

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: SS 98/2022

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

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SIGNATURE

In the matter between:

**THE STATE**

and

**LEEMA, TISETSANG SILAS**

**ACCUSED**

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**JUDGMENT ON SENTENCE**

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BRITZ, AJ

[1] The accused, Mr Tiisetsang Silas Leema, have been convicted of the following offences:

Counts 1 and 2: Murder read with the provisions of s 51(1) of the Criminal Law Amendment Act, 105 of 1997 ('the CLAA');

Count 3: Robbery with aggravating circumstances read with s 51(2) of the CLAA;

Count 4: Possession of a prohibited firearm of which the serial number or identifying mark has been altered without permission in contravention of s 4(1)(f)(iv) of the Firearms Control Act, 60 of 2000, read with s 51(2) of the CLAA;

Count 5: Unlawful Possession of ammunition in contravention of s 90 of the Firearms Control Act, 60 of 2000; and

Count 6: Being in the RSA illegally in contravention of s 49(1)(a) of the Immigration Act, 13 of 2002.

- [2] Because of the operation of the CLAA, the convictions on counts 1 and 2 each attract a minimum sentence of life imprisonment, and that on count 3 and 4 each a minimum sentence of 15 years imprisonment.
- [3] In order to determine an appropriate sentence, the court has to carefully weigh and balance the nature and seriousness of the crime, the interests of society and the personal circumstances of the accused, without over or under emphasizing any of these factors. The court must also blend the sentence with a measure of mercy as is called for by the circumstances of this case. (*S v Zinn* 1969 (2) SA 537 (A); *S v Khumalo* 1973 (3) SA 279 (A)) In addition to this the court must also be alive to the purposes of sentence, which, in general terms, are retribution, prevention, deterrence and rehabilitation. (*S v Rabie* 1975 (4) SA 855 (A))
- [4] In *S v Malgas* 2001 (1) SACR 469 (SCA) the Supreme Court of Appeal laid down the law as to how sentencing courts should treat and implement the provisions of the Criminal Law Amendment Act, 105 of 1997. The SCA made it clear that when it comes to sentencing it can no longer be business as usual and that the prescribed minimum sentences should be viewed as generally appropriate for the offences they have been prescribed. The court further declared that those prescribed minimum sentences should not be departed from lightly and for flimsy reasons.

- [5] Both Ms Bovu, and Adv Mack addressed the court on the issue of sentence, without leading any evidence.
- [6] In her address in mitigation of sentence, Ms Bovu placed the following on record: The accused is 29 years old, single and the biological father of two minor children who are 11 years and 3 years old respectively. The children reside with their maternal grandmother in Lesotho. The accused's highest level of education is the equivalent of Grade 2 in SA. Prior to his arrest he was recycling plastic bottles and generated an income of R50 a day. He is a first offender.
- [7] She conceded that the accused was convicted of very serious offences which attract prescribed minimum sentences. She further conceded that these offences are very prevalent in the court's area of jurisdiction. She also conceded that both deceased persons were killed by being shot and that the accused acted with common purpose with co-perpetrators who were not before the court.
- [8] Ms Bovu further conceded that the court may not deviate from the prescribed minimum sentences, unless it find the existence of substantial and compelling circumstances. She submitted that such substantial and compelling circumstances exist in this case and listed the following as such: (a) The accused is a first offender. (b) He has been in custody since his arrest. (c) The accused is still of a youthful age and can therefore still be rehabilitated. (d) The accused's guilty plea on count 6 is an indication of remorse.
- [9] Based on the above she requested the court to deviate from the prescribed minimum sentences, impose lesser sentences and order these sentences to be served concurrently. She submitted that an effective sentence of 20 years imprisonment would be just and fair in the circumstances.
- [10] Ms Bovu elected not to offer any address in respect of s 103 of the Firearms Control Act.
- [11] Counsel for the State pointed out that the facts found to have been proven in respect of counts 1 and 2 were that the accused and his co-perpetrators, who

were not before court, were unhappy with the manner in which the two deceased persons handled the finances of the Lesotho nationals' fund and that they decided on their own that the penalty for this was death. She accentuated the fact that no court in SA has the power to impose a similar penalty as that imposed by the accused and his co-perpetrators, and that at best the court is empowered to sentence the accused to life imprisonment. She submitted that there are no substantial and compelling circumstances in this case and that the court is therefore bound to follow the decision in *Malgas* (above). She argued, with reference to a number of decided case, which I do not deem necessary to repeat in this judgment, that none of the factors presented by Ms Bovu as substantial and compelling circumstance fall into that category. She further submitted that the accused has not shown any sign of remorse, and that his prospect for rehabilitation is therefore unlikely. In light of all of this she implored the court to impose the prescribed minimum sentences on all the counts attracting such sentences and also not disturb the prevailing legislation declaring the accused automatically unfit to possess a firearm.

[12] The task of determining the appropriate sentence in any matter is never an easy one, as it always require a fine balancing act to be performed by the judge. A judge is required to act with a firm hand in the interest of society, whilst at the same time being mindful of the fact that the accused is a human being and by his very nature prone to err. If the judge is too lenient when imposing sentence, society may decide to take the law into its own hands. If the sentence imposed by the judge is too severe, society may lose its trust in the justice system as a whole. Both these scenarios can cause irreparable harm to society and the judicial system that is in place to guide and protect society.

[13] There are, in my view, several aggravating circumstance in this case: It stands to reason that the offences the accused have been convicted of are all of a serious nature. This is reflected in the minimum sentences prescribed for counts 1 to 4. The evidence show that the accused and his co-perpetrators have gone on a crime spree. They acted in common purpose with each other. They decided what they were going to do and executed their decisions without any sign of remorse. They acted callously and shot and killed both deceased

persons in broad daylight undeterred by the possibility of being seen or caught. The cause of the killings and robbery was nothing more than a lust for money and power. With the two deceased out of the way the accused and his co-perpetrators saw their way open to take over the business by taking the deceased's money and book. There is not a single piece of evidence to show that the accused and his co-perpetrators made any attempt to resolve the dispute between them and the deceased persons in a peaceful manner. There is also no evidence that any of the deceased persons posed a threat to the accused or his co-perpetrators. To this end it is particularly shocking that the deceased in count 2 was shot in the head and killed while he was sleeping, clearly under the influence of liquor. The version proffered in the confession of the accused further makes it clear that there was a complete breach of trust between his group on the one side and the deceased persons on the other side. Both deceased were shot with firearms they had given to the accused and his co-perpetrators at one time to protect themselves while working in Magaliesburg.

- [14] With regards to the robbery it is aggravating that the victims was a woman and her younger brother. They were confronted and trapped inside their residence while being shoved and ordered around at gunpoint. The effect of the crime spree of the accused and his co-perpetrators was so severe on Ms Letsokwane that she left her employment, her house and life she built for herself in SA and moved back to her country of origin where she went into hiding.
- [15] The firearm and ammunition counts also have aggravating factors to be considered. The firearm was made untraceable by obliterating its serial number or any identifying mark. It was used in the commission of the murder of the deceased in count 1. Its origin was right from the onset knowingly to the accused in contravention with the law. The firearm is a dangerous weapon being of a semi-automatic nature. When the firearm was discovered in possession of the accused it was in a working order and loaded with a magazine with no less than 15 live rounds of ammunition.
- [16] Coming to count 6 it is aggravating that the accused entered SA in 2019 and that right from the onset he did not have any permit or authorization to be in the

country. Whilst here, he reaped the fruits of the country without making any meaningful contribution to it. Instead he involved himself in the dealings of an unsavoury part of society where the exchange of unlicensed firearms clearly did not even raise an eyebrow.

[17] It is, in my view, further aggravating that the accused did not play open cards with the court or took the court into his confidence. He maintained and still maintains his innocence with regards to counts 1 to 5. There is nothing to suggest that he, at any stage, attempted to cooperate with the police regarding the whereabouts of his co-perpetrators. Such behaviour clearly flies in the face of any argument suggesting that the accused showed or shows remorse. It rather shows that his prognoses for rehabilitation is nothing more than a fantasy.

[18] Turning to the personal circumstances of the accused, I take note of what Ms Bovu placed on record, without seeing the need to repeat it all again.

[19] The accused is the biological father of 2 minor children. This court is enjoined by s 28(2) of the Constitution to give paramountcy to the best interests of these children when determining the appropriate sentence to impose. It is however common cause that the accused is not the primary care-giver of these children as defined in *S v M (Centre for Child Law as Amicus Curiae) 2007 (2) SACR 539 (CC)*. I am therefore satisfied that despite whatever sentence I impose, the children would not be deprived of their primary care-giver and that the effect of the sentence on them would therefore be sufficiently mitigated to give paramountcy to their best interests. The accused is in any event not entitled to use the children as a get out of jail free card.

[20] The arguments made by counsel for the State and the case law referred to by her in support of those arguments showing that the factors listed by Ms Bovu as substantial and compelling do not fall in that category, can, in my view, not be flawed. Individually and combined those factors pale in comparison to the aggravating circumstances in this case. The rest of the personal circumstances of the accused placed before this court are nothing but ordinary circumstances which courts hear in almost every criminal trial. Such ordinary mitigating

factors, it was held by this court in *S v Speelman* 2014 JDR 0916 (GSJ), cannot be elevated to the status of substantial and compelling circumstances.

[21] Individually and taken together, I am unable to find that there exist any substantial and compelling circumstances in this case that would cause me to deviate from the prescribed minimum sentences, where applicable. The accused's personal circumstances must bow the knee before a sentence focusing on retribution and deterrence. The accused will have an opportunity in prison to rehabilitate, if at all possible, and that may be a factor determining the length of his incarceration.

[22] For all the reasons stated herein the accused is sentenced as follows:

Count 1: LIFE IMPRISONMENT read with the provisions of s 51(1) of Act 105 of 1997.

Count 2: LIFE IMPRISONMENT read with the provisions of s 51(1) of Act 105 of 1997.

Count 3: FIFTEEN (15) YEARS IMPRISONMENT read with the provisions of s 51(2) of Act 105 of 1997.

Count 4: FIFTEEN (15) YEARS IMPRISONMENT read with the provisions of s 51(2) of Act 105 of 1997.

Count 5: TWO (2) YEARS IMPRISONMENT.

Count 6: THREE (3) MONTHS IMPRISONMENT.

[23] I have not heard any submissions why I should make an order deviating from the ex lege position of s 103(1) of the Fire Arms Control Act 60 of 2000 and therefore I make no order. The accused is automatically, by operation of the law, unfit to possess a firearm.

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W J BRITZ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

***Appearances:***

For the State:      Adv Mack  
                              DPP, Johannesburg

For the Defence:    Ms Bovu  
                              Legal Aid, Johannesburg

***Date of judgment:***