



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

Case no: **CCD09/2024**

In the matter between:

THE STATE

and

SIFISO NKOSINATHI DLAMINI

ACCUSED

JUDGMENT ON SENTENCE

MOSSOP J:

[1] This is an ex tempore judgment.

[2] It has been said that there is no such thing as a crime of passion, only a crime of possession.¹ That observation seems to apply neatly to the facts of this matter. Mr Dlamini, you have been convicted of an offence of the utmost seriousness. Some may construe it to be a crime of passion because it involved your former lover but it is, in truth, a crime of possession. When Ms Shelembe informed you of the fact that she was not prepared to continue in a romantic relationship with you, you were not prepared to accept her decision. You wanted to continue to possess her and you reckoned that the best way of ensuring that would continue was to kill her new lover.

¹ Gloria Marie Steinem, born 25 March 1934, American journalist and social-political activist.

That you then did, in a most brutal way, stabbing the deceased three times, twice in his chest and once in his lower abdomen. And then you walked away and left him to die.

[3] That you planned the death of the deceased permits of no doubt when the evidence of Ms Gumbi is considered. Before you stabbed the deceased to death you proceeded to Ms Gumbi's place of residence and persuaded her to ascertain from the deceased where he resided. Three days later, you went to his home and lay in wait for him and your former lover early one morning and then you killed him, all in utter silence. The deceased could not have expected his fate. He did not resist you and he probably died not knowing why you desired his death.

[4] I debated yesterday with the state advocate whether a distinction could, or should, be drawn between wicked and evil killers and those that kill out of passion. It appears to me, after reflection, that such a distinction can be drawn in the appropriate circumstances. Crimes of passion are generally not premeditated but occur suddenly and impulsively, usually without thought for the consequences. But I do not think it would be proper to make such a distinction when the murder is not committed impulsively, but where it has been thought of, planned and then brought about. For that type of conduct is a manifestation of wickedness and not of true passion.

[5] In our law, planning and premeditation have long been recognised as aggravating factors in the case of murder.² That is not surprising, for planned criminality must by its very nature be regarded as being more reprehensible than an offence committed thoughtlessly on the spur of the moment.

[6] You are not a stranger to crime or to violence. You have a relatively recent conviction for assault with intent to do grievous bodily harm in 2016 for which offence you received a custodial sentence of two years. I intend to dwell on this previous conviction for a while, for there are chilling similarities between that previous conviction and your conduct in this matter.

² *S v Khiba* 1993 (2) SACR 1 (A) 4; *S v Malgas* 2001 (1) SACR 469 (SCA) para 34 (*Malgas*).

[7] Yesterday, I asked your counsel for more details regarding this previous conviction, which you ultimately admitted. Mr Mkhwanazi sought instructions from you, and you told him the details of that conviction, which he then relayed to the court. What he told the court was that the complainant in that matter, a man, had been injured by you in a traditional stick fight and had then laid a complaint against you with the South African Police Services (the SAPS). You stated that the complainant sustained an injury to the head and you were ultimately prosecuted and convicted and sentenced to two years' imprisonment arising out of that complaint. Something about that did not ring true with me. It seemed unlikely to me that someone who willingly involves himself in a traditional stick fight would later complain about a defeat that he suffered and report it to the SAPS. I remembered the popular saying that 'cowboys don't cry' and thought that this conduct on the part of the victim was unlikely to have occurred. I accordingly instructed the state advocate to obtain more details on this previous conviction overnight. He did so. He is thanked for his efforts in this regard, as is the investigating officer. Not only did they obtain the information needed, they also managed to arrange for the docket relating to your previous conviction to be delivered to this court.

[8] The production of the docket and the evidence of the investigating officer this morning made it plain that what you had instructed Mr Mkhwanazi to tell the court yesterday regarding your previous conviction was, indelicately put, nothing but a pack of lies.

[9] There had been no traditional stick fight at all. There was no male complainant, either. The complainant in that matter was a young woman. She was your ex-girlfriend and the mother of two of your children. According to the digital summary of the matter retrieved by the investigating officer, her mother had left her at home when she, the mother, had gone to work. On her return from work, she found her daughter at home covered in blood. Her daughter explained that you had hit her with a bush knife. The victim's statement in the docket adds muscle and flesh to this skeletal outline. You wanted to know from her who she was in love with, but she refused to tell you. When

demanding this information from her, you were armed with a knife. The next day, you went to the victim's homestead and accused her of making a fool of you and then struck her on the head and both arms and legs with a bush knife.

[10] Yesterday, you obviously believed that you could spin any story to this court and put a gloss on it to favour yourself. You clearly did not expect your version to be investigated further. You made another mistake, if that is what you believed. Today, you attempted to fudge the facts, by continuing to say that you were charged for striking the complainant's brother in a traditional stick fight. But, ultimately, you conceded that you were charged with assault with intent to do grievous bodily harm in respect of your ex-girlfriend and that is the offence for which you were sentenced to two years' imprisonment. To the end, however, you attempted to minimise your conduct, by asserting that you did not strike your ex-girlfriend with a bush knife but with a thick stick.

[11] You have been exposed for what you are, a shameless, manipulative liar. While that much is clear, it is also clear that you are, by nature, a violent person. Your experience in prison did not persuade you to review your attitude to violent behaviour. That is unfortunate, for society hopes that those who commit crime will recognise the error of their ways and make sure that they do not again reoffend.

[12] The position that you find yourself in now is entirely of your own making. Mr Ngubane for the state correctly said yesterday that you had attempted to shift the blame from yourself onto the deceased when you falsely alleged that he had been the primary aggressor. He said that demonstrated that you were not prepared to accept responsibility for your own conduct. I tend to agree with him. That failure is an ominous sign when your potential for rehabilitation is considered. Yesterday, Mr Mkhwanazi urged me to view you as a person who has the potential for reformation and rehabilitation. It is so, as remarked upon in this court's judgment that led to your conviction, that your evidence was littered with frequent apologies and acknowledgments on your part that you had made a mistake. It is tempting to view

those utterances as true signs of your remorse. In *S v Matyityi*,³ Ponnann 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).

[13] You have falsely denied your guilt throughout and you have not disclosed why you acted as you did. The court, as an independent observer, may deduce why you did what you did, but for the court to recognise you as being truly contrite about your behaviour, you needed to take the court into your confidence. You needed to disclose, in fact, why you did what you did. That may require you to acknowledge some unpalatable truths about yourself. But that you must do if you are to receive any credit for any remorse that you claim to have. You have not done that. It is conceivable therefore that your apologies, and the acknowledgements that you made a mistake, are simply expressions of regret and not true expressions of remorse.

[14] It appears that you are entirely self-centred in your outlook on the world. You were in a romantic relationship with Ms Shelembe, yet at that very time you were a partner in a traditional marriage with another woman with whom you had two children. Simultaneously, you were involved in two other relationships with two other women, who had each also given birth to a child by you. The latter two children are presently two years old and one-year-old respectively. At the time that this offence was

³ *S v Matyityi* 2011 (1) SACR 40 (SCA).

committed, they would have been approximately six months younger. Thus, while the father of two very young children, you involved yourself in another relationship, this time with Ms Shelembe. It seems that you lived your life according to your needs and desires and without any consideration for others.

[15] What I have just referred to regarding your progeny was what you told me yesterday. Today, you told me something completely different. You have two children with each of two women and not two children with one woman and one child with another woman and one child with a further woman. Quite frankly, Mr Dlamini, you have told so many stories that I do not know where the truth lies.

[16] While your life may pivot around what you want to do and when you want to do it, that will soon come to an end. You need to understand that your behaviour does not occur in a vacuum. Your conduct impacts on other people. It obviously impacts on those who are dependent upon you. But it also impacts upon those who are forced to live with the fallout from your criminal behaviour. I refer in this regard to Ms Shabalala and Ms Shelembe, both of whom have deposed to victim impact statements. Those statements were handed in by the state and I have considered their contents. They make for difficult, unpleasant reading.

[17] Ms Shabalala viewed the deceased as her son. She was not the biological mother of the deceased but his maternal aunt. She herself was blessed only with a biological daughter but she raised the deceased as if he was her son. He cared for her and made sure that she was properly looked after. The deceased's mother is still alive but in poor health and not able to attend these proceedings. The deceased himself fathered a child. That young child will now grow up without ever having a memory of her father because of her present tender age.

[18] Ms Shelembe, in her statement, described the horrific scene that occurred before her eyes. It must, indeed, have been an awful thing to have witnessed. Unfortunately, she states that she blames herself for the death of the deceased. Had she not commenced her relationship with him, he might still be alive, so she reasons.

Her feelings of guilt are no doubt heartfelt, but in my view she does not bear the stain of guilt over what occurred. There is only one person that caused the death of the deceased, and that is you. Ms Shelembe cannot, and must not, punish herself for your conduct, over which she had no control. I hope that you reflect on the anguish that you have caused to someone that you professed, at one stage, to love.

[19] As you are aware, the offence for which you have been convicted carries with it a minimum sentence of life imprisonment. I advise you that I am 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. That does not mean that I must find that there are 'exceptional' circumstances present that justify a lesser sentence. In *Malgas*,⁴ the court found 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. The court 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.

[20] However, the court in *Malgas* went on to state that the specified minimum sentences are not to be departed from lightly and for flimsy reasons which cannot withstand scrutiny. Speculative theories favourable to the accused person, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy of minimum sentences, and like considerations are obviously not intended to qualify as substantial and compelling circumstances.

[21] I have carefully considered all the representations made on your behalf yesterday by Mr Mkhwanazi. I do not lose sight of the fact that both your parents are deceased, that you were employed before your arrest and that you have been in custody for six months awaiting trial. I have already mentioned that you are the father of four children. But arrayed against you is the fact that you committed a murder that

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

you coolly planned and efficiently carried out and that you have a previous conviction for an offence that involved violence. You have also exhibited a willingness to mislead the court on the facts of that previous conviction.

[22] There is nothing in what has been disclosed to this court about your personal circumstances that commends itself to me as being grounds upon which I could rely to justify imposing a sentence other than the prescribed minimum sentence. There is much that indicates that the prescribed minimum sentence should be applied in your case. There is nothing that I see in you as a person that indicates to me that you are likely to acknowledge that your behaviour is unacceptable. You clearly have trust problems and you have problems in your relationships with women. Those problems seem to manifest when relationships end. Women who terminate relationships with you appear to be at serious risk.

[23] I accordingly conclude that I am not able to find that any substantial or compelling circumstances exist. In addition, given your proclivity for violent conduct, I am satisfied that you are not the type of person who should be permitted to lawfully possess a firearm in the future.

[24] I accordingly consider the following to be a just sentence in all the circumstances of this matter:

- (a) On the count of murder, you are sentenced to life imprisonment.
- (b) No determination is made in terms of section 103(1) of the Firearms Control Act 60 of 2000. That means you may not lawfully possess a firearm.

Do you understand? I wish you good luck.

MOSSOP J

APPEARANCES

Counsel for the state : Mr C Ngubane
Instructed by: : Director of Public Prosecutions
Pietermaritzburg

Counsel for the accused : Mr D Mkhwanazi
Instructed by : Legal Aid South Africa
Empangeni

Date of trial : 18, 19, 20, 25, 26 March 2024

Date of judgment on sentence : 27 March 2024