

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: A15/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

25 August 2025

In the matter between:

RABABALELA, FRANS

Appellant

and

THE STATE

Respondent

JUDGMENT

KUNY J: (YACOOB J CONCURRING)

[1] This is an appeal in terms of section 309(1) of the Criminal Procedure Act, 51 of 1977, against sentence only. The appellant is Frans Rababalela, a 55 year old male.

[2] The appellant was convicted on count 1 of sexual violating the complainant, A[...] L[...], a 13 year old girl, in January 2022 by entering her room whilst she was

naked, without her consent. This offence is proscribed by section 5 of Act 32 of 2007. He was convicted on count 2 of raping the complainant in August 2022 by penetration her vagina with his penis without her consent.

[3] The appellant pleaded guilty to both counts. He was duly convicted on both counts on 29 July 2024 on the basis of a statement of admissions in terms of section 220 of the CPA. On 22 January 2025, after a pre-sentencing report had been submitted to court the appellant was sentenced to 3 months imprisonment on count 1 and life imprisonment on count 2. He was also declared unfit to possess a firearm.

[4] The state proved a previous conviction against appellant in 2018 for the possession of an unlicensed weapon and ammunition. In addition to that, it emerged from the social worker's report, that the appellant has a previous conviction in 1998 for assault for which he was sentenced to 3 years imprisonment and a further assault charge in 2001 for which he also received a prison sentence. These convictions apparently do not appear in the SAP69 records.

[5] The complainant lived with her mother in Alexandra. The appellant, who lived in the vicinity, entered the house and walked into the complainant's bedroom. She was lying on the bed. He removed his and her clothes and proceeded to have sexual intercourse with her until he ejaculated. The rape was discovered because the complainant fell pregnant and her family became aware of her bulging stomach. She told her mother that she fell pregnant as a result of the appellant having raped her.

[6] The complainant fell pregnant from the rape and gave birth to a girl. The complainant's mother looks after the child who is supported through a state child support grant.

[7] The social worker's report describes the appellant's upbringing and his family connections in some detail. He has triplets from his first wife. She passed away and two children were born to a subsequent relationship. The appellant appears to have maintained a relationship with all his children. He completed schooling and matriculated, describing himself as an average learner. He is a

plumber and electrician by trade, having worked for his father's construction company. Both his parents are deceased. The appellant was described by his brother as a well-mannered person with whom he shared a close and pleasant relationship. The brother told the social worker that the circumstances of the offence did not correlate with what he knew the appellant. The appellant's most recent partner, Ms Buthane, expressed shock when informed of the rape. She knew him as a loving and caring person.

[8] The complainant was 15 years old when she was interviewed by the social worker. She is the seventh of nine children. The social worker reported that she was raised in a loving and supportive home. Her parents separated when she was eight but she still maintains a relationship with her father. Her mother is unemployed and financially dependent on social grant and the assistance of her eldest siblings. Her father receives an older person's grant and is financially supportive.

[9] The complainant described the rape to the social worker in the following terms:

While sleeping he entered the house and when she woke up found him on top of her. She tried to scream but he covered her mouth, ... he managed to push her underwear aside and raped her. Thereafter he threatened to kill her and her family if she reported what transpired.

[10] She reported that she did not sustain injuries but experienced pain in her vagina. The incident was made more traumatic by the fact that she was a virgin when she was raped. The social worker reported that the complainant developed a negative outlook from the rape and she feels unloved and unworthy. She is ashamed because everyone knows about the incident. She had sleepless nights and struggled with nightmares. Despite knowing that not all men are bad people, she does not trust male figures easily due to fear of being re-victimised. In October 2022 when her family learnt that she was pregnant, the complainant went to live in Soweto with her sibling because of the stigma the incident caused in the community. She gave birth on 19 February 2023 and subsequently moved back home because she needed her mother's support and to continue with her schooling. The complainant's mother

considered giving the child up for adoption. However, through supporting each other as a family they have accepted the child and are now raising her with love.

[11] The complainant and her mother were both deeply affected by the rape. The mother reported that before the rape the complainant was very lively and cheerful. Afterwards, she became withdrawn.

[12] The trial court did not find any substantial and compelling circumstances that warranted a departure from the minimum sentence of life imprisonment for the rape of a minor required in terms of Act 105 of 1997.

[13] The seriousness of the offence the appellant committed cannot be understated. The complainant was a vulnerable child at the mercy of the appellant's whims. His actions constituted a humiliating, degrading and brutal invasion of the privacy and dignity of the complainant. Both she and her family have been deeply affected by the rape. To add to this, the birth of her daughter will serve as a constant reminder of the violation of the complainant. The level of acceptance of the family, and the complainant's mother in particular, though blighted by the pain and trauma of the rape, is a testament to their love, resilience and humanity as a family.

[14] The seriousness of the offence calls for a long term of imprisonment. However, in my view, there are substantial and compelling circumstances that warrant a departure from the minimum sentence of life imprisonment. The appellant's guilty plea is a weighty factor. He did not waste the court's time, as is so often the case. He acknowledged in his guilty plea the wrongfulness of his action. Although, according to the record, he still tried to justify the incident as consensual intercourse, the indications from the social worker's report are that he is intelligent enough to know that it was not. He appears from the report to be an individual that is capable of rehabilitation. He exhibits positive relationships with his children and family members. He completed schooling and was gainfully employed as a tradesman after working in his father's business. The appellant is 55 years of age at present. A long period of imprisonment will send a strong message to the community that such crimes will be treated harshly. At the same time it will give the appellant an

opportunity to undergo rehabilitation programs in prison and be re-integrated into society when he has served his term.

[15] In all the circumstances, I make the following order:

1. The sentence of life imprisonment on count 2 is set aside and is replaced with a sentence of 20 years' imprisonment, antedated to 22 January 2025.
2. The sentence on count 1 is to run concurrently with the sentence on count 2.

JUDGE S KUNY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I AGREE.

JUDGE S YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 25 August 2025.

APPEARANCES

ON BEHALF OF APPELLANT: S Hlazo
Legal Aid South Africa

ON BEHALF OF THE RESPONDENT: C Ehlers
Office of the National Director of Public Prosecutions, Johannesburg