REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
CIRCUIT LOCAL DIVISION OF THE WESTERN CIRCUIT COURT

CASE NO CC 28/2013

(1) REPORTABLE: Yes.
(2) OF INTEREST TO OTHER JUDGES: Yes
(3) REVISED. Yes

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DATE SIGNATURE

In the matter between

THE STATE

and

ERIC MONYAKA MASWETSA **ACCUSED**

Summary
Housebreaking with intent to rob and robbery – such to be separated as a charge of housebreaking with intent to rob on the one hand and a robbery charge on the other hand. This separation of charges has become necessary by virtue of the provisions of the Criminal Law Amendment Act 105 of 1997 which requires certain minimum sentences to be imposed upon convicting an accused on specified offences. Housebreaking with intent to rob is a conviction that requires a court to impose a minimum sentence different from the minimum sentence which falls to be imposed for robbery, whether on a first, second or third offender. Only a conviction of robbery would set the provisions of Part II of Schedule 2 of the Act in motion should an accused be found guilty of robbery. Different sentences are provided for to all crimes for which minimum sentences are prescribed. The combination of a charge of

housebreaking with intent to commit a crime and the crime itself is no longer feasible where minimum sentences may be imposed on each such crime.

J U D G M E N T

WEPENER J:

[1] The accused, Mr Eric Monyaka Maswetsa, stands charged with three counts. In count 1 it is alleged that on the 11th of May 2012 he unlawfully killed Joyce Seleke. In count 2 it is alleged that on the same date he unlawfully attempted to kill Boitumelo Seleke. Count 3 reads as follows:

> '*That the accused is guilty of housebreaking with the intent to rob and robbery with aggravating circumstances as defined by s 1 of Act 51 of 1977 read with s 51 of Act 105 of 1997 in that on or about 11 May 2012 and at or near 2576 Mphatswe Street, Khuma Location in the district of Klerksdorp, the accused did unlawfully and intentionally break and enter the house of Joyce Matlakala Seleke with intent to rob and did unlawfully and intentionally assault Joyce Matlakala Seleke and did there and then and with force take the following items from her to wit, a DVD player, play station, wrist watches, cell phones and* (an) *undisclosed amount of money her property or property in her lawful possession, aggravating circumstances being present in that a knife was used.*'

[2] In my view, the words commencing with '*...and did unlawfully and intentionally assault and did then and there and with force take the following items from her...*', constitute a charge of robbery. Although, the assault together with the forceful taking of the items is robbery, no separate charge of robbery has been brought against the accused and the allegations should be seen as part of one count only. There cannot be two convictions on count 3. Jennet, J said in *S v Cetwayo* 2002 (2) SACR 319 (E) as follows at 321:

> '*It is trite that housebreaking with intent to commit an offence is in itself a substantive offence (see s 262 of Act 51 of 1977) and that it is a separate offence from the actual offence, for the purpose of which the housebreaking was committed, if such be committed. The practice is, however, that, if the offences relate to what is in effect a single incident, they are, unless there is good reason to the contrary, charged as a single offence and a single punishment is imposed.*

In confirmation of the above I need only refer, firstly, to R v Chinyerere 1980 (2) SA 576 (RA) where at 580A-C Lewis JP said the following:

> *"One has to bear in mind, however, that housebreaking with intent to steal and theft are two separate offences. This is made clear in Hunt South African Criminal Law and Procedure vol II. The learned author traces the history of housebreaking with intent to steal and theft and points out that under the old Roman-Dutch law housebreaking with intent to steal and theft was simply regarded as an aggravated form of theft. However, in the modern South African law this is no longer the case. The learned author at 644 says this:*
>
> > *'The effect of this development is that, unlike Roman Dutch law, house-breaking is no longer regarded as an aggravated form of theft. The house-breaking with intent to steal and the theft are two separate offences, though they are in practice charged and punished as one offence, so that in such cases the result is the same.'"*

And secondly, to S v Zamisa 1990 (1) SACR 22 (N) where at 23 d-e Thirion J said:

> *"It is settled practice to charge as one count the crime of housebreaking with intent to commit a crime and the crime itself, which was committed in consequence to the breaking and for the purpose for which the breaking in was committed. So much so this is the practice that only one sentence is imposed in respect of a conviction of housebreaking with intent to commit a crime and the further crime, to commit which the breaking was effected. That circumstance, however, does not do away with the fact that the house-breaking with intent to commit the crime is in itself a distinct crime which is separate from, and not dependent upon, the crime committed after entry has been effected.*"

It is also a practice which carries the approval of the Appellate Division, as it then was, in S v S 1981 (3) SA 377 (A) where at 380H Rumpff CJ said:

> "*Tegnies gesien, is, in hierdie besondere geval, die inbraak en verkragting net so nou verbind met mekaar as die misdade van huisbraak met die opset om te steel en diefstal, wat in die praktyk in ons reg as een misdaad aangekla en gestraf kan word."*

There is no good reason in the present case why the accused should not have been charged and convicted of a single offence of housebreaking with intent to steal and theft in respect of each of the incidents concerning which he was charged...'

[3] This, in my view, can no longer hold good since the promulgation of the Criminal Law Amendment Act 105 of 1997 (the Criminal Law Amendment Act) which prescribes minimum sentences for offences falling within the ambit of the Act. The nature of the conviction is relevant when sentencing an accused person. It is highly relevant whether the accused is found guilty of housebreaking with intent to rob or robbery. The first mentioned conviction ordinarily attracts a minimum sentence in terms of part IV of Schedule 2 the Criminal Law Amendment Act i.e. 5 years imprisonment for a first offender, 7 years imprisonment for a second offender and 10 years imprisonment for a

third offender, whilst robbery on the one hand, in certain prescribed circumstances, attracts a minimum sentence of 15 years imprisonment for a first offender, 20 years imprisonment for a second offender and 25 years imprisonment for a third offender. Various different sentences may be imposed upon an accused depending on the nature of his or her conviction or previous convictions, should he or she be convicted of offences referred to in the Criminal Law Amendment Act. Also, if an accused is found guilty of housebreaking with intent to rob such a conviction, in my view, is not an offence which can be regarded as robbery for purposes of sentencing an accused as a second or third offender when he or she is later convicted on a charge of robbery. Only the substantive charge of robbery would qualify to be taken into account when sentencing an accused person to the minimum sentences prescribed for robbery under the Criminal Law Amendment Act as a second or third offender if regard is had to the provisions of the Criminal Law Amendment Act.

[4] The learned judge in *Cetwayo* did not consider the effect of such a single combined charge when a person is charged with either robbery or murder or any offence for which a minimum sentence has been prescribed. He dealt with charges of housebreaking with intent to steal and theft. There is no prescribed minimum sentence for theft. I am of the view, that such a single combined charge is no longer appropriate and that there is good reason to have the charges formulated separately. As an example, I refer to the minimum sentence for '*a second offender of such offence (part II of Schedule 2) (*of the Criminal Law Amendment Act*) is a period of not less than 20 years.*' Part II of Schedule 2 refers to robbery and housebreaking with intent to rob is not referred at all in Part II of Schedule 2. As indicated earlier, it appears as a substantive offence in Part IV of the Schedule.

[5] It is therefore trite that the crime of housebreaking with intent to commit a crime i.e. theft is a substantive distinct crime to the theft itself. See *Cetwayo* above.

[6] There now appears good reason why the offence of housebreaking with intent to commit a crime and the crime should be charged as separate offences and not as a single offence in the case of robbery, murder and rape and any offence for which a minimum sentence is prescribed. In matters where the charges involve housebreaking with the intent to rob and robbery a first offender for robbery would attract a minimum sentence of 15 years imprisonment whilst the housebreaking charge would attract a different, albeit lesser, minimum sentence of 5 years imprisonment. The same would apply to housebreaking with intent to murder or rape. I leave aside the fact that lesser sentences may be imposed when substantial and compelling circumstances allow for lesser sentences than the prescribed minimum sentences to be imposed.

[7] A charge of housebreaking with intent to rob and robbery also read with s 51 of the Criminal Law Amendment Act would, in my view, be technically ineffective as the Criminal Law Amendment Act would apply differently to a charge of housebreaking with whatever further allegations may be made in the charge sheet. It is thus highly relevant whether an accused is found guilty of robbery or murder or rape and also of housebreaking with intent to commit a crime, when regard is had to the Criminal Law Amendment Act.

[8] It would consequently be desirable that, because of the provisions of the Criminal Law Amendment Act, charges be framed in such a manner in order to separate the allegations of housebreaking with intent to commit an

offence from substantive charges such as robbery and all other charges where a minimum sentence is prescribed upon conviction.

[9] In the matter before me the third count is a charge of housebreaking with intent to rob and robbery and as there is no separate count of robbery. In the words of Grosskopf J (as he then was) :

> '*the accused was, not, however charged with theft or attempted theft, and in the circumstances the accused cannot now in addition, be convicted of either theft or attempted theft as suggested by the magistrate.*'

See *S v M* 1989 (4) SA 718 (T) at 720 G where Grosskopf J was quoted with approval. I deal with the wording of the present count 3 hereunder.

[10] In this matter, after the accused pleaded guilty to the three counts, his legal representative handed in a statement wherein the accused admitted all the elements of the three counts. The admissions followed the wording of the charges. Thereafter, a further short description of the actions of the accused is set out. Having been satisfied that the accused pleaded guilty to the three counts, the State accepted the plea and I found the accused guilty on all three counts and the question of sentence stood over.

[11] When evidence was lead for purposes of sentence the accused also gave evidence. He said that he accompanied two others to the house of the deceased in order to go and break in to the house and remove articles therefrom. The three of them removed roof tiles at the house and waited in the ceiling for several hours when one of the three of them mentioned that he was almost certain that the owner of the house had left. The three of them then went into the house from the ceiling. The accused went to search in some drawers when he realised that the owner of the house had not left but was still there. The two other persons followed her and the accused heard screams and thereafter saw the other two housebreakers dragging her into a room. He

carried on stealing items from the house. I need go no further regarding the facts for purposes of the matter at this stage. I had some doubt as to the intent with which the accused acted when breaking and entering the premises and was of the view that he may have made an incorrect admission regarding the intent with which he acted that day as his evidence was that they intended stealing items from the house. Milton *Criminal Law and Procedure* Vol II 3ed (1996) 806 par 5 seems to favour the fact that the intent to commit an offence must be present when both the breaking and entering are effected. He relies for this view on *R v Laforte* 1922 CPD 487 at 500; *R v Willy Ovamboland* 1931 SWA 11; *R v Andries* 1958 (2) SA 669 (E) at 671. Save for *S v Andries,* I do not think that the cases referred to clearly support such a view or in any event do not supply authority for such a view. On the basis that the law is correctly set out by Milton, I asked counsel to address me on the issue and whether I should apply the provisions of s 113 of the Criminal Procedure Act 51 of 1977 (The Criminal Procedure Act) in order to record a plea of not guilty on count 3 as the accused may have incorrectly admitted the fact that he had the intention to rob.

[12] The evidence of the accused shows that he accompanied the other two persons with the initial intention to steal goods in the house and not to commit robbery. However, once the accused was aware that the deceased was overpowered in order to facilitate the theft, which he carried on executing after she had been overpowered by the other two co-perpetrators, the element of force which is necessary for a charge of robbery, was present. The accused admitted that he '*acted together with common intent'* with the other two persons. He consequently had a common purpose with them to overpower persons who came in their way and in fact did associate himself with the use of force to continue with the theft of goods. Yet, the evidence is that the accused went to the house of the deceased in order to steal. The question of whether a person can change his or her intent whilst in the process of executing his or intention to steal or whether *dolus eventualis* would be

sufficient for a conviction of housebreaking with intent to rob and robbery are questions that I do not have to answer.

[13] Ms Nguni argued that the allegations contained in the charge sheet are wide enough to encompass both a count of housebreaking with intent to rob and a substantive charge of robbery. Robbery consists of

'*the violent removal and appropriation of movable corporeal property belonging to another'*.

See CR Snyman *Criminal Law* at p30. These allegations are clearly set out in count three and Mr Nel conceded as much. Ms Nguni therefore argued that the accused was correctly found guilty of housebreaking with intent to rob and robbery with aggravating circumstances rather that housebreaking with intent to rob only. As the charge which was read out to the accused covers a substantive charge of robbery, Mr Nel was unable to advance reasons why the accused should not have been found guilty of housebreaking with intent to rob and robbery with aggravating circumstances.

[14] CR Snyman *supra*, p 550 says: *As 'housebreaking with intent to steal" is a crime in its own right, X is charged with two crimes if he is charged with "housebreaking with intent to steal and theft". However, it is still uncertain whether a conviction of "housebreaking with intent to steal and theft" is a conviction of a single crime or of two crimes. In practice this is unimportant, for even if one holds that two crimes have been committed they are treated as one crime <u>for the purposes of punishment</u>. It is submitted that the better view is that two crimes have been committed'.* (Foot notes omitted). (My underlining).

[15] This approach finds support in *S v Maunye and others* 2002 (1) SACR 266 T. At 277 F – 278 B Stegmann J, in a full bench decision, said

'An incident of housebreaking with intent to steal and theft, committed with a single intention, is to be regarded as essentially the crime of theft, with housebreaking as a

factor that tends to aggravate the seriousness of the offence and therfor the severity of the sentence'.

Also see *S v Nell* 2009 (2) SACR 37 C.

[16] In S v Kulati 2002 (2) SACR 406 E, a full bench said:

'The actual offence for the purpose of which the housebreaking was committed if such crime be committed is also a separate offence but in practice is charged as one offence with the crime of housebreaking with intent to commit that offence. In practice the two crimes are in effect committed during a single incident and therefore charged as one single offence and a single punishment is imposed. That, however, in my view, does not do away with the fact that in fact two separate crimes were committed. In R v O'Connell en 'n Ander 1960 (3) SA 272 (O) Potgieter J, as he then was, said the following at 272H:
"Waar 'n persoon derhalwe aangekla word van huisbraak met die doel om te steel en diefstal word hy in werklikheid aangekla van twee substantiewe misdade.'"

[17] In all the circumstances I am satisfied that count 3 encompasses a substantive charge of robbery and that the admissions made by the accused were sufficient to satisfy the conviction on that count. When the composite count of housebreaking with intent to rob and robbery is looked at objectively, the effect of such a conviction would be that an accused is effectively found guilty of both housebreaking with intent to rob and of robbery as the two charges were put as one and because of a practice that developed over the years that '…*they are in practice charged and punished as one offence*' – see *Cetwayo, supra*. I am consequently of the view that the minimum sentence prescribed for robbery would be applicable in this matter. Although charged as one offence, the sentence to be imposed on the accused is regulated by the minimum sentence prescribed for robbery as he has been convicted of robbery.

[18] I am, however, of the view that the better practice would be that an accused person should be separately charged with the offence of

housebreaking with the intent to commit a crime and the crime itself for the reasons set out hereinbefore. Should an accused be convicted of a number of offences, the cumulative effect of the sentences imposed is a factor which courts have dealt with for many years and, no doubt, will continue to do.

[19] In *Cetwayo* the court combined the charges of housebreaking with intent to steal and the charges of theft to form composite charges of housebreaking with intent to steal and theft and sentenced the accused to 18 months imprisonment on each of such composite count (part of which sentence was suspended). However, when the court in *Cetwayo* gave the judgment, Part IV of Schedule 2 did not contain housebreaking with intent to commit an offence. Part IV was amended in 2007 to its present form to incorporate housebreaking with intent to commit an offence and which is punishable with a minimum sentence of 5 years imprisonment. The amended Criminal Law Amendment Act indeed has far reaching consequences regarding the passing of sentence regarding the different offences referred to therein. In my view, it would be wrong to combine different offences for which different minimum sentences are prescribed into one charge, since the material amendment of the Criminal Law Amendment Act in 2007.

[20] Having dealt with the aforesaid issues and before judgment, the State applied to lead further evidence. Mr Nel objected but after argument, I allowed the request to lead further evidence and said that I would give my reasons for it in due course. The following paragraphs embody those reasons.

[21] During his evidence on sentence the accused gave a version that he was the one to steal things while his co-perpetrators were the ones that killed the deceased. Ms Nguni did cross examine the accused when he testified but not on an important fact i.e. that the knife found at his house contained the

Deoxyribonucleic Acid) (DNA) of the deceased. This evidence, she argued would controvert the version of the accused that the he did not carry the knife that night, which aspect is relevant to sentence. In *S v Felthun* 1999 (1) SACR 481 (SCA), the Supreme Court of Appeal held that test whether to allow the State to reopen its case depends on several factors. Firstly, a trial court has discretion to allow a party to reopen his or her case and to lead evidence at any time up to judgment. In this case, the State wished to lead evidence on sentence which was not at hand at that time and the court had not yet pronounced on the sentence to be imposed. A court should however, exercise the discretion judicially upon a consideration of all the facts of the case and having regard to considerations mentioned in cases and applying them as guidelines and not inflexible rules. At p486 C - 487 H Vivier, JA said:

'That a trial Court has a general discretion in both civil and criminal cases to allow a party who has closed his case to reopen it and to lead evidence at any time up to judgment is beyond doubt. The proper approach is that the Court's discretion should be exercised judicially upon a consideration of all the facts of each particular case, having due regard to the considerations mentioned in the cases and applying them as guidelines and not as inflexible rules. In Mkwanazi v Van der Merwe and Another 1970 (1) SA 609 (A) Holmes JA stated the correct approach thus at 616B - D:

"It is inappropriate for judicial decisions to lay down immutable conditions which have to be satisfied before the relief sought can be granted. Over the years the Courts have indicated certain guiding considerations or factors, but they must not be regarded as inflexible requirements, or as being individually decisive. Some are more cogent than others; but they should all be weighed in the scales, the pros against the cons."

Mkwanazi's case was concerned with Rule 28(11) of the Magistrate's Court Act 32 of 1944 but, as Holmes JA pointed out at 616D in his majority judgment, the Supreme Court has, inherently, much the same discretion to allow evidence before judgment. The majority of this Court held on the facts of that case that fresh evidence should have been admitted by the magistrate after both sides had closed their cases even though there was no satisfactory explanation as to why the evidence had not been led before. The omission to lead the evidence was, however, not deliberate and there was no prejudice to the other side.

In Hladhla v President Insurance Co Ltd 1965 (1) SA 614 (A) this Court held that new evidence in that case should have been allowed after the argument stage. In his judgment (at 621E - G) Van Blerk JA referred to the danger mentioned by Wigmore para 1878 that to make a general practice of introducing new evidence when, after argument, it is found where the shoe pinches, may lead to perjury. Van Blerk JA then pointed out, however, that Wigmore in the same passage goes on to say that:

"Nevertheless, situations might easily arise in which an honest purpose may justly be served, without unfair disadvantage, by admitting evidence at this stage; and it has always been conceded that the trial Court's discretion should not be hampered by an inflexible rule."

With regard to the test to be applied to an application to reopen see further: Oosthuizen v Stanley 1938 AD 322 at 33 and Barclays Western Bank Ltd v Gunas and Another 1981 (3) SA 91 (N) at 95C-96H.

The considerations mentioned by the Courts include the following: the reason why the evidence was not led timeously, the degree of materiality of the evidence, the possibility that it may have been shaped to relieve the pinch of the shoe, the possible prejudice to the other side, including such factors as the fact that a witness who could testify in rebuttal may no longer be available, the stage which the proceedings have reached and the general need for finality.

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In the light of the above decisions there is no room for the absolute rule contended for by counsel for the appellant namely that the trial Court's discretion to admit evidence for the State after the close of the defence case should be limited to where new matter is introduced

which the State could not foresee. An inflexible rule of this kind hampers the trial Judge's discretion and cannot be supported. In each case it is a matter for the trial Judge's discretion whether, on the facts of that case and applying as guidelines the considerations mentioned in the cases, the new evidence could be allowed without injustice to the accused.
With regard to the question of possible prejudice counsel for the appellant submitted that an accused is inevitably prejudiced when the State case is reopened since he may then be compelled to testify to answer the new evidence. I do not agree. An accused is never compelled to testify. His right to remain silent remains unaffected. In the present case the defence was given the opportunity to lead further evidence but the appellant was not compelled to testify. Counsel for the appellant further submitted that in a trial of more than one accused, prejudice to any accused will inevitably result if a co-accused is recalled by the court under s 167 of the Act, as happened in the present case. Again I am unable to agree. Apart from the fact that his co-accused was recalled by the trial Court at the request of the appellant's counsel so that the appellant could not have been prejudiced, his right to remain silent was unaffected by the recall of his co-accused. He himself elected to testify again'.

[22] In this matter it is not a question that the State is feeling the proverbial pinch of the shoe. The evidence became available to it after the court adjourned and before recommencing on 24 May 2013. The expert report would have been done without had it not become available due to the slow process with which the State machinery works. But it became available at a very late stage. Secondly, the nature of the evidence has, in my view, a high degree of materiality. Criminal courts are not to be used to play games and if material evidence becomes available, it should be allowed to be produced in the absence of prejudice to the accused. In this case there was no prejudice to the accused as he was afforded the opportunity to give evidence regarding the new material, if he so wished.

[23] The State and the accused then, by agreement, handed in an affidavit of Regina Janse van Rensburg in terms of section 212 of the Criminal Procedure Act. This, according to Ms Nguni, proved that the blood found on the knife of the accused, was the blood of the deceased as the deponent to the affidavit compared a sample of blood of the deceased with the blood found on the knife. The DNA result of the blood on the knife was found to match the DNA of the sample of the blood taken from the deceased.

[24] At the resumed hearing the State called several witnesses to show that the accused was found in possession of the knife which contained blood of the deceased. The accused gave no explanation and indeed said top a police official the he used the knife to eat with. The very possession of the knife containing blood of the deceased is, in my view, a factor with serious consequences for the accused. It indicates that the accused was the person who possessed the knife which was used to kill the deceased and his version in which he places the blame on others, is not true.

[25] That brings me to the question of the sentence that is to be imposed on the accused. His evidence regarding his participation in the murder has been shown to be lacking and indeed false.

[26] The accused is 26 years of age and the father of a four month old girl. He has a grade 12 which shows that he does have the necessary common sense to understand fully what his actions entailed. Although he blamed his co-perpetrators for the incident, it has been shown that he partook actively and voluntarily in the offences. He knew that the co-perpetrators had been to the house of the deceased before and said that they alleged that they did not have enough manpower to remove the goods from the home of the deceased. When one has regard to the goods that the accused removed from the house, there is little weight that one can give to this allegation. When the accused was woken to participate in the housebreaking, he willingly participated, despite him having a previous conviction for housebreaking and being on parole at the time. His professed remorse lacks credibility if regard is had to his actions and continued false version.

[27] Upon the arrest of the accused it appears that he admitted that neighbours saw him leaving the premises of the deceased. He also made a statement to a magistrate in which he admitted his involvement. The knife,

used in the murder of the deceased was found at his home. He accompanied the police to point out the scene of crime. He had no escape from the charges. It is with these facts in mind that I have to weigh up the remorse that the accused said he felt regarding the incident. He made a phone call with the cellular phone of the deceased, which led to his arrest. The accused's version of his participation remained untrue to the end. He was the person who had the knife that caused the deceased's death. I am of the view that his so-called remorse is nothing but an attempt to escape the full force of the law for his heinous actions. He unnecessarily killed an upstanding member of the community who worked hard to further not only her and her family's careers and subsistence; she assisted others, including the family of the accused, to earn additional income. He thereby left a young child without a caring mother and a devastated family.

[28] Having listened to the evidence, there is very little to be said in favour of the accused. Whilst keeping his personal circumstances in mind, I am mindful of the atrocity perpetrated by the accused. He could have left the scene without the unnecessary killing of an innocent human being in the sanctity of her home.

[29] The legislator has, as the accused was advised at the outset of this trial, provided for minimum sentences for the offences of murder and robbery with aggravating circumstances such as when a knife is used. In S v *Malgas* 2001 (1) SACR 469 (SCA), the Supreme Court of Appeal said at para 8 and 9 that:

'In short, the legislature aimed at ensuring a severe, standardised, and consistent response from the courts to the commission of such crimes unless there were, and could be seen to be, truly convincing reasons for a different response.… The specified sentences are not to be departed to from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify

as substantial and compelling circumstances. Nor were marginal differences in the personal circumstances or degrees of participation of co-offenders which, but for the provisions, might have justified differentiating between them'.

[30] I can find no substantial and compelling circumstances to deviate from the sentence prescribed by the legislator.

[31] Having regard to all the aforegoing, I am of then view that the following sentence should be imposed:

Count 1: Murder: Life imprisonment.

Count 2: Attempted murder: 8 years imprisonment.

Count 3: Housebreaking with intent to rob and robbery with aggravating circumstances: 15 years' imprisonment.

The accused is declared unfit to possess a firearm.

W L WEPENER
JUDGE OF THE HIGH COURT

COUNSEL FOR THE COMPLAINANT: *Adv Mnguni*

COUNSEL FOR THE ACCUSED: *Adv Nel*

DATE/S OF HEARING: *13, 20, 24, 30 May 2013*

DATE OF JUDGMENT: *30 May 2013*