

ddREPUBLIC OF SOUTH AFRICA



dddddddddd

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: SS39/2023

- | | |
|-----|--|
| (1) | REPORTABLE: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |
| (2) | OF INTEREST TO OTHER JUDGES: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |
| (3) | REVISED: Yes <input checked="" type="checkbox"/> / No <input type="checkbox"/> |

Date: 27 November 2023 WI du

In the matter between:

THE STATE

and

MUKWEVHO, HAPPY

ACCUSED

JUDGMENT ON SENTENCE

DU PLESSIS AJ

- [1] Mr Mukwevho faced trial on 32 counts, consisting of 7 counts of rape, 3 of kidnapping, 6 of robbery with aggravating circumstances, 4 of housebreaking with the intent to rape, 3 of housebreaking with the attempt to rob, 7 counts of possession of a dangerous weapon, and 2 counts of pointing anything that likely to lead a person to believe it is a firearm.
- [2] He pleaded guilty on all counts and made a statement in terms of s 112(2) of the Criminal Procedure Act 51 of 1977. The statement was read into the record on 15

November 2023. It was translated to Mr Mukwevho, who stated that he understood the content of the statement, that he was explained the provisions of s 51(1) of the Criminal Law Amendment Act¹ in respect of the counts of rape, and s 51(2) of the same Act for the six counts of robbery with aggravating circumstances, and s 51(1) and (2) of the Act with regards to the counts of housebreaking. He understood the doctrine of common purpose. He confirmed to the court that he made the statement freely and voluntarily, without undue influence. He was of sound and sober mind when he made the statement and was not compelled to do so.

[3] After I was satisfied that he understood the statement and that it was made freely and voluntarily, I accepted his guilty plea and convicted him of the counts. His admission on the stand during sentencing that he did "the dirty things", his apology to the victims, and his explanation that he committed the crimes at the invitation of his friends are further indications that he understood what was set out in the statement, and that it was made voluntarily.

[4] When I prepared the sentencing judgment, I realised that I accepted a guilty plea on charge 29 (kidnapping), which was admitted to but not supported by the factual explanation that followed. I invited the legal representatives to address me on the issue before sentencing. They suggested that it was an error in the statement, and that I should clarify it with Mr Mukwevho, as he admitted to all the elements of the crime of kidnapping in paragraph 14.4 of the statement. I then further interrogated him in court, and was satisfied that that statement should have set out the facts that he and his friends dragged the complainant to the dumping site to rape her when she screamed in the shack. The plea of guilty was accepted and the conviction stands.Sentencing

[5] The facts set out in the statement are summarised below for the purposes of sentencing. To protect the identity of the complainants, I will use abbreviations.

¹ 105 of 1997.

(i) Count 1 -3²

[6] Complainant AN was known to Mr Mukwevho. On 1 February 2018, he agreed with his friend to break open her shack with the intention to rape her. His friend used a side cutter to cut the chain of the door. Once inside, he shone a light in her eyes so that she could not identify him while he raped her without a condom. His friend pointed the side cutter through his jacket to make it look like a firearm. He also raped her.

[7] This admission sets out the elements of the crimes charged with. In his statement, he explained he and his friend formed the common purpose of breaking into her house with the intention to rape her,³ which they both did by penetrating her vagina with their penises,⁴ while his friend pointed the side cutter through his jacket to make it look like a firearm.⁵ They had a prior agreement to commit the offence of several acts of sexual penetration⁶ by breaking into the house.

(ii) Count 4 - 7⁷

[8] Complainant FM was also known to Mr Mukwevho. On 27 August 2018, he went to her shack and cut the chain with a side cutter. He had a knife with him. He pointed a torch at her and demanded money. He robbed her of money and a cell phone

² Housebreaking with the intent to commit rape, rape, possession of a dangerous weapon. I accept the reasoning of *S v Maswetsa* [2013] ZAGPJHC 385 para 18 as being correct: the charge of the housebreaking with the intent to commit the crime, and the crime so committed itself, as being separate charges.

³ The essential elements for housebreaking with the intent to rape are: (a) unlawful (b) breaking (c) entering (d) premises (e) intention to commit crime. Birchell *Principles of Criminal Law, 3rd ed* 859.

⁴ The essential elements for rape are the perpetrator's (a) unlawful and (b) intentional (c) sexual penetration (d) with complainant (e) without her consent. S 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007..

⁵ The essential elements for possession of a dangerous weapon are set out in s 3, read with sections 1, 2 and 4 of the Dangerous Weapons Act 15 of 2013. A dangerous weapon is any object, other than a firearm, capable of causing death or inflicting serious bodily harm, if it were used for an unlawful purpose. If a side cutter can cut through chains, it can likewise inflict serious bodily harm if used on a human.

⁶ As defined in *Jacobs v S* [2018] ZACC 4 par 128.

⁷ Housebreaking with the intent to commit rape, rape, robbery with aggravating circumstances, possession of a dangerous weapon.

with force and violence.⁸ He then raped her without a condom and left the shack with the money and cell phone.

- [9] This admission sets out the elements of the crimes charged with. In his statement, he explained how he broke into her house with the intention to rape her, which he did by penetrating her vagina with his penis. He further robbed her with violence, with the presence of a dangerous weapon being aggravating.

(iii) Count 8 - 12⁹

- [10] Complainant IM had her home broken into on 26 December 2018. Mr Mukwevho and his friend broke into her home with a side cutter. He assaulted her and took a solar battery and money from her with force. He threatened that he would kill her should she scream. He then forced her to the river with the intention to rape her, because she was screaming in her shack. First his friend raped her while he stood guard, and thereafter he raped her without a condom. They accompanied her to her place but ran away when a group of people met them.

- [11] This admission sets out the elements of the crimes charged with. In his statement, he explained he and his friend formed the common purpose of breaking into her house, intending to rape her, which they both did by penetrating her vagina with their penises. They threatened that they would kill her should she not cooperate, which is an aggravating circumstance to the robbery. Since they forced her to the river when she screamed, the crime of kidnapping is also present.¹⁰ They had a prior agreement to commit the offence of several acts of sexual penetration by breaking into the house and dragging her to the river.

⁸ The elements of robbery are (a) theft (b) violence, (3) submission and (4) intention. S 51 of the Criminal Law Amendment Act in s 1 defines “aggravating circumstances” as “(i) wielding of a fire-arm or any other dangerous weapon; (ii) inflicting grievous bodily harm or (iii) threat to inflict grievous bodily harm”.

⁹ Housebreaking with the intent to commit rape, rape, robbery with aggravating circumstances, kidnapping, possession of a dangerous weapon.

¹⁰ The elements are (a) unlawfully (2) depriving of liberty or of custody (3) a person (4) intentionally. *Principles of Criminal Law, 3rd ed* 759.

(iv) Count 13 - 17.¹¹

[12] Complainant NM was the neighbour of Mr Mukwevho's friend. On 7 February 2019, his friend asked him to rob her of her phone, and he agreed. They broke into the shack by using a side cutter. The complainant was asleep at the time. His friend put a blanket over her not to make noise, but she screamed, and he threatened her with the side cutter not to make noise. They demanded her cell phone. They took her to a dumping site to rape her, as she was making noise. His friend first raped her, whereafter he raped her, also without a condom.

[13] As in counts 8 – 12, all the facts to support the elements of the crime are set out in the statement.

(v) Count 18 - 22.¹²

[14] Complainant SM was walking down the street on 23 April 2019. Mr Mukwevho pointed a side cutter at the complainant to force her into her shack to rob her. He broke the door open by cutting the chains with the side cutter. He and his friend demanded her phone, which she gave. They then raped her without a condom, first his friend, and then Mr Mukwevho. They left the shack with the stolen phone.

[15] The facts support the elements of housebreaking with the intention to rob, and the aggravating circumstance with the robbery is the threat of inflicting grievous bodily harm with the side cutter should she not cooperate. The act of sexual penetration without consent is further admitted, as is the possession of a dangerous weapon.

¹¹ Housebreaking with the intent to commit rape, robbery with aggravating circumstances, kidnapping, rape, possession of a dangerous weapon.

¹² Housebreaking with the intent to commit robbery, robbery with aggravating circumstances, rape, pointing of anything which is likely to lead a person to believe it is a firearm, possession of a dangerous weapon.

(vi) Count 23 - 26¹³

[16] Complainant CM and MM were sleeping the night of 28 August 2019 when Mr Mukwevho and three friends broke into their RDP house. They jumped the fence and, with the frame of a SIM card, opened the window handle to enter the house. Three women were sleeping. As they were rummaging through the women's belongings, a woman woke up and wanted to scream. Mr Mukwevho told her not to scream and shone a torch in her face. He raped her, while the two other friends raped the two other women. While the other rapes were taking place, Mr Mukwevho told the owner that if she screams, he will kill her. They then stole a bag and a phone and left the house.

[17] The elements of housebreaking with the intent to rob, robbery with aggravating circumstances (threat of grievous bodily harm), and the possession of a dangerous weapon are all supported by the facts.

(vii) Count 27 - 32¹⁴

[18] Complainant MM was in her shack on 20 August 2020 when Mr Mukwevho and his three friends agreed to break into the complainant's shack. They broke the door by cutting the chain with a side cutter. The woman inside the shack wanted to scream, and they told her not to scream. A friend pointed a knife at the complainant while they searched and took a cell phone. While his friends were raping her, he found another R250 in a washing basket. He then raped her without a condom.

[19] The elements for the charges are supported by the facts.

[20] Mr Mukwevho was apprehended on 1 November 2021. He was linked to the crimes through his DNA, which was collected from the women who reported the rapes timeously at the police station and had rape kits done. These medical reports were handed to the court as exhibits by consent.

¹³ Housebreaking with the intent to commit robbery, rape, robbery with aggravating circumstances, possession of a dangerous weapon.

¹⁴ Housebreaking with the intent to commit robbery, robbery with aggravating circumstances, kidnapping, rape, pointing of anything which is likely to lead a person to believe it is a firearm, possession of a dangerous weapon.

Sentencing address

- [21] After the conviction, Mr Mukwevho took the stand to testify. He testified that he is 32 years old, unmarried, and has three kids born in 2000 (23 years), 2007 (16 years), and 2013 (10 years). When questioned about the possibility of having a child at 9 (born 2000), he was unsure. It is thus not clear how old the oldest child is.
- [22] The children stay with his mother in Polokwane, who also maintains them. He does not know where the mothers of the children are. He has a grade 7 education and earned about R15 000 monthly, being self-employed as a tiler. There was no evidence of previous convictions before the court.
- [23] Mr Mukwevho asked if he could apologise to the victims in the court. He recognised them as they stayed in the same community. He told them that he was really sorry for his actions and did not have many words - he just wanted to sincerely apologise to the victims and the community of Diepsloot where these crimes took place. He could not explain his deeds when the defence attorney asked him. He asked for a sentence of 25 years for all the counts. His message to his family and children was: may the Lord be with them until he is released.
- [24] Ms De Klerk, for the state, asked him how he would feel if his girls were treated the way he treated these women. He described that he would be furious. Despite earning a good income, he felt the need to rob because he was "deceived by friends". Asked why he apologised and what he was sorry for, he stated it was because he told himself that everything disgusting he did in the past, he would never do again.
- [25] I asked why he committed the rape. Mr Mukwevho answered that his friend would be the first person to start the rape, and he would follow. He deemed himself a candidate for rehabilitation, as he is already so regretful for what he has done and has learned so much since his arrest.
- [26] The state called 6 of the complainants to testify about the crimes' impact on them.

- [27] AN testified that she was doing matric when she was raped and that this had an adverse impact on her studies. She failed her first year in university because the whole ordeal overwhelmed her as she could not deal with the trauma. She does not feel safe anymore where she was staying. Since she stays on her own, she feels unsafe all the time. She blames her father for what happened, as he chased her from home, and that was the reason for her staying alone and being so vulnerable. She forgave Mr Mukwevha, not because what he did was not hurtful, but because she no longer wanted to carry his sins on her shoulders. She did not find his apology sincere. She had the impression that he only wanted a lesser sentence now that he was caught. She thinks 25 years is an inadequate sentence.
- [28] FM testified that the impact was terrible on her. She recently lost her husband and was the sole provider of her children. After the rape, she was afraid to leave her home to fetch water. She did not have a support structure in Gauteng at the time. She considered going back home to Limpopo, only to be faced with the dilemma that there she would not have opportunities to make sure that her children were fed. She does not accept Mr Mukwevho's apology and thinks 25 years is too short.
- [29] IM had a hard time on the stand. It was clear that she was still processing the trauma. She does not have family in Gauteng, and after the incident, she made life decisions that she otherwise would not have made just to feel safe. Even if she accepts his apology and forgives him, she still wants the court to give him more than 25 years imprisonment.
- [30] SM is afraid to sleep alone at night after the incident. She had to relocate as she was haunted by memories in the house she was staying in after the incident. What happened to her broke her family's heart, and they wanted her to move back to what she referred to as the homelands. She does not accept his apology and thinks the 25 years would be very lenient.
- [31] MM dropped out of school after the incident and stilled her trauma and pain with an increased intake of alcohol. She no longer feels safe at home; she cannot sleep. She does not accept his apology and thinks he needs more than 25 years, as he ruined a lot of people's lives.

- [32] CM felt specifically responsible for what happened in her house. As the oldest in her family, she was responsible for looking after the family. She feels that she failed her siblings because she could not protect them. Her one sibling had to stop breastfeeding her baby after the incident. She carries a lot of shame. She does not accept Mr Mukwevho's apology. She thinks 25 years is too little because he raped so many people, and "he concluded with his heart that he is going to ruin a lot of women's lives by raping them".
- [33] After the women testified about the impact, I commended them for their bravery in reporting the rapes at the police station and having rape kits done. This made it possible to hold Mr Mukwevho accountable through the criminal legal system. I hope today's sentencing brings some closure, knowing that the court has held Mr Mukwevho accountable for his wrongdoing.
- [34] While the court can understand that perpetrators are also victims of their own traumas, which in turn impacts their actions, it is nevertheless the necessary task of the court to hold perpetrators accountable for their actions within the prescripts of the law.

Sentencing law

- [35] The object of sentencing, as the Supreme Court of Appeal states, "is not to satisfy public opinion but to serve the public interest".¹⁵ Sentencing cannot only cater to public opinion. It must be fair and appropriate, with due regard to the objectives of punishment, namely deterrence, prevention, rehabilitation, retribution¹⁶ and incapacitation. This all while weighing and balancing the factors in the so-called Zinn¹⁷ triad of the crime, the offender, and the interest of society.
- [36] In some instances, the court's decision is guided by discretionary minimum sentences. Section 51 of the Criminal Law Amendment Act¹⁸ provides:

¹⁵ *S v Mhlakazi* 1997 (1) SACR 515 (SCA).

¹⁶ *S v Mokoena* [2022] ZAGPPHC 504

¹⁷ *S v Zinn* 1969 (2) SA 527 (A) at 540G.

¹⁸ 107 of 1997.

51. Discretionary minimum sentences for certain serious offences.-(1) Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.

(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in-

- (a) Part II of Schedule 2, in the case of-
 - (i) a first offender, to imprisonment for a period not less than 15 years;
[...]
- (b) Part III of Schedule 2, in the case of-
 - (i) a first offender, to imprisonment for a period not less than 10 years;
[...]
- (c) Part IV of Schedule 2, in the case of-
 - (i) a first offender, to imprisonment for a period not less than 5 years;
[...]
- (d) Part V of Schedule 2, in the case of-
 - (i) a first offender, to imprisonment for a period not less than 3 years;
[...]

(3) (a) 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 those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence: Provided that if a regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of Schedule 2, it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years.

[37] Part I of Schedule 2, as amended by the Criminal and Related Matters Amendment Act,¹⁹ refers to:²⁰

"Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 –

- (a) when committed-
 - (i) in the circumstances where the accused is convicted of the offence of rape and evidence adduced at the trial of the accused proves that the victim was also raped by-
 - (aa) any co-perpetrator or accomplice; or

¹⁹ 12 of 2021.

²⁰ Schedule 2 Part II was amended by the Criminal and Related Matters Amendment Act 12 of 2021, with date of commencement of 5 August 2022 by Proc Notice R 75 / 2022. It changed the legal position as set out in *Mahlase v S* [2013] ZASCA 191. The court can, in any case, draw from its common law jurisdiction to impose life sentences in circumstances such as this, see *S v Ndziweni* [2018] ZAGPJHC 117.

(ii) in the circumstances where the accused is convicted of the offence of rape on the basis that the accused acted in the execution or furtherance of a common purpose or conspiracy and evidence adduced at the trial of the accused proves that the victim was raped by more than one person who acted in the execution or furtherance of a common purpose or conspiracy to rape the victim, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

[38] Part II of Schedule 2, as amended by the Criminal and Related Matters Amendment Act²¹ refers to

Robbery-

(a) when there are aggravating circumstances;

[...]

Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, in circumstances other than those referred to in Part I.

[39] Part III of Schedule 2, as amended by the Criminal and Related Matters Amendment Act²² refers to

Rape or compelled rape

[40] Part IV of Schedule 2, as amended by the Criminal and Related Matters Amendment Act²³ refers to

Any of the following offences, if the accused had with him or her at the time a firearm, which was intended for use as such, in the commission of such offence

[...]

Robbery, other than a robbery referred to in Part I or II of this Schedule;

Kidnapping;

Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence;

[41] Part IV only applies to cases where the accused had a firearm while committing the offence.

²¹ 12 of 2021.

²² 12 of 2021.

²³ 12 of 2021.

[42] Many of the charges attract minimum sentences as per s 51(1) and (2) of the Criminal Law Amendment Act,²⁴ namely:

- i. Count 2, 9, 16, 20, 30 – S 51(1) Criminal Law Amendment Act²⁵ falling within the ambit of Part I of Schedule 2, Item (a)(i) and (ii) with the minimum imprisonment of life for each charge.
- ii. Count 5 and 24 – s 51(2)(b) read with Part III of Schedule 2, 10 years each for first-time offenders.
- iii. Count 6, 10, 14, 19, 23, 28 – s 51 (2) Part II of Schedule 2 – 15 years each for first-time offenders.

[43] Counts 1, 4, 8, 13, 18, 23, and 27 do, on my reading of Part IV, not fall under the minimum sentencing as the offences of breaking and entering the premises to commit an offence were not accompanied by a firearm. However, I can see no reason to differentiate between a firearm and a knife and/or side cutter in this instance. In exercising my sentencing discretion, I will be guided by Part IV Schedule 2 crimes for purposes of sentencing, namely 8 years.

[44] The prescribed minimum sentencing can only be departed from as per *S v Malgas*²⁶

'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.'

[45] In *S v Dodo*²⁷ the Constitutional Court endorsed this proportionality approach by stating

To attempt to justify any period of penal incarceration, let alone imprisonment for life as in the present case, without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the very

²⁴ 105 of 1997.

²⁵ 105 of 1997.

²⁶ 2001 (1) SACR 469 (SCA).

²⁷ [2001] ZACC 16 para 38.

heart of human dignity. Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others, bears no relation to the gravity of the offence [...] the offender is being used essentially as a means to another end and the offender's dignity assailed. So too where the reformatory effect of the punishment is predominant and the offender sentenced to lengthy imprisonment, principally because he cannot be reformed in a shorter period, but the length of imprisonment bears no relationship to what the committed offence merits. Even in the absence of such features, mere disproportionality between the offence and the period of imprisonment would also tend to treat the offender as a means to an end, thereby denying the offender's humanity.

- [46] I am mindful that the sentence should be fair towards both the victims and the perpetrator and that while I can consider public sentiment, it cannot permit the displacement of careful judgment, where all the interests are weighed carefully. I am also mindful of the severity of a life sentence, which, in principle, is to endure the length of the offender's natural life.
- [47] I have carefully considered Mr Mukwevho's submission that he should receive 25 years for all the charges. However, 25 years will be disproportionate in relation to the crimes committed, the impact on the victims and the interest of society. Through their democratically elected representatives, society made laws to signal that certain crimes deserve a certain minimum punishment, which can only be departed from as the exception if substantial and compelling circumstances render such punishment disproportional.
- [48] The state argued that none of Mr Mukwevho's circumstances are substantial and compelling. He is a very dangerous person and should be removed permanently from society. I agree.
- [49] Rape without the use of a condom is an aggravating factor in a country ravaged by HIV, increasing the risk of women either contracting HIV or falling pregnant (or both), then having to make the unbearable decision to terminate the pregnancy or to live with the consequences of something they did not consent to. Attacking women in their sleep and shining torches in their faces because they might identify you is further aggravating. It is planned and callous. It is taking advantage of women at their most vulnerable – when they are alone at home, sleeping. Mr

Mukwevho and his friends targeted neighbours and people known to them. His explanation that his friends convinced him to rape and rob these women is also aggravating, as it shows that others easily influence him, lacks the inner conviction to stand up against others when witnessing the severe violation of the rights of women, and is therefore likely to re-offend if given a chance.

[50] The one redeeming act of Mr Mukwevho was that he agreed to plead guilty to all charges. It spared the women the ordeal of having to relive their trauma in the courtroom and be interrogated about what must have been harrowing experiences.

[51] He also offered an apology. However, the reasons for his actions during his apology did not explain his deeds or show that he took ownership of his actions. His apology showed more signs of regret rather than remorse. I did not witness the "gnawing pain of conscience for the plight of another".²⁸ It is perhaps understandable, as courts offer limited capacity for giving and receiving closure and redemption. Perhaps in time, if Mr Mukwevho comes to a deeper realisation of the impact of his actions on each of these women and the immense hurt and trauma he caused them, he can offer a sincere apology where he takes responsibility for his actions and the severe impact his actions had on the lives of the women, their family, and the larger society, regardless of what that might mean for him in return. Until then, he remains dangerous, and should be removed from society.

[52] As stated before, through the Criminal Law Amendment Act,²⁹ parliament has made it clear that if men cannot, from their own inner convictions, refrain from violating the rights of women, they will be held responsible for their actions through a minimum sentencing regime unless there are substantial and compelling reasons to order otherwise. In this case, there are no substantial and compelling circumstances for me to deviate from the minimum sentences where applicable.

[53] Since I shall not consider the possibility of release on parole when determining the appropriate sentence, and since a life sentence is a sentence that, in principle,

²⁸ *Matyityi v S* 2011 (1) SACR 40 (SCA) at par 13.

²⁹ 105 of 1997.

amounts to imprisonment for the rest of the prisoner's natural life, the sentences imposed below will run concurrently as per the Correctional Services Act.³⁰

[54] The court wants to state in no uncertain terms that it views the rape and the violence meted out against these women in a serious light. Women have human dignity and have a right to have their human dignity respected. Not because they are somebody's wife, daughter, or mother but because they are themselves the holders of these rights. Women have a right to have their fundamental human rights, specifically human dignity, privacy and freedom and security of person, respected by society, particularly men. They have a right to live without the fear of going to bed and being raped in their own homes while asleep. It is the duty of this court to ensure these rights are protected and respected and to hold those who violate the rights accountable for their actions in terms of the law. A life sentence is not disproportionate to the callous, ruthless and cruel crimes committed by Mr Mukwevho and his friends.

Order

[55] I, therefore, make the following order:

1. Count 1 - 3

- a. Count 1: Housebreaking with the intent to rape – the accused is sentenced to 8 years imprisonment;
- b. Count 2: Rape – the accused is sentenced to life imprisonment;
- c. Count 3: Possession of a dangerous weapon – the accused is sentenced to 3 years imprisonment.

2. Count 4 - 7

- a. Count 4: Housebreaking with the intent to rape – the accused is sentenced to 8 years imprisonment;

³⁰ 111 of 1998; s 39(2)(a)(i).

- b. Count 5: Rape – the accused is sentenced to 10 years imprisonment;
- c. Count 6: Robbery with aggravating circumstances – the accused is sentenced to 15 years imprisonment;
- d. Count 7: Possession of a dangerous weapon – the accused is sentenced to 3 years imprisonment;

3. Count 8 - 12

- a. Count 8: Housebreaking with the intent to commit rape – the accused is sentenced to 8 years imprisonment;
- b. Count 9: Rape – the accused is sentenced to life imprisonment;
- c. Count 10: Robbery with aggravating circumstances – the accused is sentenced to 15 years imprisonment;
- d. Count 11: Kidnapping – the accused is sentenced to 5 years imprisonment;
- e. Count 12: Possession of a dangerous weapon – the accused is sentenced to 3 years imprisonment;

4. Count 13 - 17

- a. Count 13: Housebreaking with the intent to rape – the accused is sentenced to 8 years imprisonment;
- b. Count 14: Robbery with aggravating circumstances – the accused is sentenced to 15 years imprisonment;
- c. Count 15: Kidnapping – the accused is sentenced to 5 years imprisonment;
- d. Count 16: Rape – the accused is sentenced to life imprisonment;
- e. Count 17: Possession of a dangerous weapon – the accused is sentenced to 3 years imprisonment;

5. Count 18 - 22

- a. Count 18: Housebreaking with the intent to rob and robbery – the accused is sentenced to 8 years imprisonment;
- b. Count 19: Robbery with aggravating circumstances – the accused is sentenced to 15 years imprisonment;
- c. Count 20: Rape – the accused is sentenced to life imprisonment;
- d. Count 21: Pointing anything which is likely to lead a person to believe that it is a firearm or an air gun at another person – the accused is sentenced to 10 years imprisonment;
- e. Count 22: Possession of a dangerous weapon – the accused is sentenced to 3 years imprisonment.

6. Count 23 - 26

- a. Count 23: Housebreaking with the intent to commit robbery – the accused is sentenced to 8 years imprisonment;
- b. Count 24: Rape – the accused is sentenced to 10 years imprisonment;
- c. Count 25: Robbery with aggravating circumstances – the accused is sentenced to 15 years imprisonment;
- d. Count 26: Possession of a dangerous weapon – the accused is sentenced to 3 years imprisonment.

7. Count 27 - 32

- a. Count 27: Housebreaking with the intent to rob and robbery – the accused is sentenced to 8 years imprisonment;
- b. Count 28: Robbery with aggravating circumstances – the accused is sentenced to 15 years imprisonment;

- c. Count 29: Kidnapping –the accused is sentenced to 5 years imprisonment;
 - d. Count 30: Rape – the accused is sentenced to life imprisonment;
 - e. Count 31: Pointing anything which is likely to lead a person to believe that it is a firearm or an air gun at another person the accused is sentenced to 8 years imprisonment;
 - f. Count 32: Possession of a dangerous weapon – the accused is sentenced to 3 years imprisonment.
8. In terms of s 39(2)(a)(i) of the Correctional Services Act 111 of 1998, the determinate sentences of incarceration are to be served concurrently to the 5 life sentences.
9. The accused is automatically unfit to possess a firearm.

WJ DU PLESSIS

Acting Judge of the High Court

Counsel for the applicant:	Ms S Bovu
Instructed by:	Legal Aid South Africa
Counsel for the respondent:	Ms A de Klerk
Date of the hearing:	15 November 2023
Date of judgment:	26 November 2023