

SOUTH AFRICA / JUDGMENT

Kamati v S (A132/2024) [2025] ZAFSHC 171 (12 June 2025)

[2025] ZAFSHC 171

COURT

Free State High Court, Bloemfontein

BEFORE

Loubser, Opperman

CASE / FILE NUMBER

A132/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable/Not

reportable

Appeal number:

A132/2024

In

the matter between:

XOLANI

ALFRED KAMATI

Appellant

And

THE

STATE

Respondent

Neutral

Citation: Kamati v S

(A132/2024) [2025] ZAFSHC 171 (12 June 2025)

Coram:

Loubser J et

Opperman J

Heard:

10 March 2025

Delivered:

12 June 2025

Summary: Appeal only against sentence of life imprisonment
– whether court a quo
should have found substantial and compelling circumstances to deviate
from the prescribed minimum sentence
ORDER
The appeal against
sentence is dismissed.

JUDGMENT

Loubser J (Opperman J concurring)

- [1] The appellant in this appeal and two co-accused were convicted in the Regional Court sitting at Kroonstad for the murder of a taxi driver. On 13 September 2017, all three of them were sentenced to life imprisonment, the court a quo having found that there were no substantial and compelling circumstances justifying a deviation from the prescribed minimum sentence of life imprisonment. The appellant, who featured as accused no. 2 in the court a quo, now comes in higher contention against his sentence. His appeal does not lie against his conviction, and consequently this court can safely rely on the facts of the matter which formed the basis for the conviction. Due to the sentence of life imprisonment, the appellant enjoys an automatic right of appeal by virtue of the provisions of s 10 of the Judicial Matters Amendment Act 42 of 2013.
- [2] The reading of the record of proceedings reveals that the murder in question was committed by the three accused in the most gruesome manner. The murder was also premeditated by the three accused. They approached the taxi of the deceased in the district of Vierfontein in the early evening and assaulted him by inter alia throttling him with his own waistband. They then took his taxi and drove him to a bridge over a river on the farm Groenfontein in the area. There they placed a plastic bag over his head and tied his hands and legs with shoelaces so that he could not move. In the darkness of the night, they threw him into the river while he was still alive, and nonchalantly left with his vehicle, well knowing that he would probably drown. Two days later, his body was found under the water at the spot, the plastic bag still in position over his head. The cause of death was drowning. Marks found on the floor of the river provided grim testimony of how he had struggled to free himself.
- [3] In sentencing the three accused, the trial magistrate mentioned that there are extremely aggravating circumstances present which she had to take into account. ‘In the manner in which this offence was committed, I find no mitigating factors at all,’ she said.
- [4] In this Court, it was initially submitted that the sentence of life imprisonment is strikingly inappropriate in the case of the appellant. He was only 25 years of age at the time of sentencing, he has one child aged 2, he was a first offender and he was busy with an internship at the local municipality where he earned an income of R2 800.00 per month. He had made a confession to

the local magistrate and provided the police with the particulars of his co-accused, it was submitted. However, when his legal

representative was pressed on the callousness and the cruelty of the murder, she quite correctly, in my view, conceded that there is not much she can advance in the appellant's favour in that regard.

[5] In *S v Matyityi*[1] the Supreme Court of Appeal stated that courts should not depart from the prescribed minimum sentences lightly and for flimsy reasons. A proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling, or not. This was stated by the Supreme Court of Appeal in *Bailey v S*. [2] These principles are applicable in the present case, because section 51(1) of the Criminal Law Amendment Act 105 of 1997 provides that a person convicted of murder which was committed by a group of persons or which was pre-meditated, or which was caused in committing robbery with aggravating circumstances shall be sentenced to life imprisonment. The appellant falls squarely in each of these definitions, if the facts of the matter are taken into account. Furthermore, section 51(3) of the said Act provides that a court may impose a lesser sentence than the prescribed minimum if substantial and compelling circumstances exist justifying such a lesser sentence.

[6] In the final analyses, therefore, the only question before this Court that needs consideration, is whether the court a quo was correct in finding that there were no such substantial and compelling circumstances. In my view, the court a quo cannot be faulted in this respect. The cruel manner in which the appellant and his co-accused killed the deceased, leaves no other option.

[7] I make the following order:

Loubser J

I concur:

Opperman J

Appearances For the appellant: S Kruger Instructed by: Legal Aid, Bloemfontein For the respondent: S Tunzi Instructed by: The Office of the Director of Public Prosecutions: Free State, Bloemfontein

[1] *S v Matyityi* [2010] ZASCA 127; 2011 (1) SACR 40 (SCA) para 23.

[2] *S v BP* [2012] ZASCA 154; 2013 (2) SACR 533 (SCA) para 20.

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