



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 16 August 2022

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Benedict Moagi Peloeole v The Director of Public Prosecutions, Gauteng (740/2021) [2021] ZASCA 117 (16 August 2022)*

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Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the appellant's appeal and upholding the respondent's cross-appeal against the decision of the Gauteng Division of the High Court of South Africa, Pretoria (the high court).

In June 2017, Mr Benedict Moagi Peloeole (the appellant) a former member of the South African Police Service (SAPS), stood trial on two counts of murder, read with s 51(1)(a) of the Criminal Law Amendment Act 105 of 1997 (the Act). Section 51(1)(a) referred to, amongst others murder that was planned or premeditated. On 11 June 2018 the appellant was convicted of the two counts, the high court having found that on 12 September 2015 at his house in Westville, Pretoria West, he fatally shot, with his service pistol, his wife Mrs Jane Keitumetse Peloeole, aged 42, and his daughter, Ms Tsholofelo Trecia Peloeole, aged 23. During sentencing, the high court found that the murders were premeditated, but that there were substantial and compelling circumstances justifying a deviation from the prescribed sentence of life imprisonment. On 1 April 2019, the high court sentenced the appellant to 20 years' imprisonment on each count and ordered that 10 years' imprisonment of the 20 years imposed in respect of count 2, should be served concurrently with the sentence in count 1. Thus, the effective sentence was 30 years' imprisonment.

The issues brought for appeal were twofold: first, by the appellant, whether the high court erred when it found that the murders were premeditated, and second, by the State in cross-appeal, whether the high court erred when after it found that the murders were premeditated; it nevertheless accepted that there were substantial and compelling circumstances, sufficient to justify a deviation from the prescribed sentence of life imprisonment.

The appellant contended that the high court erred in finding that the murders were premeditated, his counsel submitted that the high court conflated 'intent' with 'premeditation'. The SCA held that, the submission by appellant that the high court conflated the two concepts was incorrect. The reasons for its findings was that murder was and remained a common law offence, with all its elements of intent, unlawfulness and the act of killing of a human being (actus reus). It was thus trite that in order for the State to secure a conviction on a murder charge, it must have proven all the common law elements of the offence, including the element of intent (dolus). The phrase 'planned or premeditated' was not an element of murder. It was a phrase introduced by the minimum sentence legislation (the Act), as one of the aggravating factors in the commission of murder. In the instance where one or more of these aggravating factors were found to be present, the courts were enjoined to impose a sentence not less than the minimum prescribed. In the case of murder, such a sentence would be life imprisonment. The question whether the murder was planned or premeditated was thus relevant for sentencing, and not for conviction. Though the perpetrator in his state of mind may have had both the intent and premeditation to commit the crime, the intent had to be present during the commission of the crime, while premeditation was, as a matter of logic, limited only to the state of mind before the commission of

the crime. There was therefore, a symbiotic relationship between the two concepts, in that they both related to the state of mind of the perpetrator. Counsel for the appellant contended that the high court failed to pronounce on the issue of premeditation in its judgment on conviction. The SCA found that the appellant was correct, however, also found that the high court was justified in finding, during the sentencing proceedings, that the murders were premeditated. Furthermore the high court's failure to pronounce upon the issue of premeditation at the conviction stage of proceedings did not prejudice the appellant, neither did it impact on the fairness of the proceedings.

Regarding the cross-appeal, the State contended that the high court, having found that the murders were premeditated, erred when it deviated from imposing life imprisonment. Section 51(1)(a) read with Schedule 2 Part 1 of the Act, specifically prescribed a sentence of life imprisonment for a conviction on murder, where that offence was planned or premeditated. The SCA agreed with the State's cross-appeal and found that the high court's sentence was far too lenient and reasoned that the court a quo failed to consider all the aggravating circumstances against the appellant, namely: the manner in which the appellant, without provocation, shot his daughter and wife at close range; that the victims were unarmed and were not a threat to him; that the victims were vulnerable women who were in the sanctity of their home; that the appellant had previously assaulted his wife and had his firearm taken from him due to concerns about their safety; that after he had carried out the murders on the deceased, he did not even approach them to see whether they were still alive or make any attempt of assisting them or summoning an ambulance. Instead, he calmly returned his firearm to the bedroom, and subjected his two nephews to the trauma and terrifying experience of witnessing the execution of the deceased. Furthermore, not long after committing the two murders and during his arrest, he threatened to kill the station commander merely because he had refused to shake his hand; and that four years after the murders, the appellant did not show any regret, let alone remorse for his actions, he brazenly continued to make statements intending to have his legal representative and his nephew, a state witness killed. The aggravating factors in that case far outweigh the mitigating factors and the high court's deviation from the prescribed minimum sentence in terms of the Act was a material misdirection, which justified this Court's intervention on appeal. A balanced consideration of the triad of sentencing called for the imposition of the sentence of life imprisonment. It therefore followed that the appeal must fail and the cross-appeal must succeed.

The main judgment was accompanied by a concurring judgment by Makgoka JA, who concurred with the main judgment's life imprisonment sentence but disagreed that it was based on premeditated murder on the part of the appellant but instead on the Court's inherent powers. The Honourable Judge argued that for a finding of premeditation to be present, such evidence should have gone beyond a reasonable doubt. In borderline cases such as this one, the Court should have deterred from making a finding of premeditation but instead looked at the different inferences that could have been drawn from the established facts. He further argued that, the inference drawn by the main judgment was not the only one that could have been drawn under these facts. It was for those reasons why the Court could not have confidently concluded that the appellant had time to think out or plan beforehand or to decide on, arrange in advance, make preparations for the shootings. That, however, did not mean that the appellant could not be sentenced to life imprisonment because the court had inherent powers to impose such a sentence where circumstances allowed.

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