



IN THE HIGH

COURT OF ESWATINI

JUDGMENT

Case No. 401/2016

In the matter between:

REX

And

SIFISO PHEFENI VILAKATI

Neutral citation: *Rex v Sifiso Phefeni Vilakati (401/2016) [2021] SZHC 177 (10 August 2022)*

Coram : **T. Dlamini J**

Heard : 16,17Mar 2020 3,4 Jun 2020 10,19 Nov 2020
10,15 Mar 2021 15 Apr 2021

Delivered : 10 August 2022

[1] Criminal law – Murder – Elements thereof considered

Summary: *The accused is charged with the murder of Lindokuhle Prisca Mdluli – The deceased Lindokuhle was a girlfriend of the accused and mother of his four years old baby – Eleven witnesses gave evidence to prove the crown’s case whilst the accused was the only witness who testified for the defence – The crown’s case is that the accused and the deceased had a child together – For reasons only known to the accused, he visited her, and during that visit he stabbed her several times and she died of those stab wounds – According to evidence given by the pathologist, the deceased had forty-one stab wounds, and that twenty-six of those stab wounds were fatal – The case for the defence is that the deceased was*

stabbed whilst the two were engaged in a fight and wrestling over the knife that was eventually used to stab her, and this happened whilst the deceased had her teeth panged onto the fingers of the accused

Held: *That the circumstances under which the deceased was stabbed and killed, the manner that the stab wounds were inflicted, and the multiple times that they were inflicted, the killing was brutal and inhuman – The accused is found guilty of murder.*

JUDGMENT

- [1] Sifiso Phefeni Vilakati, hereinafter referred to as “the accused”, is charged with the offence of murder. The indictment states that on or about 06 March 2016 and at or near Mashobeni area in the Shiselweni region, the accused unlawfully and intentionally killed Lindokuhle Prisca Mdluli.
- [2] The crown paraded eleven witness to prove commission of the offence whilst the defence paraded only the accused.
- [3] The evidence of the crown’s witnesses is set out below. PW1 is Dr. Komma Reddy, a pathologist working for the Royal Eswatini Police Service. According to his evidence, he conducted a post-mortem examination of the body of Lindokuhle Prisca Mdluli on 09 March 2016 at the Mbabane government hospital. The body had the following listed stab wounds, viz., a 3x1 cm stab wound on the medial side of the left eye; a 4x3 cm stab wound on the left side of the chin and a fractured lower jaw bone; four stab wounds measuring 4x1 cm, two measuring 2x1 cm and 1x1 cm on the front and middle portion of the neck; three stab wounds of 2x1 cm, 4x2 cm, 4x1 cm and two 3x1 cm on the front portion of the chest; four stab wounds measuring 6x2 cm, 4x2 cm, 3x2 cm and 2x1 cm on the abdomen; a 2x1 cm stab wound on

the front and medial side of the right forearm in the upper portion; two stab wounds of 3x1 cm and 2x1 in the left palm; eleven stab wounds measuring 4x1 cm, two 3x2 cm, two 3x1 cm, three 1x1 cm and three 2x1 cm on the back; three stab wounds measuring 2x1 cm and one 3x1 cm on the left upper arm; a 3x1 cm stab wound and two 2x1 cm stab wounds on the left forearm; 9x1 cm stab wound on the middle portion of the back side of the left thigh; a 2x1 cm stab wound on the middle portion of the back side of the right thigh in the upper portion; and a 4x2 cm stab wound on the medial and back side of the right leg in the upper portion.

[4] PW1 testified that the muscles and blood vessels in the neck were severed; the mediastinum and thymus were ruptured; the right lung had two stab wounds of 2 cm and 1 cm length in the middle lobe while the left lung had a 2 cm stab wound on the lower lobe; the heart had a 2 cm length stab wound in the left ventricle; a 2 cm length stab wound in the stomach; and a 4 cm length stab wound in one of the loops of the small intestine, and ruptured mesenteric blood vessels. The doctor's finding and conclusion was that Lindokuhle Prisca Mdluli died of multiple stab wounds. She had forty-one stab wounds, and twenty-six were fatal.

[5] PW2 is Nomvuyo Nokulunga Thwala. She testified that the deceased was a daughter of her aunt. The accused and the deceased were in a boyfriend/girlfriend relationship. The deceased resided at her grandmother's place at Mashobeni, a community where the accused also resided. She testified that while she was coming back from the river, she heard a person screaming and shouting for help. The screaming and shouting voice came from the homestead where the deceased resided. She ran to that homestead

but just before reaching it, she saw the accused coming out from the homestead.

[6] On arrival she found the deceased lying down and still shouting for help. She had stab wounds and was bleeding. PW2 also shouted for help and called Precious Thwala who came and was followed by her mother. Both Precious and her mother shook the deceased but she ended up becoming silent. Police were then called and they arrived.

[7] During cross-examination, PW2 was asked if she saw the deceased being stabbed by the accused. Her response was that she did not see him stabbing her but maintained that she was stabbed by him. She reiterated that she heard the deceased cry for help and she went there. On arrival she found that the deceased had just been stabbed and the accused is the person who was there.

[8] PW3 is Precious Nokwanda Thwala. She testified that she knows the accused as he had a child with the deceased who was a cousin to her and they were residing at the same homestead. On the year that her cousin died, she had known the accused for three years.

[9] She testified that on 06 March 2016 at around 17:00 hours while she was at the river with her mother Zanele Tanele Thwala and her father Gideon Thokozane Thwala they heard the voice of Lindokuhle screaming. Her father instructed her to rush and see what was happening. She proceeded to where the voice came from and just before she reached the homestead which she called her grandmother's, she saw the accused coming out of the homestead. PW3 was being followed by her mother, according to her testimony.

[10] She also testified that they were to meet on that pathway with the accused but she then walked backwards as the accused walked towards her. The accused

then pointed a knife at her but then took another pathway. When she entered into her grandmother's homestead, she found the deceased lying down. She held her by her hand and the deceased said to her "*cousin, I am dying*". She then became silent. PW3's mother also touched her around her neck and she was silent then. She testified that her cousin had many stab wound injuries and blood all over. PW3's father, Gideon, also arrived and told them to get blankets and cover her. The grandmother of PW3 was called by Gideon as she was at her parental homestead in Mbangweni and he told her about what had happened. They stayed there for a while and the police then came.

[11] This witness was asked by counsel for the crown about the type of knife that the accused was carrying and she said she did not see what type it was but had a lot of blood on it. She also testified about, and identified, the clothes that the accused was wearing.

[12] During cross-examination, PW3 was asked if she knows the cause of the stab wounds on the body of the deceased. She stated that they were caused by the pick and knife that the accused used on her. She however conceded that she did not see the accused inflicting the wounds but emphasized on having seen the pick, knife and the injuries on the body of the deceased. The defence attorney put it to PW3 that the accused never used a pick or knife on the deceased but it was the deceased who tried to stab the accused using the pick. This was denied by PW3 who stated that the pick was taken by the accused from where it was.

[13] PW4 is Sakhokuhle Seluleko Mavuso. She is a minor aged 12 years but answered to the court's satisfaction all questions that were meant to determine if she appreciated and understood the difference between telling the truth and

the consequences for not telling to the court the truth. She undertook to tell only the truth, and expressed her knowledge and appreciation about telling a lie. She stated that telling what is untruthful is an offence for which she would be punished.

[14] She testified that in 2016 she resided at Mashobeni with her grandmother Alvina Thwala, grandfather Simon Thwala, and the deceased who was her mother's younger sister. She informed the court that she knows the accused person as he would come near the homestead they lived in to see the deceased, and that they have a child together. She testified that on 06 March 2016 while coming from fetching a phone, she saw the accused coming from his homestead and proceeded to the homestead they lived in. It was around 17:00 hours. She proceeded and entered into their house and the deceased then closed the door. She however informed her that "*Khetho's father was coming*". Khetho is the child whose parents are the accused and the deceased.

[15] Upon arrival, the accused knocked on the window of the house and asked the deceased to come outside. The deceased told him that she was writing. The accused then went to get a pick which he used to break open the door of the house. He came inside and pulled the deceased. He dragged her out of the house and took out a knife and stabbed her whilst outside. PW4 testified that she then came out of the house but the accused pointed at her with the knife and told her to go back into the house and close the door. She duly complied.

[16] When asked in-chief if she noticed the part of the body where the deceased was stabbed, she stated that he stabbed her all over the body. She testified that when she was back inside the house as instructed by the accused, she then peeped through the window. After having finished stabbing her, he then took

a pick and used it to stab her near the eye. The accused then went away and Precious Thwala arrived, and that is when this witness came out of the house again.

[17] When asked in -chief, PW4 testified that the knife which the accused used is three stars knife and had a brown colour. Inside court she identified both the knife and the pick.

[18] The defence put it to this witness that when she saw the accused coming, he was coming from a Sangweni family homestead where there was *emalobolo* ceremony and not coming from his homestead. The witness denied and re-affirmed that the accused was coming from his homestead. She was asked in cross-examination if she confirms that the accused took a pick and used it to break open the door. She answered to the affirmative. It was however put to her that after having entered the house the accused did not drag the deceased but a scuffle ensued between them. The witness insisted that he dragged her.

[19] It was also put to this witness that during the scuffle the accused was thrown down and the deceased used that moment to take the pick and drew closer to the accused. This was denied by PW4 who stated that the deceased never at any moment took the pick but it was the accused who took it and used it to injure her.

[20] It was further put to this witness that while the accused tried to dispossess the deceased of the pick, the deceased bit her on the hand and that it was then that the accused took out the knife. This was also denied by the witness. It further was put to her that the deceased was able to get hold of the knife and that another scuffle ensued for its possession and the deceased was accidentally stabbed on the forehead. This was also denied by PW4.

[21] PW5 is Zanele Tenele Thwala. She testified that the deceased is her niece. She only identified the body of the deceased for post-mortem examination purposes.

[22] PW6 is Colani Mbuli. He testified that he resided next to the parental homestead of the accused. He also testified that on the 07 March 2016 police arrived and asked him to accompany them and be present during a pointing out by the accused. They went to a place just above the homestead of the accused where there was grown vegetation and the accused pointed out a three stars okapi knife. The witness also identified the knife inside court.

[23] PW7 is officer 4961, D/Const. Anthony Mbazo Mamba. He is a photographer and scenes of crime officer with 16 years' experience in the police service, and eleven years as a scenes of crime officer. He testified that on 06 March 2016 he received a report from D/Insp. Nkwanyana who instructed him to attend a case of a person who had been killed at Mashobeni. He proceeded to Mashobeni and the time was around 18:00 hours. Upon arrival he found community members gathered at the scene of crime. It was after sunset at that time. He introduced himself as a scenes of crime police officer and cordoned off the crime scene and assessed the condition of the victim.

[24] He then took photographs of the scene of crime, the victim and the clothing she was wearing. Then he inspected her body which had multiple stab wounds. He testified that he observed about 28 stab wounds. The victim was identified as Lindokuhle Mdluli and he found her lying dead at the scene.

[25] He also testified that on the 07 March 2016 he was informed by 6794 D/Const. Ngwenya that he has arrested the suspect. He then asked him to be part of a pointing out of exhibits that the accused wanted to make. He duly

attended and took photos of the pointing out exercise. He then advised the investigating officer to obtain the outer clothing of the suspect (accused) for DNA analysis and he did that.

[26] On the 09 March 2016 a post-mortem was conducted and blood samples were extracted from the deceased and were sent to the forensic laboratory for analysis. The witness then handed-in two (2) photo albums, one with pictures of the crime scene and the other with those of the pointing out. These were respectively marked as EXHIBITS “B” and “C”.

[27] In cross-examination, he was only asked if he confirms that when he took pictures of the deceased he only identified 28 stab wounds. He answered in the affirmative.

[28] PW8 is officer 6794 D/Const. Patrick M. Ngwenya. He was stationed at Gege police station in 2016 under the criminal investigation department (CID). He testified that on 06 March 2016 he received a 999 emergency call reporting a murder that had taken place at Mashobeni, Mhlongwane area. With 3989 Sgt. Nkwanyana, 4081 Const. Dlamini and 5982 D/Const. Dlamini, they proceeded to Mashobeni using motor vehicle registered GSD199PO. They located the Mdluli homestead where the report came from. They found people gathered there and were welcome by one Gideon Thwala. They introduced themselves as police officers from Gege police station.

[29] Mr Thwala led them to where the body of the deceased was. It was lying down and covered with a blanket. They opened the blanket and discovered that it was the body of a young lady who was wearing her underwear only and had multiple stab wounds all over her body. She was already dead and there was a pool of blood next to her. They interviewed Gideon Thwala about what

happened, and recorded statements from other witnesses. They then called the scenes of crime personnel. Officer 4961 D/Const. Mamba and 5380 D/Const. Gama came and attended to the crime scene.

[30] Having interviewed the witnesses, PW8 came to the conclusion that the suspect is one Sifiso Phefeni Vilakati of the same area. He also testified that they found a pick at the crime scene and it was alleged that the suspect used it to break open the door of the house where the deceased was in. He took the pick as an exhibit and conveyed the dead body to Nhlangano Health Centre where it was certified dead by Dr. Sarafina Mthambo.

[31] On their way back to the police station, they received a telephone call informing them that the suspect was seen at his parental homestead. They promptly rushed there with 3989 Sgt Nkwanyana and 5892 D/Const. Dlamini. They found the suspect at the homestead and was with his aunt and other relatives. They arrested the suspect after having introduced themselves and cautioned him according to the Judges' rules. The suspect was still wearing the same clothing that the witnesses described, and had blood stains on them.

[32] The suspect led the police to a pointing out at his parental homestead in the morning of 07 March 2016 where he retrieved a three stars okapi knife. This was in the presence of Colani Mbuli who was a neighbour. He also made a confession on the 08 March 2016 before Magistrate Philisiwe Dlamini.

[33] The witness then identified the exhibits that were collected, viz., pick, three stars okapi knife, camouflage shorts, red t-shirt and brown shoes. These exhibits and confession were handed in by PW8 as part of his evidence. The defence objected, however, to the confession and stated that it was not freely

and voluntarily made. The court therefore was compelled to conduct a trial within a trial in order to determine the admissibility of the confession.

[34] I now turn to consider the evidence tendered to show how the confession was made. PW8 is the first witness who gave evidence. He testified that after the accused had been cautioned according to the Judges' Rules, he elected to say something which was recorded as a statement. He then asked the accused if he was prepared to share what he recorded with another person such as a magistrate. The accused agreed and stated that he was willing to do so. Arrangements were then made for the accused to see a magistrate on the following day. PW8 and 5892 D/Const. Dlamini took the accused to the magistrate's court on the following day (08 March 2016). They handed him over to officer 7045 D/Const. Hlatshwako whose work deployment was that of court orderly at the Magistrates court. He is the one who escorted the accused to the Magistrate's Chambers.

[35] During cross-examination, it was put to PW8 that the accused was told during interrogation to make a confession but he refused. This was denied by this witness. It was further put to him that during the interrogation the accused was assaulted with fists and open hands, and was forced to make the statement. This was also denied. The witness stated that the accused was cooperative such that there was no need to force him to do anything as he even surrendered himself to his relatives in order for them to surrender him to the police.

[36] PW9 was next to give evidence. His name is 7045 Const. Thulani Hlatshwako. He testified that in 2016 he was stationed at the Nhlanguano police station under the General Duty department. On 08 March 2016 while

on duty at the Nhlanguano magistrates' court where he worked as a court orderly, officer 6894 Const. Patrick Ngwenya arrived at around 11:00 hours. He asked him to assist and escort one Sifiso Phefeni Vilakati (the accused) to magistrate Dlamini for a confession. He proceeded with the accused to the Magistrate's chambers. At the reception they were joined by the court interpreter Pholile Dlamini who led them into the chambers of the Magistrate. When inside he introduced himself to the Magistrate and then informed her that he has brought Sifiso Phefeni Vilakati for a confession. The magistrate welcomed him and he then walked out of the chambers and closed the door. Inside the chambers was the Magistrate, the court interpreter and the accused. He stood at a distance from the door of the chambers such that he could not hear what they talked about but could hear when noise of a fight ensued.

[37] PW9 testified that he waited outside for a period of about one and half hours and was then called by the court interpreter. The court interpreter told her to escort the accused back to Const. Ngwenya. He did so and handed him back to Ngwenya. He was asked about the demeanor of the accused when receiving him after coming out of the Magistrate's chambers. His answer was that he looked calm and did not show any sign of being bothered by anything.

[38] PW10 is Pholile Millicent Dlamini. She testified that she works at the Nhlanguano magistrates' court as a court clerk and interprets during court proceedings. In the morning of 08 March 2016, she received a telephone call from a Ngwenya police officer from the Gege police station. Officer Ngwenya informed her that there is a suspect who wished to record a confession before a Magistrate. She then reported this to the late Magistrate Philisiwe Dlamini.

[39] After some time, officers from Gege police station came into her office and reported that they have arrived with the suspect but left him at the reception with a court orderly police officer. She then took the *pro forma* for statements made to judicial officers and proceeded to the reception where she found officer Hlatshwako seated with the suspect. She greeted the suspect after he was shown to her by officer Hlatshwako and then led them to Magistrate Dlamini's chambers. On arrival officer Hlatshwako introduced himself to the Magistrate for record purposes and thereafter left them inside the chambers and sat at a distance outside.

[40] She also testified that Magistrate Dlamini then rose from her seat to check if no one was close to see or to hear. She then locked the door and returned to her seat. Inside it was herself, Magistrate Dlamini, and the suspect. The Magistrate then introduced herself to the suspect, and the suspect also introduced himself as Sifiso Phefeni Vilakati. The Magistrate then informed the suspect that he is not obliged to tell them anything and that if he chooses to, whatever he says will be written down and might be used in court. She further testified that the Magistrate told the suspect that there is nothing to fear and that he should be frank in what he wished to say. He was asked questions that are in the *pro forma* and she interpreted. She informed the court that when asked by the Magistrate, the suspect denied that he was assaulted.

[41] PW10 was then asked by counsel for the crown to tell the court about what happened after she had interpreted to the suspect what is written in the *pro forma*. She testified that the suspect freely and voluntarily proceeded to record a statement which was read to him afterwards by the Magistrate in English and she interpreted it in Siswati. After the suspect confirmed that it was correctly recorded, herself and the Magistrate signed it while the suspect

appended his thumbprint. Thereafter she went out to call officer Hlatshwako to come and escort the suspect as they had finished what he came to do.

[42] This witness was asked by counsel for the crown if she noticed the demeanour of the suspect from the time that she received him from officer Hlatshwako up to the time that they had finished recording the confession. His response was that the suspect was free and spoke openly during the recording of the confession.

[43] During cross-examination, PW10 was informed that the accused instructed his attorney that prior to recording the statement he was assaulted by the police. He was also advised by the police that if he refuses to make a confession he won't be admitted to bail, and that he won't be taken to hospital for treatment of the injuries he sustained. She answered by stating that if that was the case, the suspect would have reported all those things to the Magistrate when being asked the questions stipulated in the *pro forma*.

[44] The witness was advised that on the day of recording the confession the accused had visible injuries, and was asked if she noticed them. Her response was that the accused showed them a wound on his index finger and he was asked about what caused it and he said he was bitten by the deceased, Lindokuhle Mdluli.

[45] The accused then took the witness stand and gave evidence concerning the confession. He testified that he was arrested on Sunday 06 March 2016 for murder. On Monday morning at around 0800 hours officer Ngwenya arrived where he was locked in and took him out. He told him that he will have to go to record a statement. They went to his office. Upon arrival at the office, officer Ngwenya asked him why he killed Lindokuhle Mdluli and he did not

respond. Officer Ngwenya then slapped him with open hands and told him that if he fails to answer his questions a double murder would occur. When asked about what he understood by 'double murder', he stated that he understood it to mean that he would also be killed. It was then that he told officer Ngwenya that the person was killed by accident. Officer Ngwenya then said since the accused said he killed the person accidentally, he should then go and tell a magistrate the same thing that he told him. If he refuses, he will not be taken to hospital and that he won't be granted bail.

[46] Given that a threat of not being taken to hospital was made, the accused was asked about how he was injured. He stated that he was bitten on his finger by Lindokuhle. When asked who is this Lindokuhle, he testified that she is the person he accidentally killed. He testified further, that officer Ngwenya then took her back to the detention cell and told him that on the following day they will go to court and that he should not make fun of him. If he does, he should know what will follow. He then recalled that officer Ngwenya had assaulted him and understood this to mean that he will assault him again. Indeed, on the 08 March 2016 they proceeded to the Magistrates' court where he made the confession.

[47] The accused further testified that when he entered the Magistrate's chambers, the court interpreter was not there. He introduced himself to the Magistrate who then informed officer Hlatshwako, who was standing by the door, to call Pholile. He then informed the Magistrate that he came to make a confession because the police advised him to do so, and that if he did not, he will not be granted bail. He also told the Magistrate that he was assaulted by the police as well. It was after this conversation with the Magistrate that Pholile joined them. The Magistrate then told him to relate about what happened, and also

told him not to be afraid of anything and that Pholile will interpret because she recorded what was being said in English.

[48] The accused, according to his testimony, then told them that he killed the mother of his child accidentally after he became suspicious following her refusal to open the door for him, and this resulted in a fight between them.

[49] The accused was then shown a document (EXHIBIT "E1"), viz., the *pro forma* for statements made to judicial officers, and was asked if he is aware of it. He denied knowledge of it and testified that he sees it for the first time. The document contains questions asked from a suspect before recording a confession. It also bear signatures for Magistrate Dlamini and Pholile, and thumbprints of the accused. The accused denied knowledge of the thumbprints and testified that he only affixed his thumbprint on a hand written one page document and not this one. This was despite being made aware that Pholile's evidence was that the thumbprints were affixed by him.

[50] He was then asked by the defence attorney if the document he acknowledges was entirely hand written or some portions were typed. His answer was that it was entirely hand written. He was also asked if the thumbprint at the bottom of the first page is his and he stated that it is not. He was further asked about the thumbprints on the second and third pages of the document and again he denied knowledge of them.

[51] The document include seven (7) hand written pages. Each page bears the signature of the Magistrate and the court interpreter, and also a thumbprint which was said to be for the accused. When asked about these thumbprints, the accused denied that they are his. He maintained that he only affixed his thumbprint on a one page hand written document.

[52] It was put to him that his denial of the thumbprints is an afterthought because that was not put to Pholile when she testified. The accused responded by stating that he did not know that reference was being made to this document.

[53] The court referred the accused to questions 12 and 13 of the *pro forma*, and *mero motu* asked him if he realizes that the answers to these questions are consistent with the evidence he gave before court today, *viz.*, that when he recorded the confession he had an injury on his index finger, and that the injury was inflicted upon him by the deceased Lindokuhle Mdluli. In response, he agreed. He was then asked if he insisted that the thumbprints are not his. He maintained that they are not his.

[54] Having considered the contradictory evidence about the thumbprints, I ordered expert evidence on finger prints to be led. I also ordered that the fingerprints of the accused be taken for purposes of comparison with the thumbprints on the confession.

[55] Fingerprints expert evidence was led and it confirmed that all the thumbprints affixed on the confession are for the accused. This evidence was not challenged, nor controverted, by the defence. My conclusion is that it was accepted as the defence attorney's comment was that the horse has already bolted. The conclusive confirmation by the fingerprint's expert evidence removed any doubt that the accused lied before this court concerning the confession.

[56] When officer Ngwenya was cross-examined, the version (of the accused) that was put to him is that he assaulted the accused using kicks and fists and then coerced him by making threats and told him to go and make a confession. The accused testified however, that he was assaulted by officer Ngwenya with

open hands. He did not mention any use of kicks and fists. There is therefore conflicting evidence on this aspect, and obviously there is a lie being told to this court.

[57] The testimony of PW8, PW9 and PW10 corroborated each other concerning how the accused was brought to the magistrates' court, how he got to be with PW9 (court orderly officer Hlatshwako), and how he got to be before Magistrate Dlamini. Despite his denial of the confession, and despite his denial of the thumbprints that were said to be his, independent evidence of a finger prints expert confirmed those thumbprints to be his.

[58] For the reasons stated in the paragraphs above, I found and ruled that the confession was made by the accused freely and voluntarily. He made it in his sound senses, and there is no evidence that he was unduly influenced to make it, and is therefore admissible in terms of **s.226 of the Criminal Procedure and Evidence Act, 67/1938** (as amended).

[59] The confession was admitted as part of the crown's evidence and was marked as EXHIBIT "E1". Below are extracts of the confession:

2. I had last seen Lindokuhle Mdluli (the deceased) with whom I have a minor child aged four (4) years, a boy, on Friday 4th march 2016 at around 1900 hours at her parental homestead at Mashobeni, Nhlongwane area.

3. When we went separate ways we agreed to meet again the next day on Saturday 5th March 2016.

4. ...

5. The next day on Saturday 5th March 2016 I tried to call my girlfriend Lindokuhle Mdluli around 1100 hours through her cellphone.

6. She did receive the call I had made to her but did not say anything and simply placed the phone next to a radio which was playing loud music and I cut off the phone call.

7. I remained at my parental homestead the whole day on Saturday 5th March 2016 and spent the night there until the next day Sunday 6th March 2016.
8. Then around 1720 hours on Sunday 6th March 2016 I left my parental homestead to her parental homestead whereupon arrival I knocked at the door.
9. Then a child answered from inside the house and told me that Lindokuhle Mdluli (the deceased) was not present.
10. I proceeded to peep through the window of the house and I saw the said Lindokuhle Mdluli (deceased) who I saw inside the same house I had knocked at.
11. I then requested Lindokuhle Mdluli (deceased) to open the door for me but she did not respond to my request and I asked if she did not want to open the door for me and she still kept quiet and never responded.
12. I then left her parental homestead with an intention to go back home, just when I passed the chicken shed I saw a pick-axe (*lipiki*) which I then picked up and went back straight to the house where I had knocked earlier at her (deceased's) parental homestead.
13. Again upon reaching the house I proceeded to peep through the window and I asked her why she was refusing to open the door for me and she still kept quiet.
14. Upon realizing that she was not talking to me I walked straight to the door and I damaged the door with the pick-axe (*lipiki*) and forcefully opened the door myself.
15. Once inside the house I found Lindokuhle Mdluli (the deceased) seated inside the house reading some books as she sat on the floor on top of a grass mat (*licansi*).
16. She immediately stood up and attempted to grab me and push me forcefully out of the house and I held her tight as she pushed me outside until we left the house together.
17. Once outside I then proceeded to draw a knife from the pocket of my trouser and there was a struggle as she proceeded to attempt to disarm me of the knife in the process she was stabbed on her left eye.
18. I then attempted to push her away from me and my left hand got into her mouth and that is when she proceeded to bite my left index finger and I got injured.

19. I tried to pull my finger out of her mouth but I failed to do so, I then proceeded to stab her with the knife all over the body especially the upper torso.
20. She then fell down to the ground after I had stabbed her and that is when I was able to free my hand from her mouth.
21. When she was on the ground she then started to shout at me to stop stabbing her or assaulting her – she said “*babe waKhetho ngiyekele*”
22. That is when I got frightened and fled from the scene as I noticed that she was already bleeding from the stab wounds.
23. As I ran away I came across her female cousin (name forgotten) along the way who was running towards the opposite direction to Lindokuhle’s parental homestead as I also ran away towards my parental homestead with the blood stained clothes.
24. I ran towards my uncle Sibusiso Mdluli’s homestead to whom I narrated what had already happened and I requested my uncle to accompany/take me to my parental homestead.
25. Mt uncle Sibusiso Mdluli then accompanied me to my parental homestead whereupon he narrated to my aunt Lungile Vilakati what I had already told him and I also explained in details to both of them what had exactly taken place.
26. My aunt Lungile Vilakati then informed me that the Royal Swaziland Police from Gege police station had called her through her cellphone.
27. We then waited at the Vilakati homestead whereupon I requested both my uncle Sibusiso Mdluli and my aunt Lungile Vilakati to call the Royal Swaziland Police and inform them of my presence there.
28. The Royal Swaziland police from Gege arrived promptly and found us waiting for them with my aunt and uncle at the Vilakati homestead outside.
29. My aunt Lungile Vilakati then pointed at me to the police when they arrived.
30. That is when the Royal Swaziland police then informed me that I was under arrest.
31. ...
32. ...
33. ...

34. That is all I can say in connection with this matter. I now regret having committed this offence and I apologize to both families for what I did, to my parental homestead and the Mdluli homestead.

35. That is all I can say today in connection with the Murder case.

Signature of Magistrate

Signature of Interpreter

Thumbprint of Suspect

[60] The above confession is the one contained in the hand-written document. It comprises seven (7) pages and each page bears the signature of the Magistrate, Interpreter, and the thumbprint of the accused. The *pro forma* is a three pages typed document. Each of the three pages also bears the signature of the Magistrate, Interpreter and the accused.

[61] The accused is the only witness who testified for the defence. He testified that on 06 March 2016 he was at another homestead where there was a ceremony for *emalobolo*. At around 1600 hours he received a 'please call me' message from the deceased who was his girlfriend and a mother of his child. He then called her and they agreed that he should visit her where she resided. Upon arrival at the homestead, she however did not open the door for him when he knocked. He then returned to his homestead but while walking away he saw a pick which he took and returned back to the house. He broke the door of the room where the deceased was and forcefully entered. As he entered, the deceased was at him and pushed him out of the door.

[62] The deceased then took the pick as he had put it down and tried to hit him. He testified that he had a knife in his pocket which he took out but they wrestled for it as the deceased tried to dispossess him. As they wrestled over the knife, he let it go and the deceased got injured just above the eye. The

deceased then inflicted a bite on his right hand and it got stuck in her mouth. It is the accused's testimony that it was at this stage that the deceased got stabbed as he tried to save himself from the bite.

[63] The accused testified that he then saw the deceased taking some steps backward but then fell down. He saw her bleeding and became scared, hence he then ran away from the scene. As he ran away, he saw a cousin of the deceased coming and was running to the scene. He then went to report the incident to his uncle who, in the company of his wife, accompanied the accused to his parental homestead. He denied that he ever used the pick on the deceased. At home they found the accused's aunts Lungile and Zodwa, and cousin Nelly. These relatives already knew about the incident. The police had already come but thereafter left. They were however called and they came back and arrested him. This is the version of the accused.

[64] I now turn to consider the law applicable. In the case of *The King vs Siboniso Simelane (187/2012) [2019] SZHC 68 (29 November 2019)*, I cite His Lordship **Leach JA** of the South African Supreme Court of Appeal in the case of *Director of Public Prosecutions, Gauteng vs Pistorius (96/2015) [2015] ZASCA 204 (3 December 2015)* who described murder in the following terms:

[25] "... murder is the unlawful and intentional killing of another person. In order to prove the guilt of an accused person on a charge of murder, the state must therefore establish that the perpetrator committed the act that led to the death of the deceased with the necessary intention to kill, known as *dolus*.

[65] He went on to state what I quote below:

[26] In cases of murder there are principally two forms of *dolus* which arise: *dolus directus* and *dolus eventualis*... a person acts with *dolus directus* if he or she committed the offence with the object

and purpose of killing the deceased. *Dolus eventualis* on the other hand, although a relatively straight forward concept, ... arises if the perpetrator foresees the risk of death occurring, but nevertheless continues to act appreciating that death might well occur, therefore ‘gambling’ as it were with the life of the person against whom the act is directed... it is necessary to stress that the wrongdoer does not have to foresee death as a probable consequence of his or her actions. It is sufficient that the possibility of death is foreseen which, coupled with a disregard of that consequence, is sufficient to constitute the necessary criminal intent.

[66] In the case of *Rex v Jollyand 1923 AD 176 at 187*, *Kotze JA* stated what I quote below:

“The intention of an accused person is to be ascertained from his acts and his conduct. If a man without legal excuse uses a deadly weapon on another resulting in his death, the inference is that he intended to kill the deceased.”

[67] In determining intention to kill, His Lordship **M.C.B. Maphalala JA**, as he then was, stated in the case of *Shongwe v Rex (24/2011) [2012] SZSC 43 (30 November 2012)* what is quoted below:

“... the court should have regard to the lethal weapon used, the extent of the injuries sustained as well as the part of the body where the injuries were inflicted. If the injuries are severe such that the deceased could not have been expected to survive the attack, and the injuries were inflicted on a delicate part of the body using a dangerous weapon, the only reasonable inference to be drawn is that he intended to kill the deceased. (paragraph 46)

[68] PW4 testified that she saw when the accused stabbed the deceased. When asked about the part of the body where the deceased was stabbed by the accused, she testified that it was all over the body. She further testified that the accused also assaulted her using the pick, and thereafter ran away from the scene of the crime. It was then that Precious Thwala (PW3) arrived.

[69] PW3 testified that after hearing the voice of the deceased screaming and crying for help, her father instructed her to run to where the voice came from

and see what was happening. Just before entering the homestead where the deceased was, she saw the accused coming out of the homestead carrying a log. He also carried a knife that he pointed at her but took another pathway. Upon entering the homestead, she found the deceased lying down and she cried to her and said she is dying. She then became silent. She had many stab wounds. Her evidence therefore corroborated the testimony of PW4. It also placed no one else but the accused at the scene of the crime at the time that the deceased was stabbed.

[70] The evidence of PW2 also places the accused at the scene of the crime at the time that the deceased was stabbed to death. She heard the deceased screaming and shouting for help. The screaming voice came from the homestead where the deceased resided. She ran to that homestead but just before reaching it she saw the accused coming out of the homestead. She found the deceased at the homestead lying down with stab wounds, bleeding and still shouting for help.

[71] The testimony of the accused also confirms that he is the one who stabbed the deceased and she died from those stab wounds. His evidence is that the deceased sent him a “please call me message” and he called her back. They agreed that he should visit her where she resided. Having arrived at the homestead she however did not open the door for him. He ended up breaking the door open using a pick and forced his way inside. They fought as the deceased was pushing him out of the door and he ended up taking out of his pocket an okapi knife after the deceased stuck her teeth onto his fingers. He stabbed her using the knife as he was fighting to free his hand from her mouth. The deceased then took some steps backward but then fell

down and was bleeding. It was the accused's evidence that he became afraid and ran away from the scene.

[72] The testimony of the accused is consistent with the confession he made before the Nhlngano Magistrate where he stated that he tried to pull his fingers out of her mouth but failed, and it was then that he stabbed her with the knife all over the body especially the upper torso. The confession also states that the deceased then fell down to the ground and that is when the accused was able to free his hand from her mouth. It was the accused's evidence that while on the ground the deceased shouted at him and asked that he stop stabbing her.

[73] The pathologist testified that the deceased died of multiple stab wounds. Forty-one stab wounds were inflicted and twenty-six were fatal.

[74] There is therefore no doubt that the deceased died from stab wounds that were inflicted on her by the accused. The accused testified that having ran away from the scene, and upon his arrival at his parental homestead, he found that his aunts Lungile and Zodwa, together with his cousin Nelly, already knew about the incident, and that the police had already come looking for him and left. I am therefore satisfied beyond reasonable doubt that the deceased died from stab wounds that were inflicted on her by the accused.

[75] **Kotze JA** in *Rex v Jollyand (supra)* stated that the intention of an accused is to be ascertained from his acts and his conduct. From the Sangweni homestead where the accused said he attended *emalobolo* ceremony and used the knife to cut the meat he roasted, there is no explanation why he took the knife with him to the homestead where the deceased resided, more

especially because he said he was given that knife by the head of that homestead and it was not his. This version, in my considered view, is more probably untruthful given the evidence of PW4 who testified and insisted that the accused was not coming from the Sangweni homestead but was from his parental homestead, and she saw him when coming.

[76] In addition to the above, the accused testified that he went to the homestead where the deceased resided because they agreed with the deceased that he should visit her. There is no probable explanation given, or one that I can think of, why the deceased would then refuse to open the door for the accused upon arrival. Evidence was however tendered by the accused that he used a pick to break open the door and forced his way inside the room where the deceased was.

[77] It was the evidence of the accused that a fight between him and the deceased started immediately he entered the house after breaking the door open. He ended up stabbing her in an attempt to free his hand from her mouth as they were wrestling. According to the evidence of the pathologist, forty-one stab wounds were inflicted on the deceased. Twenty-six of these stab wounds were described by him to have been fatal. Amongst other injuries, the deceased's muscles and blood vessels in the neck were severed; the right lung had two stab wounds while the left one had one stab wound; the heart had a 2cm stab wound in the left ventricle; and there was also a 4cm length stab wound in one of the loops of the small intestines.

[78] The deceased could in no way have survived these stab wounds. The only inference to be drawn from these facts is that the accused intended to kill the deceased. It therefore is a finding of this court that the accused had the

necessary intention to kill. His testimony that he killed the deceased accidentally is rejected. When taking into account the number of times that the deceased was stabbed, it cannot possibly be true that the stab wounds were inflicted accidentally.

[79] The self defence plea made on behalf of the accused in his closing submissions does not fit the facts of the case. The accused used a pick to forcefully break open the door of the house where the deceased was in. He did this after the deceased had refused to open for him. He therefore was the aggressor and attacker, and his plea of self defence cannot be sustained.

[80] The court is satisfied that the crown proved its case beyond reasonable doubt. The circumstances under which the deceased was stabbed and killed, and the multiplicity of the stab wounds that were inflicted on her, considered together with the manner they were inflicted, the court returns a guilty verdict. The accused is found guilty of the murder of Lindokuhle Prisca Mdluli.

T. DLAMINI
JUDGE - HIGH COURT

For the Crown : Mr. S. Phakathi

For the Accused : Mr. M. Shongwe