IN SOUTH GAUTENG HIGH COURT

JOHANNESBURG CASE NO: SS155/01

DATE: 26/04/2002

In the matter between

THE STATE

and

DANIEL PHALAFALA MANGOELE 1st ACCUSED

ALFRED SHISHI MEDUPE 2nd ACCUSED

S E N T E N C E

WILLIS J:

[1] It is well established in these courts and reflects the accumulated wisdom of many generations that sentence should fit the criminal as well as the crime, be fair to the state and to the accused, and be blended with a measure of mercy. It must also reflect the interest of society.

[2] Accused 1 is a first offender. He is relatively young, having been

born on 3 June 1977. He is unmarried but has one minor child. He is unemployed and was at the time of the commission of this offence. He left school in standard 9. He comes from a poor family and a background that may be described as socially and economically deprived. He has shown no remorse.

[3] Accused 2 is also a first offender. He is also relatively young, having been born on 25 November 1979. He is unmarried. He has no children. He was unemployed at the time of the commission of this offence. He passed standard 10. He have been planning to undertake tertiary education with the dream of becoming a mechanic. He had no father to nurture him and his circumstances too may fairly be described as socially and economically deprived. He too has shown no remorse.

[4] These crimes are very serious indeed. A hard working person serving a useful function in society, delivering bread to the needy in squatter camps, had his live cruelly, mercilessly and in cold blood cut down. It is fair to assume that he had dependents whose existence depended upon his being able to earn his living in the manner that he did.

[5] When a person's life is cut down prematurely in this way the implications extend far and wide. This kind of crime is depressingly prevalent in our society today. Hijacking of vehicles is an utterly cowardly

and despicable act. All it requires is to use a firearm, with no special bravery, no special skill and no special courage. It is as easy as taking candy from a baby. A despicable morality underlies this kind of crime. Deprived economic circumstances and an unfortunate upbringing can never justify it.

[6] In addition to what I have said in the opening lines of this judgment sentence also has five important functions:

1. It must act as a general deterrent. In other words it must deter other members of the community from committing such acts or thinking that the price for wrong doing is worth while.
2. It must act as a specific deterrent. In other words it must deter these particular individuals from being tempted to act in such a manner ever again.
3. It must enable the possibility of correction unless this is very clearly not likely.
4. It must be protective of society. In other words society must be protected from those who do it harm.
5. It must serve society's desire for retribution. In other words society's outrage at serious wrong doing must be precated(?).

[7] Clearly in this case a lengthy period of imprisonment is warranted in order to serve each of these five functions. I have no doubt that the community as a whole cries out aloud for a lengthy and severe sentence in a case such as this.

[8] The court is obliged in terms of Section 51 of the Criminal Law Amendment Act 105 of 1997 to impose life imprisonment for the accused for the commission of the murder. (The murder having been committed in a course of a robbery and also having been planned and premeditated.) For the robberies with aggravating circumstances (firearms were used) the court is similarly obliged to impose a minimum sentence of 15 years. This section is saved by the provisions of subsection (3) which permit a lesser sentence if there are substantial and compelling circumstances which justify the imposition of a lesser sentence. The Supreme Court of Appeal, the highest court in this land in all but constitutional matters, has given clear directives as to the duty and requirements of this court with regard to the implementation of Section 51 of the Criminal Law Amendment Act.

[9] In the case of *S v Malgas* it is indicated that a severe, consistent and standardised response is required. It is indicated that maudlin sympathy for accused persons, marginal differences in the conduct of the accused in the commission of the crime, and factors such as the fact that the accused are first offenders are to play no role in coming to the conclusion that there are substantial and compelling circumstances which justify a lesser sentence.

[10] There are no special circumstances here present. Indeed, if the court were to find in this case that there are substantial and compiling

circumstances justifying a lesser sentence then in practically every conceivable type of hijacking case it will be obliged to do so. I have not the slightest doubt that the view of the community, when it comes to crimes of hijacking such as this, is that life imprisonment is required. It seems to me that these crimes are sufficiently close in time and place of their commission to justify an order that the sentences should run concurrently. In any event Section 39(2) of the Correctional Services Act 111 of 1998 directs that this should occur.

[11] The accused are sentenced as follows:

Count 1: The murder count: You are both sentenced to life imprisonment.

Count 2: Robbery with aggravating circumstances: You are both sentenced to 15 years' imprisonment.

Count 3: Unlawful possession of a firearm: You are both sentenced to 3 years' imprisonment.

Count 4: Unlawful possession of ammunition: You are both sentenced to 6 months' imprisonment.

It is directed that the sentences in counts 2, 3 and 4 are to run concurrently with the sentence in count 1. In other words the effective sentence is life imprisonment.