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**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: CC47/2024**

**(1) REPORTABLE: YES/NO**

**(2) OF INTEREST TO OTHER JUDGES: YES/NO**

**(3) REVISED: YES/NO**

**DATE: 13-11-2025**

**SIGNATURE: PD. PHAHLANE**

**In the matter between:**

**THE STATE**

**And**

**PRINCE AMUKELANI MALULEKA**

**ACCUSED**

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## JUDGMENT

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### PHAHLANE, J

- [1] The accused was charged with one (1) count of Murder read with the provisions of section 51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (“the Act”) in that upon or about 17 December 2023, and at or near 1[...] Tjakane Mamelodi East, in the district of Pretoria, the accused did unlawfully and intentionally kill RENOLDA MALULEKA, a 56 year old female person. It is the State’s contention that the murder of the deceased was planned or pre-meditated.
- [2] The accused was legally represented throughout the trial proceedings by Ms. Simpson from Legal Aid South Africa. He pleaded NOT GUILTY to the charge and made formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 (“the CPA”) in respect of the photo-album compiled by warrant officer TJ Seanego from the Local Criminal Record Centre (“LCRC”) depicting the crime scene and the body of the deceased; the Post-Mortem report compiled by Dr Dorethea Maria Joubert after conducting a post-mortem examination on the body of the deceased on 19 December 2023 in which she recorded the cause of death as: **“STAB WOUNDS NECK”**.
- [3] Before the accused could plead to the charge, the court fully explained the implications of the provisions of sections 51(1) of the Act, and the effect of section 220 admissions to the accused. The authenticity and the correctness of the post-mortem report and the findings of Dr Dorethea Maria Joubert were not in dispute and were confirmed by the accused.
- [4] The State called eight (8) witnesses in support of its case, and the accused also testified in his defence and did not call any witnesses.

- [5] The deceased in this matter was the mother of the accused. It is common course that the incident occurred at the house that was shared by both the accused and deceased. It is further common cause that apart from the main house at the premises of erf 1[...] Tjakane, Mamelodi East, there are three back rooms erected which are occupied by other family members and that at the time of the incident, the main house was only occupied by the accused and the deceased.
- [6] It is not in dispute that there were family feuds which led to three family meetings being held in an effort to reprimand the accused whom it was said to be the cause of these feuds.
- [7] The first witness on behalf of the State, **Mr Ernest Steps Mahlangu** ("Ernest") is the cousin of the accused who at the time of the incident, resided in one of the back rooms at the premises where the accused and the deceased were residing. He stayed in this premises from 2022 until 2024. He explained that the deceased was his aunt from his father's side and that they had a good relationship and loved each other as family. He stated that the relationship between the deceased and the accused was a loving one between mother and son.
- [8] He testified that on the morning of 17 December 2023, he was awoken by the screams of the accused calling out his name between the hours of 6am and 7am. He went to the main house to enquire why the accused was calling him and when he got there, he found the accused sitting on the kitchen floor, covering the deceased on the upper body like he was hugging her, and he was crying.
- [9] Ernest did not enter the house. He stood outside at a distance of 2 metres away from where the accused and the deceased were. He saw blood on the floor and noticed that the deceased was injured and bleeding on the right side of her neck. He immediately left to seek help from the community and to find transport to rush the deceased to the hospital.

- [10] He testified that he asked assistance from a certain man who was the first person to arrive at the scene, but this man refused to give assistance because he noticed that the deceased was no longer alive.
- [11] Ernest explained that the deceased's body was full of blood, and he could see blood coming out of her body.
- [12] He said he did not ask the accused what happened but instead, the accused voluntarily said the following: *"look, my mother has cut herself"*. When asked why did he not enter the house when he saw the deceased in that condition, he responded that he was scared of the accused because the accused had on several occasions made threats by verbalising that *"gotlatswa setopo mo jarateng"*, meaning that someone will die in that yard, also meaning, there would be a dead body coming out of that yard.
- [13] He said the accused told him that the deceased came home at night and reported to him that she had a problem at extension 6, and he ("Ernest") responded by saying that he was with the deceased at extension 6 and did not hear of any problem which the deceased might have encountered.
- [14] Ernest testified that although he did not check around the house, there was nothing strange in the house to suggest that there was an intruder.
- [15] As indicated above, there were many problems in the family which led to family meetings being held in order to resolve any disputes within the family. Ernest explained that he reported the problems to the family elders because the accused had been making threats that there would be a dead body coming out of that yard.
- [16] He further explained that in one of the meetings, he reported to the elders that there was something that did not sit well with the deceased, and when the elders enquired from the deceased to explain what was bothering her, the deceased responded that the accused was troubling her and that she was fearing for her life. In this regard, he explained that the deceased was scared of the accused and fearing for her life after

the threats were made by the accused – and also stated that the deceased was not happy.

[17] He testified that the meetings were always attended by himself; his niece Tidimatso Jesicca Maluleka; his great uncle Mr Peter Maluleke; Adelaide Maluleke; Elliot Maluleke and the accused.

[18] Ernest stated that in addition to the countless problems they had, the accused used to tell the deceased; his girlfriend; and some of their friends that there are people using muti in the yard and that he is being bewitched. This led to another family meeting being held and the deceased complained that the accused was troubling her. It was resolved at the meeting that the family should get along.

[19] Under cross-examination, he disputed the version that the accused did not make any threats that there would be a dead body coming out of that yard – and said the accused made those threats more than once. He confirmed that the kitchen door was opened when he got to the main house and said he does not know what happened in the house. When asked about the emotional state of the accused when he saw him in the kitchen, he responded that the accused had mixed emotions and was looking for help when he called him.

[20] **Mr Peter Maluleka** (“Mr Maluleka”) also took to the witness stand. He is the deceased’s elder brother and accordingly, the accused’s uncle. He explained that the house where the accused and the deceased were staying is a family house belonging to his late parents.

[21] He is one of the elders in the family but most importantly, he is the go-to person who would always be called in situations where there are family issues to be attended to, including resolving disputes such as the ones which are now common cause in this case.

[22] He testified that a report was made to him about the ongoing problems at the house and was called to mediate between Tidimatso; the accused and his mother because

they were not getting along. It was further reported that the accused was troublesome. Mr Maluleka testified that three family meetings were held in order to try and defuse the tension amongst the family members.

[23] According to him, the first person to call him was the deceased who informed him that she was living in fear at the house because of the constant bickering between the accused and Tidimatso and that the accused had threatened to stab Tidimatso with a knife and had said "someone must die in that house". The deceased also complained and reported to him that the accused always threatened her with violence when he demands money from her.

[24] The witness set up a meeting with the deceased, Tidimatso, accused, and Ernest. At the meeting, Ernest complained that the accused threatened to stab Tidimatso and said one must die in the house. During the first meeting, he pleaded with all parties to make peace because they lived together in the house. The parties agreed to resolve their disputes and to make peace. He reprimanded the accused and told the parties that if they cannot find one another, they can call him to come and assist with whatever problem they were facing. When he left at the end of the meeting, all parties were happy, and the accused and Tidimatso hugged each other and asked for forgiveness from one another.

[25] Mr Maluleka testified that subsequent thereafter, he needed to make a follow-up with the parties but then the deceased called him and reported that what was agreed upon at the previous meeting had been forgotten because they had gone back to the situation which had prevailed previously. He went back for a second meeting and spoke to the parties who then apologized. He explained that it was actually the accused who apologized for his behaviour because he was always trying to pick up a fight with Tidimatso.

[26] He testified that the source of the problem was the accused because he was not happy with Tidimatso being on the property. In this regard, he explained that from the interaction he had with the parties, he could deduce that there was no real or

concrete proof that Tidimatso had done something wrong, but the real problem was that the accused was not happy with her presence on the property.

- [27] The meeting concluded with him informing the parties that he would come back with one of the elders in the family – his older brother who stays in Venda because maybe then, they would all listen to him because his voice would carry more weight than his.
- [28] Mr Maluleka said on the third meeting, which took place a week before the death of the deceased, his elder brother was present. It was during this meeting that the deceased also complained that the accused does not help with anything in the house and that she was forced to do his laundry while the accused was unemployed and would be sitting on the couch doing nothing – considering his age as an adult. He stated that the deceased complained that the accused became aggressive each time she told him that she does not have money. The witness then suggested that maybe finding a job for the accused might help.
- [29] He explained that Ernest indicated during the meeting that there were things which the deceased did not disclose to the elders and demonstrated how the accused had during one of his outbursts grabbed the deceased by her throat and pull her towards him.
- [30] At this point the deceased burst into tears and explained that what Ernest was demonstrating was what she was previously trying to explain when she said she lives in fear and was afraid that the accused would one day do something bad to her. The witness submitted that grabbing the deceased by her throat was tantamount to violence.
- [31] He stated that the complaint was always made by the deceased, Tidimatso and Ernest, and that the accused had never complained that he was treated bad by these three people. He testified that at the end of the meeting, the accused once again promised not to go back to his bad behaviour.

- [32] Mr Maluleka testified that he went to the crime scene on the day of the incident and upon his arrival, he found bystanders, as well as the police who had already secured or cordoned off the scene. He was called by a police officer to get inside the house, and he found the deceased lying in a pool of blood.
- [33] Nothing came out of the cross-examination of this witness, save to confirm his earlier evidence that the accused never got along with Tidimatso and that the deceased was unhappy with the accused's general behaviour and had complained that she was living in fear and became more fearful when the accused demanded money from her.
- [34] He confirmed that he attended two meetings with the parties and that during the third meeting, his brother was present. It was put to him that the accused was not present on the last meeting, and he disputed that, saying they would not have held a meeting in the absence of the accused because 'the accused was at the centre of the family problems'. He explained that it would have been a futile exercise to hold the meeting in the absence of the accused – given the fact that in his role as the go-to person in the family, he must be informed of any problems arising.
- [35] It was further put to him that the accused denies ever threatening Tidimatso with a knife but that it was Tidimatso who threatened the deceased with a knife. He disputed that and stated that he would have been informed of that situation, if that really happened. He disputed the version that the accused denies grabbing the deceased by her clothes and stated that the accused will deny everything because he is in the accused's dock. He stressed that when the accused grabbed his mother by her clothes, that was a form of violence.
- [36] The evidence of **Sergeant Alec Isaac Maletsi Mogagabe** (Sgt Mogagabe) and that of **Sergeant Phuti Eric Chokwe** (Sgt Chokwe) will interchangeably be considered together. They are both stationed at Mamelodi SAPS, attached to Visible Policing, and have fourteen (14) years and sixteen (16) years' experience respectively in visible policing. On the 17<sup>th</sup> of December 2023, they were both on duty as crew members with Sgt Mogagabe posted as a driver.



- [37] While busy doing their patrol duties, they received a complaint from Mamelodi SAPS Client Service Centre ("CSC") – of murder that occurred at the house address of 1[...] Tjakane, mentioned in the indictment, and they proceeded to the said address.
- [38] Upon arrival, they were approached by an unknown African male who identified himself as Ernest Mahlangu and said that he is the younger brother to the deceased and the uncle to the accused. Sgt Mogagabe testified that Ernest informed them that the deceased had been stabbed to death and asked them to remove the accused from the scene because they (the police) might attend to another scene because the community or other family members might attack the accused.
- [39] Sgt Chokwe testified that Ernest showed them where the accused was. He explained that the accused was at the back of the toilet and was crying. The two officers arrested the accused and placed him at the back of the police vehicle, and the accused did not resist arrest. Sgt Mogagabe testified that he informed the accused of the reasons for his arrest before he could even be arrested and further informed him of his constitutional rights, and the accused appeared to have understood the rights explained to him.
- [40] Both Sgts Mogagabe and Chokwe stated that there were people gathered around who demanded that the accused be handed over to them and wanted to attack him. Sgt Mogagabe called one of their colleagues to come with a police van to come and take the accused away from the scene and to book him at Mamelodi SAPS. The accused was wearing blue jeans and a white T-shirt which appeared or looked like the blood stains on it had been washed.
- [41] Sgt Chokwe testified that they arrested the accused after a family member, specifically Mr Ernest Mahlangu had reported to them that the accused used to threaten to kill his mother. Ernest Mahlangu further reported to him that he was in his bedroom when he heard screams from the main house and when he proceeded there, he found the accused crying and was holding the deceased.

- [42] Sgts Mogagabe and Chokwe thereafter proceeded to the house and entered the kitchen, and there they found the deceased lying on her back, and her head was facing the northern direction. She was already covered with foil and was already declared dead by the paramedics. They testified that there was a lot of blood on the kitchen floor next to the stove and in the deceased bedroom on the bed and on the floor and on the bedroom door. There was also blood stains on the blanket as depicted on photos 29 and 30 of exhibit C.
- [43] They also found a bloodied knife, blue in colour, which is depicted on photo 35 of the same exhibit. This knife was found in the kitchen between the fridge and the stove. They called the LCRC so that swabs could be taken from the knife. When the personnel from the LCRC arrived, they took swabs from the knife and thereafter placed the knife in the forensic bag. Sgt Mogagabe took the exhibit bag and booked it in the SAP13 register with number 825/23. The SAP13 register was admitted into evidence as **exhibit D**.
- [44] Both Sergeants corroborated each other with regards to the injuries sustained by the deceased. They both observed three stab wounds on the front part of the neck of the deceased but could not remember whether the stab wounds were towards the left or right side of the neck.
- [45] They testified that they did not know the accused before the incident and neither did they have any relationship with any of the family members of the deceased.
- [46] Under **cross-examination**, Sgt Mogagabe testified that he handed over the exhibits to the CSC commander, constable Legodi, and the following day on the 18<sup>th</sup> of December 2023 they were taken out for investigation. Responding to the question whether there was anyone who approached the accused to speak to him while he was locked in the police van, Sgt Chokwe stated that no one was allowed to speak to the accused while he was in the police vehicle and that he was not aware that the accused was approached by his uncle named Freddy, whom the accused alleges had approached him and was swearing at him while in the van. He explained that he had no knowledge

of such incident because they were not stationary at the bakkie but had to go and check up on the accused who was in the police van.

[47] Sgt Mogagabe on the other hand testified under **cross-examination** that a man who identified himself as the accused's uncle requested to speak to the accused when the accused was inside the police van, and he allowed him to speak to the accused but he did not hear what they were taking about. He also did not hear anyone swearing at the accused.

[48] The next witness for the State was **Mr Gosiame Nakedi Mbungi** ("Mr Nakedi"). He testified that he received a call in the morning between 7am and 8am from Mr Leornard Elliot Maluleka ("Ntate Elliot") who informed him about the incident and requested him to rush to Tjakane at the scene. He stated that Ntate Elliot is his cousin who passed away this year in January.

[49] He got into his vehicle and drove to the scene and upon his arrival, he saw the ambulance and a police van. He parked his vehicle and went inside the yard and saw some family members and members of the community. He went straight to Ntate Elliot who was on the passage on the left side of the house and asked him what happened, and Ntate Elliot responded that Renolda's child, referring to the accused, had killed Renolda and that she was laying in the kitchen.

[50] He proceeded to the kitchen and as he entered, he saw the foil and blood, and he decided to go back to Ntate Elliot to ask what is it that the accused was using when he killed his mother, and he was informed that the accused used a knife. He said he did not believe that the accused could do such a thing, and he decided to go and ask the accused himself. He found the accused at the back of the police van and he asked permission to speak to the accused from the police officer whom he saw earlier when he entered the yard. He explained to the officer that he is the accused's uncle and was therefore granted permission to speak to the accused. He was however warned not to intimidate or swear at the accused.

- [51] He asked the accused how could he kill his mother and phrased the question as follows: *“How can you kill your mother, you have done an evil thing and in the history of this family, this thing has never been done, and no one has ever killed his mother”*.
- [52] Mr Nakedi testified that the accused was crying and replied that he killed his mother with a knife, but it was not intentional. He stated that he did not threaten the accused or swear at him and explained that the police who granted him permission to speak to the accused was nearby.
- [53] He testified that he was heartbroken after the accused told him that he killed his mother, – and he just walked away and went to his vehicle and drove to his workplace. While at work, a police officer came to take his statement, but he did not give a statement that day.
- [54] When asked about his observation on the condition of the house when he went to the kitchen, he responded that everything was normal because he checked the condition of the house, both inside and outside, and everything looked normal, and the door was not broken. He stated that prior to the incident occurring, his relationship with the accused was okay.
- [55] Under cross-examination, he confirmed that he is the uncle of the accused and further confirmed that he is also known as Freddy. He testified that at the time when he was standing at the kitchen door, he already knew that the deceased had passed on because he was informed by Ernest that the deceased was stabbed inside the house. He confirmed his earlier evidence that he was told by Ntate Elliot that the accused had stabbed the deceased and said that he was shocked, and that is why he decided to confront the accused so that he could ask him. He said he was with Ntate Elliot when he approached the accused.
- [56] Responding to the question whether the police officer who gave him permission to speak to the accused could hear their conversation, he said he was speaking softly to

the accused and that no one could hear their conversation because there were people gathered around who were making noise.

[57] He testified that when he approached the accused at the police van, he saw blood on his T-shirt, but it was not a deep blood red colour because it looked like the accused had washed his T-shirt or someone had splashed him with water, – but what he saw was blood.

[58] Once again, he repeated the evidence that the accused told him that he killed his mother, but that it was not intentional. Mr Nakedi said when the accused told him what he did, he went numb and was shocked.

[59] He stated that the accused was crying when he questioned him and he asked the following question to the accused: *“how could you do this? You have humiliated the family. What was your problem, and if you had a problem, why didn’t you talk to someone in the family? This is a disgrace you have cause us. O re baketse matlho a batho”*.

[60] The witness explained that because he was still in shock, him and Ntate Elliot just left the accused there crying inside the police van. He told Ntate Elliot that he was not emotionally okay and would be leaving and that he would rather go and sit at his workplace.

[61] It was put to him that when he approached the accused at the back of the police van, he did not ask the accused questions about what happened, but instead, he started swearing at the accused, and therefore, the accused did not say that killed his mother unintentionally. Mr Nakedi disputed that and stated that the accused told him what he did to the deceased. He expressed that if Ntate Elliot was still alive, he would be able to come to court to tell the court what happened and corroborate his evidence. He accordingly disputed the version that Ntate Elliot was not present at the scene.

[62] Furthermore, he disputed the version that he used swear words or hurled insults at the accused.

[63] The witness testified that when he approached the accused on that day, he saw a totally different Prince (Prince, referring to the accused). He concluded his evidence by stating that when he left on that day, he knew that the accused had killed the deceased because he personally told him that, and he did not hear this from someone else.

[64] **Mr Bongani Charles Tshinavhe** ("Mr Tshinavhe") also took to the witness stand in support of the State's case. He testified that he was in a love relationship with the deceased from 2022 to December 2023 when she passed away.

[65] He testified that the deceased used to stay at his house, but she encountered problems when she had to go back home in the morning and the accused would refuse to open the door for her. It was for this reason that in June 2023, they both decided to stay at the deceased's house, that is until a week before she passed away.

[66] According to him, the accused was not happy with their relationship because he fought with him. He explained that the accused once tried to beat him and he ran away, but the accused chased after him and threw him with stones until he reached his house. He reflected on the time when the accused took out a knife and threatened to stab him. He reported the incident to the deceased who said she would speak to the accused.

[67] He stated that there were days when the accused would be okay but if it happens that on a random day the accused does not get what he wants, he would then start fighting with him. He referred to an incident when the accused took out a knife and wanted to stab him, but Ernest came and took the knife from him, and the accused began to assault him (the witness). He informed the deceased that he intends laying charges against the accused, but the deceased was against it because she loved the accused dearly and he decided not to lay charges because he also loved the deceased.

[68] He further stated that there were times when the accused would demand money or food and if what he wanted was not available, he would start arguments and shout at

everyone and thereafter force his mother to take out loans so that he could get what he wanted and if he could still not get what he wanted, he would fight with his mother. Mr Tshinavhe explained that even though the deceased loved the accused, their relationship was not a good one.

[69] Like other witnesses, he testified that the accused did not only make threats to his mother, but he made threats to everyone who lived in that property when he said: *“one day someone will die in that house”*. The witness explained that mostly when such threats were made by the accused, the deceased would be fearful and made sure that the accused gets what he wanted.

[70] Mr Tshinavhe testified that the accused used to physically assault his mother even before he started having a love relationship with the deceased because the deceased told him that the accused used to assault her. He stated that he once witnessed the accused physically assaulting his mother by grabbing and pulling her and pushing her head to bump it against the fridge.

[71] Under **cross-examination** he confirmed that there were days when the accused and Tidimatso would be having a good relationship and there were days when they would quarrel. This was a similar relationship which Tidimatso used to have with the deceased. He testified that a week before the death of the deceased, Tidimatso and the deceased did not quarrel. He stated that there were a lot of issues at that house that related to the accused and anyone staying in that property including himself. He explained that he left the property after the deceased told him that a decision was taken by the family at a meeting that he should leave, and he did.

[72] He disputed the version that the accused did not threaten him – and stated that on the day when the accused was assaulting him and wanted to stab him with a knife, had it not been for Ernest taking the knife from the accused, he would have been killed. He further disputed the version that the accused denies having said *“someone will die in that yard”* and stated that the accused used to utter those words every time he was angry.

- [73] With regards to the issue that the deceased had to take loans to give to the accused, he stated that the accused used to go to a man named Kenneth to borrow money and when he could not get money from Kenneth, he would then go to his mother and demand money from her and force her to loan money from the same Kenneth.
- [74] **Ms Jesicca Tidimatso Maluleka** (“Tidimatso”) also gave *viva voce* evidence. She explained the relationship of the family members of Maluleka which is now common cause in this case. She stayed in one of the back rooms in the property from June 2023 to Mid-February 2024.
- [75] She testified that when she moved into that house, everything seemed to be going well because she had a good relationship with the accused, but that changed a month or two after moving into the property as the accused had threatened to stab her with a red butter knife. The accused pointed the knife towards her and warned that in a week or two, there will be a dead body coming out of that yard including herself. He then licked the knife which he had in his possession. She said she was afraid of staying in the family home.
- [76] She corroborated the evidence that a family meeting was held with the elders and the deceased reported that she was living in fear because the accused was threatening her. She described her relationship with the deceased as a good one and said there would be times when they would argue when she came home late from seeing her friends or her boyfriend. She said the deceased was like a mother to her.
- [77] With regards to the fights between the accused and the deceased, she testified that the accused used to manhandle his mother by pushing her and grabbing her by her clothes and using force against her. She explained that this usually happened when he wanted money from his mother and she did not have it.
- [78] She stated that a week wouldn’t go by without the accused doing that to his mother. She further testified that the accused used to treat his mother like his girlfriend. She said one day the deceased came running to her room because she was being attacked



by the accused who was manhandling her and grabbing her by the clothes – and the deceased reported to her how the accused was assaulting her in the main house.

[79] When asked if she had ever threatened the accused with a knife, she responded in the negative and stated that the accused once threatened her with a knife when they were in the kitchen and she was dishing up for everyone, including the accused, but he decided that he was going to make his own food.

[80] The last witness for the State was **Pinki Johannes Mokhonwana**. He is a sergeant stationed at Mamelodi SAPS and the investigating officer in this case. His evidence relates to having taken the exhibits to the forensic laboratory and he does not know the outcome or results of the analysis made in respect of the exhibits. His evidence therefore did not assist the State in any way. The State closed its case and the accused took the witness box.

[81] The evidence of the accused was that of a bare denial of all the allegations levelled against him and disputed the evidence of all the State witnesses. He specifically denied stabbing the deceased on the day of the incident. He said he was sleeping when he heard someone gurgle in the kitchen and when he opened the door, he saw the portion of the feet next to the fridge in a laying position. He went to check and found that it was his mother laying there. The kitchen door was slightly opened, and he pushed the top part of the door and called out or screamed for Ernest and his girlfriend to call out for assistance.

[82] He then went to pick up his mother who was lying on her stomach. He said he picked her up with her shoulders and she was facing him, and he placed her on his lap. He tried talking to the deceased, but she did not respond.

[83] He testified that Ernest ran out to ask for help from the neighbours, and thereafter his friend named Sphiwe arrived. Koketso, the next-door neighbour arrived and he went to fetch a pillow from the dining room. When he returned, he put the pillow in front of the deceased's bedroom door. It was then that he (the accused) took the deceased and placed her on the pillow and went out with koketso. They went to sit outside, next to the toilet.

- [84] He testified further that the last time he saw the deceased alive was around 1AM when she knocked on his window when she came from attending a braai at his brother's house. The deceased gave feedback of what happened at the braai and said she might have caused a problem with the family and informed him that she was not feeling well. He offered the deceased water in a jar and the deceased started vomiting and thereafter went to sleep in the couch, and he went back to his room to sleep.
- [85] The witness testified that he observed a police vehicle pulling up at his house and he was then taken to the police van. While he was seated in the van, his uncle Freddy came and started hurling insults at him and was also using vulgar words. He said he did not respond to Uncle Freddy because he was crying. He denied telling any of his family members that he had killed his mother by stabbing her.
- [86] As far as the allegations that he had been troublesome and was the cause of the three family meetings held, he denied threatening his mother or demanding money from her. He denied assaulting his mother and disputed Tidimatso's evidence that he manhandled his mother and treated her like she was his girlfriend.
- [87] He alleged that the whole family did not want him and his mother in that house. He denied ever threatening that someone will die at the house or saying that there are people using muti in the yard. He stated that there were no issues that could have caused the problems in the family but admitted that he never got along with Tidimatso.
- [88] Under **cross-examination**, he testified that when he saw the deceased lying on the floor, he panicked and he went to pick her up because she was still breathing. He noticed that the door was opened. He said the first thing that came to his mind when he saw that the deceased was injured is that someone had been in the house. He however did not go outside to investigate whether there might have been someone in the yard who injured the deceased or if there was an intruder because he was crying. He said he panicked when he found the deceased and he decided to drag or pull her to the other side.

- [89] It is common cause that there are no eyewitnesses regarding the circumstances surrounding the death of the deceased. With that being said, the question for determination by this court is whether the evidence presented is enough to point at the accused as the person who stabbed and killed the deceased.
- [90] It was submitted on behalf of the accused that since there is no direct evidence that can prove that the accused was responsible for stabbing the deceased, it will not be proper to reject his version on the basis that it is improbable. In this regard, it was submitted that the accused's version can only be rejected once the court has found that on credible evidence, the accused's version is false beyond reasonable doubt.
- [91] The State on the other hand submitted that it has succeeded in proving its case against the accused beyond a reasonable doubt considering that there was corroboration in the evidence of all state witnesses. It was further submitted that although there is no direct evidence against the accused, the court should not lose sight of the fact that courts have always been cautioned that it is not incumbent upon the prosecution to eliminate every hypothesis which is inconsistent with the accused's innocence – having regard to the fact the circumstances of this case considered holistically, weighs heavily in favour of the State to conclude that the version of the accused is not reasonably possibly true.
- [92] It is trite that in any criminal trial, the State bears the onus to prove the accused's guilt beyond a reasonable doubt. This burden will rest on the prosecution throughout the trial. The State must also discharge the evidential burden by establishing a *prima facie* case against the accused and once a *prima facie* case is established, the evidential burden will shift to the accused to adduce evidence in order to escape conviction. However, even if the accused does not adduce evidence, he will not be convicted if the court is satisfied that the State has not proved guilt beyond a reasonable doubt<sup>1</sup>. It follows that there is therefore no duty on the accused to prove his innocence.

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<sup>1</sup> Principles of Evidence, PJ Schwikkard et al, 4<sup>th</sup> Edition, 2015, at page 602.

[93] This court is mindful of the holistic approach which a trial court is required to follow in examining evidence before it. The court is also alive of the principle that the trier of facts must have regard to all considerations. In **S v Mdlongwa**<sup>2</sup> the Supreme Court of Appeal endorsed the following principle enunciated in **S v Van der Meyden**<sup>3</sup> where NUGENT J stated the following:

*“A court does not base its conclusion, whether it be to convict or to acquit on only part of the evidence... The proper test is that an accused is about to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false, some of it might be found to be unreliable, and some of it might be found to be only possibly false or unreliable, but none of it may simply be ignored”.*

[94] It is clear from the above authority that a conspectus of all the evidence is required, which must of course, be evaluated against the onus of any particular issue or in respect of the case in its entirety<sup>4</sup>.

[95] The Supreme Court of Appeal in **S v Chabalala**<sup>5</sup> amplified as follows the ‘holistic’ approach required by a trial court in examining the evidence on the question of the guilt or innocence of an accused: *“The correct approach is to weigh up all the elements which points towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of the inherent strengths and weaknesses,*

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<sup>2</sup> 2010 (2) SACR 419 (SCA) at 11

<sup>3</sup> 1999 (1) SACR 447 (W)

<sup>4</sup> S v Trainor 2003 (1) SACR 35 (SCA)

<sup>5</sup> 2003 (1) SACR 134 (SCA) at para 15.

*probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt."*

[96] In the process of evaluating all the evidence before me, I must also determine whether the accused's version is reasonably possibly true, which would entitle him to an acquittal.

[97] Both parties are *ad idem* that all family members of the deceased, including Mr Tshinavhe corroborated each other on all material respects. This relates to the fact that three family meetings were held in an attempt to resolve the family disputes which were undeniably centred around the fact that the deceased was living in constant fear and subjected to physical abuse and threats by the accused.

[98] There are two aspects of concern which stands out in the evidence of the four members of the deceased's family, that is Ernest, Mr Peter Maluleka, Tidimatso, and Mr Tshinavhe. The **first** relates to the fact that on several occasions, the accused made a specific threat that "someone will die in that house or that there will be a dead body coming out of that yard". The **second** relates to a cry for help coming from the deceased when she reported the following to Mr Peter Maluleka:

- (a) That **she was living in fear.**
- (b) That **the accused always threatened her with violence and became aggressive** when demanding money from her, even when she told him that she does not have money.
- (c) That she was living in constant fear **and was afraid that the accused would one day do something bad to her.** Not only was this report made, but it was accompanied by a demonstration made by Ernest, and confirmed by the deceased when he (Ernest) told Mr Maluleka that the deceased did not disclose the physical abuse she was subjected to by the accused – which occurred during one of his outbursts whereby he had grabbed the deceased by her throat and pull her towards him. Mr Maluleka testified that it was at that moment that the deceased

burst into tears and explained that what Ernest had demonstrated was what she had been trying to explain when she said she was fearing for her life.

[99] The chief post-mortem findings noted by Dr Dorethea Maria Joubert in her report revealed that the deceased had multiple incised/stab wounds on the neck, mainly from front to back. The stab wounds involve the strap muscles of the neck, right internal jugular vein, trachea, and oesophagus with haemorrhage and aspiration of blood. There are seven stab wounds on the right side of the neck, each measuring 1cm as noted at paragraphs 4.1 to 4.7 of the report. These stab wounds have also been identified in a drawing or sketch made by the doctor, and are clearly visible on photos 48 and 49 of exhibit C.

[100] What is noted by Dr Joubert in her report clearly shows that the deceased died a gruesome death.

[101] As indicated above, the accused disputed the evidence of all the State witnesses and denied stabbing the deceased and causing her death. He explained that when he got to the kitchen after hearing a gurgling sound, he found the deceased lying on the floor in a pool of blood.

[102] According to him, the kitchen door is a double-hung door, also known as a half door, as can be clearly seen on photo 24 of exhibit C. He stated that the door was slightly opened, and he pushed the top part of the door and called out or screamed for Ernest to come and assist.

[103] What is peculiar and difficult to understand is that after finding the door slightly opened, he suspected that someone might have been in the house, but he failed to go outside to investigate if really there was an intruder. Not only did he behave in this way but when his friend Koketso arrived and gave him a pillow to place it under the deceased, he left the house with Koketso to go and sit outside next to the toilet.

- [104] I have already indicated that there are no eyewitnesses in this case. However, the court can consider circumstantial evidence, which is indirect evidence of a fact or facts from which the court can infer a fact in issue. It is therefore important to note that circumstantial evidence is not considered to be inherently less reliable than direct evidence<sup>6</sup>. Wigmore laments the use of the term “circumstantial” to denote evidence that does not in any way derogate in value from direct evidence<sup>7</sup>.
- [105] The principles in relation to inferential reasoning are well established. In determining whether the circumstances of this case call for an inference to be drawn, if any, the court should not consider each circumstance in isolation and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each single circumstance, but it must consider all the evidence before it cumulatively. By the same token, the circumstances leading to the death of the deceased in this case cannot be considered in isolation to the exclusion of all the evidence.
- [106] It is therefore imperative to bear in mind that the cardinal rule is whether on the conspectus of the evidence presented, the State has proved beyond a reasonable doubt that the accused committed the offence. The Supreme Court of Appeal in **S v Ntsele**<sup>8</sup> stated that: *“when dealing with circumstantial evidence, the court is not required to consider every fragment individually. It was the cumulative impression, with all the pieces of evidence made collectively, that had to be considered to determine whether the accused’s guilt had been established beyond a reasonable doubt. Put differently, whether the circumstantial evidence available justifies the inescapable inference that the accused is the one who killed the deceased by stabbing her”*.
- [107] In adopting a holistic approach to the evaluation of all the evidence, the court in **S v Reddy and Others**<sup>9</sup> stated that: *“In assessing circumstantial evidence, one needs to be careful not to approach such evidence upon a piece-meal basis and to subject*

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<sup>6</sup> Musingadi and Others v S 2005 (1) SACR 395 (SCA) at para [20]

<sup>7</sup> The Law of Evidence 3<sup>rd</sup> ed Vol 1 para [25] at page 400.

<sup>8</sup> 1998 (2) SACR 178 (SCA).

<sup>9</sup> (416/94) [1996] ZASCA 55 (28 May 1996); 1996 (2) SACR 1 (A) at page 8C-D.

each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in *Rex v Blom*<sup>10</sup> where reference is made to two cardinal rules of logic which cannot be ignored. These are, **firstly**, that the inference sought to be drawn must be consistent with all the proved facts and **secondly**, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If these proved facts do not exclude all other reasonable inferences, then there must be a doubt whether the inference sought to be drawn, is correct”.

[108] Having regard to the evidence of four witnesses who corroborated each other and testified that the accused had on a number of occasions threatened the deceased, manhandled her, physically assaulted her, and uttered the words that someone will die in that yard, there is no doubt in my mind that the threats made by the accused were well orchestrated and intended to be carried out by the accused.

[109] This court is mindful of the concession made by the accused that he did not dispute his uncle’s (ie. Mr Peter Maluleka) evidence that his mother reported to him that he had threatened her with violence and that family meetings were held because he was the source of the problem. With that being said, he refused to answer questions asked by the State when confronted about a report made to his uncle by stating that: *“I don’t want to answer the question why my uncle told the court that I threatened my mother”*.

[110] He also said that he does not want to answer or respond to the question as to why Ernest would tell the court that he (the accused) had threatened his mother. When asked to comment about six of his family members as regards his continued abuse on his mother, he said that he does not want to answer why all the witnesses said that he was violent or that the family meetings were held because of him.

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<sup>10</sup> 1939 AD 188 at 202-203.



[111] Mr Nakedi testified that on the day of the incident when he approached the accused who was at the back of the police van, he was in the company of Ntate Elliot, and the accused told him that he killed his mother with a knife, but it was not intentional. This part of evidence was disputed by the accused when his counsel put to this witness that the accused denies telling him that he killed the deceased unintentionally.

[112] What is interesting about the response of this witness was that, and I quote: *“if Elliot was still alive, he would be able to come to court to tell the court what happened and corroborate my evidence”*. He also disputed the version that Ntate Elliot was not present at the scene.

[113] It is on record that the statement of Ntate Elliot Maluleka who is now deceased was admitted into evidence as **exhibit F**. The date of the incident was 17 December 2023 and this statement was commissioned three days later on the 20<sup>th</sup> of December 2023. The following is noted at paragraph 4 of this statement:

*“I further confirm that on the date and time of the alleged offence, I was together with my younger brother Osame Nakedi Mbungi (A6) when the accused person confessed that he killed the deceased but was not intending to kill the deceased”.*

[114] In light of the above, the accused’s version that Ntate Elliot was not present at the scene cannot be correct and is rejected as false because this evidence remains unchallenged. Similarly, Tidimatso’s evidence that the deceased once came running to her room, screaming for help and reported that the accused was manhandling her and grabbing her by her clothes, remain unchallenged.

[115] The evaluation of the evidence before me leaves no room for doubt that the accused is the one who killed the deceased. In my view, it is highly improbable that all five witnesses, including Mr Tshinavhe and Ntate Elliot, the deceased, would falsely implicate the accused. Mr Peter Maluleka testified that all the complains of violence

and threats were reported by Tidimatso, Ernest and the deceased. The accused has never complained of being threatened or treated bad by these three people.

[116] To show that the accused was the troublemaker who continuously made threats to his mother, the undisputed evidence of his uncle Mr Peter Maluleka was that on the second meeting, the accused specifically apologized to him for his bad behaviour.

[117] It is trite that the evidence that is reliable should be weighed alongside the evidence as may be found to be false. Independently verifiable evidence if any, should also be weighed to see if it supports any of the evidence tendered. Accordingly, in considering whether the evidence is reliable, the quality of that evidence must of necessity, be evaluated as must corroborative evidence, if any. Evidence of course, must be evaluated against the onus of any particular issue or in respect of the case in its entirety.

[118] Corroboration denotes other evidence which independently confirms or supports other evidence which renders the evidence of the accused person less probable on the issues in dispute<sup>11</sup>. In this regard, it is without a doubt that the undisputed evidence contained in **exhibit F** independently confirms and supports the evidence of five witnesses who throughout their evidence, gave it without exaggeration.

[119] Apart from the fact that the accused was not getting along with Tidimatso and not being happy with Tidimatso being on the property, it does not seem to me that Tidimatso was the target because the evidence before the court is very clear and specific as to who the threats and physical assaults and abuse were directed to – and that person is the deceased.

[120] I take note that circumstantial evidence rests ultimately on direct evidence and there must be a foundation of proved or probable facts from which to work<sup>12</sup>. **The proven facts are as follows:**

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<sup>11</sup> S v Gentle 2005 (1) SACR 420 (SCA).

<sup>12</sup> R v Mthembu 1950 (1) SA 670 (A) at 679-680

1. The accused repeatedly made threats that there will be a dead body coming out that property.
2. He specifically threatened the deceased and physically assaulted her by grabbing her by her clothes and shoved her around.
3. The deceased made several reports to Mr Peter Maluleka who was her elder brother that her own son is threatening her with violence and that she is fearing for her life and was scared that the accused might do something to her.
4. The accused made an admission to Mr Nakedi in the presence of Ntate Elliot that he killed his mother.
5. The accused was alone with the deceased in the house.

[121] A trite principle in our law is that the trier of facts must have regard to all considerations which reasonably invite clarification, and in doing this, the court should take the following into consideration, among others: all probabilities and improbabilities; reliability and opportunity for observation of the respective witnesses; the absence of interest or bias; the intrinsic merits or demerits of the evidence itself; inconsistencies or contradictions and corroboration. Probabilities must likewise be considered in the light of proven facts, and no proper inference can be drawn unless there are objective facts from which to infer the other facts<sup>13</sup>.

[122] On a consideration of the evidence in its totality and in the light of the probabilities and improbabilities in this case, I am of the view that the only inference to be drawn from all the evidence and proven facts taken and evaluated cumulatively is that the accused is the one who killed the deceased on the day of the incident, and had the intention to do so. Put differently, the objective probabilities surrounding the circumstances of this case leaves no room for doubt that the deceased was killed by non-other than the accused before this court. In my view, there was no intruder in the house on that day when the deceased was killed, hence the accused did not go outside to check.

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<sup>13</sup> See: S v Mdlongwa 2010 (2) SACR 419 (SCA) at para 11; S v Chabalala 2003 (1) SACR 134 (SCA) at para 15.

- [123] Accordingly, the first cardinal rule in the case of **Blom** has been satisfied and complied with. It therefore follows that the second rule in **Blom** has also been satisfied and complied with as the proved facts exclude and leaves no room for doubt or any other inference to be drawn, save for the one drawn by this court. Accordingly, I am of the view that the only reasonable inference to be drawn from the evidence before me is that the accused killed the deceased.
- [124] With regards to the demeanour of the State witnesses, they all came out as honest and reliable witnesses. They also did not contradict themselves and their evidence corroborated each other in all material respects, and they did not display any sign of bias. They were clear in answering all questions without any hesitation. As for the accused, his version of the events did not make sense at all. He had difficulty answering questions and was evasive in answering most of the questions and also changed his version under cross-examination. But most importantly, he flatly refused to answer some questions as demonstrated above.
- [125] One such example was when asked by the State to explain why his friend splashed him with water instead of helping him when it was clear to both of them that his mother was in pain and needed some help, and he could not give a straight answer. He stated that he was outside when he was splashed with water and when asked why there was a liquid that looks like water in the kitchen next to the deceased, he then changed his evidence to state that he was inside the house when water was poured onto him.
- [126] I find the evidence of the accused to be untruthful and unreliable, and accordingly, I am of the view that the accused is incapable of telling the truth. Consequently, it is my considered view that the accused's version is not reasonably possibly true.
- [127] With regards to the State's contention that the murder of the deceased was pre-meditated, it has been established by our courts that in order to prove premeditation where there is evidence or proven facts, the State must lead evidence to establish the

period of time between the accused forming the intent to murder the deceased, and the carrying out of his intention<sup>14</sup>.

- [128] In my view, the State succeeded in proving that the murder of the deceased was pre-meditated because the evidence clearly shows that the accused planned to kill the deceased when he first made the threats that someone will die at the house. On that fateful night, the accused carried out his well thought out plan of killing the deceased and he knew how he was going to end her life. What is unexplainable from his version is the contradiction which he gave during his evidence as to how and who could have killed the deceased.
- [129] It is common cause that he screamed and called out for Ernest to come to the main house, and without being asked any questions as to what happened, he volunteered to give an explanation that the deceased had killed herself. Ernest did not respond. He quickly left and went to look for assistance. With that in mind, the accused changed his version and wanted to make it look like there was an intruder in the house who might have killed the deceased because that was his second explanation.
- [130] I have already indicated that the accused did not go outside to see if someone had broken into his house, but he chose the easy way out by creating a lie to say that he found his mother lying in a pool of blood. If truly the accused was worried about his mother, he would have gone out rushing, but he did not. This was not the behaviour of someone who has lost his dear mother because by his own admission, when Koketso came, he just left the deceased there in the kitchen and went to sit outside next to the toilet. He did not even alert anyone that someone might have been in the house to kill his mother.
- [131] When one has regard to his strange behaviour on that day, coupled with the fact that he made an admission which he conveniently disputes in the face of corroborative evidence of exhibit F, and the repeated threats he has made, I am of the view that the plan to murder his victim, his own mother, started when he made the first threat

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<sup>14</sup> S v Raath 2009 (2) SACR 46 (CPD)

which he pronounced to the same people who resided with him in the same property and who had to run for safety and protection to the great uncle, Mr Peter Maluleka.

- [132] The concept of a planned or pre-meditated murder suggests a deliberate weighing-up of the proposed criminal conduct as opposed to the commission of the crime on the spur of the moment. An examination of all the circumstances surrounding the murder, must be investigated to allow the court to make a determination and arrive at the conclusion as to whether a particular murder is ‘planned or premeditated’<sup>15</sup>. The concept of pre-meditation also refers to doing something deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success or to evade detection<sup>16</sup>.
- [133] In my view, the actions of the accused in executing or carrying out his well thought plan to kill the deceased is in par with the decision in *Taunyane v The State*<sup>17</sup> where the court held that premeditation includes a deliberate consideration and the likelihood of success. In this matter, it took threats, assaults, planning and execution of a well-orchestrated plan to achieve what the accused wanted to achieve.
- [134] The injuries described in the post-mortem report clearly shows that the accused had no regard for human life and did not hesitate to take the life of another human being. The Constitution<sup>18</sup> provides in section 11 that “**everyone has the right to life**” which is guaranteed as an unqualified right because human life cannot be intentionally terminated.
- [135] One of the supreme laws, which is also the fifth (5) commandment that every child should never disregard or take for granted is found in Exodus 20 verse 12. It reads as follows: “respect your father and your mother so that you may live a long life. The sixth (6) commandment says do not commit murder”.

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<sup>15</sup> S v Raath 2009 (2) SACR 46 (C) at para 16.

<sup>16</sup> Taunyane v The State(Unreported Judgment) case number: A140/2015, South Gauteng Division (28 September 2016) at para 27

<sup>17</sup> Fn 16.

<sup>18</sup> Act 108 of 1996.

- [136] I raise this being mindful of the evidence of repeated abuse by a child towards his parent who cared for him and who loved him because Ernest, Mr Tshinavhe and Tidimatso testified that despite the disagreements and constant bickering in the house, the deceased loved the accused. Mr Tshinavhe specifically said – to show that the deceased loved the accused dearly as her child, when he wanted to report the assaults perpetrated on him by the accused, the deceased pleaded with him not to open a case against the accused with the police and he did not.
- [137] The actions of the accused demonstrates a pattern of behaviour which falls under the categories of Domestic Violence and gender-based violence (GBV). By definition, Domestic violence is a pattern of abusive and threatening behaviour inside of a family or household for example – and it takes a number of forms such as physical, emotional, verbal, and financial abuse.
- [138] It is on record that the accused always got angry and aggressive towards the deceased when the deceased could not give him money. He went to an extent of forcing her to go and take up loans so that he could be able to buy what he wanted – and not even appreciating that what he was doing to his own mother was a despicable act which is unimaginable.
- [139] On the other hand, GBV is not only considered a violation of human rights, but it is also a crime that undermines the principles of equality and dignity enshrined in our Constitution.
- [140] Our country is currently up in arms with the scourge of these violent acts of GBV; Domestic Violence and the killing of women, which has caused an outcry in the society and the community at large.
- [141] Having considered all the evidence before me and the submissions made by both counsels, I am satisfied, and of the view that the State succeeded in proving its case against the accused beyond a reasonable doubt and further succeeded in proving that the murder of the deceased was pre-meditated.

[142] In the circumstance, the following order is made:

1. The accused is found guilty of murder read with the provisions of section 51(1) of the CLAA.

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PD. PHAHLANE  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

**APPEARANCES**

For the State : Adv. L. Sivhidzho  
Instructed by : Director of Public Prosecutions, Pretoria  
For the Accused : Adv. S. Sampson  
Instructed by : Legal Aid South Africa  
Heard : 24-27 March 2025; 10 April 2025; 25-29 August & 17 October 2025  
Judgment Delivered : 13 November 2025