

REPUBLIC OF SOUTH AFRICA



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

CASE NO: SS23/2018

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES:
YES/NO
(3) REVISED: YES/NO

Date:

In the matter between:

THE STATE

- v -

MDLALOSE, MLULEKI WELCOME

Accused

JUDGMENT

STRYDOM J :

[1] The accused, Mr Mluleki Welcome Mdlalose (hereinafter referred to as the accused) has been arraigned on –

1.1 Three counts of murder. These counts are counts 1, 18 and 23.

1.2 Three counts of attempted murder. These counts are counts 5, 14 and 15.

1.3 One count of kidnapping, count 4.

1.4 Two counts of assault, counts 6 and 9.

1.5 One count of pointing of a firearm, count 26.

1.6 One count of contravention of section 123(b) of the Firearms Control Act, being reckless endangerment to a person or property, count 10.

1.7 One count of discharge of a firearm in a built-up area, count 11.

1.8 Eight counts of the unlawful possession of a firearm, being counts 2, 7, 12, 16, 17, 19, 21 and 24.

1.9 Eight counts of being in unlawful possession of ammunition, counts 3, 8, 13, 17, 20, 22 and 25.

[2] In all 26 counts were put to the accused. He pleaded not guilty to these counts. No plea explanation was provided by the accused.

- [3] The accused was warned about the applicable minimum sentences which applied in terms of the Criminal Law Amendment Act, 105 of 1997 (“the Amendment Act”).
- [4] The State addressed the court in terms of section 150 of the Criminal Procedure Act, 51 of 1977 (“the CPA”).
- [5] The court was informed that the State would lead evidence of six separate incidents where the accused was involved in criminal activities. His alleged involvement stretches over a period from 8 December 2012 to 31 December 2016. The accused was first arrested on 21 September 2016, but it is alleged that he, after being released on bail, committed the further crimes described in counts 23 to 26.
- [6] Admissions were made in terms of section 220 of the CPA. This included an admission that the accused does not have a licence to possess a firearm; that during September 2016 to December 2016, the accused had a cellular phone number 082 402 2926; the identity of the deceased; the places and causes of their deaths; that the bodies of the deceased did not sustain any further injuries; the findings of the post mortem reports; crime scene photographs and exhibits recovered from the crime scenes.
- [7] It was further admitted that the accused was in a love relationship with the complainant in count 14. He was not prepared to admit her cellular phone number as requested by the State.

[8] The court will deal with each incident and the counts relevant to the incident separately. There is however evidence of a ballistic nature which relates to more than one count.

[9] At the outset, it should be mentioned that the defence of the accused was a bald denial of any involvement in these crimes. As far as his defence to counts 23 and 26 are concerned, the accused stated that he was in KwaZulu-Natal when the deceased was murdered.

COUNTS 1 TO 3

[10] It was not disputed that the deceased referred to in count 1 was Sicebi Mahlaba who died on 8 December 2012 close to the Dube Hostel in Meadowlands, Soweto. It was admitted that the deceased died as a result of a bullet wound across the chest.

[11] The accused made an additional admission in which he admitted that, on 1 May 2013, he made a statement, exhibit X, to Captain Nkosi. The accused admitted that his constitutional rights were not violated and that he made the statement freely and voluntarily, without undue influence whilst he was in his sound and sober senses.

[12] In terms of the statement, the accused admitted that he was together with the deceased at a shebeen at Dube Hostel. He had an argument with two persons and then took out a firearm and shot at the two persons, but instead he shot and killed the deceased. The deceased died on the scene. He further stated that he then fled the scene and went to sleep in a taxi and that he got rid of the firearm by selling it to a car guard called

Shezi. He then stated that he fled to KwaZulu-Natal where he reported the incident to his grandmother and father. His father then organised the elders of the village to go to his friend's village to apologise for his killing. He indicated in his statement that his father was requested to pay R5,500 and a cow as compensation. The accused also stated that he was never arrested for this matter and he never reported the incident to the police.

[13] The State led the evidence of Warrant Officer Mbelase, who attended the scene of the shooting and found the body of the deceased.

[14] The State also led the evidence of Ms Zani Mahlaba, the sister of the deceased. She confirmed that the deceased and the accused were known to each other and that they stayed at Dube Hostel. She confirmed that a week after the death of her brother a delegation arrived from the family of the accused to apologise and pay reparations. The families could not arrive at a resolution.

[15] Despite the admission to allow the statement of the accused, he, during cross examination, changed his version indicating that he was assaulted to provide the statement. He could not provide the reason why he admitted the contents of the statement during the case of the State.

[16] In my view the accused has not laid a basis for the retraction of his previous admission. Moreover, the evidence of Ms Zani Mahlaba corroborated the contents of his statement insofar as a delegation was sent by the accused's family to that of the deceased after he was killed by the accused.

- [17] In terms of section 209 of the CPA an accused may be convicted of any offence on the single evidence of a confession by such accused that he committed the offence in question, if such confession is confirmed in a material respect or where the confession is not so confirmed, if the commission of the offence is proved by other evidence besides the confession.
- [18] There was evidence that the deceased was killed by a gunshot wound to his chest. The police found the body of the deceased. The contents of the statement of accused is further corroborated by the evidence of the sister of deceased who testified that the family of the accused later contacted the family of the deceased to tender some form of reparation for the killing. The court is satisfied that evidence *aliunde* exists to prove the killing of the deceased.
- [19] The only question that should be considered is whether the State has proven beyond reasonable doubt that the accused had the necessary intention to kill the deceased by shooting him. In the statement of the accused, he stated that he made a mistake. In my view, and on the version of the accused as set out in his statement he wanted to shoot people who stood close to the deceased but instead he killed the deceased. Under those circumstances, the accused must have, and in fact did, foresee the possibility that he might miss these other people and kill a person standing in close proximity of them. Before the accused fired the shot he subjectively foresaw the possibility that he may shoot someone else and he must have reconciled himself with this possibility.

[20] In *State v Makgatho* 2013 (2) SACR 13 (SCA) at para 9, the court found, that before a conclusion of foreseeability of a result could be made, that the result must have been seen as a real or reasonable possibility and one must reconcile oneself to that possibility. The test for intention remains subjective whether the accused subjectively foresaw the possibility of the consequence of shooting someone else was a possibility and that he reconciled himself therewith.

[21] During cross examination, the accused admitted that he could foresee that if one fired a firearm at a group of persons you could injure and kill any person. In my view the accused when he fired the shot foresaw the possibility that another person might be killed and he reconciled himself with this eventuality.

[22] The bare denial of accused during his testimony is not reasonable possible true if considered together with the evidence, including his admitted statement, presented by the state and is rejected as false.

[23] Consequently, the State has proven beyond reasonable doubt that the accused murdered the deceased mentioned in count 1. As the accused did not have direct intent to kill the deceased, he should be convicted of murder read with the provisions of section 51(2) of the Criminal Law Amendment Act. When he fired the shot he used a firearm and he was also in possession of ammunition. It has been admitted that the accused did not have a licence for the firearm and accordingly he should also be found guilty on counts 2 and 3.

COUNTS 4 TO 13

[24] These counts relate to kidnapping, assault, possession of an unlicensed firearm and ammunition, assault, reckless endangerment of a person or property, discharging a firearm in a built-up area or any public place.

[25] The State called Ms Nompumelelo Mathebula (hereinafter referred to as "Ms Mathebula"). She testified that she was in a two week love relationship with the accused. She used to meet him near a clinic. On 16 April 2016, he met her there. She took a phone call from a male person whilst in the company of the accused. The accused got angry and slapped her. He proceeded to point a firearm to her head pulled the trigger but the shot did not go off. He then fired a shot into the air. He then led her to his house. She was not willing to go with him but he dragged her and assaulted her further. At his house he threw her on a bed and hit her with his buckled belt all over the body. She sustained injuries. She decided not to tell her mother that she was assaulted but told her friend Zanele Quanta.

[26] Later, the accused apologised to her. She continued with the relationship.

[27] On Sunday 24 April 2016 he said that she must come over to his place. When she said she was too tired to come, he got angry. He said that he should not be disrespected and that he will come to her place. She was scared and she phoned the police. He arrived at her home and phoned her and demanded her to come out. She refused. He said that he will kill her and her family. He started to fire shots at the house. Accused called her again and informed her that he was going to buy petrol to burn down

the house with the occupants inside. When the police arrived the accused was no longer there. The police collected the cartridges which were lying outside the house.

[28] During cross examination, it was put to Ms Mathebula that the accused never assaulted her nor dragged her to his room. It was put that he never came to her house, threatened her and her family nor fired shots in the direction of the house.

[29] Zanele Qunta testified that she is a friend of Ms Mathebula. She saw the injuries on her body after she was assaulted with a belt. She testified that the accused phoned her to relate his apologies to Ms Mathebula. She confirmed that she heard gunshots on 24 April 2016. On behalf of the accused, it was put that her entire version is false.

[30] The State then called Thembisile Mathebula the mother of Ms Mathebula who confirmed that she observed the injuries on the complainant. She further confirmed the shooting incident on 24 April 2016.

[31] Although Ms Mathebula was a single witness, her evidence was satisfactory in all material aspects. Her evidence as to her injuries was corroborated by the evidence of Ms Zanele Qunta. Her evidence was further corroborated by the evidence of her mother who observed the injuries on her and also as to what transpired when the shots were fired at their home on 24 April 2016.

[32] The court finds that Ms Mathebula was a credible witness and although she testified that the accused pointed a firearm at her forehead and then

pulled the trigger, but that the firearm did not go off, the court cannot accept that the accused at that stage attempted to kill her. The evidence was that the accused thereafter fired a shot into the air but in my view, if he wanted to kill her he could have done so at that stage, but did not. In my view the State did not prove beyond reasonable doubt that the firearm had a bullet in the chamber when accused pulled the trigger or that he in fact pulled the trigger and that the firearm malfunctioned. The state in my view failed to prove that the accused formed an intention to kill Ms Mathebula there close to the clinic.

[33] The court finds that despite the fact that Ms Mathebula did not see that the accused was the person who fired shots at their home during the second incident, the only reasonable inference to be drawn under the circumstances, considering the proven facts, is that it was the accused who fired the shots. Ms Mathebula testified that the accused threatened her on the phone and indicated that if she does not come out of the house he was going to kill the occupants on the property. Thereafter she heard about three gunshots directed at the house. In such circumstances in my view, the only reasonable inference which can be drawn is that it was the accused who fired the shots.

[34] Apart from this, the accused made further admissions as per exhibit N. The accused admitted that five cartridge cases were recovered from the scene at 4312 17th Street, Riet Valley, Kagiso on 24 April 2016. The five cartridge cases recovered were tested against the 9mm parabellum Norinco model 213 semi-automatic pistol recovered from the accused on

21 September 2016 and it was found that the cartridge cases were fired from the firearm recovered from the accused.

[35] Against this evidence presented by the State, is the bare denial of the accused alleging that he was not involved at all. He also denied that the firearm was found in his possession. This will be dealt with later in this judgment. The court will consider all the circumstances of the case, all the evidence together to determine whether the State has proven its case beyond reasonable doubt. His bare denial and denial that he ever went to the home of the complainant or met her at the clinic does not stand scrutiny. The denial of the accused is not reasonably possibly true and his version is rejected as false.

[36] Accordingly, the accused should be convicted of kidnapping in that he forcefully dragged Ms Mathebula to his house against her will. He deprived her of her freedom. He should be acquitted on count 5, the count of attempted murder as the state failed to prove that outside the clinic accused formed an intention to kill Ms Mathebula. He should be found guilty on the assault count in that he hit Ms Mathebula with a belt. At the clinic the accused possessed a firearm and also fired shots. Accordingly, he should be convicted on counts 7 and 8.

[37] As far as the count 9 is concerned, the second assault count, the State relied upon the threats which the accused uttered telephonically to Ms Mathebula and her family. In my view, his threat over a telephone at that stage did not amount to an imminent threat which he could carry out there and then. A threat to inflict harm at some time in future cannot amount to

assault as an apprehension of immediate personal violence is essential to establish assault. The State has failed to prove that the accused committed assault as set out in count 9.

[38] The State has proven that the accused fired shots in a manner likely to injure and endanger the safety or property of Ms Mathebula and he should be convicted on count 10.

[39] As far as count 11 is concerned the State has proven beyond reasonable doubt that the accused fired shots with his semi-automatic pistol in a built-up area or in a public place, to wit, outside the home of Ms Mathebula, without good reason to do so. He should be convicted on this count.

[40] The court already indicated that the accused should be convicted on counts 7 and 8 of being in possession of an unlicensed firearm and ammunition. That pertains to 16 April 2016. He again was in unlawful possession of a firearm and ammunition on 24 April 2016. Accordingly he should be convicted of being in such unlawful possession of a semi-automatic pistol and ammunition on this further date. The accused should be convicted on counts 12 and 13.

COUNTS 14 TO 17

[41] These counts relate to an incident that occurred at the residence of a girlfriend of the accused, Ms Cleopatra Dathandeka Sitebe (hereinafter referred to as Ms Sitebe) outside her flat at 25 St Clair Street, Belgravia, Jeppestown.

[42] It was common cause that the accused and Ms Sitebe were involved in a love relationship during this period.

[43] On 2 September 2016, the accused visited the flat of Ms Sitebe. There was an altercation between them. Mr Myeza, the security guard on the premises, testified that whilst he was in his room on the day in question he heard a commotion. He went out to investigate and Ms Sitebe ran into his flat. He knew the accused who was known to him as Mluleki. He followed Ms Sitebe into his flat. It transpired that Ms Sitebe received a call on her cellular phone and the accused demanded to see the numbers on the phone. Ms Sitebe refused to hand over her phone to him. Ms Sitebe indicated to Mr Myeza that the accused had a firearm with him. Mr Myeza then requested the accused to leave the scene and escorted him to the gate of the premises. He testified that after opening the gate for accused, the accused pulled out a firearm and fired shots in the direction of Ms Sitebe and him. The accused then left the scene. Ms Sitebe called the police to the scene. Mr Myeza testified that no-one was injured but that a bullet struck the stairs to the flat.

[44] Mr Nkululeko Maposa testified that he was known to both Ms Sitebe and the accused. Ms Sitebe was a cousin of his wife. They lived in the same complex as Ms Sitebe. He knew the accused as he came to visit Ms Sitebe twice a week and he was informed by his wife that the accused dated Ms Sitebe.

[45] Mr Maposa testified that on this day he was in his vehicle parked outside the entrance of the flat. He testified that the window was halfway open.

He heard some noise coming from the front of the flat and he observed the accused walking in front escorted by the security guard whilst Ms Sitebe was behind the security guard. He said visibility was good as there were street lights. Once the accused was outside the gate the accused reached to his waist and pulled out something. He could only see the sparks that came from the hand of the accused and he heard gunshots. He then realised that he had a firearm. He testified that the accused pointed the firearm in the direction of Ms Sitebe and the security guard. He testified that once the accused fired the shots he walked passed his vehicle and that the two victims fled into the flat.

[46] In my view there is no reason why the evidence of Mr Myeza and Mr Maposa should not be accepted in light of all the evidence. They had no reason to fabricate their versions. Apart from that the version of the one corroborates the version of the other. There was sufficient light and there cannot be any issue regarding the identification of the accused as the perpetrator.

[47] When the police came to the scene, the police recovered three empty cartridges. The accused admitted exhibit N which states that the three cartridges found on the scene were tested against a semi-automatic pistol recovered from the possession of the accused on 21 September 2016. This issue will be dealt with later in this judgment. It was found that those cartridges were fired from the firearm so recovered.

[48] Ms Madi was called as a witness. She testified that after the shooting incident she was called by Ms Sitebe who informed her that her boyfriend

shot at her. The telephone records of Ms Sitebe indicated that she made such a call to Ms Madi.

[49] Ms Madi further testified that she did not see the accused at the flat after the incident. She said that before 12 September 2016 the accused call her on her cellular phone to apologise for the incident. She questioned him as to the reason why he shot at Ms Sitebe and he informed her that he was angry and when Ms Sitebe received a phone call from someone else he was suspicious of her.

[50] The accused then admitted that his cellular phone number was 082 402 2926. This number was also identified by the previous witness Ms Matabula. From the call data records obtained in respect of the accused's cellular phone, the accused in fact called Ms Madi on her phone number 073 050 0866. The independent evidence corroborates the evidence of Ms Madi that the accused called her to apologise for the shooting. The cellular phone records of the accused also indicate that he was in the vicinity of Belgravia at the relevant period.

[51] The evidence also indicated that Ms Sitebe opened a charge against the accused at the Jeppe Police Station in the early hours of the morning of 3 September 2016 and that she made a statement to Captain Dikgale in which she mentioned the accused as the perpetrator of the offences. After an application by the State, the court found that her statement could be handed in despite the hearsay nature of the contents as Ms Sitebe subsequently died as more fully dealt with further in this judgment.

[52] Against this strong evidence implicating the accused, his version was a total denial. He denied being at the flat on the date on question or ever coming to the flat with a firearm and firing shots.

[53] I am in agreement with the submission on behalf of the State that the evidence against the accused is overwhelming. The three eye witnesses, Mr Myeza, Mr Maposa and Ms Sitebe in exhibit Y (her statement) identified the accused as being the person who fired the shots. There can be no issue regarding the identification of the accused as the witnesses knew him well.

[54] Moreover, the ballistic evidence corroborates the version of the witnesses. The three cartridge cases recovered from the scene were fired from the semi-automatic pistol recovered in the possession of the accused on 21 September 2016. This is 19 days after the incident when the accused was found in possession of the firearm that fired at the scene. Add to this the cellular phone of the accused was used in the vicinity of Belgravia, the denial of the accused can, in light of all this evidence, not be accepted. It is not reasonably possible true and should be rejected as false. The court finds that the State has proven beyond a reasonable doubt that on 2 September 2016, the accused attempted to murder Ms Sitebe and Mr Myeza by firing shots at them. He was in possession of the firearm, the accused admitted that he did not have a licence to possess a firearm and he is thus also guilty of possession of an unlicensed firearm and ammunition and should be convicted on counts 14, and 15 (attempted

murder), and count 16 (the unlawful possession of a firearm), count 17 (the unlawful possession of ammunition).

COUNTS 18 TO 20

[55] Count 18 relates to the death of Ms Sithebe, the complainant in the shooting which took place at Belgravia on 2 September 2016. Less than two weeks thereafter, the accused was charged with her murder and being in possession of an unlicensed firearm and ammunition.

[56] As indicated above, Ms Sithebe had opened a case of attempted murder against the accused on 2 September 2016. Ms Madi testified that when she visited Ms Sithebe the accused called Ms Sithebe to enquire about his belongings and the deceased informed the accused to get his belongings at the police station.

[57] On 6 September 2016, he called Ms Madi to apologise for the incident. Ms Madi testified that the deceased informed her that she was no longer in a relationship with the accused. These telephone calls were confirmed by the evidence of the records of the cellular phone service provider as contained in exhibit V.

[58] Ms Madi testified that on 12 September 2016, the deceased was at work when the police came and spoke to the deceased at the canteen and they wanted the deceased to point out the house of the accused. The deceased arranged to take and point out to the police the home of the accused on the next day. Ms Madi testified that the deceased informed her she will not be returning home to the flat that night but was going to

Emzimhlope. She testified that the deceased was wearing a navy blue dress, blue beads, a maroon scarf and a handbag. She testified that on the next day she was informed that the deceased did not come to work and a search began for her. She attempted to phone the deceased on her cellular phone but could not reach her. She testified that she even called the accused, but his phone went to voice mail. She was later informed that the deceased had died. She testified that on 13 September 2016, the accused called her and indicated that he wanted to speak to the deceased. She informed the accused to go to where he had left the deceased. His cell phone records corroborates the evidence of Ms Madi that the accused called her.

[59] Sergeant Sekome testified that he was on duty on 12 September 2016, doing crime prevention work, when he received a call to attend a crime scene. He testified that he arrived at the scene at 18h30, he found the body of the deceased lying on the ground in a passage between two houses in Rietvlei. She had sustained gunshot wounds and was dead. He recovered four empty cartridge cases from the scene and the handbag of the deceased which was lying next to her with her possessions still inside.

[60] Mr Stephen Raphule Thebyane was a member of the South African Police Services and he was the previous investigating officer. He testified that once he took over the case, he interviewed the mother of the deceased. He testified all the items belonging to the deceased were recovered and the mother of the deceased referred him to the cousin of the deceased,

Ms Madi, who would be able to assist him in his investigation. He testified that he was informed by Ms Madi of the case of attempted murder which was opened by the deceased against the accused at Jeppe Police Station.

[61] After the interview he obtained the Jeppe case docket and recovered the A1 statement made by the deceased against the accused. He began searching for the accused. He confirmed that the accused was arrested on 21 September 2016. He was not in the room where the accused was apprehended but he testified that the accused was found in possession of a firearm and ammunition. He testified that later he went into the room and recovered three cellular phones. He also found that the accused was wanted in connection with a case involving Ms Mathebula and he interviewed her. He testified that Ms Mathebula showed him the address of the accused and the accused lived at Extension 2 and 3 in the Rietvlei Kagiso. His home was six houses from where the body of the deceased was recovered.

[62] Ms Tebiane testified that the firearm that was recovered from the accused was sent to the forensic science laboratory for testing against all cartridges recovered from the address of Ms Mathabula, the shooting of Ms Sithebe at her flat and from the scene of the crime of the murder of Ms Sithebe.

[63] Ms Tebiane testified that two cellular telephones were recovered from the deceased. Her number used on the MTN network was 073 5128740 and the number used on the Vodacom network was 071 213 7858. The

accused's cellular telephone numbers were identified as 082 402 2926 and 060 937 0412. He testified that he applied in terms of section 205 of the CPA for the cellular telephone records of both the accused and the deceased. He testified that on the date of the death of Ms Sithebe she received a call on her number 071 213 7858 from the accused handset with number 082 402 2926. This was the last call received by the deceased at 17:54:40 on 12 September 2016.

[64] The accused made further additional admissions. The accused admitted that his cellular phone records on 082 402 2926 as per exhibit V.

[65] The deceased's cellular telephone records on the MTN network was 073 512 8740 was admitted as exhibit T and her cellular telephone records on the Vodacom network 071 213 7858 was admitted as exhibit U. The accused further admitted that the area when he used his cell phone was captured by the Vodacom towers on 12 September and that it was close to the area where the body of the deceased was found.

[66] From exhibit V one observes that on the date of the murder of the deceased, the accused called the deceased 16 times on her Vodacom number 071 213 7858, from 04h43 until 17:54:40. During the last call at 17:54:40, the cellular telephone of the deceased was 300 metres from the crime scene and the cellular telephone of the accused was a maximum distance of 800 metres from the crime scene.

[67] Looking at the cellular tower information, it appears that the deceased and the accused's cellular telephones were moving towards each other. This is also confirmed when looking at the call data from the deceased's

cellular telephone number on the Vodacom network, 071 213 7858 which was admitted as exhibit U. The last time the deceased's MTN number was used on 12 September 2016 was 16h44.

[68] The ballistic tests confirmed that the semi-automatic pistol which was found in the possession of the accused on 21 September 2016 was the firearm which was used to fire the four cartridge cases recovered from the scene of the murder of Ms Sithebe.

[69] Against this circumstantial evidence, the version of the accused was a bare denial. He could not explain in his evidence what he and the deceased spoke about even though he was the last person who has spoken to her. He could provide no explanation of where he was at the time of the murder but indicated that he probably was at home.

[70] The court has no hesitation to reject the version of the accused pertaining to his whereabouts and his denial of any involvement as false beyond reasonable doubt.

[71] The court must still consider whether the State has proven the guilt of the accused beyond reasonable doubt on these counts in the light of the circumstantial evidence.

[72] For that purpose the court should consider the proven facts and should then consider whether these facts warrants as the only reasonable inference to be drawn that the accused was responsible for shooting and killing the deceased.

[73] In summary, the proven facts are:

- 73.1 The deceased opened a case of attempted murder against the accused. She observed the accused when he fired shots at her. This evidence hails from exhibit Y.
- 73.2 The accused did not come to the residence of the accused since 2 September 2016.
- 73.3 The deceased was to take the police to the residence of the accused on 13 September 2016.
- 73.4 The accused called the deceased 16 times on the day of her death.
- 73.5 The accused's last call to the deceased was at 17:54:40 on 12 September 2016 and at 18h30 her body was discovered. The accused was a maximum of 800 metres from the crime scene according to the evidence captured through the network towers.
- 73.6 The deceased was not robbed of her items which were found in her handbag lying next to her.
- 73.7 The body of the deceased was found about six houses from where the accused resided.
- 73.8 The cartridge cases recovered from the scene of the murder matched the firearm recovered from the accused on 21 September 2016, which is eight days after the murder. The cartridge cases found on the scene of the attempted murder of

the deceased in Jeppe on 2 September 2016 where the accused was identified as the perpetrator was also fired from the firearm recovered from the accused on 21 September 2016.

[74] Against this strong circumstantial evidence, the accused denied all the allegations.

[75] In my view the only reasonable inference that can be drawn from the proven facts is that the accused is a person who called the deceased luring her to extension 2 and 3 in Rietvlei Kagiso, shot and killed the deceased and then fled the scene. The accused should accordingly be convicted on counts 18, 19 and 20.

COUNTS 21 AND 22

[76] Sergeant Ronnie Maleba testified that he was on duty on 21 September 2016 doing crime prevention duties in Swaneville in Kagiso. He testified that he and his crew, Sergeant Mothoung assisted in tracing a suspect involved in a murder case. The name of the suspect they had was Mdlalose.

[77] Sergeant Maleba testified that upon receiving information they proceeded to 6113 Humakwi Street, Swaneville. He testified that they were accompanied by other officers, including the investigating officer Sergeant Thebyane. He testified that only he and Mothoung accessed the property by jumping over the wall whilst the others remained outside the gate. He testified that he went to the room and knocked on the door and the

accused opened the door. The witness testified that he identified himself as a member of the South African Police and the accused identified himself as Vumani Muleleki Mdlalose. He testified that he arrested the accused for murder and informed him of his constitutional rights. He testified that he handcuffed the accused and requested his permission to search the room. The accused replied that he could proceed with the search.

[78] Sergeant Maleba testified that Sergeant Mothoung guarded the accused in the room whilst he conducted a search. He informed the court that he searched under the pillow on the bed and recovered a firearm as depicted in exhibit G photographs 4, 7 and 8. He testified that he looked under the pillow because whilst talking to the accused he observed the accused concentrated on the pillow.

[79] He testified that he requested the accused a licence for the firearm and the accused informed him that he did not possess a licence and he arrested the accused for unlicensed possession of a firearm and ammunition.

[80] The officers of the Local Criminal Records Centre were called and no-one touched the firearm until the officers concluded his investigations. He testified that once the investigations were concluded the firearm was sealed in an evidence bag in the presence of the accused. The sealed evidence bag was booked by him into the SAP13 store as per exhibit L. He testified that the firearm, magazine and nine rounds of ammunition were recovered.

[81] Sergeant Mothoung testified and confirmed the evidence of Sergeant Maleba.

[82] The accused made admissions as per exhibit N which confirms that the firearm recovered from his room, which he said was planted by the police, was a 9mm parabellum calibre Norinco model 213 semi-automatic pistol, together with a magazine and nine rounds of ammunition. This is the firearm which fired shots on 24 April 2016 at the home of Ms Mathebula. This firearm was also discharged on 2 September 2016 at the flat in Belgravia of Ms Sithebe and Mr Myeza. It was also the firearm that was discharged on 12 September 2016 in Rietvlei extension 2 in Kagiso at the scene where the body of Ms Sithebe was recovered.

[83] The accused made further admissions as per exhibit O and the DNA report, exhibit M which confirms that the DNA of the accused was recovered on the handle and magazine of the firearm.

[84] The accused denied that the firearm and ammunition was found in his room under the pillow. He testified that he was “tubed” to make admissions. He fainted and water was poured over him. When he regained consciousness he observed a firearm on his bed. He alleged the police planted the firearm in his room.

[85] I am of the view that the version of the accused is not reasonably possibly true. It is highly improbable that the police would have had a firearm ready to be planted which firearm was discharged at the various crime scenes. Moreover, the evidence of Sergeant Moleba and Sergeant Mothoung was both credible and reliable and their testimony was that the

firearm was recovered in the room of the accused. They corroborated each other on the material aspects. The last nail in the coffin of the version of the accused was the fact that his DNA was found to be present on the firearm and magazine.

[86] In my view, the State has proven beyond reasonable doubt that the semi-automatic firearm and the nine rounds of ammunition were recovered from the accused on 21 September 2016 and he should be convicted on counts 21 and 22.

COUNTS 23 TO 26

[87] These counts relate to the murder of Nondumiso Seku at 2864 Rhino Street, Block 8, Swaneville in Kagiso. The accused was also charged for being in possession of an unlicensed firearm and ammunition. Count 26 relates to the pointing of a firearm at Mr Patrick Siyabonga Mahlaba.

[88] These crimes were committed after the initial arrest of the accused when the firearm was found and when he was out released on bail.

[89] The accused had a love relationship with Ms Seku (the deceased) and they moved into the back room at 2864 Rhino Street, Block 8, Swaneville, Kagiso during October 2016. According to the evidence of the landlady, Ms Rosie Twala, she resided in the main house on the property. The deceased and the accused were given the keys to the room and keys to the main gate on the property. The room used by the deceased and the accused is depicted on exhibit I, photographs 4 to 18. This room of the

accused and the deceased is adjacent to a room rented out to Mr Patrick Siyabonga Mhlaba. These rooms shared a common wall.

[90] Mr Mhlaba testified that on 31 December 2016 he was at home, and during the course of the day he spoke to the deceased who he called sister. He said that during the course of the day he saw that the deceased was busy with laundry. He testified that the deceased informed him that her boyfriend was calling her on her cellular phone that was inside the room and if she does not answer, it would cause problems because he was an aggressive person. He testified that the telephone rang and she went to answer it. When she came back she informed him that her boyfriend was angry as she was not answering her phone and he wanted to know whom she was with.

[91] Mr Mhlaba testified that later in the evening between 7 and 8pm he heard the deceased screaming. He testified that she screamed "Sifiso you hurting me, stop stabbing me". He testified that it was quiet and then he heard approximately two gunshots. He testified he went out of his room and observed the door to the room of the deceased was slightly open. Through the opening he noticed the deceased leaning on a wall next to her bed. He saw blood on top of the bed. He testified that he was returning to his room when the accused came from the direction of the toilet and the accused had a firearm in his hands which he pointed at him. The accused then told him to go back to his room before he shoots him and he told him to lock his door. He testified that the firearm was pointed at his upper body and he thought he was going to be shot. He testified

that he complied and went into his room. He heard the accused going into the room, searching it and then leaving. The witness then called the police.

[92] Mr Mhlaba further testified that during the course of the incident when he observed the accused, he was approximately 5 metres from the accused and he could observe the accused clearly as the area was illuminated by the outside light which was depicted in exhibit I, photograph 4. He could describe the clothing of the accused and said he spoke to him. He could also describe the firearm which the accused was carrying as silver in colour with a wheel mechanism.

[93] Mr Mhlaba testified that the police then arrived and found the deceased dead in her room. There was no forced entry into the property or into the room. According to him the accused never returned to the residence thereafter.

[94] According to the evidence of Ms Rosie Twala, she saw the accused and the deceased earlier on 31 December 2016. She then left for work but was called by the police at 20h00 who informed her that the deceased was found dead in her room. She confirmed that the accused never returned to the property.

[95] Against this evidence was a bare denial of the accused who testified that he left the property on 28 December 2016 to Masinga in KwaZulu-Natal as he was ill and was on leave from his job. The accused called no witnesses to support his alibi.

[96] The evidence of Mr Patrick Mhlaba was both credible and reliable. He had sufficient opportunity to observe the accused whom he knew. His evidence is supported by Ms Rosie Twala who said she saw the accused on the morning of 31 December 2016.

[97] The State further led the evidence of Ms Tusuaeli, the investigating officer who visited the scene on the date of the incident. She confirmed that the deceased sustained both stab wounds and gunshot injuries. She testified that a knife was found at the scene but after a search no cartridge cases was recovered. She confirmed that there was no forced entry to the property or the room. She testified that later the brother of the deceased brought her the identity document of the accused. The identity document was confirmed to be that of the accused and Ms Twala informed her that she knew the boyfriend of the deceased as Mluleki. She was also informed that the accused was a queue marshal at a Krugersdorp taxi rank. Ms Tusuaeli testified that she went to the taxi rank to investigate and was informed that the accused was last seen on 31 December 2016. Ms Tusuaeli testified that once the identity document was obtained the particulars of the accused were circulated on the police networks and it was discovered that the accused was wanted in connection with cases in Jeppe and Meadowlands. Sergeant Thebyane, her colleague, also wanted the accused in connection with a docket for possession of an unlicensed firearm. She testified that the accused was to appear in court in Kagiso in February 2017 but failed to and a warrant for his arrest was obtained. He was subsequently arrested in Roodepoort in November

2017. She arrested the accused for the murder of Ms Seku whilst the accused was in the cells at Kagiso.

[98] On the strength of the evidence of Mr Mhlaba, the State has proven beyond reasonable doubt that the accused is the person who pointed the firearm at him. There is no reason to reject the evidence of Mr Mhlaba who was both a credible and reliable witness. The accused should be convicted on count 26.

[99] As far as the murder count 23 is concerned, the State relied on circumstantial evidence and argued that the only reasonable inference to be drawn from the proven facts is that the accused was responsible for killing the deceased.

[100] The proven facts are as follows:

100.1 Mr Mhlaba testified that on that night he heard the deceased scream "Sifiso you hurting me, stop stabbing me".

100.2 The accused admits that he was known by the name Sifiso. The evidence of Mr Mhlaba is corroborated by the post mortem findings. The deceased sustained both gunshot wounds and stab wounds. The police discovered a knife on the scene of the incident.

100.3 After Mr Mhlaba heard the deceased screaming, he heard about two gunshots and five minutes later he went outside, he looked at the deceased who was kneeling on the floor and he

observed the accused with a firearm coming from the direction of the toilet.

100.4 The accused was the only person in the yard with a firearm. Mr Mhlaba described the firearm as being one with a wheel mechanism. This type of revolver would not discharge cartridges. Again this evidence is corroborated by the fact that the police found no cartridges at the scene.

100.5 Further there was no forced entry into the property and the main gate to the property was open.

100.6 The accused fled the scene and never returned to the scene even though he had a court case and his identity document was left at the scene. The accused was arrested 11 months later.

100.7 The deceased had earlier that day informed Mr Mhlaba that the accused would be angry if she did not answer her phone and he was aggressive.

[101] From these proven facts, the only reasonable inference to be drawn is that the accused was the person who stabbed and shot the deceased. The version of the accused that he was in KwaZulu-Natal at the time of the incident must be rejected as false beyond reasonable doubt.

[102] There was direct evidence by Mr Mhlaba that the accused was in possession of a firearm and that shots were fired.

[103] Accordingly, the accused should be convicted on counts 23, 24 and 25.

[104] The court finds the accused guilty on the following counts:

- 104.1 Count 1, murder read with section 51(2) of the Criminal Law Amendment Act 105 of 1997.
- 104.2 Counts 2, 7, 12, 16, 19 and 21 being in the unlawful possession of a firearm as charged.
- 104.3 Count 24, being in the unlawful possession of a firearm.
- 104.4 Counts 3, 8, 13, 17, 20, 22 and 25, being in the unlawful possession of ammunition as charged.
- 104.5 Count 4, kidnapping, as charged.
- 104.6 Count 6, assault, as charged.
- 104.7 Count 10, reckless endangerment to person or property, as charged.
- 104.8 Count 11, discharge of a firearm in a built-up area or any public place, as charged.
- 104.9 Counts 14 and 15, attempted murder, as charged.
- 104.10 Count 18, murder, as charged.
- 104.11 Count 23, murder, as charged.
- 104.12 Count 26, pointing of a firearm, as charged.

[105] The accused is acquitted on count 5, attempted murder, and on count 9, assault.

**RÉAN STRYDOM
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG HIGH COURT**

Date of Hearing: 22 February 2021
Date of Judgment on conviction: 02 December 2021 and 06 December 2021

For the State: Adv. N. Kowlas
For the accused: Adv. L. Mosoang