



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NO: CC 2/2025

In the matter between:

THE STATE

and

JOHN MMOLOTSI

Coram: Reddy J

Reserved: 5 December 2025 Circuit Court

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 14 April 2026 at 8h30.

Criminal law — Murder — Premeditation — Section 51(1) of the Criminal Law Amendment Act 105 of 1997 — Accused charged with two counts of murder read with s 51(1) and Part 1 of Schedule 2 of the CLAA — Accused pleaded not guilty — Identity of accused as perpetrator not in dispute by reason of his own admission of presence — Sole factual dispute between accused and single State

witness — Witness held credible and her evidence corroborated by accused's admissions to family members — Accused's version found to be elaborate and contrived — Premeditation established from the totality of the circumstances including possession of a knife, deliberate scaling of fence and entry into deceased's home, sustained attack inflicting multiple stab wounds on both deceased, and voluntary surrender to police — Premeditation need not be conceived over a long period; even a few minutes suffice: *Kekana v S* (37/2018) [2018] ZASCA 148; 2019 (1) SACR 1 (SCA) applied — Accused convicted on both counts of murder read with s 51(1) read with Part 1 of Schedule 2 of the CLAA, the court being satisfied that the murders were planned or premeditated.

JUDGMENT

REDDY J

Introduction

[1] On 2 December 2023, Xoliswa Ivy Mbese (Ivy) and her daughter, Nomsa Palesa Mbese (Palesa), were viciously attacked in the sanctity of their home. Palesa succumbed to multiple stab wounds and was declared dead at the scene. Ivy was transported for treatment. Sadly, she was certified dead on 6 December 2023. Multiple penetrating incised wounds to the torso were the cause of death. The State alleged that the accused was the perpetrator and had premeditated the murders of both deceased. Resultantly, the accused was indicted on two counts of murder, read with section 51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the CLAA).

[2] The accused, duly represented, pleaded not guilty and denied committing the offences. Notwithstanding his plea of not guilty, the accused consented to several admissions being recorded in terms of s220 of the Criminal Procedure Act 51 of 1977 (the CPA). These admissions related to formal evidence. Consequently, the identity of the deceased and the respective causes of death were not in dispute.

[3] It followed that two issues require determination; first, the identity of the perpetrator, and second, whether the perpetrator had premeditated the murder of both deceased. The basic tenets of our jurisprudential culture are settled in their application to our criminal process. Central to this is that the guilt of the accused must be proved by the State, and that the onus rests on the State to prove the guilt of the accused beyond a reasonable doubt. In *S v T*¹ the burden of proof was enunciated as follows:

“The State is required, when it tries a person for allegedly committing an offence, to prove the guilt of the accused beyond a reasonable doubt. This high standard of proof – universally required in civilized systems of criminal justice – is a core component of the fundamental right that every person enjoys under the Constitution, and under the common law prior to 1994, to a fair trial. It is not part of a charter for criminals, and neither is it a mere technicality. When a court finds that the guilt of an accused has not been proved beyond a reasonable doubt, that accused is entitled to an acquittal, even if there may be suspicions that he or she was, indeed, the perpetrator of the crime in question. That is an inevitable consequence of living in a society in which the freedom and the dignity of the individual are properly protected and are respected. The inverse – convictions based on suspicion or speculation – is the hallmark of tyrannical systems of law. South Africans have bitter experience of such a system and where it leads to.”

[4] For the state to discharge the onus of proof, the prosecution must prove the accused's guilt beyond a reasonable doubt. Subsumed within this onus, the

¹ 2005 (2) SACR 318 (E), paragraph [37].

prosecution must prove every element of the alleged crimes, including that the accused was the perpetrator, that the accused had the required intention, that the crime in question was committed, and that the act in question was unlawful.

[5] The established corollary in our constitutional epoch regarding the prosecution's onus of proof is that no onus rests on the accused to prove their innocence.

[6] For an accused to be acquitted, the version of an accused need only be reasonably possibly true. In *S v Van der Meyden*² Nugent JA enunciated this principle in the following manner:

'The onus of proof in a criminal case is discharged by the State if the evidence establishes the guilt of the accused beyond a reasonable doubt. The corollary is that he is entitled to be acquitted if it is reasonably possible that he might be innocent (see, for example, *R v Difford* 1937 AD 370 at 373 and 383). These are not separate and independent tests, but the expression of the same test when viewed from opposite perspectives. In order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt, which will be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. The two are inseparable, each being the logical corollary of the other.'

The State case

[7] In December 2023, Liziwe Lucia Mafa (Mafa) and the accused lived together in a romantic relationship. The relationship had since ended without animosity. On 2 December 2023, the accused intended to have a braai. In preparation, a braai stand was set out and layered with charcoal. As the accused struggled with the braai stand, he used a knife to fix it. Shortly after lighting the

² 1999 (1) SACR 447 (W), at 448F-G.

charcoal, his neighbours Ivy and Palesa appeared. Palesa insulted the accused and Mafa and threatened their lives. Notwithstanding that Mafa was under the influence of alcohol, she stood up and reproached them.

[8] At some point, the accused stood up, scaled the fence separating the properties, and entered Ivy's yard. Ivy and Palesa then fled into their home. The accused followed. At this stage, Mafa asked her daughter, Nontutuzelo, to contact the accused's brother, Sello Mmolotsi (Sello).

[9] The accused returned comparably by mounting the fence separating the two. At that point, the accused asked Mafa for forgiveness. Mafa did not inquire why the accused sought forgiveness. Ivy and Palesa did not emerge from the house. Sello and the accused's uncle, Mr. Botshelo Nelson Mmolotsi (Botshelo), arrived. By then, members of the community had gathered at the gate. Upon the ambulance's arrival, a white cover was placed over Palesa. Ivy was placed on a bed in the ambulance's emergency services.

[10] Sello was informed by the accused that he had argued with his neighbours and stabbed them with a knife. Sello, in turn, called Botshelo. Upon Botshelo's arrival, the accused repeated that he had made a mistake and stabbed his neighbours. At the accused's request, he was taken to the police station.

The defence case

[11] The accused confirmed that after his employment ended, he intended to have a braai. Accordingly, he asked Nontutuzelo to fetch the braai stand. Noticing that it was dirty, the accused went into the house to fetch a knife to clean the plastic sticks inside the braai stand. While using the knife, it slipped and bent. After unbending it, he placed the knife in the house and used a face brick to

continue cleaning. After completing the same, Nontutuzelo was asked to fetch the braai charcoal.

[12] After layering the braai charcoal onto the braai stand, Ivy emerged, followed by Palesa. Both made sarcastic remarks about the braai he was about to have. Ivy concluded by informing the accused that she had sought the Basutos to kill him. On Ivy's instructions, Palesa was asked to call the Basutos. She acquiesced. With the phone on speaker, the accused could hear the conversation. Ivy commanded the Basutos to kill the accused, Mafa, and the children in the way they had killed his mother. The Basuto indicated that they were on the same street.

[13] Armed with knowledge of his mother's murder, the accused informed Ivy that he would apply for a protection order, which would require an investigation by the South African Police Service and would center on determining why she had murdered his mother. The accused then entered his home.

[14] After a while, the accused went outside and heard a voice calling 'Mashi'. He saw three unknown people. The accused then approached them near the fence. Again, he heard the call, 'Mashi, Mashi, help me.' He then noticed Ivy beside the door of her house. At his request, Ivy informed him that Palesa had been murdered by two boys who had demanded money.

[15] The accused rushed to retrieve the gate key, then opened it to ask the group at the gate what had happened to Ivy. The accused was informed that he should jump Ivy's gate. He refused, reasoning that first, Ivy had uttered several profanities against him; secondly, it was the task of police officers; and thirdly, he was afraid, as Palesa had already been murdered.

[16] An unknown male wearing a cap manhandled him, informing the accused that the community was going to set fire to his home while he was inside it. This male then pointed a firearm at his waist, confirming that he intended to kill the accused. Petrified by the threats, he returned to his home. The police were contacted and confirmed that once transport was available, his complaint would be dealt with. On returning outside, he found Sello. Sello was told that he had killed Ivy and Palesa and that the accused would surrender himself to the police. Moreover, the accused indicated that he was afraid of being killed by the community, which would contend that he participated in the murder of Ivy and Palesa. A similar admission was made to Botshelo. Botshelo was requested to take him to the police station, where he handed himself over. The accused maintained that the admissions were made to preserve his safety. He denied that he had stabbed Ivy and Palesa.

Analysis

[17] As alluded to, the identity of the deceased and their respective causes of death are unassailable. Additionally, the issue of the accused's identification is rendered common cause by his own admission of being present. It therefore brings into sharp focus a pure dispute of fact between the evidence of the accused and that of Mafa.

[18] Our law is replete with precedent on how such a dispute is to be resolved. In *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others*³, the following architecture was provided:

‘ On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So too on several peripheral areas of dispute which may have a bearing on the

³ (427/01) [2002] ZASCA 98; 2003 (1) SA 11 (SCA) (6 September 2002)

probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court must make findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's finding on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness's candour and demeanour in the witness-box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extracurial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness's reliability will depend, apart from the factors mentioned under (a)(ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probability or improbability of each party's version on each of the disputed issues. In the light of its assessment of (a), (b) and (c) the court will then, as a final step, determine whether the party burdened with the onus of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when a court's credibility findings compel it in one direction and its evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail. '

[19] Similarly, in *National Employers' General Insurance Co Ltd v Jagers*⁴ the following approach was posited:

'It seems to me, with respect, that in any civil case, as in any criminal case, the onus can ordinarily only be discharged by adducing credible evidence to support the case of the party on whom the onus rests. In a civil case the onus is obviously not as heavy as it is in a criminal case, but nevertheless where the onus rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to

⁴ 1984 (4) SA 437 (ECD) at 440D-441A.

be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however the probabilities are evenly balanced in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.

This view seems to me to be in general accordance with the views expressed by Coetzee J in *Koster Ko-operatiewe Landboumaatskappy Bpk v Suid-Afrikaanse Spoorweë en Hawens* (supra) and *African Eagle Assurance Co Ltd v Cainer* (supra). I would merely stress however that when in such circumstances one talks about a plaintiff having discharged the onus which rested upon him on a balance of probabilities one really means that the court is satisfied on a balance of probabilities that he was telling the truth and that his version was therefore acceptable. It does not seem to me to be desirable for a court first to consider the question of credibility of the witnesses as the trial judge did in the present case, and then, having concluded that enquiry, to consider the probabilities of the case, as though the two aspects constitute separate fields of enquiry. In fact, as I have pointed out, it is only where a consideration of the probabilities fails to indicate where the truth probably lies, that recourse is had to an estimate of relative credibility apart from the probabilities.”

[20] It bears underscoring that although the credibility and probability methodology described in *Jagers* is instructive, the applicable standard of proof in these proceedings remains proof beyond a reasonable doubt, as required in criminal proceedings, rather than proof on a balance of probabilities.

[21] To this end, Mafa was a single witness. The reliability and credibility of her evidence must be assessed within this context. Section 208 of the CPA provides that ‘an accused may be convicted of any offence on the single evidence

of any competent witness.’ The litmus test of a single witness was laid down in *R v Mokoena*⁵ and succinctly set out in *S v Sauls and Others*⁶ as follows:

‘The absence of the word “credible” is of no significance; the single witness must still be credible, but there are. . . “indefinite degrees in this character we call credibility. . . There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness. . . The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, even though there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told.’

[22] The court can base its findings on the evidence of a single witness where that evidence is substantially satisfactory and is corroborated, which, in many respects, should consist of independent evidence.⁷ Notwithstanding the accused’s contention and Mafa’s concession that she had imbibed alcohol, Mafa rebuffed any suggestion that her faculties had been impaired by alcohol, which constrained her observations. Her evidence bolstered this.

[23] Significantly, Mafa’s evidence was impartial and confined to three fragments of evidence. First, the accused had scaled the separating fence; second, he had followed the deceased into the house; and third, on returning in almost identical fashion, he apologized. There is no basis to discount the evidence of Mafa. Her cross-examination did not disintegrate the material facts which underpinned her evidence. Moreover, her evidence is independently corroborated by the accused’s admissions to Sello and Botshelo. To my mind, Mafa was an honest and credible witness.

⁵ [1956] 3 All SA 208 (A) at 212-213.

⁶ [1981] 4 All SA 182 (AD); 1981 (3) SA 172 (A) at 180E-F.

⁷ *S v Gentle* (317/2003) [2005] ZASCA 26.

[24] On the other hand, the accused was an unreliable witness. The elaborate and contrived version he presented was clearly false in the extreme. It was apparent that he had given much thought to manipulating the facts to align with the version he sought to proffer. The evidence of Mafa was straightforward. The accused had scaled the fence and followed both deceased, who had run into the house. She was near him, and her evidence on this point was unassailable, notwithstanding the accused's persistent denial.

[25] The various fragments of evidence lead to the ineluctable conclusion that the accused had murdered both deceased. Firstly, the accused had a knife, which he used to clean the braai stand. To explain this, he concocted the version that the knife had bent, and after unbending it, he placed it in the house, so he did not have the knife. Secondly, he was seen entering the yard. Thirdly, on his return, he apologized to Mafa. To circumvent these strands of evidence, he proposed that Mafa was intoxicated. Fourthly, on the arrival of Sello, he admitted to having stabbed the deceased with a knife. To discount the effect of this admission, he suggested there had been sibling rivalry, including a dispute over assets following their mother's passing. Fifthly, he admitted to Botshelo that he had stabbed the deceased. Sixthly, Dr. Magano found that the cause of Ivy's death was multiple penetrating incised wounds to the torso, and Dr. Huma found that Palesa had died of multiple stab wounds. Seventhly, it was impossible for the accused to have known that the deceased had been stabbed had he not entered the yard. Therefore, he fabricated the conversation that he had with Ivy after she was attacked.

[26] There is no doubt that the accused murdered both the deceased; what finally falls to be considered is whether these murders were premeditated. Premeditation is a crucial factor in distinguishing between murder as

contemplated under section 51(2) and premeditated murder as contemplated under section 51(1) of the CLAA.

[27] Ultimately, it is for this Court to find that the accused acted with premeditation. For present purposes, premeditation means a deliberate weighing up of the proposed criminal conduct, as opposed to the commission of the crime on the spur of the moment.⁸ The requirement that premeditation must be established before conviction, and not deferred to sentencing, was confirmed in *S v Legoa*.⁹ Notably, *Legoa* is a statutory interpretation decision on sentencing jurisdiction, not a premeditation authority. The reference here is only to the limited proposition that all elements of the scheduled offence, including premeditation, must be established before conviction. It is important to note that, in instances where this pronouncement has not been made before conviction, it would not necessarily result in an unfair trial.¹⁰

[28] In *Benedict Moagi Peloele v The Director of Public Prosecutions, Gauteng*¹¹, it was held that determining whether a crime was premeditated requires consideration of the factual matrix of each case to ascertain the perpetrator's state of mind before the commission of the offence. In parallel with this approach and in keeping with *Molema v S*¹² this Court makes the premeditation finding at the conviction stage, rather than at sentencing, as required.

⁸ *S v Raath* (A82/2008) [2008] ZAWCHC 72; 2009 (2) SACR 46 (C) para 16.

⁹ [2002] ZASCA 122; [2002] 4 All SA 373 (SCA), at paras 13-14.

¹⁰ *Rasimate Samuel Baloyi v The State* [2022] ZASCA 35.

¹¹ [2022] ZASCA 117; 2022 (2) SACR 349 (SCA) at para 15.

¹² [2023] ZANWHC 209 para 22 and *Billy v S* [2024] ZAWCHC 376 para 7.

[29] In *S v Mini*¹³ Williamson JA stated:

‘In attempting to decide by inferential reasoning the state of mind of a particular accused at a particular time, it seems to me that a trier of fact should try mentally to project himself into the position of that accused at that time’.

[30] The court must consider the totality of the evidence in determining whether the murders were premeditated. It is incumbent upon the State to prove beyond a reasonable doubt that the accused premeditated the murders. The accused bears no onus, but may place before the court a factual basis upon which it may conclude that the murders were not premeditated. In *Kekana v S*¹⁴ the court held that:

“In summary, therefore, it was for the appellant to lay a factual foundation for a conclusion that the murders were not premeditated, and the issue was one for the trial court to decide. *In coming to a decision, the court would have had regard to all the circumstances of the murders, including the appellant’s actions during the relevant period*”. A mere assertion by an accused that he does not know what overcame him, how the incident transpired, or that it happened too quickly, is insufficient. Ultimately, it is the trial court’s prerogative to decide whether the murders were premeditated. In making this determination, the court will consider all relevant circumstances, including the accused’s conduct before, during, and after the commission of the offence.

[31] On a conspectus of the evidence, the State has proved beyond a reasonable doubt that the accused premeditated the murders of both deceased. In coming to this conclusion, I have had regard to all the circumstances of the murders,

¹³ 1963 (3) SA 188 (A) at 196E.

¹⁴ [2018] ZASCA 148; 2019 (1) SACR 1 (SCA) at para 21.

including the accused's conduct before, during, and after their commission, as enjoined by *Kekana v S*¹⁵ and *Billy v S*.¹⁶

[32] I amply this in the following way. First, the accused made a deliberate and considered decision to scale the fence separating the two properties and pursue two women who were actively fleeing into the sanctuary of their home. This is clear and purposeful conduct on the part of the accused. Second, on entering the home, the accused inflicted multiple stab wounds on both deceased a sustained and directed an attack on two separate victims that is wholly inconsistent with an impulsive cause of conduct. Third, upon returning to his own property, the accused immediately sought forgiveness from Mafa. This acknowledgment of wrongdoing, made unsolicited before any engagement, is consistent with a deliberate act rather than a spontaneous one. Fourth, the accused voluntarily surrendered himself to the police, evincing the calm deliberation of a person who had acted with forethought rather than on impulse.

[33] As was held in *Kekana v S*¹⁷, even a few minutes are sufficient to carry out a premeditated action, and time is not the only consideration. The brevity of the interval between the altercation and the killings does not exclude a finding of premeditation. The four strands of evidence identified above, considered cumulatively, establish premeditation beyond a reasonable doubt.

Order

Count 1

¹⁵ [2018] ZASCA 148; 2019 (1) SACR 1 (SCA) at para 21.

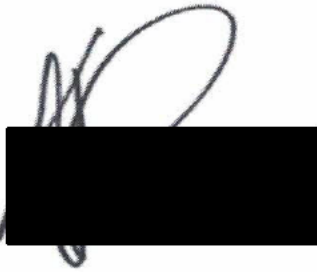
¹⁶ *Billy v S* [2024] ZAWCHC 376 para 7.

¹⁷ *S v Kekana* [2014] ZASCA 158 at para 13

Guilty of murder, the court being satisfied that the murder was premeditated as contemplated in section 51(1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

Count 2

Guilty of murder, the court being satisfied that the murder was premeditated as contemplated in section 51(1) read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997



A REDDY

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

APPEARANCES

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Instructed by: Director of Public Prosecutions, North West Province

For the Accused: Mr. Semino

Instructed by: Legal Aid South Africa