



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

- (1) **REPORTABLE: NO**
- (2) OF INTEREST TO OTHER JUDGES: [N]
- (3) REVISED: [N]

Signature: _____ Date: _____

CASE NO.: 108/2022

In the matter between:

THE STATE

and

LETSOALO, COLLEN

Accused

NEATRAL CITATION: *The State vs Letsoalo Collen* (Case number:108/2022) [2023]

ZAGPJHC 452 (10 MAY 2023)

SENTENCE.

Kumalo J

INTRODUCTION

1. The accused in this matter is convicted of one count of murder read with section 51(1) of the Criminal Law Amendment Act 105 of 1997 and one count

of assault with intent to do grievous bodily harm. The charge of murder carries the prescribed minimum sentence of life imprisonment.

2. The count on murder related to the killing of his girlfriend and the one on assault relates to his attempt to stab one Thabo Raphudi.
3. Sentencing is indeed regarded as one of the most difficult tasks which a presiding officer in any criminal matter has to deal with. It has been described as a painful difficult problem and involves a careful and dispassionate consideration of all factors.
4. The court must consider the personal circumstances of the accused, the nature of the offense that has been committed and the interest of society. It must forever consider the recognized objectives of sentencing which are prevention, rehabilitation, deterrence and retribution.
5. The seriousness of the offense, the circumstances under which they were committed and the victims are all relevant factors that must also be considered. The personal circumstances of the accused including his age, education, dependents etc, his previous convictions if any, his employment and other relevant conduct or activities also call for consideration in respect of the possibility of rehabilitation.
6. An appropriate sentence should also have regard to and serve the interest of society and the protection of its needs and the deterrence of the would-be criminals.
7. They accused in this matter is convicted of the crime of murder read with the provisions of section 51(1) of the Criminal Law Amendment Act of 55 of 1997 which prescribes a minimum sentence of life imprisonment.
8. It is trite that the minimum sentences are ordained to be the sentences that must ordinarily be imposed unless the court finds substantial and compelling

circumstances which would justify a departure therefrom. In addition the Supreme Court of Appeals has endorsed the view that the minimum sentences must not be departed from for flimsy reasons and are the starting point when one is to impose a sentence.

9. In the event of substantial and compelling circumstances not existing, the sentencing court is entitled to depart from imposing the prescribed minimum sentence if it is of the view that having regards to the nature of the offense, the personal circumstances of the accused and the interest of society, it would be disproportionate and unjust to do so.
10. This is often referred to as the proportionality test. When sentencing an accused person, the court has to evaluate all the evidence including the mitigating and aggravating factors to decide whether substantial and compelling circumstances exist. A court must be conscious of the fact that the legislature has ordained a particular sentence for such an offence and there must be convincing reasons to depart therefrom which reasons must be recorded.
11. For circumstances to qualify as substantial and compelling, the courts have confirmed that they need not be exceptional in the sense that they are seldom encountered or rare nor are they limited to those which diminish the moral guilt of the offender.
12. Where a court is convinced that after consideration of all the factors, an injustice will occur if the minimum sentence is imposed then it can characterize such factors as constituting substantial and compelling circumstances and deviate from imposing the prescribed minimum sentence.
13. Further, it is trite that particular factors whether aggravating or mitigating should not be considered individually and or in isolation to determine whether substantial or compelling circumstances exist. Alternately in deciding whether substantial and compelling circumstances exist one must look at the

traditional mitigating and aggravating factors and consider the cumulative effect thereof.

14. There is no general applicable list of mitigating and aggravating factors and whether a factor is mitigating or aggravating is determined by the presiding officer in each particular case. In *S v Ramba*, the court indicated that aggravating and mitigating factors are always factors which a court can properly take into account in the determination of aggravation or mitigation of sentence
15. The passing of sentence often requires balancing of the mitigating and aggravating factors and requires a sufficient amount of weight to be attached to each of these factors. It may often occur that aggravating factors might outweigh the mitigating factors even to the extent that mitigating factors have no effect on the sentence such as when life imprisonment is imposed. A party wishing to rely on a mitigating factor must provide sufficient factual basis for that by producing evidence to satisfy the court that the mitigating factors justify a departure from the prescribed minimum sentence.
16. The offence committed by the accused in this matter is indeed very serious. A life was taken and no amount of remorse will ever bring that life back.
17. The accused is 46 year old and has no children. He is unemployed and only went as far as grade10 educationally. He is not married and has been in custody since 7 June 2022.
18. He plead guilty to the charge of murder and he had handed himself to the police and made a statement to that effect.
19. His plea of guilty was not accepted by the State on the basis that he did not admit premeditation. A plea of not guilty was entered and the state was required to lead evidence to prove premeditation.

20. Counsel for the accused implored this court to consider this as a crime of passion.
21. The State led the evidence of the deceased sister Regina Ralefu. The evidence of this particular witness showed this court how their household has been negatively affected by the passing away of the deceased. The deceased was the breadwinner of the family. Four people are directly negatively affected by her demise. It is the witness, her two children and the daughter of the deceased. It is fortuitous that the erstwhile employers of the deceased have stepped in to assist with her daughter's education.
22. Despite the fact that the accused had acknowledged his wrong and apologized to the family, she stated that she cannot find it in herself the ability to forgive him. Her reasons for this amongst others is that the accused had on several occasions when he was involved in an issues with the deceased, he would say that the deceased would never break up with him and that he would kill her. This she said is something the accused would say whenever they had a conflict. she pleaded that the accused be sentenced to life imprisonment.
23. The state further argued that the mitigating circumstances far outweigh the mitigating circumstances.
24. If I have to balance the two, clearly the aggravating circumstances far outweigh the mitigating circumstances presented on behalf of the accused. The only things that count to the accused favor is the fact that he indeed pleaded guilty to the charge of murder although he disputed that it was premeditated. The court has however found that the murder was premeditated. The other factor in his favour is the fact that he handed himself to the police.
25. There are no other factors that I can consider to be in his favor. To further compound issues for the accused, is the fact that the State proved previous

convictions of a serious nature namely attempted murder on two occasions , robbery, possession of a firearm and ammunition.

26. It is correct that these convictions and sentence are more than 20 years old. However, I am of the view that they cannot be ignored. They all relate to a charge similar to the one that the accused is convicted of in this matter, murder to be specific although he was convicted and sentenced to attempted murder. All these tend to prove the accused' propensity to violent crimes.
27. On 11 August 1996 the accused was sentenced to an effective term of five year's imprisonment for attempted murder and on 13 June 1997 the accused was sentenced to an effective 10 year's imprisonment.
28. Clearly the accused did not learn any lessons from his previous brush with the law and can therefore not be a suitable candidate for rehabilitation or other form of punishment other than direct imprisonment.
29. Having noted the above, this court is further of the view that there are no compelling and substantial circumstances for it to deviate from the prescribed minimum sentence and the only appropriate sentence is "life imprisonment.
30. The Accused is further convicted of the charge of assault with intent to do grievous bodily harm on Thabo Raphudi. I am of the view that a term of imprisonment for a period of 18 months would be appropriate.
31. In the circumstances, the following order is made:
 1. Count 1, - accused is sentenced to life imprisonment;
 2. Count 2 – Accused is sentenced to imprisonment for a period of 18 months;

3. The sentence on count 2 is to run concurrently with the sentence on count 1; and
4. The Accused is declared that he is not fit to possess a firearm in terms of section 103 of the Firearms Control Act, act No. 60 of 2000.

Kumalo MP Judge
Judge of the High Court of South Africa
Gauteng Division, JHB

APPEARANCES:

For the state: Adv. Mashabela

From: NDPP

For defence: Adv. Mthembu

From: Legal Aid

Judgment delivered: 05 May 2023

Sentence: 10 May 2023