

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO: KS 21/2024

In the matter between:

THE STATE

and

MABOITSHEGE, BUTIKI SIMON

Accused

Neutral citation: *The State v BS Maboitshege (KS21/2024)*

Coram: Groenewaldt AJ

Date of Judgment: 08 September 2025

Summary: Charge – Murder. Found guilty on 03 September 2025. Factors considered – personal circumstances of accused, the crime itself *S v Zinn* 1969 (2) SA 537(A)); mercy and application thereof (*S v Rabie* 1975 (4) SA (A) at 866A-C); *locus classicus* (*S v Malgas* 2001 (1) SACR 469 (SCA)); Life imprisonment (*S v Weideman* [2014] ZAECPEHC 62). Sentence – 20 (twenty) years imprisonment.

ORDER

1. The accused, BUTIKI SIMON MABOITSHEGE, is hereby sentenced to **20 (TWENTY) YEARS IMPRISONMENT** in respect of the charge of murder that he has been found guilty on.

JUDGMENT ON SENTENCING

- [1] On 03 September 2025, the accused was found guilty on the charge of murder, read with the provisions of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("**CLAA**") as amended. The accused now stands to be sentenced on the said conviction.
- [2] Sentencing is an onerous and complexed judicial exercise. There is no rule of thumb approach when it comes to the imposition of an appropriate sentence.
- [3] However, our case law has provided a blueprint for sentencing in **S v Zinn** 1969(2) SA 537(A) to what has become known as the triad, being the personal circumstances of the accused, the crime itself and the interests of society.
- [4] A further consideration is also whether the sentence to be imposed should be blended with a measure of mercy. In **S v Rabie** 1975 (4) SA (A) at 866A-C the extent to which mercy is appropriate has been dealt with. In respect of "mercy" being a consideration and the application thereof, the views of Corbett JA (as he then was) in the aforesaid case were set out as follows:

“A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive after severity, nor on the other hand surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality. It is in the context of this attitude of mind that I see mercy as an element in the determination of the appropriate punishment in the light of all the circumstances of the particular case.”

[5] In terms of the CLAA, the prescribed minimum sentences must be applied unless the Court finds substantial and compelling circumstances to depart from the prescribed minimum sentence as contemplated by Section 51(1) of the CLAA. What would constitute substantial and compelling circumstances would depend on the facts of each case.

[6] The *locus classicus* in relation to what constitutes substantial and compelling circumstances, is to be found in **S v Malgas** 2001(1) SACR 469 (SCA) as set out at paragraph 25 which I will quote as follows:

“[25] What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the legislature’s view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed. In summary –

A Section 51 has limited but not eliminated the courts’ discretion in imposing sentence in respect of offences referred to in Part 1 of Schedule 2 (or

imprisonment for other specified periods for offences listed in other parts of Schedule 2).

- B 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 the specified circumstances.*
- C Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.*
- D The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.*
- E The legislature has however deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean that all other considerations are to be ignored.*
- F All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in the sentencing process.*

- G The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ("substantial and compelling") and must be such as cumulatively justify a departure from the standardised response that the legislature has ordained.*
- H In applying the statutory provisions, it is inappropriately constricting to use the concepts developed in dealing with appeals against sentence as the sole criterion.*
- I If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.*
- J In so doing, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the bench mark which the legislature has provided."*

PERSONAL CIRCUMSTANCES OF THE ACCUSED:

- [7] The accused's personal circumstances were placed before the Court on an *ex parte* basis by his legal representative. He is 41 years of age, unmarried and had fathered one minor child, (aged 3 at the time the crime was committed), with the deceased. He dropped out of school after completing Grade 6 due to financial constraints. He is one of seven children. His mother was unemployed and his father a gardener. Only three of the accused's siblings completed school and the rest did casual work to support their parents.

- [8] Prior to his arrest in this matter, he was employed as a builder and earned approximately R6 000.00 per month, which salary was utilised to maintain the deceased and their minor child. He also maintained his parental home though there is no legal duty on him to do so.
- [9] He has a previous conviction for possession of drugs (dagga) for which he paid an admission of guilt fine of R100.00 without going on trial in 2008.

THE CRIME:

- [10] It is ironic that the deceased was trialled during the month that our nation celebrates women's month. Every year, in August, South Africa celebrates women's month to pay tribute to the more than 20 000 women who marched to the Union Buildings on 9 August 1956 in protest against the oppressive apartheid Pass Laws to women. Our society have always acknowledged the importance of women and the significant role they play. The CLAA was enacted for, amongst others, to introduce harsher sentences in instances where domestic violence victims, which are mostly females, are murdered.
- [11] This highlights the seriousness with which the legislature views the lives of women. Women are regarded as a vulnerable group in our society due to the scourge of gender-based violence. For this reason, the CLAA was modified to prescribe the minimum sentence of life imprisonment.
- [12] Violence against anyone, is a constitutional violation of the right to freedom and security of the person, which includes the right to be free from all forms of violence, be it from public or private sources. Excessive force was applied to the deceased and she sustained multiple injuries in the most inhumane fashion imaginable. The sanction to be imposed should also fit the severity of the crime. As a nation we cannot celebrate women by treating them as disenfranchised persons by imposing sentences that undervalue their existence.

INTERESTS OF SOCIETY:

- [13] The State called **Aletta Swartz** ("**Swartz**") to give evidence on the impact the death of the deceased had on her family and also on the Warrenton community.
- [14] Swartz testified that the deceased was her niece. The deceased was unemployed, had four children and the lastborn, now aged 4, were born between her and the accused. The youngest is a boy who resides with her sister's child, named Celeste Swartz. The said individual receives a grant for the youngest child. The other three children are living with their father's sister as the father passed on about five years ago. The aunt also receives a grant for them.
- [15] She testified that the death of the deceased affected the family negatively and they are struggling to come to terms with her death. The death of the deceased has affected the children to such an extent that when they come to visit, they cry a lot. It has also affected their schooling, especially the eldest child. The death has further impacted the community where the deceased comes from. According to Swartz, the community had expressed their dislike for what had happened to the deceased.
- [16] The youngest child's last recollection of his mother is that of a police van. When the boy sees a police van, he would say that his mother is in that vehicle. According to Swartz, the accused have never apologised for the death nor has he expressed emotion regarding her death. This was the only *viva voce* evidence presented.
- [17] The conduct of the accused has also violated the aforesaid children's constitutional rights enshrined in Section 28 of the Constitution of the Republic of South Africa, Act 108 of 1996. Section 28(1)(b) reads as follows:

"28(1) Every child has the right to –

(b) *family care or parental care, or to appropriate alternative care when removed from the family environment".*

[18] The accused has taken away the very fundamentals or essence of being a child, which is to receive parental care from his/her parent. The damage done is immeasurable and it has left a void that no sanction can fill.

[19] As Courts operate within society, it is expected of Courts to express its dissatisfaction with serious offences through its sentences, which in turn will act as a deterrent for potential wrongdoers.

ANALYSIS:

[20] Although life imprisonment is described as the minimum sentence, there is not a heavier sentence that a Court can impose in our country. Life imprisonment is the most severe sentence and should be reserved for the most serious of criminal acts. Goosen J penned it eloquently in **S v Weideman** [2014] ZACPEHC 62 which reads as follows:

"Life imprisonment is the most severe sentence that can be imposed by a court. For this reason, it is, generally speaking, reserved for the most serious and egregious criminal acts. It is also reserved for those instances where the criminal poses a clear and present danger to the society and where there is little or no prospect of rehabilitation of the criminal and reintegration of that individual into society. This does not however mean that a court should keep something in reserve on the basis that some more serious manifestation of the crime can be imagined. It means only that the sentence of life imprisonment must be proportionate to the nature of crime for which it is imposed."

[21] The accused is, for all intents and purposes, a first offender having fallen foul of the law only once previously by paying an admission of guilt fine for possession

of dagga more than 17 years ago. His criminal record is indicative of the fact that he is a candidate for rehabilitation which does not mean that he should not be removed from society for a considerable period.

- [22] From the diction used by the accused and the behaviour of the deceased in terms of the evidence led, it appears that an emotionally charged atmosphere prevailed between the aforesaid parties. In addition, the murder was not pre-planned.
- [23] In **S v Jacobus Pitso** KS7/2025, a Northern Cape Division ruling at paragraph 37, Lever J took the abovementioned circumstances into consideration as justification to deviate from the prescribed minimum sentence of life imprisonment. Each case should however be decided on its unique set of facts.
- [24] The evidence in the trial points to the deceased as the aggressor that evening at a tavern before the incident occurred. It cannot be contested that provocation played a role in the commission of the offence, and should be considered as a mitigatory factor in favour of the accused.
- [25] Alcohol also played a role in the commission of the offence, even though the evidence is that it did not affect the faculties of the accused. This, together with the fact that the crime was a spur of the moment event, I find as favourable circumstances in favour of the accused.
- [26] Given the circumstances, a lengthy imprisonment is the only appropriate sentence. I have accepted that the accused has committed a spur of the moment act for which he is not remorseful. The offence he committed is by its nature extremely serious and involved gender-based violence.
- [27] Mr Steynberg, on behalf of the accused, argued that life imprisonment is an extreme sentence and should not be imposed lightly. He quoted Section 73(1)(b)

of the **CORRECTIONAL SERVICES ACT** 111 of 1998, which provides the following:

"An offender sentenced to life incarceration remains in a correctional centre for the rest of his or her life."

He further submitted that the fact that an accused can be released on parole at some stage prior to his death should not be a determining factor when a sanction is meted out. I am in agreement with these submissions and find it legally sound.

[28] Balancing the various considerations, and bearing in mind the period of nearly 19 months that the accused has already spent in custody, I am of the view that life imprisonment is an inappropriate sentence and that it would be unjust to impose such a sentence.

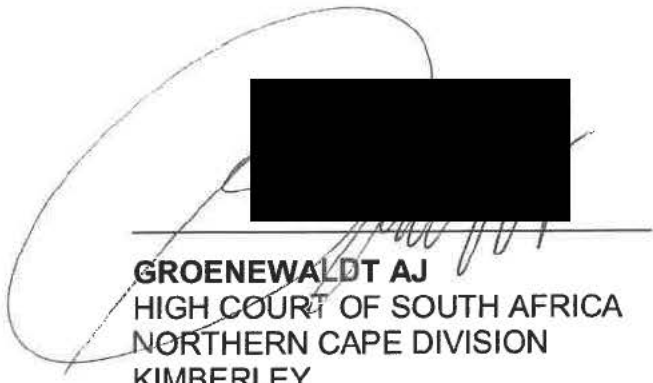
[29] I find in the light of what is contained herein, that there are substantial and compelling reasons to divert from the statutorily prescribed minimum sentence of life imprisonment.

[30] This Court also has a duty in terms of Section 299A of the **CRIMINAL PROCEDURE ACT** 51 of 1977 to inform any immediate relative of the deceased that he/she has a right, subject to the directives issued by the Commissioner of Correctional Services under subsection (4), to make representations when placement of the accused on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board.

[31] The following sentence is imposed:

1. **THE ACCUSED, BUTIKI SIMON MABOITSHEGE, IS HEREBY SENTENCED TO 20 (TWENTY) YEARS IMPRISONMENT IN**

RESPECT OF THE CHARGE OF MURDER THAT HE HAS BEEN
FOUND GUILTY ON.



GROENEWALDT AJ
HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION
KIMBERLEY

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