

SOUTH AFRICA / JUDGMENT

Liremi v S (Appeal) (HCA11/2024)

[2025] ZALMPTHC 9 (25 April 2025)

[2025] ZALMPTHC 9**COURT**

Limpopo High Court, Thohoyandou

BEFORE

TC Tshidada, J Ngobenj, T Matumba

CASE / FILE NUMBER

HCA 11/2024

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****LOCAL DIVISION, THOHOYANDOU****CASE****NO: HCA 11/2024****(1) REPORTABLE: YES/NO****(2)****OF INTEREST TO THE JUDGES: YES/NO****(3)****REVISED.****DATE:**

25/04/2025

SIGNATURE:

TC TSHIDADA J

In

the matter between:

EUGENE

THOMPPO LIREMI

Appellant

and

THE

STATE

Respondent

JUDGMENT

TSHIDADA J

- [1] The appellant approached this court with leave granted by Justice Phatudi AML on 22 November 2023, aggrieved and intending to contest his conviction on one count of murder, wherein he was charged in terms of the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA), and the resultant imprisonment of 25 years imposed on him by the trial court presided over by Justice Kgomo (as he then was), on 11 November 2019.
- [2] The appeal on conviction is premised on the following crisp and trivial issues, thus, the trial court erred in convicting the appellant on a count of murder read with the provisions of Section 51(1) of the CLAA supra, whereas there were no facts or evidence in support of that provision. Secondly, that the trial court did not promptly and fully appraise him (the appellant) of the application of the said provision and the consequences likely to arise from the offence he was charged with. He further contended that his guilty plea statement in terms of Section 112(2) of the Criminal Act 51 of 1977 (CPA) did not contain full admission of the charge of murder within the purview of Section 51(1) of the CLAA.
- [3] He lastly sought to suggest that the court a quo should have found that he committed the offence under consideration in a spare of a moment and triggered by anger after learning that the deceased he murdered had recently killed his biological brother. As a result, Justice Kgomo should have found that the appellant's criminal capacity and responsibility would have been diminished at that stage, therefore, he should have been sentenced within the provisions of section 51(2) of the CLAA.
- [4] Ad sentence, the appellant argues on his papers that an imprisonment sentence of 25 years imposed on him was disproportionate and shocking, deserving reconsideration by this court and if needs be, to be set aside by this court for it does not commensurate the offence committed.
- [5] Appellant further criticized the trial court of failing to consider the circumstances under which the offence was committed as a substantial and compelling factor justifying imposition of a lesser and lenient imprisonment sentence on him.
- [6] It is trite law that the only enabling authority for the appeal court to upset a conviction and/or sentence by the trial court, was restated in *S v Saddler*[1]. Conviction and sentence can be set aside only if the appeal court having considered the trial record finds, and is of the view that trial proceedings a quo were vitiated with irregularities and mis-directions, alternatively that the imprisonment sentence imposed is disturbingly inappropriate

for the crime committed, thereby inducing a sense of shock to the reader.

- [7] Section 51(1) of CLAA provides thus:

"Notwithstanding any other law, but subject to subsection (3) and (6), a regional court or a high court shall sentence a person it has convicted of an offence referred to in Part 1 of Schedule 2 to life imprisonment".

Whereas, subsection (3) provides thus:

"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 a lesser sentence."

[8] One of the enlisted offences under Part I of Schedule 2 is a planned or premeditated murder, as it was found in the current matter.

[9] The SCA per Mathopo AJA as he then was in *Kekana v S*[2] held that:

"it is not necessary that the appellant should have thought or planned his action a long period of time in advance before carrying out his plan. Time is not the only consideration because even a few minutes are enough to carry out a premeditated action."

[10] It is common cause per appellant appellant's plea of guilty statement herein that he stated that:

"I received a phone call that the deceased had stabbed my elder brother to death at one of the local liquor bar lounge. I then decided to rush to the scene where I discovered my brother lying dead in a pool of blood along the road. One of the bystanders informed me that my brother was killed by Phutswane Seabane (the deceased herein) in this matter. I then noticed the deceased walking away at a distance of 50 meters away, through the headlights of an oncoming vehicle. I then decided to run after him, before I could catch him, the deceased ran into a certain kraal but I managed to grab him. As the deceased fell on the ground, I started hitting his head with a rock several times and stabbed him with a broken bottle".

[11] The appellant went further in his impugned statement and stated the following:

"I admit I acted with revenge of my brother who was killed by Phutswane Seabane (the deceased herein). I further admit that I acted in revenge and that I never acted in self-defense or private defense of my late elder brother when I attacked the deceased herein, since my elder brother was already killed by Phutswane Seabane, and as such, my actions were not justified. Wherefore, I admit that I do not have a legal defense to the offence of murder and plead guilty to the charge of murder as charged".

[12] The above factual background clearly demonstrates premeditation by the appellant prior to him executing his grievous action which were undoubtedly engineered by revenge he had planned earlier. His action was grievous to the extent that upon apprehending the deceased, he did not only start hitting the deceased head with a rock, worse of it is that he went on to stab him with a broken bottle to death.

- [13] It is therefore my finding that the trial court did not misdirect itself with the evidence at its disposal when it concluded that the appellant premeditated to revenge the death of his brother prior to killing the deceased herein. Appellant's unrestrained statement demonstrates his intention and motivation when he committed the offence under consideration, reflecting no hindrance of his mental capacity in any form whatsoever.
- [14] It is fallacy for the appellant to suggest that the trial court failed or did not properly appraise him of the provision, application and consequences of Section 51(1) of CLAA, when one has regard to the trial record. Appellant was properly legally represented for the duration of the trial.
- [15] The record reflects that the appellant was informed at least on three occasions about the nature of the charge he was facing, including the applicable legal framework and prescribed sentences thereon, in the event the court was to find him guilty.
- [16] Appellant was first informed in open court of the charge and the statutory legal provision when the state counsel read him the charges and the related legislation before his plea.
- [17] After he confirmed to the court that he understood the charge against him and before the court could note his plea, the trial Judge further explained to him in detail what a murder charge read with the provisions of Section 51(1) entail. He was further made aware of the legislated minimum sentence of life imprisonment if he were to be convicted, and in the event no substantial and compelling circumstances were not to be established in his favor.
- [18] With full knowledge and understanding of what he was confronted with, the appellant pleaded guilty to the charge against him, as already alluded herein per his Section 112 (2) statement referred to above. His defense counsel confirmed the plea to be in accordance with his instructions and equally placed it on record that he also appraised the appellant of the nitty gritty that comes with a murder charge in terms of Section 51(1).
- [19] Having perused the record, this court is satisfied that the appellant was fully and sufficiently informed of the details of the charge against him, the applicable legislation and the consequential sentence prior to him tendering his plea to the court. Therefore, his critique of the trial court on this aspect is unfounded and deserves no interference by this court.
- [20] Having considered the trial record, particularly the appellant's Section 112(2) plea of guilty statement, this court is satisfied that the appellant advertently and eloquently elaborated the factual background, his intention and the unlawfulness of his conduct, which in my view evidently comprised his full admission of the crime he committed in compliance with the stipulated provision as was held in *S v Mshengu*[3].
- [21] In light of the afore consideration, the trial court competently and lawfully accepted his flawless plea of guilty before pronouncing his guilt verdict as charged,

[22] It is common legal concept that sentencing process is a pre-eminent discretionary exercise residing entirely with the presiding officer of the main trial. Expectation is always that the discretion vested with the presiding officer is to be exercised appropriately and judiciously so. See: *S v Kgosimore*.^[4]

[23] Appellant was incorrect to contend that the learned Judge erred when he held that there were no substantial and compelling circumstance submitted on his behalf justifying deviation by the trial court from imposing a prescribed minimum sentence of life imprisonment on him.

[24] It is apparent from the court judgment attached to the record of proceedings that the learned Judge in his consideration of an appropriate sentence to be imposed took cognizance of the triad factors set out in *S v Zinn*^[5], wherein he weighed the appellant personal and mitigating circumstances submitted on his behalf as well as aggravating factors

which the state argued were a sufficient justification for the court to impose a minimum sentence of life imprisonment on the appellant.

[25] The trial court however held that after looking carefully into the circumstances of this case which were found mitigatory and constituting substantial and compelling factors, the trial court decided not to impose life imprisonment, deliberately imposing a lenient sentence of 25 years imprisonment on the appellant, a sentence of which the appellant's counsel conceded the term to be served would be much lesser compared to a term of life imprisonment, in that according to counsel knowledge, the appellant would be required to serve half of the sentence, likely to be twelve and a half years (12½), instead of appellant serving life imprisonment sentence which comes with a fixed and defined term of twenty five (25) years imprisonment before an offender could be eligible for parole. Notably and undeniable a bargain on the term of imprisonment sentence the appellant will be required to serve.

[26] On hindsight, appellant's counsel further acknowledged that the trial court infused an element of mercy when sentencing the appellant, particularly when regard is had on the appellant's proven and admitted previous convictions and sentences, all of which the offences are related to the current matter which has become even more serious because the appellant did not only severely assault his victim like in previous matters, but assaulted the deceased in this matter with intent to cause him grievous bodily harm which resulted in his demise.

[27] This court takes judicial notice that, the appellant was not deterred by the four previous convictions and sentences imposed on him, neither did he learn any lesson therefrom. Appellant rendered himself a habitual offender of same offence in a way.

[28] It is therefore this court's conclusion that the trial court did not misdirect itself when imposing the sentence it ultimately imposed on the appellant. The trial court clearly found substantial and compelling reasons in favor of the appellant and decided to impose a lesser imprisonment sentence which according to this court is considered and found not to be harsh, shocking or disproportionate with the offence committed.

[29] As a result, I find no reason to interfere with the sentence imposed by the court a quo. The conviction and sentence imposed on the appellant stand to be confirmed.

[30] In the result, the following order is made:

[30.1] The appeal against both conviction and sentence is dismissed.

T.C. TSHIDADA

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, THOHOYANDOU

I, agree

J NGOBENI

T MATUMBA

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the Appellant: Adv. M J Mushasha

Instructed by: Maungedzo Attorneys

For the Respondent: Adv. S Muavha

Office of the DDPP, Limpopo, Thohoyandou

Heard On: 28 March 2025

Delivered On: 25 April 2025

[1] 2000(1) SACR 331 SCA

[2] (629/13) [2014] ZASCA

[3] 2009 (2) SACR 316 SCA

[4] 1999 (2) SACR 238 SCA, para 10

[5] 1996 (2) SA 537 (A)

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Prepared on 9 October 2026 · Esheria