

REPUBLIC OF SOUTH AFRICA



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

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

2 August 2023

DATE

SIGNATURE

CASE NUMBER: SS100/2022

In the matter between:

THE STATE

and

VUSI MICHAEL DUBE

ACCUSED

SENTENCE

DOSIO J:

Sentence

[1] The accused has been found guilty of murder read with the provisions of s51(1) of the Criminal Law Amendment Act 105 of and 1997 ('Act 105 of 1997').

[2] For purposes of sentence, this court has taken into consideration the personal circumstances of the accused, the seriousness of the offence for which he has been found guilty and the interests of the community.

The personal circumstances of the accused

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

- (a) He is 48 years old.
- (b) He has two of his own children aged 16 and 20 years old with the deceased and two further step-children.
- (c) He grew up in Midrand and passed standard nine.
- (d) Prior to his arrest he was employed at RCK Parkmore for five years where he did gardening work and received a salary of R5900-00.
- (e) The accused was the sole provider for his family.
- (f) The previous conviction of the accused is for theft which is not an offence involving violence.

The seriousness of the offence

[4] The deceased was killed in her own home as a result of an argument that arose between the accused and the deceased. Seventeen injuries were inflicted on the body of the deceased during the assault that happened on this fateful day. The deceased was tired and never retaliated. She was a helpless victim and the accused could have refrained from inflicting the final stab wound to her neck or from strangling her.

[5] Murder is the most serious of crimes. Not only does it end the life of a loved family member but it leaves much hardship and pain for the remaining family members.

[6] The mother of the deceased who is 80 years old completed an impact report on the family and she states that she has suffered emotional trauma arising from the death of her daughter. This event has caused her memory loss and due to the deceased's death she has had to look after the deceased's two children. This has caused considerable financial strain on the mother of the deceased as the pension money she receives is not enough to support the two children. In addition, the death of the deceased has caused the one child to become a drug addict.

Interests of the community

[7] 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.

[8] In *S v Msimanga and Another*,¹ the Supreme Court of Appeal 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.

[9] 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.

[10] 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.

[11] As stated in the case of *S v Malgas*,² the Supreme Court of Appeal held that: '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.'³

[12] Notwithstanding the application of the prescribed minimum sentences this court has considered other sentencing options, however, direct imprisonment is the only suitable sentence as the accused under the influence of liquor is a danger to the community.

¹ *S v Msimanga and Another* 2005 (1) SACR 377 (A).

² *S v Malgas* 2001 (1) SACR 469 SCA.

³ *Ibid* para i.

[13] 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.

[14] Violence against woman is a serious concern in this country and even though there are numerous campaigns to address this violence, it continues unabated.

[15] In the matter of *S v Matyityi*,⁴ the Supreme Court of Appeal held that:

'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.'⁵

[16] The accused has not shown any remorse in this matter. He decided to plead not guilty, which although it is his constitutional right, he had the choice to come to the witness bench and plead mercy knowing that he had been found guilty of killing his wife. He elected not to do this and accordingly, this Court finds he shows no genuine remorse for the heinous crime he committed. He was not honest with the court during the trial stating that someone else had possibly committed this murder.

[17] Nosipho Ncgobo observed the deceased before the fatal stab wound was inflicted to the deceased's neck. At this point, the accused could have stopped beating his wife. The deceased's pulse was beating slowly. She was no longer capable of fighting back. He could have spared her life. Yet, he decided to end it there. He also had a chance to stop beating her when Mr Phaladi Nonyana told him to stop hitting his wife on the head with a broom and to stop strangling her. Yet the accused persisted. These are not substantial and compelling circumstances to depart from the minimum prescribed sentence. In fact, they are circumstances justifying the imposition of a life imprisonment. As a result, this court finds there are no

⁴ *S v Matyityi* 2011 (1) SACR 40 SCA.

⁵ *Ibid* para 24.

substantial and compelling circumstances present that warrants a departure from the prescribed statutory norm in respect to the charge of murder. A sentence of life imprisonment will not be disproportionate to the crime committed.

[18] The accused has been in custody for almost three years. In the case of *DPP v Gcwala*,⁶ the Supreme Court of Appeal 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 is a just sentence in the circumstances of this case.

[19] In the result, the accused is sentenced to life imprisonment. In terms of section 103 of the Firearms Control Act 60 of 2000, the accused is declared unfit to possess a firearm.

D DOSIO
JUDGE OF THE HIGH COURT
JOHANNESBURG

⁶ *DPP v Gcwala* (295/13) [2014] ZASCA 44 (31 March 2014).

Date Heard:
Judgment handed down:

28 July 2023
2 August 2023

Appearances:

On behalf of the State:
On behalf of the Accused:

Adv A. Deoraj
Adv L. Qoqo