Original.

HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA) 22/01/2016

APPEAL CASE NO: A340/15

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| **DELETE WHICHEVER IS NOT APPLICABLE** |
| **(1) REPORTABLE: ~~YES / NO~~.** |
| **(2) OF INTEREST TO OTHER JUDGES: ~~YES / NO.~~** |
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| 22/01/2016 ..... |
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IN THE MATTER BETWEEN

ABDUL MOHAMMED Appellant

and

THE STATE Respondent

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JUDGMENT

LEGODI J,

HEARD ON: 05 DECEMBER 2015

JUDGMENT HANDED DOWN: 22 JANUARY 2016

[1] This is a criminal appeal against a sentence of imprisonment on a charge of murder, attempted murder, unlawful possession of firearm and ammunitions and a recommendation that the appellant should not be considered for parole until he had served 30 years of the 40 years imprisonment imposed on the murder charge.

[2] On 26 September 1997 the appellant Mr Abdul Mohammed was sentenced in the High Court Pretoria (as per Grobbelaarr J) to 40 years imprisonment on a charge of murder, 10 years on a charge of attempted murder, 3 years on a charge of unlawful possession of a firearm and 1 year on a charge of unlawful possession of ammunitions in contravention of the provisions of the Fire Arms Control Act no. of 60 of 200. It was ordered that the other sentences were to run concurrently with the 40 years imprisonment on the charge of murder. It was further recommended that the appellant should serve 30 years of the 40 years imprisonment before being eligible for parole.

[3] This appeal was with the leave of the Supreme Court of Appeal granted on 8 August 2014. The appellant was convicted on the above mentioned charges on the 26 September 1997. The circumstances under which the offences were committed are succinctly set out in the judgment by the court *quo*.

[4] Starting with the appellant's version, together with the deceased, were members of a gang called BAD BOYS. The deceased allegedly ordered the appellant to kill one person by the name of Chris Pietersen. When the appellant refused, the deceased threatened him with death.

[5] On one occasion, the deceased hit the appellant on the back of his head with a firearm. He reported the matter to the police and the deceased was arrested and charged with attempted murder. The deceased after his arrest in Mamelodi and on their way to court threatened the appellant with death, telling him that he will not see the sun rise the following day as he would be killed by other people or by the deceased himself.

[6] On Monday 7 October 1996 the appellant was to attend court at Magistrate's court Pretoria. He was scared to attend court due to the threats made by the deceased. He told one of his friends about the threats and as a result he was accompanied to court by about four people. He started at court 7 and thereafter proceeded to court 4 where he was supposed to appear on another charge together with the deceased. At court 4 they

found the deceased together with a group of about nine to ten people including women. The deceased and one Michael Isaacs stood up where they were seated and then approached to where the appellant was. All other men who were in the deceased's company followed the appellant. As they were approaching, the deceased moved his right hand towards his right back pocket. The appellant thought the deceased was pulling out a fire arm to shoot him. The appellant then pulled out his fire arm and pointed it at the deceased. The deceased however moved forward towards the appellant still with his hand at his right back pocket. The appellant then fired a shot at the deceased at a distance of about four or five paces away. The deceased's hand was still at his back. The appellant fired the second bullet as the deceased was still standing in-front of him. The other people who were with the deceased started to run away. The appellant fired the third bullet at the deceased. The appellant then ran away. He fired further shots at the deceased as he was moving away from him. He saw the deceased falling down after he had fired the last shot.

[7] The appellant's version was rejected by the trial court, in my view, correctly so. The appellant was convicted on the following set of facts: On 7 October 1996 the deceased was waiting at Court 4 of Magistrate's Court Pretoria when the appellant approached with a group of people. Without much ado, the appellant shot at the deceased. The deceased's friend was also shot. The appellant then run away. He was later arrested, charged, convicted and sentenced as indicated in paragraph 2 of this judgment.

[8] The trial commenced and concluded before the Criminal Law Amendment Act 105 of 1997 came into operation. Therefore the court *a quo* in sentencing the appellant exercised its discretion. The issue at hand is whether the trial court correctly exercised its discretion. The discretion must be exercised in a judicial manner and not capriciously or upon any wrong principle. If it appears that a court has not exercised its discretion judicially, or that it has been influenced by wrong principles or misdirection on the facts or that it has reached a decision which could not reasonably have been made by a court properly directing itself to all the relevant facts and principles, the court of appeal may interfere with that exercise of discretion. A court of appeal will be slow to interfere with an exercise of discretion unless it was exercised improperly.

[9] It remains an established principle of our Criminal Law that sentencing discretion lies pre-eminently with the sentencing court and ought to be exercised judicially and in line with established principles governing sentencing[1]. Decided cases on sentencing provide guidelines and not straightjackets[2]. Each case has its own factual matrix and judicial fixation. Past sentencing patterns as absolute precedents would be in conflict with the principle of individualization, and ultimately, the right to a fair trial[3]. However, individualization of sentence invariably gives rise to the need for a wide discretion in sentencing although the guidance of past decisions by High Courts may lead to some degree of consistency[4].

[10] A wide discretion is allowed to a trial court in the assessment of punishment except in cases where a minimum sentence is set by statute under the Criminal Law Amendment Act 105 of 1997.

[11] In exercising its discretion, the court must consider the triad as enunciated in *S v Zinn* 1969(2) SA 537 (AD) at 540G, which consists of:

(a) The nature, magnitude and effect of the crime itself;
(b) The interests of society; and
(c) The interests of and circumstances surrounding the offender.

[12] The rule is that an appeal court must consider the issue of sentence on facts which were in existence when the sentence was originally imposed and not according to new circumstances. This however is not invariable and may be departed from where there are exceptional and peculiar circumstances[5].

[13] In his written heads of argument, counsel for the respondent (the State), inter alia, argued:

"*21*

*Since about 1992, sentences of more than 25 years have become more common and sentences of up to 40 years imprisonment were quite really imposed for very serious crimes.*

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[1] See *S v PB* 2013 (2) SACR 533 (SCA) at para 19.
[2] See *S v D* 1995 (1) SACR 259 (A) at 260e.
[3] See *S v PB supra* at para. 18.
[4] See *R v S* 1958 (3) SA 102 (A).
[5] See *S v Karolia* 2006 (2) SACR 75 (SCA) at 93c-h.

*Much longer sentences have also been imposed as well as sentences of longer than the offender's life expectancy.*

*Last mentioned were viewed as unconstitutional because it could be cruel, inhumane or degrading. With the abolition of the death penalty, those crimes which previously would have resulted in the imposition of the death penalty were now punished with long terms of imprisonment, many of which were inevitably life imprisonment. The development of our law has subsequently been overtaken by the minimum sentences legislation. Vide: Guide to Sentencing in South Africa p222-223 and case law referred to".*

[14] Furthermore, counsel for the respondent in his written heads referred us to case law where sentences for a long period were imposed for serious crimes. For example, in *S v Nkosi* 1993 (1) SACR 709 (A), a total of 122 years and six months imprisonment was replaced with a sentence of life imprisonment. In *S v Schoeman* 1995 (1) SACR 423 (T) the court remarked that any term of imprisonment shorter than an accused's life expectation could also be a suitable and just sentence. The term of 30 years' imprisonment alone for murder, imposed in that matter on appeal, was not viewed as shockingly inappropriate and the appeal against sentence of 30 years on a charge of murder was dismissed.

[15] On the other hand, in the matter of *S v Mhlakaza & Others* 1997 (1) SACR 515 (SCA) an effective sentence of 47 years' imprisonment on one of the appellants was reduced to 38 years' imprisonment. The effective sentence of the other appellant which was 38 years imprisonment was not interfered with. Having quoted other case law where longer periods of imprisonment were imposed, two further submissions were made as follows on behalf of the respondent:

*"32.*

*The appellant can come into consideration for parole after serving half of his sentence, which is 20 years' imprisonment. At that stage he will be about 49 years old.*

*33.*

*It is submitted that it cannot be said that the trial court committed any irregularity or misdirection during evaluation of the sentence or that the sentence is disturbingly inappropriate".*

[16] Starting with the latter submission it is important to restate the fact that on appeal against sentence, the court of appeal should be guided by the principle that punishment is pre-eminently a matter for the discretion of the trial court and should be careful not erode that discretion[6]. A sentence should only be altered if the discretion has not been judicially and properly exercised. The test is whether the sentence is vitiated by irregularity, misdirection or is so disturbingly inappropriate that it induces a sense of shock.

[17] The trial court during sentencing, in my view considered all relevant factors including the circumstances under which the offences were committed, in particular, with reference to the murder charge. Furthermore, the trial court was also willing to accept the fact that the appellant might have believed in the threats that he would be killed by the deceased, but warned that he had chosen the wrong method and place to address his fears.

[18] In its judgment during sentencing, the trial court expressed itself in Afrikaans as follows:

*"Ander aspek wat ek ook nie buite rekening kan laat nie, is die plek waar die voorval plaasgevind het. Wat die benadering van die gewone mens aanbetref, is die Landdroshof soos die staatsadvokaat direk uitgedruk het; die hart van 'n ordelike samelewing.*

*Ek kan nie daarop verbeter nie. Dit is 'n plek waar die gewone mens moet kan voorsien dat geregtigheid sal plaasvind en nie alleenlik geregtigheid nie, maar dat mense, lede van die publiek ook met gerustheid en veiligheid soontoe kan gaan"*

[19] I tend to agree. Looking at the passage to court 4 where it all happened, one can imagine the pandemonium and the scare that would have been caused to the members of the public. Someone being killed in cold blood during daylight and fired into his body several bullets and walked out of the building with impunity, no doubt, would have brought a chilling effect in the minds of those who had witnessed a movie- like dreadful

[6] See *S v Rabie* 1975 (4) SA 855 (A).

happening. Many of those who were there would have come to court to seek justice. Instead, what they had witnessed must have been the worst injustice of the century to them.

[20] The father of the deceased was there and witnessed everything. The deceased and the appellant were co-accused in a case where they were appearing together on 7 October 1996 at Magistrate's court Pretoria. The case was postponed in the absence of the appellant and a warrant of arrest was authorized. While they were still at court 4, the appellant and other four people approached. They went straight to where the deceased was seated on a bench and in a half circle, stood in front of him. Without saying anything, the appellant took out a firearm and shot at the deceased. He fired the second shot into the body of the deceased. At that stage, the deceased stood up to run away, but fell down. The appellant continued to pump bullets into the deceased's body whilst the deceased was lying on the floor. The appellant came closer to the deceased and shot onto his head. The last bullet was fired at a distance of 40 centimeters. The other person who was with the deceased was also shot at as he tried to run away and this formed the subject of the attempted murder charge.

[21] All of the above would have come as a disappointment not only to those who had witnessed the incident, but also those who might have heard about it. To go straight to where justice is sought and expected to be carried out; and then commit such horrendous crimes, would have brought the administration of justice into disrepute. That should never be allowed to happen, because it can have the potential to make people to take the law into their own hands. The appellant's attitude also displayed the extent to which he had no respect for the rule of law. That of course is in the nature of people who get themselves involved in gangsterism. The only way of regaining the respect and confidence in the criminal justice system in the circumstances of the case, was to impose a harsher sentence as the trial court did.

[22] The other factor which worried the trial court was the meticulous planning in the commission of the offences. The trial court explained it as follows:

> *"Wat my verder hinder in verband met die agtergrond is die klaarblyklike beplanning wat hierdie oortreding vooraf gegaan het en dit is die beplanning en die sluheid waarmee die vuurwapen in die bepaalde omstandighede die landdroskantoor binne gesmokkel is.*

*U het klaarblyklik misbruik gemaak van die feit dat u ysters in u arm gehad het, wetende dat dit op die metaalverklikker opgetel sou word om onder die dekmantel van die ysters in u arm die vuurwapen dan binne te smokkel.*

*Die rede hoekom u op die waarskynlikhede die Landdroskantoor van alle plekke uitgekies het, is omdat dit normaalweg moeilik is om 'n vuurwapen daar in te smokkel en dit sou meebring dat die oorledene dan ongewapen sou wees en na alle waarskynlikheid nie behoorlike weerstand kon bied nie".*

[23] There must have been a good reason for the commission of these offences on this particular day and at this particular place and I think the trial court correctly described the motive behind the whole incident as quoted above. The trial court rejected the version of the appellant that he thought the deceased was just about to shoot when he shot at the deceased. The evidence in my view was overwhelming against the appellant. His disappearance after the shooting was not consistent with a person who believed that he had acted in the defence of his life.

[24] One is inclined to agree with the court *a quo* that the murder of the deceased was pre-mediated and well planned. It was planned in such a way that the deceased would obviously have been unaware that at the door of the court, where both of them were to appear would be used by the appellant as the place to end his life. You need a daring and dangerous person to have such guts and the appellant displayed himself to be that kind of a person.

[25] The appellant belonged to the Bad Boys gang. Any group of people entering into a pact of unlawful activities, with respect, has no place amongst our communities. The trial court put it appropriately this way:

*"Die verdere tragedie is dat hierdie optrede van u nou al toon in watter mate bendes en mense soos u ons ordelike gemeenskap met absolute minagtig bejeën. Om 'n landdroshof van alle plekke uit te kies waar daar talle onskuldige mense is, om hierdie tipe van optrede aan die dag te lê..Dit ek kan nie buite rekening bring nie.*

*... U het 'n ander vorm daarvan toegepas, 'n ander vorm van anargie waar u en lede van 'n bende die Landdroskantoor uitgekies het van alle plekke om hulle geskille in op te los.*

*Die eerste tipe van optrede dat verontregte mense die reg in hulle eie hande neem, lei tot 'n vorm van anargie wat het nie toegelaat kan word nie. Dit sal beteken die einde van ons gemeenskap ...*

*Aan die ander kant as bendes toegelaat word om hulle verskille in 'n Landdroskantoor te begin besleg, toon dit nie alleenlik hulle minagting en gebrek aan respek vir wet en orde nie, maar dan kan ons maar so vining as wat ons kan almal padgee uit hierdie land, want dan gaan daar niks van ons geweenskap oorbly nie".*

[26] It is in the nature of gangsters to harass people and have no respect for the law. When the deeds of gangsters tend to take the upper hand in our society, it must be met with the might of the law through our courts by imposing heavier sentences. Ordinary members of the society must see our courts as the upper guardian of the rule of the law and not criminals. In that way, confidence in the justice system is maintained and the taking of the law into one's hands is diminished.

[27] In the instant case, there was no reason for the appellant to take the law into his own hands. He had reported the deceased to the police. He laid a charge of attempted murder against the deceased. Instead of allowing the wheel of the law to take its course, he decided to be ahead of it and by so doing untimely brought forward deceased's life to its end. That was descending into anarchy and by no means, can it be tolerated and allowed to happen.

[28] The trial court was mindful of the fact that it did not have to overemphasize the nature, magnitude and effect of the crime itself and the circumstances under which the offences were committed as set out earlier in this judgment. It acknowledged the fact that all relevant factors ought to be considered equally, without overemphasizing or less emphasizing the one against the other. For this, the trial court also considered the personal circumstances of the appellant and took note of the fact that when the nature of the offence and interests of society are considered, the accused to a certain extent is still in the background, but when he as a culpable human being is considered, the spotlight must be focused fully on his person in its entirety, with all its facets. As held in *S v Du Toit* 1979 (3) SA 846 (A) at 857H-858B, he is not regarded with a primitive desire of revenge, but with human compassion which demands that extenuating circumstances be investigated. The court *a quo* considered the personal circumstances of the appellant which were put on record as follows: He was young man of about 28 years at the time of his sentencing. He was a first offender who had gone to school up to standard 6. He was unmarried but was having a girlfriend who was five months pregnant at the time of his sentencing. He was working as a mechanical technician earning R450 -00 per week. He was arrested on 8 October 1996 and was in custody for about 11 months at the time

of sentencing. The trial court found all of the above to be mitigating in favour of the appellant.

[29] The trial court also took the view that the fact that the appellant was open with the court throughout the proceedings, that he never disputed the fact that he shot at the deceased and that the appellant had problems with the deceased was something to consider. Insofar as the trial court might have considered this as a mitigating factor in favour of the appellant, I share a different view. The evidence against the appellant was obviously overwhelming. The shooting took place in full view of several people. The deceased's father and the complainant in the attempted murder charge were amongst the many people who had witnessed the deceased being killed in cold blood. Therefore, his admission to the shooting cannot be attributable to the appellant feeling remorseful about what he did. Furthermore, the fact that he had problems with the deceased was no justification to act in the manner he did. He knew exactly what to do. He had already reported the deceased to the police and the deceased was arrested and charged with attempted murder. Instead of allowing the law to take its course, he resorted to self-help. That was aggravating coupled with the planning that accompanied the whole mission to kill the deceased.

[30] It is so that courts have emphasized that justice should be tempered by the element of mercy and the concept of mercy has itself been subjected to a good deal of judicial scrutiny. In *V* 1972 (3) SA 611 (A) at 614D Holmes JA held:

> *"The element of mercy, a hallmark of civilized and enlightened administration, should not be overlooked, lest the court be in danger of reducing itself to the plane of the criminal... The mercy has nothing in common with soft weakness, or maudlin sympathy for the criminal, or permissive tolerance. It is an element of justice itself".*

[31] In considering an element of mercy, one should be guided by a sign of contrition on the part of the accused person. The appellant, whilst acknowledging having killed the deceased, was steadfast that he thought the deceased was pulling out a firearm to shoot at him. He was so persistent despite overwhelming evidence against him. That, in my view, displayed the daring character in him and unwillingness to accept any wrong doing.

[32] In *S v Van der Westhuizen* 1974 (4) SA 61 (C) at 66 E-F, it was held what mercy means in a criminal court is *"that justice must be done, but it must be done with compassion and humility, not by rule of thumb, and that a sentence must be assessed not callously or arbitrarily or vindictively, but with due regard to the weaknesses of human beings and their propensity for succumbing to temptation... But it must also be borne in mind that consideration of mercy must not be allowed to lead to the condonation or minimization of serious crimes".*

[33] What the appellant did was not just succumbing to temptation, but was also a clear dishonesty and show of force knowing very well that the deceased in all probabilities was unarmed as he would not have passed through the security check-out point without a weapon or firearm being detected, unlike the appellant who managed to fool the security guards into believing that what activated the detector was not a firearm. That was the kind of a person the trial court had to deal with. Sentencing the appellant to 40 years' imprisonment on the murder charge, taking into account the applicable case law at the time; and also considering the fact that the prescribed minimum sentence in terms of Act 105 of 1997 was not in place at the time, cannot be viewed as inducing a sense of shock, inappropriate or amounting to improper exercise of discretion.

[34] The purpose of sentencing is not to satisfy or meet public opinion, but to serve and promote the public interest, and in my view, to promote confidence in the criminal justice system[7]. Public interest must be an ever present concern[8]. The trial court in imposing the sentences as it did, also considered this factor acknowledging that the society needs protection. In *S v Mkhize*1973 (3) SA 284 Miller J stated:

> *"While the public is entitled to protection against any one individual, one cannot sacrifice the individual entirely in offering that protection to it. I think the most the court can do consistently with justice is to protect the public for as long a period as seems commensurate with the accused's deserts".*

[35] I am unable to find that the trial court in sentencing the appellant to 40 years' imprisonment on the murder charge did not consistently with justice, seek 'to protect the public for as long a period as seems commensurate with the appellant's deserts'. Punishment serves the public interests by discouraging a repetition of the offence by the

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[7] See *S v Mhlakaza & Another* 1997 (1) SACR 515 (SCA) at 518 e-f.
[8] See *S v SM* 2013 (2) SACR 111 (SCA) at para 56.

offender and the perpetration of similar offences by others. In the present case, both the deceased and the appellant were members of Bad Boys gang. They had followers or co-gangsters in pursuit of common criminal activities. It became necessary thereto to discourage those other members of the gang who were with the appellant or working with the appellant including those who associated themselves with the deceased that crime does not pay. Imposing a sentence of 40 years' imprisonment cannot be said to have gone beyond proper judicial exercise of discretion. The appeal should therefore fail.

[36] The court *a quo* also made a recommendation as follows:

> *"Dit word verder aanbeveel dat u 'n periode van mistens 30 jaar gevangenisstraf moet uitdien alvorens u vir parool oorweeg word ..."*

[37] In *Zono v The State* 20182/2014 [2014] ZA SCA 188 (27 November 2014), Theron JA stated:

> *"[3] The fixing of a non-parole period constitutes an increase in the penalty imposed on a convicted person, and thus cannot operate retrospectively. The penalty to which the convicted person is subject is that applicable at the time of the commission of the relevant crime, and not the date of either conviction or sentence. This was confirmed by this court in Mchunu v the State where Willis JA held:*
>
> *'As has been emphasized in R v Mazibuko, it is an ancient, well-established principle of our common law that the liability for a penalty arises when the crime is committed and not when a person is either convicted or sentenced. An increase in penalty (which the fixing of a non-parole period is) will, therefore, ordinarily not operate retrospectively in circumstances where that additional burden did not apply at the time when the offence was committed ... The crimes in question were committed before the coming into operation of s 276B of the Act. There are no special circumstances, recognized in our law, which would permit a departure from the general principle that sets its face against the retrospective operation of a penalty. The order of the court below fixing a period of time before the appellants may be released on parole was therefore incorrectly made'.*

[38] Just as in *Zono supra*, the offences in the present case were committed when there was no legislative provision for a court to stipulate a non-parole period. The parole was within the discretion of the executive in terms of sections 22A and 65 of the

Correctional Services Act 9 of 1959. In terms of section 22A a prisoner may earn credits amounting to no more than half of the period of imprisonment. On the other hand, in terms of section 65(4)(a) a prisoner serving a determinate sentence shall not be considered for parole until he or she has served half of the term of the imprisonment and that the date for consideration of parole can be brought forward by the number of credits earned.

[39] In the present case, the appellant will be completing half of his 40 years imprisonment in 2017. The recommendation for non-parole period before the appellant had served 30 years imprisonment, could present a problem or uncertainty to the prison authority which might feel obliged to consider the appellant's release on parole only in 2027 when the appellant shall have served 30 years of his term of imprisonment.

[40] The Supreme Court of Appeal criticized the imposition of non-parole periods. This appears to have caused the legislature to enact section 276B of the Criminal Procedure Act 51 of 1997 which deals with the power of a court to determine a non-parole period. The section became operative on 1 October 2004. The offences in the present case were therefore committed before the section became operative. Theron JA in paragraph [6] of *Zono's* case *supra* held:

> *"[6] In my view the effect of the recent judgment of this court in Mchunu above, renders any attempts to stipulate a non-parole period in a matter involving a crime committed prior to the coming into operation of s 276B, impermissible. In the absence of legislative authority to do so, it appears that courts that sought to impose such a non-parole period, as both the sentencing court and the full court in this matter did, misdirected themselves. In the circumstances this court is obliged to set aside that imposition of a non-parole period".*

[41] The court *a quo* seems to have accepted that the imposition of non-parole period must sparingly be resorted to. The acknowledgement of this seems to have been founded on the fact that the officials of Correctional Services Department are better placed to decide when a particular prisoner must be placed on parole. In its recommendation for non-parole period the trial court stated:

> *"Die diskresie berus nog aan die einde van die dag by die Departement van Korrektiewe Dienste".*

This comment in my view did not do away with the recommendation which the court *a quo* made. The 30 years non-parole period recommendation stands. The period is just too long and has the potential to interfere with the Department's discretion to integrate much earlier into the community a well behaved prisoner. As I said earlier, the recommendation for non-parole period was unnecessary and could present a problem if allowed to stand.

[42] As far as the other sentences are concerned the appellant was sentenced to 10 years' imprisonment on the attempted murder charge, 3 and 1 years' imprisonment on the unlawful possession of a firearm and ammunitions respectively. The complainant in the attempted murder charge was shot three times as he tried to run away from the appellant at the time the appellant started shooting. The one bullet which got stuck underneath his right knee was taken out at the hospital. He was also shot on his left toe and the one piece of the bullet remained stuck therein. The other bullet hit him behind his left leg. The bullet remained stuck on his leg and could not be taken out except if his leg was to be cut. Having regard to all of this, 10 years' imprisonment imposed on the appellant regarding the attempted murder charge cannot be said to induce a sense of shock. I do not think there is much to be said regarding the 3 years and the 1 year imprisonment for unlawful possession of firearm and ammunitions respectively. The cumulative effect of these sentences was minimized by the order to have the sentences run concurrently with the 40 years' imprisonment on the murder charge. There is no reason to interfere with this order.

[43] Consequently an order is hereby made as follows:

43.1 The appeal against sentence imposed on the appellant in respect of all the charges is hereby dismissed.

43.2 The recommendation for non-parole period of 30 years is hereby set aside and the appellant is entitled to be considered for parole in accordance with applicable legislative frame work.

43.3 The order for the sentences on the attempted murder charge, unlawful possession of fire arm and ammunitions to run concurrently with the 40

years' imprisonment on the murder charge is hereby confirmed and the sentence is antedated to 27 September 1997 being the date on which the appellant was sentenced and started serving his sentence.

PP LEDWABA DJP

**M F LEGODI**
**JUDGE OF THE HIGH COURT**

**I agree**

**W R C PRINSLOO**

**I agree**

**T J RAULINGA**

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