

THE STATE

Versus

MICHAEL GOODLUCK NLEYA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 18, 19 AND 22 OCTOBER 2012

L. Maunze state counsel

P. Madzivire defence counsel

Criminal Trial

KAMOCHA J: The accused was charged with the crime of murder. In that on 8 October 2010 and in a bushy area in Mnyamana area of Plumtree he did wrongfully, unlawfully and intentionally kill and murder Blessed Msebele a male juvenile in his life therebeing.

When the court asked the accused at the beginning of the trial whether his full names were Michael Goodluck Nleya he denied that they were. He told the court, instead, that his correct names were Njabulo Ncube and alleged he was given the names Michael Goodluck Nleya by the police at Plumtree as nicknames on 17 June 2011 when he came back from South Africa.

His defence counsel then advised the court that the accused was a holder of a South African identity card and drivers' licence bearing the name Njabulo Ncube but he was a Zimbabwean citizen and not South African.

When the charge was then put to him he tendered a plea of not guilty. The state outline was read and produced as exhibit one which I do not propose to read all over again. I will, however, reproduce the defence outline which was read and produced as exhibit two. It was brief and reads thus:-

"The accused person puts the state to strict proof thereof and the sum total of his defence is as follows:

1. More particularly the accused person denies having an or (sic);
 - i) Negligently or harbouring any intention be it actual or otherwise to murder deceased.
2. The accused person will instead tell this honourable court that:-

3. During the fateful period deceased was murdered:
 - i) Accused at all material times was resident in South Africa;
 - ii) Specifically at the material time the accused was in Maputo, Mozambique, where he had gone driving a haulage truck during the course of his employment, with Halfway Toyota, South African company.
4. Accused remembers being subjected to a citizen arrest by some Zimbabwean men in South Africa.
 - i) These men later on smuggled him into Zimbabwe, where they later on handed him to the police at Plumtree wherein murder charges were leveled against him
5. The accused person therefore maintains his plea of not guilty of murder.

WHEREFORE on the strength of his innocence accused person will submit that he is not guilty as charged and prays for his acquittal on the merits.”

The following exhibits were produced during the trial. Exhibit 3 was an affidavit by a police officer called Pascal Max Ndlovu who identified the burnt remains of the deceased to the pathologist doctor Sanganaï Pesanaï who examined the remains of the deceased and compiled the post mortem report exhibit 4. The doctor carried out the post mortem on 11 October 2010 at United Bulawayo Hospitals. His observations were that the deceased had 90% burns. He gave marks of violence as “fractured skull both lone limbs”. Both parietal bones of the skull were fractured. The doctor could not ascertain the cause of death due to the degree of burns although he opined that the cause of death could have resulted from 90% burns the deceased suffered.

The evidence of the following witnesses was admitted as it appears in the state out line by consent in terms of section 314 of the Criminal procedure and Evidence Act [Chapter 9:07] Loveness Moyo, Julius Gumbo, Mthulisi Ncube, Sergeant Munga, Tsepo Msebele, Detective Sergeant Tawanda Shoniwa, Detective Sergeant Joachim Mudoni, Pascal Max Ndlovu and doctor Sanganaï Pesanaï.

Viva voce evidence was led from three witnesses namely, Phephelaphi Dube, Sarah Msebele and Agnes Dube. Phephelaphi Dube hereinafter referred to as “Phephelaphi” told this court that she was 60 years. She lives at Jolly Msebele’s homestead in the Ndolwane area of Bulilima district in Plumtree. She runs and owns Thandabantu Store at Butshe business centre.

She knows the accused as he lived in the same area. He was in fact in love with her daughter Sarah Msebele the mother of the deceased Blessed Msebele. She said the accused was known in the area, as Michael Goodluck Nleya. She did not know that he was also known as Njabulo Ncube.

The deceased was her grandson being the son of her daughter Sarah Msebele. On the fateful night she retired to bed at the backroom of the shop with her grandchildren namely Loveness Moyo, Blessed Msebele – the deceased and two other children. During the early hours of the morning around 2 a.m. 8 October 2010 she heard a violent knock on the door. The person banged the door for the second time and hurled a barrage of insults when she asked who it was.

He asked for the owner of the store and when she replied that he had died, he accused her of having killed him so that she could remain running the store. He hit the burglar bars with wooden droppers which he took from the garden fence. He then told her that she is not wanted at the business centre and said he was going to kill her and burn down the shop. He hit her with the wooden droppers through the window while she was inside but she held the door closed while he hit her on the head and other parts of the body.

He then demanded for some money which she gave him through the window but he said that was too little and continued to assault her until the door was opened. The person had masked his face. After the door had been opened he called Loveness to go outside. In calling Loveness the person used the name “Rato” which she is affectionately known with by her close relatives. She went out as ordered but returned into the room. He demanded the phone which he was given.

The person entered the room and threw the witness to the ground and belaboured her with some object which she did not know until she was unconscious. When she came to, she discovered that one of her legs had been broken. The children were no longer there. She managed to crawl to the nearby shop where neighbours who had been alerted by Loveness found her.

During the ordeal the deceased had gone under the bed. Loveness who was aged 18 years and Forbedience aged 17 years managed to flee.

The witness said when the person was hurling obscenities at her, demanding money from her which when given to him the person said it was too little she recognized the voice as that of the accused but she wondered why the voice was that of accused as he was supposed to be still incarcerated in a South African prison serving a prison term. Further the person called Loveness by the name “Rato” a name only known by those closely associated with her family. On learning that accused had been released from prison she was certain that her assailant was the accused.

She was taken to the clinic that same night and later transferred to Plumtree hospital and subsequently learnt that the deceased had been murdered. The witness still walks with a limp.

When she was discharged from hospital the accused phoned her using the sim card that he stole during the robbery. Each time she tried to answer the phone he switched off the phone but she had recognized the number as hers which the accused stole during the robbery.

Under cross examination she was asked if she could not be mistaken about his voice she was emphatic that she could not as she knew the accused well. She even knew his voice before he was in love with her daughter. Further when it was suggested to her that accused was in Mozambique when the murder was committed she said that was simply not true.

Phephelaphi was a good witness who gave her evidence clearly and in a compelling manner. She was very credible and worth to be believed. The court accepts her evidence in its entirety.

The next witness was Agnes Dube who is now 72 years but looked frail. She lives at her own homestead in the Ndolwane area in Bulilima district, Plumtree. The accused is her biological son. She had been blessed with 10 children many of whom are now dead. The accused was her fifth child. She said his full names were Michael Goodluck Nleya. She was surprised to hear that he was also known as Njabulo Ncube which names she did not know. She knew the deceased as one of the children in the area. She used to see him at school. She was aware that accused was in love with Sarah Msebele the mother of the deceased.

Her evidence was that after the deceased had been murdered it was common knowledge in the area that it was the accused who had murdered him. The accused had not come home for a very long time.

In March 2011 the accused came home during the night. She immediately confronted him and asked him why he had murdered the child. The accused opened up to his mother. He told her that it was indeed him who had murdered the child. He explained to her that he was revenging because he had spent a lot of money on the deceased's mother when she was in love with him. The mother asked him why he did not report the matter to the headman if that had been the case. The accused told her that he did not operate that way as that would not have brought back his money. In any event he had already killed the child.

The accused left after two days. During the time he was there he used to leave home early in the morning and returned under cover of darkness.

Under cross-examination she did not agree with the suggestion that the accused was in Mozambique at the time the murder was committed. She was entirely correct because he himself had told her that he had killed the child in order to revenge.

The witness appeared to be reluctant to talk but she nevertheless told the court that she had no reason to lie against her own child. She is worth to be believed. Her evidence corroborates that of Phephelaphi on all the material points. For instance that the accused was at the scene on that day not in Mozambique.

The third witness was Sarah Msebele who is aged 28 years and is the biological mother of the deceased.

The accused was her boyfriend from 2004 to 2006. His correct names are Michael Goodluck Nleya but was using Njabulo Ncube when in South Africa.

She alleged that her affair with the accused was not a good one right from the on-set as he was a violent man who used to assault her and told her that he would kill her if she reported him to the police for the assaults. He told her that he did not accept rejection from any woman. He would kill her if she dared reject him. He would not kill her alone but her whole family.

The witness used to work as a temporary teacher here in Zimbabwe but accused came and forced her to leave that job and go with him to South Africa. He threatened to kill her and her whole family if she refused to go with him to South Africa. She claimed to have gone with him out of fear.

The situation worsened when they were in South Africa. She could not visit her relatives. She allegedly suffered but did not know what to do. She fell pregnant in 2006 but the accused was arrested in October 2006.

She gave birth to a baby with a down syndrome in 2007. The child was kept in hospital. While the baby was in hospital none of the accused's relatives offered any financial assistance. The baby died in hospital after one month and she went to inform the accused who appeared to understand and accept what had happened.

Trouble started when she decided to part ways with the accused. She screwed up her courage and went to prison to give him the bad news that she was parting ways with him. She secured a job for herself and moved out of the place she used to stay with the accused.

The accused who was incarcerated at Leeuwkop Prison at Brayson started writing letters to her. She produced a total of 9 letters which she had kept. She did not reply to any of the letters.

The letters are full of obscenities but there is one common thread that runs through all of them. The accused was bitter about being rejected. His desire to cause harm to Sarah

Msebele and her family in revenge is clearly manifested. He was also bitter with Sarah's mother whom he accused of influencing her. He clearly manifests, through his letters the desire to inflict more pain and suffering on Sarah and her whole family than what he himself had suffered at the hands of Sarah. This he said he would do as soon as he was out of prison. He mentioned in some of the letters that he was about to be released from prison and would be fulfilling his desires and wishes to kill.

On 8 October 2010 she received a call from home advising her of the attack on her family and the gruesome murder of her son. It was not difficult for her to know who had done so. To confirm what she believed, she immediately proceeded to Leeuwkop Prison to check if accused had been released. The prison authorities confirmed that accused had been released from Leeuwkop Prison on 1 September 2010 but had been sent to Lindela for deportation back to Zimbabwe.

This court finds that the 9 letters were written by the accused. No other person could have written such details about what took place between accused and Sarah. The letters were in fact being delivered by his friend.

When she came to bury her son she made it clear to all and sundry that the accused was the culprit. This court accepts her evidence in its entirety.

The evidence of Julies Gumbo and Mthulisi Ncube which was admitted by consent was to the effect that they were members of the Neighbourhood Watch Committee. After receiving the report of the attack on Phephelaphi and the disappearance of the deceased they followed the foot prints of the assailant for 7 kilometres where they found the body of the deceased in a fire which they put out. They observed that the skull of the deceased was depressed and one of the legs was in pieces. The deceased had been burnt beyond recognition.

Detective Sergeant Tawanda Shoniwa who was investigating officer told the court that accused led him to the recovery of the sim card the accused had robbed Phephelaphi of. That is the card accused was using to call Phephelaphi but would switch off when she replied.

The accused was a hopeless witness who even told lies from the word "go" by attempting to deny his name. His alibi fails in the light of the evidence led by the state. His evidence is rejected. He never worked for any haulage company.

His wish and desire had always been to kill and he has accomplished it. He is therefore guilty of murder with actual intent.

Attorney General's Office state counsel
Joel Pincus, Konson & Wolhuter accused's legal practitioners