

THE STATE
versus
EMMANUEL MAHEMBE

HIGH COURT OF ZIMBABWE
MUTEVEDZI J with Assessors Mrs Baye & Mr Guruva
GWERU, 24 SEPTEMBER 2024

Criminal Trial

S. Pedzisayi, for the state
V. Kwande, for accused

MUTEVEDZI J: The two murders in issue bear all the hallmarks of having been perpetrated by a serial killer. The similarities of the victims were so striking that they cannot be explained as a coincidence. The deceased were both middle aged women with very loose connections to their families. The first deceased Patricia Mutero was aged 37 years whilst the second deceased Iddah Chigumbate was aged 35 years. They both had business interests and were both in love relationships with the accused. Both of them drove cars of the same make and model- the Honda Fit and both died from strangulation.

[1] The state alleges that the two deceased were killed by the accused person Emmanuel Mahembe. He is alleged to have strangled the first deceased to death between August 2021 and September 2021 at Makotore Village, Chief Nhema in Shurugwi. He allegedly then killed the second deceased again by strangulation on 20 May 2022 at Total Mine Turn off along Shurugwi road

[2] The accused did not file a defence outline at the commencement of the trial. Counsel had been unable to take instructions because the accused pretended to be mentally disordered. Ms *Kwande* who represented him indicated that despite she had also noticed that the accused's mental challenges were a façade. He pretended not to comprehend anything. AS a result, she had failed to make any headway in drawing up his defence outline. The prosecutor tendered psychiatrists and psychologists reports which all stated that the accused was malingering and had no signs of mental disorder. On the basis of those reports we directed that the trial would proceed despite the accused's rumblings.

[3] When the charge was read to him, the accused ignored it and refused to plead. In terms of s 182 of the Criminal Procedure and Evidence Act [Chapter 9:07] (The CPEA), we entered a plea of not guilty for the accused. The state opened its case, tendered various exhibits and called witnesses as will be shown later. Towards the tail-end of the state case, we experienced a power outage which necessitated an adjournment of the proceedings for about ten minutes. When the court reconvened, Ms *Kwande* advised us that during that break, the accused had advised her that he was now completely cured of his mental illness and was ready to participate in the proceedings. We were not surprised because the signs had always been there that he comprehended everything that was going on despite faking all manner of delirium and disorientation. When he gave his defence, he covered and controverted even the evidence of witnesses who had testified whilst he was “mentally disordered,” putting beyond doubt the doctors’ and the court’s findings that the accused was not mentally disordered at any time.

[4] Prosecution commenced adduction of its evidence by applying to tender the accused’s warned and cautioned statements in respect of both murders recorded at ZRP Shurugwi on 20 July 2022 and later confirmed by a magistrate at Shurugwi Court on 21 July 2022. They became exhibits 1 (a) and (b). Next, the prosecutor applied to tender the autopsy reports compiled by Doctor J.R. Gregori on 25 July 2022 at United Bulawayo Hospitals after he examined the deceased persons’ remains to ascertain the causes of their deaths. They were marked exhibits 2 (a) and (b) respectively. The next exhibit was a black *itel* cellphone which belonged to the second deceased person Iddah. It was allegedly recovered from the person of the accused. We marked it exhibit 3. Exhibit 4 was a copy of the passport of the deceased Patricia Mutero. The prosecutor also tendered copies of the pictures of the deceased persons’ cars as exhibits 5 (a) and (b) respectively. To round off the preliminaries, Mr. *Pedzisayi* applied to have the evidence of witnesses Ratidzo Madhuveko, Tanaka Anania, Letwin Mpofo, Gibson Nyika, and Dr. J. R. Gregori formally admitted into evidence in terms of s 314 of the CPEA as it appeared on the state’s summary of evidence. All the applications were granted with the consent of counsel for the accused.

[5] The state then called oral testimonies starting with that of Tafadzwa Mutare. He said the accused had sold him a car which was later recovered by the police. The car he was sold

was a white Honda Fit. The transaction had started when the witness had been advised that the accused was selling a car by a man called Charles who is a mechanic. The accused was called and confirmed he had the car. He said he was far away and he asked if the witness knew his homestead. He didn't know where it was but was given directions. He got there and was permitted to view the car in the absence of the accused. He did and advised the accused over the phone that he was happy with the car and interested in purchasing it. The purchase price was later pegged at USD \$3700. The witness backtracked because the price was too steep for him. He pulled out of the deal. Later he bought another car called a Toyota Fun Cargo but still had interest in the accused's Honda Fit. He called the accused and enquired if he did not want to swap the cars. The accused agreed but said he wanted the witness to top up with some money. He wanted USD \$300. They again negotiated until the top up money was reduced to USD \$160. He paid and they deal was done. It was late on the day they concluded the deal. They couldn't get anyone to witness their agreement on an affidavit. They therefore just concluded a general agreement of sale. They agreed to formalize their agreement on an affidavit the following morning, whatever that meant! The witness said but from thereafter, the accused was evasive until the police swopped in and told him they were looking for the car he had bought, in connection with this charge.

[6] **Jerry Majoni** was the next witness. He received the report that the second deceased Iddah had been missing for two months. He later got information that there was a person who was sending messages using the deceased's phone. The messages demanded money for one thing or another. On the day he received the report the same person was expecting to receive USD\$100 at Zvezuro shop at Chachacha center. Majoni said the police were not sure who would turn up to collect the money. They therefore went there undercover to wait to see the person who would collect the money. The accused then arrived with the intention to collect the money. They apprehended him and explained to him that there was a missing person who had last been seen two months previously and that he was a suspect in the matter. They took him to the police station in his car. Along the way, the deceased's son called on the deceased's number. The phone rang from accused's pocket. The police later searched the accused's car and found Iddah's identity card. They also later got confirmation that the car which the accused was driving actually belonged to Iddah. They

asked the accused to lead them to his residence as they broadened the investigation. They searched his house and recovered Patricia Mutero's passport and her driver's license. They also got affidavits which described a transaction relating to the sale of Patricia Mutero's vehicle before taking the accused back to the station and handed him over to the CID for further investigations.

[7] The prosecutor, with the consent of counsel for the accused produced a copy of Patricia Mutero's certificate of competency as exhibit 7 in the proceedings

[8] At CID Shurugwi, the investigation was taken over by an officer called **Vincent Pepuke**. ZRP Donga base had handed over the accused and all the exhibits linking him to the commission of the crime. They interviewed the accused with a view to establishing the whereabouts of Iddah whose car and particulars accused had in his possession. The accused narrated the events which led him to kill the deceased. He led the police to the recovery of Iddah Chigumbate's body along Unki Road in a shaft which was about three metres deep. They exhumed the body of the second deceased. It was buried together with a bag which contained a small purse which had \$10. The body had a rope on its neck. They took the body to a mortuary. The accused also led them, on the day following the exhumation of Iddah's remains, to the recovery of the deceased Patricia Mutero's remains. Before recovering her body, Pepuke said they saw some short braids, small bones and one sandal. The shallow grave in which the first deceased's body was buried, was close to where the items had been recovered. The shallow grave was along a river bank. The body was wrapped in a red blanket, was wearing a pair of blue jeans and was wholly decomposed.

[9] The witness added that Iddah's body was recovered about twenty-five kilometres from Shurugwi Town. They had been led to the place by the accused person. The shaft into which the body had been thrown was about fifteen to twenty metres off the road. They had come to know about the second body again through the indications of the accused. It was buried at a site about forty-five kilometres from Shurugwi Town. Both bodies were later positively identified by the deceased's relatives.

[10] During cross examination, counsel for the accused put it to the witness that the accused denied ever making indications but the officer said, much as the accused could do that, it was virtually impossible to have found out about the bodies and where they were

buried if he had not shown them. He further refuted the suggestion that the accused was found with Patricia's particulars because he was related to her. He said it was not possible that he then knew where her body was buried and had kept quiet when she went missing and the relatives were looking for her. He equally rubbished the claim that he had Iddah's car and particulars after he had seized them for a debt that Iddah owed him.

Defence case

[11] In his defence, the accused after miraculously recovering from his mental sickness went on a long tirade. He said he wanted to start by thanking the court for granting him the opportunity to talk. It was needless because it had always been his right. He had stupidly spurned it in the beginning. He said on a date he couldn't recall, he had left his home to go to Chachacha Centre. When he got there, he had bought a drink and went to stand beside a Honda Fit car whose registration numbers he could not remember. He was surprised to be apprehended by officer Majoni in the company of relatives of some person who was missing. They said he was under arrest. A week prior to that, he had gone to the same police station to report that his two phones had been stolen on his way from work in Mashava. There was one police officer at the station when he reported the matter whom he told that the suspect may have gone to drink at a local bar. The officer then asked him to go and make his report to Majoni at the bar. He complied and Majoni apprehended the person and took him to the station. He asked the accused to go home and return to the station the next day. When he did, he found to his surprise, that the person had been released. Although he queried it he couldn't get a proper explanation. So, when he was arrested he wasn't in possession of the phone alleged by Majoni. That phone was taken from the car besides which he had been standing when Majoni arrested him.

[12] He added that the police later took him to his house. On the way there, Majoni would disembark to allow the deceased's relatives to assault him. They wanted to know the deceased's whereabouts but he said he insisted that he didn't know anything. At his place nothing was recovered except that Majoni just took the accused's snooker balls. On their way to the station, the accused said he then saw his phones which he had earlier reported as stolen. They were produced by the police and alleged to have been the ones he had used to call Iddah's relatives.

[13] The accused said that he was handed over to CID officers who assaulted him forcing him to admit to things he didn't know at all. They later took him to the uniformed police section who refused to detain him because he was badly injured. Officer Pepuke is the one who assaulted him most. They took him out after two days and indicated they were going with him for indications. They asked him to show them where he had buried the bodies. He said he was just admitting to anything. They travelled along Unki road. When they arrived at the place where Iddah's body was, there were a lot of people who had gathered. The police forced him to point to a certain pit. He said he was afraid of the assaults and he pointed. A body was recovered from the pit he pointed out. He said he didn't know whose body it was.

[14] The following day they went back and travelled along a road that led to Mhandamabwe. The police were directing. Along the way, there were people who were molding bricks who said they had discovered some braids along a river bank. They took him and the police to the place where Patricia's body was dug up. The accused admitted that he made a warned and cautioned statement to the police but that he did so under duress. He couldn't however explain why he had not pointed that out to the magistrate at the time that the statement was confirmed at court.

[15] Further, the accused said Patricia's belongings were not recovered from his home. He denied having sold Patricia's car to Tafadzwa Mutare. He instead claimed that it was him who had bought a car from Tafadzwa. In another twist he admitted that he knew Patricia at a time he was standing as an agent of his uncle who wanted to buy a shop belonging to Patricia. He said he had no relationship with her. The accused was extensively cross examined by the prosecutor.

Common cause issues and those not seriously disputed

[16] From the facts as stated above a number of issues became common cause. They are that:

- a. Both deceased persons did not die natural deaths. They were killed. They died due to strangulation.
- b. They were both not properly buried
- c. They both lost their Honda Fit cars

- d. One of the cars was recovered from the accused and the other from a person who had bought it from the accused
- e. The accused was found in possession of identity particulars of the deceased persons

The issues

[17] There is no direct evidence that the accused killed either of the deceased. No one witnessed him kill the deceased persons. The evidence linking him to the commission of the offence is entirely circumstantial in that he was found in possession of the deceased's recently stolen property. He is further connected to the crimes by his indications and his confirmed, warned and cautioned statements. The question therefore is whether or not it was the accused who killed the deceased persons.

The recent possession

[18] Section 123 of the Code provides that:

“123 Recent possession of stolen property

(1) Subject to subsection (2), where a person is found in possession of property that has recently been stolen and the circumstances of the person's possession are such that he or she may reasonably be expected to give an explanation for his or her possession, a court may infer that the person is guilty of either theft of the property or stock, or of receiving it knowing it to have been stolen, whichever crime is more appropriate on the evidence, if the person

(a) cannot explain his or her possession; or

(b) gives an explanation of his or her possession which is false or unreasonable

(2) A court shall not draw the inference referred to in subsection (1) unless the circumstances of the person's possession of the property are such that, in the absence of an explanation from him or her, the only reasonable inference is that he or she is guilty of theft, stock theft or receiving stolen property knowing it to have been stolen, as the case may be.”

[19] In the case of *S v Godfrey Marowa and Others* HH 245/24 I pointed out that the doctrine of recent possession cannot be viewed as an autonomous principle in our law. It is simply a part of the principles of circumstantial evidence. Its application in murder cases cannot and does not directly lead to conviction like it does with cases of theft or receiving stolen property knowing it to have been stolen. Instead, two separate inquiries must be undertaken. The initial one is the routine inquiry where an accused found in possession of recently stolen property in circumstances where he is reasonably expected to give an explanation, is required to explain his possession of the property. If he fails to give any explanation or his explanation is false or unreasonable, the court then draws the inference that he either stole the property or received it knowing that it had been stolen. Once that

hurdle is dealt with the reality that when the accused stole the property its owner/custodian was murdered is circumstantial proof that the accused is the killer. For the doctrine to be of any use in murder cases, it must inevitably be joined to the principles of circumstantial evidence.

[20] The provision of the law cited above places an obligation on an accused who is found in possession of recently stolen property to account for his possession. He must explain his possession of it and where he does so, his explanation must be reasonable. The court will infer that he is the thief if he fails to give an explanation or his explanation is false or unreasonable. See *R v Sitoli* 1967 RLR 302 where the following was held:

“Where a person charged with theft gives a false explanation of his possession of the property concerned, the strength of this feature as a strand in the *corpus delict* depends on circumstances. If there is a competing rational hypothesis for the false explanation consistent with innocence, then its force may be neutralised.”

My understanding of the above is that a court may rationalise lies told by an accused regarding his/her possession of recently stolen property. That an accused could be dishonesty in his explanation of the possession and still be innocent. The principle stemmed from the older case of *R v Nel* 1937 C.P.D 327 where it was held that:

“It is well known that accused persons may give false explanations in an endeavour to divert attention from themselves when they think the circumstances tend to bring suspicion upon them.”

[21] In this case, the accused was found in possession of Iddah’s car and her cellphone. He was also found to have sold Patricia’s car to Tafadzwa Mutare. In addition, he was found in possession of Patricia’s passport and her driver’s licence. For Patricia’s property his first reaction was that he was not found with any of it. He later turned and said he had Patricia’s property because he was related to her. She was his cousin before adding a third twist to say that he had known her at a time when he was acting for his uncle who wanted to buy a shop from her. The three different versions show that the accused’s explanation of his possession of that property is not only false but palpably so. An accused who gives various explanations for one set of facts is obviously not telling the truth. The unreasonableness in the explanation is noticeable. Patricia had been missing for a long time. Her relatives were looking for her yet the accused knew where her body was buried.

He lied to the mother of the deceased that she had gone to Chikombedzi where she was staying with her boyfriend and that he had bought her shop. That evidence was not controverted at all.

[22] In relation to Iddah the accused's explanation is even more preposterous. He starts by telling the court the cock and bull story of his stolen phones. He added that when he was arrested he was just unfortunate to have been standing beside Iddah's car. Officer Majoni was clear that the accused arrived at the place where they had waylaid him driving Iddah's car. The sincerity of the officer's testimony is illustrated by the fact that at that time the police didn't even know that it was Iddah's car. They only discovered after the relatives identified it as such. There was no way then that they could have picked the car at a shopping centre and bundled the accused into it. The same applies to Iddah's phone. He tried to deny having been found with it but that denial can't hold. He had been using it to send messages to Anania Tanaka, Iddah's son demanding money on several occasions. The money had been sent to him. He collected it from Gibson Nyika on all the occasions. When the money was first personally left by Tanaka, he had advised Gibson that the money would be collected by Mwale. The accused had later arrived and stupidly introduced himself to Gibson as Mwale yet Gibson said he knew him to be called Mahembe. He had known the accused since 2021. Once again that evidence was uncontroverted. So, the fact that the accused had been extorting money from the second deceased's son, was found in possession of her recently stolen property which he could not account for surely leaves no doubt in our minds that it was the accused who stole it from the deceased.

The accused's statement and the indications

[23] Although indications remain extra curial statements like any verbal or written statement is, s 258 (2) of the CP&E Act places indications into a special category of extra curial statements. It provides that:

258 Admissibility of facts discovered by means of inadmissible confession

(1) ...

(2) It shall be lawful to admit evidence that anything was pointed out by the person under trial or that any fact or thing was discovered in consequence of information given by such person notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible against him on such trial.

[24] It means therefore that where an accused person points out a place or position or something and the pointing is not accompanied by any utterances or written statements the pointing out or demonstration may be admitted into evidence without the need for the trial within a trial procedure intended to deal with the admissibility of otherwise objectionable statements allegedly made by an accused.

[25] Further, where a fact or item is discovered as a result of information made available by the accused that fact or item shall also be lawfully admitted into evidence despite it being linked to a confession or statement which in itself is by law not admissible. See *S v Tafadzwa Shamba & Anor* HH 396/23

[26] In this case, whatever the accused's argument, it remains that he showed the police the places where both the deceased's bodies were dumped. It matters not that he did so after being assaulted. If indeed he was assaulted, those remain facts obtained by means of inadmissible confessions covered by s 258(2). It would not change anything. There was no way, the accused would have known where Iddah and Patricia's bodies were buried if he had not participated in their killing and or disposal. His fate is then sealed by the statements he made to the police which were confirmed by a magistrate. Needless to say, s 256 (2) provides that a confirmed statement shall be admitted into evidence upon its mere production by the prosecutor. The accused's statements as already stated were confirmed by a magistrate. The accused, in them, stated how he killed the deceased persons and buried their bodies. It confirms the entire cycle of evidence which we discussed above.

[27] When looked at as a whole, the chain of evidence points to one result. That it is the accused and nobody else who killed the two women. The evidence is interconnected and there cannot be any other way to explain it other that it was the accused who committed and is guilty of both crimes. It is consistent with his guilt and inconsistent with his innocence.

[28] Against the above findings, we have no apprehension to reject the accused's fractured and patently false explanations. In the same breath we are moved to accept that the state managed to prove its case beyond reasonable doubt as required by law. Accordingly, we find the accused guilty of both counts of murder as charged.

SENTENCING JUDGMENT- 27/9/24

[29] The Wikipedia describes a serial killer as a person who murders three or more people, with the killings taking place over a significant period of time in separate events. It mentions psychological gratification as the major motivation for the killings. Killings of that nature involve some sexual contact with the victims at some stage during the murder process. Other motives include anger, thrill-seeking, financial gain, and attention seeking. Victims of serial killers tend to have things common amongst them such as demographic profile, appearance, gender, or race.¹

[30] In this case the offender Emmanuel Mahembe came slightly short of fitting the definition of a serial killer. In fact, if he had killed one more victim, he would have qualified to be regarded as a serial killer because his excesses conform with all the other requirements. He killed two women between August 2021 and May 2022. He was in love with both women; the profiles of the two women were similar in that they ran businesses of sorts and they both drove Honda Fit cars. Both of them had fairly loose family connections such that nobody really bothered to quickly suspect that something had terribly gone wrong. They both drank alcohol which allowed the offender to easily strangle both of them to death. It can be deduced from the proven facts that his motives were psychological gratification, thrill-seeking and financial gain because he stole from both women.

[31] Our laws, as will be demonstrated later consider killings of this nature very seriously and in fact, they prescribe that it shall be a factor in aggravation that the murder was one of two or more murders committed by the accused during the same episode, or was one of a series of two or more murders committed by the accused over any period of time.

[32] Needless to state, in sentencing a murder convict, the court is required as a rule to first make the determination on whether or not the murder was committed in aggravating circumstances. That inquiry is necessary because the sentencing approaches are different where the crime is aggravated and where it is not. With the former, the court is confined to the three options of death, life imprisonment or a determinate term of not

¹ https://en.wikipedia.org/wiki/Serial_killer;

less than twenty years imprisonment. With the latter, the court's full sentencing discretion is restored in the determination of the length of imprisonment it can impose after taking everything else into account. The only handicap is that it cannot impose any other penalty other than imprisonment.

[33] In the case at hand, the prosecutor argued that the offender premeditated the commission of both offences; he committed them to facilitate the robberies and that he perpetrated two murders over a period of time. These are issues that cannot be denied. The facts of the matters speak for themselves. It could have only taken serious thought and careful planning to pull off the murders in the seamless manner that the offender did in both cases. They were not random killings. It involved the selection of a target who fitted a particular profile. It follows therefore that the murders were not an overnight occurrence but a process involving elaborate planning. It cannot be gainsaid that the offender premeditated the crimes.

[34] We have already dealt with the fact that there were two murders committed over a period of time. That the offender took his victims' possessions after the murders is equally apparent. We may not be sure if both had money but if they did, he must have taken it in addition to appropriating their vehicles one of which he sold not only for financial gain but obviously in a bid to distance himself from the commission of the crime and conceal evidence.

[35] In addition, the offender concealed the evidence of the murders. In both cases, he disposed the bodies to hide them from discovery. He threw the second deceased Iddah's body into a three-metre-deep disused mine shaft. He buried Patricia's body in a shallow grave by a river bank. He did not stop there. He actually approached Patricia's mother after he had killed her and lied that he had bought Patricia's shop. Even after killing their mother he still wanted to take away from her children the little inheritance that was a solace to them. To some extent he succeeded in extorting money from Iddah's son who by the time the crime was discovered had paid him about USD \$ 1600. The concealment of evidence is, in terms of the additional aggravating factors provided in the sentencing guidelines an aggravating factor. It is worsened by the extortionist tendencies exhibited by the offender after the murders.

[36] Worse still the offender is no doubt a cunning individual. He must have been smooth talking because in both instances he had no difficulties in isolating his victims and luring them to very secluded places. We are not sure about his choice of the dip-tank but it must have had some significance to him. His deviousness continued even during the trial when he tried to hoodwink everyone into thinking that he was mentally disordered when he was not. It took some experience and boldness from all of us to ensure that the trial went ahead in the face of the offender's pretence. We also applaud the honesty and integrity of Ms. *Kwande* who represented the offender in denouncing his pretentious behavior. Her forthrightness is what is meant by the call that a legal practitioner's first duty is towards the court. A less honesty legal practitioner would have tried to take advantage of the situation to stall the trial and defeat the ends of justice. In the end we have no hesitation to hold that this is a murder that was committed in a multiplicity of aggravating circumstances.

[37] In mitigation, we were advised that the offender is aged 39 years. He is a family man with five minor children aged between two and fifteen years. He is the breadwinner in the family because his wife is not employed. We were equally advised that he is a first offender who has been in pre-trial incarceration for close to two years now. The above however appears to be all that can be said in his favour. He has not done anything to pacify the families of the deceased. If anything, and as said above, he actually wanted to deprive them of the inheritances left by their love ones.

[38] Our overall view is that this is a man with both the capacity and make up to go on a spree of killings. He has not divulged what motivated him into the barbaric killings. He remains highly dangerous because whatever made him to kill the deceased persons in the first place may overcome him once more and drive him to strike again. It would be remiss of this court to turn a blind eye to the possibility of that danger. The murders would have ordinarily attracted the death sentence but after careful consideration, the efficacy and benefits of imposing that penalty in this case appear lost to us. We are however moved to hold that the offender has to be removed from society for good. He is dangerous, particularly to women. In the circumstances, the offender is sentenced as follows:

- a. Count 1 relating to the murder of Patricia Mutero: - **Life imprisonment**

b. Count 2 in relating to the murder of Iddah Chigumbabte: - Life imprisonment

National Prosecuting Authority, State's legal practitioners

Kwande Legal Practitioners, Accused's legal practitioners