

IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, BHISHO)

CASE NO: CC 91/14

In the matter between:

THE STATE

VS

LUYANDA XIMIYA

Accused

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SENTENCE

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MAKAULA J:

[1] The deceased died as a result of a single gunshot wound. The post mortem report reflects as the cause of death “*a gunshot wound neck and spinal cord – unnatural cause*”. At the time of his death the deceased was 71 years old married to the complainant in count 2, **Idellette** for a period of 48 years. They were blessed with four children who are all grown-ups and several grandchildren four of whom were present with the deceased and **Mrs Troskie** at the time the deceased died in the hands of the accused and his

accomplices, two of whom are unknown and the other one is reported to have been killed during another robbery.

[2] Death of a human being through killing has devastating and dire consequences for the family of the deceased person. It results in financial, emotional, traumatic and psychological problems on those close and around the deceased. Its adverse effects can never be adequately described and the pain it causes cannot be measure in anyway. The pain and helplessness that one feels cannot be verbalized. The same is felt by the deceased family in this matter.

[3] Some of us try to live, a healthy lifestyle and behave appropriately because we want to preserve our lives and to leave as many years as we possibly can. That we do in order to benefit ourselves and those around us. We want to live as long as it is humanly possible so that we may see our children, grandchildren and great grandchildren grow. We wish so because we want to instil good values and morals on them.

[4] I may unashamedly say that the deceased had succeeded to look after himself but for the actions of the accused. No amount of words can describe the loss the accused caused the family of the deceased and the community in general. As alluded, to the effects of murder to those close to the victim are the same across the nation and the colour line. Cutting somebody's life through violence more especial violence which is perpetrated by criminality needs to be condemned and meted out with appropriate punishment.

[5] What is now colloquially termed “*farm killings*” is rife in our country. Farmers who contribute quite substantially to our economy in the recent years have been targeted by criminals. Such conduct has been condemned and still needs to be condemned. Farm killings are sporadic and need to be knipped in the bud. In my career I have dealt with several cases involving people like the accused who go around robbing and killing farmers especially those who are as old or more as the deceased in this matter. Communities and the government are really affected by these senseless killings of innocent and law abiding members of our community.

[6] I cringe to think that the deceased in this matter lost his life for absolutely no reason. The only valuable items that were stolen from his farm were left thrown away i.e. the car and fire-arms. Nothing of value apart from the rings was taken away and recovered.

[7] It is a miracle that the life of **Mrs Troskie** and the grandchildren was spared. She should thank **God**, if she is a **Christian** like I am, that she was not raped. I, however, have to take into account that she was severely injured. I alluded to her injuries in my judgment and shall do so even now.

“[11] The J88 which was completed by **Dr TJA Louw** reflects the following injuries:

- 11.1 Deep laceration of ±6cm over forehead and bridge of nose;
- 11.2 Severe swelling of face with bruises over face and scalp;
- 11.3 Active bleeding from laceration fracture of the left mandible, nasal and frontal bones present.

The conclusion was “*severe blunt force was used to cause facial injuries.*”

[12] **Mrs Troskie** was further treated by **Dr Hein Slabbert** who is a Maxillofacial and oral surgeon. She was admitted at Greenacres hospital on 13 December 2013 with the following injuries:

12.1 Laceration forehead, fractured left zygomatic arch, fracture of outer wall of frontal sinus, nasal bone fracture with displacement of nasal bridge, ethmoid fractures, blow-out fracture of the right orbital floor, fracture of the left mandibular ramus, coronoid process and condyle.

[13] On 14 December 2013 she received the following treatment:

13.1 Open reduction and internal fixation frontal bone, nasal bridge, nasal bones and closure of soft tissue lacerations.

[14] On 10 January 2014 she received the following treatment:

14.1 Closed reduction of mandibular fractures using Erich arch bars and intermaxillary fixation.”

[8] The accused played a pivotal role before and after the commission of these offences as stated in my judgment on conviction. I shall adumbrate in this judgment the role he played. The evidence clearly establishes that he switched off the lights when they got to the farm, grabbed and assaulted **Mrs Troskie** causing her the injuries as described above. He took and removed the items which have been recovered. All these things should be viewed in the backdrop that from the time they left town to come to the deceased's farm, they armed themselves with fire-arms which they used in the killing of the deceased. I rejected the evidence of the accused that he only came to the deceased's farm to steal sheep. This was a planned and well orchestrated robbery.

[9] In considering sentence, I have to have regard to the personal circumstances of the accused. He was 25 years at the time of the commission of the offences. He is not married though he has 2 children aged 3 and 7 years respectively. He was maintaining them though they stayed with their mothers at the time of his arrest. He was working earning a sum of **R3 500.00** per month in a road construction company. **Mr Solani**, for the accused further submitted that the accused is a candidate or a person who is capable of rehabilitation. Indicators for such are that the accused did not run away, he made a clean breast by confessing and pointing out the crime scenes to the police, so submitted **Mr Solani**. The parents of the accused are deceased and he lived with his grandparents and is not married.

[10] The question of sentence is pre-emptily the discretion of the court which has to be exercised judiciously. In other words, after having properly considered the triad i.e. the interest of the community, the crime, as well as those of the accused are taken into account. The balancing of these interests is always a difficult one and not easy to strike. Hence I was perturbed or taken aback by the address of **Mr Robinson** that he merely prepared his address in respect of life imprisonment only and not any other form of punishment. It is trite that officers of court should, in advancing their cases be of assistance to the court in the interest of justice and not adopt a dogmatic view.

[11] The accused did not show any remorse as suggested by **Mr Solani**. The accused changed his defence in order to suite the circumstances of this

case. He has not shown, at most, any signs of contrition that was expected of him or any reasonable person in his position especially that he alleges to have been forced in the commission of the offences. Much was expected of him under those circumstances. The age of the accused cannot count in his favour for anything in this matter. He was a grown-up who clearly could discern between right and wrong, what is barbaric and not. He therefore cannot benefit from his age if one has regards to how the deceased was lured outside three times to be killed on the third occasion.

[12] I, therefore, find no substantial and compelling circumstances in respect of counts 1, 2 and 3.

Consequently, I hand down the following sentences;

**COUNT 1:      Murder**

**The accused is sentenced to life imprisonment.**

**COUNT 2:      Robbery with aggravating circumstances**

**The accused is sentenced to undergo fifteen (15) years imprisonment.**

**COUNT 3:      Unlawful possession of fire-arms**

**The accused is sentenced to undergo fifteen (15) years imprisonment.**

**COUNT 4:      Unlawful possession of fire-arms**

**The accused is sentenced to undergo three (3) years imprisonment.**

**COUNT 5:      Unlawful possession of ammunition**

**The accused is sentenced to undergo two (2) years imprisonment.**

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**M MAKAULA**

**JUDGE OF THE HIGH COURT**

Counsel for the State:                      Adv Robinson

Counsel for the Accused:                  Mr Solani

Heard on:    16, 17 & 18 February 2015

Delivered on:                                    19 February 2015