



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

Case No.: **CC16/2018**

In the matter between:

**THE STATE**

and

**MR GOODMAN NOBADE**

Accused

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CORAM:

**SALIE-HLOPHE, J**

DATE OF COMMENCEMENT OF HEARING:

**13 MAY 2019**

DATES OF HEARING AFTER COMMENCEMENT:

**20 MAY 2019**

**21 MAY 2019**

**22 MAY 2019**

**27 MAY 2019**

**28 MAY 2019**

**29 MAY 2019**

**6 JUNE 2019**

**10 JUNE 2019**

**11 JUNE 2019**

DELIVERED:

**19 JUNE 2019**

COUNSEL FOR THE STATE:

Advocate Blows

COUNSEL FOR ACCUSED:

Advocate Mtini

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**JUDGMENT ON SENTENCE DELIVERED ON 19 JUNE 2019**

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**SALIE-HLOPHE, J:**

[1] Mr. Nobade, on the 10<sup>th</sup> of June 2019, this Court found you guilty as charged and convicted you of (1) having assaulted your wife, Ms Agnes Mzisa, with the intent to do grievous bodily harm, (2) the murder of your wife with the direct intention to kill her as well as (3) defeating the ends of justice by dismembering of her body, cleaning up the crime scene and disposing of her body parts at various locations in and around the area of Khayelitsha. Further to that you supplied false information to the police in order to mislead the investigation as to the true method of her death and that you had in fact murdered her.

[2] Now is the time for me to meet out an appropriate sentence to you for the crimes of which you had been convicted. The determination of a suitable sentence

does not entail a mechanical process in which predetermined sentences are imposed for specific crimes. In each case the sentencing court has to take into account all relevant factors, afford the appropriate weight thereto and strike a balance between the various interests to consider. In determining a sentence which is just and fair, I have regard to the triad of factors that have to be considered as set out in the case of **S v Zinn 1969 (2) SA 537 (A)**. The Court must therefore take into account your personal circumstances as the accused and being the person convicted of the crimes, the nature of the crime including the gravity and extent thereof and the interests of the community.

[3] In deciding on such a sentence the Court must tinge it with a measure of mercy and strive to meet the objectives of punishment being retribution, prevention, deterrence and rehabilitation.

[4] In mitigation of sentence, your counsel addressed the Court ex parte and placed factors before me which I should take into account in order to impose a lesser sentence to you in respect of the crimes of which you had been convicted. Counsel for the State on the other hand led evidence in the form of two (2) witnesses, namely, the son of your late wife as well as your sister-in-law. Furthermore submissions were addressed ex parte which in the view of the State are aggravating and warranting of the imposition of a harsher punishment namely, life imprisonment.

[5] The legislature otherwise known as the lawmakers have recognized that certain serious crimes must be met with a minimum sentence. In respect of the conviction of the murder you had committed, a minimum period of 15 years imprisonment is prescribed in terms of Section 51(2)(a) of the Criminal Law

Amendment Act 105 of 1997, commonly referred to as the minimum sentence legislation.

[6] I had during closing submissions ventilated with your counsel and counsel for the state that an appropriate sentence could in the circumstances warrant of this Court to exceed the prescribed minimum sentence, taking into account the aggravating features of the murder in respect of which you had been convicted and they had each addressed me on their submissions in that regard.

[7] I will now turn to the triad factors, starting with your personal circumstances as had been highlighted by your counsel.

**PERSONAL CIRCUMSTANCES:**

[8] Your counsel submitted that although your identity document indicates your year of birth to be 1961, making you 58 years of age, your instructions are that you were in fact born in 1954. He requested of this Court to accept you as being 64 years of age, meaning that at the time of the offence in April 2017 you were aged 62. It was also submitted that you are the father of four children, the youngest of which is still schoolgoing, born in 2006.

[9] You have been incarcerated for a period of two years, whilst awaiting the finalisation of this matter, having been arrested in June 2017.

[10] You have a number of relevant previous convictions which includes elements of violence and dishonesty. Your counsel correctly argued that as your last previous

conviction was in 1997, it should be ignored by this Court as it had occasioned more than 10 years ago. For this reason you stand before this Court as a first offender.

[11] As regards the aggravating features of this crime, it was submitted on your behalf, that this Court must bear in mind that the murder of your wife was uncovered at your instance in that you informed your niece that you had killed your wife, which had effectively set the wheels of investigation and justice into action. Further to that, it was contended that your lowered perception of women must be seen in the context that you are from a rural community, that you are illiterate and that the cultural beliefs to which you prescribe perceive women to be subordinate to men and that they are required to dress in a particular manner. I will deal with that further on in this judgment.

[12] I turn now to the second factor to be considered, that being the crimes of which you had been convicted, the manner of execution thereof as well as the nature, seriousness and impact thereof.

#### THE OFFENCES:

[13] The victim of these offences was non other than your wife with whom you had been married for a number of years. She was your partner and shared a home with you. It was in this very home that you had murdered her and gruesomely dismembered her body by cutting her up with one of your kitchen knives.

[14] The Court has heard the shocking and gruesome details of the heinously abusive manner in which you conducted yourself towards your wife, so much so she pleaded for help from your family as the elders for remedial measures and to counsel your marriage. She called for protection through the legal mechanisms of a domestic violence order, setting out in her affidavit that she feared you, that you abused her in every conceivable manner and, amongst other complaints, that she bore the scars of repeated injuries inflicted by you. She also indicated that she feared for her life and that she did not know what else you are capable of doing to her.

[15] It is clear to this Court that your wife suffered during this marriage. You had systematically abused her in every form possible. You belittled her, beat her up, insulted her, falsely accused her of having loose sexual morals, humiliated her in the presence of others, you stripped of her dignity and her pride and treated her as an object. The injuries you inflicted were directed amongst others at her face, her hair, her breasts, her thighs, her chest. In short, it was directed to the very parts of her body that would present her as a woman. The manner in which you inflicted the injuries to your wife is consistent with the clear hatred and lowered impression you have of women in general.

[16] It is significant to this Court that instead of protecting Agnes, Msimane as your family named her as your Makoti, you violated her, escalating the level of harm and injuries to such an extent that you took her life. Even this was not enough for you. As a final act of contempt for her and for women as a whole, believing as you stated that women have too many rights, you went about to cut her up into pieces, dumping pieces of her body in different areas. Only her head and one upper leg was

recovered, the rest had perished, washed away in the stream where you had dumped it and in all likelihood eaten up by dogs and pigs.

[17] You did not testify in mitigation of sentence and did not display remorse for the murder of your wife. Had you done so it would have been taken into account as a mitigating factor. That you elected not to do so, will however not be viewed as an aggravating factor.

[18] Your counsel requested me to consider that as a sign of contrition that it was ultimately owing to your phone call to your niece that the police got involved. This is a very myopic view to adopt. Your wife was an active and responsible member of society. She was the mother of three children, she was loved by friends and family, she was a responsible employee and an active member of the church. It would have been a matter of time for her to be reported as a missing person and for you as her husband to explain and be interrogated as to her absence. Taking into account the manner in which events had unfolded, you played a cat and mouse game with family members and with the police. In no way can the deceptive manner in which you had gone about to explain your wife's absence afford you any form of mitigation. In fact, the manner in which you spun a web of lies surrounding her death and when and where to find her remains, was done methodically to maximise your benefits, in the hope that her scattered remains would have perished in such a manner that you could make her death anything you wanted it to be. In the course thereof, you did not spare her family and loved ones from the pain that they would have suffered and their anguish as what had happened to her or where her body was.

[19] Mr. Magoma, the eldest son of the deceased, testified before this Court as to the loss that he feels with the death of his mother. He described his mother to have been someone whom cared and provided for him and his two younger siblings in a manner which no one else can replace. He explained how painful her death is to them, the emotional gap it has caused them in their lives and how distraught he is to have learnt the extent of his mother's abuse at the hands of the accused, the way in which she died and what the accused had done to her body after her death. He testified that he continues to be angry about these events, that he struggles to process and accept her death and that his education had suffered, having dropped out of matric during the year of her death. In these circumstances he is forced to forge ahead in order to provide for himself and look after his younger siblings, a situation that continues to be very difficult for them.

[20] Mrs. Gladys Nobade, the wife of your brother, testified that she had been married into the family since 1973. Her testimony essentially challenged your counsel's submissions as per your instructions that you are 64 and not 58 years of age as per your identity document and she further denied any knowledge of you having children. More specifically she denied that you have a minor child as claimed in respect of whom you provide physical support and care. Mrs. Nobade, who also testified during the trial, had consistently made a good impression to this Court as an honest and credible witness. Furthermore, a copy of your identity document had been placed on record from which this Court is entitled to presume the regularity *ex facie* the document. In the absence of evidence to the contrary. In the premise, the Court accepts the evidence presented by the State that you are in fact 58 years of age and that you have no children, in particular no minor children, for this Court to



take into account and that you had lied about these facts to manipulate the Court so as to gain its sympathy.

### INTERESTS OF THE COMMUNITY:

[21] With regard to the interests of society it is undeniable that we are experiencing high levels of violent crime and in particular with reference to this case, violent crime against women. In two recent cases where the accused had been convicted of murdering of their wives and concealing their deaths, that being, *S v Rohde*, Case Number CC43/2017 and *S v Packham*, Case Number CC50/2018, the scourge of femicide in our society had been dealt with in sentence. In both these matters, the narrative had become a familiar feature in our Courts, society and the media: an unhappy husband eliminates his wife by murdering her and then concealing her death to escape the letter of the law. In *Rohde*, the accused murdered his wife and attempted to conceal her murder by staging her body and the crime scene as if she had committed suicide. In *Packham*, the accused murdered his wife in their home, then set her car alight with her body in the boot at a nearby train station to suggest that it was a random stranger who had murdered her. *S v Rohde*, the Court set out in the judgment handed down in respect of sentence that intimate partner violence is the most common form of violence women experience in this country. Women killed globally in 2013 revealed the following statistics. The data from 66 countries found globally that **39%** of homicides of women are committed by an intimate partner. When comparing the global data of South Africa, the proportion of intimate homicides in our country stands at **57%**. We have become the femicide capital of the world. Further, that the killing of women by their partners has clearly become an epidemic and enormous social problem. The prevention of

these incidents of murder and violence against women clearly commands of us as a society to create a greater consciousness and social milieu which promotes gender equality, the rights of women to their self-determination in all spheres of their life, including their careers, association, movement and in their marriages, the right to be equally protected, human rights and justice.

[22] It is thus important and the duty of the Courts to contribute in our role as the justice system to impose appropriate sentences, particularly where women are murdered in the context of their marriages, their relationships and homes. Whilst it is so that you, as the accused, cannot be sacrificed at the altar of deterrence for other would-be offenders, nor can it impose punishment in anger, the interests of the community must be satisfied that offenders of serious crimes such as these be punished accordingly. If offenders are punished too lightly for serious offences, society would lose confidence in our Courts and so too would law and order be undermined. Serious crimes of this nature therefore compel that the objectives of retribution and deterrence weigh more than the objectives of rehabilitation of the offender and accordingly the interests of the accused would recede to the background.

[23] Whilst counsel for the accused argued that I must take into account that the accused's lowered perception of women and their subservient role to men emanates from a cultural perception, I must add that there is no civil society, particularly a society based on our Constitutional principles of the right to life, equality and dignity, which would condone violence against women, the murder of women and the dismemberment of their bodies after the termination of their lives. Counsel for the accused also argued as a mitigating factor that the crimes were committed in the

course of an unhappy marriage, more particularly that the deceased did not oblige the accused as he deemed fit and thus ought to be seen by this Court as “crimes of passion”.

[24] It is an unconstitutional notion that the killing of a woman by a man in the torrent of a stormy marriage or quarrel warrants the imposition of a lesser sentence. This is born from an antiquated and patriarchal notion that women ought to be subservient to their male partners. It flies in the face of the fundamental human rights of equality and dignity. It has become a regular expression in recent years from our judicial benches that the murder and crimes of violence committed by a man against his wife or partner is an aggravating feature of the crime, particularly so as he has the duty and the responsibility to protect his wife or partner and not to harm her. It has become a sad reality that violence against women is not only rife in public and outdoor places but indeed violence against women are being perpetrated in their private spaces, their homes and their relationships: the very places, both physical and emotional, where they ought to feel most protected and be safe. The increase of women being savagely murdered and butchered in their homes or by their partners remains an attack on humanity and our community. It can never be tolerated. It can never be seen to be the order of the day and in that way, by way of social fatigue, become an acceptable form of life. Our Courts need to continue sending a very strong message that this conduct is morally and legally reprehensible and that offenders will be punished accordingly, for if not, it could and would also result in society losing faith in the justice system and taking the law into their own hands to administer justice.

AGGRAVATING FEATURES:

[25] The aggravating features of the crimes which you committed, and in particular, the murder of your wife are significant and startling. The violence you had exerted on her during the fatal attack was indeed not isolated. You were very comfortable asserting yourself over her during the marriage with violence and abuse. On the day of her death you simply escalated the extent of your physical assaults on her to such an extent that it ultimately resulted in her murder. She was of slight built compared to you big and tall stature. She would have been no match to you and you would have easily overpowered and mortally wounded her.

[26] During the course of the marriage she pleaded for you to reconsider your behaviour. She engaged your family as a measure to counsel the marriage and to get you to desist from such conduct in the furtherance of the marital relationship. You had time over the many months and years of your marriage to reflect on your abusive conduct and to learn to restrain yourself and ultimately, to exit the marriage if you had felt so unhappy and unfulfilled in it. Instead, you continued to play a pathologically deceitful game with her, making her and others believe that you would change; that you would not do it again. She took comfort and contentment in this. She stayed in the marriage, believing (as she must have) that you would repent and have a happy marriage. In the end, you continued until she was no more.

[27] Horrifically, in a final curtain call, you chopped her up in the home you shared and discarded of her body piece by piece. The evidence of the State pathologist was that the cutting up of your wife would have taken considerable force and precision, to cut through her body parts, through bones and ultimately sever her

limbs. But further to that, it would have been a gruesome act to carry out. Yet you managed to do that, successfully too. In refuse bags you threw her, like she was nothing more than refuse followed up with a catch me if you can attitude and a cat and mouse game as to where you had thrown her remains. You clearly have no soul. The clear and gruesome picture which emerges from the evidence is that after murdering your wife, you methodically and savagely proceeded to butcher her into pieces and then devoid of any emotion or care disposed of her remains so as to enhance the chances of erasing her from this earth and getting away from facing justice for murdering her. In the process you robbed her family from the important cultural burial rituals and funeral processes and allowing them to get closure on the death of their loved one. This is the conduct of a heartless monster. Though you had not been convicted of a hate crime against women, it is a significant feature that it is your hatred of women that permeates through the commission of these offences.

### **CONCLUSION:**

[28] The State had called upon the imposition of a life sentence. The charge sheet which formally set out the charges against you and which had been read out at the inception of this trial cautioned that this Court's inherent power to impose a life sentence would be sought in the event of you being convicted as charged.

[29] In terms of the minimum sentence legislation, I am entitled to impose a sentence in excess of the said prescribed minimum if I am satisfied that the aggravating features are such that it warrants a harsher sentence. It had been held in various judgments of this Court and the Supreme Court of Appeal that the

minimum sentence legislation does not interfere with this Court's inherent jurisdiction to impose a life sentence, even in the absence of premeditation, if the circumstances so warrant it. (See: S v Aliko 2019 JDR 0673 (SCA); S v Malgas 2001 (2) SA 1222 (SCA); S v Kleynhans (SS45/2016) [2017] ZAWCHC 125 (24 October 2017))

[30] Turning to the facts and circumstances of this case, I am of the view that the aggravating features are so extreme and shocking that it far outweighs your personal circumstances and other mitigatory factors to such extent that it warrants a sentence in excess of the prescribed period of 15 years. This prescribed minimum sentence would be woefully inappropriate in these circumstances and after a careful consideration of various suitable sentencing options, **taking all three (3) counts together for the purpose of sentencing**, I am of the view that you must be removed from society for the duration of your life. No other sentence would be just and equitable other than to imprison you for life and accordingly I sentence you to a term of **life imprisonment**.

[31] Finally, you are further declared to be unfit to possess a firearm.

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**SALIE-HLOPHE, J**