IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION,
NORTH-EASTERN CIRCUIT, MTUBATUBA

Case number: **CCD55/2023**

In the matter between:

THE STATE

and

NTOMBIZODWA GERTRUDE NTINGA **FIRST ACCUSED**
SAMKELO NCAMISA MPANZA **SECOND ACCUSED**

Coram: Mossop J
Heard (sentence): 27 March 2025
Delivered: 28 March 2025

JUDGMENT ON SENTENCE

MOSSOP J:

Introduction

[1] Having sat through five weeks of evidence and having been in your presence for

that period of time, I have acquired a degree of knowledge about you both. I must be frank, however, and indicate that this experience has left me with a far from impressive image of both of you as human beings. A person is a human being because of the genes contained within 23 pairs of chromosomes. Your wicked conduct causes one to question whether you are truly human or whether you are both monsters, devoid of human qualities. One of the qualities of being a human being is empathy. Empathy is an ability to identify with or vicariously experience the emotions, thoughts or attitudes of another. You both appear to lack any empathy. You certainly did not display it in relation to WO Ntinga or the deceased Mr Mdluli on 1 August 2023.

[2] Your conduct in involving yourselves in the death of these two men shows a complete indifference to the value of human life, the most valuable thing that a human being possesses. You snuffed out two lives without a second thought. Your conduct violated all notions of ubuntu. In *S v Mankwanyane*,[1] the Constitutional Court recognised the African customary principle of ubuntu as one of the values underpinning the Constitution when dealing with the question of criminal punishment. In that matter, six of eleven judges identified ubuntu as being a key constitutional value that:

'… places some emphasis on communality and on the independence and on the interdependence of the members of a community. It recognises a person's status as a human being entitled to unconditional respect, dignity, value and acceptance . . . The person has a corresponding duty to give the same. . . ' [2]

[3] Ubuntu is an important component in the way that we interact and live together. In *Port Elizabeth Municipality v Various Occupiers*,[3] Sachs J said:

'The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the needs for human interdependence, respect and concern.'

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[1] *S v Mankwanyane* 1995 (3) SA 391 (CC).
[2] Ibid para 224.
[3] *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) para 30.

[4] Ubuntu clearly means nothing to you. You displayed no respect to either of the deceased men's status as human beings. You treated them in an entirely unacceptable manner, stripping them of any of their dignity. WO Ntinga was forced into the boot of a motor vehicle, a part of a motor vehicle that was not designed to convey human beings. It is not possible to comprehend what terror he must have experienced in the boot as you, accused two, drove him off to his death. When it was decided to kill him, his lifeless body was left partially naked, exposed to the elements. Why? You had killed him. Why strip away, literally, the last piece of dignity that he possessed?

[5] As far as the deceased Mr Mdluli is concerned, accused two and your associate, Mira Khoza (Mira), took umbrage at the fact that he tried to escape from the captivity that you had imposed upon him against his will. He was subjected to crushing blows to his head from a metal crowbar. While it is a wonder that he did not perish immediately, it is no wonder that he ultimately did not survive that beating. But he did not die immediately. The process of dying took approximately four days. To make matters worse, if that was at all possible, you simply left him at the side of the road as if he was a piece of trash. He was not that. He was, like you, a member of the human race. He was a human being.

[6] Considering your cruel treatment of the two deceased men, it is abundantly clear to me that you have fallen very far from the standards of conduct espoused by the philosophy of ubuntu and it is obvious how singularly lacking in compassion and mercy your conduct towards your two victims was. Addressing accused two, your counsel, Mr Mkhwanazi, urged me to be merciful in imposing sentence upon you. You seek mercy from this court, but you showed none of that to the deceased men. But, because we have a civilized and sensitive legal system, and because we do not sentence in anger, you will be granted mercy where that is possible despite your unwillingness to grant it to the two men that you kidnapped and killed. But you should be under no illusions that a light sentence will be imposed upon you. The sentence to be imposed will have to be a heavy one because of the seriousness of your acts of criminality.

[7] That the crimes that you have committed are extremely serious brooks of no doubt. It is difficult to conceive of a more serious offence than the murder of another person. In the not-too-distant past it was possible for a sentence of death to be imposed upon someone found guilty of the murder of another citizen. That demonstrates to you how seriously this offence is regarded by the law. Thankfully, we no longer have the death penalty and so another form of sentence needs to take its place. It is my duty to determine, based on the specific facts of this case, what that sentence should be. To do so, I must, inter alia, have regard to your personal circumstances.

[8] I have heard, and taken note, of your personal circumstances from your respective counsel. Speaking now to accused one, you had a career in the South African Police Services (SAPS). You had a young son. The photographs show that you lived in a nice, new home. You had a motor vehicle. You had a husband. Yet, it appears that this was not enough for you. You wanted something more. I do not know what it was that you wanted. You may have truly desired a relationship with Mira, although I doubt that this was the case. Whatever it is that you wanted, it is very clear that you did not want your husband. And thus you arranged for him to be kidnapped and killed.

[9] Accused two, you have very different personal circumstances. You claim to have been 19 at the time of the events in question. At that young age you were already the father of three children, one aged two and two aged one year each, although the latter two were not twins. You left school before completing grade 9 and you have no recollection of your father, who was killed when you were very young. While accused one had everything going for her, it appears that you had very little going for yourself. Yours was a hard scrabble existence.

[10] As you are aware, the law prescribes a minimum sentence for murder where it is planned or premeditated. That was undoubtedly the case in this matter. Section 51(1) of the Criminal Law Amendment Act 105 of 1997 (the Act) provides as follows:

'Notwithstanding any other law, but subject to subsections (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 imprisonment for life.'

Premeditated murder is mentioned in Part 1 of Schedule 2 to the Act. Thus, each of you faces the possibility of life imprisonment.

[11] I am, however, not compelled to impose the minimum sentence referred to by the Act. I can impose a lesser sentence if I am satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence. The Act does not define what 'substantial and compelling' circumstances are. This is a matter left to the sentencing court to determine. The facts of each case will determine whether such circumstances exist.

[12] Yesterday you may have heard both Mr Qulo and Mr Mkhwanazi refer to the case of '*Malgas*' when they addressed me in mitigation of sentence. This was a reference to the matter of *S v Malgas*,[4] a leading case in our law on the issue of substantial and compelling circumstances. That case held that it is incorrect to hold the view that for circumstances to qualify as substantial and compelling they must be 'exceptional' in the sense of being seldom encountered or rarely encountered. But the court held that where a minimum sentence is specified, it should not be departed from lightly and for flimsy reasons which cannot withstand scrutiny. If such a departure occurs, there must be 'weighty justification' for not applying the minimum sentence. In making that point, the court in *Malgas* observed that there is no reason to conclude that the legislature intended a court to exclude from consideration, any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders.

[13] At the end of the day, a sentencing court is required, after evaluating all the competing factors, to impose a sentence that is just. In doing so, it is important, in my view, not to commence this most difficult exercise by starting with the mindset that the prescribed minimum sentence is always a just sentence. The prescribed minimum

[4] *S v Malgas* 2001 (2) SA 1222 (SCA).

sentence may be a just sentence. But it may also not be. All the circumstances of the case must be identified, considered and evaluated and then it should be considered whether the prescribed sentence is disproportionate to the crime, the offence and the legitimate needs of the community. That will require the court to consider what a just sentence would be in all the circumstances of the case. If a just sentence falls materially below the prescribed sentence, there will be substantial and compelling circumstances to depart from the prescribed sentence.[5]

[14] The facts of this case are most distressing and disturbing. It would not be remiss of me to remark that the conduct, particularly of accused one, can only be described as being exceptionally wicked. Two aspects of what happened on the evening of 1 August 2023 justify this extreme description of her conduct. When you, accused one, returned to your home after going to the nearby tavern to purchase liquor for your soon to be murdered husband, you realised that he was no longer wearing his SAPS uniform. On the version contained in your confession, you stepped out of the house and telephoned Mira to alert him to the fact that your husband was no longer in uniform and was wearing different clothing. You told Mira what he was then wearing and you told him where he was seated in the television lounge. The meaning of this is clear: you did not want the wrong person taken away and killed. The intruders had to know who their principal target was and where he could be found. The cruelty and ruthlessness of your conduct is shocking.

[15] But the second aspect is almost as brutal as the first. The deceased Mr Mdluli unexpectedly arrived at your home, bringing with him Mr Ndimande. Their arrival changed the dynamic of what was to occur. There was no reason for the deceased Mr Mdluli to be drawn into your evil plan. You had a cellular telephone dedicated to communicating with Mira and accused two. All you needed to do was to use it and tell them that the plan could not be given effect to that night and would have to be done at another time. You did not make that call. And as a direct consequence, a man with no connection at all to your plan to kill your husband forfeited his life. And that brought misery to his family and loved ones,

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[5] *S v GK* 2013 (2) SACR 505 (WCC) para 14.

as shall shortly be considered.

[16] The existence of these two facts would in any ordinary person weigh down upon their conscience most heavily and cause them immense distress and mental difficulties for it is not an easy thing, I imagine, to accept that you are responsible for the untimely and unnecessary deaths of two human beings. I suspect, however, that you, accused one, are not an ordinary person and I suspect that you believe that you bear no responsibility for what occurred. I have had the opportunity of observing you over the five weeks of this trial, as I mentioned earlier. But for one moment in the proceedings, you have shown no emotion whatsoever. You have sat scowling and stone faced in the dock, generally unresponsive to even the most horrific evidence that has been led. The moment that you did display emotion was when the State advocate requested you during cross-examining you to look at the photograph of the body of your husband. You appeared to weep, and the court adjourned for a short while to allow you to compose yourself, but I harboured the suspicion that the tears were more apparent than real.

[17] There is no doubt that you, accused one, bear responsibility for the death of the two men and what led up to that occurring and all that followed. But in saying so, I must acknowledge that I am not certain why you decided that killing your husband would be a solution to whatever difficulty it was that you were experiencing. You have not taken the court into your confidence and explained this.

[18] A potential reason was advanced in your confession, namely that you had been assaulted by your husband and that he generally treated you poorly. That could explain your conduct, as I observed in my earlier judgment. But you then recanted your confession and said that you were told what to say by Lt Col Mkhabela. In other words, you did not tell him what was recorded in your confession and therefore it was not true. You then, before this court, and after admitting that your husband did assault you, immediately rejected the fact of this having occurred, saying that the injuries to your lower lip were caused by you falling onto a hoe in the garden. Then yesterday morning, your counsel, Mr Qulo, urged me to find that you were in an abusive relationship and that your

husband had hurt your lip by pushing you against a concrete pillar. You will appreciate from these contradictory versions that what exactly happened is as clear as mud, if anything did happen at all. But in my view, you cannot reject the contents of your confession as being something that you were told to say and which is untrue and then ask me to accept it as being the truth and to then to proceed to further argue that it discloses a mitigating feature. Such reasoning would be false.

[19] In addition, you have exhibited not an atom of remorse for what happened. Mr Qulo indicated yesterday that there is nothing before this court to show that you have any contrition for what occurred. He was correct in making that submission. Remorse, or an acknowledgement of a deep and painful regret for your conduct, would have assisted the court in attempting to find substantial and compelling circumstances that could have supported a sentence other than the prescribed minimum sentence on the two counts of murder. But no signs of contrition have been shown by you. You may regret having been caught and you may feel sorry for yourself because of where you now find yourself, but that does not equate to remorse. In *S v Matyityi*,[6] Ponnan JA had the following to say on the issue of 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 an 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. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can 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 has 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.' (Footnotes omitted)

[6] *S v Matyityi* 2011 (1) SACR 40 (SCA).

[20] None of the factors mentioned by Ponnan JA appear in this matter. You have not explained your conduct and I can therefore not find that you display any remorse for your destructive conduct. I can find no redeeming qualities in you, nor can I find any circumstances that would constitute substantial and compelling grounds to avoid the minimum sentences applicable in this matter.

[21] After deep consideration, I do not think that the same can be said about accused two. Addressing you accused two, your position is, I think, distinguishable from accused one. I am prepared to accept that there is a measure of remorse to be discerned in the fact that you made certain limited admissions at the commencement of the trial and then the next day made further substantial admissions that confirmed your guilt on the robbery and kidnapping charges. That had the effect of shortening the trial and the State was not required to spend unnecessary time on proving those offences. That stands to your credit.

[22] A further factor that I find to assume some importance, is your age. It must be accepted that you were 19 years old when you committed these offences, being barely a year into adulthood. You were, in all likelihood, influenced to an extent by Mira, an older man. These two factors, namely the admissions that you made and your age, are accordingly adjudged by me to constitute substantial and compelling reasons to deviate from the prescribed minimum sentences.

[23] I am fortified in coming to that decision by my assessment that you, accused one, are more morally blameworthy than accused two. In so finding, I do not diminish the enormity of accused two's conduct. But you set up the scheme together with your lover and cold bloodedly watched your husband be taken to his death. Accused two, you were part of the mechanism that caused that death. But had it not been for accused one's conduct, in my view accused two would not have involved himself with WO Ntinga and the deceased Mr Mdluli. I have found that there are no compelling and substantial factors that count in accused one's favour and that the minimum sentences applicable must be imposed. If your conduct, accused two, is adjudged to be less blameworthy, it is just that you receive a severe, but slightly lesser, sentence.

[24] In this matter, there are more victims than just the two deceased men. The victim impact statements handed in by consent are particularly upsetting. There can be nothing more disturbing than reading of the anguish and despair of a family member lamenting the loss of a loved one. And let there be no mistake: both the men who were murdered were deeply loved by many people. The court gallery has been filled on all the many days of this trial. That demonstrates the importance of these two men in the lives of their respective families and in their communities and workplaces.

[25] Both mothers of the deceased men have deposed to affidavits. Their despair is overwhelming and their submissions show that the wounds caused to each of them by your conduct remain raw and painful 18 months after the death of their sons. The mother of WO Ntinga correctly states that she could never imagine that her daughter-in-law, accused one:

'… was going to have intentions that are so evil against my son at a later stage.'

[26] The deceased Mr Mdluli had been married for but a month when he was killed. His wife, in a series of submissions that are suffused with anguish and a feeling of hopelessness, makes the point that her husband was:

'… killed on purpose and for nothing …'

In that, she is entirely correct. The murder of the deceased Mr Mdluli was senseless and for nothing. The victim impact statements reveal the enormity of what you have done and the void that you have left in the lives of a number of people.

[27] In sentencing you, I take into account that you have been detained in custody while awaiting trial for approximately 18 months. I also acknowledge that you have been convicted of a number of offences and the cumulative effect of the multiple sentences that will be imposed upon you must be controlled so that the total effect of the sentences do not become excessive.

[28] All things having been considered, I believe the following sentences will be in the interests of justice:

Accused one

1. Count 1, being the murder of Mr Nkosinathi Protus Ntinga: life imprisonment.
2. Count 2, being the murder of Mr Mpendulo Mdluli: life imprisonment.
3. Count 3, being the robbery with aggravating circumstances of Mr Nkosinathi Protus Ntinga, Mr Mpendulo Mdluli and Mr Lindani Ndimande: 15 years' imprisonment.
4. Count 4, being the kidnapping of Mr Nkosinathi Protus Ntinga: 5 years' imprisonment.
5. Count 5, being the kidnapping of Mr Mpendulo Mdluli: 5 years' imprisonment.
6. In terms of the provisions of s 280(2) of the Criminal Procedure Act 51 of 1977 it is directed that the sentences imposed on counts 2, 3, 4 and 5 shall run concurrently with the sentence imposed on count 1.
7. Accused one will thus serve a sentence of life imprisonment.
8. No determination is made in terms of section 103(1) of the Firearms Control Act 60 of 2000 and accused one is consequently declared unfit to possess a firearm.

Accused two

1. Count 1, being the murder of Mr Nkosinathi Protus Ntinga: 25 years' imprisonment.
2. Count 2, being the murder of Mr Mpendulo Mdluli: 25 years' imprisonment.
3. Count 3, being the robbery with aggravating circumstances of Mr Nkosinathi Protus Ntinga, Mr Mpendulo Mdluli and Mr Lindani Ndimande: 14 years' imprisonment.
4. Count 4, being the kidnapping of Mr Nkosinathi Protus Ntinga: 4 years' imprisonment.
5. Count 5, being the kidnapping of Mr Mpendulo Mdluli: 4 years' imprisonment.
6. In terms of the provisions of s 280(2) of the Criminal Procedure Act 51 of 1977 it is directed that the sentences imposed on counts 2, 3, 4 and 5 shall run concurrently with the sentence imposed on count 1.
7. Accused two will thus serve a prison sentence of 25 years' imprisonment.
8. No determination is made in terms of section 103(1) of the Firearms Control Act 60 of 2000 and accused two is consequently declared unfit to possess a firearm.

Do you each understand?

I wish you good luck.

MOSSOP J

APPEARANCES

Counsel for the State:	Ms P T Ntsele
Instructed by:	Director of Public Prosecutions Pietermaritzburg
Counsel for accused one:	Mr M W Qulo
Instructed by:	Legal Aid South Africa
Counsel for accused two:	Mr D C Mkhwanazi
Instructed by:	Legal Aid South Africa