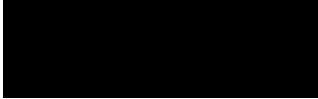


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>06/02/24</u> DATE	 SIGNATURE

CASE NO: **CC26/23**

THE STATE

And

THULANI INNOCENT SOKO

ACCUSED

JUDGMENT

MSIBI AJ

INTRODUCTION

- [1] The accused, Mr Thulani Innocent Soko is indicted before this court on a charge of murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 as amended, in that on 15 June 2022 at Thusi Village in Ermelo in Mpumalanga province, the accused unlawfully and intentionally killed Tafadzwa Maginini by stabbing him with a knife.

- [2] The accused was legally represented by Advocate M Mavasa from the Legal Aid Board, while Advocate R Molokoane appeared for the State. On 31 January 2023, after the charges were put to him, the accused pleaded guilty to the charge of murder.

- [3] The accused's written plea statement in terms of section 112(2) of the Criminal Procedure Act 51 of 1977 (the Act), signed by the accused was read into the record as follows:

*"I the undersigned, **THULANI INNOCENT SOKO**, do hereby state that:*

I am an adult male accused in this matter and I have been informed that I am being indicted on one count of murder, read with the provisions of section 51 (1) of the Criminal Law Amendment Act 105 of 1997 as amended.

My legal representative of record advised me of my constitutional rights, more in particular my rights to remain silent, rights not to give self-incriminating evidence and rights to be presumed innocent unless otherwise proven so by a competent court of law.

Having so understood my rights as aforesaid, I elect to make this statement freely and voluntarily, in my sound and sober senses and without being unduly influenced thereto:

I understand the charge preferred against me by the State and I plead to the charge as follows:

Count1: Murder-read with the provisions of section 51 (1) of the Criminal Law Amendment Act 105 of 1997, as amended - GUILTYI plead NOT GUILTY to murder, but I do plead GUILTY.

In amplification of my plea of guilty to the main count and guilty to the above count, I wish to state the facts upon which my pleas is based and make the formal admissions in terms of section 220 of Act 51 of 1977, as amended:

1. *I admit that the deceased was unknown to me but I have since been informed that he was Tafadzwa Maginini, a male person.*
2. *Briefly, the circumstances leading to the death of the deceased are as follows:*
 - a. *I was at all material times in a love relationship with Lerato Precious Baloyi (hereinafter referred to as my girlfriend) who was staying at Sincawuncawu, Thusi Village.*
 - b. *On the 15th of June 2022, I went to my girlfriend's place in order to see her. I knocked at the door and, surprisingly, my girlfriend refused to open for me and she told me that her mother did not want me to come to her place anymore.*
 - c. *I did not take that kindly and I forcefully entered her room and that is when I saw the deceased and he assaulted me by beating me up and pushing me out of the house.*
 - d. *I got out and left the place very angry. I went to my friend (Mduduzi Sphesihle Simelane) who was at a certain market selling fat cakes and I explained had happened to me and he said that the deceased was very spiteful and he was sympathetic to me. He said he wanted to see who that person was and said we should go back to my girlfriend's home.*
 - e. *Emboldened by the company of my friend, we went to my girlfriend's place and found the deceased still there. We had an argument but no physical fight this time around. We left to where I had found my friend selling fat cakes.*
 - f. *I left and went home still very angry that I had found my girlfriend with another man and he had assaulted me.*
 - g. *I got home and I armed myself with a knife and decided*

to go back to my girlfriend's place in order to fight the deceased.

- h. On my way I spotted the deceased on the street walking away from my girlfriend's place. I went to him and I realised that he was in possession of a screw driver and he brandished it. I then took out my knife from my pocket.*
- i. Upon seeing my knife, the deceased became scared and he ran away. I chased after him whilst in possession of a knife and he jumped over a wall of a certain homestead but I kept on chasing him until I caught up with him after he fell on the ground.*
- j. I then stabbed him with the knife on the abdomen area and the intestines protruded. I became scared and I ran away from the scene.*
- k. I admit further that the deceased died as a result of the stab wound that I inflicted on him by intentionally and unlawfully stabbing him with a knife.*
- l. I admit that my actions were wrongful, unlawful and punishable by law and I do not have a defence in law for my actions.*

ADMISSIONS IN TERMS OF SECTION 220 OF ACT 51 OF 1977

I, the undersigned THULANI INNOCENT SOKO admits as follows:

- 1. That the deceased is the person mentioned in Count 1 of the indictment, namely TAFADZWA MAGIRINI and he was positively identified by Tapiwa Moyo. The identification statement is marked "Exhibit B"*
- 2. The deceased died on 15th June 2022 at Ermelo.*
- 3. That Mr Manoko Makololo transported the body of the deceased from the scene to Ermelo Forensic Pathology for custody and his statement is Exhibit "C"*
- 4. That on the 17th June 2022 Mr Manoko Enoch Makololo pointed out the deceased marked BR 116/2022 to Dr Phyllis Jwankie at Ermelo*

Forensic Pathology Facility without any further injuries whilst under his care.

5. *That Dr Phyllis Jwankie conducted a medico – legal post mortem examination on the body of the deceased on 17/05/2022 herewith handed in by agreement as **Exhibit “D”***
6. *That the facts and findings of the medico legal post-mortem examination recorded by Dr Phyllis Jwankie in the post mortem report **Exhibit “D”** are correct.*
7. *The cause of death of the deceased Tafadzwa Magiriri is correctly recorded in **Exhibit “D”** as; **DEEP PENETRATING INCISED WOUND TO THE ABDOMEN”***
8. *That the correctness and authenticity of the following documents is not in dispute and is herewith handed by agreement as exhibits:*
9. ***Exhibit “E”** a photograph – album accompanied by an affidavit, key thereto consisting of photos 1-11, depicting the crime scene and the injuries sustained by the deceased taken by Sergeant S. W. Nkoana.
DATED AND SIGNED at BREYTEN ON THE 31st day of JANUARY 2024.”*

- [4] I thereafter put certain questions to the accused in order to satisfy myself whether he understood, confirmed and appreciated the nature and import of the statement, including the facts contained therein, which he confirmed.
- [5] The state accepted the plea and the facts upon which it was premised. The accused’s plea statement was admitted as **Exhibit A**.
- [6] From the contents of the accused’s written plea statement and his formal admissions that he were received and recorded in terms of section 220 of the Act, I was satisfied that the accused intended to plead guilty to the main count of murder read with the provisions of section 51(1) of Act 105 of 1997. The accused admitted that his act of stabbing and killing the deceased was pre-meditated. I was satisfied his admissions were in keeping with the

Supreme Court of Appeal's decision in **S v Kekana**¹ where it was stated that:

“premeditation does not necessarily entail that the accused should have thought or planned his or her actions for a long period of time in advance before carrying out his or her plan. This is because “even a few minutes are enough to carry out a premeditated action”

[7] I accordingly found the accused guilty as charged.

[8] The State did not prove previous convictions.

SENTENCE

[9] As it was held in **S v Mathee**² in determining the appropriate sentence the court has to consider the personal circumstances of the accused, the nature of the crimes and the interests of society. The court has to impose a sentence incorporating the objectives of punishment, namely deterrence, prevention rehabilitation and retribution.

[10] As stated in **S v Holder**³, an appropriate sentence entails that the demands of our times be taken into account, together with the mitigating and aggravating factors.

[11] In **S v Rabie**⁴ it was stated that punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances.

[12] No sentence is appropriate in a particular case merely because it is customarily imposed in similar cases. Our courts have to individualise sentences that are imposed, so as to reflect the desired balance of the above

¹ 2013(1) SACR 101 (SCA)

² 1971(3) SA 769 (A) at 774

³ 1979 (2) SA 70 (A)

⁴ 1975 (4) SA 855 (A) 862G

mentioned factors.

- [13] The considerations mentioned above are affected by the provisions of Act 105 of 1997, which provides for the imposition of minimum sentences of life imprisonment in respect the offence of certain murders. The provisions of section 51 of this Act are peremptory. In **S v Malgas**⁵ the court remarked as follows:

“Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in specified circumstances”

- [14] At para 476 the court further remarked as follows:

“The Legislature aimed at ensuring a severe, standardised and consistent response from the courts to the commission of such crimes, unless there were, and could be seen to be, truly convincing reasons for a different response”

- [15] Section 51 (3) allows the court to enquire into the existence or otherwise of substantial and compelling circumstances which would justify the imposition of a lesser sentence than the prescribed minimum sentence.

PERSONAL CIRCUMSTANCES

- [16] The accused did not testify in mitigation of sentence, Adv Mavasa addressed the court in mitigation of sentence as follows:

16.1 That the accused is 24 years old and he was 22 years of age at the time of the commission of the offence;

16.2 He is not married;

⁵ 2001(1) SACR 469 SCA at 481

- 16.3 He has 1 year old child;
- 16.4 The accused's father passed on in 2010 while his mother passed on in 2011;
- 16.5 He was never raised by his father;
- 16.6 He is not employed and he has no source of income;
- 16.7 The accused lived with his elder brother who maintained him financially;
- 16.8 His highest standard of education is grade 10;
- 16.8 He enjoys good health;
- 16.9 He is a first offender.

[17] Counsel further submitted that the accused was very remorseful for his actions, which is demonstrated by the fact that he cooperated with the police. He made a confession and a pointing out. In court, the accused pleaded guilty to the charge saving the State time and resources and mostly saving the witnesses the trauma of reliving the unfortunate event.

[18] It was further submitted that youthfulness could have played a role in the conduct of the accused on the date in question, which could have influenced him to show his friends that he was not a coward.

[19] Counsel submitted that the personal circumstances of the accused, the circumstances leading to the commission of the offence, the fact that accused pleaded guilty to the charge taken cumulatively, constitute substantial and compelling circumstances justifying a departure from the prescribed minimum sentence.

[20] In aggravation of sentence Counsel for the State submitted that the accused has been convicted on a serious offence that attracts a prescribed sentences. Not only is the offence serious in nature but also prevalent in this Division and country wide. Violent crimes are a cancer to our society. Despite the steps taken by the legislature to curb same, such offences are sadly on the increase.

[21] The State further submitted that the accused was told by the lady that he calls his girlfriend that he was no longer welcome at her home, adding that her mother has given instructions that he should not enter her house. Instead of respecting the young lady and her mother's right to privacy and instructions he forced his way into the house where he found the deceased.

[22] After a fight and an argument he went to arm himself with a knife and returned to confront the deceased. He was the aggressor on the date in question. He had the intention to find the deceased and stab him with the knife. The fact that the deceased was running away from him did not dissuade him from carrying out his initial intent. The State further argued that the murder was pre-meditated and there no compelling and substantial circumstances that warrant a deviation from the prescribed minimum sentence of life imprisonment.

[23] On the question of youthfulness Counsel for the state referred the court to the matter in **S v P N**⁶, where the court dealt with a 19 years old offender. The state submitted that youthfulness as in the matter of *S v P N supra*, should not constitute substantial and compelling circumstances calling for a deviation from the prescribed minimum sentence.

THE OFFENCE

[26] Murder is one of the most grievous offences. In **S v Scott Crossley**⁷, the court held that any sentence imposed in respect of such an offence must have a deterrent and retributive effect.

[27] Every person has a right to life and bodily integrity according to the Bill of rights. In **S v Makwanyane**⁸, **O'Regan J** stated as follows:

“the right to life was included in the Constitution, not simply to enshrine the

⁶ 2010 (2) SACR 187(EGC)

⁷ 2008(1) SACR 223 (SCA)

⁸ [1995] ZACC 3; 1995 (3) 391(CC)

right to existence. It is not as mere organic matter that the constitution cherishes, but the right to human life, to live as a human being, to be part of a broader community, to share in the experience of humanity. This concept of human life is at the centre of our constitutional values”

[28] These rights are not to be given mere lip service but full protection from the law.

[29] There is no victim impact report in this matter, due to the fact that the deceased was a Zimbabwean national, and his family could not be traced and brought to court by the investigating officer; nevertheless murder remains one of the most grievous offences.

PROVOCATION

[30] In **S v Ndzima**⁹, **Plasket J** indicated that provocation is a mitigating factor as acts performed under extreme provocation are understood by ordinary human beings. In this matter the appellant fired a shot in self-defence, out of anger he fired a shot at the second attacker while he was fleeing from him. The court accepted that both acts resulted from a severe provocation. However, the appellant executed both his attackers while they were lying helpless on the ground by further shooting them with a firearm. The court found this to be a cold blooded and vicious attack which made the provocation as a mitigating factor pale to a significant degree. It was further held that the act of executing the deceased could not be regarded as excusable human reaction to the provocation.

[31] In the matter before me, the deceased was also stabbed and killed in a similar manner. The crime committed against the deceased was brutal and not in keeping with the measure of provocation detailed by the accused. He had no regard for the law or the consequences of his actions.

⁹ 2010 (2) SACR 501 (ECG)

- [32] Any offence that gives the impression that human life is cheap calls for harsh punishment. The accused chased a person who was not fighting but fleeing from him.

YOUTHFULNESS

- [33] Our law considers an offender to be a child only until he reaches 18 years of age. In **S v P N** (supra) the full bench referred to the judgment of the Constitutional Court in **Centre of Child Law v Minister of Justice and Constitutional Development**¹⁰ where it was held as follows:

“there is no intrinsic magic in the age of 18, except that in many cases it has been accepted as marking a transition from childhood to adulthood. The Constitution’s drafters could have set the frontier at 19 or 17. They did not”

- [34] At page 195 A-C the court further stated as follows:

“The appellant though youthful, is no longer a child. He cannot be said to be more vulnerable or susceptible to negative influences and outside pressures or that his character (like children under 18) is not yet fully formed and he therefore is uniquely capable of rehabilitation as put in para[34] and [35] of the Centre for Child Law case (supra). Had the appellant been 2 years younger he could have been sentenced differently, but he is not. He was 19 years old when he raped B. Whereas his relative youth may be a mitigating factor, it does not in my view, constitute a circumstance which would justify the imposition of a lesser sentence [in terms of the minimum sentence legislation] The seriousness of the offence far outweighs the fact that he is a youthful first offender”

¹⁰ 2009 (6) SA 632 (CC)

REMORSE

- [35] The issue of remorse came before the Supreme Court of Appeal in **S v Matyityi**¹¹ where **Ponnan JA** differentiated between regret and remorse when he said:

“There is moreover, a chasm between regret and remorse. Many accused persons might 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 acknowledgment of the extent of one’s error”

- [36] In the present case the accused pleaded to the charge of murder guilty. As it was held in **S v Martin**¹² a plea of guilty has frequently been taken into account by the sentencing courts as a mitigating factor. The mitigation has been found in the fact that the accused has not wasted the court’s time or the taxpayer’s money. The latter are not the only inferences to be drawn from a plea of guilty, as such a plea of guilty can indicate a multiplicity of realities and approaches thereto by the accused. It may simply mean that the case against the accused is overwhelming and incontestable and it may not imply anything more than that the accused is realistic.

- [37] There is nothing on record that points to the fact that accused is genuinely remorseful except the fact that he regrets his conduct which has resulted in his arrest and incarceration.

INTERESTS OF SOCIETY

- [38] Violent crimes have reached alarming proportions country wide. It is sad to realise that youthful members of society resort to violence as a means to dispute resolution. This was clearly not the only way available for the accused

¹¹ 2000 (1) SACR 552 (SCA)

¹² 1996 (2) SACR 378 (W)

to address problems between himself and his girlfriend and the deceased.

[39] The legislature enacted the provisions of section 51(1) as a direct response to society's outcry against certain offences, including gruesome and premeditated murders. During sentencing our courts are expected to recognise and express society's moral outrage against these kind of offences. The attack on the deceased was brutal and uncalled for. When weighed against the accused's personal circumstances, namely his age, remorse and youthfulness, I am of the view that the aggravating circumstances far outweighs his mitigating circumstances. I find no "weighty justification" for the imposition of a lesser sentence as laid down in *S v Malgas* (supra).

[40] Given all the above, I am therefore unable to find that there are substantial and compelling circumstances present that would justify a deviation from the prescribed minimum sentence

SENTENCE

[41] After taking all relevant considerations into account I make the following order:

1. The accused is sentenced to life imprisonment.
2. In terms of section 103(2) of Act 60 of 2000 the accused is declared unfit to possess a firearm.

MSIBI SM-AJ

ACTING JUDGE OF THE HIGH COURT

Appearances

Date heard: 29 January to 1 February 2024

Judgment delivered: 06 February 2024

For the State: Adv. R. Molokoane

Instructed by: DPP Middelburg

For the accused: Adv. M. Mavasa

Instructed by: Legal-Aid

Board of SA