

**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

CASE NUMBER: CC22/2021

**REPORTABLE: YES / NO
OF INTEREST TO OTHER JUDGES: YES/NO**

REVISED.

4/2/2020

In the matter between:-

THE STATE

versus

JULIUS THABISO MNDAWE

Accused

JUDGMENT (CONVICTION)

GREYLING-COETZER AJ

INTRODUCTION

[1] The accused, **JULIUS THABISO MNDawe** (“the accused”), having allegedly committed Serial Femicide is indicted on five counts of the murder and five charges of Defeating/Obstructing the Administration of Justice.

[2] The State contended that the five victims (all young female person) were murdered by the accused over a period of sixteen months, as from January 2018 to May 2019. It was further contended that upon unlawfully and intentionally murdering the five victims, the accused concealed their remains by burying same in shallow graves on his property.

[3] The incidents underpinning the aforesaid charges occurred in Numbi Trust, in the district of Masoyi, where the accused lived alone.

[4] The specific allegations levelled against the accused are that:-

(a) Count 1 - Murder: Upon or about 9 May 2019 and at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and intentionally kill **Elina Tokkie Tlaka**, an adult female person.

(b) Count 3 – Defeating the Administration of Justice: Upon or about 9 May 2019 at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and with the intent to defeat or obstruct the administration of justice, by committing an act to wit kill **Elina Tokkie Tlaka** and conceal her body by burying the said body in a shallow grave in his yard.

(c) Count 5 - Murder: Upon or about 6 January 2019 and at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and intentionally kill **B[....] K[....]**, a minor female person.

(d) Count 6 – Defeating the Administration of Justice: Upon or about 6 January 2019 at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and with the intent to defeat or obstruct the administration of justice, by committing an act to wit kill **B[....] K[....]** and conceal her body by burying the said body in a shallow grave in his yard.

(e) Count 7 – Murder: Upon or about March 2018 and at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and intentionally kill **Noxolo Purity M[....]i** an adult female person.

(f) Count 8 – Defeating the Administration of Justice: Upon or about March 2018 at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and with the intent to defeat or obstruct the administration of justice, by committing an act to wit kill **Noxolo Purity M[....]i** and conceal her body by burying the said body in a shallow grave in his yard.

(g) Count 9 - Murder: Upon or about 28 April 2018 and at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and intentionally kill **N[....] I[....] M[....]i** a minor female person.

(h) Count 10 – Defeating the Administration of Justice: Upon or about 28 April 2018 at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and with the intent to defeat or obstruct the administration of justice, by committing an act to wit kill **N[....] I[....] M[....]i** and conceal her body by burying the said body in a shallow grave in his yard.

(i) Count 11 - Murder: Upon or about 2 September 2018 and at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and intentionally kill **F[....] M[....]2** a minor female person.

(j) Count 12 – Defeating the Administration of Justice: Upon or about 2 September 2018 at or near Numbi Trust in the district of Masoyi, the accused did unlawfully and with the intent to defeat or obstruct the administration of justice, by committing an act to wit kill **F[....] M[....]2** and conceal her body by burying the said body in a shallow grave in his yard.

[5] Count 2 and 4 having been withdrawn by the State.

[6] The State indicated that Section 51(1) as read with Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 are applicable in that the murders

were planned or premeditated, and that a minimum sentence of life imprisonment would therefore be applicable.

[7] Before the accused pleaded to the charges, the provisions, import and implications of Section 51(1) of the Criminal Law Amendment Act 105 of 1997 were explained to the accused, and he confirmed to understand same. The legal representative appearing on his behalf also confirmed on record that same was explained to the accused earlier, and that his confirmation is therefore in line with her instruction.

[8] I hence forth refer to the victims by their names, as it is ever too easy to merely refer to them as “the victims” or “the deceases”. Sometimes, although momentarily, forgetting that each of them was persons in their own right, who ought to have enjoyed the right to be called by their names .

THE PLEA

[9] The accused pleaded guilty to all the charges levelled against him, and a written plea explanation was placed before the court. In terms of Section 112 of the Criminal Procedure Act 51 of 1977 (as amended) the accused admitted to:-

(a) unlawfully and intentionally killing **B[....]** (a 15 year old female) on 6 January 2018 and concealing her body by burying it in a shallow grave in his yard;

(b) unlawfully and intentionally killing **Noxolo** (an adult female) during March 2018 and concealing her body by burying it in a shallow grave in his yard;

(c) unlawfully and intentionally killing **N[....]** (a minor female) on 28 April 2018 and concealing her body by burying it in a shallow grave in his yard

(d) unlawfully and intentionally killing **F[....]** (a minor female) on 2 September 2018 and concealing her body by burying it in a shallow grave in his yard; and

(e) unlawfully and intentionally killing **Elina** (an adult female) on 9 May 2019 and concealing her body by burying it in a shallow grave in his yard.

[10] According to the accused, the events leading up to each murder were as follows:-

The murder of **B[....]**

[11] The accused stated that **B[....]** was the sister of his then girlfriend, whose name was not disclosed.

[12] On 6 January 2018 **B[....]** indicated that she was going to report the accused to the SAPS for raping her, and as this was not true, the accused became very angry. The accused then assaulted **B[....]** with his fists until she fell to the ground, not moving.

[13] The accused then realized that **B[....]** was not breathing and dead. As he was scared, he decided to bury **B[....]** in his yard in order to hide her body, as he knew that he would be in trouble for what he had done.

The murder of **Noxolo**

[14] During March 2018, the exact date being unknown, **Noxolo** went to the accused's house, where they got involved in an argument. According to the accused this argument escalated to the extent that he assaulted **Noxolo** until she fell to the ground and was no longer breathing.

[15] When the accused realized that **Noxolo** was dead, he became scared and buried **Noxolo's** body in his yard in order to hide it, as he knew he would be in trouble for what he had done.

The murder of **N[....]**

[16] On 28 April 2018 **N[....]** went to the accused's house, where they got involved in an argument. According to the accused this argument escalated to the extent that he assaulted **N[....]** until she fell to the ground and was no longer breathing. When he

realized that she was dead, he became scared and buried her body in his yard to hide it, as he knew he would be in trouble for what he had done.

The murder of F[....]

[17] On 2 September 2018 **F[....]** went to the accused's house, where they got involved in an argument, which escalated to the extent that he assaulted **F[....]** until she fell to the ground and was no longer breathing. He again realized that **F[....]** was dead and he became scared. He similarly buried **F[....]**'s body in his yard in order to hide it, as he knew he would be in trouble for what he had done.

The murder of **Elina**

[18] The accused explained that he knew **Elina**. On 8 May 2019 she went to the accused, near the place where he was staying. According to the accused **Elina** wanted money from him. He however informed her that he did not have money, whereafter **Elina** left.

[19] **Elina** returned the following day on 9 May 2019 and again asked the accused for money. The accused said that he did not know why she wanted money from him.

[20] According to the accused they became angry with one another, and **Elina** slapped him, whereafter the accused assaulted **Elina** with his fists until she fell to the ground. **Elina** was neither moving nor breathing, and the accused realized that she was dead. He became scared and decided to bury her body in his yard in order to hide it, as he knew he would be in trouble for what he had done.

Denial of planning

[21] Although the accused admitted to the murders and the concealment of the bodies of the five female persons, he stated that he never planned to cause their deaths. He explained that he was extremely remorseful for what he had done, and that is the reason why he told the police what happened and showed the police where their bodies were buried, and telling the court what happened.

FORMAL ADMISSIONS BY THE ACCUSED

[22] Before the State started leading evidence on the only dispute issue, planned or premeditated, the accused (duly assisted and advised by his legal representative) admitted certain facts relating to the individual charges in terms of Section 220 of the Criminal Procedure Act 51 of 1977 (as amended).

[23] Such admissions were made in writing and embodied in Exhibit "B", which was initialed and signed by both the accused and his legal representative. All the signatures were placed on paper in the court's presence and in the presence of the State.

[24] The written formal admissions statement in terms of Section 220 of the Act inter alia confirmed that:

- (a) **Elina, B[....], Noxolo, N[....] and F[....]** died as a result of the injuries they sustained at Numbi Trust between the period January 2018 to May 2019;
- (b) that they were all buried by the accused at the accused's homestead without help from anyone else;
- (c) that on 1 July 2019 the police went to the accused's homestead and found the cellphone handset of **Elina**, whereafter the accused volunteered information to the police as to the whereabouts of **Elina**, and later of **B[....], Noxolo, N[....] and F[....]**;
- (d) that the accused identified the human remains of 5 woman and pointed them out to the police as being that of **Elina, B[....], Noxolo, N[....] and Felica**.

[25] The following documents and content were also tendered as formal admissions in terms of Section 220, and were dealt with and described in the written Section 220 statement:-received as Exhibits C to H2

- (a) In respect of **Elina**, the medico-legal post-mortem report, conveyance of the body affidavit, declaration of death affidavit, affidavit in terms of Section 212(4) of the Act, the description and key to the photographs, photo album

consisting of 45 photos in respect of the pointing out and certified copies of the SAP13 record relating to Elina's cellphone.

(b) In respect of **B[....]**, the medico-legal post-mortem report, conveyance of the body/remains affidavit, declaration of death affidavit, affidavit in terms of Section 212(4) of the Act, the description and key to the photographs and a photo album consisting of 45 photos in respect of the pointing out.

(c) In respect of **Noxolo**, the medico-legal post-mortem report, conveyance of the body/remains affidavit and declaration of death affidavit.

(d) In respect of **N[....]**, the medico-legal post-mortem report, conveyance of the body/remains affidavit and declaration of death affidavit.

(e) In respect of **F[....]**, the medico-legal post-mortem report, conveyance of the body/remains affidavit, declaration of death affidavit, affidavit in terms of Section 212(4) of the Act, the description and key to the photographs and a photo album consisting of 34 photos in respect of the pointing out in respect of the body of **Noxolo, N[....] and F[....]**.

STATE WITNESS IN RESPECT OF PREMEDITATION

[26] The State called one witness in respect of the disputed issue of premeditation or planning. Sergeant Mnisi, the investigating officer, testified that:-

(a) **Elina's** human remains were found inside the yard of the accused, more particularly the garden of the accused, next to the toilet (which was a pit toilet);

(b) **B[....]'s** and **Noxolo's** human remains were found in the accused's garden;

(c) **N[....]'s** and **F[....]'s** human remains were found to be buried under the cement floor of an unfinished structure attached to the accused's house.

[27] According to Sergeant Mnisi he knew Elina and the accused to be boyfriend and

girlfriend.

[28] According to his observations of the crime scenes and places of burial, which he visited on more than one occasion, he observed three shallow graves in the garden, approximately 2-3 meters apart from one another, and approximately 1 meter deep.

[29] With regards to Elina's grave, Sergeant Mnisi noticed burnt blankets and that it was wet. He further observed a trench approximately 8 meters from the shallow grave to a water tap inside the accused's premises, and that there was water flowing from the tap which ran into the shallow grave.

[30] He further observed a similar trench between a drainage pipe protruding from the wall of the house to B[....]'s grave. No water was running from the said drainage pipe. He testified that the same was observed in respect of Noxolo's grave.

[31] With regards to F[....]'s and N[....]'s grave, they were buried underneath the cement floor, parallel to one another.

[32] During cross-examination, Sergeant Mnisi confirmed that he did not request the Local Criminal Record Center: Nelspruit, to photograph these trenches. As such, these trenches are not visible from admitted photo albums.

[33] Sergeant Mnisi further testified that Elina, B[....] and Noxolo did not reside in the direct vicinity of the accused, but N[....] and F[....] did. During cross-examination Sergeant Mnisi elaborated and testified that B[....] lived in Swalalla Trust, which is approximately 20 minutes' drive, and between 15-20km from the accused's residence. Elina resided in Ngoben Trust, which is approximately 10 minutes' drive and 10km or less away from the accused's residence. Noxolo resided in Mashadza Trust, which is approximately 10-15km away from the accused's residence, whereas F[....] and N[....] lived 3-5 minutes' walk away from the accused's residence.

[34] The State closed its case, whereupon the Defense closed its case without leading any evidence.

ARGUMENT

[35] It was argued on behalf of the State that considering the common cause facts that all the victims were known to the accused, resided in the greater Masoyi area, were murdered in a similar manner, and buried in the same way, are indicative that the murders were committed in circumstances of premeditation.

[36] According to the State and common cause evidence, the deaths could not have been spur-of-the-moment, as suggested by the accused. Even should one accept that the first incident, causing the death of B[...], was committed within the spur-of-the-moment, same cannot be said for the remaining four murders.

[37] It was argued that there was a clear pattern of young women, killed in the accused's house and buried by the accused in his yard (some bodies buried 3 meters apart). This, the State argued, could almost be seen as a plan being played out and executed, as opposed to the bodies being sporadically buried as and when the killings took place.

[38] It was argued on behalf of the Defense that the State is requesting the court to rely on similar facts with sufficient probative value, to make a presumption that there was premeditation. Although similar facts are not usually accepted, it is in some instances. But said instance requires a nexus for the court to make the presumption in respect of time and place. Although there were five bodies found in the accused's yard, and in each incident there was an argument that escalated to an assault, which assault was so severe that the accused did foresee that it might lead to death.

[39] According to the Defense there was no evidence that the assaults took place in the accused's house. The State has not proven act of prior preparation, and is therefore only relying on the coincidences that there were five bodies.

[40] The Defense further argued that there was no pattern, as the first murder happened and was only followed two months later by that of Noxolo. Then a further month passed before the murder of N[...]², whereafter there was a lapse of five months before F[...] was murdered. Then a further eight months passed before Elina was murdered.

[41] According to the Defense there was no evidence that the accused formed the intention to lure the women to his place of residence, some of them even staying further than 10km away. It was simply spur-of-the-moment arguments leading to assault, which in turn led to death, by a man in an emotional rage. This does not prove premeditation.

[42] I understood the defense to argue that just because similar facts are present in respect of the five murders does not mean the murders were premeditated.

MEDICO-LEGAL POST-MORTEM REPORT

[43] Per the admitted post-mortem report the following findings and observations were made:

43.1 **Elina** was an adult black female.

- Her skull was partly burned.
- Her cause of death was determined to be unnatural due to the existence advanced stage of decomposition.
- Both hands and feet were absent with multiple pieces of green broken glass present, including two pieces covering the eye sockets.
- Her orbital and nasal bones intact.
- Her uterus was absent.

43.2 **B[...]** was found to be a minor black female,

- 15 years of age,
- the cause of death was undetermined due to the advanced stage of decomposition.

- no injuries were present on her bones,
- her orbital, nasal and oral cavities were intact.

43.3 In respect of **Noxolo** it was found that she was a young adult black female.

- There was evidence of fatal blunt head trauma, causing depressed skull fracture, sized 35mmx28mm, which could be a hammer blow.
- the cause of death was determined to be a fatal blunt head trauma.

43.4 In respect of **N[...]**² it was confirmed that she was a minor black female

- younger than the age of sixteen.
- cause of death undetermined due to the advanced stage of decomposition
- A white shoe lace and piece of wire were found around both of her upper limbs and in front of the skeleton, which finding suggests that **N[...]**² had been legated around the wrists.

43.5 In respect of **F[...]**, was a black female

- approximately 17 or eighteen years of age.
- Due to the advanced stage of decomposition, her cause of death was undetermined.

[44] None of the reports recorded absence of teeth, broken facial bones or any broken bones. The photo album received into evidence in respect of **Elina**, displays the presence of her full set of teeth. These are injuries ordinarily present in person assaulted to death or assaulted with a fist to death.

LEGAL PRINCIPLES

[45] It was held in *S v Nduna* 2011 (1) SACR 115 (SCA) that whilst similar fact evidence is admissible to prove the identity of an accused person as the perpetrator of an offence, it cannot be used to prove the commission of the crime itself. The honourable court added that this legal principle operates, in addition, to exclude such similar fact evidence from being confirmatory material on another count. The learned judge proceeded to elucidate the above principle by stating that:

“18. However, the application of the rule is not to be confused with the situation where the rule is invoked to establish the cogency of the evidence of systematic course of wrongful conduct, in order to render it more probable that the offender committed each of the offences charged in respect of such conduct. C S v Gokool 1965 (3) SA 461 (N) at 475A-D). The appellant’s argument, if it were to be accepted, would be tantamount to excluding evidence of the modus operandi of the appellant merely because he had been charged with more than one count of robbery.”

[46] In *S v Gokool* 1965 (3) SA 461 (N), Harcourt J said the following at 475D-F:

“It is clear that each count brought against an accused person must be considered separately and that the admissibility of evidence on each count must be tested as if that count had been the only count against such accused - R v Buthelezi, 1944 T.P.D. 254. But this does not prevent material, which could be admissible under the rules relating to similar fact evidence, from being received merely because a plurality of counts is involved in a case.”

[47] The above rules and principles speak to the circumstances of this case and the type of similar fact evidence was thus quite relevant.

[48] In **S v Raath**¹ the Full Bench of the Western Cape Division gave the following exposition of the importance of the term “*premeditated*”:-

¹ 2009 (2) SACR 46 (C) at par 16

“The concept of a planned or premeditated murder is not statutory defined... Clearly the concept suggest a deliberate weighing up of the proposed criminal conduct as opposed to the commission of the crime on the spur of the moment or in unexpected circumstances. There is, however, a broad continuum between the two poles of a murder committed in the heat of the moment and a murder which may have been conceived and planned over months or even years before its execution. In my view only an examination of all the circumstances surrounding any particular murder, including not least the accused’s state of mind, will allow one to arrive at a conclusion as to whether a particular murder is ‘planned’ or ‘premeditated’. In such an evaluation the period of time between the accused forming the intention to commit the murder and carrying out this intention is obviously of cardinal importance but, equally, does not at some arbitrary point, provide a ready-made answer to the question of whether the murder was ‘planned’ or ‘premeditated’.

[49] The time lapse between the intention to commit the crime and the execution of the crime might suggest an opportunity for reflection about and before carrying out the intention. That being said, planning does not necessarily involve a long period of time. Similar reasoning was employed by the Supreme Court of Appeal in **Kekana v S** 2014 (ZASCA) 158 (1 October 2014) where Mathopo AJA (Lewis JA and Govender AJA concurring) held that:

“(i)n my view it is not necessary that the appellant should have thought or planned his action a long period of time in advance before carrying out his plan. Time is not the only consideration because even a few minutes are enough to carry out a premeditated action.”

[50] In *Montsho v S* **[2015] ZASCA 187** the Supreme Court of Appeal held that the facts of the matter determine whether the crime was premeditated:

‘[13] In the view I take of the matter, I do not consider that there is any benefit to be derived, on the facts of this case, in formulating a general definition of whether the phrase ‘planned or premeditated’ denotes a single concept. The

inquiry as to whether or not any given facts would at the very least sustain an inference to be drawn from them as to whether or not an accused had manifested a plan or premeditation to commit the offence in issue can properly be determined on a case by case basis. Thus the circumstances in which a crime was committed and the peculiar facts of each case will determine whether or not the commission of the crime was planned or premeditated.

[51] As can be seen from the authorities, whether or not a murder is planned or premeditated, is determined upon a consideration of the facts of a particular matter.

[52] The following emerges from the facts:

52.1 The accused knew **Elina, B[....], Noxolo, N[....]2 and F[....]**. Thus the accused was also known to them.

52.2 **Elina, B[....], Noxolo, N[....]2 and F[....]** on 5 different occasions went to the accused's house. The circumstances of this not being placed before court.

52.3 At the accused's house, **Elina, B[....], Noxolo, N[....]2 and F[....]** each got involved in an argument with the accused.

52.4 Each of these arguments escalated;

52.5 The accused assaulted each of them;

52.6 First in time, Jan 2018 ,the accused became very angry and assaulted **B[....]** with his fists until she fell to the ground and not moving;

52.7 March 2018, the accused assaulted **Noxolo** until she fell to the ground and was not breathing;

52.8 April 2018, the accused assaulted **N[....]2** until she fell to the ground and was not breathing.

52.9 September 2018, the accused assaulted **F[....]** until she fell to the ground and was not breathing and

52.10 May 2019, the accused assaulted **Elina** with his fists until she fell to the ground. This was preceded by the accused becoming angry and Elina slapping the accused,

[53] In respect of **all of them** the accused realized that they were dead, he became scared and buried their bodies.

[54] All the bodies were buried on the accused's premises.

- Three bodies were buried in the accused's garden, approximately 2-3 meters apart
- Two bodies were buried under a cement floor of an unfinished structure next to the accused's house, parallel with one another.

[55] These murders took place in the following sequence:-

- January 2018: **B[....]**, fifteen years of age, was buried in the accused's garden and her remains found 18 months later;
- March 2018: **Noxolo**, who was barely an adult at an age of between eighteen and twenty-one, having died of blunt head trauma and a fractured skull, was buried in the accused's garden and her remains found 16 months later;
- April 2018: **N[....]2** was younger than sixteen years of age. Her wrists were tied and she was buried under a cement floor and her remains found 15 months later;
- September 2018: **F[....]**, whose cause of death was undetermined, was found buried under a cement floor, parallel to the body of **N[....]2**, **F[....]**'s remains found 9 months later;

- May 2019: **Elina** was found 2 months later with a burned skull, absent her hands and feet.

[56] Evaluating all the evidence against the comments *inter alia* both *Raath supra* and *Montsho v S* there is a deliberate course of action which was so organized as to increase the likelihood of success and enable evasion of apprehension thereafter.

[57] All 5 murders were committed at the house of the accused, where he stayed alone, calculated to increase the likelihood of success. They were all committed with only the accused and one of the woman present at the time. The postmortem evidence attributing more to the method of death than an mere assault. Their bodies were disposed of to evade apprehension.

[58] The similarities of these five murders are such that it can simply not be viewed as individual distinct events. These facts of similarity sets out the systematic course of wrongful conduct.

[59] It is inconceivable how the accused could have acted in the heat of the moment on five separate occasion over a period of sixteen months. The common cause evidence does not support such a finding.

[60] On each occasion according to the accused found himself in exactly the same situation as before, where he entered into an argument with the deceased, assaulted her to death, then realized what he had done and hide his crime. This speaks to rationalization. The accused overall conduct puts paid to the suggestion that these murders were in the spur of the moment assaults. The postmortem reports reveal more than mere assault. The coincidence argued for by the defence is wholly improbable.

[61] The five murders all show consistent course of conduct²:

61.1 one method of selection of the victim, young black females;

² S v **Phillips 1985 (2) SA 727 (N)**

61.2 all coming to him his homestead

61.3 one geographical area, the accused homestead within 20km from where the woman reside;

61.4 one result, death;

61.5 one method of disposal of the bodies, burial in shallow graves on his property.

[62] I am satisfied that the only reasonable inference to be drawn from totality of the evidence and facts is that the accused premeditated these murders applying thought and carried it out, making sure that it was complete and concealing his criminal acts. on this basis overcoming the required standards.

ORDER

You are found :

GUILTY OF COUNT 1 – The premeditated Murder of **Elina Tokkie Tlaka**

GUILTY OF COUNT 5 – The premeditated Murder of **B[....] K[....]**

GUILTY OF COUNT 7 - The premeditated Murder of **Noxolo Purity M[....]i**

GUILTY OF COUNT 9 – The premeditated Murder of **N[....]2 I[....] M[....]i**

GUILTY OF COUNT 11 – The premeditated Murder of **F[....] M[....]2**

GUILTY OF COUNT 3,6,8,10 and 12 – Defeating or obstructing the course and administration of Justice.

DATE OF HEARING: 2 FEBRUARY 2022

DATE OF JUDGMENT: 4 FEBRUARY 2022

FOR THE STATE: Advocate Mata - Prosecutor

FOR THE DEFENSE: Advocate Erasmus – Legal Aid