Reportable:	**NO**
Circulate to Judges:	**NO**
Circulate to Magistrates:	**NO**
Circulate to Regional Magistrates:	**NO**

IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION - MAHIKENG

CASE NO: CA18/25

REGIONAL COURT CASE: RC 41/15

In the matter between:

RETSHEPAONE GLADWIN KEPI **APPELLANT**

and

THE STATE **RESPONDENT**

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is ***6 October 2025*** *at* ***10h00****.*

ORDER

The appeal against conviction and sentence is dismissed.

JUDGMENT

REDDY J

Introduction

[1] The appellant was charged before the Regional Court Taung, (the court a quo) with count: 1 Murder read with section 51(1) of the Criminal Law Amendment Act 105 of 1997, (the CLAA) and count: 2 Assault with intent to do grievous bodily harm.

[2] On 10 February 2025, the appellant was found guilty on both counts. On even date he was sentenced as follows count 1: life imprisonment and count 2: three (3) years imprisonment. The court a quo declared the appellant ex lege unfit to possess a firearm in terms of the provisions of section 103(1) of the Firearms Control Act 60 of 2000. Additionally, it was ordered that the sentences run concurrently in terms of the provisions of s280 (2) of the Criminal Procedure Act 51 of 1977, (the CPA).

[3] The appellant now assails his conviction only on the count of murder and sentence founded on his automatic right of appeal in terms of s 309(1) (a) of the CPA.

[4] The appellant pleaded not guilty and made a lengthy statement in terms of the provisions of s115 of the CPA. which contained several admissions. It reads as follows:

' I admit that on 28th day of January 2024, I was at Mophoitsile Village which falls within the jurisdiction of this court. I admit that I met up with two of my friends namely Peo or Olebogeng Kepi and Tumelo Motse in the road. I was from my house going to buy cigarettes at the tuck shop. That is when Tumelo said we must go to my uncle's house, who is the deceased, to go and ask for a car.

We then walked to his house and entered the gate. Olebogeng then stayed at the gate while we entered the house through the door which was not closed.

I admit that, that when we were on our way to the deceased's room, we met up with the deceased son who fled after he saw us through the window. I admit that by then I was in possession with a knife, and I pushed open the door to the deceased's bedroom and found himself preparing for bed.

I admit that I asked for the keys to the car and he responded by asking: 'What car?' The deceased then charged at me and Tumelo told me to stab him and I admit then I stabbed the deceased's four times with a knife. After I stabbed the deceased with the knife, I saw Tumelo running away and I ran after him.

I admit that I ran to my house where I was later arrested by the police. I can confirm that I unlawfully stabbed the deceased with a knife because the deceased did not have any weapon in his possession and my life was never in danger.

I admit that I stabbed the deceased four times, but it was never my intention to kill the deceased. I only stabbed the deceased because Tumelo told me to stab the deceased.

I further confirm that the post-mortem is true and correct when it stipulates that the cause of death is sepsis secondary to penetrating and incised wound to the chest and abdomen.

……..'

[5] The material facts are these. Thabang Motse (Tumelo), confirmed that the day in issue he was in the company of the appellant and Olebogeng Kepi, (Olebogeng). The appellant indicated to Tumelo that he had borrowed a motor vehicle from the deceased who was the appellant's uncle. The appellant suggested that they should go to fetch it. The purpose of fetching the motor vehicle was to use it to travel to places of entertainment in Magogong. Olebogeng out of his own volition waited at the gate of the deceased's home.

[6] Tumelo and the appellant proceeded into the home of the deceased. The appellant with the aid of a knife chased Mojalefa the deceased's child. This caused Mojalefa to escape from the house through the bedroom window of his sister. Tumelo questioned the appellant about his conduct considering that the appellant had disclosed that he had borrowed the deceased's motor vehicle. The appellant did not respond, instead the appellant kicked the bedroom door in which the deceased was in.

[7] The appellant entered whilst the deceased was preparing for bed and requested that deceased should give him the keys. The deceased retorted, "whose keys?" The appellant then caused the deceased to fall. Pinning him to the ground, the appellant began stabbing the deceased. Tumelo then enquired from the appellant as to why he had stabbed the deceased in view of the arrangement that he had to borrow the deceased's motor vehicle. The appellant reacted by wanting to stab Tumelo. Tumelo then fled. The following day, the appellant threatened to shoot him if spoke about ' his issues'.

[8] The appellant challenges the conviction on the sole ground that the court a quo had erred in finding that the murder was planned or premediated.

[9] It is well established that a court of appeal will not overturn a trial court's findings on facts unless they are shown to be vitiated by material misdirection or are shown by the record to be wrong[1] . To my mind, I cannot find that the court a quo misdirected itself. The evidence demonstrates beyond reasonable doubt that the appellant unlawfully and intentionally stabbed the deceased to death [2]. The factual matrix when

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1 *S v Francis* 1991 (1) SACR 198 (A) at 204 C-E.
2 *Rex vs Ndhlovu* 1945 AD 369- 373.

viewed conjunctively with the injuries the deceased sustained demonstrates that the appellant had the direct intention to kill the deceased.[3]

[10] I now turn to the question of whether the murder of the deceased was premeditated. Premeditation is a critical jurisdictional requirement which demonstrates the distinction between murder as contemplated under section 51(2) and premeditated murder under section 51(1) of the CLAA, which carries a mandatory sentence of life imprisonment. Drawing this distinction Cameron JA (as he then was) in *S v Legoa*[4] pronounced that:

> 'The 1997 minimum sentencing legislation requires for its application that an accused must have been 'convicted of an offence referred to' in the Schedule. In this case the offence 'referred to' in the Schedule is that of dealing in a dangerous dependence-producing substance '*if it is proved that – (a) the value of the dependence-producing substance in question is more than R50 000,00*'. The question is whether the High Court's conclusion that the value of the substance in question relates solely to the question of sentence and is irrelevant before conviction, is correct.
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> In my view, for three principal reasons it is not. First, the High Court's conclusion flies in the face of the wording of the 1997 statute. That wording in my view clearly indicates that for the minimum sentencing jurisdiction to exist in respect of an offence, the accused's conviction must encompass all the elements of the offence set out in the Schedule. (This does not apply when the Schedule specifies an attribute not of the offence, but of the accused, such as rape when committed 'by a person who has been convicted of two or more offences of rape but has not yet been sentenced in respect of such convictions'). Second, even if the wording of the statute was open to more than one interpretation (which in my view it is not), the grave injustice that the contrary

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[3] *Director of Public Prosecutions, Gauteng v Pistorius* 2016 (2) SA 317 (SCA) para 25.

[4] (33/2002) [2002] ZASCA 122; [2002] 4 All SA 373 (SCA); 2003 (1) SACR 13 (SCA) (26 September 2002), paras 13-14.

interpretation can cause, compels the conclusion that the elements of the offence must be established before conviction. Third, the High Court's conclusion is contrary to established principles and practice in our criminal trial courts.'

[11] Evidence is the litmus test for the consideration of the existence of premeditation. It is incumbent on the respondent to prove that there exists premeditation. In short, it is for the trial court to determine the state of mind of the perpetrator prior to the commission of the offence. Premeditation is defined as something done deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success, or to evade detection or apprehension[5] . Only an examination of all the circumstances surrounding any murder, including not least the accused's state of mind, will allow one to arrive at a conclusion as to whether a particular murder is premeditated.

[12] In *S v Raath*[6] , the court underscored that when assessing the accused's state of mind at the time of the killings, a subjective test is applied. This approach necessitates that the trier of fact assesses the accused's personal feelings, experiences, and perceptions, rather than applying a wholly neutral or objective standard. In this regard, in *S v Mini*[7] the following was postulated:

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5 *S v PM* 2014 (2) SACR 481 (GP) para 36.

6 2009 (2) SACR 46 (C), *Raath* was quoted with approval by the Supreme Court of Appeal in *Kekana v The State* (629/2013) [2014] ZASCA 158.

7 1963 (3) SA 188 (A) at 196E, See also *S v Ferreira and Others* [2004] ZASCA 29; [2004] 4 All SA 373 (SCA) para 33.

'In attempting to decide by inferential reasoning the state of mind of a particular accused at a particular time, it seems to me that a trier of fact should try mentally to project himself into the position of that accused at that time'.

[13] In *S v Dlodlo*,[8] the following the factors are intrusive in determining an accused's state of mind for the purposes of intent:

The subjective state of mind of an accused person at the time of the infliction of a fatal injury is not ordinarily capable of direct proof, and can normally only be inferred from all the circumstances leading up to and surrounding the infliction of that injury. Where, however, the accused's subjective state of mind at the relevant time is sought to be proved by inference, the inference sought to be drawn must be consistent with all the proved facts, and the proved facts should be such that they exclude every other reasonable inference save the one sought to be drawn. If they do not exclude every other reasonable inference, then there must be a reasonable doubt whether the inference sought to be drawn is the correct one.'

[14] In *Kekana* [9], the court held that:

'In summary therefore, it was for the appellant to lay a factual foundation for a conclusion that the murders were not premeditated, and the issue was one for the trial court to decide. In coming to a decision, the court would have had regard to all the circumstances of the murders, including the appellant's actions during the relevant period.'

[15] This court is mindful of what the court said in *Baloyi v S*[10] regarding the fact that 'not in every instance, that an accused is armed with a weapon,

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8 1966 (2) SA 401 (AD) at 405G-H.

9 [2018] ZASCA 148; 2019 (1) SACR 1 (SCA).

10 2022[ZASCA] 35 at 13

will it be an indication of premeditation'. Not only is it of outmost importance to examine the accused's state of mind at the time of the commission of the offence but also all the factual evidence surrounding the circumstances leading up to the commission of the offence in question.

[16] It is to this enquiry I move focus to. In so far as the subjective mind of the appellant is concerned, the appellant denied that he had any intention to stab the deceased. Conclusively, the factual evidence dispels same. The appellant proceeded to the home of the deceased armed with a knife. The prospect of using the knife would have undoubtedly occupied his mind. On arrival, he brandished this knife at Mojalefa ensuring that Mojalefa exited the home. The appellant was untruthful about a prior arrangement that he had with the deceased regarding the use of his motor vehicle. This is reinforced by the request for the deceased keys when the appellant confronted him. It is this factual evidence that evinces the accused state of mind prior to and as a build up to the point of the commission of the offence.

[17] The deceased rebuffed any suggestion regarding the handing over of his motor vehicle keys. The appellant pinned the deceased to the ground and stabbed the deceased not once but four times. These unassailable facts attest to nothing but a person with the foregoing premeditation set out to bring about the death of the deceased. Nothing in the appellant's actions speaks to the stabbing in the spur of the moment. Resultantly, the factual finding of the court a quo was correct. It follows that the appeal against conviction must fail.

[18] It is trite that sentencing is pre-eminently a matter for the discretion of the trial court and that an appellate court should only alter a sentence if that discretion has not been judicially and properly exercised, namely where the sentence is vitiated by irregularity, misdirection or is disturbingly inappropriate.[11]

[19] In *S v Malgas*[12] the following approach was postulated:

> "The mental process in which courts engage when considering questions of sentence depends upon the task at hand. Subject of course to any limitations imposed by legislation or binding judicial precedent, a trial court will consider the particular circumstances of the case in the light of the well-known triad of factors relevant to sentence and impose what it considers to be a just and appropriate sentence. A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate court is at large. However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate". It must be emphasised that in the latter situation the appellate court is not at large in the sense in which it is at large in the former. In the latter situation it may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may do so only where the difference is so substantial that

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[11] *S v Holder* 1979 (2) SA 70 (A) at 75A.
[12] 2001 (2) SA 1222 (SCA) at para 12.

it attracts epithets of the kind I have mentioned. No such limitation exists in the former situation."

[20] The court a *quo* found that there were no substantial and compelling circumstances to justify a departure from the prescribed sentence of life imprisonment. Notwithstanding the demanding duty that a sentencing court is seized with, the exercising of a sentencing discretion is aimed at the attainment of a balance. The balance is directed at three central factors namely, the crime, the offender and the interests of the community[13].

[21] The appellant's heads of arguments did not present any significant challenge to the mandatory sentence imposed, save to retell that the cumulative personal circumstances of the appellant at the time the sentences were not considered. Tangentially, no factors were identified with specificity to suggest that the court a quo committed a misdirection.

[22] It is trite that each matter must be adjudicated on its own particularities and exigencies. In casu, the appellant stabbed his sixty-eight-year-old relative in the sanctity of his bedroom. The appellant showed no remorse for his actions and sought to cloud the facts by attempting to divorce himself from his unlawful conduct by blaming Tumelo. Moreover, the appellant attempted to unlawfully dispossess the deceased of his motor vehicle to use it in pursuit of places of entertainment. True remorse must not be conflated

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[13] *S v Zinn* 1969 (2) SA 537 (A) at 540G-H.

with self-preservation. In *S v Matyityi* [14] the following, was posited about genuine remorse of an offender:

'... 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; whether he or she does indeed have a true appreciation of the consequences of those actions.'

[23] I have given serious consideration of the factors mentioned in mitigation and aggravation of sentence. Conclusively, the mitigating is outweighed by the aggravating factors. I am unpersuaded that the factors exist that called for the departure from the minimum prescribed sentence in terms of section 51(1) of CLAA. Consequently, the exercise of the court a quo's sentencing discretion cannot be faulted. In the premises, the appeal against sentence must fail.

Order

[24] Therefore, I make the following order:

The appeal against conviction and sentence is dismissed.

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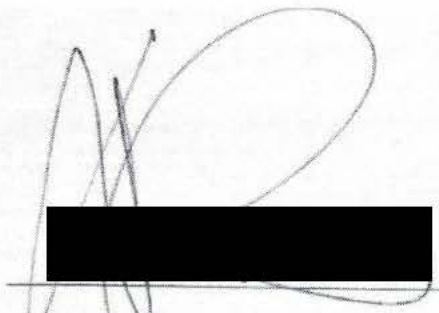
[14] 2011 (1) SACR 40 (SCA).



A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION MAHIKENG

I agree

B MATLHAPE

ACTING JUDGE OF THE HIGH COURT

OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For the Appellant:	Mr. T R Semino
Instructed by:	Legal Aid South Africa
For the Respondent:	Advocate J J Van Niekerk
Instructed by:	The Director of Public Prosecutions, North West Province.
Date Heard:	20 June 2025
Date Handed Down:	6 October 2025