**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO: A 902/2015**

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED. ✓

4 November 2016 .....
DATE SIGNATURE

**NELSON RONALD KEWEESA** Appellant

and

**THE STATE** Respondent

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**JUDGMENT**

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**MBONGWE, AJ:**

[1] The appellant stood trial in the Regional Court in Lydenburg, Mpumalanga Province, on a charge of murder. The State alleged that the appellant had, out of a jealous rage, stabbed his girlfriend with a knife 33 times causing her extensive injuries which caused her death. The appellant was legally represented throughout the proceedings. He was convicted of murder on the 8 June 2015 and sentenced to 20 years imprisonment. The appellant was further declared unfit to possess a firearm. On application for leave to appeal, the trial

court turned down the application in respect of the conviction, but granted the appellant leave to appeal against the sentence.

[2] The argument presented on behalf of the appellant on appeal was that the trial court, in determining an appropriate sentence, erred in its consideration and assessment of the appellant's personal circumstances and, therefore, misdirected itself in its finding that there were no substantial and compelling circumstances justifying a lesser sentence than that it imposed. An alternative argument that was advanced in motivation for a lesser sentence was that the trial court failed to conduct necessary investigations such as calling for a probation officer's report or calling witnesses to testify on the appellant's personal circumstances. The overall submission made was that a sentence of 15 years imprisonment would be appropriate in this case.

I do not agree with this argument. In *casu* the court *a quo* dealt with the question of substantial and compelling circumstances by engaging the appellant's legal representative and the appellant also testified in mitigation of sentence (record p78).

[3] In considering an appeal against a sentence imposed by a trial court, the court hearing an appeal has first to bear in mind that sentencing is discretionary to the trial court and should guard against interfering with the exercise of such discretion, unless it is convinced that the trial court had not exercised its discretion properly and in a judicial manner **( See Rex v Dhlumayo 1948(2) SA 677 (A)** or where the sentence imposed is vitiated by irregularity or misdirection or is so inappropriate that it induces a sense of shock.**( See S v Rabie 1975 (4) SA 855 (A).**

[4] It is on record in the present case that the appellant's gruesome stabbing and the resultant murder of the deceased, his girlfriend, was precipitated by his jealous rage, having earlier seen her in the company of another man. Arming himself with a knife and stabbing the deceased 33 times was heinous and heartless, to say the least. The appellant's plea of not guilty and his fabrication of a defence constituted a display of the absence of the appreciation of the wrongfulness of his conduct and remorse. These two elements form part of a number that are crucial considerations in the determination of an appropriate sentence to be imposed, bearing in mind, of cause, the purpose of sentence, namely, to deter and to rehabilitate, amongst others. This principle was aptly stated thus in **S v Thonga 1993 (1) SACR 365 (V): "***In my view the punishment must first be reasonable, ie, it should reflect the degree of moral blameworthiness attaching to the offender as well as the degree of reprehensibleness or seriousness of the offence."* Taking into account the appellant's actions and the absence of the elements I have alluded to, a lesser sentence than that imposed by the trial court would mark a failure of the justice system to seek to achieve the desired effect of punishment and may result in an encouragement of societal disrespect for the system itself.

[5] I cannot find that the sentence of imprisonment of the appellant to a period of twenty years is inappropriate, nor that the trial court had not exercised its sentencing discretion properly and in a judicial manner. In fact, as was correctly pointed out by the trial court, the appellant was indeed lucky that the State did not charge him with the premeditated murder of the deceased, in which case life imprisonment would have been imposed. It is noted that the trial magistrate nonetheless handed down the maximum sentence permitted by the law. This is in no way shocking considering the brutal manner in which the appellant murdered

the deceased and the pain she had to endure as each of the 33 stabbings was inflicted on her body.

[6] I can find no merit in the argument that the trial court failed to find that substantial and compelling circumstances existed in this case. On his own version, the appellant did not know the age of his alleged minor child nor to establish that he has a bond with it. The appellant's relatively young age, the fact that he was employed and was a first offender do not *per se* constitute substantial and compelling circumstances warranting the imposition of a lesser sentence. In my view, the sentence of twenty years imprisonment is reasonable, justified in line with the exposition of the law stated in the Thonga case referred to above.

[7] I, therefore, propose that the following order be made:

*The appeal is dismissed.*

**M MBONGWE**
**ACTING JUDGE OF THE HIGH COURT**

**D S MOLEFE**
**JUDGE OF THE HIGH COURT**

**I AGREE. AND IT IS SO ORDERED.**