

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO:

SS29/10

DATE:

6 DECEMBER 2010

5 In the matter between:

THE STATE

and

KWANELE JAMES

Accused 1

MZUVUKILE TUSWA

Accused 2

10

SENTENCE

WEINKOVE, AJ

- 15 Kwanele you have been found guilty on two counts of murder, one count of arson, and three counts of attempted murder. These are extremely serious offences, and if I were to sentence you to imprisonment on each count to be served separately you would have to spend most of your life in prison.
- 20 You have brought shame and disgrace on your family. You have used your mother's name, and her untimely passing, as an excuse to perpetrate cruel and terrible acts of violence against innocent people. You have killed a three year old child and his mother, people who had nothing to do with your grudge
- 25 against the complainant. You deprived a grandmother from
- /ds /...

seeing her grandson growing up as well as the love and support of her daughter. You deprived the deceased people of the pleasure of their lives.

5 You created a grudge against the complainant, you know as well as everybody else in this Court, in your community and in your family, that you, according to the evidence, saw a vision in a bread tin lid, which they call a magic mirror. In your view there are witches and wizards and there are people with
10 supernatural powers. This was a misguided belief in supernatural powers. It is clear from the evidence before this Court that the commission of this crime was premeditated and planned. For reasons, which I will never understand, you persuaded yourself that the complainant was to blame for your
15 mother's untimely death and on the night of the murder you decided to kill the complainant, resulting in that other people that lived in the home were killed.

You resided across the road from where she lived, and had
20 lived for many years. You knew that her three young daughters lived with her, as did her three year old grandson. You must have seen him playing outside, because at the age of three he could walk and he could talk.

25 You bring shame to your mother's memory through this terrible
/ds /...

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act. She worked as a domestic and out of very little money that she earned she paid for your education, and put you in a position to obtain a matric. You failed to take that opportunity, but at least you reached grade 11. If one imagines the sacrifices that she made for her children it would have been a terrible thing for her to have lived to see how she wasted her money on you because you have become a common criminal and a cruel murderer. No one can blame the community for being outraged at what happened. And if on top of all this one were to add the fact that it was you that conscripted accused 2, Biza, your so-called friend, to help you carry out this terrible deed, then your disgrace and cruelty becomes even greater.

In addition you did not play open cards with this Court. If I allow myself to take into account only the factors that I have mentioned, which I may say weigh heavily with me, I would have imposed an even longer sentence. I must however take into account any factors which reduce the moral blameworthiness of your offences and which can be taken as extenuating circumstances.

I therefore take into account that you are a young man, without previous convictions. I would also take into account the fact that when you were initially arrested you confessed to the investigating officer. You also made a confession to the

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community, to your uncle and to a captain of what you had done, and why you did it. I would also take into account the fact that you have been detained in prison since 6 March 2009. It is a pity that you were either persuaded, or persuaded
5 yourself, that you were better off denying all guilt and instead attacked the honesty and integrity of those involved in this case. Whoever gave you this advice, if someone did, then I can assure you they did not give you advice that served your best interest, but however I will for the purposes of sentence
10 have regard to the fact that in the first instance you did tell the truth. I will also take into account the fact however, that however heavy a sentence I impose upon you, I can never bring back to life those people you murdered. No term of imprisonment can compensate the victims for the financial
15 losses they have suffered because of your terrible acts.

In passing sentence I must not allow myself to simply appease the public conscience. I must not allow myself to pass a sentence which could be likened to a mob justice penalty. If
20 the sentence I impose upon you is too long there will be little, if any, hope of you becoming redeemed. If it is too light the residents of Kuyasa in Khayelitsha may lose faith in the judiciary.

25 Finally I must take into account the facts which Advocate
/ds /...

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Kolenso so ably presented to this Court and however angry and outraged I may feel about this matter I must be mindful of the fact that justice must be tempered with mercy, and this Court will also bear in mind that all the offences were
5 committed in one act of throwing petrol bombs.

Kwanele please be seated now and accused 2 please stand.

Biza, accused 2, as far as you are concerned in law you are as
10 guilty as accused 1 for aiding and abetting him to carry out these terrible crimes. You fully identified yourself with the commission of these offences, to such an extent that the Court regards you as a co-offender. You supported him to the extent of going to buy the petrol. You accompanied accused 1 to the
15 scene of the crime and helped him make the petrol bombs by pouring petrol into empty beer bottles. You had no reason whatsoever to wish to harm anyone in the complainant's house, least of all her children and the little three year old boy. You also had the privilege of a good education, your
20 parents sent you at what must have been incredible costs to a private school where you almost matriculated. You should have stopped Kwanele from carrying out his acts, not helped him do it. When you burst into tears in the presence of the investigating officer you had good reason to cry, but it was too
25 late. In your case also you made a confession to the
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community, to the investigating officer, and later to Captain van der Merwe.

For some reason you later on decided you would be better off
5 if you impeach the honesty of these people and call them all
liars and denied that you had anything to do with this crime. I
will assume in your favour also, as with Kwanele, that
someone or some people may have persuaded you to lie, and
to change your mind about the initial decision to be honest and
10 truthful. Technically you deserve to be given the same
sentence as Kwanele but again I must take into account
special factors which apply to you and not to him.

Over and above the fact that you are a first offender, and still
15 a young man I must also take into account the fact that this
whole scheme, and this whole enterprise was Kwanele's
brainchild. You come from a decent background, and I cannot
believe that you were so weak-willed as not to try to stop
Kwanele from doing this, let alone helping him. I must also
20 take into account the fact that in your confession to the
captain you did say that you had been drinking that day, and to
an extent you were affected. It is sad to see that there are not
more young people who seek to further educate themselves
and model their lives on great leaders like Nelson Mandela,
25 and the great number of doctors and judges and scientists
/ds /...

produced by the Xhosa people. I take into account therefore that you were intoxicated that night, because you said so in your confession. I also will take into account that you probably played a lesser role than Kwanele. I therefore
5 believe that this Court must distinguish your sentence from Kwanele and impose a lesser sentence.

Accused 1 and 2 please both stand.

10 ACCUSED 1 taking all factors into account I SENTENCE YOU TO 25 (TWENTY FIVE) YEARS IMPRISONMENT ON EACH COUNT OF MURDER. These sentences are to run concurrently. I SENTENCE YOU TO A FURTHER 5 (FIVE) YEARS IMPRISONMENT IN RESPECT OF THE ACT OF
15 ARSON. For purposes of sentence the THREE COUNTS OF ATTEMPTED MURDER WILL BE TAKEN AS ONE and you are SENTENCED TO 12 (TWELVE) YEARS IMPRISONMENT in respect of these counts. The sentences of attempted murder and arson are also to run concurrently with one another, and
20 with the sentence of 25 years for murder. You are SENTENCED TO AN EFFECTIVE PERIOD OF 25 (TWENTY FIVE) YEARS IMPRISONMENT.

ACCUSED 2 the sentence I impose upon you is 15 (FIFTEEN)
25 YEARS ON EACH COUNT OF MURDER. These two sentences

are to run concurrently. I SENTENCE YOU TO A FURTHER 3
(THREE) YEARS IMPRISONMENT ON THE ACT OF ARSON,
and a FURTHER 3 (THREE) YEARS IMPRISONMENT ON
EACH CHARGE OF ATTEMPTED MURDER. All these
5 sentences are to run concurrently with one another, and with
the sentence of 15 years for the murder. In the result YOU
WILL SERVE A TOTAL SENTENCE OF 15 (FIFTEEN) YEARS
IMPRISONMENT.

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WEINKOVE, AJ