delivered 19/3/18

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: A467/2017

Date:

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

16/3/2018 .....
DATE SIGNATURE

In the matter between:

SILAS MATHEE MOSEHLA

APPELLANT

And

THE STATE

RESPONDENT

JUDGMENT

PRETORIUS J.

(1) This is an appeal against sentence imposed by Kgomo J on 13 May

2010. Leave to appeal was granted by the court *a quo* on 18 November 2016 as follows:

> *"1. Leave to appeal the conviction is refused;*
>
> *2. Leave to appeal the sentence is granted especially to determine whether the additional 12 years should not be served concurrently with the life sentence imposed."*

INTRODUCTION:

(2) The appellant was arraigned in the High Court in Middelburg on one count of murder, one count of housebreaking with the intent to rob and robbery with aggravating circumstances, one count of unlawful possession of a firearm in contravention of Section 3 of Act 60 of 2000 and one count of unlawful possession of ammunition in contravention of Section 90 of Act 60 of 2000. The appellant was the second accused in the court *a quo* and was convicted on 13 May 2010.

(3) The appellant was sentenced to life imprisonment on count 1, twelve years' imprisonment on count 2, five years' imprisonment on count 3 and one year's imprisonment on count 4. The sentences on count 3 and 4 were ordered to run concurrently with the sentence on count 1. The appellant was declared unfit to possess a firearm.

(4) The appellant was legally represented throughout the proceedings.

BACKGROUND:

(5) The evidence in the court *a quo* was that on 11 January 2007 the appellant, and his co-accused, together with the witness Mr Mosehla, who was a witness in terms of Section 204 of Act 51 of 1977, went to a farm at Roossenekal, which had an electrified perimeter fence. They breached the fence by removing a big rock and crawled underneath the fence. They reached the farm house. A crowbar, which they had brought along, was used to open the locked door of the farm house. At the time they left home the second accused, the present appellant, was armed with a handgun.

(6) According to the deceased's wife, Mrs Breedt, who was 80 years old when testifying, she and her husband were having lunch under a tree between 12h00 and 13h00 on 11 January 2007 when they saw two men walking along the perimeter fence. After lunch they went into the house and she locked the front door and went to the bedroom. She saw the one man she had seen earlier walking outside the perimeter fence, in the house. He grabbed her, pushed her against the wall and told her to shut up. The deceased came to her, enquiring what was wrong. She saw behind the deceased, the other man she had seen walking previously, with an iron bar in his hand. He hit the deceased on the head with the iron bar. The deceased fell down and was hit once more with the iron bar. The whole time the perpetrators were

screaming at her and the deceased "where is the money?" She handed the safe keys to the perpetrators. They removed three rifles, as well as a revolver and money, knives and other valuables from the safe. The deceased was tied onto a chair with telephone cables and a piece of curtain was stuffed into his mouth and he was left in the bathroom. She suffered a similar fate in the kitchen, where she was tied to a chair. Both men went back into the bathroom, where her husband was. She heard them threatening him again, asking once more for money and then she heard a gunshot. They came to her and told her that they had shot her husband. She heard them removing items from the house and loading it onto the Nissan bakkie, after she had told them to use the Nissan bakkie, as they could not get the other bakkie to start.

(7) After some time she cut herself loose, when realising that the perpetrators had left. She took a blanket and ran out of the house at approximately 21h30. She sat under a tree until the next morning when she was rescued by the farmworkers. She never returned to the farm.

(8) The court *a quo* dealt with all the evidence and found that through the doctrine of common purpose both the appellant and his co-accused were guilty as set out above.

SENTENCE:

(9) The court *a quo* dealt with the sentencing and found that the appellant had been convicted of extremely serious crimes. The commission of the crimes were premeditated as the appellant and his co-accused had travelled from Ga Mogashoa to Roossenekal to execute their plan, armed with a crowbar and a revolver. The court *a quo* found that the appellant and his co-accused had chosen very old people, aged 78 and 80 years respectively, as their victims. The court found their actions to be cruel and inhuman.

(10) According to the appellant's counsel the court *a quo* misdirected itself in finding that the murder of the deceased was premeditated. Mrs Breedt's evidence was that the appellant and his co-accused were armed. Her evidence was that she and the deceased had been threatened throughout by the appellant and his co-accused that they would be killed if they did not provide the money. There was no reason to kill the deceased, as he had been tied to a chair and had been prevented from screaming by stuffing a piece of curtain into his mouth. This court cannot find that the court *a quo* was wrong in finding that the murder was premeditated and committed in cold blood. The facts speak for themselves.

(11) The appellant did not testify in mitigation of sentence and the court

found that the appellant showed no remorse at all. See **S v Matyityi**[1] where Ponnan JA found:

> *"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."*

(12) In the present instance the finding by Nugent JA in **S v Swart**[2] is apposite:

> *"What appears from those cases is that in our law retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be*

[1] 2011(1) SACR 40 (SCA) at paragraph 13
[2] 2004(2) SACR 370 (SCA) at 378

accorded to each according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role."

(13) In **S v Vilakazi**[3] Nugent JA held:

"In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of 'flimsy' grounds that Malgas said should be avoided."

(14) In the present appeal there were numerous aggravating circumstances which justified the imposition of a life sentence. The court *a quo* had dealt with all the mitigating and aggravating facts and there was no misdirection by the court when imposing a life sentence.

(15) Section 39(2) of the **Correctional Services Act**[4] provides:

---

[3] 2009(1) SACR 552 (SCA) at paragraph 58

"(2) (a) Subject to the provisions of paragraph (b), a person who receives more than one sentence of incarceration or receives additional sentences while serving a term of incarceration, must serve each such sentence, the one after the expiration, setting aside or remission of the other, in such order as the National Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs that such sentences shall run concurrently but-

(i) any determinate sentence of incarceration to be served by any person runs concurrently with a life sentence or with sentence of incarceration to be served by such person in consequence of being declared an habitual criminal or a dangerous criminal;"

(16) In **S v Mashava**[5] it was held:

"The provision is clear. Any determinate sentence of incarceration, imposed in addition to life imprisonment, is subsumed by the latter. This is logical and practical. A person only has one life and a sentence of life imprisonment is the ultimate penal provision. Section 39(2)(ii) provides for more than one life sentence imposed on a person also to run concurrently. The effect of section 39(2)(a)(i) is that the order by the court below, that the sentence are not ordered to run

---

[4] Act 111 of 1998
[5] 2014(1) SACR 541 (SCA) at paragraph 7

concurrently, is liable to be set aside."

(17) It is thus clear that the sentences on counts 2, 3 and 4 will automatically run concurrently with the sentence of life imprisonment.

(18) In the result the following order is made:

1. The appeal against sentence succeeds as follows:

1.1 The sentences on counts 1, 3 and 4 are confirmed;

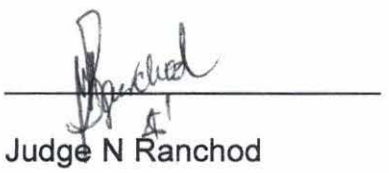
1.2 The sentence on count 2 is confirmed, but it is ordered that it will run concurrently with the sentence of life imprisonment imposed on the appellant.

Judge C Pretorius

I agree.

Judge J Raulinga

I agree.



Judge N Ranchod

Case number	: A467/2017
Matter heard on	: 2 March 2018
For the Appellant	: Adv JL Kgokane
Instructed by	: Legal Aid South Africa
For the Respondent	: Adv CP Harmzen
Instructed by	: Director of Public Prosecutions
Date of Judgment	: