

SOUTH AFRICA / JUDGMENT

Konjo v S (CA 31/2023) [2024]

ZANWHC 238 (16 September 2024)

[2024] ZANWHC 238

COURT

North West High Court, Mafikeng

BEFORE

Scarrott, Laubscher

CASE / FILE NUMBER

CA 31/2023

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT
OF SOUTH AFRICA
(NORTH-WEST
DIVISION, MAHIKENG)
CASE
NO.: CA 31/2023
REGIONAL
COURT CASE NO.: RC9/2022

Reportable: YES/NO
Circulate
to Judges: YES/NO
Circulate
to Magistrates: YES/NO
Circulate
to Regional Magistrates: YES/NO
IN

THE CRIMINAL APPEAL
OF:

KONJO
ANDRIES
APPELLANT
and
THE
STATE
RESPONDENT

Delivered:

This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 10h00 am on 16 SEPTEMBER 2024.

JUDGMENT

CORAM: SCARROTT AJ and LAUBSCHER AJ

BACKGROUND

RELEVANT TO THIS APPEAL:

[1] This is an appeal by the Appellant against both his conviction and sentence by the Regional Division of the North West held in Bloemhof on a charge of murder.

[2] The record filed in this matter reflects that the Appellant was charged as follows:

“In that the accused is guilty of the crime of murder read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 read further with the provisions of Sections 256 and 258 of the Criminal Procedure Act 51 of 1977. In that on 27 March 2021 in Bloemhof in the Regional Division of the North West the accused did unlawfully and intentionally kill a male person to wit Eric Ketele Motudi by hitting him with an axe several times. The provisions of Section 51 Subsection 1 are applicable in that after the accused had a physical fight with the deceased he went to fetch an axe to assault

him with, that is why the provisions of Section 51 Subsection 1 of Act 105/1977 is applicable as the murder was premeditated”.

[3] The Appellant, who had legal representation at all relevant times in the proceedings a quo, confirmed that he understood the charge.

[4] The Appellant then pleaded guilty to the charge and submitted a statement in terms of section 112(2) of the Criminal Procedure Act, Act 51 of 1977 (hereafter “the Criminal Procedure Act”). That statement was read into the record, confirmed by the Appellant and handed in as “EXHIBIT A”.

[5] The relevant paragraphs of the Appellant’s section 112 statement, for present purposes, are:

“4. I submit that on the 27th of March 2021 near Bloemhof I unlawful (sic) and intentionally killed one Eric Mothudi by hitting him with an axe.

5. I am guilty as on the abovementioned date I was at the farm and I heard my wife arguing with an unknown man, I went closer to enquire what the argument was about, I submit that myself and this man had an argument, which led to us having a physical fight, I head butted the man and he fell. In a fit of rage I then went into my house and fetched an axe and assaulted him with it.
6. I submit that he sustained fatal injuries, I thus confirm that he died as a result of the injuries that I caused.

7. I submit at the time I committed this offence I understood that assaulting the accused in the manner that I did would result in him sustaining fatal injuries and despite this understanding proceeded to hit him with the axe. I submit that I acted intentionally, and further I have no legal justification for my conduct. I am guilty as

charged.”

[6] The Appellant confirmed the contents of his statement to the trial court.

[7] The State accepted the Appellant’s plea and the trial court immediately handed down judgment as follows:

“Yes and as a result you are found guilty as you are charged”.

[8] No questions were put to the Appellant by the court in terms of section 112(2) of the Criminal Procedure Act and no evidence was presented in terms of Section 112(3) of the said act.

[9] The Appellant was convicted solely on the strength of his statement in terms of section 112 of the Criminal Procedure Act.

- (a) He is 40 years of age, married with eight children, the youngest of which is three months old, and he is responsible for their maintenance;
- (b) He was a shepherd earning R1000 a month and has no formal education;
- (c) He pleaded guilty, did not waste the court’s time and took the court into his confidence;
- (d) He was acting out of character at the time due to consuming alcohol (this was conceded not to be a defence);
- (e) He is not a hardened criminal.

[11] The State made submissions to the trial court in response to the Appellant's submissions and in aggravation of sentence. The submissions were that:

- (a) The Appellant was in the company of his wife and children when he killed the deceased;
- (b) He had already defeated the deceased when he fetched the axe and assaulted him with it;
- (c) He buried the body of the deceased where it remained for months;
- (d) The plea of guilty was not due to remorse but the overwhelming evidence against him;
- (e) His actions were inhumane and cruel;
- (f) The Appellant's children are better off without him.

[12] After these submissions by the respective parties before the court a quo, the trial court found that: “...there is no ... substantial or compelling circumstances that has been presented to make this court to deviate from the prescribed sentence in terms of Section

51(3)(a) of the Criminal Law Amendment Act 105/1997...”. The court a quo sentenced the Appellant to life imprisonment. The trial court also made consequential orders declaring the Appellant unfit to possess a firearm under section 103(2) of the Firearm Control Act, Act 60 of 2000 and that the family of the deceased is to be contacted and involved when the Department of Correctional Services considers parole.

THE APPEAL

- [13] This appeal was noted against conviction and sentence and comes to this Court in terms of section 309(1)(a) of the Criminal Procedure Act, the Appellant having been sentenced to life imprisonment.
- [14] This appeal is based primarily on the Appellant's contention that the trial court misdirected itself in that the elements of section 51 of the Criminal Law Amendment Act, Act 105 of 1997 (hereafter “the Criminal Law Amendment Act”) that were referred to in the charges (that the murder was “planned or premeditated”) were not proven before conviction. This, the Appellant says, meant that the trial court incorrectly convicted the Appellant of murder that was “premeditated” or “planned” and then consequently approached sentencing as if the minimum sentencing provisions or “enhanced penalty jurisdiction” for a planned or premeditated murder, were applicable.
- [15] The Appellant also challenges the State's submission that the Appellant was in the company of his wife and children at the time of the offence and that he buried the body of the deceased. This challenge is made on the basis that the record contains no evidence of either of these facts.
- [16] The State, in turn, opposes the appeal contending that on any basis the conviction of murder was proven, that the charges mention section 51(1) of the Criminal Law Amendment Act, that the Appellant pleaded guilty to those charges, that premeditation can be inferred from the facts admitted in the section 112 statement, that the Appellant pleaded guilty to the charge as framed and placed no evidence that would make section 51(2) of the Criminal Law Amendment Act applicable, and that the Appellant had a fair trial.
- [17] Accordingly, then, the question for determination in this appeal is whether the section 112 statement suffices to approach the conviction and sentencing as if the murder was planned or premeditated invoking section 51(1) of the Criminal Law Amendment Act as the departure point for sentencing and if not, whether the Appellant was prejudiced as a result.
- [18] This Court will approach the appeal against the conviction first.

MURDER

- [19] After the reading, confirmation by the Appellant and submission of the section 112 statement, the Appellant was convicted of murder “as you are charged”. The charge applicable was a charge of murder with premeditation.

[20] Murder is the “unlawful and intentional causing of the death of another human being”. The elements of the crime are: causing the death; of another person; unlawfully, and intentionally[1].

[21] It is trite that there is no offence of “premeditated murder” or “planned murder” or any combination thereof. These phrases in the Criminal Law Amendment Act refer to characteristics or features of a crime i.e. in casu, the offence of murder where it was “planned” or “premeditated”.

[22] This was stated as follows by Cameron JA in *S v Legoa*[2] as follows:

“It is correct that, in specifying an enhanced penal jurisdiction for particular forms of an existing offence, the legislature does not create a new type of offence. Thus, ‘robbery with aggravating circumstances’ is not a new offence.[3] The offences scheduled in the minimum sentencing legislation are likewise not new offences. They are but specific forms of existing offences, and when their commission is proved in the form specified in the Schedule, the sentencing court acquires an enhanced penalty jurisdiction. It acquires that jurisdiction, however, only if the evidence regarding all the elements of the form of the scheduled offence is led before verdict on guilt or innocence, and the trial court finds that all the elements specified in the Schedule are present...” (this Court’s emphasis)

[23] Paragraph 4 of the Appellant’s section 112 statement admits all of the essential elements of the crime of murder. It states: “I submit that on the 27th of March 2021 near Bloemhof I unlawful (sic) and intentionally killed one Eric Mothudi by hitting him with an axe”.

[24] The statement admits the murder of the deceased with *dolus directus*. This is considered further below.

MINIMUM SENTENCING LEGISLATION

[25] Section 51 of the Criminal Law Amendment Act introduced the so-called “minimum sentencing legislation”. It became effective and applicable to offences committed from 1 May 1998[4].

[26] As stated above section 51 of the Criminal Law Amendment Act does not create new offences, it refers to “specific forms” of existing offences. Where the form referred to in section 51 of the Criminal Law Amendment Act and the schedules (for example that the murder was planned or premeditated), are proven then and at that time the sentencing court acquires the jurisdiction and enhanced penalty provisions under the Criminal Law Amendment Act and is bound to apply that legislation.

[27] The wording of section 51(1) of the Criminal Law Amendment Act applies and requires that where a court has “convicted” an accused of an offence referred to in Part I of Schedule 2 that subject to subsections (3) and (6) of section 51, the court sentence the convicted person to “imprisonment for life”.

[28] The conviction is stated in the section as being a conviction of an offence “referred to in Part I of Schedule 2”. In this regard and as is stated by the author SS Terblanche in *A Guide to Sentencing in South Africa*[5] (and this Court includes the footnotes as they appear in this quoted portion):

“As in the case of section 51(1) offences, section 51(2) requires that the accused be convicted of an offence, not only included in Schedule 2, but as described in Schedule 2. The focus of this provision is on the characteristics of the offence and because the offender has to be convicted of exactly such an offence, these characteristics have to be proved before conviction. This principle was established in S v Legoa.[6] Such characteristics do not have to be part of the essential elements of the offences. The court emphasised that the jurisdiction to impose the enhanced sentences is acquired only if all the elements of the offence, as described, are proved before conviction and the trial court finds them to be present.[7] When the offence as described specifies an attribute of the accused instead of the offence, the principle does not necessarily apply.[8]

This does not mean that the conviction must necessarily be for an offence as described in the Schedule.[9] What is required is that the facts referred to in the Schedule must be fixed at the time of conviction, even if by necessary implication

only.[10] In particular, once the accused has been convicted of the basic offence, the state cannot then surprise her with additional evidence

in an effort to bring the provisions of the Act into play.[11]

Proof beyond a reasonable doubt is required.[12] If a conviction is based on a plea of guilty, the relevant section 112 statement should address all the elements described in the Schedule.”[13]

(this Court’s emphasis).

[29] The question of whether a murder was “planned” or “premeditated” is a factual one[14] and as stated above, requires proof beyond reasonable doubt before conviction.

PLANNING AND PREMEDITATION

[30] There is no statutory definition of “planned” or “premeditated”. This has however been the subject of judicial consideration. The position in this regard was well set out by Satchwell J in *S v Taunyane*[15]:

“...in Raath supra planned or premeditated murder was described as follows (p 53 para [16]): ‘Clearly the concept suggests a deliberate weighing-up of the proposed criminal conduct as opposed to the commission of the crime on the spur of the moment or in unexpected circumstances. There is, however, a broad continuum between the two poles of a murder committed in the heat of the moment and one which had been conceived and planned over months or even years before its execution... Only an examination of all the circumstances surrounding any particular murder, including not least the accused’s state of mind, will allow one to arrive at the conclusion as to whether a particular murder is ‘planned or premeditated’. In such an evaluation the period of time between the accused forming the

intent to commit the murder and carrying out this intention is obviously of cardinal importance but, equally, does not at some arbitrary point, provide a ready-made answer to the question of whether the murder was ‘planned or premeditated’.”

Raath was quoted with approval by the Supreme Court of Appeal in *Kekana v The State* (629/2013) [2014] ZASCA 158 (1 October 2014).

The distinction between ‘planning’ and ‘premeditation’ was made on the basis of dictionary definitions in *Raath supra* but has subsequently been examined in some detail in *S v PM* 2014 (2) SACR 481 (GP) where it was found that the concepts were distinct from each other – premeditation referring “to something done

deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success, or to evade detection or apprehension” while planning refers to “a scheme, design or method of acting, doing, proceeding or making which is developed in advance as a process, calculated to optimally achieve a goal” (at para [36]).

The period of time which may elapse between a perpetrator forming an intention to commit the murder and carrying out such murder is of importance but does not, as was said in *Raath supra* “prove a ready-made answer to the question of whether the murder was ‘planned or premeditated’ or, as was said in *Kekana supra*, “time is not the only consideration”.

[31] As Satchwell J stated so succinctly in *S v Taunyane*[16]:

“The question ... is whether or not appellant “weighed – up” his proposed conduct either on a thought-out basis or an arranged-in-advance basis (as set out in Raath supra ..., or, whether or not appellant “rationally considered the timing or method” of the killing, or, prepared a “scheme or design in advance” for achieving his goal of killing the deceased (as set out in PM supra ...).”

[32] The relevant facts that were before the trial court were the Appellant's statement in terms of section 112. In view of the importance of this statement, the relevant paragraph thereof (paragraph 5 as quoted above) is repeated:

I am guilty as on the abovementioned date I was at the farm and I heard my wife arguing with an unknown man, I went closer to enquire what the argument was about, I submit that myself and this man had an argument, which led to us having a physical fight, I head butted the man and he fell. In a fit of rage I then went into my house and fetched an axe and assaulted him with it.

[33] The above statement provides no detail or information as to:

- (a) The Appellant's state of mind at any point, beyond being in a “fit of rage”;
- (b) The time delay between the deceased falling down after being head-butted by the Appellant and the Appellant entering the house;
- (c) Whether the purpose of entering the house was to fetch the axe;

- (d) Whether the Appellant “weighed – up” his proposed conduct either on a thought-out basis or an arranged-in-advance basis (as set out in the Raath matter referred to supra, or, whether or not Appellant “rationally considered the timing or method” of the killing, or, prepared a “scheme or design in advance” for achieving his goal of killing the deceased.
- [34] The contents of the section 112 statement of the Appellant do not admit that the murder was “planned” or “premeditated”. There are accordingly no facts and thus evidence that the murder was “planned” or “premeditated”. The element of planning and premeditation may have been included in the charge and the Appellant may have pleaded guilty as charged, but this does not change the fact that planning and premeditation were not addressed in the section 112 statement, or supported by evidence adduced before the Court a quo.
- [35] The Respondent submits in their heads of argument that: “The premeditation is inferred from the facts”, i.e. from the Appellant’s statement as aforesaid.
- [36] To draw an inference requires the court to apply what in the often referred to matter of S v Blom[17] was referred to as “two cardinal rules of logic”, which was described as follows:
- “In reasoning by inference there are two cardinal orders of logic which cannot be ignored:*
- (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
 - (2) The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.”
- [37] The requirement for the trial court to have validly accepted, from an inference, that planning or premeditation was present, was for planning or premeditation to have been proven beyond reasonable doubt before conviction. Stated otherwise: Does the Appellant's statement quoted above, exclude every reasonable inference save that the murder was planned or premeditated? If not, then there must be a doubt whether the inference sought to be drawn (that the murder was planned or premeditated) is correct.
- [38] It simply cannot be said that the Appellant’s statement as quoted, excludes the inference that the murder was a spur of the moment action. The Appellant describes his act of going into the house and fetching the axe as being one undertaken “in a fit of rage”.
- [39] As such, in the view of this Court, it cannot be said that it was proven beyond reasonable doubt that the murder was “planned” or “premeditated”. The plea of guilty to the charge as framed does not assist the Respondent. To find as such would be to place form over function. The requirement, as stated above, is that “if the conviction is based on a plea of guilty, the relevant Section 112 statement should address all the elements described in the Schedule[18]”. It does not and planning and premeditation cannot be inferred.

- [40] As a consequence, the appeal against the conviction of the Appellant on the charge of murder must be upheld to the extent that the conviction refers to murder that was planned or premeditated as contemplated by section 51(1) of the Criminal Law Amendment Act.
- [42] Accordingly, the trial court approached the sentencing procedure from the wrong starting point and applied the incorrect provisions of the statutory law pertaining to prescribed minimum sentences. That this is prejudicial to the Appellant is self-evident.
- [43] The Appellant's section 112 statement says that: "I unlawfully and intentionally killed [the deceased]" and "I submit at the time I committed this offence I understood that assaulting the accused in the manner that I did would result in him sustaining fatal injuries and despite this understanding proceeded to hit him with the axe. I submit that I acted intentionally, and further I have no legal justification for my conduct. I am guilty as charged".
- [44] The Appellant's admissions show the admission of a direct intention (*dolus directus*) to kill the deceased noting more.

SENTENCING

- [45] This Court, now dealing with murder "in circumstances other than those referred to in Part I of Schedule 2" to the Criminal Law Amendment Act, is constrained to approach sentencing cognisant that section 51(2) requires that, subject to subsections (3) and (6), this Court is required to sentence the Appellant, as a first offender, to imprisonment for a period of not less than 15 years[19].
- [46] Section 51(3)(a) of the Criminal Law Amendment Act 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 those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence: Provided that if a regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of Schedule 2, it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years." (own emphasis).
- [47] As the Appellant is older than 18 years and was so at all material times, section 51(6) of the Criminal Law Amendment Act is not applicable.
- [48] In the seminal judgment on minimum sentences, *S v Malgas*,[20] the following was stated by Marais JA in the SCA regarding sentencing and the implementation of the provisions of section 51 of the Criminal Law Amendment Act and the concomitant imposing of prescribed minimum sentences brought about thereby:

"...The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative

hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances. Nor were marginal differences in the personal circumstances or degrees of participation of co-offenders which, but for the provisions, might have justified differentiating between them. But for the rest I can see no warrant for deducing that the legislature intended a court to exclude from consideration, ante omnia as it were, any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders...

Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.”[21] (own emphasis)

[49] In *S v Vilakazi*[22] the judgment in *Malgas* and that of the Constitutional Court in *S v Dodo* were considered. Nugent JA stated in *S v Vilakazi* that:

“... the essence of the decisions in Malgas and in Dodo is that a court is not compelled to perpetrate injustice by imposing a sentence that is disproportionate to the particular offence. Whether a sentence is proportionate cannot be determined in the abstract, but only upon a consideration of all material circumstances of the particular case, though bearing in mind what the legislature has ordained and the other strictures referred to in Malgas. It was also pointed out in Malgas that a prescribed sentence need not be ‘shockingly unjust’ before it is departed from for ‘one does not calibrate injustices in a court of law’.[23] It is enough for the sentence to be departed from that it would be unjust to impose it.”

[50] Accordingly then, where imposing the minimum sentence would be unjust, the court then is required to impose a lesser sentence[24].

[51] As to the reasons advanced by the Appellant in support of his request for a lesser sentence, the following statement by Nugent JA in *S v Vilakazi*

[25] is of guidance:

“In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of ‘flimsy’ grounds that Malgas said should be avoided. But they are nonetheless relevant in another respect. A material consideration is whether the accused can be expected to offend again. While that can never be confidently predicted his or her circumstances might assist in making at least some assessment”.

- [52] The grounds given by the Appellant in mitigation are personal circumstances as envisaged by Vilakazi. In addition to the personal circumstances mentioned in Vilakazi as not being material, the Appellant was not a youth, there was no evidence of reduced mental capacity, the purported remorse of the Appellant and his having pleaded guilty must be seen in light of the severity and brutality of his actions and that he did not confess until his arrest some time after the murder of the deceased.
- [53] The sentence proposed by the Appellant's legal representative in the heads of argument accords with the applicable minimum sentence (15 years).
- [54] There are no substantial and compelling reasons which would justify the imposition of a lesser sentence than the sentence prescribed: i.e. 15 years.
- [55] In this matter, this Court is accordingly satisfied that the imposition of the prescribed minimum sentence would not constitute an injustice, nor would it be disproportionate to the crime, the criminal or the legitimate needs of society.

CONCLUSION

AND JUDGMENT:

- [56] The appeal against conviction is upheld and the finding and order of the court a quo substituted with the following:

“The accused is found guilty of murder”.

- [57] The appeal against sentence is upheld and the finding and order of the court a quo substituted with the following:

“The accused is sentenced to 15 (fifteen) years’ imprisonment”.

- [58] The consequential orders as referred to in paragraph 12 above, are confirmed.

A B SCARROTT

ACTING JUDGE OF THE HIGH COURT, NORTH-WEST DIVISION, MAHIKENG

I AGREE.

N G LAUBSCHER

For the Appellant: Adv J Mitchell

For the Respondent: Adv T Moetaesi

Date of hearing: 21 June 2024

Date of judgment: 16 September 2024

- [1] Criminal Law CR Snyman Fifth Edition page 447.

[2] 2003

(1) SACR 13 (SCA) at para 18.

[3] S v Moloto 1982

(1) SA 844 (A) 850C-D, per Rumpff CJ: “Roof, of poging tot roof, met verswarende omstandighede is nie ‘n nuwe soort misdaad wat deur die Wetgewer geskep is nie. Dit bly steeds roof, of poging tot roof, maar volgens art 277(1)(c) [of Act 51 of 1977] van verleen die aanwesigheid van verswarende

omstandighede aan die Verhoorregter ‘n diskresionere bevoegdheid om by skuldigbevinding die doodvonnis op te lê.”

[4] A Guide to Sentencing in South Africa SS Terblanche Third Edition page 50.

[5] Third Edition, page 66.

[6] 2003 (1) SACR 13 (SCA) at paras 14-18. The finding is based on three considerations (at para 15): (1) the clear wording of the provision (this was also the main consideration in S v Nziyane 2000 (1) SACR 605 (T) at 609c-d);

(2) the established practice of the court (e.g., the aggravating circumstances in robbery with aggravating circumstances are

considered during the trial stage, even though such circumstances may not be an element of the offence robbery); and (3) a contrary

interpretation can cause grave injustice.

[7] At para 18. See also S v Gagu

[2006] ZASCA 7; 2006 (1) SACR 547 (SCA) at para 7, with the following clarification: the “elements” of the offence must be established before conviction, and the conviction must encompass all the elements of the particular offence as set out in Schedule 2.

[8] Cf S v Sukwazi 2002 (1) SACR 619 (N) at 624. Contra S v Qwati 2001 (1) SACR 378 (NC).

[9] S v Cunningham 2004 (2) SACR 16 (E).

[10] S v Cunningham supra at 19 found that Legoa did not require the trial court’s verdict to include all the details referred to in the Act. Cf also S v Kimberley 2004 (2) SACR 38 (E); S v Jafta 2004 (2) SACR 103 (E).

[11] See also S v Jafta supra (the charge sheet made no mention of the Act; after conviction, the prosecutor wanted to adduce evidence about the value of drugs

involved, but the court refused to allow this).

[12] Cf Isaacs v S

[2006] 2 All SA 163 (C) at para 37.

[13] Cf S v Gagu

[2006] ZASCA 7; 2006 (1) SACR 547 (SCA) at para 7 (the appellants were convicted of rape, but since their statements did not refer to a common purpose or conspiracy to commit rape, their sentencing could not be covered by Part 1).

[14] Cf S v Mahlangu 2012 (2) SACR 373 (GSJ) at 376 – 377.

[15] 2018 SACR (1) 163 (GJ) paras 26 – 28.

[16] Para [30].

[17] 1939 (AD) 188 at 202 – 203.

[18] A Guide to Sentencing in South Africa supra page 66.

[19] Section 51(2)(a) of the Criminal Law Amendment Act read with Part II of Schedule 2.

[20] 2001 (1) SACR 469 (SCA).

[21] At paras [7] to [9] and [25].

[22] Vilakazi v The State (576/07) [2008] ZASCA 87 at para 20.

[23] Malgas supra para 23.

[24] Vilakazi v The State supra at paras 14 – 15.

[25] Vilakazi v The State supra at para 58.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANWHC/2024/238.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/konjo-v-s-unknown-topic-anwhc-2024--6a3ea51f3b1caa9129815461>

Prepared on 12 October 2026 · Esheria