

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

In the matter between:

Case No: CC 41/2023

THE STATE

and

MANDLA QOSHO

Accused 1

SIYANA MAKALENI

Accused No. 3

SIGAGELA MGWATYU

Accused No.4

SENTENCE

BANDS J:

[1] On 4 March 2024, I convicted Mandla Qosho (“*accused 1*”); Siyanda Makaleni (“*accused 3*”) and Sigagela Mgwatyu (“*accused 4*”) on the charges against them; all three having pleaded guilty in accordance with the provisions of section 112(2) of the Criminal Procedure Act 51 of 1977 (“*the Act*”). I further ordered that the trial in respect of the erstwhile accused number 2 in these proceedings, Themba Dingela (“*Dingela*”),¹ be held separately from the trial against accused 1, 3 and 4. This judgment concerns the sentence proceedings in respect of all three accused.

[2] Accused 1 was convicted on two charges of robbery with aggravating circumstances; two charges of kidnapping; and 2 charges of murder, all of which

¹ Who pleaded guilty to all charges against him save for those in respect of murder, to which he pleaded not guilty.

emanated from the same incident, to which I shall return. Furthermore, in relation thereto, he was convicted of the unlawful possession of a firearm and ammunition in contravention of the Firearms Control Act 60 of 2000. Accused 3 and 4, in relation to the same incident, were each convicted on two charges of robbery with aggravating circumstances; and two charges of kidnapping.

[3] On the night of 8 July 2023, 56 year old Zoleka Gantana ("*Zoleka*") and her newly appointed assistant, 27 year old Kholosa Mpunga ("*Kholosa*"), were working in a modest grocery store, situated on Zoleka's property, in Ncerha Village 7, Kidds Beach, East London. Unknown to them, accused 1, who at that stage resided within walking distance from Zoleka's property (84 meters away), had contacted his co-accused and another man referred to only as 'Tiger',² inviting them to attend upon his home. There, they planned the robbery of Zoleka's white Isuzu bakkie ("*the vehicle*"). According to the statements of accused 1, 3 and 4, accused 1, who was armed with an unlicensed firearm and ammunition, proceeded to the store, together with accused 3 and 4; Dingela; and Tiger. Accused 1, 3 and 4 all admit that they foresaw the possibility that the firearm would be utilised, should they encounter any resistance. They reconciled themselves with such a possibility. Cable ties and gloves formed part of their artillery.

[4] The men gained entrance onto Zoleka's property through an entry point, which had been cut into her boundary fence. It is not clear whether the entry point was made on the night of the incident or whether it had been done on a prior occasion in preparation for the commission of the offences. The men, having gained

² Who is now at large.

entry onto the property, proceeded to the store, where they found Zoleka and Kholosa still working. The two women were threatened and forced to lie on the floor. The men demanded the keys to Zoleka's vehicle, which she handed to them. Thereafter, the men tied Zoleka and Kholosa's hands behind their backs utilising the cable ties.

[5] Accused 3 proceeded to the vehicle and brought it closer to the store, which was then ransacked. Stock to the value of R6,930.88, consisting of everyday items such as Sunlight dishwashing liquid; batteries; Pampers disposable diapers; bread; biscuits; and tinned food, was loaded onto the back of the vehicle. Once satisfied, Zoleka and Kholosa were forced onto the back of the vehicle, absent a canopy, and driven some 49 kilometres to a rural (and very remote) farm in Peddie owned by the father of Dingela and accused 4, Daninge Farm. I pause to mention that Dingela resided in a back yard flatlet located behind the main farmhouse.

[6] On arrival at the farm, Zoleka and Kholosa were taken to an isolated, abandoned shack³ on the property, situated in the middle of the veld, 364 meters away from the main farmhouse. It is there that the two women spent the last, what must have been horrifying, day-and-half of their lives, being held, against their will, until their death on 10 July 2023. While the women were guarded by accused 1, the

³ From the photographs taken of the scene, the shocking and degrading conditions in which Zoleka and Kholosa spent the last, what must have been horrifying, day-and-a-half of their lives, in the middle of winter, is apparent. The abandoned metal shack, which clearly was not constructed for human habitation, consists of four walls, a flat roof, a dirt floor, and a door. But for the door, the remaining structures consist of old rusty corrugated metal sheeting. There is no apparent ventilation. The floor on which they would have rested, if they were able to; simply a dirt floor littered with stoned and rubbish. One red chair stands in the corner of the shack – presumably for the comfort of accused 1 as he guarded over the women. No ablution facilities are in sight.

stock from the store was offloaded from the vehicle and placed in various chests situated in and around the main farmhouse and back yard flatlet. Money and bank cards (together with their pin numbers) were demanded from Zoleka, which she handed over. On the morning of 9 July 2023, accused 3, together with Tiger, proceeded to an ATM at the Gillwell Mall, where a total amount of R1,000.00 was drawn from Zoleka's Standard Bank account, in two transactions at 08h43 (R200.00) and 08h46 (R800.00) respectively.

[7] According to the statement of accused 1, on 10 July 2023, he and Dingela took Zoleka and Kholosa to a riverbank, situated 1.39 kilometres away from the shack, lineally, where accused 1 executed the two women by gunshot to the head. Following their execution, accused 1 and Dingela built a fire in a sandy pit, in which the bodies of Zoleka and Kholosa were burnt. The women's charred remains were thereafter cut into fist sized pieces with a panga and thrown into the river.

[8] A breakthrough in the investigation was made on 12 July 2023 when Zoleka's missing vehicle, which had fortuitously become stuck in mud due to recent heavy rainfall, was found abandoned on the side of the road, 2.56 kilometres away from Daninge Farm. Whilst at the time of its recovery, both number plates had been removed, with a false number plate having been fitted to the vehicle's rear-end, the original licence disk remained on the vehicle, which depicted the vehicle's registration number. The vehicle was swabbed and dusted for forensics. The right middle fingerprint of Dingela was lifted from the outside top right edge of the driver's window. He was later arrested on the same day.

[9] The investigations continued over the course of the next two days, with accused 3 and 1 being arrested on 14 and 15 July 2023, respectively.

[10] Whilst items belonging to both of the deceased were identified and recovered from the buildings situated on Daninge Farm, confirming their prior presence; by 14 July 2023, they had still not been found. The father of Dingela and accused 4 confirmed having seen a woman in the shack, together with a man (presumably accused 1) whilst walking on his farm.⁴ According to the investigating officer, Warrant Officer Human, a further breakthrough in the case was made when Dingela made a pointing out, during which he pointed out, *inter alia*, the sandy pit in which the women's bodies had been burnt and cut into pieces, as well as the river, into which their remains had been discarded. The photographs tendered into evidence depicting the fist-sized charred remains of the two deceased, which were recovered from the river, clearly depict the extent of the effort that was undertaken in an attempt to conceal the bodies of Zoleka and Kholosa and to accordingly, conceal the commission of the offences.

[11] Accused 4 was subsequently arrested some six months later on 12 January 2024.

[12] Accused 1 is subject to a prescribed minimum sentence of life in respect of counts 5 and 6 by operation of section 51(1), read with Part 1 of Schedule 2, of the Criminal Law Amendment Act 105 of 1997 ("*Act 105 of 1997*"), which prescribes minimum sentences, unless substantial and compelling circumstances are found to be present. In respect of accused 1, 3 and 4's convictions on counts 1 and 4, for

⁴ There exists no explanation as to why he did not sound the alarm to the authorities.

robbery with aggravating circumstances; and on counts 2 and 3, for kidnapping, the accused are each subject to minimum sentences of 15 and 5 years respectively in accordance with the provisions of 51(2)(a) and 51(2)(c) of Act 105 of 1997. The State gave notice of their intention to request the imposition of a sentence in excess of the minimum sentence in relation to counts 2 and 3.

[13] The starting point in respect of the convictions falling within the ambit of section 51(1) of Act 105 of 1997 is not a clean slate upon which I am free to inscribe whatever sentence I deem appropriate.⁵ As emphasised in *S v Malgas*:⁶

“[A] court was not be given a clean slate on which to inscribe whatever sentence it thought fit. Instead, it was required to approach that question conscious of the fact that the legislature has ordained life imprisonment or the particular prescribed period of imprisonment as the sentence which should ordinarily be imposed for the commission of the listed crimes in the specified circumstances. In short, 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. When considering sentence the emphasis was to be shifted to the objective gravity of the type of crime and the public's need for effective sanctions against it.

...

The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and

⁵ *S v Matyityi* 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA)

⁶ *S v Malgas* [2001] 3 All SA 220 (A)

compelling circumstances. Nor were marginal differences in the personal circumstances or degrees of participation of co-offenders which, but for the provisions, might have justified differentiating between them. But for the rest I can see no warrant for deducing that the legislature intended a court to exclude from consideration, ante omnia as it were, any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders.”

[14] In approaching the sentencing of the accused, I am to impose sentences that will strike an appropriate balance between the seriousness of the crimes of which they have been convicted; the personal circumstances of the accused; and the legitimate expectations and legal interests of the community.

[15] The crimes for which the accused have been convicted of are heinous and show a complete disregard for human life. The robbery, with aggravating circumstances, culminating in the kidnapping of Zoleka and Kholosa, who were transported in the middle of the night like cattle and thereafter held in degrading circumstances until their murder, was pre-meditated; unprovoked; and cowardly. The seriousness thereof was conceded by Mr Charles who appeared on behalf of all three accused.

[16] The devastation and lasting impact of the carefully planned and executed actions of the three accused was palpable in court, whilst listening to the emotional testimony of Zoleka’s daughter, Nombuntu Gantana (“*Nombuntu*”); and the mother of Kholosa, Ntombekhaya Mpunga.

[17] Zoleka was described as having shared a close relationship with her family members. She was a daughter; a grandmother to two young grandchildren; a

mother of two; and a friend. She was actively involved in the upliftment of the community and a leader at her church. Despite her modest beginnings in life, she held a strong view of education, which she instilled in her children. This is evidenced not only by the qualifications, which she had obtained, namely a certificate in business management and another in theology, but also through her children; her daughter being the present Deputy Director of Communications for the Department of Correctional Services in the Eastern Cape. At the time of her death, she was financially responsible for approximately 10 family members, including her mother; her nieces and nephews; and a family member with a disability. This she did from the revenue received from her two businesses. Nombuntu explained that the vehicle in question was purchased by her in 2019 as a birthday gift for her mother, to assist her in the running of her businesses. The vehicle was a source of much joy for Zoleka.

[18] Ntombekhaya described her daughter, Kholosa, as a quiet young woman who loved to laugh and sing. She was a single mother of a beautiful two-year old daughter and was actively involved in the community and her church. After completing grade 12, Kholosa studied two years towards a diploma in computers, whereafter she worked as an assistant teacher at two different schools. Ntombekhaya, through tears, testified how Kholosa had travelled far from home a mere ten days prior to the incident to take up employment with Zoleka for the purposes of: (i) assisting her financially, as she was struggling; and (ii) contributing towards Kholosa's younger brother's traditional initiation ritual, which was scheduled for the latter part of 2023. Ntombekhaya described how she had lived in hope that her daughter would be found following the recovery of Zoleka's vehicle.

[19] The devastation and trauma experienced by Zoleka and Kholosa's families was further exacerbated by the fact that they were unable to properly mourn for their loved ones during the extended period of investigation into the matter, which required the forensic analysis of their body parts, which were thereafter presented to them to bury. In this manner, they were denied of their cultural burial rituals of dressing and viewing the bodies of their loved ones, prior to burial, in order to say goodbye. The families are not at peace and cannot move on with their lives, knowing full-well that what they have buried is in all likelihood only part of their loved ones' bodies.

[20] I have had regard to personal circumstances of each of the accused (through their legal representative from the bar), who elected not to testify in mitigation of their sentences. I find that there are no substantial and compelling circumstances which militate against the imposition of the minimum sentences set out above. I have reached this conclusion for the following reasons.

[21] Accused 1 is 46 years of age and is currently single and unemployed. His highest level of education is grade 10, having dropped out of school during his grade 11 year. He is the father of two minor daughters, both of whom reside with their mother. He has prior convictions of theft and robbery for which he was sentenced to six years' imprisonment, of which three were suspended, on 19 October 2015.

[22] Accused 3 is 45 years of age and is also currently single. He is the father of one major son who resides with his mother. His highest level of education is grade 11. Prior to his arrest, he was employed as a soil investigator earning approximately

R7,000.00 per month. Accused 3 has a prior conviction of housebreaking which dates back to 2002 and is for all intents and purposes a first-time offender.

[23] Accused 4 is 54 years of age and like accused 1 and 3, is also currently single. He dropped out of school during the course of his grade 9 year and was unemployed at the time of his arrest. He is the father of three children, each being born to a different mother. Save to recall that his one child was born in 2013, he was unable to recall their respective ages. Accused 4 has a long line of previous convictions having been convicted of stock theft in 1985 and 1986 respectively. In 1997, he was thereafter convicted on various counts of attempted murder; housebreaking; and murder, for which he received an effective sentence of 22 years imprisonment. Significantly, at the time of the commission of the offences pertaining to the present matter, accused 4 was out on special remission of sentence until August 2025, having been released on 27 April 2012.

[24] The three accused's election not to testify leads me to the inescapable conclusion that nothing further could be said in their favour. This notwithstanding, their legal representative implored upon me to find that there were substantial compelling circumstances to depart from the minimum sentences applicable, citing the three accused's remorse as a factor to which I ought to have regard. Such remorse was said to be evident in each of the accused having pleaded guilty, with the same one-line sentence being apparent in each of their pleas, in the following terms:

"I am pleading guilty out of remorse and wish for the court to have mercy on me."

[25] Perhaps let me start by stating that at no stage of the proceedings, during which detailed evidence of the shocking events was described, was there an iota of remorse visible on behalf of any of the accused. The evidence linking the accused to the offences was overwhelming. Not one of the accused came forward voluntarily, remorseful of their actions, prior to them pleading guilty on 4 March 2024. As stated in paragraph [14] of *Matyityi*:

“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. There is no indication that any of this, all of which was peculiarly within the respondent’s knowledge, was explored in this case.”

[26] On the basis of the evidence placed before me, I cannot even conclude that the accused are regretful of their conduct, let alone remorseful therefor. The premediated actions, which unfolded over the course of 8 July to 10 July 2023 as set out above, in the face of accused 1 and 4’s past convictions, is strongly indicative of the fact that they have not been encouraged by their past punishments to lead

reformed lives. There exists no explanation as to why it was necessary to kidnap, hold, and thereafter take the lives of the deceased; already having robbed Zoleka of her vehicle and the store of its stock. These actions were senseless. The only conclusion that can be drawn is that accused 1, having been a member of the same community as Zoleka, residing in close proximity to her, was fearful of being implicated in the commission of the offences and wished to dispose of all possible evidence at any (and at all) cost.

[27] To depart from the minimum sentences herein would be to ignore the objective gravity of the offences; their prevalence in this country and the legislature's quest for severe and standardised responses by the courts as was cautioned against in *S v Matyityi*. In respect of counts 2 and 3 (kidnapping), a sentence in excess of the prescribed minimum sentence is indicated in light of the aggravating features surrounding the commission of the offence in question. The State argued that 10 years' imprisonment would be appropriate. The accused's legal representative elected to advance no submissions in this regard. Taking into account the circumstances of this case, I am of the opinion that 8 years' imprisonment is appropriate.

[28] In sentencing accused 3 and 4, I am mindful not to lose sight of the crimes for which they have been convicted and not to allow the brutality of their murder and the events that unfolded thereafter to conceal the bodies of the deceased (at the hands of others) to cloud my judgement.

[29] In light of the aforesaid, the following sentences are imposed:

Accused 1

1. On counts 1 and 4, robbery with aggravating circumstances, 15 years' imprisonment in respect of each count.
2. On counts 2 and 3, kidnapping, 8 years' imprisonment in respect of each count.
3. On counts 5 and 6, murder, life imprisonment in respect of each count.
4. On count 7, for contravening section 3(1) read with section 120(1)(a) and 121 of the Firearms Control Act 60 of 2000 (the unlawful possession of a firearm without a licence), eight years' imprisonment.
5. On count 8, for contravening section 90 read with s 120(1)(a) and 121 of the Firearms Control Act 60 of 2000 (the unlawful possession of ammunition), 4 years' imprisonment.
6. It is ordered that the sentences imposed on each of the counts are to run concurrently.

Accused 3

1. On counts 1 and 4, robbery with aggravating circumstances, 15 years' imprisonment in respect of each count.
2. On counts 2 and 3, kidnapping, 8 years imprisonment in respect of each count.
3. It is ordered that the sentences imposed on each of the counts are to run concurrently.

Accused 4

1. On counts 1 and 4, robbery with aggravating circumstances, 15 years' imprisonment in respect of each count.

2. On counts 2 and 3, kidnapping, 8 years' imprisonment in respect of each count.
3. It is ordered that 3 years of the sentences imposed in respect of counts 2 and 3 are to run concurrently with those imposed in respect of counts 1 and 4. Accordingly, the effective sentence in respect of accused 4 is that of 20 years imprisonment.

I BANDS
JUDGE OF THE HIGH COURT

Heard: 5 and 6 March 2024

Delivered: 8 March 2024