

**IN THE HIGH COURT OF ESWATINI**  
**HELD AT MBABANE**                      **CRIMINAL CASE NO. 42/2018**

In the matter between:

**THE KING**

**v**

**SIPHO SHONGWE**

**Accused**

*Neutral citation:*                      *The King v. Sipho Shongwe (42/2018) SZHC 289 (17 October 2023)*

**CORAM:**                      **N.M. MASEKO – Judge**

**FOR THE CROWN:**                      **ADV. M.R. HELLENS SC with him Principal Crown Counsel Macebo Nxumalo**

**FOR THE DEFENCE:**                      **ADV. L. HODES SC with him Attorney Lucky Howe and Attorney Ben J. Simelane**

**DATES OF TRIAL:**                      **28/05/2019 and various dates to August 2023**

**DATES OF FINAL SUBMISSIONS:**                      **03/08/2023 & 04/08/2023**

**DATE OF JUDGMENT:**                      **17/10/2023**

**SUMMARY**

Criminal law:                      Criminal trial – direct evidence –  
circumstantial evidence –  
Accomplice evidence –  
corroboration of accomplice  
evidence – two accomplice  
witnesses' evidence credible and  
sufficiently corroborated by  
evidence of independent witnesses  
– cautionary rules relating to  
accomplice evidence – electronic /  
scientific evidence and value  
thereof expert witnesses – failure

Held: to put the defence case to Crown Witnesses and effect thereof.  
Accused found guilty as charged and indicted of the crime of murder.

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## JUDGMENT

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### MASEKO J

- [1] In the early evening of the 14<sup>th</sup> January 2018, the deceased Victor Gamedze was shot and killed at the Galp Filling Station, Ezulwini in the Hhohho District. The post-mortem report confirms that he died consequence to gunshot injuries. He was shot twice in the head at close range and at the time when he was shot, he was walking from the garage shop towards his motor vehicle which was parked next to the fuel bousers.
- [2] The deceased was walking with Ananias Khumalo (PW3) when his assailant approached them from behind and shot him at close range. Another witness who witnessed the shooting of the deceased was Tony Zeeman who testified as PW2. His evidence in the main corroborated that of PW3 Ananias Khumalo as well as the CCTV footage which clearly showed the whole shooting incidence.
- [3] It is common cause that after the murder of the deceased, the police led by D/Senior Supt. Sikhumbuzo Fakudze launched a full-scale investigation which eventually resulted to the arrests of the accomplice witnesses Tata and Ncaza by Interpol and the Accused Sipho Shongwe was arrested on the 19<sup>th</sup> January 2018 at Ngwenya border.
- [4] PW1 is Steve Horton who testified that he is in the trucking business. He testified that during December 2017 between

the 18<sup>th</sup> and 20<sup>th</sup> December 2017 he was at Galp Filling Station with fellow businessman Mike Mamba (PW 12) fixing their trucks when the Accused drove past them and when he saw them, he decided to stop. The three know each other as they are all from Manzini and grew up together.

- [5] PW1 testified that as they were having a conversation about soccer in general the Accused mentioned that he was not happy with Mr. Gamedze's conduct, and that "**sekusele intfo lencane ku Gamedze**" and he made a hand gesture. PW1 said he considered that as a warning to Gamedze, and he duly informed Gamedze about it. He testified that the accused person then drove off in his red VW Polo bearing RSA numbers.
  
- [6] PW1 was subjected to a vigorous cross-examination by Counsel for the defence, in particular on the contents of the statement he recorded with the police and the oral evidence he presented in Court.
  
- [7] Under cross-examination PW1 also confirmed that on the following day after the conversation with the Accused, Victor Gamedze called him enquiring about the threats against him, apparently Mike Mamba had informed him about the threats.
  
- [8] In my view PW1's testimony was not discredited under cross-examination but instead it was strengthened by the mere reading of the statement into the record and there were no contradictions between his statement and his oral testimony presented in Court.
  
- [9] PW2 is Tony Zeeman, and he testified that on the 14<sup>th</sup> January 2018 between 1830 hours and 1900 hours he was at Galp Filling Station, Ezulwini, having a meeting with his

business associates when a new model Toyota double cab motor vehicle drove into the Filling Station, and as it passed by him, the driver greeted him and said **"how are you Mr. Zeeman"**, and drove off to park in front of the Filling Station. The driver was wearing a white cap. The driver went into the shop and after a short while came back carrying a white cup/mug in his hand and was walking with an old man towards his car. As he was trying to identify the driver of this car, a slender gentleman wearing blue jeans and a powdered blue top, like a sweater ran around the Toyota double cab and straight to the driver of the Toyota double cab and shot him twice in the head and he fell down.

- [10] At the time the slender gentleman still carrying the gun ran towards the bus station enroute to Mbabane where he boarded a red VW Polo motor vehicle which had no number plates at the back, and the car sped off towards the Mbabane direction. PW2 and his colleague then went to the driver of the Toyota double cab to inspect the injuries. They realised that he was badly injured and he was quickly loaded on to the Toyota double cab and driven to Medisun. He realised for the first time that the said driver was Victor Gamedze who was very well known to him.
  
- [11] PW2 was cross-examined by Counsel for the defence and nothing turn on the cross-examination.
  
- [12] PW3 is Ananias Sikhulu Khumalo, he testified that on the 14<sup>th</sup> January 2018 he was at Galp Filling Station at Ezulwini in the company of the deceased Victor Gamedze when he was shot two times on the head. The shooter was slender, and he wore blue pants, a blue top and a hoodie that was also blue. After shooting the deceased he then ran towards the bus station enroute to Mbabane and boarded a red motor vehicle which drove off towards the Mbabane direction at high speed.

- [13] PW4 is Sipho Thulani Bhembe who knew the deceased from soccer. He testified that he last saw him at Somhlolo Stadium where there was a soccer match between Mbabane Swallows and Manzini Wanderers, this was on the 14<sup>th</sup> January 2018, the day he was killed. PW4 testified that he was with his friend Sibusiso and they entered the Royal Box to watch the match, and they came across Dzodzo who resides at Msunduza.
- [14] PW4 testified that he saw Dzodzo identifying Victor Gamedze with his head to a slender gentleman who was wearing a powdered blue top.
- [15] He testified further that after the game he drove via the Manzana private hospital where he spotted Dzodzo with other people in his car following Victor Gamedze's car and they were separated by two vehicles, and that was the last time he saw Victor Gamedze alive. He testified that he paid particular attention to Dzodzo because Dzodzo was not a soccer person, so he was surprised that he was at the stadium to watch soccer on that day.
- [16] PW4 testified that the murder of Victor Gamedze sent shockwaves throughout the whole country and was widely published in the media and there were photographs circulating in the media and he recognised the slender gentleman who was at the stadium with Dzodzo when Dzodzo identified Victor Gamedze with his head to the slender gentleman. It was at that stage that he realised that he needed to report his observations to the police. He testified that the Accused and the late Victor Gamedze were both his friends and that at some point in time there was a feud amongst Victor, Sipho Shongwe and himself and they were called to a certain place where there was a mediator and they were counselled to forgive each other.

- [17] PW4 testified that at some point in 2017 he met with the Accused at a certain Italian Restaurant in Matsapha, in fact this meeting was at the instance of the Accused who had invited him, and during the meeting the (Accused) requested him to enlist the services of hitmen to come to Eswatini to kill Victor Gamedze and he also said that they were not going to use their money to pay these people. PW4 testified that the reason why the Accused asked him to get the hitmen in RSA is because he (PW4) was driving public transport to RSA and hitmen are present in the transport industry as they are hired by transport operators to kill each other. PW4 testified that this was the last time he talked to the Accused, and therefore after the death of Gamedze he felt the need to disclose this to the police so that the law may take its course. He testified that due to the fact that he was aware of the plan by the Accused to kill Victor Gamedze he was scared that he may also be killed and this prompted him to disclose everything to the police, in particular their meeting at the said Italian Restaurant where the Accused had solicited his assistance in obtaining hitmen to kill Victor. He testified that when the Accused asked him to get the hitmen to kill Gamedze, he was shocked and scared, but remained calm so that the Accused would not see that he was scared.
- [18] PW4 was subjected to a vigorous cross-examination by the defence, in particular with regard to the multiple statements which he made to the police. It was put to PW4 that the Accused denies that they met at the said Italian Restaurant to plot the murder of Gamedze and PW4 reiterated his testimony in chief. It was put to PW4 that he is fabricating the story about the Accused plotting to murder Gamedze because PW4 was bitter because he had been removed from the social team WhatsApp group because he was close to the deceased and was leaking everything that was discussed in the group. However, PW4 denied those allegations and stated that Mbabane Swallows was in the Premier League whereas Matsapha United was in the lower division, therefore there

was no leaking of information since the teams were not at the same level.

- [19] PW5 is Ricardo Mordaunt and he testified that he is an expert in installation of close circuit television (CCTV) security cameras and that he has been in the field for over 12 years. He testified that he also maintains, service and also assist with back-up and downloading of footage where necessary.
- [20] PW5 testified that on the 15<sup>th</sup> January 2018 he was requested by the Royal Eswatini Police to back-up or capture CCTV footage from Galp Filling Station, Ezulwini, Spar Ezulwini and at the Ngwenya Border Post. PW5 testified that he does not remember the date of the Ngwenya Border footage, but for the Spar Ezulwini the date is 13<sup>th</sup> January 2018 and the Galp Filling Station was for the 14<sup>th</sup> January 2018. He testified that applying his expertise he duly captured all the footages requested and handed them over to the police. PW4 identified these footages before Court during his testimony when there was a replay where he identified each scene and what was seen from each of the said scenes. PW5 was cross-examined by Counsel for the defence, however, nothing turns on the cross-examination as he was confirming what he sees in these different footages.
- [21] After the testimony of PW5, the Crown recalled PW3 Ananias Khumalo to view the video footage where he identified himself and the late Victor Gamedze, and he also identified the shooting of Gamedze by the person who was wearing blue trousers and a blue jacket and was also wearing a cap in his head which was also blue in colour. PW3 was cross-examined briefly on the contents of the footage and nothing turns on that cross-examination.

- [22] PW6 is German Victor Gamedze, who testified that on the 14<sup>th</sup> January 2018 he was at Somhlolo Stadium to watch the soccer match and that after the match he drove his car to Galp Filling Station at Ezulwini, to fill petrol before proceeding to his home at Esitseni area past Dlangeni area.
- [23] PW6 testified that whilst at the filling station he wanted to obtain money through mobile money and was directed to a place called Thandabantu behind the filling station next to the bus station enroute to Mbabane. As he proceeded to Thandabantu he suddenly heard two-gun shots at the filling station and he turned back to check what was happening, and as he proceeded to the filling station, he came across a gentleman who was running towards the bus station enroute to Mbabane and this gentleman was carrying a gun. He chased this gentleman, however unsuccessfully as this gentleman boarded a red Polo motor vehicle which sped off towards Mbabane direction and this car had no rear number plate. He testified that he could identify this man, and that he had seen him in the Times of Swaziland when Gamedze's killers were splashed in the papers. PW6 was cross-examined on inconsistencies in his testimony and the statement he had recorded to the police, however nothing turns on the cross-examination.
- [24] PW7 is Nkosinathi Mbuli and he testified that he works for Eswatini Revenue Services as Security Services Manager. He testified that Ngwenya Border has integrated security systems, CCTV surveillance inclusive. He stated that they outsource security services to security vendors whilst at the same time use their own systems.
- [25] PW7 testified that they were approached by the Royal Eswatini Police for footage of the Ngwenya Border as they were investigating the death of Victor Gamedze. The officer who approached them is the Principal Investigating Officer



Sikhumbuzo Fakudze. He testified that he allowed Fakudze to access their system and view the footage. Detective Fakudze had come with its own technician and after viewing the footage Fakudze informed him that they have identified the person they were looking for, and he allowed then to download the footage. The technician's name is Ricardo. There was no cross-examination of this witness by the defence.

- [26] PW8 is Mandla Bheki Mkhathshwa who testified that he works at Galp Filling Station, Ezulwini as a Supervisor. He testified that one of his duties is to operate the CCTV cameras in the event there is a need. He testified that on the 14<sup>th</sup> January 2018 he was at work when the deceased Victor Gamedze was shot dead, and the police, whilst conducting their investigations, approached him to view the video footage and he allowed them to view the footage, and they came back on the following day with their technician to retrieve or download the video footage and he allowed them to retrieve same, and this footage referred to the shooting of Victor Gamedze. The cross-examination of this witness was very brief.
- [27] PW9 is Mphikeleli Makhanya who testified that he works at Buy 'n Save Spar, Ezulwini Branch at the Corner Plaza as Assistant Manager. He testified that they have security CCTV cameras which they utilise to check anything that needs to be checked. He testified that the police approached him with a request to view the CCTV footage and they were in the company of Ricardo who is a technician and he is the one who downloaded the clip that was essential to the police. He testified that he has forgotten the date of the request by the police but the footage was for a date that was in a "cash receipt" from his shop which they had in their possession. There was no cross-examination for this witness.

- [28] PW10 is Sihle Gugu Mamba who testified that she is employed by Swaziland Posts and Telecommunications she testified that in December 2017 she went to Solani's Shisanyama to get a quotation for a function which they were going to have, and she met Dzodzo Sandile Zikalala who assisted them and he also took her details and thereafter started calling her on her mobile phone and proposed love to her.
- [29] She testified that in mid-January 2018 she was later approached by the police after the murder of Victor Gamedze and they wanted the call log on her phone and they eventually found Dzodzo's calls. PW10 testified further that at some point in time after the murder of Gamedze, Dzodzo called her using a South African number, and she also gave the police that number.
- [30] She testified further that when Dzodzo called with the South African number he asked about the death of Gamedze and she confirmed it, and then on the 15<sup>th</sup> January 2018 Dzodzo called her using his Swazi number and informed her that he was now in Eswatini and has been summoned by the police on suspicion that he is the one who had killed Victor Gamedze. PW10 was subjected to a lengthy cross-examination in particular on the various phone numbers and her interactions with Dzodzo, as well as the contents of her statement she recorded with the police. Her testimony is crucial in so far as the phone numbers belonging to Dzodzo are concerned.
- [31] PW11 is Sifiso Sipho Mnisi and he testified that he is a businessman and was the Logistics Manager for Matsapha United Football Club, a team owned by the Accused, Sipho Shongwe. He testified that in January 2018 he was using two cellular phone numbers namely 76025952 and 76055952. He testified that he was approached by the police

on the calls made on the 11<sup>th</sup> January 2018, at 1326 hours and 1328 hours which he received from cell number 76769952 and he informed the police that the number belongs to the Accused Sipho Shongwe and they were talking about players that needed to be secured for the team, Matsapha United Football Club. PW11 testified that even after he had recorded a statement with the police, he continued to check the Accused in prison, and in one instance they discussed the issue of the phone call involving number 76769952 which the Accused vehemently denied to be his cell phone number. This visit when this phone number was discussed was before this witness testified. PW11 was cross-examined by the defence Counsel and he changed his testimony that he had talked to the Accused who was using that number. He introduced for the first time in his evidence that he visited the Accused in prison and that the Accused confronted him about the calls-in question and informed him that the said number 76769952 did not belong to him.

- [32] PW11 confirmed under re-examination by Counsel for the Crown Advocate Hellens SC that he discussed his testimony with the Accused whilst the said Accused was in prison, before the trial of the said Accused started.
- [33] I must state that I am not convinced that PW11 did not know who he was talking to in this number 76769952. I say this because PW11 was confident in his evidence in chief that when he talked to the Accused in this number 76769952, they were talking about signing new players for Matsapha United Football Club, as well as friendly games etc. I have no doubt in my mind that his sudden change of testimony was caused by his discussion of his testimony with the Accused in prison before he (PW11) testified. I therefore reject his testimony that he was not sure or didn't know who he was talking to. If PW11 is honest, he should have advised the police as soon as possible after his visit to prison that they have discussed the testimony regarding number 76769952

with the Accused. In that way he would have displayed his integrity and honesty, but he chose to conceal that from the police and disclosed same under cross-examination.

- [34] PW12 is Mike Mamba who testified that he is in the trucking business and a colleague of Steve Horton PW1. His evidence corroborates Steve Horton's testimony is so far as it relates to the meeting at Galp Filling Station and not the conversation as testified to by Steve Horton. He testified further that he thereafter met the deceased Victor Gamedze in Mbabane where the deceased mentioned that he had a problem with the Accused however without elaborating though. PW12 was evasive in his testimony.
  
- [35] PW13 is Mzwandile Mabuza and he testified that he resides at Ezulwini and he is a businessman operating Jimmy's Bar. He testified that on the 14<sup>th</sup> January 2018 in the afternoon Dzodzo came to his bar driving a new red VW Golf. He wanted liquor but did not get the type or brand he wanted, so he went to another liquor outlet nearby where he bought the liquor and then drove off with his passenger. PW13 testified that Dzodzo talked to Sayid Juma PW14 who was also enjoying his drink.
  
- [36] PW14 is Sayid Juma and is resident at Ezulwini. He corroborated PW13 about Dzodzo's visit to Jimmy's Bar on that afternoon of the 14<sup>th</sup> January 2018.
  
- [37] PW15 is Bongane Nkhambule and he testified that he resides at Mbangweni, Mbabane. He testified that on the 14<sup>th</sup> January 2018 in the afternoon he was at Somhlolo Stadium to watch Mbabane Swallows playing Manzini Wanderers. After the game he got a lift which dropped him at Galp Filling Station and he arrived at the time when the deceased Victor

Gamedze was shot and killed. He corroborates Tony Zeeman, Ananias Khumalo and German Victor Gamedze.

- [38] PW16 is Sipho Thwala a Police Officer attached to the digital forensic laboratory of the Royal Eswatini Police Services. Officer Thwala testified about a cellular phone conversation between Ntombifuthi Masuku PW17 and accomplice witnesses Simphiwe Tata Ngubane PW 43 (Tata) and Mbuso Ncaza Nkosi PW47 (Ncaza) respectively. The said conversation is said to have taken place on the 12<sup>th</sup> February 2018. The background of this call is provided by PW17 Masuku herself in her testimony. PW16 testified that applying his digital forensic expertise he downloaded the conversation from the cell phone of PW17 and handed over the CD to the investigating team. Officer Thwala testified that when he performed his duties, PW17 was present.
- [39] PW16 was subjected to a long cross-examination, however not on the content of the downloaded recording and also not on his expertise, but rather more on the chain of custody of the downloaded material.
- [40] PW17 is Ntombifuthi Masuku and she testified that she is Manager at Shield Guest House situate in Mbabane. On Thursday the 11<sup>th</sup> January 2018, a grey car came to her establishment and since it was at night, she did not open for the occupants of the car who were knocking on the door. The car stayed there for the whole night until the next morning. PW17 testified that on the Friday morning the 12<sup>th</sup> January 2018, there was a knock at the door and she opened the door and found a person she knew by the name of Msandi, a regular customer of the Guest House. He said he was asking for a house for three people and she provided a room that could accommodate all three of them, they were all males, and are the people who were knocking on her door the

previous night whom she did not open for because she was scared to open at night.

[41] She testified that one of them introduced himself as Siphiwo and he spoke Zulu and proposed lover to her, however she declined his proposals. She gave a full description of the trio, however since Tata and Ncaza testified as Crown witnesses, her evidence corroborates their evidence in so far as their stay at Shield Guest House, their movements and their phone call to her on 12<sup>th</sup> February 2018 when they wanted to send her to Matsapha prison to the Accused and she refused. The audio clip was played in Court and was confirmed by PW17 Masuku, Tata and Ncaza. She testified that Msandi paid for the accommodation of the three of them for the duration of their stay. After the murder of Victor Gamedze, pictures of the suspects and the car were all over the newspapers and she saw Tata who was known to her as Jojo and she also saw Siphiwo, and Msandi, who was referred to as Dzodzo Sandile Lutsango. She testified that on Monday 15<sup>th</sup> January 2018 in the morning she assisted Siphiwo to make two calls to his two wives and thereafter he asked to use her bank account to have money from his wives transferred into her account and indeed the sum of E1,000.00 was credited into her account and she then hired PW18 Mduduzi Gama to drive Siphiwo to town to withdraw the money which she had transferred to PW18 via e-wallet. She testified that it was the last time she saw Siphiwo.

[42] PW18 is Mduduzi Gama the taxi driver and his evidence corroborates PW17 in material respects.

[43] PW19 is Nonduduzo Bridget Zwane she testified that in January 2018, she worked at Solanis Shisanyama, and that on the 13<sup>th</sup> January 2018, she together with her colleague Laura Zhavale served two gentlemen who had entered the establishment and ordered drinks. They were Zulu speaking

and one of them complemented her and proposed love to her and she gave him her number 76705151 and he thereafter called her sometimes using a South African number and a Swazi number. There was no cross-exam for this witness.

- [44] PW20 is Laura Zhavale she testified that in January 2018 she worked at Solanis, and her evidence in the main corroborated the evidence of PW19 Bridget Zwane, Tata Ngubane and Ncaza Nkosi. There was no cross-examination. She testified that she also gave her cell number to one of the gentleman.
- [45] PW21 is Sicelo Sifiso Hlophe who testified that in January 2018 he was a tenant of Dzodzo at Msunduzi. He testified that in the early hours of the 15<sup>th</sup> January 2018 at around 1:30 a.m. he received a call from Dzodzo asking this witness to pick him from Mhlambanyatsi and he duly drove to Mhlambanyatsi in a white Polo vivo and parked next to the filling station as directed by Dzodzo, however Dzodzo was not there and because it was too dark, he went to park next to the police post where he was accommodated by security officers PW22 and PW23. He did not get Dzodzo so he eventually went back to his flat. He testified that Dzodzo arrived in the early morning of the 15<sup>th</sup> January 2018 and he was uneasy to talk about the Mhlambanyatsi issue. He testified that the last time he saw Dzodzo was on Tuesday 16<sup>th</sup> January 2018 in the morning. The evidence of PW21 corroborates the evidence of Tata and Ncaza especially the route they took where they eventually abandoned the Toyota Yaris. He was not cross-examined.
- [46] PW22 is Jabulane Lukhele was employed as a security guard at Mhlambanyatsi in January 2018 and his evidence corroborates of PW21 and his colleague PW23 Phesheya Dlamini.

- [47] PW 23 is Phesheya Dlamini and testified that he is a colleague of PW22 and corroborates him in material respect.
- [48] PW24 is Mcolisi Vista Mbuyisa and he testified that he stayed at Mbabane and is a friend of Dzodzo. He provided a crucial cell phone number 76770021 which Dzodzo was using on the 15<sup>th</sup> January 2018 when he called him on his number 76212469.
- [49] PW25 is Sifiso Donald Dlamini, and he testified that he works at Swazi Mobile, and that on the 14<sup>th</sup> January 2018 he attended the soccer match at Somhlolo Stadium. He was seated in the Royal Box with Royal Leopards Coach and he saw Dzodzo peeking into the Royal Box and he was surprised because Dzodzo did not attend soccer matches. This evidence is crucial because it corroborates the evidence of Sipho Thulani Bhembe, Ncaza and Tata.
- [50] PW26 is Dr Komma Reddy a pathologist employed by the Royal Eswatini Police. He testified that the deceased Victor Gamedze died of gunshot wounds. He handed into Court his Post-Mortem Report.
- [51] PW27 is Alex Ndzimandze he testified that he is a brother to the deceased and he identified his body during the post-mortem examination conducted by Dr Komma Reddy PW26.
- [52] PW28 is Sifiso Solomon Mbhalo Hlophe and he testified that he was unemployed and that he has a gift for praying for people and is a member of the Zion Church where he is a Reverend. He testified that he knows the Accused person Sipho Shongwe through soccer discussions. He testified that at some point in time he assisted the Accused by preparing something for his team Matsapha United which was going to



play Mbabane Swallows. He prepared a concoction for luck in football games.

- [53] PW28 testified that in one of their consultations the Accused mentioned Victor Gamedze's name and said the way Gamedze was managing PLS was not the right way, **and that Gamedze did not have an idea that he (Accused) could remove him within a space of a minute and hand himself over to the police.** PW28 later testified that the **"remove in a space of a minute and hand himself to the police"** meant that he would kill him and then hand himself over to the police.
- [54] PW28 testified further that on the 14<sup>th</sup> January 2018 at around 1800 hours he was at Galp Filling Station to refuel his car and purchase bread as they were enroute to Manzana to bath. He saw Victor Gamedze's car parked in front of the Filling Station, Gamedze was in the shop and then went out walking to his car with Ananias Khumalo and all of a sudden, he heard two gunshots and saw the shooter running towards a red VW Polo and they sped off in the Mvutshini direction. PW28 testified that before the gunshots he had seen Dzodzo who was well known to him standing next to the pump on his left side. PW28 was subjected to a lengthy and vigorous cross-examination however he re-iterated his testimony in chief. His testimony corroborates the evidence of Steve Horton, Sipho Bhembé on the threats to kill Victor Gamedze, and the involvement of Dzodzo in the murder of Victor Gamedze, and also corroborates the evidence of Tata Ngubane, Ncaza Nkosi, Ananias Khumalo and Tony Zeeman to name a few.
- [55] PW29 is Phatfwakahle Lukhele she testified that she is an ex-girlfriend of Dzodzo and that even though they had separated they were still on talking terms. She testified that he had informed her that he would be leaving for RSA on the 7<sup>th</sup>

January 2018 to consult a doctor for his ulcer's ailment. However, she was surprised on the Monday 15<sup>th</sup> January 2018 when people started asking her about the whereabouts of Dzodzo and even telling her that he was seen at Somhlolo on the 14<sup>th</sup> January 2018.

- [56] PW29 testified that she called him on his Swazi number enquiring about the Somhlolo issue, at first, he denied but later conceded that he came back before the 15<sup>th</sup> January 2018. She testified that on the 21<sup>st</sup> January 2018 she was called by the police, and she told him that the police had called her, and Dzodzo told her to delete their conversations i.e., phone calls and messages and then report to him what the police wanted, and indeed after meeting the police she did that as per his instructions.
  
- [57] PW30 is Nokuthula Dlamini a friend to Ntombifuthi Masuku PW17, and she corroborates PW17 in material respects on the events of the weekend of the 13<sup>th</sup> – 14<sup>th</sup> January 2018.
  
- [58] PW31 is Nkosinathi Emmanuel Malindzisa who testified that he is employed by Eswatini Revenue Authority as a Security System Technician. He testified that at Ngwenya Border, they have installed CCTV security cameras to monitor all activities that take place there, including movement of people and cars, etc. In February 2018 the police requested certain information and downloaded same.
  
- [59] PW32 is police officer 3400 D/SGT Bheki Dlamini, a Scene of Crime Investigator based at Manzini Regional Headquarters. On the 15<sup>th</sup> January 2018 he attended to a scene of crime at Lundzi area where he took photographs of a silver-grey Toyota Yaris motor vehicle with its contents, which he handed into Court as part of his testimony. These items are Schweppes Leomon drink (not opened), empty flying fish can,

empty Peter Stuyvesant pack and one motor vehicle clearance receipt.

- [60] PW33 is police officer 3095 D/Inspector Patrick Dlodlu based at Lobamba Police Station. On the 14<sup>th</sup> January 2018 at around 19:00 hours he attended the scene of crime at the Galp Filling Station Ezulwini, where the deceased Victor Gamedze had been shot and had already been taken to the Medisun Clinic at Ezulwini. He together with his officers then went to the Medisun Clinic whereupon they discovered that Gamedze passed on. Investigations commenced and, on the 15th January 2018, he travelled to Lundzi area, whereupon a Toyota Yaris motor vehicle was found abandoned. It was silver grey in colour. In the motor vehicle amongst other items, he discovered a sim card holder, Ezulwini Super Spar receipt, Swaziland Revenue Authority receipt and a receipt from L.L. Swaziland Cleaning supplies. He seized these items for further investigations.
- [61] Under cross-examination Detective Dlodlu was criticized for allegedly interfering with the scene of crime which should have been attended firstly by the scenes of Crime Officer PW32 Bheki Dlamini. I must state that an Investigating Officer investigating a crime has a right to seize exhibits which in his/her view would speedily further his/her investigation, as long as he will keep proper record of the seized items through the chain of custody systems in place in the police establishment. This is what Detective Dlodlu did and the nature of the items he seized did not in any way contaminate or interfere with the integrity of the scene of crime at Lundzi area on that day.
- [62] The items seized by Detective / Insp Dlodlu provided a breakthrough in the investigation of this matter because the Ezulwini Super Spar receipt led to the CCTV footage which identified the two accomplice witnesses together with Dzodzo.

The SRA receipt led to the CCTV footage of Ngwenya Border which produced evidence of the Toyota Yaris driven by Ncaza Nkosi entering the country. The sim card led to the discovery of the phone numbers which were used to communicate between the Accused and the others who are involved in the murder of Gamedze, namely Dzodzo, Tata and Ncaza.

- [63] PW34 is 3905 D/Sgt Sandile Chonco who is a Scenes of Crime Investigating Officer and he testified that on the 14<sup>th</sup> January 2018 he attended to the scene of crime at the Galp Filling Station Ezulwini where the deceased Victor Gamedze had been fatally shot. He took photographs of the scene.
  
- [64] On the 17<sup>th</sup> January 2018 Officer Chonco attended the post-mortem examination of the body of the deceased Victor Gamedze, and he also took photographs during the post-mortem. On the 24<sup>th</sup> January 2018, he took photographs of a black VW Golf ESD 897 AH which had been hit by a bullet at the Galp Filling Station on the 14<sup>th</sup> January 2018. On the 23<sup>rd</sup> January 2018 he proceeded to Msunduzi location where he took photographs of a red VW Polo registration number CH 86 HD GP at the homestead of Dzodzo Zikalala. The cross-examination of Officer Chonco was on the procedural aspects of evidence collection and the chain of custody.
  
- [65] The red VW Polo was identified by the accomplice witnesses Ncaza and Tata as the motor vehicle which was used on the date of the murder of the deceased Gamedze as the getaway car, and they later transferred to the silver-grey Yaris which was eventually abandoned at Lundzi area.
  
- [66] PW35 is Msebe Malinga who is a Civil Servant and based in the Ministry of Commerce in the position of Registrar of Companies. He testified about company's name V-Track

Investments (Proprietary) Limited and Office Buddies Investments (Proprietary) Limited.

- [67] He testified that the directors of V-Track are Abel Bafana Hlatshwayo and Sipho Dumisane Shongwe, and that the directors of Office Buddies are Vuyiswa Ncobile Siyaya the wife of the Accused, Sipho Shongwe and Dumsile Sylvia Manyatsi. There was no cross-examination of Malinga.
- [68] PW36 is Precious Chauya and she testified that she is an employee of the Eswatini Revenue Authority based at Ezulwini Headquarters in the capacity of Customs Operational Policy Director. She testified that in 2019 she received a request from the Eswatini Royal Police Service to ascertain whether the silver-grey Toyota Yaris was recorded and processed in their system on the 11<sup>th</sup> January 2018. She was able to access the information using their system called ASYCUDA.
- [69] PW37 is Nontsikelelo Zwane a former employee of Young Heroes from November 2018 to May 2019. She testified that she was issued with a sim card as part of her working tools. The number was 78025449 and she would occasionally receive water bills from this number possibly from its previous use. The water bills account is 040293534 and was for some premises around Matsapha. The phone number 78025449 was identified in the course of the trial and I will deal with it later in the judgment.
- [70] PW38 is Colani Linda Nhleko who testified that in 2017 he joined an organisation called Young Heroes. He was the Supervisor of PW37 Nontsikelelo Zwane and corroborates her evidence in material respects.

- [71] PW40 is Makhosi Simelane who testified that he is a Civil Servant based in the Ministry of Home Affairs in the Immigration Department in the capacity of Chief Immigration Officer. He testified that on the morning of 20<sup>th</sup> January 2018, two police officers arrived at his offices and requested that he produce immigration records of Ncaza Nkosi of the period 11<sup>th</sup> to 15<sup>th</sup> January 2018. He actioned this request and could not find any record of entry or departure of the aforesaid Ncaza Nkosi during the period in question.
- [72] The evidence of PW40 Makhosi Simelane corroborates the evidence of the accomplice Ncaza Nkosi wherein he testified that the Accused had arranged his illegal entry into the country without using a passport by placing the gate pass at a strategic place enabling him to cross into the country driving the Toyota Yaris. In the footage Ncaza can be seen talking on his cell whilst inside the Immigration Office and by passing the immigration counter and walking to the SRA desk where he paid the road toll fee of E50.00 – Ncaza testified that at all material times when he was in the Immigration Offices at the Ngwenya he was on the phone chatting to the Accused who was directing him on what to do and eventually he crossed into Eswatini driving the stolen Toyota Yaris without stamping his passport. It is for that reason why the Immigration Department under PW40 could not capture him into its system because he did not use a passport to enter Eswatini.
- [73] PW41 Captain Bongiwe Claudia Gqotso is a member of the South African Police Services based at the Forensic Science Laboratory and based in the scientific analysis section. She outlined the evidence in detail concerning the video footages which was converted into still pictures for purposes of identifying the accomplice witnesses in the video footage. This evidence is corroborated by Ncaza and Tata in their respective testimonies. Their identities are no longer in issue since they testified as accomplice witnesses.

- [74] PW42 is Colonel Pretorius of the South African Police Services who testified that she is Commander of Facial Identification at the Criminal Court and also based at the Forensic Science Laboratory Crime Scene Management division. Her evidence is corroborated by the evidence of Tata and Ncaza in their testimony. The identification of the killers of Gamedze is not in dispute.
- [75] PW43 is Simphiwe Tata Ngubane, an accomplice witness in this criminal trial together with Mbuso Ncaza Nkosi. Before each of them testified this Court cautioned them in accordance with the provisions of Section 234 of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended.
- [76] He testified that he is a South African citizen residing in Soweto and that he is a friend to Mbuso Ncaza Nkosi. He testified that sometime in January 2018 he received a call from his friend Ncaza who informed him that there was work in Swaziland. Tata said he enquired from Ncaza what form of work and Ncaza replied that it relates to a gentleman who always goes around carrying millions in his bag. Ncaza explained that he had heard about this work from Faruk who also said that Faruk and his friends were together in prison for a heist which took place in Bronkospuit.
- [77] Tata testified that Ncaza asked him to pick him up at Dube so that they could meet the guy who was giving them the job, and indeed he drove to Dube to fetch Ncaza and they both went to Faruk's place at Eldorado Park. The place is like a lodge.
- [78] Upon arrival there they found no one at the parking lot and they waited, he sat in the car and played music and Ncaza waited behind the car and after a few minutes Ncaza called him, and when he looked behind there was a silver-grey

Amarok motor vehicle. Two men alighted from the car and all four of them then proceeded into the house where they sat down on chairs. They greeted each other and the Accused introduced himself as Sipho and Dzodzo followed and introduced himself as Dzodzo Charley. At that time the Accused did not state his surname. The two gentlemen said they were from Swaziland. He stated that he can recognise Shongwe since he met him face to face and indeed identified him in Court, further he also said he could identify with a corn in one of his feet, he saw that because the Accused was wearing sandals or push-ins.

- [79] Tata testified that the Accused told them that there is a man whom they work with in Swaziland however this man was now taking all the business by himself through corrupt means because he has money. He testified that the Accused stated that they have to rob him of his money which is always in the boot of his car.
- [80] Tata testified that they also raised the issue of cars to be used as well as the guns, and the Accused and Dzodzo stated that everything has been prepared. Tata Ngubane testified that the pair of Accused and Dzodzo told them that the matter was urgent, as a result of the urgency they all decided that Tata and Ncaza should find a stolen car. At that juncture the Accused, Dzodzo and Ncaza got into the Amarok and were together for about 15 minutes and Ncaza alighted from the Amarok and joined Tata and he was carrying a plastic bag which was full of money and he said it was to secure the stolen car. The money was all in twenty-rand notes.
- [81] Tata testified further that they then drove to Orlando to meet a gentleman whom Ncaza had phoned and they found him standing by a certain gate. They alighted from their car and Tata and this gentleman were talking about the car, the gentleman said the motor vehicle was new and it would cost



R7,000.00 (Seven Thousand Rands) eventually they decided on R5,500.00 (Five Thousand Five Hundred Rands) or R6,000.00 (Six Thousand Rands).

- [82] The motor vehicle was taken out of the gentleman's premises, it is a silver-grey Toyota Yaris and it was jumpstarted since it did not have an ignition key and Ncaza drove the car back to Faruk's place at Eldorado Park, and a lady opened the gate to park the car in a compound amongst other vehicles which were being stripped. Tata testified that they then left the car there, and they also separated and arranged to meet the following day. Tata testified that there was no money remuneration that was discussed during the meeting between the Accused, Dzodzo, Ncaza and himself.
- [83] On the following day Ncaza came to fetch him at around 1200 noon to 1300 hours and he was driving in the Yaris and they drove to Sandton to pick Dzodzo who however seem not to know the place well and they struggled to find him but eventually found him in the early evening and it was dark.
- [84] Tata said once they found Dzodzo they began the journey to Swaziland, however they slept at a hotel in Middelburg called the Sun. In the morning they drove to a **"location"** in that vicinity, Dzodzo took them to friend of is who was driving a Ford Ranger and Dzodzo and that man had a long conversation.
- [85] Tata testified that they stayed in Middelburg with this man who was driving the Ranger for a long time, and then Dzodzo came to them and informed them that everything that was being prepared at the border for them to pass illegally was sorted. They got into the Yaris and Ncaza drove to Carolina where the car windows were tinted with a dark tint, and thereafter they embarked on the journey to Swaziland. Tata

testified further that when they were about 3 to 4 kilometres away from the border Dzodzo started giving instructions to Ncaza on how he was to enter the Oshoek Border as well as onto the Swazi Border.

- [86] Dzodzo told Ncaza that when he enters the South African side, he must drive on the left lane and park next to the toilets, get out of the car and get into the toilet and upon entering the toilet then look on his left side where there is a dust bin and underneath the dustbin he will find a gate pass, and it's the one that will enable him to depart South Africa and enter Swaziland. He said all this had been arranged with the South African Police Official who knows about this Yaris Ncaza was driving.
- [87] As they were about to reach the border Dzodzo called someone on his phone and a man who was limping approached them and assisted them to unlawfully jump the fence and enter Swaziland and then after sometime the three of them i.e., Dzodzo, Ncaza, himself and the limping man were now together on the Swazi side after Ncaza had also driven the Yaris through into Eswatini and parked at the Shopping Complex near the Filling Station. Dzodzo then left them briefly saying he was going to meet the groot man (big man), and he came back with money and paid the limping man.
- [88] Tata Ngubane testified that after the limping man had been paid and gone, they got into the Yaris and drove towards Mbabane, however before they could drive further Dzodzo received a phone call instructing him to turn back by the traffic circle, where there is an overhead bridge and he did that and parked at a certain spot and thereafter a Mercedes Benz C Class arrived, it had no number plate at the front, and it was parked at a distance. The man they met in Johannesburg (the Accused) was driving that car and Dzodzo

alighted from their car and went to the Accused's car and the Accused handed over a plastic bag to Dzodzo and he came back to the Yaris and since it was not dark since it was summer he could identify the driver as the man they met in Johannesburg who introduced himself as Sipho, thereafter they then drove to Mbabane to a Guest House where Dzodzo said he has a lady friend who works there. They arrived at the Guest House and knocked in vain and no one opened so Tata and Ncaza slept in the car and Dzodzo slept in the veranda, in the morning the lady then booked them into a room.

- [89] Tata testified that he discovered in the morning when at Guest House that the plastic given to Ncaza by the Accused contain two firearms, one of them being a South Arican **"state issue CZ88 firearm"** and the other looked like a Glock but was very small. Dzodzo had made the booking at the Guest House. Tata testified that Dzodzo and Ncaza went out leaving him behind, in fact that is when he opened the plastic bag and discovered that it contained the firearms he has described. Dzodzo and Ncaza came back with food and he asked them when was the job going to be done and they did not explain to him. He testified that they arrived in Swaziland on the Thursday and that is when they spent the night in the car.
- [90] Tata testified that as they were seated and relaxing, Dzodzo received a call, and thereafter he told them that they were going to see the escape route which they were going to use after finishing the job. He testified that they drove away from Mbabane a bit and then stopped and parked at a place next to a tavern or pub. There, there was VW Polo green in colour with Swaziland registration numbers. They parked about 8 to 10 metres from the Polo. Dzodzo alighted from the Yaris and jumped onto the Polo and stayed for some time there and then alighted and came to the Yaris and gave Ncaza E1000 saying it is from **"uncle"**.

- [91] After handing over the money to Ncaza he returned to the Polo jumped in and it drove away leaving them behind. Tata and Ncaza then drove to Solanis where they had food and also met two ladies whom they proposed love to and also exchanged numbers. After that they then went back to the Guest House. Dzodzo later came back and joined them at the guest house.
- [92] However, since it was Friday Dzodzo and Ncaza went out leaving him behind, and at that time about four (4) men who were neatly dressed arrived and greeted him and said the job must be done tomorrow, he was surprised, and when Dzodzo and Ncaza came back he informed them about the four men and again he received no response from them.
- [93] Tata testified that they all retired to bed and on the following day Saturday they went to Pep stores to buy clothes to change as they did not know how long they were going to be in Swaziland. Tata stated that he again enquired on when is the job going to be done. Dzodzo then took them to a place called Cuddle Puddle where the target usually does body massage. They were still driving in the Yaris.
- [94] Tata testified that they didn't find the target at Cuddle Puddle and then they went to Ezulwini Spar where they bought food. It was Dzodzo, Ncaza and himself who went into the Spar at Ezulwini.
- [95] This evidence corroborates the CCTV footage as well as their own evidence i.e., Tata and Ncaza. Further it corroborates the evidence of Dzodzo in this conspiracy to kill Victor Gamedze.

- [96] Tata testified that from Ezulwini they drove to Mbabane to a huge building written Swazi Mobile and they parked outside, Dzodzo had said this is where they could find the gentleman they were looking for, as he works there and has shares in that building. Tata testified that they did not find the target's car as directed by Dzodzo, and he (Dzodzo) then drove them to a stadium near Mbabane, where he said the target's soccer team trains there, and again they did not find the target.
- [97] At that state they drove to a certain garage next to the bus rank to collect a red VW Polo GTI Registration No. CH 86 HD GP because they were going to use it on the following day.
- [98] On the following day, the 14<sup>th</sup> February 2018, whilst they were seated on the table outside the room, Dzodzo received a call and thereafter told them that the target they came for in Swaziland has been seen and might be carrying all the money because he was going to the sport ground where his team was going to play that day. They dressed quickly and then drove to the stadium via the Cuddle Puddle route passed the Casino on the left and complex on the right until they reached the stadium. They bought the tickets and entered the stadium, and they started searching for the target, and in the parking lot inside the stadium they saw a bus written Mbabane Swallows which had a trailer attached on it.
- [99] They searched and couldn't see or find the target, and then Dzodzo suggested that him and Ncaza go to the grand stand where VIP's seat. They came back and Mbuso said he had identified him. Tata testified that during the half time he also had an opportunity to see him, when Dzodzo went upstairs and he followed him. He saw him wearing a La coste white cap and a mustered striped t-shirt and a jean trouser.

[100] Thereafter, Dzodzo suggested that they go out of the stadium to another place, indeed they drove to Ezulwini at Jimmy's bar when they had drinks Heineken and Dzodzo smoked dagga and they watched Manchester on TV. Ncaza had remained behind in the stadium. After that match Dzodzo suggested that they leave for the stadium, and when they arrived at the stadium Ncaza came running to them and told them that the person they were looking for had driven out of the stadium using a van double cab, white Toyota Hilux. They followed it and it was through the road below the stadium, Dzodzo was driving the red Polo GTI. They followed the white double cab from the stadium and it off ramped from the highway until it reached the garage. Dzodzo drove the GTI and there were five vehicles between the double cab and the GTI.

[101] They could see the double cab Toyota Hilux at the garage, and Dzodzo drove past the garage for a short distance and stopped. They had seen the gentleman alight from the Toyota Hilux and went into the garage shop. As they had stopped, Tata jumped out of their car and went to a nearby bus to relieve himself since he thought they were waiting for the Toyota Hilux double cab to drive away from the garage and then they would follow it and at a convenient spot block him and rob him. Both Dzodzo and Ncaza each had a firearm. Ncaza was going to use the firearm during the robbery to shoot the gentleman in case he resisted the robbery of his money.

[101] Tata testified that whilst he was relieving himself, he heard two gunshots and then saw Ncaza came out running opened the door of the red Polo GTI jumped in and it drove off at high speeding leaving him behind. He then went towards the garage and stopped by the road below the garage and could see the deceased lying down in a pool of blood and people were saying he had been killed by Wanderers fans, and the people were calling him by his name Victor Gamedze, and he

learnt of the name of the deceased for the first time there. He was shocked why the deceased was killed because the aim was to take the money from him and not to kill him.

[103] Since he was confused and stranded Tata then boarded a taxi to Mbabane, and then from town proceeded to the Guest House on foot and when he was about to reach the Guest House, there came a black Honda Fit and stopped next to him and inside was Dzodzo and Ncaza, who said he must get in and he replied that he was so near the Guest House and they also alighted from the Honda Fit and they all proceeded to the Guest house on foot.

[104] Tata testified that they entered the room and started packing their items, and that is when he asked Ncaza as to why he shot the deceased **"because they came to Swaziland for money"**. Ncaza responded by saying he was going to tell him later, Dzodzo was also there and never said anything. Tata testified that he kept quiet because all he wanted was to leave. They got out of the room and boarded the Yaris and no one wanted to drive so he volunteered to drive and Dzodzo directed him to use the road which had been designated as the escape route by the Accused and Dzodzo. Tata testified that he drove on that route. He drove the Yaris as directed for a long time until they reached a point where Dzodzo directed him to stop the vehicle. As he was driving, he noticed a lot of trees, some of them cut. He parked the motor vehicle and they got out preparing to abandon the car and they tampered with the licence disk by pouring the dry lemon drink. He testified further that he was the one drinking the dry lemon, Dzodzo was drinking red bull, they left all these cans in the car. They also left a sim kit which was sealed and another sim card holder all for Swazi MTN. These sim cards were purchased in Swaziland. Ncaza was smoking Peter Styvesant and he also left it in the Yaris.

[105] Tata testified that as they were walking Dzodzo instructed them to hide for any car using the road, and indeed cars came and they would get into the bushy areas and then walk again. Dzodzo was busy on his WhatsApp. As Dzodzo had said that they should hide some cars drove past them with their sirens on. They were walking and hiding at the same time.

[106] Tata testified that as the distance they walked was long and strenuous, he then developed a severe pain since he has a bullet in his spine so he needed to rest. He sat under a tree and rested until he felt better and they all started walking again. However, Ncaza said he had lost his phone where they had rested and asked for his phone to use to provide light as they were searching for Ncaza's phone. He gave them the phone and the two Dzodzo and Ncaza went back to search for the phone and he continued walking hoping they would find him along the way but that never happened.

[107] Tata testified that he walked for a long distance and when it was dawn and he could recognise a person and then he saw a woman and approached her and asked for direction to Mbabane, and she showed him a stop sign by the T-junction and he was able to get a taxi and travelled back to Mbabane, where he went to the Guest House and asked the lady there Futhi to lend him her phone and he called his wife who then deposited R1,000.00 (One Thousand Rands) to Futhi's cell phone through cell phone banking. Futhi then called a taxi which took him to town to withdraw the money, and he then boarded a kombi to Ngwenya and luckily for him at Ngwenya he saw the limping man who had assisted them when they came to Swaziland and he (limping man) assisted him to cross illegally into RSA and then he boarded a taxi next to the bottle store and travelled to Johannesburg.

[108] Tata testified that whilst in Johannesburg he met Ncaza who gave him R10 000.00 (Ten Thousand Rands) saying it would



assist him get a lawyer because of the trouble Ncaza has caused for him. He explained that he got the money from Faruk.

[109] Tata testified that Ncaza wanted to speak to Futhi the lady at the Guest House, and Tata made the phone call using his phone, greeted Futhi and then handed the phone over to Ncaza to talk to Futhi. Ncaza asked Futhi to go to prison and ask the Accused to call / contact him but Futhi refused.

[110] It is common cause that the audio clip of the telephone conversation amongst Tata, Ncaza and Futhi was played in Court and Tata and Ncaza confirmed it in their testimonies.

[111] Tata testified that after a few days of the murder of Victor Gamedze, he left home driving to Inadale and when he was at Protea, he was stopped at a police roadblock and thought it was a routine police activity yet he was wrong because he was pointed with guns and arrested, and he was informed that he was a suspect in the murder of Victor Gamedze in Swaziland. He was taken to a police station in the South of Johannesburg. Tata testified that he was arrested for the murder of Victor Gamedze pending extradition to Swaziland, he was also charged for unlawful possession of a firearm which was found in his physical possession.

[112] Tata testified that he was taken to Court and thereafter remanded to Diepkloof Prison also known as Suncity Prison. For the unlicensed firearm he was sentenced to 15 years imprisonment and 8 years was suspended, and was given an option of a fine.

[113] Tata testified that upon being questioned by the police after his arrest he admitted everything he knew about the murder

of Gamedze. Ncaza was also arrested and brought to Suncity Prison and the two of them consulted their legal aid Counsel Mr. Nel.

[114] Statements were recorded from them and were eventually handed to the Swazi Police who also came and interviewed them. They co-operated with the Swazi Police and the prosecution. Advocate Nel advised them to speak the truth when they testify in Swaziland.

[115] Tata testified that whilst at Suncity Prison, an Attorney who introduced himself as Mr. Mnisi consulted with them and said he had been sent by the Accused to represent them in the extradition matter and they refused and informed Mr. Nell of the occurrence.

[116] Tata testified further that after consulting with the Swazi team they had agreed to testify on AVL, and if need be, to come to Swaziland to testify in person since he had raised money to pay his fine for the conviction of the illegal possession of the firearm since he had been given an option to pay a fine. Preparations were made for them to testify on AVL and in some instances they even attended to some office in Johannesburg. He emphasised that both of them were willing to testify either on AVL or in person, whichever option presented itself.

[117] Tata also testified about Advocate Nthabiseng Mahornane who informed them that she had been instructed by people from Swaziland to tell them that if they don't testify against the Accused, they will be paid R700,000.00 (Seven Hundred Thousand Rands), plus R2 million worth of drugs. Their first step was to sign affidavits which she had in her possession and had already been commissioned by a Commissioner of Oaths before they deposed to them. Tata said he asked her

to leave the affidavits behind so that they study them and she would collect them the following week, she agreed and left the affidavits, and they alerted their lawyer who in turn alerted the Swazi Police and these affidavits were eventually handed to the Investigating Officer, Mr. Fakudze. He testified that she even tried to represent them in Court but could not because she didn't have their instructions and also, they wanted the Swazi Authorities who were present in Court to see her in person. When she tried to address the Court Tata said he raised his hand and objected to her representing them because they did not instruct her and she also could not produce any letter of authority and she then informed the Court that she was not properly before Court and she took her bags and departed from the Courtroom in shame.

[118] Tata Ngubane was subjected to a lengthy and vigorous cross-examination by defence Council Advocate Hodes SC, however, the gist of his evidence on how they met the Accused and Dzodzo in Eldorado Park, his identification of the Accused, their journey to Swaziland on the Yaris, their illegal entry into Swaziland by jumping the fence, the meeting with the Accused when he gave Dzodzo the guns, their stay at the Guest House, the vigorous hunting of the deceased in all the places he mentioned, their activities at the stadium which is also corroborated by Sipho Bhembe, when they followed the deceased from the stadium to the Galp Filling Station, Ezulwini, how and who shot Victor Gamedze and how they eventually escaped from the scene and eventually departed Swaziland, has not in my view been discredited by the cross-examination. In my view Tata remained constant and reiterated his testimony and it was eventually confirmed by Ncaza that Tata did not know that Victor Gamedze was going to be killed in the manner he did, but that he was going to be robbed his money at gun-pint and then if he resists that's when he was going to be shot.

[119] There were contradictions in his evidence in his statement as against his oral testimony in Court. In any trial contradictions are there, however, the guiding factor is whether the contradictions go to the root of the evidence rendering it not credible or whether it's a contradiction that does not go into the root of the matter and thus does not affect credibility and trustworthiness of the evidence. In this case listening to the evidence and observing the demeanour of Tata Ngubane, I do not doubt his evidence for a moment. His evidence corroborated the evidence of Ncaza in material respects and he was eager to testify and tell it like it happened.

[120] PW44 is Mancoba Sipho Mahlalela and he testified that he is a technician and was employed by Dynamic IT in January 2018. He testified that they were responsible for maintaining the security cameras at the Galp Filling Station, Ezulwini, which they found already installed. He together with Ricardo Mordaunt downloaded the CCTV footage in January 2018, at the Galp Filling Station and he testified that the system was functioning well.

[121] PW45 is Thembi Mkhonto who testified that when she compiled her analysis of various telephone numbers, she was an employee of MTN Swaziland in the capacity of Chief Technical and Information Officer, and previously she was Senior Manager for Networks where her duties were to look after the whole network technology and also ensuring that she extract and analyse information on records and also information on customers from one tool is called concierge which provides customer information.

[122] Ms. Mkhonto testified that this customer care tool enables MTN Eswatini to get information about all numbers that are within MTN Eswatini.

[123] Ms Mkhonto testified that within the telecommunication industry what happens is that the call detail records are of high importance because any company that is a telecommunication company relies on this information for charging and also for customer queries and other information that can also be required when looking into call pattern and how customers are behaving. She testified further that it is important to ensure that the system is 100% uptime whereby there is one system which is working and the other on standby. She stated that Eswatini has two switches, one situate at Ezulwini and the other at Matsapha.

[124] She testified that if one system goes down, the other system takes over locally, if both go down, within the same switch than the one in the remote side takes over, and in that case it's like there are four systems in all. She testified further that when the other systems come back one of the things that is also critical is to ensure that the information is synchronised, which basically means that the information in the system should be the same throughout. This means that when the system comes out, it now checks from all other systems which were up to say at what level are you, what information do you have, so that at least at any given point in time there is similar information in the system. She testified further that as regards call records, there is a system which is called Call Details Records live (CDR) which permits capturing and steering of the call records for an extended period of time.

[125] Ms Mkhonto testified in Eswatini the call records are stored in the system for five years. This means that once all call records are captured and stored, a search for a call of interest can be performed while live capturing and storing continues on the background.

[126] Ms Mkhonto continued and testified that call records provide a call pattern like the called number and also the calling number, the time, duration, type of the call, the device used and even the base station. She clarified that base stations are those aeriels or towers that are found in the mountains most of the time. Ms. Mkhonto explained that each antenna serves like 120 degrees in such a way that for the three antennas serve like 360 degrees around that particular tower. Ms. Mkhonto testified that when dealing with cellular networks, there are hand overs between the base stations. In the call records it just shows that a call within one antenna and that call finishes within another antenna.

[127] Ms, Mkhonto testified that as per the request of the police, to provide information on certain cellular phone numbers, she was able to generate the information and prepare reports marked "TM1 – TM6" respectively and these are the reports which she testified on in detail.

[128] The reports prepared by Ms. Mkhonto and marked "**TM1 – TM6**" were referred to in Court as the "**TM series**" for convenience during the trial. The evidence of Ms. Mkhonto provided an insight as to how calls are made and captured in their call data records the MTN system. Her evidence is corroborated by the Principal Investigator D/Snr. Supt Sikhumbuzo Fakudze. There is criticism levelled against Mr. Fakudze in the manner in which he analysed the records, it was argued by the defence that Fakudze is not an expert in telecommunications and therefore he could not analyse the reports prepared by Ms. Mkhonto, the "TM series" because he was not trained to do so. I will deal with this aspect in my analysis of the whole evidence. Ms. Mkhonto as cross examined on the operations of the MTN network telecommunications systems in Eswatini in particular the extraction of call data reports. She confirmed that the numbers she analysed were all from D/Snr. Supt Fakudze.

[129]PW46 is 3004 D/Snr. Supt Sikhumbuzo Fakudze who testified that he is a member of the Royal Eswatini Police Services based at the Mbabane Hhohho Regional Police Headquarters in the capacity of Regional Crime Branch Officer (RCBO). He testified that he is the Principal Investigating Officer in this matter and that on the 14<sup>th</sup> January 2018 he commenced investigations of this matter after the murder of Victor Gamedze who was gunned down at the Galp Filling Station at Ezulwini. He prepared a report which contains the comprehensive details of his investigation.

[130]He testified that on the 14<sup>th</sup> January 2018 a report was made that someone had been shot dead at the Galp Filling Station at Ezulwini and acting upon that report he together with other officers proceeded to the scene of crime whereupon they found a lot of people who were crying, going up and down. There was a pool of blood on the ground just in front of the shop within the Filling Station. They cordoned the scene and made enquiries on what happened. He testified that Scenes of Crime Officer Sgt Chonco is the one who attended and examined the scene. Next to the pool of blood there was a white double cab bakkie, and after searching the scene they observed two empty cartridges next to the pool of blood.

[131]Investigations established that the person who was shot was Victor Gamedze and that he was conveyed to the Medisun Clinic where he was certified dead upon arrival at the Medisun Clinic. Information gathered revealed that the deceased was shot dead by a slim gentleman who shot Gamedze at short range whilst he was walking from the shop towards the double cab bakkie. The gentleman who shot Gamedze was said to have jumped onto a red VW sedan which was parked at the bus station enroute to Mbabane and the VW sped off.

[132] Mr Fakudze testified that amongst the people found there are Tony Zeeman, German Victor Gamedze and Ananias Khumalo who provided information at the scene of crime. He testified further that as investigations continued, they discovered that the Accused before Court had made threats to kill Gamedze when talking to other people. People who testified on these threats made by the Accused are Stephen Horton, Sipho Thulani Bhembe, Mike Mamba and Sifiso Mbhalo Hlophe.

[133] Mr Fakudze testified further that on the second day they revisited the scene of crime where they requested for the CCTV footage from the authorities of the Filling Station, and whilst at the Galp Filling Station they received information on the abandoned silver-grey Toyota Yaris motor vehicle at Mhlambanyatsi – Lundzi area. Mr. Fakudze instructed officers to attend to the Yaris led by D/Insp Patrick Dlodlu. The information discovered by Officer Dlodlu and the other officers intensified the investigations and led to the investigation at Super Spar Ezulwini, where a CCTV footage was also downloaded and it revealed the identity of some of the people involved in the murder of Gamedze. Further a road roll receipt issued at Ngwenya border on the 11<sup>th</sup> January 2018 around 1900 hours led Fakudze to investigate the Ngwenya border and obtained footage from the CCTV cameras installed at Ngwenya border.

[134] Mr Fakudze testified that the Toyota Yaris was suspected to be stolen because the registration numbers had been removed and the licence disc on the windscreen was also tampered with. The sim card and sim card holder as well as other documents in the car, the drink and empty cans in the Yaris also provided valuable evidence in the investigation of the case.



[135] I must state that the evidence of Officer Dlodlu on the Yaris and the contents thereof which were found where it was abandoned was confirmed and corroborated by both Tata and Ncaza in their accomplice evidence.

[136] Mr Fakudze testified further that at Ngwenya Border, the CCTV footage revealed that the Yaris entered Eswatini on the 11<sup>th</sup> January 2018 at around 19:37 hours, and also the driver of the Yaris who was later identified as Mbuso Ncaza Nkosi is seen in the CCTV footage downloaded from Ngwenya Border and is the same person who is seen in the Ezulwini Spar footage in the company of Dzodzo Zikalala as well as the gentleman who was later discovered to be Simphiwe Tata Ngubane.

[137] The CCTV footage of the Galp Filling Station Ezulwini which shows the suspect who shot and killed Victor Gamedze is corroborated by the Ngwenya CCTV footage which shows the same Simphiwe Ncaza Nkosi driving the Yaris into Eswatini on the 11<sup>th</sup> January 2018.

[138] Mr Fakudze testified that all the CCTV footages were downloaded by an expert from Dynamic IT, Ricardo Mordaunt and his colleague after he had obtained court orders to have such evidence downloaded from the aforesaid CCTV cameras at the Galp Filling Station Ezulwini, the Spar Ezulwini and the Ngwenya Border.

[139] Mr Fakudze testified further that the sim card holder discovered in the Yaris was handed over to MTN for it to be analysed and when that was done it was able to reveal the telephone number. He testified further that the trio of Dzodzo, Ncaza and Tata were already gazetted and were being circulated as wanted suspects for the murder of the deceased Victor Gamedze. The investigations led to Shield Guest

House where the trio were said to have been booked and Ntombifuthi Masuku an employee of the guest house confirmed the registration of the Yaris as well as the suspects Dzodzo, Tata and Ncaza that they were booked at her establishment on the 12<sup>th</sup> January 2018 and that on the Monday 15<sup>th</sup> January 2018 Tata Ngubane came to the guest house early in the morning and was looking for Dzodzo and Ncaza. He testified further that Ntombifuthi also identified the suspects in the pictures which were circulating in the newspapers.

[140] The evidence of Ntombifuthi Masuku is corroborated by the evidence of Tata and Ncaza themselves in their testimonies.

[141] Mr Fakudze testified on the movement of the accomplice witnesses from the 11<sup>th</sup> January 2018 until the murder of Victor Gamedze on the 14<sup>th</sup> January 2018 as well as their movement on the 15<sup>th</sup> January 2018, in particular Tata Ngubane. He testified that his investigations established that Dzodzo escaped from Eswatini and is believed to be in South Africa. He testified that on the 16<sup>th</sup> January 2018 they went to the homestead of Dzodzo at Msunduzi where they seized the red VW sedan registration CH 96 HD GP.

[142] Mr Fakudze testified further that MTN Eswatini was able to trace the cell number of the sim card holder found in the Yaris at Lundzi and that the number is 76776450. He testified that the information is contained in the "**TM series**" reports prepared by Ms. Mkhonto which are already part of the evidence before this Court.

[143] Mr Fakudze testified that the cell phone number 76776450 which he referred to as the "**Yaris number**" was discovered by Ms. Mkhonto from her analysis of the call details records as having been active in the MTN Eswatini system from 13<sup>th</sup>

January 2018 to the 15<sup>th</sup> January 2018. He testified that this **“Yaris number”** is linked to different person or users.

[144] Mr Fakudze testified that using the TM series reports he discovered that the Yaris number 76776450 revealed cell phone 76770021 because this number communicated with the Yaris number 76776450.

[145] Mr Fakudze testified further that the interview with Mcolisi Mbuyisa PW24 whose number is 76212469 also provided a link to the Yaris number 76776450 and 78203344 owned by Laura Zhavale PW20, as well as 76705151 owned by Bridget Zwane PW19. Further another link is 76655930 a number owned by Sifiso Hlophe PW21, who was the tenant of Dzodzo, the very same man Dzodzo phoned at 0130 hours on the 15<sup>th</sup> January 2018 to come and fetch him at Mhlambanyatsi. The Yaris number is also linked to South African number owned by Ncaza being 0027787097299. Mr. Fakudze was able to reference all these numbers and their link to the Yaris number through the TM series reports prepared by Ms. Mkhonto from the MTN call details report (CDR).

[146] Mr Fakudze testified that the Yaris number also communicated with cell number 76770021 and investigations revealed that it was used by Dzodzo, and this number 76770021 was used from the 14<sup>th</sup> January 2018 at 2019 hrs/ until the 18<sup>th</sup> January 2018. This number 76770021 its first communication was with 76769952 which through investigations revealed that it was used by the Accused, Sipho Shongwe before Court. Mr. Fakudze explained that it was through the interview with Sipho Mnisi PW11 who was an official of Matsapha United Football Club who testified that he received a call from the Accused in January 2018 when they discussed the signing of players and friendly games. This is the same witnesses who changed his evidence under cross-examination and further revealed that

he had met the Accused in prison and they discussed his testimony including this number 76769952 which the Accused denied being his number.

[147]The number 76212469 owned by Mbuyisa proved through investigations that 76770021 was belonging to Dzodzo.

[148]Mr Fakudze further testified that the number 76769952 which number belongs to the Accused before Court was also in communication several times with number 78025449 which Fakudze investigated and found that it is owned by Vuyiswa Siyaya, the wife of the Accused. Files from Swaziland Water Services Corporation revealed that 78025449 is owned by Vuyiswa Siyaya. Further the Registrar of Companies also proved before Court that 78025449 is owned by Vuyiswa Siyaya the wife of the Accused before Court.

[149]Mr Fakudze testified that number 76769952 owned by the Accused person also communicated with 76065377 owned by Mduduzi Bhekizulu Dlamini a friend of the Accused and he frequently visits the Accused.

[150]Mr Fakudze testified that on the 11<sup>th</sup> January 2018 at 2018 hours Vuyiswa Siyaya using her number 78025449 called the Accused on his number 76769952, and from there this number 76769952 was terminated from the MTN network.

[151]He testified further that on the 11<sup>th</sup> January 2018 at 0827 hours Sifiso Mnisi PW11 the Matsapha United official using his number 76025952 called the Accused on his number 76769952 and they talked for 386 seconds. There was another call from the Accused's number 76769952 to Siph

Mnisi's number 76025952, and they communicated for 64 seconds.

[152] Fakudze testified that again on the same day 11<sup>th</sup> January 2018 at 1828 hours the Accused using 76769952 called Mnisi's number 76025952 and they communicated for about 122 seconds. This is the same Mnisi who at first testified in Court that the number 76769952 which had called him belong to the Accused and then only to change his testimony under cross-examination and further revealed under cross-examination that he visited the Accused in prison and they discussed the evidence before the trial started wherein the Accused informed him that the said number 76769952 does not belong to him. If Mnisi was honest he should have disclosed his meeting with the Accused in prison to the police, and also disclosed that the Accused had told him that the number 76769952 does not belong to him.

[153] I find it very difficult to believe the evidence of Mnisi under cross-examination when he made a U-turn and pretended not to know that the number 76769952 belonged to the Accused. This is because,

- (i) he recorded a statement to the police wherein he stated that the number belonged to the Accused;
- (ii) he testified in chief during the trial and maintained that the number belonged to the Accused and that he had talked to the Accused in January 2018;
- (iii) under cross-examination he changed his testimony in chief and testified that he was not sure as to who is the owner of the number 76769952;
- (iv) further under cross-examination he disclosed for the first time that he had visited the Accused on numerous

occasions in prison and they discussed the evidence of this trial, and the Accused informed him that the number 76769952 did not belong to him;

- (v) the brilliant analysis of TM series report by D/Snr. Supt Fakudze has revealed that the Accused and Mnisi communicated on numerous occasions on the 11<sup>th</sup> January 2018 for: -
- 386 seconds;
  - 64 seconds; and
  - 122 seconds.

[154] It must be borne in mind that the different cell phone numbers which Ms. Mkhonto used to prepare the TM series reports from the Call details report in the MTN Eswatini network system were provided by D/Snr. Supt Sikhumbuzo Fakudze after he conducted the extensive investigations with his team of police officers. These numbers were obtained by Fakudze and his officers and then handed over to Ms. Mkhonto for analysis through her expertise and she was not able to attribute any number to any person because at that time the Vela system of registering sim cards was not yet in place, however her evidence provided the much needed information to Mr. Fakudze because of her testimony regarding the network base stations, or towers, how the towers handover or convey signal from tower to tower when a person makes calls whilst in transit and also the site or place of the tower responsible for the signal i.e. the name of the place where the call is made, and even which antenna was conveying the signal regard being had that Ms. Mkhonto testified that each tower or base station has three antennas each covering 120 degrees to enable the tower to give signal to a cell phone maximum use without breaking the signal, to the extent that even the three antennas hand over the signal to each other within the same tower to enable the cell phone to enjoy consistent connection whilst in transit and the same goes for the tower to tower handover where the cell phone user is in transit.

[155] Mr Fakudze's analysis of the "TM series reports" had also provided the following cell phone evidence as can be seen from reference TM3 page 267-268 as follows: -

i)	76769952 called	0027 834 800 554	0803 hours
ii)	76769952 called	0027 834 800 554	0839 hours
iii)	76769952 called	0027 834 800 554	0908 hours
iv)	76769952 called	0027 834 800 554	1259 hours
v)	76769952 called	0027 834 800 554	1306 hours
vi)	76769952 called	0027 834 800 554	1744 hours
vii)	76769952 called	0027 834 800 554	1823 hours
viii)	76769952 called	0027 834 800 554	1827 hours
ix)	76769952 called	0027 834 800 554	1830 hours
x)	76769952 called	0027 834 800 554	1847 hours
xi)	76769952 called	0027 834 800 554	1850 hours
xii)	76769952 called	0027 834 800 554	1855 hours
xiii)	76769952 called	0027 834 800 554	1856 hours
xiv)	76769952 called	0027 834 800 554	1952 hours
xv)	76769952 called	0027 834 800 554	1959 hours
xvi)	76769952 called	0027 834 800 554	2000 hours
xvii)	76769952 called	0027 834 800 554	2001 hours
xviii)	76769952 called	0027 834 800 554	2007 hours

[156] Mr Fakudze testified **that all these calls referred to above** were made by the Accused using 76769952 to Dzodzo's South African number 0027 834 800 554 on the 11<sup>th</sup> January 2018 whilst Dzodzo was in South Africa with Tata and Ncaza and they were enroute to Eswatini.

[157] Mr Fakudze testified that the number 0027834800554 belongs to Dzodzo because this number was confirmed by the following people whom Dzodzo called when he was in South Africa.

(i) 0027 834 800 554 called PW10 Gugu Mamba on her number 76299518;

(ii) 0027 834 800 554 called PW29 Phathwakahle Tetamile Lukhele on her number 78449541.

[158] Mr Fakudze emphasized that after the last call from Accused number 76769952 to Dzodzo's number 0027 834 800 554 at 2007 hrs on the 11<sup>th</sup> January 2018, the number 76769952 was terminated from the MTN network and the Accused started using 76770137 communicating with Dzodzo on his number 76770021.

[159] Mr Fakudze testified that the communication between the Accused and Dzodzo was on the day the two, Dzodzo and Tata illegally jumped the fence into Eswatini and Ncaza was picked by the CCTV cameras at Ngwenya Border whilst crossing into the country driving the silver-grey Yaris, and Ncaza himself confirmed that in his accomplice testimony.

[160] Mr Fakudze further testified that Mbuso Ncaza Nkosi using number 0027 787 097 299 was called by the Accused Sipho Shongwe on the 11<sup>th</sup> January 2018 in his number 76769952 as referenced in TM3 page 268 as follows: -

- i) 76769952 called 0027 787 097 299 @ 1904 hours
- ii) 76769952 called 0027 787 097 299 @ 1923 hours
- ii) 76769952 called 0027 787 097 299 @ 1925 hours
- iv) 76769952 called 0027 787 097 299 @ 1926 hours
- v) 76769952 called 0027 787 097 299 @ 1927 hours
- vi) 76769952 called 0027 787 097 299 @ 1928 hours
- vii) 76769952 called 0027 787 097 299 @ 1932 hours
- viii) 76769952 called 0027 787 097 299 @ 1937 hours
- ix) 76769952 called 0027 787 097 299 @ 1938 hours



- x) 76769952 called 0027 787 097 299 @ 1956 hours
- xi) 76769952 called 0027 787 097 299 @ 2001 hours

On the 11<sup>th</sup> January 2018 at 1924hours and 1926hours Sipho Shongwe using number 76769952 communicated with an RSA number 0027761967615. Sipho Shongwe had on a previous occasion on the 1<sup>st</sup> November 2017 using his number 76065652 communicated with the same RSA number 0027761967615.

[161] Mr Fakudze testified that this is the time range on the 11<sup>th</sup> January 2018 which appears on the SRA Road Toll receipt when Ncaza was actually captured on the CCTV footage paying for the said road toll receipt. In his testimony Ncaza himself testified that whilst executing his unlawful entry into the country he was on the phone continuously with Shongwe the Accused who was directing him on how to execute his illegal entry at Ngwenya Border. Ncaza is seen in the CCTV footage inside the Immigration Department and SRA section continuously on the phone. Ncaza's evidence corroborates the evidence of Mr. Fakudze. Fakudze testified further that the last call from 76769952 to 0027 787 097 299 at 2002 hrs was now picking the signals of Ngwenya Mines and Motshane network points.

[162] Mr Fakudze testified further that the Accused's normal number 76065652 was utilising handset serial number 359467 0737288501. Further investigations revealed that the Accused's other number 76476629 also utilized the same handset with the serial number mentioned herein above. This was during the period 20<sup>th</sup> November 2017 to 5<sup>th</sup> December 2017.

[163] Mr Fakudze testified further that he proved that the number 76065652 was owned by the Company V-Track whose director is the Accused, Sipho Shongwe. This evidence was

tendered before Court by the Registrar of the Companies Msebe Malinga. Further there is another number being 76376629 also linked to the Accused which also utilised the same handset serial number referred to above. Further there is another number 78494836 linked to the Accused and used on the same handset serial number referred to above wherein he communicated with his wife Vuyiswa Siyaya on her number 78025449.

[164] Mr Fakudze testified further that there is another handset serial number which was utilising numbers which were discovered through investigations to be owned by the Accused. This handset serial number is IMEI 3572560517223340. These numbers are 76476629 and 76981781.

[165] Mr Fakudze stated that another handset serial number IMEI 3573280856610607 was utilized by cell numbers 76476629 and 76981781. Further the Accused's normal number 76065652 utilized a gadget with serial number IMEI 3456345691082628. Further Fakudze stated that investigations also revealed that cell number 76981781 belonging to the Accused communicated with Dzodzo from 4<sup>th</sup> January 2018 to the 14<sup>th</sup> January 2018, whilst in a handset with serial number IMEI 13572560517223340. Fakudze's testimony is that all these number have been in the hands of the Accused.

[166] Mr Fakudze further highlighted that through his investigations and analysis of the "TM series reports" he was able to use the network towers to monitor the movement of the Accused and his accomplices in the murder of Victor Gamedze. During his testimony he was able to determine that on the 14<sup>th</sup> January 2018 in the early evening around the time when Victor Gamedze was killed, the Accused was at home Ngculwini because the cell phone number 76770137

was at 1548 hrs picking the signal of Lwandle Farm and Lugaganeni.

[167] Fakudze testified further that still on the same day 14<sup>th</sup> January 2018 number 76770137 was picking Lwandle Farm at 1552 hrs and at 1741 hrs same number was picking Lwandle Farm. Fakudze highlighted that he was certain that when Victor Gamedze was shot dead by Mbuso Ncaza Nkosi between 1800 hours and 1900 hours at Galp Filling Station Ezulwini on the 14<sup>th</sup> January 2018, the Accused was home at Ngculwini. Fakudze stated that he agrees with the Accused's statement which he made in his bail application that he was at home at Ngculwini on the day 14<sup>th</sup> January 2018 when Victor Gamedze was murdered. Officer Fakudze highlighted further that all his analysis of the cellular phone evidence was based solely on the call details report prepared by Ms. Mkhonto from cell phone numbers which he had forwarded to Ms. Mkhonto to analyse utilising her expertise.

[168] Mr Fakudze testified that cell phone number 76476629 belonging to the Accused was picking Uneswa Kwaluseni tower with internet messages at 2205 hours. Fakudze testified further that the last call between the Accused using cell number 76770137 and Dzodzo using 76770021, was on the 14<sup>th</sup> February 2018 at 1741 hrs where the Accused was picking the Lwandle signal, reference TM6 page 11 from the MTN data analysis.

[169] Fakudze testified that in the afternoon of the 14<sup>th</sup> January 2018 on the day of Gamedze's death, the Accused utilising cell number 76770137 was communicating with Dzodzo, Tata and Ncaza on his number 76770021 which was picking the Lobamba SPTC, Lobamba Fire Station. This was in the afternoon of the 14<sup>th</sup> January 2018 when Dzodzo, Ncaza and Tata were in the stadium still hunting for the deceased, Victor Gamedze.

[170] Mr Fakudze emphasised in his testimony that cell number 78025449 was owned by Vuyiswa Siyaya Mrs. Shongwe from 27<sup>th</sup> March 2013 to the 25<sup>th</sup> May 2018 after the arrest of the Accused. This was revealed by Msebe Malinga when he testified that Vuyiswa was a Director of Office Buddies and 78025449 her number as reflected in the Registrar of Companies records.

[171] The same number was also confirmed by Mr. Sikhumbuzo Tsabedze from Swaziland Water Services Corporation where Office Buddies had a water utility account, and again the number was reflected as a contact number for Vuyiswa Siyaya in SWSC records.

[172] Mr Fakudze demonstrated at great length and in detail how the numbers 78025449 and 76922942 belonging to Vuyiswa Siyaya, as well as cell number 76466629 owned by the Accused were picking signals from Lwandle and also picking Matsapha, Mfabantfu, Logoba hill which shows that there was movement from one place to another. The point is Fakudze wanted to prove that the numbers 78025449 and 76922942 were owned by Vuyiswa Siyaya corroborated by the evidence of Msebe Maling and Sikhumbuzo Tsasbeze respectively. Fakudze testified that all this evidence was sourced from the call data report from MTN as per the TM series prepared by Ms. Mkhonto.

[173] Mr Fakudze testified that the number 78025449 owned by Vuyiswa Siyaya and the number 76065652 and 76476642 owned by the Accused have on numerous times been using the same handset serial number IMEI 359 467 073 728 8501. Cell number 76922942 also used a handset with serial number IMEI 359 775 748 13704 also owned by Vuyiswa Siyaya. He testified further there is number 7849 4836 which was also using a gadget with serial number IMEI 359467073728501, and this is the same handset which is

used for 76476642 and 76065652 which numbers are owned by the Accused before Court. Fakudze concluded, and in my view, correctly so that Vuyiswa Siyaya and her husband, the Accused were staying together since their numbers were interchanging gadgets and also picking the same tower or towers signal.

[174] Mr Fakudze testified that the Accused was arrested at the Ngwenya Border on the 19<sup>th</sup> January 2018 in the company of his wife, Vuyiswa Siyaya. He was cautioned in terms of the judges' rules and detained in custody. After he had been cautioned, he did not want to say anything concerning the case but freely and voluntarily revealed his numbers to the police as 76065652 and 76476629. He was thereafter charged with the murder of Victor Gamedze.

[175] It is my view that the numbers herein referred to above 76065652 and 76476629 clearly prove that the number 78025449 belonged to Vuyiswa Siyaya, the wife of the Accused which corroborates the evidence of Mr. Fakudze because these numbers communicated with each other as demonstrated in the TM series reports relied upon by Mr. Fakudze. The denial by the Accused that his wife's number is not 78025449 has no merit.

[176] Mr Fakudze also led the evidence of the CCTV footage in respect of the Galp Filling Station Ezulwini, Super Spar Ezulwini and the Ngwenya Border. He also handed into Court all the exhibits including the two motor vehicles, to wit the red VW Polo GTI and the Silver-grey Toyota Yaris. All this evidence was corroborated by Ncaza and Tata in their accomplice evidence.

[177] Mr Fakudze further testified that the accomplice witnesses Mbuso Ncaza Nkosi and Simphiwe Tata Ngubane were

arrested by Interpol in the RSA, and that extradition proceedings were commenced. Whilst in custody, they made affidavits indicating that they wanted to co-operate and testify. An AVL application was prepared however the two eventually came to Eswatini to testify in person.

[178] Mr Fakudze was subjected to a lengthy and vigorous cross-examination by the defence, and in my view his evidence in chief remains credible and trustworthy. His evidence was corroborated in the main by the testimony of Tata and Ncaza. The swift action in the investigation of this matter saw Tata and Ncaza arrested within a few days of Victor Gamedze's death and even the Accused himself was arrested within a record time of at least five days from the date of the gruesome murder of Victor Gamedze.

[179] As soon as the CCTV footage from the Galp Filling Station started circulating in the newspapers, pressure mounted on all the suspects. Dzodzo disappeared leaving behind the red VW Polo GTI which he drove on the 14<sup>th</sup> January 2018 whilst they desperately hunted the deceased Victor Gamedze like a dangerous animal, and which Polo GTI was also used as a getaway car from the vicinity of the Galp Filling Station Ezulwini, the scene of crime.

[180] Mr Fakudze was heavily criticised for the manner in which he articulated his analysis and interpretation of the TM series prepared by Ms. Mkhonto from the MTN Eswatini network, it being alleged that he is not an expert in telecommunications and therefore not qualified to refer to the telephone records. In my view this criticism has no merit because Mr. Fakudze did not personally perform the duties of Ms. Mkhonto because he is not qualified to do so, but what he did was conduct extensive investigations wherein he obtained telephone numbers from various witnesses and then handed these to Ms. Mkhonto for her to scientifically obtain the data

from the MTN Eswatini network. Ms. Mkhonto indeed obtained the call data records using her expertise and compiled her extensive report, the TM series which contained information of the call records or data which had been requested by Mr. Fakudze through a Court Order.

[181] Mr Fakudze having obtained the TM series then started analysing the numbers one by one and was therefore able to testify before this Court because the numbers which Ms. Mkhonto analysed were numbers which were known to him which he had obtained from his extensive investigations with his team of police officers.

[182] PW47 is Mbuso Ncaza Nkosi, he is an accomplice witness and after having been duly cautioned by the Court in terms of Section 234 of the Criminal Procedure and Evidence Act No. 67/1938 as amended, testified that he is a South African National and currently in custody serving a sentence of ten (10) years for attempted murder imposed on him in 2018.

[183] He testified that the events which link him to this case started when Faruk Meyers who was known to him called him to come to his place at Eldorado Park on the 8<sup>th</sup> January 2018 to meet people from Eswatini pertaining to a job or assignment.

[184] Ncaza testified that because he was someone in need of money at the time, he was filled with excitement that there are people who want to give him a job, since it was January and there were no jobs.

[185] Ncaza testified that he immediately went to Faruk's place, and did not find Faruk, he then called Faruk on his phone and Faruk told him to look around for Shongwe. Indeed, he

entered Faruk's workshop and found two gentlemen, and one called him and said "**are you Ncaza**" and he agreed, and the gentleman introduced himself as Sipho, and his companion as Charlie.

[186] Ncaza said on this day when he met these two, the Accused and Charlie he was alone. He got to know of Charlie's other name Dzodzo after he was arrested. Ncaza was able to recognise and identify the Accused in the dock with ease.

[187] Ncaza testified that the Accused introduced himself by saying he has a job in Swaziland, a different job compared to the job he is used to do with Faruk and others. Ncaza said the Accused told him that there was someone in Swaziland who was ill-treating him by closing all his ways of selling and getting drugs into the Country. Ncaza testified that the Accused asked him if he could do the job for him and he (Accused) was going to pay him R80,000.00. Ncaza testified that the Accused said he could kill this person himself but in Swaziland it would be known that it is him who killed this person, and therefore he wanted him (Ncaza) to kill this man. Ncaza testified that he told this man in the face that he was not a hitman and cannot do that job for him, and he stood up and walked out the gate. Ncaza testified that as he was about to exit the gate, he heard the Accused saying he doesn't know who he was talking to. Ncaza testified that he ignored the man and entered his car and drove away.

[188] Ncaza testified further that on the following day in the morning at around 9:00 a.m. on a Tuesday, he received a call from an unknown caller. The person on the other end of the line was threatening him saying because he now knows about the job then he (Ncaza) is the one who is supposed to do it, and that if (Ncaza) does not do the job then they were going to deal with Ncaza's family. The person further said they know where his firstborn child is schooling and also know



where he stays. The person further said he knows that his (Ncaza's) girlfriend whom he staying with at Kempton Park is pregnant, and that if Ncaza doesn't do this job he will deal with him because he even knows Ncaza's home in Dube. Ncaza testified that he was scared, and he tried to call Faruk but he did not pick his phone. Ncaza testified that the person who called him is the Accused, Sipho Shongwe before Court.

[189] Ncaza testified that he tried several times to call Faruk on the phone to find out what is happening but Faruk did not respond. At that moment the person who had been threatening him called him again said they must meet at Faruk's place where they met the previous day, Ncaza testified that this person who was calling is the Accused Sipho Shongwe before Court.

[190] Ncaza testified that at that juncture he called his friend Tata who came to him as soon as possible thinking that there was a serious job. When Tata arrived, he told him that there was a job concerning money since he knows that Tata is always interested in jobs that include money just like himself. Ncaza testified that he told Tata that they should go to Faruk's place because the people who were going to give them the instructions are there at Faruk's place.

[191] Ncaza testified that at that stage the man called again asking where he was and he advised him that he was on the way to Faruk's place. Along the way Tata asked to buy two beers from a tavern nearby and then Ncaza told the Accused that he was coming with his friend, and that they must not tell him that there are threats, as he (Ncaza) had only told him about money. Ncaza testified that it was Sipho Shongwe he was talking to.

[192] Ncaza testified that he did not tell Tata about the threats since he knew Tata could pick a fight with those people when already his (Ncaza's) family was in trouble. Ncaza testified that he did not tell Tata that he had actually been hired under threats to kill.

[193] This evidence corroborates the evidence of Tata Ngubane when he testified that he did not know that the deceased was to be killed, but what he knew was that the deceased was going to be robbed of the money which he always kept in his car. Further the conduct or behaviour of Ncaza and Dzodzo immediately after Ncaza shot Victor Gamedze of escaping from the scene leaving Tata there also corroborates Tata's testimony that he did not know that Victor Gamedze was going to be killed. From the evidence it appears that from the 11<sup>th</sup> January 2018 in the evening when they entered Eswatini until the 14<sup>th</sup> January 2018 when Ncaza shot Victor Gamedze at the Galp Filling Station, there were many instances when Dzodzo and Ncaza would leave Tata alone in the Guest House whilst the two went out.

[194] Further even on the Friday evening the 12<sup>th</sup> January and on the evening of Saturday the 13<sup>th</sup>, the pair went out together leaving Tata alone in the Guest House. Even when those men who were dressed in suits came to the Guest House to tell them that the job must be done on the Sunday, they found Tata alone. Even when they separated in the midst of the night after abandoning the Yaris car and they took Tata's phone to search for Ncaza's phone they again abandoned him to the extent that he didn't know how Ncaza eventually got back to South Africa. These instances corroborate the testimony of Tata that he did not know that Victor Gamedze was going to be killed.

[195] Equally these instances corroborate and give credence to Ncaza's own testimony that Tata did not know that Victor

Gamedze was going to be killed. It is for that reason why Tata was surprised and demanded an explanation from the two Dzodzo and Ncaza on why Victor Gamedze was killed in the garage and why did they didn't stick to the original plan i.e., the robbery and again they could not provide an answer at the Guest House, except that Ncaza told him that he (Ncaza) was going to explain later.

[196] Ncaza testified that the reason he wanted Tata to come along was because he wanted him (Tata) to keep an eye on him, to watch and see everything that was going to happen, so that if something bad happens to him, Tata would be a witness to say what happened to him.

[197] Ncaza testified that they arrived at Faruk's place and found Sipho together with Charlie. They all sat down and Sipho was wearing a white t-shirt, some brown shorts and sandals. They all deliberated on the robbery of the person in Eswatini, and the need for working tools namely a car and the gun and at that juncture Sipho took out an amount of R10,000.00 (Ten Thousand Rands) saying it was for purchasing a car since he knew that Ncaza and Faruk were dealing with cars. Ncaza testified that at that time he called some gentlemen that were stealing cars in Orlando West. The money was R10,000.00 in R20.00 notes, and was contained on a plastic and was handed over to him whilst Tata was not with them but was on the other side of the car.

[198] Ncaza testified that the R10,000.00 was for purchasing a stolen motor vehicle to be driven to Swaziland and be used to carry out the job of taking the money from the person who goes around carrying huge sums of money. He testified further that the idea between himself and Sipho and Dzodzo was to kill the person he was hired to kill but the issue of money was a strategy to lure Tata to be present because if Tata had known that blood was going to be spilled, then he

(Tata) would have refused to come, yet he (Ncaza) needed him badly to be there. Otherwise, the real job was to kill, so testified Ncaza.

[199] Ncaza testified that they drove to Orlando West with Tata and purchased the Toyota Yaris, silver-grey in colour for R7 000.00 (Seven Thousand Emalangeni) and he Ncaza then called Charlie who approved of the car and since it had no keys and the ignition was broken so they discounted R500.00 and he eventually paid R6,500.00, and they drove the car and parked it at Faruk's workshop where it was fitted with fake number plates. This was done by himself, Faruk and Tata. Ncaza testified that he called Charlie and informed him that the car was now ok, and Charlie said they must meet on the following day, the Wednesday.

[200] Ncaza testified that indeed on the Wednesday Charlie called and told them to pick him up at the Dom a nearby location around Sandton, and indeed they met Charlie, filled the car with fuel and then drove to Middelburg. In the car, there was Ncaza himself who was driving Tata and Charlie.

[201] Along the way Sipho called Charlie asking why they have not arrived and Charlie explained that it got late, Charlie referred to Sipho as **"uncle"**, and Sipho also talked to Ncaza after Charlie handed the phone to Ncaza to talk to Sipho, and Sipho assured Ncaza that he had arranged everything at the border so that they cross through. Since it was late, they spent the night at the Sun Hotel in Middelburg.

[202] Ncaza testified that on the following morning they drove to a location in Middelburg where they met a gentleman known by Charlie, who was driving a Ford Ranger. From there they drove to Carolina where they purchased food and had the Yaris tinted on the windows. From there they drove to

Badplaas to while away time since Sipho had instructed that they get to the border at least at 1800hours, however they eventually left for the border around 18:45 hours.

[203] Ncaza testified that when they arrived at the border, he saw trucks and Charlie instructed him to park next to the trucks and that Charlie and Tata would alight and he told Ncaza that Sipho will call to give instructions on how to cross into Swaziland. Charlie directed that he was to collect a paper under a dustbin. In the toilet Ncaza found Charlie who gave him the E50.00 road toll fee and as Ncaza entered the Yaris, Sipho called and directed him on how to proceed to the Swazi side, and Ncaza testified that he was constantly on the phone with the Accused who was directing him on which window to go to in order to pay the E50.00, he was alone at that time since Charlie informed him that Tata and himself (Charlie) were going to jump the fence.

[204] Ncaza testified that Sipho Shongwe was calling him on his number 078 709 7299. After paying the E50.00 he called Sipho Shongwe who then directed him to drive to the security point where he will only open the boot of the Yaris, Ncaza did just that and entered Eswatini and Sipho had told him to park there at the Shopping Centre next to the border. Ncaza testified that he recognised the voice of Sipho Shongwe when he called and directed him on how to illegally enter Eswatini.

[205] Ncaza testified that when he paid the E50.00 the paper he had picked from underneath the dustbin was stamped.

[206] Ncaza testified that at the Shopping Centre Charlie and Tata arrived and got into the car and Charlie told him to drive and gave directions.

[207] Ncaza testified that when Charlie instructed him to drive, he told them that they were going to meet Shongwe, and indeed they met him nearby at a certain place and he was driving a Mercedes Benz SUV similar to an X5. Ncaza testified that Shongwe came to their car carrying a plastic with a rolled towel inside wherein there were two guns, and he gave them those two guns and a new phone and a starter pack, and he also gave Charlie some money. Sipho left and said they will talk later.

[208] Ncaza testified that Charlie / Dzodzo knew the person who was going to be killed and was going to guide him, although Tata did not know about the killing part, he (Tata) only knew about the robbery to steal the money.

[209] Ncaza testified that when they arrived in Mbabane, they started searching for the person to be killed, they started in Mbabane where Dzodzo took them to a huge building which was dark and underneath it they were selling cell phones and Dzodzo said this is where the target was working.

[210] They further proceeded to a block of flats and Dzodzo seemed to be getting lost, and at that time Sipho called asking Dzodzo if he was able to locate the place but Dzodzo said he was not able to locate the house, Sipho was a bit upset but then said the house will be seen tomorrow since its dark. Ncaza testified that they then went to look for the Guest House and they arrived there and Dzodzo knocked without success and they eventually slept in the car.

[211] Ncaza testified that the following morning the lady who works at the Guest House booked them in. Her name is Ntombifuthi Masuku. After booking at the Guest House they all went to town to buy some t-shirts at Pep to change. This was on the

Friday the 12<sup>th</sup> January 2018. They again searched for the target man but were unsuccessful.

[212] The evidence of Tata and Ncaza corroborate each other in material respects all the way from Johannesburg to Eswatini and the places where they searched for the target man on the Friday, Saturday and eventually on the Sunday, 14<sup>th</sup> January 2018 when Victor Gamedze was eventually shot by Ncaza at Galp Filling Station at Ezulwini. The evidence of both Ncaza and Tata also corroborate each other in so far as the events after the murder of Gamedze, how they eventually met at the Guest House, collected their items and Tata drove the Yaris directed by Dzodzo to the escape route which Dzodzo and the Accused had identified.

[213] Ncaza testified that on the Saturday, the 13<sup>th</sup> January 2018 when they were having their meal at the Guest House, he demanded from Dzodzo to be shown the target, and Dzodzo called Sipho and informed him about that and Sipho then instructed Dzodzo to show Ncaza and Tata a photo of the target man, and Dzodzo opened his cellular phone and showed them a picture of Victor Gamedze.

[214] Ncaza testified further that after they had seen the photo of the target man, Sipho Shongwe called him and informed him that he has now removed the powers of the target person through “inyanga” so it was going to be easy to kill him. This call was made through the phone Sipho gave them on the Thursday 11<sup>th</sup> January 2018 when they arrived in the Country. Ncaza testified that Sipho requested that he should not disappoint him because he (Ncaza) knew their deal.

[215] Ncaza testified that on the Saturday they went to Ezulwini Spar to buy food and upon their return Sipho called and said he was preparing plans for the exit with the police and

soldiers. Ncaza testified that Sipho called again saying they should meet he wants to take Charlie and show him the escape route. Indeed, they met at a certain area near a tavern and Sipho was driving a green Polo with Eswatini plates. Charlie went to Sipho's car and then Sipho came to the Yaris and gave Ncaza E1,000.00 for food. Sipho and Dzodzo drove away and Ncaza and Tata drove in the Yaris to Solanis since Tata said he likes the food there. That was when they met the ladies, Laura Zhavele and Bridget Zwane and exchanged phone numbers. Ncaza testified that he gave the lady at Solanis his South African number. These are the numbers which Mr. Fakudze and his team found through their investigations and forwarded them to Ms. Mkhonto who obtained the call data on these numbers. Ncaza's South African number 0027 78 709 7299 communicated with Sipho Shongwe on his number 76769952 on the 11<sup>th</sup> January 2018. Ncaza also gave this number to Laura Zhavale and further called her, Ncaza also called Bridget Zwane on this number, and it's the very number which Ncaza and Tata used when calling Ntombifuthi Masuku on the 12<sup>th</sup> February 2018.

[216] Ncaza testified that when they went back to the Guest House, they found Dzodzo and he informed them that uncle (Accused) had shown him the escape route. The three of them again searched for the target man on the Saturday and were unsuccessful, at some point in time Dzodzo left them in the bush next to the home of the target person but the target man did not come and they eventually returned to the Guest House.

[217] Ncaza testified that on the Saturday, 13<sup>th</sup> January 2018 when they were at the Guest House having returned from searching for the target person, Sipho called and told him that the person will be at the stadium tomorrow, the 14<sup>th</sup> January 2018, his team is playing, and further told him that he will tell them the time to leave because he (Sipho) was still going to monitor the target and see how he is going to travel. This



was on the Saturday evening. Ncaza testified that Sipho further told him that after he had completed the job, he would take him to his traditional healer to be cleansed. Ncaza said he became suspicious that he was going to be killed.

[218] Ncaza testified that on the Sunday Sipho called and said the person was at the stadium, and then they left and went to the stadium and Charlie paid for their tickets. They entered the stadium and then Charlie told Ncaza to come with him so that he could see the target and they went to the VIP section.

[219] At the entrance to the VIP section there was a police officer who told them that they could not enter there as there were prominent people, however Dzodzo was eager to show him the target man and he in fact did identify Victor Gamedze to him using his head.

[220] Ncaza testified that he thereafter sat on the stands and during half-time Dzodzo told Tata to follow him so that he could also show Tata the target man. Dzodzo said he was going to hug Victor Gamedze as he was now out of the VIP section, and indeed they went up the grand stand, and indeed Dzodzo hugged Victor Gamedze, and Victor also hugged Tata. The match commenced and as the target man was climbing up the grand stand, he looked at Ncaza and Ncaza was unsettled by that gesture, thinking that maybe the target man was now aware of him.

[221] As Tata also testified that he and Dzodzo went out of the stadium and returned later when the match had finished, Ncaza also corroborates that testimony.

[222] Ncaza testified that after the match he tracked the target man and called Dzodzo and Tata when he saw the target man

entering his car and took off his white cap, and told them that the person was leaving now and they quickly came and then they started following and monitoring him through the traffic along the highway and off ramp until he entered the garage, Dzodzo also parked along the road below the garage and at that time Tata complained of stomach ache, and he then went to a bushy area to relieve himself.

[223] Dzodzo gave Ncaza the gun and a cap and then he said he will remove the rear plates of the VW Polo GTI which was parked by the roadside.

[224] Ncaza testified that he then went to the garage and saw the car they had been following, he approached the car from the back and when the target man exited from the shop, he took out the gun and came to the target man and shot him twice in the head and then ran to the red VW Polo and they drove away with Dzodzo. The deceased was driving a white double cab bakkie.

[225] Ncaza testified that they left Tata behind next to the garage after he had shot the deceased Victor Gamedze. However, they later met at the Guest House when they came in a taxi after leaving the Polo GTI somewhere. When they got to the Guest House, they packed their belongings and Tata asked him why he shot the man, and Ncaza testified that he asked Tata to wait as he was emotional. They boarded the Yaris and Tata drove whilst being directed by Dzodzo to the same place where there is a tavern, and they stopped because Dzodzo wanted to purchase beers. Indeed, he purchased flying fish, dry lemon and a few beers. At that time whilst Dzodzo was in the tavern Sipho called asking where they were and Ncaza informed him, Sipho then said they must leave immediately, and when Dzodzo came back they drove for a long time along the forest until they reached a gravel road

and then Dzodzo instructed Tata to park the car facing the forest direction.

[226] Indeed, they parked the car, and Dzodzo instructed Ncaza to remove the number plates which he did and threw them so close to the car, they left the beers and other drinks and the receipts and other documents were left in the car and they embarked on the rest of their journey on foot. Ncaza testified on all the items which had been left in the car including the number plates, the cooldrink cans, beer cans, the receipts etc. Ncaza's evidence corroborated the evidence of Tata, Detective Dlodlu and Officer Bheki Dlamini.

[227] Ncaza testified that he left a trail of evidence so that he is arrested and then disclose everything and the truth comes out, because he together with his family were threatened by Sipho Shongwe if he did not kill the deceased Victor Gamedze.

[228] Ncaza also testified about the affidavit of Advocate Nthabiseng Mahomane and corroborated Tata in material respects how she visited them in prison and offered the R700,000.00 cash plus R2 million worth of drugs if they agree not to testify against the Accused, Sipho Shongwe and then depose to the affidavits which had already been irregularly commissioned by the Commissioner of Oaths, and they refused and requested her to leave the affidavits with them as they wanted to consider the offer.

[229] Ncaza further corroborated Tata that Advocate Mahomane further attempted to appear in Court on their behalf but they objected and she was embarrassed and eventually left Court in shame. However, during her appearance the Swazi team led by Mr. Fakudze was there and they saw Advocate

Mahomane themselves, something which Ncaza and Tata wanted to happen.

[230] This whole scenario or incident of Advocate Mahomane is a clear indication of guilt on the part of the Accused. If he says he doesn't know the accomplice witnesses, Ncaza and Tata as he has said, then why send Advocate Mahomane to attempt to interfere with potential Crown witnesses, let alone these accomplice witnesses.

[231] The CCTV footage of Ngwenya border was played in Court and Ncaza testified that he is the person in the footage and he was on the phone talking to Sipho Shongwe who was telling him how and where to pay the road toll. Further in another video Ncaza confirmed that it was him driving the Toyota Yaris and handing the piece of paper to the official which he had found under the dust bin, and he reiterated that it was Sipho Shongwe who told him that he is going to get it under the dustbin and he did.

[232] Ncaza was also shown the video of the Ezulwini Spar and he confirmed that it was him, Dzodzo and Tata. He further confirmed the video of the 14<sup>th</sup> January 2018 at the Galp Filling Station where he was seen shooting the deceased, Victor Gamedze. Ncaza also testified about the many attempts to interfere with their evidence including the delivery of a bus at his homestead in Soweto apparently from the Accused. This bus contained papers of Matsapha United Football Club. Even Ncaza's mother testified about the bus and she is the one who produced the papers written Matsapha United Football Club.

[233] In my view all these attempts to interfere with the evidence of these witnesses is both circumstantial evidence as well as

direct evidence and can only strengthen the Crown's case. So many people attempted to influence Ncaza and Tata however their desire was to testify in Eswatini and spill the beans in this matter.

[234] It appears that there was so much desperation to avoid Ncaza testifying in Court because obviously he knows something about the death of Victor Gamedze and he doesn't deny that he shot and killed Victor Gamedze on the 14<sup>th</sup> January 2018 under threats from Sipho Shongwe on him and his family.

[235] It is not understandable why so many people would approach Ncaza and attempt to prevent him from testifying when Sipho Shongwe claims not to know Ncaza.

[236] Ncaza was subjected to a lengthy cross-examination by the defence. He maintained his testimony in chief and reiterated that he came to Eswatini to commit the murder of Victor Gamedze as a result of the meeting with the Accused, Dzodzo and Faruk at the business place of Faruk in Eldorado Park Johannesburg. It was put to him that Sipho Shongwe denies knowing all his evidence, however Ncaza was resilient in his testimony that Shongwe instructed him to kill the deceased Victor Gamedze and even testified how he arranged for him to enter Eswatini without a passport whilst he was emphatic that even the gun, he used to shoot Victor Gamedze had been given to him by Sipho Shongwe when they had entered the border and were in Eswatini. Ncaza was emphatic that Sipho Shongwe also identified the escape route for them after the murder of Victor Gamedze.

[237] PW48 is Antony Mashabane the Barberton Correctional Services Officer who testified on the incarceration of the Accused person together with Faruk Meyers in the RSA. I will not analyse this evidence.

[238] PW49 is Duduzile Nkosi and she testified that she is the mother of Mbuso Ncaza Nkosi. She testified that in October 2018 a person by the name of Roney came to her homestead on a VW 21-seater bus and said he was given by one Azizi to deliver it at her home she asked for an explanation from the said Azizi and eventually Azizi came. She together with her relatives inspected the bus and found papers written Matsapha United Football Club. She identified the documents and eventually handed them into Court as exhibits.

[239] Under cross-examination she disclosed that Azizi had told her that he was sent by a person from Eswatini who has been arrested to deliver the bus as payment of the job that was done for killing a prominent person. After leading Ncaza's mother the Crown closed its case.

### **DEFENCE CASE**

[240] The Accused testified in his defence. He stated that he was born on the 6<sup>th</sup> September 1970 at Madonsa in Manzini.

[241] He testified that in the year 1997 he was arrested in South Africa for a cash-in-transit heist which occurred in Bronkospuit a place next to Pretoria. He was detained at Pretoria Local Prison and in 1998 he was transferred to CMAX and stayed there until transferred to Bavensport around 2005. From Bavensport he was transferred to Barberton prison, until 2008 when he was released and he came to Eswatini and registered a company namely Si-Mani Investments which was trading as Gree which manufactures air conditioners from China. They were granted a franchise licence to distribute the product in Swaziland and Mozambique.

[242] He testified that he also got into the construction industry as well as soccer wherein he established a team called Matsapha United Football Club and he was the Managing Director of that Club. In 2014 he married his wife Vuyiswa Shongwe and in 2015 they were blessed with a baby girl.

[243] The Accused testified that he knows Steve Horton and Mike Mamba and would occasionally meet them and they would chat about soccer but he does not remember exactly what was said on the day he met them at the Galp Filling Station, Manzini. He testified that the name of Victor Gamedze may have featured when discussing football in general.

[244] The Accused testified further that there were rumours that him and the deceased did not see eye to eye and he then approached Mr. Richard Mngomezulu one of the bosses in the police service to reconcile them and indeed Mr. Mngomezulu convened a meeting for him and the deceased Gamedze. Mngomezulu reconciled them to the extent that they thereafter started calling each other and would even meet.

[245] He testified that on the 14<sup>th</sup> January 2018 he was at home at Ngculwini and got to know that Gamedze has been killed through a relative of his who had visited them after someone called his relative and informed him that Gamedze was dead. The relative then informed all of them.

[246] He testified that he travelled to Nelspruit on a business trip on the 15<sup>th</sup> January 2018 and returned on the 17<sup>th</sup> January 2018 to Eswatini. He was arrested on the 19<sup>th</sup> January 2018 at Ngwenya border whilst enroute to Kruger National Park with his wife. They were traveling in a white BMW GT. He was carrying a Nokia cell phone. He denied that he was

carrying a Siemens cell phone on that day as alleged by the police.

[247] He testified that he knows the Investigating Officer D/Snr. Supt Fakudze as a fan of Mbabane Swallows, and that Fakudze's brother was involved in Manzini Wanderers and that the brother is now involved with Royal Leopards. He referred to the Fakudzes as a soccer family.

[248] He testified that he heard Mr. Fakudze referring to a host of numbers which he doesn't know, except two numbers which he personally gave to Fakudze and who in turn wrote them in his diary. He testified that it is not true that he has so many numbers.

[249] He testified further that he does not know Faruk Meyers, and that he heard the evidence that on the 8<sup>th</sup> January 2018 he was in Johannesburg where he met Faruk and Ncaza, and that is not true because he was in Eswatini and in fact does not even know Faruk. He testified that he knows Dzodzo but does not know Mbuso Ncaza Nkosi and Tata Ngubane who are implicating him in the murder of Victor Gamedze. He testified that he has never had a corn in his feet and that whilst he was in prison in South Africa, he was never transported with Faruk Meyers when going to hospital, and that he doesn't know Faruk and has never met him.

[250] He testified further he has never owned an Amarok motor vehicle in his life and that he once owned a Mercedes Benz c-class which he sold in 2016. He testified that he has never committed this offence for which he has been charged. He stated that these people who are talking about him are lying and he does not know them.



[251] He testified further that Steve Horton, Mbhalo Hlophe and Sipho Bhembe are people who were very close to the deceased and therefore how could he have said those things about the deceased when he knew them to be very close to the deceased.

[252] He testified that Mbuso Ncaza Nkosi and Tata Ngubane who testified that he forced them to commit murder are fabricating a story about him as he doesn't know them. Further their evidence contradicts each other, and he testified that he doesn't understand how they can be threatened by one individual from Eswatini and then not report to police stations in Soweto and further travel all these kilometres to Eswatini simply because of threats.

[253] He testified that they were told by someone to incriminate him and they are so desperate to exonerate themselves to the extent that they can even point a finger at Father Christmas. He testified that he never paid anybody to kill Gamedze, and that he never sent a bus to Ncaza's family in order to influence his testimony, and further does not know where these Matsapha United Football Club papers come from, and would not even know how they got into whose hands.

[254] The Accused was subjected to a lengthy cross-examination by Counsel for the Crown and he maintained his position that he never met the accomplice witnesses Ncaza and Tata at Faruk's place, in fact he does not know them, and he does not even know Faruk, further that he never sent anyone or threatened anyone to go and kill Victor Gamedze. He denied all the evidence given by Ncaza and Tata before Court which pertains to him because these are people who are unknown to him and who are fabricating such a story about him.

[255] DW2 is Sihle Samkelo Nkambule who testified that he has a BSc in Maths and Computer Science, Honors Degree in Information Systems from UCT and further has qualifications in Cyber Security and Digital Forensic to name a few.

[256] He testified that he was instructed by the defence to review the digital evidence presented by Ms. Mkhonto herein before Court. He testified that digital evidence is any probative information stored or transmitted digitally can be used in a trial, if that evidence was gathered and analysed and reported in a way that is admissible in Court, using digital forensic practices which are similar to processes followed during a crime scene investigation.

[257] Mr Nkambule testified that the process of digital evidence investigation and gathering in a crime scene entail that there must be demarcation where the crime happened and there must be an expert who attends to the crime scene, and who follows due processes of collecting evidence in the crime scene.

[258] Nkambule testified that in such cases where digital forensic evidence is concerned or is utilised by the Court, there must be data which the prosecution presents to the defence to enable the defence to challenge the case. He testified that the digital evidence presented *in casu* by the Crown through Ms. Mkhonto was only in columns and figures which should not be the case. He stated that there must be transparency regarding the uncertainties that relate to technical or human factors when handling and processing data.

[259] He stated that in such a case there are certain international standards and frameworks which guide the processing of digital forensic evidence. He testified further that the standards apply on how you identify the data, how you collect

it and how you store it. Having done that the next process is how you analyse the data and interpret it to be information.

[260] Mr Nkambule testified that *in casu* the data provided to the Accused's defence team was not original, and such data was not obtained in a forensically sound manner which might have potentially resulted to contamination. The reason being that the data does not have fingerprints which are called hash numbers.

[261] Mr Nkambule testified that the lack of verification of the IMEI data gathered from the CDR live sim against the seized devices of the Accused creates doubt towards the involvement of the Accused. Further he testified that the lack of the VELA system to identify the owner of the phone number adds complexity in this case.

[262] Mr Nkambule testified that his finding in the TM series prepared by Ms. Mkhonto is that the integrity of the collection process is in doubt. The data should be collected without any alteration or destruction of the data or its meter data. In order to be forensically sound, the collection process must be defensible, consistent, reputable while documented and authenticated. Neither of these principles are present herein and there is a great possibility that the files were tampered with.

[263] Mr Nkambule testified further that the extracting methodology and procedure was not stated. The affidavits of Ms. Mkhonto do not clearly detail the processes and procedures that were followed in extracting and providing the call records, and thus the implication is that they could not verify the records attained at MTN. Mr. Nkambule's conclusion was that the **"TM series reports"** prepared by Ms. Mkhonto were not credible and therefore the credibility

of the evidence of D/Snr Supt Fakudze is all doubtful and should be rejected by this Court. Mr. Nkambule was cross-examined by the Crown, and he maintained his testimony that Ms. Mkhonto had not followed proper procedures for downloading and reservation and analysis of the call details data.

### **ANALYSIS OF THE EVIDENCE**

[264] The Crown led direct evidence in order to prove the commission of the offence against the Accused. This direct evidence consisted of the evidence of accomplice witnesses namely Mbuso Ncaza Nkosi (Ncaza) and Simphiwe Tata Ngubane (Tata).

[265] The Crown also led scientific evidence in the form of call data /details records (CDR) extracted from MTN Eswatini network and analysed by the expert Ms. Thembi Mkhonto. The cellular phone numbers whose information was extracted and analysed by Ms. Mkhonto were provided by D/Snr. Supt Sikhumbuzo Fakudze (PW46) after he had obtained these numbers from his investigation of this case together with his team of police officers. Mr. Fakudze had obtained these numbers from witnesses who were in one way or the other found to have communicated and or interacted with the suspects in this matter.

[266] In criminal law, direct evidence is evidence that, if believed directly proves a fact. Usually in criminal matters direct evidence will be eyewitness testimony, regarding something that was actually observed.

[267] The other scientific evidence which the Crown led in this trial is the CCTV footages that were extracted from the Galp Filling Station at Ezulwini where the deceased Victor Gamedze was shot and killed by Ncaza. Further the Crown led the evidence of the CCTV footage from Ezulwini Super Spar where Ncaza,

Tata and Dzodzo are seen buying food, and Mr. Fakudze and his team were led to the Ezulwini Super Spar by receipts which were found in the Yaris car by D/Insp P. Dlodlu on the 15<sup>th</sup> January 2018 at Lundzi area where the car had been abandoned. Another CCTV footage was extracted by Mr. Fakudze and his team from the Ngwenya border where on the 11<sup>th</sup> January 2018 Ncaza is seen entering the country illegally driving the Yaris car which was eventually abandoned at Lundzi area on the night of the murder of the deceased Victor Gamedze.

[268] The scientific evidence of the **"TM series reports"** produced by Ms Mkhonto assumes the status of circumstantial evidence, which is defined as evidence of facts that this Court can draw conclusions from. For example, the evidence of Steve Horton, Mbhalo Hlophe and Sipho Thulani Bhembe can be classified as circumstantial or indirect evidence because they allege that the Accused made certain statements which entitles this Court to draw conclusions on whether the Accused committed the crime with which he is charged or not. It must always be borne in mind that it is trite law that circumstantial evidence may be sufficient to connect an Accused with the crime and to prove the guilt of the Accused beyond reasonable doubt. Further the attempts to interfere with the evidence of the accomplice witnesses Ncaza and Tata, for example, by Advocate Nthabiseng Mahomane, the delivery of the bus to Ncaza's mother which had papers/documentation of Matsapha United Football Club, and attorneys visiting the accomplice witnesses on the instructions of the Accused to represent the accomplice witnesses in extradition proceedings is classic and credible circumstantial evidence.

[269] Further the disappearance of Dzodzo a few days after the murder of the deceased, Victor Gamedze is another classic example of circumstantial evidence. The two accomplice witnesses Ncaza and Tata have not been shown to be

unreliable and untrustworthy. They had been with Dzodzo from the 8<sup>th</sup> January 2018 until a few days from the murder of the deceased, Victor Gamedze. The accomplices are South African citizens who have given a consistent elaborate and similar account of their dealings with Dzodzo and the Accused in this matter. Dzodzo disappeared when the police were closing in on him, however the red VW Polo GTI was found at his home and is positively identified by the accomplice witnesses, Tata and Ncaza as the vehicle belonging to Dzodzo and which was used mainly on the 14<sup>th</sup> January 2018 to hunt down, and tail the deceased Victor Gamedze from Somhlolo Stadium to the Galp Filling Station Ezulwini where he was eventually shot and killed by Ncaza, who then quickly jumped into the said red Polo driven by Dzodzo and they escaped from the scene. Unfortunately for Dzodzo he had been seen by Mbhalo Hlophe next to the red Polo talking on his phone and even when Ncaza ran to the Polo and Dzodzo drove off at high speed. In fact, this part of the evidence where Dzodzo was seen by PW28 Sifiso Mbhalo Hlophe is now direct evidence because he was seen driving the getaway car immediately when the deceased had been shot dead. The very same car positively identified by Ncaza and Tata as well as Mbhalo Hlophe himself who was at the Galp Filling Station, Ezulwini when Victor Gamedze was shot dead.

[270] Further there is the direct evidence of Sipho Bhembe who had earlier been at the stadium and saw Dzodzo showing Ncaza the late Victor Gamedze at the Royal Box. Sipho Bhembe is the same witness who was invited by Sipho Shongwe in 2017 to an Italian Restaurant at Matsapha where Shongwe asked Bhembe to organise hitman to kill Victor Gamedze because he was unfairly dominating other teams.

[271] The evidence of Steve Horton and Mike Mamba, although Mamba was a bit evasive, when the Accused met them at the Galp Filling Station in Manzini and told them that "**sekusele**

**intfo lengaka kuGamedze**" is a threat and capable of many interpretations, but it is undoubtedly an expression by its maker of the intention to cause pain or death to that person to whom it refers.

[272] In this context, the statement was made to Steve Horton and Mike Mamba on the 18<sup>th</sup> and 20<sup>th</sup> December 2017 and Victor Gamedze was shot and killed by Ncaza at the Accused's behest on the 14<sup>th</sup> January 2018, the period between the 18<sup>th</sup> and 20<sup>th</sup> December 2017 and the 14<sup>th</sup> January 2018 is very short, and the statement was therefore meant to indicate that Victor Gamedze was left with very little time to live and the evidence of Steve Horton also corroborates the testimony of Sipho Thulani Bhembe.

[273] Sipho Thulani Bhembe testified that sometime in 2017, the Accused invited him to an Italian Restaurant in Matsapha whereupon the Accused requested him to organise hitman who were going to kill Victor Gamedze because he (Victor) was dominating other soccer teams because he uses corrupt practices, and he (Accused) was not happy about it. The Accused requested Sipho Bhembe to get or organise the hitman because it would be easy for him to do since he was a public transport driver to South Africa. This evidence corroborates the evidence of Steve Horton and further goes on to corroborate the evidence of Sifiso Mbhalo Hlophe.

[274] Sifiso Solomon Mbhalo Hlophe testified that he is a Reverend of the Zion Church and that the Accused was his client since he (Mbhalo) has the gift of praying for people. On one occasion the Accused came to consult him for his services and they started having a conversation about football and the Accused then told this witness that the late Victor Gamedze was not managing the PLS the right way, and also that **Victor had no idea that he (the Accused) could remove him in a space of a minute and then hand himself to the police.**

Sifiso Hlophe understood that statement to mean that the Accused could easily kill Victor Gamedze and hand himself over to the police for he would have committed a crime. It was a coincidence that Sifiso Mbhalo Hlophe was himself at the Galp Filling Station during the time when Victor Gamedze was shot dead by Ncaza and **he saw Dzodzo** just below the pumps on the road. After Ncaza had shot Victor Gamedze, Mbhalo Hlophe saw both Ncaza and Dzodzo running to the red VW Polo where they got into that vehicle and drove away.

[275] The presence of Dzodzo at the Galp Filling Station as testified to by Sifiso Solomon Mbhalo Hlophe corroborates the evidence of Ncaza and Tata that they were working with Dzodzo in the furtherance of the Accused elaborate and sophisticated plan to murder Gamedze. When the Accused made this murderous statement to Mbhalo Hlophe it was very close to the 14<sup>th</sup> January 2018 because Mbhalo testified that he told the deceased that the following Tuesday will not come with him alive from the week that had started. According to Mbhalo the Accused made the statement on the Friday or Saturday before the match on the Sunday and by that time Ncaza, Dzodzo and Tata were already in the Country hunting for Victor Gamedze. The accomplice evidence provided by Ncaza and Tata remains credible. It is beyond imagination that they can choose to falsely implicate the Accused and Dzodzo out of the blue. It appears from their evidence that prior to their meeting on the 8<sup>th</sup> January 2018 when Ncaza alone met Sipho Shongwe and Dzodzo they did not know each other. Further on the second meeting when Tata was present on the 9<sup>th</sup> January 2018 and they discussed the **disguised robbery** of Gamedze and eventually the Accused forked out the R10,000.00 for the purchase of the Yaris which was going to be used in the commission of the murder of Victor Gamedze contains complex and elaborate details incapable of being fabricated by the accomplice witnesses against the Accused.



[276] There is too much detail in the planning of the murder of the deceased Victor Gamedze by the Accused, Dzodzo and Tata and Ncaza. The Accused embarked on a "journey of hate" from Eswatini all the way to Johannesburg to plan and organise hitman to kill Gamedze assisted by Faruk. The details presented by Ncaza and Tata in their testimonies against the Accused corroborates the evidence of Sipho Thulani Bhembe, Sifiso Mbhalo Hlophe and Steve Horton and D/Snr. Supt. Sikhumbuzo Fakudze.

[277] All the witnesses who corroborate each other were independently told by the Accused on different dates, at different places of his intention to kill the deceased Victor Gamedze. These witnesses who are independent of each other testified in one voice as if they were together when the Accused made his intentions known to them that he was not happy with the manner in which the deceased Gamedze was running the PLS and wanted to kill him: -

(i) **Steve Horton and Mike Mamba**

they were talking about soccer when the Accused made the threats that "**sekusele intfo lengaka Ku Gamedze**" using his fingers to demonstrate that to Steve Horton and Mike Mamba;

(ii) **Sipho Thulani Bhembe**

The Accused was at an Italian Restaurant in Matsapha with Sipho Thulani Bhembe whom he had invited to request him (Bhembe) to organise hitman from RSA to kill Victor Gamedze at no cost to them. Bhembe was shocked and outraged by the Accused's utterances, but he maintained his calm.

(iii) **Sifiso Solomon Mbhalo Hlophe**

the Accused had gone to consult Mbhalo Solomon Sifiso Hlophe for his services as "**umthandazi**" when he complained to Hlophe that the deceased was not

running the PLS in a right way and that he (deceased) does not know that he (Accused) could remove him in a space of a minute and then hand himself to the police.

[278] The cumulative effect of the testimony of these witnesses point to one conclusion and that is: the Accused harboured massive hatred for the deceased such that he could not even hide it, but instead voiced it out to these witnesses who were shocked thereafter to learn of the gruesome murder of the deceased Victor Gamedze and then volunteered this information to the police because they all remembered that he (Accused) had made these threats to kill the deceased, and all of them were shocked about such threats which eventually became real when Gamedze was fatally shot on the 14<sup>th</sup> January 2018 at the Galp Filling Station, Ezulwini. As I stated above herein Mbhalo Hlophe testified that he saw Dzodzo below the fuel pumps during the moment when the deceased was shot dead and that after Ncaza had shot the deceased, he (Ncaza) together with Dzodzo ran towards the waiting room and got into the red VW Polo and drove off. This evidence is very crucial as it corroborates the version of Sipho Thulani Bhembe that he saw Dzodzo point out Victor Gamedze to the slender gentleman at the Royal Box at Somhlolo Stadium. Ncaza himself corroborates the evidence of Sipho Bhembe.

[279] This is a classic case of corroborative evidence in abundance and at its best because there are two accomplice witnesses who have testified against the Accused, Sipho Shongwe in a manner that is beyond doubt. I say this because of all the details from the meetings at Eldorado Park until they reached Eswatini, and started hunting Victor Gamedze as if he was a dangerous animal and eventually killed him on the Sunday 14<sup>th</sup> January, 2018. Ncaza testified that on numerous occasions when they were still in RSA the Accused called him on his South African number giving him directions on how he was to illegally enter Eswatini, which he eventually did

driving the Yaris. Once in Eswatini, the Accused gave them guns to be used in the murder of Gamedze, and indeed one of those firearms was used to kill Gamedze by Ncaza and he thereafter handed it to Dzodzo. The two witnesses Ncaza and Tata corroborates each other in all material respects, and both testified that the Accused had even identified an escape route with Dzodzo and which route they used after killing Victor Gamedze, it is for this reason why I say their evidence is credible, trustworthy and thus safe to rely on. It is impossible that these two Ncaza and Tata could accurately and with ease testify so much in detail if they were fabricating evidence against the Accused. In my view they are credible witnesses and their evidence is sufficiently corroborated by independent evidence of other witnesses. This is not a case of accomplice evidence of a single witness, *in casu*, there are two accomplice witnesses who are credible and corroborate each other, and who are further corroborated by other independent witnesses.

[280] The testimony of Ms Thembi Mkhonto wherein she downloaded call data records from the MTN Eswatini network was also not successfully challenged by the defence. Ms Mkhonto testified on call data records of various cellular phone numbers which had been supplied to her by D/Snr. Supt Sikhumbuzo Fakudze who had obtained these numbers through investigation in this case. The evidence of Sihle Nkambule (DW2) which purports to discredit the evidence of Ms Mkhonto has not succeeded to do so, because the evidence of DW2 Sihle Nkambule should have been used to cross-examine Ms. Mkhonto and prove to her whilst she was on the stand that her evidence had serious shortfalls and therefore should not be relied on by this Court. The testimony of Sihle Nkambule was never put to Ms Mkhonto so that she could comment on it and more importantly so that the Court is made aware as to the nature of the defence case, *in casu* that is not the position.

[281] It is trite law that in a criminal trial the case of the Accused is put to the Crown witnesses in Cross-examination so that they may comment it, and further that the Court is informed of what evidence the Accused will parade during his/her defence. This never happened with regard to the evidence of Ms Mkhonto. The testimony of Sihle Nkambule DW2 was never put to Ms. Mkhonto for her to respond or comment on it, and it appraise the Court of it.

[282] DW2 Sihle Nkambule levelled very strong criticisms at Ms Mkhonto concerning among other things, her collection of the data, preservation of the data and analysis of data saying that she did not comply with procedures for downloading call data records. This testimony is in my view unfair to Ms Mkhonto because it condemned her without affording her the opportunity to be heard, and this should have been done through the cross-examination of Ms Mkhonto, which unfortunately did not happen. This evidence of DW2 is belated and thus can be easily classified as an afterthought and thus of no value at all in these proceedings.

[283] The defence was under a duty to apply to recall Ms Mkhonto so that they confront her with the evidence of DW2 Sihle Nkambule and see her reaction, but they chose not to apply to recall her. As thing stand the evidence of Ms Mkhonto having testified on the data obtained from the MTN network of the numbers supplied to her by Fakudze stands unchallenged because even her cross-examination by the defence did not dent or discredit her evidence.

[284] The investigation conducted by D/Snr. Supt Fakudze is thorough, fair and credible. The deceased Victor Gamedze was shot dead execution style on the 14<sup>th</sup> January 2018 shortly after 1800 hours after watching his team play Manzini Wanderers. It turned out that this was his last time alive to

watch his team Mbabane Swallows as he was brutally killed thereafter.

[285] The brilliant investigation by Fakudze and his team was soon to reveal a web of conspiracy by the Accused, fugitive of the law Dzodzo Zikalala and the two accomplices Tata and Ncaza. Through Fakudze's swift investigation, the public saw for the first time the faces of the suspects being splashed in the newspapers, the second getaway car to wit, the Toyota Yaris was found abandoned at Lundzi and crucial documentary evidence material was discovered which led to the downloading of CCTV footages from the Galp Filling Station, Ezulwini, Spar Ezulwini and Ngwenya border where Ncaza was seen at the border illegally crossing into Eswatini and continuously on the cell phone with the Accused who was directing him on what to do in order to cross illegally into Eswatini.

[286] The swift investigation led to the recovery of Dzodzo's red VW Polo GTI at his home at Msunduza, and the eventual arrest of the Accused Sipho Shongwe on the 19<sup>th</sup> January 2018 at Ngwenya Border whilst he was enroute to South Africa. Cellular phone numbers were obtained by Fakudze and his team and eventually handed to Ms. Mkhonto of MTN Eswatini to download call data records to determine who was talking to who during the planning and execution of the gruesome murder of Gamedze.

[287] Fakudze's investigation led to the recording of statements from very crucial witnesses like Steve Horton, Sipho Thulani Bhembe, Sifiso Solomon Mbhalo Hlophe, Ricardo Mordaunt, Ntombifuthi Masuku, Laura Zhavale, Nonduduzo Bridget Zwane, where the numbers of Ncaza and Tata were found together with the Yaris number, and Nontsikelele Zwane previously employed by Young Heroes, whose number 78025449 linked Vuyiswa Siyaya, the wife of the Accused to

a company called Office Buddies, and to the number 76769952 which was proven by Fakudze to belong to the Accused Sipho Shongwe.

[288] Fakudze and his team also discovered the evidence of Sifiso Sipho Mnisi, the Logistics Manager of Matsapha United Football Club where he received numerous calls from the Accused who was using cell number 76769952 and in particular on the 11<sup>th</sup> January 2018 at around 10:10 a.m. Mnisi was recorded at statement and confirmed to the police that he was talking to the Accused on that number. He testified in Court and maintained his evidence in Chief, however, during cross-examination he then changed his testimony and denied that the number 76769952 belonged to the Accused. It got worse when he disclosed in cross-examination that he had visited the Accused in prison before the start of the trial, and that in fact the Accused had denied during their meeting in prison that the aforesaid number belonged to him. Mnisi confirmed that he discussed the evidence with Sipho Shongwe before commencement of the trial.

[289] D/Snr. Supt Fakudze investigated the matter like his life depended on it. The manner in which he analysed the TM series reports prepared by Ms. Mkhonto was amazing. He knew the numbers like the back of his hand and was able to provide accurate communication linkages between and amongst these numbers. Even when his Counsel were leading evidence and/or conducting cross-examination and/or submissions, Fakudze was on high alert and would correct his prosecution team when they had mixed the numbers or information. Whilst Ms. Mkhonto provided the general information on the numbers like all experts do, Mr. Fakudze provided the faces behind the numbers even though the VELA system was not in existence yet when the deceased was shot dead. His analysis of the TM series report was able

to establish, for example, that the number 76769952 undoubtedly belonged to the Accused Sipho Shongwe, no matter how the Accused denied, Fakudze confirmed that the Accused's own Logistics Manager Sifiso Sipho Mnisi (PW11) confirmed that on the 11<sup>th</sup> January 2018 at 10:10 a.m. he was talking to Sipho Shongwe on the number 76769952. This is the very same number which the Accused use to call Ncaza on his RSA number 0027 787 097 299 on the 11<sup>th</sup> January 2018 when directing him how to illegally enter Eswatini at Ngwenya border.

[290] The role played by Tata and Ncaza in exposing the plan by the Accused and Advocate Nthabiseng Mahomane to interfere with their evidence was a milestone in proving their desire to testify as accomplice witnesses, and they did. They also made sure that Advocate Mahomane appear in Court when the Eswatini team was there led by Mr. Fakudze. Indeed, Advocate Mahomane fell into that trap and was seen by the Eswatini team. This was after they had brilliantly tricked Advocate Mahomane to leave the commissioned affidavits, which they wanted to handover to the Eswatini team led by Mr. Fakudze to demonstrate the extent of the Accused's interference in their evidence. Ncaza and Tata also disowned Advocate Mahomane right in Court before the Magistrate and she was embarrassed and eventually abandoned her attempts. There is no doubt in my mind that Advocate Mahomane herself was very very desperate to accomplish the Accused's mission of interfering with the evidence of the two accomplice witnesses.

[291] I must highlight that it is the prerogative of the Crown to decide in a case like this one where there are multiple Accused persons to decide who to prosecute and who to make a Crown witness. *In casu* the Crown made a decision to charge and indict the Accused before Court and turning Ncaza and Tata into Crown witnesses in order to obtain their accomplice evidence. As *dominis litis* the Crown is perfectly

entitled to do that, and *in casu* this strategy saw both accomplices corroborating each other in a historic and credible manner to prove the conspiracy which led to the gruesome murder of Victor Gamedze on the 14<sup>th</sup> January 2018.

[292] Ncaza is the only one who knew exactly what was going to happen in Eswatini i.e., the purpose of the whole operation was to kill Gamedze and not to rob him as Tata was made to believe. In the circumstances it is Ncaza who was the main man to the Accused and whom the Accused communicated with, Tata on the other hand was labouring under an extreme misapprehension hence he was shocked why Victor Gamedze was killed in full view of the people at the garage/filling station and the planned robbery was abandoned, and his frustration was understandable when he testified before the Court. The evidence of Tata corroborated the evidence of Ncaza and vice versa. Both accomplice witnesses corroborated the evidence of Fakudze and his team, and likewise the evidence of Fakudze and his team corroborated the evidence of Ncaza and Tata. It must be borne in mind that Mr. Fakudze and his team investigated this matter thoroughly and during their investigations they did not know that Ncaza and Tata will testify in this case.

[293] This is the practise that is adopted in many jurisdictions where the criminals who execute the groundwork and the dirty work for the kingpin who usually comes nowhere near the crime scene, end up testifying against the kingpin and he/she gets convicted, of course, depending on the credibility and corroboration of their accomplice evidence, and these accomplices depending on the truthfulness and full disclosure of the crimes end up being granted immunity from prosecution. *In casu* the procedure adopted by the Crown has led to the massive disclosure of these gruesome details which are corroborative evidence against the Accused. He is the source and sole cause of the death of the late Victor



Gamedze, a fact which he was boasting about to witness like Steve Horton, Sifiso Mbhalo Hlophe and Sipho Thulani Bhembe.

[294] In the case of **S. v Agliotti (SS 154/2009) [2010] ZAGP JHC 129; 2011 (3) SALR 437 (GSJ) (25 November 2010)** a similar approach was adopted by the then Directorate of Special Operation (DSO) popularly known as **"Scorpions"** when the prosecution turned the actual physical perpetrators of the crime to be state witnesses and testify against the kingpin Glenn Agliotti. The Accused's Counsel in this matter Advocate L. Hodes SC. was representing Mr. Agliotti and the matter was before Kgomo J. sitting in the South Gauteng High Court in Johannesburg. In this matter the Accused Mr. Agliotti was acquitted at the close of the state's case in terms of Section 174 of the South African Criminal Procedure Act No. 51 of 1977 as amended.

[295] At paragraph 46 of the judgment Kgomo J stated the following: -

***"The first three witnesses Schultz, Nigel and Kappie were the Section 204 witnesses that did the actual execution of the plan to incapacitate Mildernhall and participated in the shooting to death by Schulz of Brett Kebble. Their rendition was like a scene from a mafia film tragic, emotionless and comical only that it was real and serious."***

[296] The observation by Kgomo J. herein referred to above is exactly the same as the case in casu. The deceased Victor Gamedze was gunned down by Ncaza, who was together with Dzodzo and Tata in full view of the people who were at the Galp Filling Station at Ezulwini. The shooting to death of Victor Gamedze at so much close range indeed even in this case was **like a scene from a mafia film -tragic, emotionless and comical - only that it was real and**

serious, to borrow from the words of Kgomo J. This is the best way to describe the tragic death of Victor Gamedze as a result of trans-border organised crime syndicates involving the Accused Sipho Shongwe, his friend Faruk Meyers, Dzodzo and the two Ncaza and Tata. I believe that the Accused and Faruk Meyers knew each other in the criminal underworld, there is no reason why Ncaza and Tata would implicate Faruk and the Accused out of the blue. In fact, Ncaza also testified that whilst they were in prison Faruk himself tried very hard to influence Ncaza to change his mind and not testify by offering him R300.00 (Three Hundred Rands) to testify that it was not Ncaza who shot Victor Gamedze but Tata and then he (Faruk) was going to make a plan that Tata dies wherever he was. Ncaza testified that he then called Tata and alerted him of Faruk's threats.

[297] At paragraph 33 of the Agliotti case (*supra*) Kgomo J had this to say about credibility of evidence: -

***"(33) a witness may give an impressive rendition or account of an event or events but when such witness is cross-examined, all the good that he did may be partially or totally negated. The previous statements made by such a witness may be put to him/her and the cross-examiner may in that process succeed in casting aspersions or doubt on the veracity of his/her story and concomitantly on his/her credibility."***

[298] I agree entirely with the observations made by Kgomo J. that the credibility of the evidence of any witness who is proven to be unreliable in cross-examination lacks integrity and trustworthiness.

[299] In the Agliotti case (*supra*) Kgomo J. acquitted Agliotti at the close of the state's case because when Advocate L. Hodes cross-examined those witnesses for the state his cross-

examination proved that they were untruthful witnesses because they changed their versions and this resulted to their evidence being untrustworthy.

[300] *In casu* that is not the position the two accomplice witnesses Ncaza and Tata maintained their testimonies even under searching cross-examination. Further, even the witnesses whom the Accused informed of the threats to kill Victor Gamedze, namely Steve Horton, Mbhalo Hlophe and Sipho Thulani Bhembé, they did not change their versions under cross-examination they maintained their versions that he made the statements to each of them respectively.

[301] In the case of **Mfanimpela Mbuyisa and Another v. Rex (20 and 21/2015) [2017] SZSC (12 May 2017)** Dr. B.J. Odoki JA stated as follows as paragraphs 52 when dealing with accomplice evidence:-

***‘52. In Jabulani Mzila Dlamini and Another v. Rex – Criminal Appeal Case No. 15/121 this Court quoted with approval the case of S v Hlaphezulu 1965 (4) AS 439 (A) where the South African Appellate Division of the Supreme Court stated: -***

***“It is well settled that the testimony of an accomplice requires particular scrutiny because of the cumulative effect of the following factors –***

***First, he is a self-confessed criminal, Second, various considerations may lead him to falsely implicate the Accused, for example a desire to shield the culprit or particularly where he has not been sentenced, the hope of clemency. Third, by reason of his inside knowledge, he had a deceptive facility for convincing description – his only fiction being the substitution of the Accused for the culprit.....there has grown a cautionary rule of***

*practice requiring (a) recognition by the trial Court of the foregoing dangers, and (b) the safeguard of some factor reducing the risk of a wrong conviction, such as corroboration implicating the Accused in the commission of the offence, or the mendacity as a witness, or the implication by the accomplice to someone near or dear to him.”*

[302] At paragraph 54 Dr. B. J Odoki JA stated as follows: -

*“54. In R v. Ncanana (1948) SA 399 A at pages 405 -406 it was stated by Schriener JA that: -*

*“What is required is that the trier of fact should warn himself, or, if the trier is a jury, that it should be warned of the special danger of convicting on the evidence of an accomplice; for an accomplice is not merely a witness with a possible motive to tell lies about an innocent accused but is such a witness peculiarly equipped by reason of his inside knowledge of the crime to convince the unwary that his lies are the truth. This special danger is not met by corroboration of the accomplice in material respects not implicating the Accused, or by proof aliunde that the crime charged was committed by someone else the risk that he may be convicted wrongly will be reduced, and in the most satisfactory way, if there is corroboration implicating the Accused. But it will also be reduced if the Accused shows himself to be a lying witness or if he does not give evidence to contradict or explain that of the accomplice.”*

*And it will also be reduced even in the absence of these features, if the trier of fact understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance of the accomplice and rejection of the Accused is, in such circumstances, only permissible where the merits of the former as a witness and the demerits of the latter are beyond question.’*

[303] At paragraph 55 Dr. B. J. Odoki JA states as follows when still addressing the accomplice evidence: -

***“55. In S v. Masuku 1969 (2) SA 25 A 375 (N) at page 375 – 7 the following exposition of basic principles relating to the evidence of an accomplice was given: -***

- 1. Caution in dealing with evidence of an accomplice is imperative;***
- 2. An accomplice is a witness with a possible motive to tell lies about an innocent Accused, for example, to shield some other person or to obtain immunity for himself;***
- 3. Corroboration, not implicating an Accused but merely in regard to the details of the crime, not implicating the Accused is not conclusive of the truthfulness of the accomplice;***
- 4. The very fact of being an accomplice enables him to furnish the Court with details of the crime which is art to give the Court the impression that he is in all respects a satisfactory witness or as he has been described able to convince the unwary that his lies are the truth;***
- 5. Accordingly, to satisfy the cautionary rule, if corroboration is sought it must be corroboration directly implicating the Accused in the commission of the offence.***
- 6. Such corroboration may, however, be found in the evidence of another accomplice provided the latter is a reliable witness;***
- 7. The assurance may be found where the Accused is a lying witness or where he does not give evidence;***

8. *The risk of incrimination will also be reduced in a proper case where the accomplice is a friend of the Accused;*
9. *Where the corroboration of an accomplice is offered by evidence of another accomplice the latter remains an accomplice and the Court is not relieved of its duty to examine the evidence also with caution. He like other accomplice has a possible motive to tell lies;*
10. *In the absence of any of the aforesaid features, it is competent for a Court to convict on the evidence of an accomplice only where the Court understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance and rejection of the Accused is only permissible where the merits of the accomplice as a witness are beyond question."*


[304] The Crown's evidence is overwhelming against the Accused person and the accomplice evidence is credible and sufficiently corroborated, and the accomplice witnesses Ncaza and Tata also corroborate each other and do not contradict themselves in material respects. Any contradictions pointed out in their oral testimonies in Court vis-à-vis their written statements does not in any way affect the elaborate planning and their coming to Eswatini to kill Victor Gamedze in the manner they did, after hunting him from the 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> January 2018 when they eventually found him and killed him at the Galp Filling Station at Ezulwini. That evidence remains credible, trustworthy and is corroborated by the CCTV footages, the telephone records and conversations with various witnesses and the exhibits that were produced in evidence by Mr. Fakudze and his team.

[305] As regards, the testimony of Ncaza and Tata, I am convinced that they testified truthfully and never exaggerated the role

of Dzodzo and the Accused in this matter, and therefore I grant them immunity from prosecution in terms of Section 234 (2) read together with Section 234 (1) of the Criminal Procedure and Evidence Act No. 67/1938 as Amended.

[306] The Crown has proven its case against the Accused beyond reasonable doubt and he is found guilty of the murder of Victor Gamedze on the 14<sup>th</sup> January 2018 at the Galp Filling Station, Ezulwini as charged and indicted by Crown.

**I hand down this judgment.**



**N.M. MASEKO J.**  
**JUDGE**