

SOUTH AFRICA / JUDGMENT

S v Mvela and Others

(Sentence) (SS002/2023) [2025]

ZAGPJHC 226 (10 March 2025)

[2025] ZAGPJHC 226

COURT

South Gauteng High Court, Johannesburg

BEFORE

R. Strydom

CASE / FILE NUMBER

SS002/2023

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

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG (PALMRIDGE)

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO

28 February 2025

Case Number: SS 002/2023

In the matter between:

THE STATE

and

MAQHIZA VUYAKWETHU MVELA

Accused 1

BIDI SIYABONGA

Accused 2

T[...] L[...]

Accused 3

NDLOVU SIPHESIHLE

Accused 4

M[...] L[...]

Accused 5

M[...] B[...]

Accused 6

SENTENCE

STRYDOM, J

Introduction

- [1] The six accused were convicted on Count 1, a murder count, read with section 51(1) and section 51(6) of the General Law Amendment Act, 105 of 1997, (the ‘Amendment Act’). Accused 5 only was convicted on a further count of attempted murder.
- [2] For purposes of sentencing this Court would have to have regard to the ages of the various accused on the date when the crimes were committed, when they were arrested and their ages on date of sentencing.
- [3] The accused were arrested shortly after the crime was committed on 27 April 2023. As a result of this the difference between the date when the crimes were committed, and the dates of their respective arrests, have no impact on their ages when sentences are considered, as they were arrested within days of the date when the crimes were committed. The accused were convicted on 4 December 2024 and sentenced on 28 February 2025.
- [4] Section 51(6) of the Amendment Act provides that the prescribed minimum sentences provided for in section 51 does not apply in respect of an accused person who was under the age of 18 years at the time of the commission of an offence contemplated in sub-sections
- (1) and (2).
- [5] The Child Justice Act 75 of 2008 (the ‘Child Justice Act’) becomes applicable when a child is standing trial and sentenced. The Child Justice Act provides a legislative framework in line with section 28(1)(g) of the Constitution of this country which provides that every child has the

right not to be detained except as a measure of last resort.

- [6] In term of section 1 of the Child Justice Act ‘child’ means any person under the age of 18 years and, in certain circumstances, means a person who is 18 years or older but under the age of 21 years whose matter is dealt with in terms of section 4(2) of this Act. It is not stipulated in the definition of “child” when the person should be 18 years or older not to be regarded as a child.
- [7] Section 4(2) of the Child Justice Act provides for the Director of Public Prosecutions to direct in a case of a person who is alleged to have committed an offence when he or she was under the age of 18 years when the crime was committed but over 18 years, but under 21 years when he or she was arrested, to be dealt with in terms of section 5(2) to (4) of this Act. These sections deal with diversion, meaning diversion of a matter involving a child away from the formal court procedures in a criminal matter. No such direction was provided by the Director of Public Prosecutions in this matter.
- [8] Section 4 of the Child Justice Act further determines the applicability of this Act to include a person who was under the age of 10 at the time of the commission of the alleged offence, but also, any person who is alleged to have committed an offence and who was 10 years or older, but under the age of 18 years when he or she was handed a written notice or summonsed to appear in a preliminary inquiry, or arrested for an offence.
- [9] It is noted that as far as a person under the age of 10 is concerned the relevant time to determine age is the date of commission of the offence, whilst as far as persons over the age of 10 are concerned, the date of notices or summons or arrest is the relevant date. The court in *S v Nteta* 2016 (2) SACR 641 WCC at [10] found that the person should not only be under the age of 18 years when he/she committed the offence, but he/she should also have been under the age of 18 years when he/she was arrested for the Child Justice Act to apply.
- [10] Accused 3, 5 and 6 fall within the category of children under the age of 18 years when they were arrested and therefore, this Court sat as a ‘Child Justice Court’ which is defined to mean any court provided for in the Criminal Procedure Act dealing with the trial.
- [11] Section 6 of the Child Justice Act created categories depending on the seriousness of the crimes on which a child has been convicted. In this case the accused were convicted on a count of murder which renders Schedule 3 to this Act applicable.
- [12] Chapter 9 of the Child Justice Act deals with the trial of a child in the Child Justice Court and Chapter 10 with sentencing. Importantly, section 68 provides that a Child Justice Court must, after convicting a child, impose a sentence in accordance with this Chapter. Section 69 provides for the objectives of sentencing and factors to be considered. Sub-sections (1) and (4) should be quoted to serve as a reminder to this Court what considerations are to be applied when a child is sentenced.

“Section 69(1) In addition to any other considerations relating to sentencing, the objectives of sentencing in terms of this Act are to—

- (a) encourage the child to understand the implications of and be accountable for the harm caused;
- (b) promote an individualised response which strikes a balance between the circumstances of the child, the nature of the offence and the interests of society;
- (c) promote the reintegration of the child into the family and community;
- (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence assist the child in the process of reintegration; and
- (e) use imprisonment only as a measure of last resort and only for the shortest appropriate period of time.

...

- (4) When considering the imposition of a sentence involving imprisonment in terms of section 77, the child justice court must take the following factors into account:
 - (a) The seriousness of the offence, with due regard to—
 - (i) the amount of harm done or risked through the offence; and
 - (ii) the culpability of the child in causing or risking the harm;
 - (b) the protection of the community;
 - (c) the severity of the impact of the offence on the victim;
 - (d) the previous failure of the child to respond to non-residential alternatives, if applicable; and
 - (e) the desirability of keeping the child out of prison.”

[13] Pre-sentencing reports, as required in section 71 of the Child Justice Act were obtained in relation to the three minor accused but also in relation to the other youthful accused. These reports were compiled by Probation Officers in the services of the Department of Social Development. Suitability reports to consider correctional supervision as a sentence option were also compiled by employees of the Department of Correctional Services. This Court wants to extend its appreciation to the compilers of these reports, which have assisted the Court in its difficult task of sentencing the accused, especially the minor accused.

[14] Section 76 deals with a sentence of compulsory residence in a Child and Youth Care Centre (CYCC). Such a centre is defined in the Child Justice Act to mean a CYCC referred to in section 191 of the Children’s Act, 38 of 2005. For purposes of the judgment on sentence I quote s76(1)-(3)(b):

“Section 76...

- (1) A child justice court that convicts a child of an offence may sentence him or her to compulsory residence in a child and youth care centre providing a programs referred to in section 191 (2) (j) of the Children's Act.
- (2) A sentence referred to in subsection
- (1) may, subject to subsection (3), be imposed for a period not exceeding five years or for a period which may not exceed the date on which the child in question turns 21 years of age, whichever date is the earliest.
- (3) (a) A child justice court that convicts a child of an offence—
- (i) referred to in Schedule 3; and
- (ii) which, if committed by an adult, would have justified a term of imprisonment exceeding ten years,
- may, if substantial and compelling reasons exist, in addition to a sentence in terms of subsection (1), sentence the child to a period of imprisonment which is to be served after completion of the period determined in accordance with subsection (2).
- (b) The head of the child and youth care centre to which a child has been sentenced in terms of subsection
- (1) must, on the child's completion of that sentence, submit a prescribed report to the child justice court which imposed the sentence, containing his or her views on the extent to which the relevant objectives of sentencing referred to in section 69 have been achieved and the possibility of the child's reintegration into society without serving the additional term of imprisonment."
- [15] Section 77 provides for imprisonment as a further sentencing option of direct imprisonment in a case where a child over the age of 14 was convicted of, inter alia, a Schedule 3 offence, which includes murder. Section 77(4) provides for a sentence of imprisonment for a period not exceeding 25 years or correctional supervision.
- [16] Thus, it is important to determine the different ages of the accused. Their respective dates of birth were provided through evidence. The date when the offences were committed was 27 April 2023, and the arrest of the accused took place before there were changes to their ages. Sentencing took place on 28 February 2025.
- [17] Accused 1 was born on 1 March 2005. On the date when the offence was committed and when he was arrested, he was 18 years old, and on date of conviction and sentence he was 19 years old. He will turn 20 on 1 March 2025.
- [18] Accused 2 was born on 20 August 2003. On the date when the offence was committed and when he was arrested, he was 19 years old and on date of conviction he was 21 years old. He is still 21 years old. He is the oldest amongst the accused.

- [19] Accused 3 was born on 4 May 2006. On the date when the offence was committed and when he was arrested, he was 16 years old, and on date of conviction he was 18 years old. He is still 18 years old.
- [20] Accused 4 was born on 6 September 2004. On the date when the offence was committed and when he was arrested, he was 18 years old, and on date of conviction he was 20 years old. He still is of the same age.
- [21] Accused 5 was born on 11 June 2007. On the date when the offence was committed and when he was arrested, he was 15 years old and on date of conviction he was 17 years old. He is still the same age.
- [22] Accused 6 was born on 1 December 2007. On the date when the offence was committed and when he was arrested, he was 15 years old and on date of conviction he was 17 years old. He is still the same age.
- [23] Thus, accused 1, 2 and 4 were 18 years or older when the crime was committed, and their sentences should be considered in terms of section 51(1) as the Court found that the accused acted in the furtherance of a common purpose when the murder took place. The Court will have to consider section 51(3) of the Amendment Act as to whether there exist substantial and compelling circumstances to deviate from the prescribed minimum sentence of life imprisonment.
- [24] Accused 3, 5 and 6 were under the age of 18 when the crimes were committed. This would mean that the minimum sentences prescribed in terms of section 51(1) and (2) does not apply to them. The Court will deal with these accused in terms of the Child Justice Act. The fact that accused 3 turned 18 during the proceedings makes no difference. (See: *S v SN* unreported, case no. 14114/14 (WCC) and *S v Melapi* 2014 (1) SACR 363 (GP)).
- [25] The accused were convicted on a count of murder and, accused 5, also on a count of attempted murder, in that they as a group went to attack another group of boys living in Block [...], Doornkop. The accused were a group of young people living in Block [...], Doornkop. There was a further group involved in what transpired on this day and one of their members was also assaulted during that day. There existed some animosity between these groups which on the day of the incident was fuelled by an attack on accused 5, a member of the Block [...] group (the accused group), and on Zakhele Mdlalose, a member of this further group. Later during the day there were further violent incidents when members of these groups assaulted each other. The accused with others set out that evening to settle some score with members of the Block [...] group. They were armed with various dangerous weapons and their main aim was to get hold of one Katlego, a member of the group to which the deceased belonged. When they saw a few members of the Block 8 group, including Katlego, they gave chase. Katlego managed to get away but accused 5 stabbed Siyabonga Hlongwane and injured him. Their group caught up with the deceased and he was stabbed to death.

[26] What the evidence in this matter revealed was that young people in this area known as Doornkop formed groups and there was a rivalry between these groups which led to violence. The Court was never informed what the underlying cause of this rivalry was and why these groups were formed. What the evidence has revealed, however, was that on this day of the incident their rivalry reached a boiling point, and the accused group armed themselves for the attack on the group to which the deceased belonged. Accused 2 shouted at some stage that his group must go and attack. Leading up to this attack on the deceased and Siyabonga it became clear that the

deceased was not the instigator of anything. He just happened to be in the company of Katlego who ran away. Unfortunately, the deceased took a wrong turn and was apprehended and stabbed. In evidence on sentence one of the accused explained that this killing should never have happened. This was repeated by the accused in their testimony. Fact is, it happened, and in my view, this came about as the accused acted as a group. The individual group members failed to apply their minds individually and to properly consider the consequences of their actions. Peer pressure and bravado must have played a role. The moral blameworthiness of younger members of the group, although actively involved in the attack, were to some extent diminished. They still knew what they were doing was wrong.

[27] It is trite that a Court, when considering appropriate sentences must consider and balance three competing factors; these are the personal circumstances of the accused, the seriousness of the crime and the interests of society.

[28] The Court should strive to achieve and arrive at a judicious counterbalance between these elements to ensure that one factor is not unduly accentuated at the expense of and to the exclusion of the others.

[29] The Court is also required to have regard to the aims of punishment when it considers an appropriate sentence, namely prevention, deterrence, rehabilitation and retribution. The sentence must be balanced, and the Court will consider the concept of mercy in appropriate circumstances.

[30] Starting with the nature of the crime. Murder remains one of the most serious crimes. In this country it is prevalent. It is also an unfortunate fact that people, many of whom are unemployed, engage in gang activities using unlicensed firearms to commit crimes. In the case of the accused no firearms were involved but the accused carried various sharp objects. Accused 1 had a uniquely handmade object which would have been made only with one object and that is to injure someone.

[31] When a loved one gets murdered the people that are left behind suffer the most. The interviews conducted with family members as part of the pre-sentencing reports made this clear. The State called the grandmother and the father of the deceased in aggravation of sentence. The father of the deceased could not understand why his son fell victim to this senseless killing. The deceased was his only child. He was the only grandchild of his grandmother. The grief of the father of the deceased was clearly demonstrated during his

testimony. He even went so far as to ask this Court to sentence the accused to death. The deceased was a young boy and was still assisting his father with chores at his home during the day of his murder. He was sent to do something but never returned.

Society expects our courts to deal with convicted murderers appropriately. But a court cannot be dictated by what society expects

a sentence to be. In the sentencing process the personal circumstances of the convicted accused should be closely scrutinized in conjunction with the circumstances under which the crime was committed. This should be done, in cases where a minimum sentence is prescribed, to determine whether the prescribed minimum sentence should be imposed or whether there exist substantial and compelling

circumstances to deviate from the prescribed sentence. Also, in determining an appropriate sentence where a court is of the view that the minimum prescribed sentence should not be imposed or in cases where no minimum sentence is applicable.

- [32] This brings this Court to the personal circumstances of the accused, all of whom testified in mitigation of sentence. Reference to their respective pre-sentencing reports will be made.
- [33] At the outset it should be mentioned that despite the Suitability Reports compiled to consider correctional supervision as a sentencing option, this Court is of the view that this sentencing option would not be appropriate. The circumstance under which the murder took place, especially the fact that accused acted in a group, renders the crime too serious to impose correctional supervision. The various probation officers, after considering relevant factors, including the unwillingness of the accused to take responsibility for what they have done, did not recommend correctional supervision as an appropriate sentence.
- [34] The Court was referred to the judgment in the matter of *S v Christopher Velly Mashaba* (Case number CC29/2021, dated 7 December 2022) where my brother Moosa J sentenced the accused in that matter to correctional supervision pursuant to the accused being convicted on a murder, read with section 51(1) of the Amendment Act. This case is to be distinguished from the case of the accused on multiple levels. First, during the sentencing stage the accused in that matter “laid his chest bare to the court whereby he agreed with his conviction and exhibited remorse for his unlawful actions.” In the case of the accused this was not done. Second, the personal circumstances of the accused in that matter differed markedly from the personal circumstances of the accused. The accused in that matter was a family man and supported his family, even the family of his brother, the deceased. He was gainfully employed. Third, the murder took place against the background of a family feud where the deceased was a troublemaker, regularly upsetting the family unity. The court found that substantial and compelling circumstance were, inter alia, to be found in the “extraordinary nature and circumstances of the crime” and “the dynamics of the accused’s extended family, and the events which preceded and culminated in the shooting of the deceased.” These considerations are not applicable in this case of the accused.

[35] Accused 1 was 18 years old when the crime was committed and is currently nearly 20 years old. During 2023 he was registered for grade 12 but could not complete the grade. He never failed any grade. He aspired to study further after school. He is a first offender. His family reported that he was not an aggressive person. He had a pleasant upbringing. During his testimony in mitigation, he admitted that he kicked the deceased. The probation officer, however, reported that on the day in question he went with his group to go and look for the block 8 group. His group carried weapons and when they saw the block 8 group they chased them. The deceased was caught, and they assaulted him. He assaulted the deceased by hitting him with a baseball bat. It was then when two of his group members stabbed the deceased with a knife in the neck and on his chest. What is clear is that accused 1 failed to take the Court in his confidence as when he testified in court, he denied the version which the probation officer could only have obtained from

him. The probation officer recommended direct imprisonment for the offence despite the accused's relatively young age.

[36] Accused 2 is the oldest of the accused. He was 19 years old when the crime was committed and is currently 21 years old. He repeated two grades and was in grade 12 when he was arrested. He is a first offender. It was reported that accused 2 is short tempered, easily provoked and engaged in physical fights. This is in line with evidence to the effect that he called upon his friends to go onto the attack. His family members reported that he never displayed violence towards them. However, at school he was violent and aggressive, and he instigated fights. In court he sympathized with the family of the deceased but took no responsibility for his actions. He started to use marijuana. The probation officer concluded that his use of marijuana played a key role in the commission of the offence. Accused 2 distanced himself from the crime he was convicted of. Despite strong evidence implicating him he maintains that he was wrongly convicted. The probation officer indicated that his prognosis for rehabilitation is still poor since he is not accepting any responsibility. In her report she explored all sentence possibilities but concluded that direct imprisonment is recommended. She stated that the accused may benefit from rehabilitation in a structured environment where he will be exposed to programs which might instill some responsibility and contribute to him realizing the seriousness of his actions.

[37] Accused 3 was 16 years old when the crime was committed and currently is 18 years. According to his pre-sentencing report accused 3 had a good upbringing but at school he presented with behavioural issues which resulted in multiple disciplinary hearings. His parents noted that he became arrogant. At his last school he bunked classes and was smoking cannabis inside the school premises. He was a ringleader and very manipulative towards other children at school. He was disrespectful towards teachers. Eventually he dropped out of grade 11. Accused 2 also has no previous convictions or pending cases. The probation officer reported that accused 3 has not developed nor mastered his independence skills and therefore struggles to make informed decisions. He easily succumbs to

peer pressure and might be doing this to obtain a sense of belonging. Accused 3 found himself at a stage where friends matter the most and what others think of him is of importance to him. He would easily succumb to peer pressure.

- [38] In Court accused 3 never took responsibility for his actions. Because of his behavioural issues the probation officer recommended direct imprisonment to be served in the juvenile section of prison where he can be exposed to life skills, anger management, family reintegration, substance abuse and other relevant programs to assist him to modify his behavior. He can attend school in prison. It was recommended that he be dealt with in terms of section 77 of the Child Justice Act at Baviaanspoort Correctional Services (Juvenile Section).
- [39] Accused 4 was 18 years old when the crime was committed and is currently 20 years old. He is a first offender. He grew up in the care of his maternal grandmother but kept in contact with his mother on a regular basis. His father was totally absent during his upbringing. His grandfather was his pillar of strength, but when he passed away it affected his academic performance. He started using drugs which resulted in him repeating grade 9 in 2021. In 2022, he discontinued his studies whilst attending grade 10. Thereafter he lacked interest in furthering his studies. In 2019 he started experimenting with cannabis which later escalated to other substances. Later he stopped using substances and pursued boxing.
- [40] In his pre-sentencing report, he was described as a reserved and nonviolent person. In court he failed to take any responsibility for his actions. He testified that he had no weapon and only watched when the deceased was killed with weapons. It was recommended that considering the seriousness of the crime he was convicted of, accused 4 should be sentenced to direct imprisonment.
- [41] Accused 5 was 15 years old when the crimes he was convicted of were committed. He is currently 17 years old and still a minor. He is a first offender and testified that he is sorry for what had happened to the deceased. He did not take responsibility for his actions. He testified that he aspires to become an electrical engineer and wanted to attend a college. He confirmed that earlier on the day of the incident he was stabbed by Katlego, but the deceased should never have been killed.
- [42] He grew up without a father figure but otherwise in a stable family environment. His maternal uncle became a father figure towards him. He dropped out of grade 9 due to this case. At school he experienced difficulties as he was accused of stealing a tablet computer. During 2023 he started with substance abuse and according to him the stressful situation in which he found himself in was the cause of this. It was reported that he became addicted as he was spending time with his friends who were using drugs. It was indicated that the accused is easily influenced by his peers. Since 2022 he began to associate with peers that negatively influenced him and he succumbed to peer pressure. Nonetheless, he is not an aggressive person. It was stated that after the offence was committed his conduct has changed positively as he maintains respect and his family have not received any complaints

from the community regarding his behavior.

- [43] It was reported by the probation officer, Mr. Andile Buthelezi, that the offences committed by accused 5 are serious in nature. He pointed out that accused 5 pleaded not guilty and thus failed to take responsibility for his actions. This indicates that his prognosis for rehabilitation is still poor. The probation officer was of the view that poor decision making played a role when he committed the offences and therefore, he should be equipped through life skill programs which will be of benefit to him in future decision making when confronted with conflicting situations. It was recommended that accused 5 be subjected to a sentence of compulsory residence at the Shoshanguve Child and Youth Care Centre in terms of section 76(2) of the Child Justice Act.
- [45] Accused 6 did not take responsibility for his actions but told the probation officer that after he was stabbed, he gathered with his friends to go and look for the perpetrator, Katlego, who, when they found him, managed to outrun them. He told the probation officer that he witnessed the assault on the deceased, but he did not participate. He expressed his hurt on being convicted of a crime he did not commit.
- [46] The probation officer requested this Court to impose a sentence that focuses on a holistic approach in rehabilitating the accused. She does not believe that at this stage a non-custodial sentence is suitable. She reported that the accused had not reached the level of understanding of his role when the offense was committed. With his stance and attitude towards the offence, issues of remorse could not be explored. She stated that although she believes that a structured environment is necessary, it should be noted that imprisonment, which should be considered as the last resort, is considered not suitable, as he may be exposed to hardened criminals. The Court should consider that this is a violent offense which was controlled by emotions rather than criminality. It was recommended that accused 5 be subjected to a sentence of compulsory residence in a CYCC in terms of section 76(2) of the Child Justice Act until he turns 21 years old.
- [47] The approach to considering the sentences of accused 1, 2 and 4 would be different from that of accused 3, 5 and 6. Accused 1, 2 and 4 were 18 years or older when the crime was committed. This would mean that the prescribed minimum sentence of life imprisonment would become applicable unless the Court could find that substantial and compelling circumstances exist to deviate from this prescribed sentence.
- [48] In my view, which view was supported by the State and counsel for the accused, there exist substantial and compelling circumstances to deviate from the prescribed minimum sentence. The three accused are first offenders and were 18, 19 and 18 years old, respectively, when the murder was committed. They have spent nearly two years in prison awaiting finalization of their trial. The events which transpired on that day led to their retaliation. Accused 5 was stabbed earlier that day. Later accused 2 was also involved in some fighting with the group of the deceased. The Court accepts that the main aim of the attack was to assault and stab Katlego, but when he ran away, they, acting as a group, caught

and killed the deceased. Peer pressure and acting in a group played a role in their decision-making processes.

- [49] The Court, having found that substantial and compelling circumstances exist to deviate from the prescribed minimum sentence should now consider what an appropriate sentence should be having regard to the seriousness of the crime, the personal circumstances of the individual accused and the interest of society. As previously mentioned in this judgment, murder is and remains a very serious crime. The circumstances under which this crime was committed points to a rivalry between various groups of young people staying in the area known as Doornkop. Young people get involved in behavior, which, acting alone they would not involve themselves with.

Youthfulness under certain circumstances can be regarded as a mitigating factor. Young people sometimes do things without appreciating the consequences which may follow upon their deeds. I view this case to fall within this category. Direct imprisonment, however, remains the only appropriate sentence.

- [50] Even though accused 1, 2 and 4 were not taking responsibility for their actions the Court is of the view that through the various programs offered in prison they can rehabilitate themselves. The Court is further of the view that this is an appropriate case where a partially suspended sentence should be imposed. This will provide the relatively young accused with an opportunity not to be incarcerated for too long, but will hopefully, simultaneously, prevent them from again getting involved in violent crimes. In coming to this conclusion, the Court considered their pleas for mercy.
- [51] The Court as far as accused 5 is concerned will take his convictions on the murder count and on the attempted murder count together for purposes of sentencing. These crimes were committed during the same incident and only minutes apart from each other.
- [52] In relation to accused 5 and 6 the Court has decided to follow the recommendations of the probation officers, with modifications, and to sentence accused 5 and 6 to a sentence of compulsory residence in a CYCC in terms of section 76(1),(2) and (3) of the Child Justice Act for a period of 3 years from date of sentence. In addition, to a period of direct imprisonment for a period of 3 years as contemplated in section 76(3)(a) and (b). This, after considering the objectives of sentencing and the factors mentioned in section 69 of the Child Justice Act, would be an appropriate sentence should these two accused use this opportunity to rehabilitate themselves. This can only happen if they actively participate in the programs offered by the CYCC. It was reported by the probation officers that accused 5 and 6 had behavioral issues at school and were not cooperative. Cooperation at the CYCC is not guaranteed. Accordingly, this Court is of the view that substantial and compelling reasons exist to, in addition to the 3 years in the CYCC, sentence the two accused too a relatively short period of imprisonment to be served after their residence at the CYCC. This would place the ball in the court of accused 5 and 6 to obtain a positive report from the head of the CYCC and then to convince the Child Justice Court that the Court should make an order for

their release as contemplated in section 76(3)(c)(iii) of this Act. This would mean that they could, on the return day, be released, without conditions or to serve the further 3 years in prison.

- [53] The court has been provided with information from the Shoshanguve CYCC that this institution has accommodation available for accused 5 and 6.
- [54] As far as the sentence of accused 3 is concerned the probation officer recommended direct imprisonment in terms of section 77 of the Child Justice Act to be served at Baviaanspoort Correctional Services (Juvenile Section). Accused 3 is about a year older than accused 5 and 6. He, as accused 5 and 6, was disrespectful towards teachers at school and his parents failed to assist the school to address this issue. He used cannabis on school premises. He was a ringleader and very manipulative towards other children at school. Should accused 3 be sent to a CYCC he will only be in such facility for about 2 years and 2 months till he turns 21 years old. In my view, this is too short considering the seriousness of the conviction on the murder count. I agree with the recommendation of the probation officer that accused 3 must be sentenced to direct imprisonment for a period. The court would nevertheless order imprisonment for a relatively short period during which period, hopefully, accused 3 can accept responsibility for his actions and be rehabilitated. If this happens, he can be reintegrated into his family and community. A portion of such imprisonment should be suspended to offer the youthful accused 3 an opportunity not to be detained for too long, provided he does not get involved in violent crimes again.
- [55] The court must mention in favour of the three minor accused, who were released in the care of their parents and warned to appear in court, that they punctually arrived at court to stand their trial. This situation prevailed even after conviction, until they were sentenced. This provides an indication in my mind that they can rehabilitate themselves and become useful citizens in society.
- [56] Having considered all the mitigating and aggravating circumstances in this case and after considering the position of each one of the accused and having applied mercy, the court sentence the accused as follows:
- a. On count 1 accused 1, 2 and 4 are sentenced to 12 years imprisonment 5 years of which are suspended for a period of 5 years on condition that the accused are not convicted of any crime during the period of suspension of which violence is an element and for which conviction the accused are sentenced to imprisonment without an option of a fine.
 - b. On count 1 accused 3 is sentenced to 10 years imprisonment 5 years of which is suspended for a period of 5 years on condition that the accused is not convicted of any crime committed during the period of suspension of which violence is an element and for which conviction the accused is sentenced to imprisonment without an option of a fine. The accused should serve his sentence in the juvenile section of prison at least till he reaches the age of 21.

- c. Accused 5, on counts 1 and 2, and accused 6, on count 1, are sentence to compulsory residence in the Shoshanguve Child and Youth Care Centre in terms of section 76(1),(2) and (3) of the Child Justice Act for a period of 3 years from date of this sentence. In addition, accused 5 and 6 are sentenced to 3 years imprisonment which is to be served after the period of 3 years in the child and youth care centre, subject to the terms of section 76(3)(b) and (c).
- d. The probation officers Mr Buthelezi and Ms Budaza are directed to oversee, with the assistance of the investigating officer, Seargent Molefe, that accused 5 and 6 are taken to the Soshanguve Child and Youth Care Centre in the prescribed manner, as soon as possible, but not later than one month after this order was made.
- e. This order must be handed to the relevant functionaries at the Shoshanguve Child and Youth Care Centre.

R. STRYDOM

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Date of sentence: 28 February 2025

Appearances

For the State: Adv. P. Maleleka

Instructed by: National Prosecution Authority (Johannesburg)

For Accused 1, 2 and 4: Adv. A. Mavatha

Instructed by: Legal-Aid South Africa (Johannesburg)

For Accused 3, 5 and 6: Mr. S. J. Madinane

Instructed by: SJ Madinane Attorneys

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/ZAGPJHC/2025/226.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-mvela-and-others-unknown-topic-agpjhc-2025>

Prepared on 9 October 2026 · Esheria