

SOUTH AFRICA / JUDGMENT

S v Sello (CC12/2022) [2023] ZAGPPHC 2058 (3 August 2023)

[2023] ZAGPPHC 2058

COURT

North Gauteng High Court, Pretoria

BEFORE

Mlotshwa

CASE / FILE NUMBER

CC12/2022

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

Source record

SAFLII

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

Policy

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case number: CC12/2022

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED:

YES/NO

In

the matter between:

STATE

VERSUS

DIEKETSENG

SELLO

ACCUSED

JUDGEMENT**– SENTENCE**

MLOTSHWA AJ

1

The accused is Dieketseng Sello, a 26-year-old female person of [...] Extension [...], K[...].

2 The accused was charged with 1 count of murder read with the provisions of section 51(2) of Act 105 of 1977, in that on or about 18 June 2021 and at or near 6894 Extension 3, Khutsong, in the district of Carltonville she did unlawfully and intentionally kill Moleko Isaac Molai, a 31-year-old male person.

3 The State is represented by Advocate Shivuri while the accused is represented by Advocate Botha.

4 On 6 June 2023, the accused pleaded guilty to the murder of the deceased and tendered a statement in terms of section 112(2) of the Criminal Procedure[1].

5 In the said statement the accused outlined the events that lead to the death of the deceased on that fateful evening.

6 She stated that she and the deceased were in a relationship and stayed together with their two minor children. She was at the communal home which she shared with the deceased. She was lying on a sofa under a blanket after she had taken a bath and fed their baby.

7 The deceased arrived at the house holding a beer bottle in his hand accompanied by a female person called Zanele. The deceased asked her why was she in the house as he wanted to sleep with Zanele, his girlfriend in their communal home. The accused informed him that it is her residence as well but that he could sleep with his girlfriend in the house. The deceased insisted that she should leave. She refused.

8 According to the accused at some stage the deceased left with the girlfriend. He returned later in a state of intoxication and banged on the locked door and windows. She opened for him and went back to lie on the sofa covering herself with the blanket.

9 The verbal altercation continued between herself and the deceased which started again when the deceased pulled away the blanket from her. She and the deceased ultimately fought physically when the deceased slapped her with an open hand on her face and she retaliated by slapping him on the face as well. She stated that she went back to lie on the sofa. The deceased continued with his aggressive behavior by continuously pulling away the blanket from her.

10 According to the accused she eventually got up from the sofa. The deceased throttled her. Thereafter he took a broom stick and wanted to assault her therewith but she grabbed the broom stick and they fought over the control of the broom stick until the stick broke.

11 Where after the deceased took a pot of lukewarm water and poured some on her. She took the pot and poured the lukewarm water on the deceased. The deceased stepped on the wet floor and fell. He stood up and took the hot plate stove and wanted to burn her therewith but failed to do so.

12 The deceased then took a kitchen knife and informed the accused that he wanted to kill her with that knife. She grabbed him with his clothes on the chest and they wrestled and ended up outside the house. They traded blows. She eventually succeeded to gain possession of the knife.

13 At that stage according to the accused her emotions took over her and she started to stab the deceased with the knife. She vented her anger towards the deceased by attacking him with the knife, stabbing him several times in the process. She can't remember how many times she stabbed the deceased.

14 The deceased eventually fell on the ground. At that stage the neighbours had come out of their houses and were watching them fighting. The deceased was bleeding and one of the neighbours asked her to bring a cloth so that they could try to stop the bleeding. She in turn informed the neighbours to take the deceased to the clinic.

15 The deceased was then taken to the clinic by a neighbor where, she is informed, the deceased passed away as a result of the injuries he sustained as a result of the stabbing.

16 The accused conceded that she did foresee that the deceased would die as a result of the stabbing but nevertheless she continued stabbing him having reconciled herself with that fact and proceeded to inflict the stab wounds on the deceased.

17 The accused further states in her statement that she was at all times during the incident in her sound and sober senses and knew that what she was doing was unlawful. The provocation by the deceased did not diminish her legal capacity.

18 When determining the appropriate sentence, the classic triad enunciated in *S v Zinn*[2] is to be taken into account. This court has to consider the gravity of the offence, the circumstances of the offender and the public interest.

19 In *State v Banda and Others*[3] Friedman J explained that:

"The elements of the triad contain an equilibrium and a tension. A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others. This is not merely a formula, nor a judicial incantation, the mere stating whereof satisfies the requirement. What is necessary is that the court shall consider, and try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concerns."

20 A pre-sentence report was compiled by a probation officer, Ms Rebecca Makgolane (Makgolane) which was handed in as exhibit “E”. The court is indebted to her for a professionally compiled report.

21 According to Makgolane, the accused is a first born of two siblings. She and her younger brother were adopted by Mr and Mrs Elisa Sello as they were abandoned by their biological mother when they were still very young. The accused was not aware that she was adopted. She always regarded Mr and Mrs Sello as her biological parents until one day a girl that she was playing with informed her that she was adopted. She confronted her mother with this information who indeed confirmed to her that she was adopted. Mrs Sello told her that she didn't tell her earlier as she was still young and she was waiting for the right time to do so.

22 The accused is a mother of four minor children, namely;

22.1 L born on 06.12.2015

22.2 A born on 21. 11.2017

22.3 O two years old and

22.4 N 11 months old.

23 According to the probation officer's report the father of the first two children is the deceased. These children presently stay with the accused's mother, Mrs Sello, in Khutsong, Carltonville. They stay in a two bedroomed house with a kitchen, sitting room, dining room and a bathroom. The house is neat, clean and is spacious enough for the family. The whole yard is paved, clean with a beautiful wall and large enough for the children to play in the premises. They have access to water and electricity. The accused's mother receives her own monthly old age pension grant as well as the Government Support Grant for the children.

24 The father of the last two minor children is one Lebo Pule. These two children are presently staying with their aunt, Portia Pule, Lebo's sister in Braamvlei. The probation officer visited the place where the children presently stay with their aunt. The probation officer reported that the children were being well taken care of. They have a shelter and food. She found them clean, healthy and happy. They have birth certificates and their clinic records are up-to-date. The aunt reported to the probation officer that she loves her younger brother's children and does not mind looking after them. She receives the monthly Government Support Grant for the children.

25 Portia, the aunt to the children, reported to the probation officer that she at one stage stayed with the accused and her younger brother in Potchefstroom for a short while. In that short period of time she realized that the accused has “anger issues that she needs to deal with”. The accused used to fight with her younger brother. She describes the accused as being bully, short tempered and does not like to be reprimanded.

26 According to the probation officer the accused did not have the best of a relationship with her parents. Her mother chased her away from their home. The accused believes that her mother chased her away from home because the mother does not care about her. But according to her

mother she was chased away from home because she wanted to control everybody. She was disrespectful and abused her, the mother, emotionally to the extent that even today she doesn't want the accused to visit her home. She indicated further that she is afraid of the accused. The strained relationship between the accused and her parents was so bad that her mother banned her from attending her father's funeral.

27 According to the probation officer the accused admits to her wrong doing and takes responsibility for her "wrongful actions". She realizes that she wronged the victim's family and is asking for forgiveness from the entire family.

28 According to the probation officer the accused is also apologizing to her mother for having disrespected her, for not having listened to her when she reprimanded her. She, the accused, is now feeling ashamed of herself. The accused added that if she listened to her mother, she would not have been at a Correction facility now. According to the probation officer, the accused concluded by stating that she has learnt her lesson and that she will never repeat the same mistake and has realized that her mother is a very important person in her life.

29 The probation officer also interviewed the deceased parents, Mr and Mrs Molai. They stayed not very far from where the accused and the deceased stayed. The parents advised the probation officer that they were still in pain to what happened to their son, the deceased. The parents stated that they were however not surprised about what happened to the deceased because of the way the accused disrespected them and because there were other incidents prior to the fatal one, where the accused had assaulted their son, the deceased, so severely that he laid unconscious in the street and the accused came to their house and told them to reprimand the deceased. When they found the deceased unconscious in the street, he was full of blood on his head. When the deceased regained consciousness he told them that the accused hit him with a beer bottle on the head.

30 According to the deceased's family the accused assaulted the deceased again so severe that he had to be admitted at a hospital for medical treatment. The deceased was always advised to lay criminal charges against the accused for assaulting him. He refused to do so, claiming that she, the accused, is the mother of their children and does not want her to be imprisoned.

31 According to the probation officer, the deceased family love the deceased and accused's children. The children visit their paternal grandparents and the two families assist each other to care for the children. On the day the probation officer visited the deceased's family she found the children there. The children were warmly and cleanly dressed. The children looked happy. It showed that they were in good hands.

32 According to the probation officer the two families are in agreement that the accused should be sentenced to a custodial sentence "for everyone to get closure".

33 The accused is presently serving a sentence of 6 months' imprisonment for theft committed on 25 January 2023.

34 The accused is a 26-year-old woman. She is the mother of four minor children aged 7, 5, 2 and 11 months old. It is therefore imperative to this court in the light of section 28 of the Constitution and any other relevant statutory provisions to take into account when sentencing the accused that she is a mother of the four minor children.

35 Section 28 (2) of the Constitution provides that “(a) child’s best interest are of paramount importance in every matter concerning the child”.

36 In *S v M*[4] it was held that:

“Indeed, it is the very sweeping character of the provision that has led to be asked about its normative efficacy. For example, in Jooste, Van Dijkhorst J stated:

‘The wide formulation of section 28(2) is ostensibly so all-embracing that the interests of the child would override all other legitimate

interests of parents, siblings, and third parties. It would prevent conscription or imprisonment or transfer or dismissal by the employer of the parent where that is not in the child’s interest. That clearly could not have been intended. In my view, this provision is intended as a general guideline and not a rule of law of horizontal application. That is left to the positive law and any amendments it may undergo.’”

37 Section 28 of the Constitution like all other rights conferred by the Constitution is subject to the limitation contained in section 36 of the Constitution. As the Constitutional Court found in *Sonderup v Tondelli and Another*[5] that the international obligation to return a child to the country of his or her residence for determination of custody would constitute a justifiable limitation under section 36 of section 28 rights. It was found that this limitation on section 28(2) was counterbalanced by the duty of courts to weigh the consequences of the court’s decision on children. See *S v Mphahlele*[6] and *S v Howells*[7]

38 Accordingly, the fact that the best interests of the child are paramount does not mean that they are absolute. Like all rights in the Bill of Rights their operation has to take account of their relationship to other rights, which might require that their ambit be limited.

39 The question to be asked in this case is whether the accused is a primary caregiver to the minor children. In *S v M*[8], a primary caregiver was described as “the person with whom the child lives and who performs everyday tasks like ensuring that the child is fed and looked after and that the child attends school regularly”. Of course as the Constitutional Court found “as in all matters concerning children, everything will depend on the facts of the particular case in which the issue might arise”.

40 According to the probation officer’s report the children are presently taken care of by their maternal grandmother, in the case of the two elder ones and by their aunt in the case of the younger two. Strictly speaking the accused is therefore presently not the primary caregiver of the children.

41 It is therefore clear from the report that if the accused is sentenced to a custodial sentence, although it would be ideal for the children to be brought up by their biological mother, the impact on the children will be minimal as they are presently being taken care adequately. The children's best interests are sufficiently taken care of.

42 As the Constitutional Court further found in M[9] that the purpose of emphasizing the duty of the sentencing court to acknowledge the interests of the children is not to permit errant parents unreasonably to avoid appropriate punishment. Rather it is to protect the innocent children as much as is possible in the circumstances from avoidable harm.

43 Further an appropriate order may be made that the Department of Welfare and Population Department be requested to see to it that the children are properly cared for during their mother's imprisonment and are kept in touch with her.

44 As aforesaid the accused is a 26 years old female person. She is not married but was staying with the deceased as a partner. Two minor children aged 7 and 5 years old were born out of the relationship. After the death of the deceased on 18 June 2021, the accused fell in love with one Lebo Pule and out of this relationship two minor children aged 2 years and 11 months were born.

45 The accused is presently serving a sentence of six months' imprisonment for theft committed well after the murder of the deceased. So for practical purposes and for the purposes of sentencing for this crime the court will regard the accused as a first offender.

46 The accused has passed grade 12. Before her incarceration she has been employed at various retail stores around Carltonville and Randfontein in different capacities ranging from being a cashier and as a packer.

47 The accused relationship with the deceased was one of constant problems, physical fights and squabbles. There are allegations made by the deceased father to the probation officer that the accused previously severely assaulted the deceased to the extent that he lost consciousness and at one stage had to be hospitalized which the accused does not deny.

48 The accused further had a tumultuous relationship with her parents, Mr and Mrs Sello, who initially took her and her younger brother as foster parents and later decided to officially adopt them. Mrs Sello informed the probation officer that the accused was brought up in a supportive environment where good values and acceptable moral guidance was extended to her and her sibling, was loved and treated equally like her sibling and her basic needs were met. The problem started when the accused started to want to control everybody in the house. She became disrespectful to such an extent that Mrs Sello regrets having adopted the accused. She even banned her from attending Mr Sello's funeral.

49 The accused, according to the probation officer's report also encountered a lot of problems with the deceased parents. The accused clearly had no regard for the deceased's parents. She extremely disrespected them. She would assault the deceased rendering him unconscious and call on the deceased parents to come and pick him up.

50 There are also the concerning allegations, again not disputed by the accused that after she had stabbed the deceased so brutally she told a neighbour who had come to assist the deceased to “take your dog to stich him and he will come back”

51 Her controlling and bullying behavior was also observed by Ms Portia Pule who had stayed with the accused and her new boyfriend for a short period of time. Again, according to Ms Pule the accused would assault her new boyfriend at the time Ms Pule stayed with them. According to Ms Pule the accused has anger issues.

52 It is clear from the above that the accused has problems to control her emotions and temper. She has scant regard for other people, be it adults, neighbors or her partners. She is so ungrateful even to her adoptive parents who took care of her and her sibling after they were abandoned by their mother at a very young age.

53 It is doubtful if the accused is genuinely remorseful. It's hardly two years since the deceased has passed away and already the accused has given birth to two minor children. The eldest being already two years old. One wonders if ever the accused mourned the death of the father of his children, the deceased.

54 The defence argued that the accused displayed remorse for her actions, she asked for forgiveness from the family of deceased and the court observed that the accused was sometimes tearful on the accused dock.

55 The State on the other hand contended that the accused displayed no remorse. The post-murder behavior of the accused should also be taken into account when one assesses whether or not the accused is remorseful. In *S v Matyityi*[10] Ponnann JA stated the following regarding remorse:

“There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from the appreciation and 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. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look”.

56 The post-murder conduct of the accused are not hallmarks of a person who is remorseful of her actions but rather of a cold and calculated individual hell-bent on moving on with her life. The behavior does not show a real demonstration of any insight into the seriousness of the crime and its impact on the community and the family of the deceased.

57 Surprisingly, according to the probation officer, the accused told her that she never had a chance to apologise to the family of the deceased and is now asking for forgiveness from the family. One wonders what chance she is talking about because the family has always been there. Instead of going to the family to apologise she went on with her life as if nothing happened. She immediately went on to stay with another boyfriend and gave birth not only to one but two children.

58 The offence of murder that the accused has been convicted of is a very serious offence. It is very prevalent.

59 The applicable sentence for the murder is subject to the provisions of section 51(2) of Act 105 of 1997 (the Minimum Sentences Act). In this instance the minimum sentence is fifteen years' imprisonment.

60 It is trite that where the minimum sentence is applicable, a court can only deviate therefrom if substantial and compelling circumstances

are found to justify the imposition of a lesser sentence. In *S v Malgas*[11] it was stated that that when dealing with crimes falling under the regime of the Minimum Sentences Act, it is no longer "business

as usual" and that minimum sentences should not be departed from lightly and for flimsy reasons which could not withstand scrutiny.

61 The deceased died a violent death. The stabbing by the accused was brutal. According to the postmortem report which was admitted by consent as exhibit "C", the deceased had the following wounds;

- (i) 1 x 1cm stab wound to the neck on the right, 5cm right of midline and 6cm above the right collar bone,
- (ii) 1 x 1cm stab wound to the top of the left shoulder,
- (iii) 1x 1cm stab wound on the left chest, 3cm left of the midline 2cm below left collar bone,
- (iv) 1 x 1cm stab wound 10cm below the left armpit,
- (v) 1 x 1cm stab wound 40cm below the left armpit,
- (vi) 1 x 1cm stab wound 4cm below the left ear and
- (vii) 1 x stab wound between ribs 11 and 12 on the right chest lateral.

62 The deceased lost a lot of blood as a result of the stabbing. Dr Julian David Jacobson who conducted the postmortem examination and compiled the postmortem report observed that there was 2 liters of blood in the deceased chest. That's a lot of blood.

63 The deceased died a painful, brutal, violent and sadistic death. The accused stabbed him with a knife seven times. The stab wounds are on the neck, shoulder, collar bone, chest, armpits and ear. One shudders to think of the pain felt by the deceased as the knife penetrated his body so many times. The accused's actions were really callous, heartless and really cold. On top of that she was still emotionally unaffected and called the deceased a dog.

64 The accused has deprived the deceased's minor children of their father and breadwinner. The grandparents are left with the invidious task of bringing up these children with their meager old age pension grants and the government child grant. The probation officer reported that the elder children were traumatized by the death of their father to the extent that the paternal grandparents had to remove a photograph of the deceased that hanged in the family's dining room wall.

65 As aforesaid, the crime of murder is very prevalent. What makes this crime more despicable is that it was committed against an intimate life partner. Crime in South Africa is out of control. The society expects courts to pass sentences that should deter would-be criminals. The minimum sentences Act was passed more than 20 years ago, mainly to curb the spiraling of the offences mentioned in the Act, one of which is murder. The minimum sentences as contained in the Act seem to hardly deter criminals for if this was the case then there would be a steady decline in the rate of murders and more especially murders committed against life partners.

66 It is trite that the minimum sentences are ordained to be the sentences that must ordinarily be imposed unless the court finds substantial and compelling circumstances which would justify a departure therefrom.

67 The court has to evaluate all the circumstances cumulatively including the mitigating and aggravating circumstances to decide whether substantial and compelling circumstances exists in the matter to justify a departure from the ordained sentence. The court must be alive to the fact the legislature has ordained a particular sentence for the offence the accused has been convicted.

68 If I have to balance the aggravating and mitigating factors in this matter. What counts in the accused's favor is that she pleaded guilty and the fact that the deceased came with a female friend to their common home which would have angered the accused. The further factor is that the two were involved in a physical fist fight before the fatal stabbings. The court has further to take into account that you are a mother of four minor children.

69 Due to the seriousness of the offence you committed, although the court has to exercise a measure of mercy, *S v Rabie*[12], it is required that the elements of retribution and deterrence should come to the fore, and that your rehabilitation should be accorded a smaller role. The Supreme Court of Appeal in *S v Mhlakaza and Another*[13] also pointed out that, given the high level of violent and serious crimes in the country, when sentencing an accused person for such offences, emphasis should be on retribution and deterrence. It is therefore not wrong to conclude that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into

disrepute and victims of crime may be inclined to take the law into their own hands.

70 In affirming that retribution should carry more weight because of the seriousness of the crime which an accused person has been convicted of, when the court considers the aspects relating to the purpose of punishment, it was put in *S v Swart*[14] as follows:

“In our law, retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be accorded to each, according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role”.

71 As aforesaid, the deceased was killed in a ruthless manner and showed that the accused has no regard for human life. The number and positions of the stab wounds inflicted on the deceased makes one to shiver. It is very scary that a female person could be so heartless and coldblooded. The sentence must surely show the indignation of the society about this type of crime.

72 The Constitution of our country provides that “everyone has a right to life”. It is therefore the duty of the courts to protect the citizens of the country and the society in general from the scourge of these violent crimes, and to send a clear message that this behavior is unacceptable and will not be tolerated.

73 The society has a legitimate expectation that apprehensible criminal activities as displayed by the accused should not be left unpunished.

The society demands and commands that serious crimes warrant serious sentences and expects that the courts send a clear and strong message that such acts of gruesome criminality will not be tolerated and will be dealt with effectively. See *S v Holder*[15]

74 It is hoped that you will use the time in custody to attend to the necessary programs offered by the Correctional Services fruitfully to attend to your anger management problems, to learn that life is not about you only, other people have rights too. Hopefully you will learn that bullying and controlling other people especially your life partners is not ideal.

75 In your case, the court has to consider that, as aforesaid, you are a mother of four young children. The court has therefore not to look at your personal circumstances only but also take into account the interests of your children, their mental and physical health, their safety, education, primary needs, care and protection.

76 As aforesaid, both sets of minor children are being taken care of by the accused’s mother and their aunt respectively. The probation officer reported that the children are well looked after and taken care of. Their daily needs are met. They have warm clean homes and are importantly loved by their present primary caregivers. Their financial needs are also met in the form of the government’s monthly child grant.

77 This court is mindful that a sentence must also be fair to the accused as well as to the community and be blended with a measure of mercy. This court has considered the best interest of the children. The court has considered the test to be applied by sentencing courts when sentencing a primary caregiver to a custodial sentence as set out in the M[16] matter. I have applied my mind as to whether the minor children will be adequately cared for while the accused is incarcerated, and this court is satisfied that whilst they are cared for as alluded to above, the measures incorporated in the order of this court has catered for the children's wellbeing and their best interests are considered.

78 This court has also taken into account the other sentencing options like a fine, a suspended sentence, a correctional supervision sentence and is of the opinion that due to the heinous crime committed by the accused, all are unsuitable. As was stated in S v Shaik[17] that:

"The right to a fair trial requires a substantive, rather than a formal or textual approach. It is clear also that fairness is not a one-way street conferring an unlimited right to an accused to demand the most favourable possible treatment. A fair trial also requires-fairness to the public as represented by the State. It has to instill confidence in the criminal justice system with the public, including those close to the accused, as well as those distressed by the audacity and horror of crime".

79 Having considered all the circumstances of this case, and the question whether substantial and compelling circumstances exist which call for the imposition of a lesser sentence than the prescribed minimum sentence in terms of the Act, I am of the view that this court may deviate from imposing the minimum sentence of 15 years imprisonment due to the undisputed fact the deceased came to your the residence you shared with him with a girlfriend and demanded you to leave as he wanted to sleep with his girlfriend in the house and that when he came back he fought with you and you then ultimately dispossessed him of the knife and then you stabbed him therewith to death. The court will however not lose sight of the fact that the ordained sentence for the offence you committed is 15 years.

80 In the circumstances the court makes the following order:

1. You are sentenced to thirteen (13) years' imprisonment;
2. You are declared unfit to possess a firearm in terms of section 103 (1) of the Firearms Control Act 60 of 2000;
3. The Registrar of this Court is requested immediately to approach the Department of Welfare and Population Development with a request:
 - 3.1. That the Department of Welfare and Population Development investigate the circumstances of the accused's four minor children without delay and take all appropriate steps to ensure that;
 - 3.1.1. The children are properly cared for in all respects during the accused's incarceration;
 - 3.1.2. The children remain in contact with the accused during her period of incarceration and see her on a frequent basis, insofar as prison regulations permit; and

3.1.3. Everything reasonable possible is done to ensure the reunification of the accused with her children on the accused's release from prison and the promotion of interests of the family unit thereafter.

MLOTSHWA J

ACTING JUDGE OF THE HIGH
COURT, GAUTENG DIVISION,
PRETORIA

Delivered: This judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Case lines. The date for handing down is deemed to be 30 May 2022.

APPEARANCES

STATE: Adv M Shivuri

The office of the Director of Public Prosecutions, Gauteng North

DEFENCE: Adv M Botha

Legal Aid South Africa

[1] Act 51 of 1977

[2] 1969

(2) SA 537(A)

[3] 1991(2) SA 352 (B) at 355A-C

[4] 2008 (3) SA 232(CC)

[5]

[2000] ZACC 26; 2001 (2) BCLR 152(CC)

[6]

[2023] ZAGP JHC 792 (14 July 2023)

[7] 1999 (1) SACR 675 (C)

[8] *supra*

[9] *supra*

[10] 2011 (1) SACR 40 SCA

[11] 2001 (1) SACR 469 (SCA)

[12] 1975 (4) SA 855 AD at 862D-F

[13] 1997(1) SACR 515(SCA)

[14] 2004(2) SACR 370(SCA)

[15] 1979 (2) SA 70 (A)

[16] *supra*

[17]

[2007] ZACC 19; 2008 (1) SACR 1 (CC) para 43

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/ZAGPPHC/2023/2058.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-sello-unknown-topic-agpphc-2023--6a3ea50d3b1caa9129806deb>

Prepared on 9 October 2026 · Esheria