

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG
HELD AT PALM RIDGE**

Case No: SS 77/2024

DPP Ref: 10/2/11/1-2024/52

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

4 AUGUST 2025

In the matter between:

THE STATE

V

M[...], J[...] K[...]

Accused

JUDGMENT

MAHOMED J:

BACKGROUND

[1] The accused is charged with two counts, count 1 murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 and

read with part of Schedule 2 of the Act and count 2 assault with intent to do grievous bodily harm read with s 51(2) and part III of schedule 2 of the Criminal Law Amendment Act 105 Of 1997. He pleaded guilty to the charges and filed a statement in support of his guilty plea, in terms of section 112(2) of the Criminal Procedure Act 51 of 1977, (“the Act”), marked as exhibit A. However, the state did not accept his plea explanation which was admitted in terms of s220 of the Act.

[2] In his plea statement the accused denied the state’s allegations that the murder was premediated and stated that he was trying to fend off the deceased after she grabbed him and she was stronger than him.

[3] He stated that the deceased was his girlfriend and that on the night of 24 February 2024, in Clayville in the magisterial district of Johannesburg North, he murdered the deceased. He stated that they together with their three children, returned home late that night after visiting a friend, they drank alcohol with him. He stated that the deceased was unhappy with his having gone to the local tavern with his friend that night, she was concerned that they would both fraternize with other women. They argued about this and the deceased threw a glass at him, which he managed to avoid as it shattered against the wall. He stated that she was stronger than him and she pushed him against the kitchen sink, he saw a knife nearby and stabbed her several times, as she was clinging onto him and when she collapsed, he was freed from her grip. He admitted that his actions were intentional and that he did foresee her dying when he stabbed her but nevertheless continued. The forensic evidence was not disputed, the report stated that the deceased was stabbed 15 times. He stated that he injured the deceased’s minor child L[...] R[...] after he wielded a knife at him, whilst L[...] tried to disarm him of the knife, the minor child sustained a cut to his hand and suffered grievous bodily harm. He admitted his actions were unlawful and intentional, he stated that he is remorseful. He stated that the security officers at their property tried to enter their home when he arrived to investigate a report from neighbors’ and he tried to prevent them from entering when a scuffle broke out and the accused injured himself with the knife he was holding. He denied that the murder was premediated as alleged by the state and on his version, he was in a rage from the argument and killed the deceased with the knife he found in the kitchen.

The State's Case

[4] The state rejected the plea explanation and submitted the murder was premeditated. The state called three witnesses, a Mr. Tsitiso Hoffman, the security guard on duty at their apartment block and the deceased's two children, L[...], who was 13 years old and L[...] who was 10 years old. Their younger sibling O[...] was 3 years old at the time and slept in the deceased's bedroom.

L[...] M[...]

[5] I was satisfied that the minor child understood the meaning of taking the oath and its implications, he testified through an interpreter who was duly qualified and was duly sworn in. L[...] testified that he was 13 years old and that the deceased was not his biological mother, but his late mother's sister. She treated him as her child and he accepted her as his mother. He testified the accused is not his father, he called him uncle.

[6] He testified that they had returned home late on 24 February 2024 from their friend's, home. He was about to fall asleep when he heard his mother and the accused, whom he referred to as uncle K[...], arguing. The accused shouted that the deceased was cheating on him, he heard her deny that she was cheating and she shouted at the accused to call the person and confirm his accusations. He testified that he heard the accused shout at the deceased that he was going to kill her and he did not care if anyone called the police.

[7] In his statement to the police he stated that he left his room to investigate what was going on, when the accused shouted at him and told him that the was also going to deal with him, the accused shouted an expletive about his private parts. L[...] testified that at that point he was afraid and he returned to his room. The accused then shouted out to him and L[...] and called them to the dining room, they both approached him when he told them that he was going to kill their mother and himself and that they both will be left on their own. He heard his mother shout to him to call for help at which point the accused ordered them to leave their cellphones on

the couch. When he approached the kitchen, he saw his mother M[...] M[...], lying near the fridge in a pool of blood and saw her gagging.

[8] It is not in dispute that the accused brandished the knife about in L[...]’s direction, and L[...] was injured when he tried to disarm him, and the accused cut him across both his palms as he tried to grab the knife. He was injured between the left thumb and index finger.

[9] He testified that he saw the security person at their door trying to access their home, when the accused refused to open the door. The security guard struggled with the gate but managed to open the door to their home. They instructed him to return to his room. The accused ordered him back, grabbed him and thereafter he fell in the deceased’s blood on the kitchen floor. He had soiled his pants from the blood. He testified that the accused tried to slit his throat, and testified that he only cut himself at his upper throat after he killed the deceased.

[10] He denied that the deceased was the aggressor on that night. He heard glass breaking in the kitchen and he heard the deceased shouting at him to call the police as the man was hurting her. The witness identified the accused, sitting in the dock.

[11] During cross examination, the witness testified the accused was collected by the deceased and aunt Latoya and her husband to join them to drinks. He testified that the two males left to go out to the tavern. Counsel sought to discredit the witness when he highlighted a variance in his evidence between his testimony in court and his statement, exhibit E, to the police. The variance relates in the main on who may have started the argument or fight. Counsel for the accused tried to demonstrate that the accused’s version that the deceased was the aggressor. In my view in the light of the plea explanation, the inconsistencies were not material having regard to the main issue before this court. The court also noted that the incident occurred a long while ago and raised difficult memories for the witness who had lost his “second mother”.

[12] The issue before this court is whether the murder was premeditated. The witness conceded that he did not witness the stabbing but was sure that he heard his

mother move from her room to the dining room where the argument started and then his mother and the accused moved to the kitchen. The witness was sure that the accused started the fight. He testified that he enjoyed a healthy relationship with the accused prior to the killing of his mother.

[13] In reexamination the witness confirmed that he heard the deceased shout out “you are stabbing me.” The witness persisted with his earlier evidence that he was called to the kitchen, he witnessed the deceased on the kitchen floor gasping for breath and that the accused told all of them that he was going to kill their mother and himself and they will all be left to fend for themselves.

L[...]

[14] The court was satisfied the minor child understood the taking of the oath and he testified through a qualified intermediary. He testified that the deceased was his biological mother, the accused was a friend to his mother, who visited their home intermittently. On the night of the incident he returned with the family from friend’s home and changed for bed. He testified that he was asleep when he was woken by the sound of breaking glass coming from the direction of the door of his bedroom. He shared his bedroom with L[...], who woke up and told him he was going to the bathroom, he left the bedroom. The accused shouted that L[...] must return to the bedroom, thereafter the accused insulted him by referring to his private parts.

[15] He heard the accused shout at the deceased that she wanted to fool him and he called her names by referring to her private parts. This witness corroborated the evidence of his older brother. He heard the accused telling his mother that she was cheating on him. She told him to telephone the person to verify this accusation. The accused assaulted his mother. He heard the pounding of fists and heard his mother shouting at L[...] to call the police. Following this, the accused called L[...] and instructed him to place the phones on the couch. He called them told them he was going to kill his mother and then himself and they would be left to fend for themselves. He witnessed at the time that the deceased was on the kitchen floor in a pool of blood. They returned to their room and he heard the accused assault his mother further. He testified that when they were called the deceased was on the floor

and was still alive, she was gasping for breath. He testified that the accused instructed L[...] to block the door to prevent the security from entering the home. The security managed to enter their home and he instructed him and L[...] to go to the neighbor's home. The witness reluctantly agreed to point out the accused, he stated that he "did not want to see his face." The witness identified the accused sitting in the courtroom through the glass window.

[16] He testified that the accused is O[...]’s father, O[...] was about three years old when the incident happened. He was only an occasional visitor in their home. During cross examination, the witness stated that his mother and the accused were drinking alcohol at their friend's home. The further testified that his saw his mother was still alive, when he went to out of his room. During cross examination he testified that he knew that the accused did not return with them to their home, but had gone out to buy some ice, however he was still awake by the time the accused returned. The state put no further question in reexamination.

TSITSO HOFFMAN

[17] He testified that on the night of 25 February 2024 he was on guard duty at the building where the deceased lived, in Clayville Proteas. The deceased's neighbors reported to him at about 00h00 that they heard noise and shouting from the direction of the deceased's flat. He went on to investigate the cause of complaint when he tried to enter and found the gate was locked, the door was unlocked, he identified himself and he heard the deceased asking for assistance. He saw the deceased on the floor, she threw out the house keys and she asked him for help because the accused was hurting her and she was dying. He looked in and he noticed blood on the accused's clothes and saw blood stains on the wall and cupboards. He called for backup as per his training. His support team attended on the scene. He testified that the accused did not say anything to him nor asked him for any assistance.

[18] During cross examination he testified that he did not know how the door was opened and when he returned with back up to the flat, he called out the deceased but there was no response from her. The state posed no questions in reexamination.

The Defense case

[19] The accused did not testify and Mr. Ngxumza submitted that his client stood by his plea explanation which was entered as his admissions in terms of s220 of the Act. The defense did not call any witness.

[20] During cross examination, L[...], testified that both the deceased and the accused drank alcohol that night at their friend's home. Although he could not tell how the fight started, he testified that he heard shouting from the deceased's room and then the sound of breaking glass. Counsel in his heads of argument and in cross examination sought to establish that none of the state's witnesses saw how the fight or argument started and therefor the court must accept the accused's version that the deceased had overpowered him and he found the knife and stabbed and killed the deceased, he did not plan the killing at all.

The Issue

[21] This court is to decide on the evidence before it if the murder was premeditated.

Analysis.

[22] The photographs on file support the state's version that the deceased was dragged and assaulted. Her undergarment was torn, her T shirt was torn and she appeared in semi state of dress. Her hair appeared to be pulled at and therefor ruffled, she did not appear to be any larger or stronger than the accused. The court rejects the accused's version that she overpowered him and he found the knife and stabbed her to free himself from her grip.

[23] The findings in the postmortem report, exhibit A31, were common cause and it recorded that the deceased sustained 15 stab wounds over her face, shoulders, chest and arms and the cause of death being penetrating incised wounds. Photograph 9 includes the cutlery drawer on the floor, and a reasonable inference can be drawn that the knife was "obtained from the drawer", and is dispositive of the

accused's version that he "found the knife in the sink" and picked it up and stabbed the deceased multiple times as per the forensic report. I agree with counsel for the state that he had the time to prepare for his attack. He had the presence of mind to open a drawer, hard enough that it fell out and obtained the knife to execute his plan. The court rejects his version that he "found a knife" and used it to murder the accused, instead he formulated a plan, looked for a knife and executed his plan to kill the deceased. In *S v PM 2014 (2) SACR 481 (GP)*, the court stated:

"premeditation refers to something done deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success or to evade detection or apprehension."

[24] I am of the view that the accused did in fact consider his method. The family had returned late at night and all were preparing to retire for the night. L[...] testified that he heard shouts outside his door, the deceased's body was found in the kitchen, where a knife would be found. The state submitted that the deceased's condition appeared as if she was dragged into the kitchen, where a knife can be found, to kill her. It was not an act that was committed at the spur of the moment.

[25] The court is cognizant of the cautionary rules to be applied in accepting the evidence of minor children and relatives. The children were logical, albeit the defense raised inconsistencies between the statement that L[...] made to the police with his evidence in court. However, when one has regard to the conspectus of the evidence the inconsistencies are not material.

Reliability and Relevance

[26] The children were logical and were coherent. They corroborated one another, that they heard the argument was about cheating, that they were ordered to put their phones on the couch, that they were told he was going to kill their mother and they would be left alone, that the accused attempted to prevent the security guard from entering their home. They both testified with ease and fluency on what they heard and witnessed. The children did not waver in their evidence nor hesitate so as to manufacture evidence. They appeared confident and answered with relevance and directly to the questions put. The accused had the presence of mind to call the

children to the dining room, ordered them to put their cellphones on the lounge, told them he was going to kill their mother and himself, told them they were going to be left alone. His behavior demonstrated a thought-out plan to destroy all their lives. L[...]’s evidence was that he saw the accused stab himself, but he was interrupted by the arrival of the security guard.

The Law

[27] In our law, if a murder is premeditated the prescribed sentence is life imprisonment.

In *S v Raath* 2009 (2) SACR 46 (C) planned or premeditated murder was described as follows (p 53 para [16]):

‘Clearly the concept suggests a deliberate weighing-up of the proposed criminal conduct as opposed to the commission of the crime on the spur of the moment or in unexpected circumstances. There is, however, a broad continuum between the two poles of a murder committed in the heat of the moment and one which had been conceived and planned over months or even years before its execution... Only an examination of all the circumstances surrounding any particular murder, including not least the accused’s state of mind, will allow one to arrive at the conclusion as to whether a particular murder is ‘planned or premeditated’. In such an evaluation the period of time between the accused forming the intent to commit the murder and carrying out this intention is obviously of cardinal importance but, equally, does not at some arbitrary point, provide a ready-made answer to the question of whether the murder was ‘planned or premeditated’.’ Raath was quoted with approval by the Supreme Court of Appeal in *Kekana v The State* (629/2013) [2014] ZASCA 158 (1 October 2014).

[28] Premeditation involves a degree of planning that distinguishes it from crimes of passion and accidental killings. The distinction between ‘planning’ and ‘premeditation’ was made on the basis of dictionary definitions in *Raath supra* and in *S v PM* 2014 (2) SACR 481 (GP) where it was held that the concepts were distinct from each other – premeditation referring “ *to something done deliberately after*

rationally considering the timing or method of so doing, calculated to increase the likelihood of success, or to evade detection or apprehension” while planning refers to “*a scheme, design or method of acting, doing, proceeding or making which is developed in advance as a process, calculated to optimally achieve a goal*” (at para [36]).

[29] In Raath supra, the court held that premeditation does not require long-term planning but requires some measure of prior thought or consideration before the act is committed. The court in this case explained that the premeditation can “*happen within minutes*” if the suspect forms an intent before committing the act. If one has regard to the distinction between premeditation and planning as set out in S v PM supra, the evidence supports the finding I make that his actions were deliberate and therefore premeditated. A court must have regard to the conspectus of the evidence to determine the premeditated act. In this case, the argument was heated, the deceased was challenging an accusation by the accused, the accused stated clearly that he was going to kill her, they ended up in the kitchen where the cutlery drawer was pulled out which dropped to the floor, he told the children he was going to kill their mother and proceeded to further traumatize them by telling them they will be left alone. In my view he had several opportunities to rethink his plan, he had the presence of mind to order them to leave their cellphones on the couch, presumably to prevent them from, calling for help or taking pictures of the scene. The accused’s overall conduct supports the states argument that the murder was premeditated. In DPP, Gauteng v Pistorius [2016] ZASCA 150, the SCA explained that even a short period between forming the intent and carrying out the act can amount to premeditation. In this case the court found that “*retrieving a firearm from another room before committing the crime can demonstrate premeditation.*” In casu the argument started out in the dining room, they moved to the kitchen where the cutlery drawer was pulled out and dropped to the ground and where he obtained the knife with which he stabbed the deceased multiple times. He cannot be said to have acted in the heat of the moment, he processed in his mind the move to the kitchen, the fact that the children would be left alone, he understood that if found out the police may be called and he would be in trouble, he attempted to prevent the security guard who would report his actions from entering the apartment. His actions align with his earlier threats which demonstrate that he was carrying out a preconceived plan

rather than reacting in the heat of the moment. I considered the dicta in R v Blom 1939 AD 188 at 202, on the facts before me, all reasonable inferences may be excluded, the accused's words and actions matched. He planned and murdered the deceased, the mother of the children whom he shared a home with, albeit periodically.

[30] I considered the plea explanation and find that the accused has admitted to all of the elements of the offence. For the reasons set out earlier, I find that the murder was premeditated.

[31] Therefor the following verdict is made:

The accused is found guilty as charged on both counts, the murder was premeditated.

Mahomed J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 27 May 2025 until 22 July 2025

Date of Judgment: 4 August 2025

Appearances

For the state: Adv Phatlanyane

For the defense: Adv Ngxuma