

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: SS085/2022

DPP Ref: 10/2/11/1 (2022/106)

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 08 MARCH 2023

In the matter between:

THE STATE

and

MDLANE: GIDEON SABATA

ACCUSED

JUDGEMENT

ALLY AJ

[1] The Accused, Mr Gideon Sabata Mdlane, has been arraigned before this Court on the following charges:

1.1. **Count 1:** Murder of **G[....] M[....]1**, an adult female person, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997 as amended by Section 15 of Act 12 of 2021;

1.2. **Count 2:** Murder of **L[....] Y[....]1 M[....]2**, a minor female child born on 30 January 2016, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997 as amended by Section 15 of Act 12 of 2021;

1.3. **Count 3:** Murder of **K[....] Y[....]2 M[....]3**, a minor female child born on 18 November 2020, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997 as amended by Section 15 of Act 12 of 2021;

1.4. **Count 4:** Attempted murder of **N[....] M[....]4**, a minor female child born on 8 February 2019, read with the provisions of Section 51(1) of Act No 105 of 1997 and Part 1 of Schedule 2 of Act 105 of 1997 as amended by Section 15 of Act 12 of 2021.

[2] The State is represented by Adv. R. Barnard and the Defence by Ms Bovu from Legal Aid South Africa.

[3] The Accused pleaded guilty on all four counts in terms of Section 112(2) of the Criminal Procedure Act 51 of 1977, as amended, and indicated that his guilty plea must be read with Section 51(2) of Act 105 of 1997. A statement in this regard was handed in as Exhibit "A"

[4] The State accepted the facts placed before the Court as admissions in terms of Section 220 of the Criminal Procedure Act 51 of 1977, as amended, and indicated that they will argue that the Accused must be found guilty as charged, in other words, on all counts but read with Section 51(1) of Act 105 of 1997.

[5] The State and the Defence then presented argument for and against the guilty plea as tendered.

[6] The facts as outlined by the Accused in respect of the abovementioned plea of guilty are as follows:

6.1. On 12 May 2022 he was at [...] P[...] DZ[...]in Soweto, a sub-district of Johannesburg Central;

6.2. On the said date he admits that he unlawfully and intentionally killed the following deceased:

6.2.1. **G[....] M[....]1**, an adult female person;

6.2.2. **L[....] Y[....]1 M[....]2**, a minor female child;

6.2.3. **K[....] Y[....]2 M[....]3**, a minor female child.

6.3. He further admits that on the same date as above, that is, 12 May 2022, he unlawfully and intentionally attempted to kill **N[....] M[....]4**, a minor female child.

6.4. The Accused resided with the three deceased and the complainant in Count 4, the attempted murder charge.

6.5. The deceased in Count 1, **G[....] M[....]1** was married to the Accused by customary law and two children were born of this relationship, **K[....] Y[....]2 M[....]3** and **N[....] M[....]4**.

6.6. The third child, **L[....] Y[....]1 M[....]2** was the Accused's step-child whom he raised with his wife.

6.7. On 12 May 2022 the deceased, the Accused's wife, came home late from work and when the Accused confronted her, she stated that she knocked off late.

6.8. The Accused went out to a friend and on his return, he was in the sitting-room and his wife was in the bedroom and the door was slightly opened. The Accused overheard his wife talking to someone on the phone saying she was tired of staying with an old man and that he must go back to her parents and take the cows he paid for lobola.

6.9. When he approached her about the telephone conversation, she told him that she was talking to her boyfriend. He tried to grab the phone in order to talk to the person but his wife threw it on the floor. He had an argument with the deceased about the telephone conversation.

6.10. The Accused went out of the bedroom and was on his way to the garage with the intention of cooling off when he noticed a knife in the kitchen. He then changed his mind, took the knife and went back to the bedroom with the intention to stab his wife and inflict the pain which she also emotionally caused him. When he entered the bedroom with the knife, his wife pushed him when she saw the knife and the Accused fell against the wardrobe with the knife. He stood up and took the knife from the floor and wanted to stab his wife.

6.11. The Accused and his wife tussled, as he states it, over the knife until he managed to be in possession of the knife. He stabbed his wife, firstly on the shoulders so that she would not attack him and thereafter he stabbed her several times on the body with the intention to kill her. At the time when he was stabbing his wife, she was not defending herself. After he stabbed her, she sat on the bed and passed on and fell on the floor.

6.12. When the Accused noticed she was dead, he thought it was better to also take his own life to be with her by committing suicide. However, he also thought that he would not be able to leave his children behind as orphans and he had to kill them also.

6.13. The Accused admits that by killing his wife, he did not act in self-defence as the deceased was not a threat at the time.

6.15. The Accused admits the cause of death as outlined in the post-mortem report, Exhibit “B”, of Dr M.A. Ramela, and that the cause of death was determined to be that of multiple stabbing.

6.16. The Accused then states that he proceeded to stab each of the children more than once on the body with the knife with the intention to kill them. He cannot recall which child was stabbed first and last. He recalls that he was stabbing them one by one more than once on the body. The Accused states that he did not notice which parts of the body he was stabbing.

6.17. At the time of the stabbing, the children were crying and were unable to defend themselves. When he noticed that the children were no longer crying and were dead, he took all of them and put them on the bed. He further states that he was not aware that **N[....] M[....]4**, the complainant in Count 4, was still alive as she looked like she was dead like the others.

6.18. The Accused admits the post-mortem report, Exhibit “C” as being the report of Dr K.S. Carson and admits that the cause of death of **L[....] Y[....]1 M[....]2**, was determined to be ‘penetrating stab wound of the chest’.

6.19. The Accused admits the post-mortem report, Exhibit “D” as being the report of Dr F. Nciweni and admits that the cause of death of **Khanyisa Lamile Mdlane**, was determined to be ‘abdominal penetrating incised wound’.

6.20. The Accused further admits that **N[....] M[....]4** survived and was admitted to Chris Hani Hospital where she was examined by Dr N.C. Mashaba whose report is marked Exhibit “E”. The Accused admits the contents of the said Exhibit “E”.

6.21. The Accused admits that he did not act in self-defence and furthermore admits he inflicted the injuries sustained by the deceased in Counts 1 to 3 and that the injuries caused their deaths.

6.22. The Accused admits that he had no right to assault and attempt to kill N[....] M[....]4, the complainant in Count 4.

6.23. The Accused admits the correctness of the crime scene photographs marked as Exhibit “F” but has no knowledge of how the two knives depicted in photo 9 of Exhibit “F” ended up in his bedroom.

6.24. The Accused furthermore stated that his attempt at committing suicide firstly, by hanging himself from a plank in the ceiling and secondly by drinking Jeyes fluid mixed with car battery water, was unsuccessful.

6.25. Finally, the Accused was aware that his actions were wrongful, unlawful, and punishable by law.

[7] The question that arises, which is common cause to the State and the Defence, is whether the above stated facts amount to murder and attempted murder as read with Section 51(1) of Act 105 of 1997.

[8] Section 51(1) of Act 105 of 1997 provides as follows:

“Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to Part 1 of Schedule 2 to imprisonment for life.”

[9] Part 1 of Schedule 2 of Act 105 of 1997 provides as follows:

“Murder, when –

(a) It was planned or premeditated;”

[10] The rest of the provisions of Part 1 of Schedule 2 are not relevant for purposes of this judgement.

[11] Now it should be noted that the words 'planned' and 'premeditated' are not defined in Act 105 of 1997.

[12] The Court was referred to the case of *Kekana v S*¹ by the State to serve as a guide in dealing with the present case. The Appellant in the *Kekana* matter was faced with a direction by the Court of Appeal in terms of Section 322 (6) of the Criminal Procedure Act 51 of 1977, as amended, which relates to a Court of Appeal increasing a sentence.

[13] The Supreme Court of Appeal in *Kekana* found it misplaced of an Accused to plead guilty to murder but that the guilty plea must be read with Section 51(2) of Act 105 of 1997. The reasoning of the Court is that murder is murder and aggravating and extenuating circumstances are relevant to sentence. An Accused must, if so advised, plead guilty based on facts and a Court must then find such an accused guilty based on the facts placed before the Court.

[14] The Accused in the present case before this Court, has pleaded guilty and placed certain facts before the Court. Ms Bovu on behalf of the Accused, submits that based on the facts placed before the Court, the murder was neither 'pre-planned' nor 'premeditated'.

[15] The State on the other hand argues that the same facts as placed before this Court by the accused, amount to 'pre-planned' and/or 'premeditated murder' and the accused should be found guilty as such. It should be noted that the said Act does not define the concepts 'pre-planned' and 'premeditated'.

[16] The second reason for the State referring this Court to the *Kekana* matter was the reference therein to another *Kekana*² matter³:

¹ 2018 SCA 148

² *Kekana v S* 2014 SCA 158

³ *Kekana v S* 2018 supra @ para 37

“...In this regard, one must bear in mind what this Court said in S v Kekana [2014] SCA 158 at para 13, that premeditation does not necessarily entail that the accused should have thought or planned his or her action for a long period of time in advance before carrying out his or her plan. This is because ‘even a few minutes are enough to carry out a premeditated action’.”

[17] I align myself with the explanation given to the word ‘premeditated’ by the Supreme Court of Appeal⁴. The question that remains is whether the actions of the Accused in the present matter amounted to ‘premeditation’ as explained in the Kekana case.

[18] I am of the view that in respect of all counts, the Accused’s actions in this case evidenced ‘premeditation’. In this regard, he was on his way to the garage when he changed his mind and decided that he wanted to inflict pain on his wife. He did this with the express intention, in his own words⁵, of killing his wife. He disavows any defence in the said killing. It is clear from the post-mortem report, Exhibit “B” that multiple stab wounds were inflicted on the body of his wife, **G[....] M[....]1**. There is no evidence whatsoever, to gainsay the intention in this particular case, namely, that of *dolus directus*. The accused must therefore be found guilty of murder and the intention being *dolus directus*.

[19] Insofar as the minor children are concerned, the Accused again in his own words, decides that the children should not be left orphans and they must be killed. This Court can think of no other intention in the circumstances of the killing of **L[....] Y[....]1 M[....]2** and **K[....] Y[....]2 M[....]3** than that of *dolus directus*. The Accused wanted them dead and stabbed them with the intention that they must die. Accordingly, the Accused must be found guilty of the murder of **L[....] Y[....]1 M[....]2** and **K[....] Y[....]2 M[....]3** with the intention being *dolus directus*.

⁴ Kekana v S 2014 supra

⁵ Section 112 statement para 7.4

[20] Finally, in respect of **N[....] M[....]4**, as with the killing of her siblings, the Accused had the direct intention of killing her also. It is by the grace of God that this child is alive today. Accordingly, the Accused must be found guilty of the attempted murder of **Noxolo** with the intention being *dolus directus*.

[21] It is the judgement of this Court, accordingly, that the Accused Mr Gideon Sabata Mdlane is found guilty of murder, with direct intent, of the following persons:

21.1. **G[....] M[....]1**

21.2. **L[....] Y[....]1 M[....]2**

21.3. **K[....] Y[....]2 M[....]3**

[22] It is further the judgement of this Court that the Accused, Gideon Sabata Mdlane is guilty of the attempted murder with direct intent of **N[....] M[....]4**.

G ALLY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Appearances:

For the State:

Adv. R. Barnard
DPP Johannesburg

For the Accused:

Ms S. Bovu
Legal Aid South Africa