

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS72/2019

DATE: 05-11-2021

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

10 In the matter between

STATE

and

ROSEMARY NOMIA NDLOVU

Accused

S E N T E N C E

MONAMA, J: On 22 October 2021, I convicted the accused on 6 counts of murder within the provisions of section 51(1) of The Criminal Law Amendment Act read together with the provisions of the Criminal Procedure Act and other equally serious crimes.

Those convictions relate to the offences of defeating the administration of justice, fraud, attempted murder, incitement to commit murder. The relevant section

of the Criminal Law Amendment reads as follows:

"Notwithstanding any other law, but subject to subsection 3 and 6, a higher court shall if it has convicted a person of an offence, referred to in Part I of schedule 2, sentence the person to life imprisonment."

In section 51 (3) it says that:

10 "If the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed, he shall enter those circumstances on record of the proceedings and may thereupon impose such lesser sentence."

The parties have now lead evidence in mitigation and aggravation as the case may be. The defence as well as the state have also addressed me. Put briefly, the accused position is that there are some substantial and compelling circumstances, meaning that I have to deviate from the
20 prescribed sentence.

On the other hand, the state submitted that there are no substantial and compelling circumstances and it called for life imprisonment. It also argued that the accused was not remorseful and the offences were brazen and intended to obtain more money from the death of the

victims.

The imposition of an appropriate sentence is not a task without its own challenges, but the approach is tried. The approach is better summarised in the following statement from our case law namely:

10 "That the court in imposing sentence must consider a triad, meaning that the triad is consisting of the crime, the offender and the interest of the society. Put it differently, punishment should feed the criminal as well as the crime, be fair to the society and where applicable, be blended with mercy according to the circumstances of the case."

The Criminal Law Reports are replayed with example of how the courts should grapple with this difficult task, but they are in agreement that given the current levels of high levels violence and serious crime in this country, the emphasis should be on retribution and deterrence and the interest of
20 rehabilitation should take the back seat.

Meaning that in our law retribution and deterrence are proper purposes of punishment and there must be accorded due weight in any sentence that it imposes. Serious crimes will usually require retribution and deterrence should come to the fore, rehabilitation should

take as I have said the back seat.

The imposition of sentence is and must always be fact based, that is what they would say in the circumstances of each case. The mitigation and the aggravation circumstances also play a very crucial role. I have already indicated the court should look at the crime, the criminal and the interest of society where possible there must be a measure of mercy, but in addition to, there are some sub guidance which one has to take into account.

10 Particularly the legislation that is applicable in this case. The Act in question is called The Criminal Law Amendment Act which was passed some 23 years ago which says:

"If the court convicts in the circumstances that are mentioned, then life imprisonment should be imposed unless there are some substantial and compelling circumstances."

The said concept, substantial and compelling is not defined in the Act. That is understandable, because the legislature
20 did not want to take away or to tamper with the discretions, which the courts have enjoyed all the time.

Having said that, this Act was brought into being, because of the high level of crime in this country and that Act was meant to cater for that situation in order to attempt to reduce such high volume of criminal activity, including

murder. The courts have always said, particularly starting with the *S v Malgas* that:

"For the court not to impose the ordained life sentence, the substantial and compelling circumstances must be truly such and not be circumstances based on flimsy ground. It must not be diluted, because the views of the presiding or the sentencing officer."

10 The parties as I have said made some submissions. I have also had the benefit of listening to the evidence by the accused during the hearing on merits as well as the victims. During the sentencing procedure this morning, the accused chose to testify on her behalf, but in evaluating whether those submissions that he give has supplemented by the arguments from the defence.

I have to keep in mind that at this stage anything that was said during the merits proceedings also has a place or must be taken into account at this stage. We have
20 already heard as the state correctly pointed out, the evidence of some 54 witnesses on behalf of the state. They mainly dealt with the manner in which the victims and the crimes were committed and the state, also this morning lead the evidence of Ms Mushawana, the aunt to the accused.

Ms Mashego also the relative of the accused, the

grandmother to Brilliant Mashego, Ms Nhlapo, the partner to Zanele Motha and Mr Mabasa the brother to Maurice Hingwane Mabasa. We have also had the benefit of the evidence of an expert, Lt Col Myberg who gave expert evidence on whether the accused is a good candidate for rehabilitation.

Now, earlier I have indicated that in order to arrive at the appropriate sentence one will have to look at various circumstances. The first one is the personal circumstances
10 of the accused. The accused is 46 years old and on his credit side, of his alleged account, she is the first offender and that counts in her favour.

She has been in custody for some period in excess of 3 years. At the time of her arrest and in fact at the time when she started committing the offence, which she was found guilty of, she was gainfully employed as a member of The South African Police Service. At the time of her arrest, she was also already elevated to a position of a sergeant.

In other words when she committed all these
20 offences, she was donning the blue uniform and shouting the slogan that we serve and protect. In the analysis that I have just given, the counsel for the accused said there are some elements of special and compelling circumstances.

The interest of the society in the competing of criminality, are many. They include the entire well-being of

the state in its various or many manifestation. The members of the society are entitled to live in this beautiful country without fear of death or violence. The accused chose to be a member of the Police Service as I have already indicated.

The expectation of the society is that he will act according to the motto and the prescripts of the South African Police Service. For the period starting 2012, she acted actively in contra distinction to that expectation. She
10 was involved in criminality. She was involved or in cahoots with, to use her term, the [*indigenous language*], which is translated into the hit man.

At some stage he, she and another hit man, so called, they travelled to Mapulaneng where she pointed out to Lakhiwe Mkhize the house occupied by the mother. The evidence placed before me is that she paid R2 600 for the elimination, the murder of the mother. As I have indicated during my judgment on merits, that evidence was never
challenged.

20 For some strange reasons an unexplained one for that matter, this Lakhiwe Mkhize took pity to the old lady as he testified to and the killing did not take place, that was also followed by the sting during which we received evidence from the accused herself on the clip how her sister has to be killed.

Such conduct is frowned upon by the state and even as old as during the time of the ten commandments we made the slogan that 'thou shall not murder', meaning that since time in memorial killing or murder had always had some serious consequences and the accused irrespective of those prohibitions, warnings and irrespective of the fact that she was the member of the Police force, where the society expected different behaviour, she was manifestly involved in killing of his own relatives, meaning that their death meant
10 some money for her.

The question before me now is whether from the presentation of submissions by the defence, are there substantial and compelling circumstances in the existence in this matter. Her age in my view does not qualify as such. The evidence from the record cannot by stretch of any imagination be held to be [*mechanical failure* 13:43].

The very purpose for which this legislation enacted. The aggravated circumstances are overwhelming. The accused was in cahoots with dangerous and brutal criminals
20 called [*indigenous language*]. He even knew how to connect with them and she provided them with her contact details.

During the evidence on the merits, she even remanded Vincent that, 'I did you a favour, this is the time you repay my favour in by killing my sister in Pumelo'. Those criminals they who are in cahoots with the accused

are merciless. This is demonstrated clearly by the manner in which all the six victims were killed.

Her mother was more lucky. The accused was selling the state firearms to the criminals. The accused monetised the lives of her relatives, he saw that as a commodity. He treated their lives like a script in the shareholding languages. With the risk of unnecessary repetition, the accused betrayed her own colleagues. She betrayed her own motto as a police officer.

10 The crimes were brazen and calculative. She has threatened the investigating officers and also the employees of the insurance company, thus the reason why I am saying the aggravating circumstances are overwhelming. These crimes have correctly caught and shocked the nation.

 Since 1932, this country has never seen or observed and or experienced such brutality mainly to cash in the insurance policies. The lawlessness with which she carried all this criminality threatens or threatened the very existence of this democratic society. The accused is cruel,
20 hellish, bullish and brazen.

 The accused was manipulative and always deceitful tricking her victims into believing that she loved them, they always refer to her as aunty. Once she seduced them into such a mode, she struck like vulture.

 Now the last point that I would like to deal with

very briefly is whether from the analysis that I have given is whether this cruel aunty is a candidate for any rehabilitation. The expert has classified her as a serial killer and which classification I accept and the accused also demonstrated complete absence of remorse.

He said I remember that 'I had to apologise', because in their mind so that is qualified remorse and therefore is not a remorse at all. This accused deserves to be removed from the society for a very very long time. The
10 evidence has also been, I received the evidence that she is still not a candidate to be admitted to rehabilitation.

In the circumstances, may the accused please rise. I accordingly impose the following sentence on accused. On the murder count, that is count 1, count 2, count 7, count 9, count 10 and count 12 that is the matter of Homu Madala, Audrey Ndlovu, Maurice Mashaba and then number 9 is Zanele Motha, number 10 is Mayeni Motha or Mashaba and then Brilliant Mashaba. The accused is sentenced to life imprisonment on each count.

20 On count 3, defeating the ends of justice, this relates to the tampering of the scene where the sister was killed and this is also very serious, because it was also done by a police officer. The accused is sentenced to 5 years imprisonment.

On count 4, count 5, count 6 and count 8, those are

the fraud counts, the accused is sentenced to 10 years imprisonment on each count. On count 13, count 15, count 16, count 17, count 18, count 19 and count 20, incitement to commit murder, the accused is sentenced to 10 years imprisonment on each count.

Lastly, on count 14, attempted murder on her mother, the accused is sentenced similarly to 10 years imprisonment. The sentences in count 2, count 3, count 4, count 5, count 6, count 7, count 8, count 9, count 10, count 10 12, count 13, count 14, count 15, count 16, count 17, count 18, count 19 and count 20 are ordered to run concurrently with the sentence of life imprisonment imposed in count 1. Effective period of imprisonment therefore is life.

Lastly the report by the Col Myberg is ordered to be kept on the file with the authorities so that they can be able to monitor the progress of the accused.

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20 **MONAMA, J**
JUDGE OF THE HIGH COURT
DATE: