of R15 000-00 a month. As a result this court cannot find that the motivation for committing this crime was need. As a result the court finds he committed this crime purely out of greed. There is no clear explanation before this court as to what motivated the accused to commit or partake in these heinous crimes, especially since he himself has a young family to maintain.

[17] The fact that the accused is 29 years old and a first offender, is certainly a positive factor in his favour, but it can hardly be a substantial and compelling circumstance on its own. (see *Shubane v The State* (073/14) 2014 ZASCA 148 26 September 2014).

[18] The learned Poonen JA in of *S v Matyityi* 2011 (1) SACR 40 SCA at paragraph [14] stated That:

‘at the age of 27 the respondent could hardly be described as a callow youth. At best for him his chronological age was a neutral factor’.

[19] The learned Poonen JA stated further at paragraph [24];

‘Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation continues to be alarming...one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest of reasons... As Malgas makes plain courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences...Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as ‘relative youthfulness’ or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer’s notion of fairness.’

[20] In my view there are no substantial and compelling circumstances present in respect to the accused that warrants a departure from the prescribed statutory norm in respect to count one. In respect to count one, irrespective of the fact whether the accused was a co-perpetrator or an accessory after the fact, the fact remains that he partook in very serious offences without stopping what was going on.

[21] The accused has been in custody since 3 August 2020. In the case of *DPP v Gcwala*

(295/13) [2014] ZASCA 44 (31 March 2014) it was held that 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 and whether it is proportionate to the crimes committed. It was further stated in this case that the test is not whether on its own that period of detention constitutes a substantial and compelling circumstance, but whether the effective sentence proposed is proportionate to the crimes and whether the sentence in all the circumstances, including the period spent in detention prior to conviction and sentence is a just one. This Court finds, the sentence of life imprisonment in respect to the murder that was committed warrants a term of life imprisonment.

[22] In respect to the second charge of attempted murder, this is equally serious in that Mrs Rosa Pereira was attacked in her own home and could easily have died. The fact that she was motionless on the floor after the attack probably made the accused and his co-perpetrator think she was no longer a threat or that she was possibly dead. This equally attracts a high sentence.

[23] The cumulative effect of sentences has been considered by this court and so has the period of detention pending the finalisation of this matter been considered by the court. The count of murder and attempted murder didn't happen exactly at the same time. There must have been a period between when the assault of Mrs Pereira occurred until the deceased was murdered.

[24] In the result the following order is made:

Count 1

The accused is sentenced to life imprisonment

Count 2

The Accused is sentenced to 10 years imprisonment

[25] In terms of section 39 (2)(a)(i) of the Correctional Services Act 111 of 1998

("Correctional Services Act") any determinate sentence of incarceration in addition to life imprisonment is subsumed by the latter. Accordingly, in terms of section 39 (2)(a)(i) of the Correctional Services Act the sentence imposed on count 2 is automatically subsumed under the life imprisonment sentence imposed.

[26] In terms of section 103 (1) (g) of Act 60 of 2000, the accused is declared unfit to possess a firearm.

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JUDGE OF THE HIGH COURT

Date sentence imposed: 8 February 2022

Appearances:

On behalf of the State Adv Ngubane

On behalf of Accused Adv Milubi