

SOUTH AFRICA / JUDGMENT

S v Mndawe (Sentence) (CC22/2021)

[2022] ZAMPMBHC 56 (10 February 2022)

[2022] ZAMPMBHC 56**COURT**

Mbombela High Court, Mpumalanga

BEFORE

Greyling-Coetzer

CASE / FILE NUMBER

CC22/2021

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****MPUMALANGA****DIVISION, MBOMBELA (MAIN SEAT)****CASE****NUMBER: CC22/2021****REPORTABLE:**

YES / NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED.

In

the matter between:-

THE

STATE

versus

JULIUS

THABISO MNDAWE

Accused

JUDGMENT**(SENTENCE)****GREYLING-COETZER AJ****INTRODUCTION**

- [1] Having killed five young black women known to him and buried their bodies in his yard, Mr Mndawe was found a criminal and convicted on 4 February 2022 in respect of five counts of Murder and five counts of Defeating or Obstruction of the Course or the Administration of Justice.
- [2] The convictions in respect of the five counts of Murder, attract a minimum sentence in terms of the Criminal Amendment Act 105 of 1997 (“the Act”) of life imprisonment. In other words, unless I am satisfied that there are substantial and compelling circumstances as envisaged in Section 51(3) of the Act, I shall be obliged to impose at least life imprisonment.
- [3] The imposition of sentence is not a mechanical process in which predetermined sentences are imposed for specific crimes. In each case the sentencing court has to take into account all relevant factors, afford the appropriate weight thereto and strike a balance between the various interests to be considered. This is required to be done notwithstanding the disturbing events which underpin the convictions still lingering in one’s mind. The sentence imposed must be and is the product of clearheaded, unemotional and considered deliberation.
- [4] The approach to sentencing is termed the “triad of Zinn”, being the consideration and balance of the personal circumstances of the accused; the nature and extent of the crime and the interest of society.[1] But at the same time, the four-fold objects of punishment are to be taken regard of, namely deterrence; prevention; rehabilitation and retribution.[2]
- [5] The punishment must fit the crime. In *S v Rabie* 1975 (4) SA 855 (AD) at 862G-H, it was held as follows:-
- “Punishment should fit the criminal as well as the crime, be fair to society and be blended with the measure of mercy according to the circumstances.” (own emphasis)*
- [6] As alluded to above, and faced with the application of the prescribed minimum sentence, a sentencing court may only depart therefrom if said court, upon a consideration of the circumstances of the particular case, is satisfied that such circumstances render the prescribed sentence unjust, in that it would be disproportionate to the crime, the accused and the need of society, so that an injustice would be done by imposing that sentence.[3]

[7] From *S v Malgas*[4] it ought to be distilled that a court, when faced with a crime in respect of which a minimum sentence is prescribed, must approach a matter conscious of the fact that the legislature has ordained the prescribed minimum sentence as the sentence that should ordinarily

and in the absence of substantial and compelling grounds be imposed for the listed crimes in the specific circumstances.[5]

[8] It thus stands to be determined whether life imprisonment is appropriate in respect of the murders committed by Mr Mndawe.

[9] Mr Mndawe was born in 1994 and is still young at 28 years of age. He was 24 years old when the first murder of the five were committed. He is the second born and has one older and two younger brothers. Both his parents are still alive.

[10] Mr Mndawe is not married. He has 6 children from 4 different woman. Two of his children are aged 8, one is 5 years of age, one is aged 4 and the other two are 2 years of age. All the children reside with their respective biological mothers. Mr Mndawe supported 4 of the 6 children in undetermined amounts, depending on affordability and need. The youngest two children he has never supported as he has no contact with them. This is unsurprising when regard is has to their age and Mr Mndawe being arrested in July 2019.

[11] Mr Mndawe completed Grade 7. Prior to his arrest he was employed as a security guard at a lodge near the Kruger National Park, earning R3 000.00 per month. This was preceded by employment as a general maintenance worker, earning R4 500.00 per month. In the latter capacity he was employed for five years.

[12] He has stands before court as a first offender. He has been in custody since his arrest.

[13] Mr Mndawe did not testify in mitigation of his sentence. Had you done so, it would have been taken into account as a mitigating factor. That he elected not to do so, will however not be viewed as an aggravating factor.

[14] The State relied on five victim impact reports, which were received into evidence by agreement between the parties. These reports expressed the devastating effect the disappearance, murder and concealment of the bodies had on the various families.

[15] The judgment in respect of Mr Mndawe's conviction contains an evaluation of the circumstances in which the crimes were committed. I have considered such circumstances in arriving at a decision on whether life imprisonment is an appropriate sentence and I do not again repeat such circumstances herein.

[16] What the court knows about the specific circumstances of the crimes is what Mr Mndawe set out in his Section 112(2) statement and the admissions received by the court in terms of Section 220 of the Act.

- [17] In summation, Mr Mndawe was known to Elina (hereafter referred to as Tokkie), B[...], N[...], N[...]² and F[...]. They all, on 5 different dates, spanning over 18 months, went to Mr Mndawe's place of residence. There they all got embroiled in an argument with Mr Mndawe. He assaulted them until they fell to the ground and were no longer breathing. Mr Mndawe then buried their bodies in his yard, to conceal his crimes.
- [18] The concealment of the crimes, through burial, resulted in only their remains being found. This effectively silenced the young women as their remains had little to tell. Although this is the case, and notwithstanding their advanced stages of decomposition, some physical evidence provided inklings of what transpired and the cause of death of some.
- [19] B[...] was 15 years old, Grade 9 pupil and was murdered in January 2018. B[...] had no injuries to her bones, and her orbital, nasal and oral cavities were intact.
- [20] N[...], a young adult, was murdered in March 2018. The fatal injury being blunt head trauma.
- [21] NoN[...]², was younger than sixteen years of age, and murdered in April 2018. NoN[...]²'s wrists were bound with a white shoe lace and a piece of wire.
- [22] F[...] was a minor, murdered in September 2018
- [23] Tokkie's skull was partially burnt. Both her hands and feet were absent. She was murdered in May 2019.
- [24] None of the reports recorded the absence of teeth, broken facial bones or any broken bones, which countermanded Mr Mndawe's recount of the assaults which caused their deaths.
- [25] The impact of the crimes on the families of the five young women, as well as on the family of Mr Mndawe is profound. Not only did the disappearance and deaths cause unimaginable emotional distress, but the manner in which their bodies were treated is deplorable. The burying of their bodies took away the sacred act of putting their souls to rest.
- [26] The murders were committed over a period of eighteen months, some 5 months and longer apart, during which time Mr Mndawe had time to reflect on his heinous deeds and to change his life. He did not.
- [27] All persons are entitled to enjoy the basic and fundamental right to life, which is not only enshrined and entrenched in the Constitution,
- but it is also declared therein as a non-derogable right.^[6] This seems to be of no consequence to Mr Mndawe.
- [28] Viewing all the acts of murder and concealment cumulatively, they must rank high on the ladder of serious crime. These were premeditated murders, having serious consequences. It appears that these crimes were not only hardhearted murders, but calculated on completion to conceal that which was done.

- [29] Although Mr Mndawe has spent an extensive period, from July 2019, in custody, and although it is undoubtedly so that under the correct circumstances this fact alone could have qualified for a finding that substantial and compelling circumstances are present, which would have entitled this court to deviate from the minimum sentence applicable, this case is not such a case.
- [30] In *S v Matyityi*[7] remorse was explained to be a gnawing pain of conscience for the plight of another. Thus, genuine contrition can only come from an appreciation of an acknowledgement of the extent of one's error, whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught, is a factual question. For a court to find that an accused person is genuinely remorseful, it needs to have a proper appreciation of inter alia what motivated the accused to commit the deed; what had since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions. The former is absent in this matter and I am unable to make such a finding.
- [31] A life sentence is the most severe sentence which a court may impose. It endures for the remainder of the natural life of the offender. Whether it is an appropriate sentence, particularly in respect of its proportionality to the particular circumstances of the case, as dealt with above, requires careful consideration. This has been done and I am unable to find that there are any substantial and compelling circumstances present which would warrant a deviation from the minimum sentence applicable.
- [32] Mr Mndawe has been convicted of the monstrous crimes, and for that he deserves nothing but severe custodial punishment. In *S v Holder*[8] it was stated as follows:-

"In the application of the principle that imprisonment ought to be avoided, the penal element must, in serious offences, of whatever

nature, come to the fore and be properly considered, if punishment still has any meaning in the criminal law. The community expects that a serious crime will be punished, but also expect at the same time that mitigating circumstances must be taken into account and the accused's particular position deserves thorough consideration. That is sentencing according to the demand of our time."

- [33] Mr Mndawe, It is most regretful as you are relatively young and have no previous convictions. But, your conduct warrants the severest possible penalty. Society expects no less. The crimes warrant such a result, and your circumstances are not sufficiently compelling to come to any different conclusion.
- [34] In the result, this Court SENTENCE[9] you as follows:-
- Count 1: the murder of Elina Tokkie Tlaka, you are sentenced to LIFE IMPRISONMENT.
- Count 5: the murder of B[...] Khoza, you are sentenced to LIFE IMPRISONMENT.

Count 7: the murder of N[...] Purity Mdluli, you are sentenced to LIFE IMPRISONMENT.

Count 9: the murder of N[...] Innocentia Mdluli, you are sentenced to LIFE IMPRISONMENT.

Count 11: the murder of F[...] Mndlovu, you are sentenced to LIFE IMPRISONMENT.

Counts 3, 6, 8, 10 and 12: Obstructing the Course of Justice or the Administration of Justice, as set out in the charge sheet, you are sentenced to FIVE YEARS' IMPRISONMENT on each count.

In terms of Section 103(1) of Act 60 of 2000, a person is ex lege (that is in operation of law) automatically declared unfit to possess a firearm. The court declines to determine otherwise, in other words, you are declared unfit to possess a firearm.

DATE OF HEARING:

7 February 2022

DATE OF JUDGMENT: 10 February 2022

FOR THE STATE:

ADV MATA – National Prosecuting Authority

Mpumalanga Mbombela

FOR THE DEFENSE:

ADV ERASMUS – Legal Aid South Africa

[1] S v Zinn 1996 (2) SA 537 (A) at 540G-H

[2] S v M

[2007] ZACC 18; 2008 (3) SA 232 (CC) at par [10]

[3] S v Malgas 2001

(1) SACR 469 (SCA) at par [25]

[4] 2001 (1) SACR 469 (SCA)

[5] S v Malgas (supra); S v Vilakazi 2009 (1) SACR 552 (SCA) at par [15]

[6] Section 11, read with Section 36 of the Constitution of the Republic of South Africa 108 of 1996

[7] 2011

(1) SACR 40 (SCA) at par [13]

[8] 1979

(2) SA 70 (A)

[9] Section 39(2)(a) of the Correctional Services Act 111 of 1998

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Prepared on 12 October 2026 · Esheria