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**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION: MTHATHA]**

CASE NO. CC06/2025

In the matter between:

THE STATE

Vs

SIPHO TOLE MDEKAZI

Accused

JUDGMENT

JOLWANA J

[1] On 3 May 2024 Mr Mahlubandile Churchill Mdani (the deceased) was at his homestead with his wife at Cabazana Location in Mt Ayliff when he was shot and killed by unknown gunmen one of whom was armed with a rifle. The accused was charged for the murder of the deceased and the related charges. He pleaded not guilty to the charges and disclosed that his defence was that of an alibi in that on the day he was alleged to have committed the murder, he was in Cape Town. The charges with which the accused was charged and to which he pleaded not guilty were housebreaking with intent to commit an offence, the murder of the deceased and the unlawful possession of a firearm, to wit, a rifle.

[2] The first State witness was Mrs Mdani who testified that the deceased was her husband. On 3 May 2024 she was in the bedroom of their homestead at Cabazana Location in Mt Ayliff with the deceased. It was after 18:00 and they were watching television. The deceased had just returned from hospital where he had undergone an operation. He was not well, with only one leg that was working. She testified that before the deceased was discharged from hospital there was an incident in which the deceased's two nephews were attacked. One was shot and killed and the other one ran away and returned to Cape Town. There were therefore problems within the family of the deceased when the shooting incident in which the deceased was killed occurred.

[3] Having just been discharged from hospital, the deceased was not able to do anything on his own and was under her care and assistance with basic things like eating. Just before the incident the deceased had asked for a yoghurt and was on his bed eating it and some of it had spilled next to their bed. She went out to fetch a bucket with a damp cloth and cleaned the spill. She then went out again to throw away the water. Because it was winter, it was already dark and the electric lights in the homestead were on. As she went out to spill the water, she saw a person whom, at first glance, she thought it was her son who had not yet returned from work. She quickly realized that the said person was not her son because of his clothing and his height. She became suspicious and quickly went back inside with the bucket and closed the door which easily locked with a latch. After locking the door, she heard the door handle being opened but she had locked it as a result of which the door did not open. She then heard two gunshots being fired at the door. However, the door was not penetrated by the bullets.

[4] Further shots were fired at the window. At this stage she could tell that the shots were fired from different firearms. The windows had no burglar proofing as they had recently been changed. The bedroom window was shattered and the blinds fell. She ran and hid in the bathroom adjoining the bedroom. The deceased had rolled over to the other side of the bed and was on the floor. She was able to see what was happening in the bedroom from the bathroom and some cartridges landed in the bathroom. She could hear that the assailants were inside the bedroom and they

continued shooting. She did not know how they gained entry into the bedroom but she assumed that they used the shattered bedroom window as the door was still locked. The bedroom window was about 1.5 meters in length and width. While still hiding in the bathroom, she could see that the deceased was lying in a pool of blood. She then heard the door being opened from inside with the assailants apparently exiting.

[5] Confused and in shock, she remained in the bathroom for a few minutes. She then heard the assailants re-entering the bedroom and they uttered the words “sure sure”. She could tell that it was not just one assailant. She was afraid and remained hiding in the bathroom. At some stage she thought that they had left and she went to her phone and called the neighbours whispering as she was not certain that the assailants had actually gone. The neighbours and other members of the community arrived and called the police who then arrived about an hour later.

[6] Under cross-examination Mrs Mdani testified that her homestead has a house in which her bedroom is located. The bedroom door opens into a verandah which is the only access to the bedroom. The shots were fired through the bedroom window. In relation to her evidence that there was a family dispute, she testified that the accused was not a member of the deceased's family and she had never seen him before the incident. The attackers were unknown to her. When she saw the person she saw when she was going out to throw away water, she was about six meters from him and she could tell that the said person was unknown to her. What raised her suspicions when she saw this person was that not only was this person a stranger but also she heard the sound of a weapon which she assumed was a firearm. However, she did not notice any firearm carried by this person when she retreated back inside the bedroom. At no stage was she able to see any other person other than the one person she saw when she was going out to spill the water. It was put to her that the accused denied being involved in the shooting incident and that, on 3 May 2024 he was at the Promenade Dischem Pharmacy (Dischem Pharmacy) in Cape Town at 11:49 before midday after which he went home in Delft. Mrs Mdani testified that she was not even aware how the accused was implicated in the killing of her husband.

[7] The next witness was sergeant Nongogo. She testified that she was stationed at Mt Ayliff Police Station. On 3 May 2024 she received a report of a shooting incident at Cabazana Location in Mt Ayliff from her relief commander. She was doing patrol duties at the time. She and her colleagues, constables Nkosi and Hlanekelela proceeded to the Mdani homestead. When they got there, community members were already there inside the yard. They were shown where the body of the deceased was and told what had happened. The members of the community were gathered along the fence and others were near another structure, not where the body of the deceased was. As she entered the bedroom, she saw some cartridges and some blood. As she proceeded further into the bedroom, she saw the deceased lying on the other side of the bed on the floor. She noticed that the bedroom window was broken. She also entered into the bathroom and saw further empty cartridges. As they were cordoning off the crime scene, they saw further cartridges outside the house. She then phoned the other stakeholders including members from the Local Criminal Record Centre (LCRC), the detectives, the Emergency Medical Services and the forensic unit.

[8] The State called the investigating officer constable Motsokoane. He testified that he visited the crime scene and the LCRC officers also visited the crime scene including a fingerprint expert. He later received a report from LCRC to the effect that finger prints which had been found at the crime scene had matched the fingerprints of the accused which were in the database of the LCRC. That is how the accused was linked to the case. During the investigation, he became aware that the accused was saying that on the date of the incident, he was in Cape Town. He followed up that information and proceeded to the Dischem Pharmacy in Cape Town which accused allegedly visited on the day of the incident. The legal representative of the accused had brought documents during a bail application which suggested that the accused was in Cape Town at Dischem Pharmacy at the Promenade on 3 May 2024. He went to the Promenade Mall Dischem Pharmacy and met the store manager, Mr Donald. He asked Mr Donald to view the CCTV recordings of the 3 May 2024. Mr Donald told him that they no longer had the recordings of that date. He then showed Mr Donald the documents that had been submitted by the accused's legal representative. Mr Donald referred him to a certain Mr Mark. He had some difficulties with the said document as it reflected the name of Mr Sipho Mdekazi

which are the names of the accused. That document also described the person who had been seen and attended to at Dischem Pharmacy as having been an african female.

[9] After the accused was arrested, his girlfriend sent an envelope which had the details of the accused and had a Dischem Pharmacy stamp. He enquired at the said Dischem Pharmacy if there was any other recording or register showing the accused's presence at that Pharmacy. There was none. He was not able to speak to Mr Mark to whom he had been referred by Mr Donald as he was reported to be on leave. The envelop that was sent by the accused's girlfriend was from Dischem Pharmacy and had the accused's names. He asked the accused's girlfriend what was inside the envelop and she said it had nothing. She also sent a certified copy of the identity document of the accused which she said the accused had personally gone to Delft Police Station and had it certified as a true copy of the original on the date of the incident. He testified that the accused had not said any of the things his girlfriend was saying. He had only said that on the date of the incident, he was applying for employment. The issue of the accused being at Dischem Pharmacy came from his girlfriend. Constable Motsokoane testified that on the day of his arrest, the accused was alone at his home at No.7[...] G[...] Crescent in Delft, Cape Town. Accused stayed alone at that address. When they went to his girlfriend for the accused to leave his keys with her, she confirmed that she was his girlfriend. He asked her where the accused was on the date of the incident. After reflecting on the question she said he was around in the Delft area.

[10] Under cross-examination, constable Motsokoane testified that he and his colleagues left for Cape Town on 17 September 2024 and arrested accused on 18 September 2024. They went to Cape Town as two teams and went to different directions with the tracing team going straight to the accused's place of residence. He was later phoned by that team and was told that the accused had been found. They arranged to meet at Delft Police Station with the team that arrested the accused. He interviewed the accused at Delft Police Station. He told him what crime he had been arrested for. The accused told him that on the date of the incident he was applying for a job. He was not in Cape Town when the information about the accused having been at Dischem Pharmacy was brought to their attention.

[11] He denied that when he met the accused, the accused told him to go to Dischem Pharmacy and he refused. He emphasized that the accused having told him about Dischem Pharmacy when he was arrested was simply not true. The accused told him that he was applying for a job and that he did not have any proof of that. They were on the way to the Eastern Cape when his girlfriend sent him a certified copy of the accused's identity document which appeared to have been certified as a true copy of the original on 3 May 2024. They came back to the Eastern Cape with the accused on 19 September 2024. He went back to Cape Town on 3 February 2025 for purposes of viewing the CCTV footage at Dischem Pharmacy. This was after receiving the documents which suggested that the accused was at Dischem Pharmacy, Promenade on the date of the incident.

[12] The next witness for the State was warrant officer Sefoloko. His evidence was that he is attached to the Provincial Crime Scene Management Unit. His extensive qualifications are not in dispute, save to mention that those qualifications include a variety of areas including collection of fingerprint evidence, fingerprint analysis and comparison. He testified that at about midnight on 4 May 2024, he attended a crime scene at Cabazana Location in Mt Ayliff at the homestead of the deceased. He documented the crime scene through photographs and collected fingerprint evidence. He found identification prints from the inside of the bedroom door just above the door handle. He developed the prints using a yellow florescent powder together with a blue light also known as the crime light and the yellow goggles. He handed up as an exhibit, a disc in which the prints in a digital format were captured.

[13] On 25 September 2024 he received prints from sergeant Motsokoane in an SAP192 form with the names of the accused. These prints had been taken for comparison purposes. He compared those prints with the prints from the crime scene. He found that the prints from the crime scene and the prints from the SAP192 received from the investigating officer corresponded. On 28 May 2024 he had taken the prints he had collected from the crime scene and put them into their Automated Fingerprint Identification System (AFIS) system which he described as a repository of all fingerprints of people that had been convicted of crime before. The fingerprints from the crime scene matched fingerprints number 2000LTJ 358 which

belonged to a person with the names Mr Sipho Thole Mdekazi with the surnames Magazi, Mdekazi and Tole. He contacted the investigating officer who took fingerprints from the accused on 25 September 2024 on the SAP192 form referred to earlier. These prints corresponded with the prints from the crime scene and the prints that were on the AFIS system with the result that all three sets of fingerprints corresponded.

[14] On 9 April 2025 he received another SAP192 form with fingerprints which were obtained from the accused for court purposes of preparing a court chart. He prepared a court chart which he also handed up as an exhibit. He testified that photo 1 on the court chart is a photographic enlargement of the crime scene print whereas photo 2 is a photographic enlargement of the prints obtained from the accused on 9 April 2025. They were both enlarged to the same size. He marked seven of the ridge characteristics all of which corresponded in respect of type, size, direction, place and position. He explained that the seven points are sufficient to prove the identity of a person beyond reasonable doubt. He testified that the seven points were as follows. The first point is a bifurcation which is a single ridge that splits into two ridges. Points two to six are the beginning or end of the ridge. Lastly, number seven represents a bifurcation which is also a single ridge that splits into two ridges. He testified that even before he finished testifying and with the concurrence of the accused and his legal representative, he obtained prints from the accused which he also compared and found them corresponding. This was done to ensure that the person before court to whom the fingerprints evidence is said to relate is the correct person as he has never personally seen the accused before. Warrant officer Sefoloko further testified that no two persons have the same fingerprints. He therefore concluded that the fingerprints he got from the Cabazana crime scene at about midnight on 4 May 2024 belonged to the accused. The cross-examination that ensued did not take the matter any further.

[15] The medico-legal post-mortem report compiled by Dr Nkanyuza was admitted as part of the evidence by agreement with the defence. Dr Nkanyuza made the following chief post mortem findings: a gunshot entry wound on the lateral aspect of the left side of the chest; a gunshot entry wound on the left side of the chest; a fracture of the ribs 5/6 and 8 on the right of the thoracic cage; a gunshot wound on

the liver and a gunshot wound on the right lung. He concluded that the cause of death was gunshot chest-hypovolemic shock. Thereafter the state closed its case.

[16] The defence opened its case with the accused testifying in his defence. His evidence was that he ordinarily resided at no.7[...] G[...] Crescent, Delft in Cape Town which is his mother's house. His rural home is at Xolobe Location in the district of Tsomo. He started residing in the Western Cape in October 2003 and worked as a general worker. He started working under the employ of ZARA as a porter at Groote Schuur Hospital on 8 May 2024. At the time of his arrest, he was still working as a porter at Groote Schuur Hospital. He testified that he was in Cape Town on 3 May 2024 when he was alleged to have killed the deceased. He was at Dischem Pharmacy in Cape Town on 3 May 2024. On that day he went to Dischem Pharmacy to receive an injection which was a precondition for him to start working at Groote Schuur Hospital. He was assisted at Dischem Pharmacy after 14:00 towards 15:00. Thereafter he went home where he remained for the rest of that day. When he was attended to at Dischem Pharmacy, he submitted his details as Sipho Mdekazi and his age as being 42 years old as well as his address. He also indicated his gender as a male person.

[17] With reference to a document which was said to have been obtained by his legal representative during bail proceedings, the accused testified that the said document was issued for him by Dischem Pharmacy. It was given to him and he took it to his place of employment for him to be employed. The copies that were before court were obtained while he was already in custody. However, he did not know how those documents got to be submitted in court. His previous attorney had indicated that he would obtain proof that he was in Cape Town. The accused further testified that when he was arrested on 18 September 2024 he was at home and was told his constitutional rights and he was given an opportunity to explain himself. The police who arrested him asked him if he knew Mt Ayliff and he told them that he did not know it. He was then told that he was suspected of having stabbed a person to death with a knife in Mt Ayliff. He was told that the said stabbing incident occurred on 3 May 2024.

[18] He testified that his response was that he was never in Mt Ayliff and he never went there and stabbed anyone. The police told him that he was lying. He testified that he did not give the police any other response beyond telling them that he was never there and that he did not know anything concerning the alleged stabbing incident. The police then took him to Delft Police Station for further questioning. On arrival at the police station, the police asked him where he was on 3 May 2024 and he told them that he was in Cape Town. He was told that he was suspected of having stabbed a person in Mount Ayliff. He was charged with murder and told that he was being detained. The murder charge was mentioned both at the time of his arrest at home and at the police station. On both occasions he was told that he had killed a person with a knife. He was shocked when he was told that he had killed a person with a firearm during court appearances in the magistrates' court. When he was asked about having stabbed a person to death, he told the police that he did not even know where Mt Ayliff is.

[19] He met constable Motsokoane for the first time at about 13:00 at Delft Police Station after his arrest. Constable Motsokoane told him that he was suspected of stabbing a person in Mt Ayliff in the Eastern Cape. He denied being in Mt Ayliff, however, the police did not want to listen to him despite him telling them that he was in Cape Town at the time of the incident. He was then detained and on 20 September 2024 at about 04:00 in the morning he was transported to the Eastern Cape. Before he was taken to the Eastern Cape, his girlfriend had arrived with things that showed that he was at Dischem Pharmacy. He asked the police to go to Dischem Pharmacy with him to view video footage. However, constable Motsokoane said that they were going to do what they wanted, not what he wanted. As a result, they did not take him to Dischem Pharmacy. He testified that this conversation took place on 20 September 2024 before they departed for the Eastern Cape and they first went to a garage. He testified that he did not know how his fingerprints got to be found at the door at the crime scene as he was in Cape Town on that day. He had never been in Mt Ayliff in his life before his arrest.

[20] Under cross-examination, the accused testified that while he was aware that there are flights from Cape Town to the Eastern Cape, he has never used a flight to fly to the Eastern Cape. He was shocked when the expert witness, warrant officer

Sefoloko said that he found his finger prints at the crime scene when he was in Cape Town. He confirmed that the address mentioned by warrant officer Sefoloko being no.7[...] G[...] Crescent, Delft in Cape Town was his address. He confirmed that he was once arrested. He testified that when he went to Dischem Pharmacy, a file was opened for him and his names were entered into the registers. He disputed constable Motsokoane's evidence that there was no record of him having been registered there saying he went there with his identity document. He arrived at the till at that Dischem Pharmacy at 11:50. He left after 13:00 to 14:00 due to the que that was long. When it was put to him that according to the document submitted in court on his behalf as proof that he was there, the consultation with him was closed at 12:06, he testified that there were two ques. He had to first get a slip at the till and thereafter go to que for medication.

[21] Accused further testified that before the police left Cape Town with him, his girlfriend brought the slip and a brown envelope containing the things he had gone to buy at Dischem Pharmacy. He did not know about the fact that the document he had submitted as proof that he was at Dischem Pharmacy indicated that the nurse had attended a female person saying he did not know about a female person as he personally went there on 3 May 2024. He added that the documents he submitted at work which were the same documents he had obtain at Dischem Pharmacy did not refer to a female person. He further said that the document that refers to a female person did not have his identity number. He said that the document that would have his correct details was at work. On being asked some clarity seeking questions by the court, the accused testified that he had told his legal representative about having been arrested in Cape Town for stabbing a person in Mt Ayliff and hearing for the first time when he appeared in court in Mt Ayliff about the said person having been shot dead. He also said that his girlfriend gave him the documents proving his presence in Cape Town on 3 May 2024 before the 20 September 2024. Thereafter the case for the accused was closed.

[22] The evidence relating to the events of the 3 May 2024 at the deceased's homestead at or after 18:00 leading to the fatal shooting of the deceased was largely common cause or was not seriously contested. Similarly, with the evidence of the sounding of the alarm, the arrival of the members of the community and the arrival of

the different units of the police and the roles that they played in collecting crime scene evidence was not seriously contested. The evidence of the arrival of the fingerprint expert and how he collected the evidence, the methods used and his comparison and analysis of the fingerprints he found at the crime scene was also not contested. Because of the fact that the only evidence linking the accused to the crimes that were committed on 3 May 2024 at the Mdani homestead at Cabazana Location was the fingerprint evidence of the expert, I consider it necessary to refer to some of the evidence of warrant officer Sofoloko, even if I do so briefly as I have tried to capture some of it hereinbefore.

[23] His evidence was that at midnight on 4 May 2024 he arrived at the crime scene and documented it including taking crime scene photographs. He also found identifiable fingerprints which he captured digitally. It should be noted that he arrived at the crime scene just over five hours after the incident. On 28 May 2024 he entered the prints he found at the crime scene into the Automated Fingerprints Identification System (the AFIS) which he described as a repository of the fingerprints of people that had been previously convicted. Some of the prints from the crime scene matched or corresponded with fingerprint number 2000LTJ358. This fingerprint belonged to a person whose names included the known names of the accused and his address according to the AFIS system was no.7[...] G[...] Crescent, Delft in Cape Town, which was the address of the accused. It must be noted that this was the address at which the accused was arrested on 18 September 2024.

[24] On 25 September 2024 warrant officer Sefoloko received prints from constable Motsokoane, the investigating officer on SAP192 form which had the names of the accused. These prints had been taken for comparison purposes. He compared the prints from the crime scene with the prints he received from constable Motsokoane. The prints from the SAP192 form corresponded with those he had picked up from the crime scene. On 9 April 2025 he received another SAP192 form which had been obtained for court purposes and to enable him to prepare a court chart. He prepared the court chart by photographic enlargement of the print from the crime scene and the prints obtained from the accused and contained on SAP192 form dated 9 April 2025 to the same size. He then marked the seven ridge characteristics of the print from the crime scene and those obtained from the accused. They all corresponded in

type, size, direction, place and position. He concluded this aspect of his evidence by saying that seven ridge characteristics are sufficient to prove the identity of the person beyond reasonable doubt and that no two persons have the same fingerprints. Therefore, some of the prints he picked up at the crime scene in this matter belong to the accused.

[25] This is more or less the sum total of the case of the State against the accused. This brings me to the legal position regarding the opinion evidence of a fingerprint expert. In *Nala*¹ the court explained the legal position as follows:

“It appears from the judgment of Kennedy J that the members of the Court were able upon examination of the enlargements to determine the existence of some, but not all of the points of identity. The trial Court was however, correct in its approach to opinion evidence given by a finger print expert. The Court is not called upon to determine the existence or otherwise of points of identity, inasmuch as special knowledge and skill (and, possibly, special equipment) are required to undertake the necessary comparison. Where the trial court investigates the expert’s evidence regarding points of identity it does so, not in order to satisfy itself that the expert’s opinion as to the identity of the disputed finger print may safely be relied upon. If the Court is itself able to discern all the points of identity relied upon by the expert, it will no doubt more readily hold that the opinion of the expert may safely be relied upon than in a case where e.g., it is quite unable to discern any of the points of identity relied upon.”

[26] The evidence of the accused was that he was nowhere near the crime scene on the date of the incident and that he had never been to Mt Ayliff before his arrest. He was at Dischem Pharmacy, Promenade Mall in Cape Town on 3 May 2024. His evidence was that he had told the investigating officer on the date of his arrest that he was at that Pharmacy on that date and requested him to go to that Pharmacy to view the CCTV footage. He testified that the investigating officer refused to do so. The basis on which the investigating officer would have refused to do this was

¹ S v Nala 1965(4) SA 360 (AD) at 362 C-E

unclear as at that stage, they had not obtained any of the fingerprints contained in the SAP192 forms from the accused. On the other hand, the investigating officer testified that the accused never said anything about being at the Dischem Pharmacy on that date. He had told the police that he was busy making an application for a job and that he had documents at home to prove it. They went back to the home of the accused at no.7[...] G[...] Street, Delft. However, no documents could be found.

[27] The investigating officer further testified that the documents relied upon by the accused to prove that he was at Dischem Pharmacy on that day were obtained by his erstwhile legal representative. He went to that Pharmacy and unfortunately no CCTV footage could be found due to the fact that it had been sometime since the 3 May 2024 when he went there on 3 February 2025. No other documents or evidence of the accused having been there was found. It is difficult to readily accept that those documents that had been obtained for bail application purposes were from that Dischem Pharmacy. It is rather concerning that none of them are in a letter head from that Pharmacy or contained any emblem or signage of that Pharmacy but that is the least of the problems with those documents. There are other problems with the document relied upon. It is the fact that the person who was seen at that Pharmacy is described as having been a 42 year old African female. The accused sought to distance himself from this document pointing out that he had gone to Dischem Pharmacy to obtain documents that he needed to submit at work at Groote Schuur Hospital where he was applying for a job.

[28] This was not without its own difficulties too. First, the evidence of constable Motsokoane was that accused never mentioned being at that Pharmacy but he said that he was applying for a job on that day. When the accused testified, his evidence was mainly about being at Dischem Pharmacy. He never mentioned applying for a job on that day when he testified during his evidence in chief. The second problem was that his evidence, when he was asked some clarity seeking questions by the court, was that these documents on which he relied were necessary for the job application. However, he said that he only submitted the documents on 5 May 2024. He testified that he was interviewed on 8 May 2024, the very day he said he started working as a porter at Groote Schuur Hospital. It is difficult to fathom a situation in which a person is required to comply with medical requirements for a job at the

application stage even before he or she is interviewed. The illogicality of the potential employers requiring all job applicants to satisfy this requirement even before the shortlisting and interviews is glaring. There are many other problems with the accused's alibi including his failure to call this girlfriend who seems to have played this crucial role in proving the alibi of the accused.

[29] I hasten to point out that an accused person is not required to prove his alibi. In *Hlongwana*² the court expressed itself as follows:

“The legal position with regard to an alibi is that there is no onus on an accused to establish it and if it might reasonably be true he must be acquitted. But it is important to point out in applying this test the alibi does not have to be considered in isolation. The correct approach is to consider the alibi in the light of the totality of the evidence in the case and the court's impressions of witnesses.”

[30] It is so that there were shortcomings in the police's investigation of this case. For example, it is not clear to me why the police did not speak to the nurse at Dischem Pharmacy, who, on the document submitted by the defence to prove that the accused was there, attended to the accused. Once that document was submitted the police did not investigate its authenticity. They just rejected it on their own without establishing that it was a false or a fake document. There were glaringly disconcerting features about that document, one of which was the fact that the names of the accused appear on it. At the same time, the document records that the person who was seen was a female person. Another difficulty is the fact that according to that document this female patient is described as being:

“S-A 42 Y/O FEMALE IN A STABLE CONDITION REQUESTING ADMIN OF EUVAXB.

O-CLIENT APPEARS WELL WITH NO C/O RAISED

A-EUVAX B GIVEN IMI LEFT ARM BATCH HR: UFX23501 EXP 01/2026

P-MONITOR INJECTION SITE FOR ANY ABNORMALITIES

² R v Hlongwana 1959(3) SA 337(A)

ADVISED ON VIT C SUPPLEMENT TO BOOST IMMUNE SYSTEM”

[31] The State did not call a properly qualified witness, be it a nurse or a doctor to assist the court in understanding the circumstances in which the medicine that was injected on the accused could have been injected. There are glaring questions like whether or not a person can simply walk into a pharmacy on their own without a doctor's prescription and request to be injected with this medicine. The medicine purportedly injected on him was described as hepatitis B injection. The person was described as having been in a stable condition. This suggests that this person, whoever it was, might have been sick. On the other hand, the accused's evidence was that he went to that pharmacy for a job application which required that he submits proof of having been given a hepatitis B injection. This appears to be odds with a sick person in a stable condition as the basis for the injection.

[32] At some stage during his evidence, the accused appeared to be distancing himself from this specific document indicating that the correct document was submitted at his work place. On the other hand, the State cannot be expected to close every loophole open to the accused. This is certainly not part of our law. In *Chabalala*³ the court said that:

“The trial court's approach to the case was however, holistic and in this, it was undoubtedly right: *S v Van Aswegen* 2001 (2) SACR 97 (SCA). The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weakness, probabilities and improbabilities on both sides and, having done so, to decide whether, the balance weighs so heavily in favour of the State so as to exclude any reasonable doubt about the accused's guilt. The result may prove that one scrap of evidence or one defect in the case of either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation

³ *S v Chabalala* 2003 (1) SACR 134 (SCA) at 139 para 15.

to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence.”

[33] While the accused insisted on having been nowhere near the crime scene, having never set his foot in Mt Ayliff and therefore not being involved in the brutal murder of the deceased, there are serious problems with his alibi. The evidence that he gave was entirely unsatisfactory with certain aspects of it having been not put to the investigating officer while some of it simply did not make sense and appeared to have been made up as he was testifying. For example, I have serious difficulties with the accused’s version that on 3 May 2024 he was making a job application which necessitated his visit to Dischem Pharmacy. Among other problems, the job application was made on 3 May 2024. The 3 May 2024 was a Friday. He claimed to have submitted this job application on 5 May 2024 which was a Sunday. This is hugely improbable but it gets worse, as, on his evidence, he was interviewed on 8 May 2024, the very day in which he started working. If one assumes that there would have been many job applicants, how he got to be interviewed on 8 May 2024 and start working on that same date is bewildering. Even worse, his visit to Dischem Pharmacy was about the job application when he would not have known that he would be employed. None of this made any sense.

[34] However, as I said before, he had no onus to prove his alibi. However, on closer scrutiny, his alibi did not make sense at all. Even worse, was the fingerprint expert finding his print at the crime scene more than 1000km away from where he said he was. The evidence of warrant officer Sefoloko was very detailed, clear and reliable. He was able to explain in quite some detail how he got the fingerprints at the crime scene, what he did with them and how they led to the accused who was now before court. He was able to point out, explain and identify the seven points that are necessary to prove that one of the prints that were found at the crime scene was that of the accused. The legal representative of the accused pointed out, correctly, I might add, that it was difficult to challenge the evidence of warrant officer Sefoloko, the fingerprint expert.

[35] The callous murder of the deceased was clearly pre planned with some detail. It appears to have been part of the accused’s plans, together with whoever he worked

with, to have documents that placed him in Cape Town on the exact date on which the deceased was murdered. This was, in my view, not a simple coincidence. His alibi defence did not stand up to closer scrutiny and is rejected as having been a pre-planned ruse to avoid criminal liability in the event that anything led to him. While the court does not have to be convinced that every detail of the accused's version is true, an accused's version must be reasonably possibly true in substance. In this case, the accused's version was not only improbable, it was so improbable that it could not be reasonably possibly true. The version presented by the State was mutually destructive with the version of the accused that he was in Cape Town on 3 May 2024, the date of the deceased murder. The process of considering these two versions cannot be explained any better than Moosa J in *Van Rensburg*⁴.

“Logic dictates that, where there are two conflicting versions or two mutually destructive stories, both cannot be true. Only one can be true. Consequently, the other must be false. However, the dictates of logic do not displace the standard of proof required either in a civil or criminal matter. In order to determine the objective truth of the one version and the falsity of the other, it is important to consider not only the credibility of the witnesses, but also the reliability of such witnesses. Evidence that is reliable should be weighed against the evidence that is found to be false and, in the process measured against the probabilities. In the final analysis the court must determine whether the State has mustered the requisite threshold – in this case proof beyond reasonable doubt. (see: *S v Saban and 'n Ander* 1992(1) SACR 199 (A) at 203j to 204 a-b; *S v Van der Meyden* 1999(1) SACR 447 (W) at 440 g-j – 450a-b and *S v Trainor* 2003 (1) SACR 35 (SCA) at para [9].)”

[36] On the basis of a careful analysis of all the evidence in this matter, I have come to the conclusion that the State has proved the guilt of the accused beyond reasonable doubt for the premeditated murder of the deceased.

[37] In the result the accused is found guilty as follows:

⁴ *S v Van Rensburg and Another* 2009 (2) SACR 216 (C) para 8

1. Housebreaking with intent to commit an offence.
2. The murder of Mahlubandile Churchill Mdani.
3. Possession of an unlicensed firearm.

M.S. JOLWANA
JUDGE OF THE HIGH COURT

Appearances

Counsel for the state : C Mkentane
Instructed by : NDPP
Mthatha

Counsel for the accused : S T Kekana
Instructed by : Legal Aid Board South Africa
Mthatha

Date heard : 25 July 2025
Date delivered : 1 August 2025