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IN THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL DIVISION)CASE NO:

SS56/2003

DATE:

14-4-2003

In the matter of:

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THE STATE

versus

DANISO DANIEL MPANDLE

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SENTENCE

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DLODLO, AJ: In passing sentence the Court must consider the accused's personal circumstances, the offences you have been found guilty of and the interests of the community.

You are 32 years of age. You have passed Standard 6. You are not married but you are the father of two sons, aged 13 and six years respectively. You were employed by the deceased for a period of two years before the incident. Your income was the sum of R300 per week from the employment you had. When the incident took place you had been relieved of your duties by the deceased. Your son Bongani was staying with the deceased. The latter cared for your son even after you had been fired from work. In your own evidence your son Bongani occasionally stayed with the deceased. You testified and told the Court that you regret what you did to the deceased and that you spent sleepless nights as a result of these offences of which you have been found guilty. Only one previous conviction has been proved against you, namely theft, which you committed in the district of Queenstown in 1990 and in terms of section 294(1)A of Act 51 of 1977, the magistrate

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ordered that you be given corporal punishment.

Mr Mpandle, you are guilty of very serious crimes indeed. You knew the deceased so well that he was like a father to you. In your own evidence, the deceased is that person who found you in the midst of the other people seated on the corner of the street looking for employment opportunities. You were presumably hungry, as it follows you would have had no money. You were, therefore, not in a position to buy food for yourself. Obviously you were not in a position to provide for your son Bongani. In your evidence Mr Mpandle, the deceased chose you from the group and he employed you. He enabled you to earn an income of R300 per week for the period of two years. In addition, the deceased out of his good heart, took your son and cared for him. You told the Court yourself how your son was attached to the deceased. 5 10

When, according to what the Court gathered from your evidence, you were no longer performing your duties well for your employer (the deceased), he fired you. He did what any reasonable employer would do in the circumstances. Despite the fact that you had been sacked from your work, the deceased did not take a decision to part ways with your son, he cared for the boy. The two were clearly attached to each other. You yourself telephoned the deceased, informing him that you wanted to come and visit your son Bongani. All was well when you arrived and you told the Court that the deceased even put a game on for you on the computer. The deceased was working and was in front of another computer at the time. 15 20

You suddenly started to ask for your money from the deceased. 25

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The deceased was clearly not wrong in saying that he was supporting your son. It is very clear that the deceased did not in the least expect trouble from you. Mr Mpandle, you proceeded to the kitchen of the deceased which was obviously well known to you. You went there to fetch the knife. You used the knife against an apparently old and defenceless person. In your own evidence you stabbed him several wounds on the chest whilst he was still seated on a chair in front of his computer. You stabbed him repeatedly such that you yourself cannot say how many times you stabbed him. When the weapon broke, you again proceeded into the kitchen to fetch another knife. You used a second knife against the deceased. You inflicted numerous injuries to the deceased. According to the pathologist who gave evidence for the State, there were 18 stab wounds all on the most delicate parts of the human body, namely the chest and neck. Some wounds pierced the heart. As far as the injuries are concerned, Exhibits "B" and "E" speak for themselves. These were amplified for the Court by Sarka Anna Siroka, the pathologist who testified for the State in aggravation of sentence.

Mr Mpandle, you stabbed the deceased so much that you only stopped when, in your own words, he was "motionless". You took the motionless body of the deceased to the bathroom. Your explanation for doing so is that you did not want Bongani, your son, to see the blood-stained, motionless body of the deceased. Without hesitation I reject that explanation as lies. The purpose why you took this body to the bathroom is clear - you were engaged in the concealment of a very

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serious crime you had finished committing. Mr Mpandle, you told the Court that you thereafter took clothing belonging to your son Bongani. You took your son who was asleep and you loaded Bongani and his clothes into the Honda Ballade belonging to the deceased. The very Honda Ballade the deceased used in fetching you from Milnerton. You helped yourself to the cash money of the deceased. You stole the deceased's motor vehicle; you used it to get away from the scene of the crime.

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Mr Mpandle, you told the Court that before departing you locked the apartment of the deceased and drove away with the keys. You claimed to have done that in order to prevent the possible theft of the computers. You know yourself this is a lie that you were protecting the computers. You were preventing the discovery of the crime you had committed. If you did not care about the stabbed deceased, how on earth do you expect the Court to believe you that you were concerned at all whether or not the computers were stolen? Nobody could possibly see the deceased who had been so seriously stabbed. Nobody could therefore render any assistance to the deceased, not even a good Samaritan of the olden days could have been of help to this man. You drove to your own place of abode in the vehicle of the deceased. You used the money you stole for your own personal benefit. You drove around in the vehicle as though nothing had happened.

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When you were caught by the police, you were with your girlfriend inside the stolen vehicle. You did not tell the police that the deceased is locked inside the apartment. On being questioned on this, you merely

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said that you were afraid that you would be arrested. Surely you could even have made an anonymous call about this. It is not true that you were afraid. You were indeed a very brave man. In fact, you are dangerously brave. You could not have been afraid of anything, let alone arrest. The deceased was viciously attacked inside his own apartment. He was brutally murdered. He was brutally murdered by a person whom he perceived to be a friend. That person is yourself Mr Mpandle. When the deceased drove to Milnerton to fetch you upon receiving your telephone calls that you wanted to see Bongani, he did not know that he was bringing death unto himself. He genuinely believed he was fetching an old friend.

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The interest of the community must always be one of the considerations the Court takes into account in assessing the punishment for any crimes committed. The only mitigating factor I find in your favour is that you are the first offender as far as the violent crimes are concerned. This must necessarily taken into consideration on count 1. It has been argued on your behalf that you are remorseful about what you did. You testified and said you spend sleepless nights thinking about the terrifying crime you committed against a man you knew so well. A man who was both your employer and your personal friend. A man who appeared to have been a charming custodian of your own son. You need to be assured that in sentencing you I will give due regard to your personal circumstances. I will not lose sight of the already mentioned fact that as to count 1 you are the first offender and that you now seem remorseful in your actions.

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The aggravating features of this case have already been set out *supra* and it would be pointless to over-burden the record with repetition.

I, however, hasten to mention that in crimes of violence, factors aggravating the crime, ordinarily include the degree and extent of violence used; the nature of any weapon, the brutality and cruelty of the attack; the nature and character of the victim, including whether the victim was unarmed or helpless (in this regard see S v Qamata 1997(1) SACR at 479 (E) particularly at 481h; and S v Mguni 1994(1) SACR 579 at 583e). The attack on the victim was gruesome, vicious, cruel and inhumane. The deceased was attacked and killed in cold blood. The deceased did not defend himself and from the look of things he would not as he was unaware that an attack was imminent. The deceased was helpless. Even when nature intervened by causing the knife to break, you went for another knife. You were intent to ensure that your mission is completed, namely to bring about an end to the life of the deceased.

When one attempts to balance the mitigating factors and the aggravating factors in this matter, one readily finds that the aggravating factors totally outweigh the mitigating factors. You brutally killed the deceased; according to your explanation, because he insulted you and ordered you out of his apartment. I have been unable to find any morally acceptable motive for the crimes you committed. Deducing from the evidence and the facts in this case, you possibly killed the deceased because he fired you and because you believed him to be owing you some money by virtue of your previous employment with him. You could have easily gone to the Department of Labour and declared a dispute if

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you believed you have been unfairly dismissed from your employment.

A morally unacceptable motive may aggravate sentence (in this regard see S v Tyers 1997(1) SACR at 261 (NC).) In S v Randall 1995(1) SACR at 559 (C) it was held to be aggravating when a crime is committed for monetary reward. The very fact that you had free access to the deceased's apartment, you could freely telephone him and arrange to visit him and your son, shows how much trust the deceased placed in you. You decided to abuse the position of trust in which you were placed. The evidence of the investigating officer in aggravation of sentence does show that this kind of an offence, namely murder, is somewhat prevalent. Whilst this is a factor which this Court should keep in mind in assessing punishment, the Court must be guided by Rumpff, JA said in this regard in S v Seegers 1970(2) SA at 506 (AD) particularly at 511C-F where the learned Judge said the following:

"Prevalence of a particular offence, as such, does not of course, necessarily elevate the case. Whether or not the prevalence of a particular offence ought to be considered as an aggravating feature depends entirely on the type of the offence committed and the circumstances in which the offence is committed."

Having accepted that you are the first offender of violent offences and that that fact must be taken as mitigatory, but the Court would be failing in its duty if it loses sight of the nature of the crime and the callousness you showed in the commission of this crime. Of course Mr Mpandle, you are not a first offender in dishonest offences. As set out

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above, you have previously been found guilty and sentenced. You were very young and a reasonably long period of time has elapsed between the commission of that offence and the offence you stand guilty of today. You are to be treated as the first offender even in the theft charge.

I do not regard your plea of guilty as an indication of remorse. 5  
Investigations have already established that your son, Bongani, stayed with the deceased and that you yourself previously worked for the deceased. You were found by the police in the deceased's motor vehicle. The knives used in the commission of the murder were left by you at the scene of the crime. It appears to me that you came to realise that there 10  
was no chance to deny anything here. However, as stated earlier on, I accept that you are remorseful about what you did. Those sleepless nights will be with you for the rest of your life. You will remember the deceased and you will always remember that you were the cause of his demise. The memory of your actions in this case will taunt you for the 15  
rest of your life.

I have attentively listened to the legal representatives who presented submissions in this matter. The Court is indeed indebted to both of you. Various alternatives and/or options opened to the Court to be used in punishing you have been considered. You have been found to 20  
be an obvious candidate for imprisonment. Society deserves protection against people like you. Short-tempered persons are indeed extremely dangerous because their actions cannot be anticipated and timeously taken care of. You narrowly escape life sentence in count 1. The obvious factors that militate against the imposition of life sentence is that 25



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you are only 32 years of age, you are a first offender and that you committed the offence at the spur of the moment. There was no carefully worked out plan to kill the deceased (see S v Selemane 1994(1) SACR at 481h-485b; and S v Booysen 1993(1) SA (AD) at 702e-f; S v Mokgalala 1993(1) SACR 704 (AD) at 708f; S v Mofokeng 1992(2) SACR at 710 (AD) at 715g-h).

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You must consider yourself very fortunate in that you clearly listened to and accepted your counsel's advice to plead guilty to theft as far as count 2 is concerned. The original count 2 would have made you a candidate for life imprisonment regardless of the considerations I have mentioned above as to count 1. The position is clearly, as counsel for the State correctly submitted, that the provisions of section 51(1)(c)(ii) of Act 105 of 1997 would have been applicable to you, the Minimum Sentences Act.

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We are in agreement, having presided over your case, having heard the circumstances under which these offences were committed, and having had due regard to your personal circumstances and relevant factors, that the following sentence is appropriate:

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Count 1 - murder, you are sentenced to undergo imprisonment for the period of 20 years.

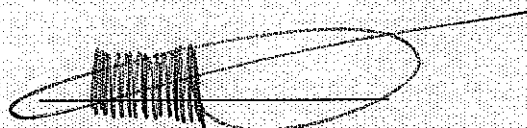
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Count 2 - theft, you are to undergo imprisonment for the period of 10 years.

In terms of section 280(2) of Act 51 of 1977, five years of the 10 years in count 2 is to run concurrently with the sentence on count 1.

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DLODLO, AJ