

SOUTH AFRICA / JUDGMENT

Cawe v S (Appeal) (A253/24)

[2025] ZAWCHC 289 (20 May 2025)

[2025] ZAWCHC 289**COURT**

Western Cape High Court, Cape Town

BEFORE

Le Grange, Njokweni

CASE / FILE NUMBER

A253/24

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Policy**IN**

**THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE
DIVISION, CAPE TOWN)**

Case No: A253/24

**(Court
a quo)**

Case No: CSH58/23**In the matter between:**

ESETHU
CAWE
Appellant
and
THE
STATE
Respondent
Neutral
citation: Esethu
Cawe v The State (Case no A253/24)
[2025] ZAWCHC ...
(20 MAY 2025)

Coram:

LE GRANGE J et NJOKWENI AJ

Heard: 9 MAY 2025

Delivered: 20 MAY 2025

Summary: automatic appeal – domestic violence – interim protection order – contravention of s17(a) of the Domestic Violence Act 116 of 1996 – murder – Life imprisonment – prescribed minimum sentence – substantial and compelling circumstances to justify departure from imposition of life sentence do not exist – life imprisonment sentence appropriate.

JUDGMENT

Njokweni AJ (Le Grange J concurring:)

Introduction

- [1] In and around July 2022 and August 2022, Ms. R[...] N[...], a 28-year-old female resided with her 4-year-old daughter in Khayelitsha in Clanwilliam, Western Cape. She was in an intimate relationship with Mr. Esethu Cawe (Appellant).
- [2] On 22 July 2022 at about 6pm, Ms. N[...] was brutally stabbed to death by the appellant in the presence and full view of her 4-year-old daughter. Ms. N[...] subsequently died because of fatal multiple stab wounds to various parts of her body.
- [3] The accused was arrested for murdering Ms. N[...] (deceased) and contravention of an Interim Protection order. He attempted to negotiate with the state for a plea agreement on sentencing. His efforts were unsuccessful in that the state refused to enter a plea bargain and proceed to prosecute the appellant. He later appeared in the Regional Court, Clanwilliam, where he faced two counts:

Count 1: Contravention of section 17(a) and section 1,5,7 and 17 of the Domestic Violence Act 116 of 1998.

Count 2: Murder in that on the 22nd of August 2022 at Clanwilliam, he unlawfully and intentionally killed the deceased by stabbing her multiple times with a knife all over her body causing her death unnaturally.

- [4] The appellant pleaded guilty to both counts and was convicted accordingly. After conviction, he was sentenced to 4 years for breach of the Interim Protection Order and life imprisonment for murder.
- [5] He now appeals the sentence in respect of the life sentence only.

Facts

Ad conviction

- [6] In and around July 2022 the relationship between the deceased and the appellant broke down irretrievably due to alleged various acts of domestic violence perpetrated by the appellant on the deceased. Apparently, prior to her death, the deceased suspected the appellant of infidelity. But when she confronted the appellant on various occasions, the latter became aggressive, violent and even threatened to kill her. The latter caused the deceased to end the relationship with the appellant. However, it appears that the appellant was still hopeful to rekindle same.
- [7] It appears that the acts of domestic violence continued and as a result, on 26 July 2022 the deceased obtained an Interim Protection Order (IPO) against the appellant in terms of the Domestic Violence Act 116 of 1998. The IPO inter alia prohibited the appellant from (1) entering deceased's house in Khayelitsha, Clanwilliam; assaulting or threatening to assault, verbally abusing her. The IPO was duly served on the appellant and as such was aware of its existence and terms.
- [8] On 22 August 2022 at 6pm, the appellant breached the terms of the IPO by inter alia entering the house of the deceased who at the time was with her four-year-old minor child.
- [9] It appears that an argument ensued while the deceased was peeling vegetables in preparation of dinner for her and the minor. The appellant then grabbed the knife from the deceased and stabbed her multiple times. The appellant stabbed the deceased multiple times, inter alia, on her body, face, neck, breasts, ear and back to mention but a few.
- [10] The deceased died because of the fatal stab wounds brutally inflicted on her by the appellant in full view of a four-year-old minor child.
- [11] The appellant reported himself to the police station for stabbing the deceased to death. He was subsequently charged in the Regional Court sitting in Clanwilliam:
- [12] The Appellant was legally represented and despite being unsuccessful in his plea negotiations, he pleaded guilty on the 28th of February 2024 and was convicted.

Ad sentence

- [13] Various exhibits including the postmortem report depicting the nature and extent of severity of the fatal stab wounds were handed in during the court proceedings.
- [14] The State had called various witnesses in Aggravation of sentence:

Doctor Deon Andrew Swigelaar,

- [15] He testified on the nature and extent of severity of the fatal injuries inflicted on the deceased by the appellant, to wit multiple stab wounds on her back, breasts, thighs, ear, face to mention but a few and that the blade of the knife was still inside deceased body.

D[...] N[...]

[16] She is the deceased cousin. She inter alia testified on the history of domestic violence perpetrated by the appellant on the deceased. She also advised the deceased to obtain the IPO, which was obtained in July 2022.

[17] She is currently taking care of the deceased's two children. Both are still traumatised by the brutal killing of their mother, especially the younger one who witnessed the incident. She testified they are finding it difficult to deal with her death. In fact, she even blames the police for allegedly failing to protect the deceased.

Mamelo Gloria Ralinku

[18] She is the neighbor of the deceased. On 22 August 2022 she heard the cries of the deceased and went out to investigate. She found the deceased bleeding from multiple stab wounds. The deceased four-year-old daughter was also present. On her arrival at the deceased house, she noticed the appellant leaving the deceased house. She took the deceased to the hospital where she was pronounced dead. The death of the deceased has affected her emotionally and psychologically. It also affected her well-being negatively.

Nokolong Gqokot

[19] The first police officer to arrive on the crime scene.

Ms. Booysen

[20] The regional magistrate requested a pre-sentence report from a probation officer. The probation officer, Ms. Booysen, confirmed the Appellant mentioned he is sorry for killing the deceased. According to her however, the appellant failed to show true remorse but only regretted his wrongful deeds.

[21] The court a quo found there were no substantial and compelling circumstances to deviate from imposing the mandatory minimum sentence of life imprisonment.

[22] In the result, the Appellant was sentenced to 4 years direct imprisonment in respect of Count 1 and life imprisonment in respect of count 2. The sentences were ordered to run concurrently.

[23] The Appellant enjoys an automatic right to appeal as he was sentenced to imprisonment for life by the regional court under section 51(1) of the Criminal Law Amendment Act 105 of 1997.

[24] The Appellant however elected to file a notice of appeal against the sentence in respect of count 2 only.

The applicable legal principles

[25] It is trite that this Court can interfere with the sentence imposed by a lower court if the lower court did not exercise its discretion properly and judicially. This Court can also interfere where a misdirection has taken place, and the lower court did not exercise its discretion at all or exercised it improperly or unreasonably.[1]

[26] In *S v GK*[2] the court held:

“... that there was nothing in the Act which fettered an appellate court's power to reconsider the matter of substantial and compelling

circumstances. The values of the Constitution were better served by an interpretation which did not fetter the appellate court when it came to the question of the presence or absence of substantial and compelling circumstances. To allow an appellate court to make its own value judgment on appeal provided accused persons with greater safeguards against the imposition of disproportionate punishment.

[27] It is stated in *S v Malgas*[3]

‘All factors traditionally taken into account in sentencing (whether or not they diminish moral guilt), thus continue to play a role; none is excluded from the outset from consideration in the sentencing process.

The ultimate impact of all the circumstances relevant to the sentencing must be measured against the composite yardstick (substantial and compelling) and must be such as cumulatively justifying a departure from the standardised response that the Legislature has ordained.’

Application of the legal principles to the facts

[28] It was submitted by counsel for the appellant that the court a quo erred in concluding that no substantial and compelling circumstances exist. According to counsel, the appellant has shown remorse by pleading guilty and his personal circumstances are of such nature that considered cumulatively they justify the imposition of a lesser sentence than the prescribed sentence of life.

[29] The appellant’s personal circumstances can be described as follows:

- a. He was 26 years old on the date of the commission of the offence and 27 years old at the time of being sentenced.
- b. He is a first offender. There is no indication that he has been involved in the commission of crimes up until now. According to his counsel he has a better prognosis for rehabilitation and is less of a threat to society than a serial offender.
- c. Appellant has two siblings and had a stable upbringing with a good support system
- d. He was in a relationship with the mother of his three-year-old daughter. She is currently studying at the University of Nelson Mandela.

- e. His child resides with her maternal grandmother in the Eastern Cape, who receives a child support grant. He is also assisting financially.
- f. He was in a relationship with the deceased. The deceased was apparently also in a relationship with her child's father. He also assisted the deceased financially.
- g. He resided at Khayelitsha.
- h. He was employed at Patrysvlei farm and his earnings were R4000 per month.
- i. He handed himself shortly after the incident to the police and cooperated with the police and pleaded guilty.
- j. He has scholastic achievement of grade 11 and if a chance arises, he would complete grade 12.
- k. He was in custody for one year and six months until he was sentenced.

[30] Counsel for the appellant conceded that the crimes of which the appellant has been convicted are serious and the interest of society must be reflected in the sentence. It was also contended that notwithstanding such seriousness, the imposition of sentence must be a balanced process and consider the appellant's circumstances. I agree with the latter submission.

[31] The court a quo gave a full and detailed judgment on sentence. It carefully considered each factor in mitigation and aggravation and properly considered the appellant's personal circumstances.

[32] The crime the appellant committed is indeed very serious. The deceased was viciously stabbed multiple times in her own home. To make matters even worse, the appellant did so in front of her 4-year-old girl child. The appellant showed the deceased and her minor child no mercy.

[33] The little girl has been scarred for life. She was displaced from her friends and the comfort of her home where she peacefully resided with the deceased. No person let alone such a young child should be subjected to such brutality. The psychological trauma suffered by the child cannot be ignored and is an aggravating factor.

[34] It is precisely these kinds of crimes that which the legislature deemed necessary to prescribe mandatory minimum sentence of life imprisonment.

[35] The court a quo, in my view, correctly found that no substantial and compelling circumstances exist that justify deviation from the prescribed minimum sentence.

Conclusion

[36] For all the reasons stated above, the appeal cannot succeed. In the result the following order is proposed.

1. The appeal against sentence in respect of count 2, Murder, is dismissed.

P NJOKWENI

ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

A LE GRANGE

JUDGE OF THE HIGH COURT

APPEARANCES:

For appellant: Adv Abdurahman

Instructed by: Legal Aid South Africa

Cape Town Justice Centre

For respondent: Adv C Monis

Instructed by: NDPP, Cape Town.

[1] S v Fhetani 2007 (2) SACR 590 (SCA); S v Nkosi 2011 (2) SACR 469 (SCA).

[2] 2013

(2) SACR 505 WCC

[3] 2001

(1) SACR at page 471 para f-g

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