

IN THE HIGH COURT OF SOUTH AFRICA  
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: SS08/2007

DATE: 27 OCTOBER 2008

5 In the matter between:

THE STATE

and

BERNARD MUSSA SELESTIN

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JUDGMENT

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NGEWU, AJ

15 The accused appeared before the Court on three counts, count 1  
was murder, count 2 was robbery with aggravating circumstances  
and count 3 was attempted murder. The allegation by the State  
was that on or about 26 July 2005 and at or near Chad Road,  
Norfolk, in the District of Wynberg, Cape Town the accused  
20 unlawfully and intentionally killed one Bertus Schreuder by  
stabbing him with a knife and/or hitting him with a hammer and by  
gagging or strangling him, and that the provisions of Section 51 of  
Act 105 of 1997, the Criminal Law Amendment Act, were

applicable in that the murder was planned or premeditated. In regard to count 2 the State alleged that on the same date and place, as mentioned in count 1 the accused unlawfully and intentionally induced submission of Bertus Schreuder by stabbing him with a knife and/or hitting him with a hammer and by gagging or strangling him, and did unlawfully and with intent to rob take one Mazda 323 Sting motor vehicle, registration number CA273553, Standard Bank ATM cards, the property of or in lawful possession of or under the lawful control of Bertus Schreuder. Aggravating circumstances as defined in Section 1 of Act 51 of 1977 are present in that on the occasion during which the offence was committed, whether before or after the commission of the offence the accused inflicted grievous bodily harm to Bertus Schreuder, and that the provisions of Section 52 of Act 105 of 1997, the Criminal Law Amendment Act, are applicable in that there were aggravating circumstances involved as well as the taking of the motor vehicle.

In regard to count 3, the allegation was that on or about the same date and place as mentioned in the main count, or count 1, the accused unlawfully and with intent to kill, stabbed Ulrich Reinhard Milongi with a knife in the neck area, tied his hands and legs behind his body and tied a black bag around his mouth. The

Court explained the implications of the provisions of the Criminal Law Amendment Act. The accused pleaded not guilty and he was initially represented by Mr Colenso and later by Advocate Gassas. A statement in plea explanation was tendered and duly signed by  
5 the accused in which is recorded the following;

He was in Cape Town on the afternoon of the murder, being 26 July 2005, [the murder which is now subject of dispute]. He received a telephone call from one Ebrahim Gumba, who  
10 persuaded him to look after the deceased's motor vehicle. He did not know that it was the deceased's car and he indicated to him that it was under his lawful custody and control. He knew many people in Muizenberg, Steenberg or Retreat area and often visited them at their houses. He may have been to the deceased's house  
15 prior to the murder, although he did not recognise it from pictures contained in annexure A. A bundle of documents was tendered to the Court and also 220 admissions, with the leave of the accused.

The accused admitted the identity of the deceased and that from  
20 the scene of the incident until the post mortem examination the deceased suffered no further injuries. He did not dispute the correctness of the contents of the report. He did not dispute the photo album or the specimens taken from the deceased's body

during post-mortem examinations. He further did not dispute the blood alcohol content results of the deceased, nor the photo album depicting where the accused was arrested and where the vehicle belonging to the deceased was found. He further did not  
5 dispute that the cause of death was a combination of blunt trauma injuries and asphyxiation as per the medical report.

The State led the evidence of a number of witnesses. Jeremy Hibbert testified that he had known the deceased as a next door  
10 neighbour. He was from the airport when he heard a lot of screaming and shouting from the neighbour's house. It was dark and he shouted across the wall. His son told him that it was Ryno who was screaming. Ryno also stayed at the deceased's house and was there every day. They then jumped over the wall to  
15 investigate. They saw Ryno lying at the back of the garden with his hands tied behind his back. His legs were also tied. He bled profusely and was trying to get up. They tried to calm him and assured him that they would get help and he must remain calm. Mr Hibbert then looked into the house through the window and  
20 saw Bertus lying in the passage, there was no movement, he had no shirt on, his shirt was open, he saw there was nothing to be done, the house was neat. There was no other person in the house, the deceased's car was not in the garage. His son called

the police and his wife activated the alarm. Andre Deon Martin testified that he was the next door neighbour as well to the deceased. He was at home half past six in the evening on the day of the incident. He heard a scream from the deceased's house, it was emanating from the deceased's backyard. He and his wife phoned the police who arrived in less than ten minutes. They all went to the neighbour's house and found Mr Hibbert already there; the person screaming was always seen at the deceased's yard; there was no car parked in the deceased's garage.

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Richard Tango testified that he stayed in Westlake vicinity, No 12, Erica Avenue; he knew the accused through his wife, as the accused stayed in his wife's place with a partner for about a year sharing her house with another couple. Mr Tango and his girlfriend stayed in a bungalow that was in the same yard. He woke up on the 28<sup>th</sup> of July, wanting to do his washing in the washing machine that stood outside. He shifted the machine and saw a hammer under the washing machine. It had a big head and a brown handle. He had never seen the hammer prior to that date; the hammer was handed over to the police. The police had been in the area earlier on; there was blood on the hammer; he had not touched the hammer; he had a car that was parked under the window outside, that is the accused. Mr Tango denied having

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accused Mr Selestin of having an affair with his wife or live-in partner. He never was jealous of him at all. Mr Tango further denied that he would wash his clothes from a bucket as suggested by the accused. He further denied that he fabricated evidence  
5 against the accused.

Victor Ndaba testified that on 27 July 2005 he was on duty as a constable attached to Kirstenhof SAPS and had six years service. They were on guard a certain vehicle whose owner had been  
10 killed. The car was parked at 23 Poplar Avenue, at the backyard. It was a Mazda 323 Sting. They were waiting for fingerprint experts and photographers. He was with Inspector Fourie and they were seated in an unmarked police vehicle. They had received a call from the house owners that they saw a suspicious  
15 car. It had arrived at night, they did not know who the owner was and they do not know who drove it there. The vehicle was hidden at the back of the house and was not visible from the front. The vehicle was locked, the windows were properly closed and it was not damaged.

20 In a period of about half an hour the accused approached from Flamingo Street, that was opposite their vehicle. He had a green Pick 'n Pay bag and car keys in his hands. He went past them and

he suspected him. He called him when he was in front of house No 21 Poplar Avenue. As the accused yelled back he inserted the keys in his pocket and then looked at him. He said he was on his way to his friend's place up the street. He then demanded the  
5 keys and invited him to come with them to the suspected stolen vehicle. He then pressed the immobiliser and the alarm went off. The accused told him that the keys belonged to his friend whom he had met in Cape Town or whom he would meet in Cape Town. In the Pick 'n Pay bag there was a laptop wrapped in a plastic bag.  
10 The witness requested to search the accused and found a Motorola phone, bank cards apparently in the deceased's name, a paper with a bank pin number and a loose MTN sim card. The accused was then taken to the police station.

15 When the fingerprint experts arrived and opened the car, they found the accused international driver's license on the floor of the car. The witness questioned the accused about the license at the police station and the accused said that he had lost it three months ago. The accused was then arrested, the laptop cover  
20 was found in the neighbour's yard.

Dr Linda Liebenberg testified that she was a qualified medical doctor with MBCHB and a diploma in forensic medicine. She does

autopsies and is a pathologist stationed at UCT. She performed an autopsy on the deceased. The head injuries he sustained were consistent with being inflicted with a hammer. The deceased had an oval indented (indistinct) fracture, he died rapidly as he  
5 swallowed blood.

Martin Clive Marais testified that he was an inspector and was attached to the local Criminal Record Centre in Cape Town as a photographer. He had received training in photography and  
10 attended various courses, he also does videos and collects forensic evidence at the scenes. He was called to the scene at Chad Road, he photographed, videoed and collected various forensic exhibits and blood swabs from the blood splattered through the house, they were sampled and sealed. He kept them  
15 in his possession until he handed them to the LCRC. The plate in photo 19 of the photo album was the only one left out of place, the house was neat. Food in it was relatively fresh, it had no mould. He also found a claw hammer as depicted in photo 51 of the photo album. The hammer was forensically tested and was excluded.  
20 Inspector Flewin brought another hammer which was allegedly used in the commission of the crime. It was number 32/05 and was handed in with other exhibits at LCRC, Cape Town.



Captain Flewin testified that he was stationed at the LCRC, Cape Town, he also was a qualified fingerprint, palm print and footprint expert; for 16 years he worked as a fingerprint expert. On the 27<sup>th</sup> of July 2005 at about 8:21 he was summonsed to 38 Chard Road, Kirstenhof where he searched for fingerprints and palm prints on a plate rim which contained food on the kitchen top drawer. The fingerprint was duly lifted and was compared with a right thumb print made by the accused and they matched. He found the seven points of similarity that they normally need to conclude that the fingerprint belonged to that of the suspect. This led him to conclude that that fingerprint is that of the accused before Court, as no two people share fingerprints. He also lifted a fingerprint on the outside of the middle of the rear-view mirror which compared with accused left hand print that was in the deceased's car. He also compared it with that of the accused and there were seven points of similarity identified and that also led him to conclude that that fingerprint was that of the accused before Court.

Captain Ulrich Knoetze testified that he was the reporting officer, he had DNA techniques qualifications and a BSC from UWC. He received the hammer that was properly sealed in an exhibit bag. Mr Mark Fassen testified that received two large bags containing

smaller bags with exhibits, they were properly sealed, they would not accept unsealed bags for exhibits.

Constable Matthews testified that he was called to the scene at  
5 Chard Road, everything looked normal and in place as they entered the house. In the passage he saw the deceased lying in a pool of blood. He was tied around his feet and his hands were tied behind his back. There was no forced entry into the house. They interviewed Ryno Anderson who was the survivor. He had  
10 stab wounds in the neck area, and an arm problem due to the rope that was tied around the neck. They received a call regarding the deceased's vehicle on the 27<sup>th</sup>. On the 28<sup>th</sup> Mr Tango contacted them about the hammer he found under the washing machine. The hammer was bloodstained and dirty and it was exhibited  
15 before the Court as exhibit I. The claw hammer found in the house of the deceased was clean and was excluded on the fingerprints testing. The car was found behind the house at No 22 Poplar Avenue. They found a bunch of house keys, deceased's diary, bank cards, etc in the rubbish bin at 23 Poplar Avenue.  
20 According to him the accused was also known as Charles. He took two statements from Ulrich Mhlongi, the victim in count 3. One was whilst he was in hospital and the other one whilst he was in the sheltered accommodation arranged for him. Both were duly

signed and the commissioned. He said Mr Mihlongi left the sheltered accommodation and they could not trace him again despite their diligent search. He was a Tanzanian and he did not renew his refugee status, nobody knows where he is. He checked  
5 with the custom officials his new address but in vain. The State then applied that the statements made by Ulrich Mihlongi be admitted to just give a clear picture to the Court of the actual issues or incidents that happened on the day in question. The statements are not intended to prove the identity of the culprit at  
10 all. In the interests of justice the statements were ruled admissible by the Court and were duly exhibited. The statements did not introduce new evidence but were rather corroboratory of the evidence the Court already had. The statements were made sincerely and immediately after the commission of the offence.  
15 The events were still fresh in the memory of the declarant and the declarant did not display any incapacabilities as to the narrative ability. A reason was tendered for the absence of declarant.

The Court accepted the nature and probative value of the  
20 statements. Mr Colenso withdrew and Advocate Gassas took over the defence of the accused. According to Constable Matthews where the accused stayed in Erica Road there was a yellow unroadworthy Mazda belonging to the accused. It was just parked

there. It is this witness who retrieved the hammer from under the washing machine, that is Mr Matthews himself. It is untrue that there was no washing machine in the premises. The witness further found a blue t-shirt, there was a staff ID card found in the  
5 accused room, it bore the name Charles and had a photo of the accused.

The State also handed in a portion of the bail proceedings. Mr Selestin testified in his own defence. He told the Court that he  
10 was a Tanzanian national, he came to South Africa in 2003. He has performed various jobs. During the time of his arrest he stayed at No 12 Erica Road and had been there for not more than a year. His car was parked next to the window, anybody could have come to the premises any time because it was an open yard.  
15 Only one vehicle could park on the property. Mr Tango's wife would come to him, that is to his room, when they quarrelled, asking him to call the police. For that reason Tango accused him of having an affair with his wife. There was no washing machine anywhere in the yard. Mr Tango would do his washing from a  
20 bucket. He knew nothing about the hammer. He did not know how the hammer got there. He'd never seen the hammer before.

On 27 July 2005 Ebrahim gave him the car which he would hand

over the following day to him. He then woke up that morning and went to John to collect the car, that is the following morning. He would take it to Ebrahim in Salt River, Cape Town. John stayed at 23 Poplar Road, the vehicle was a Mazda 323. As he proceeded there he left his house open. On the 26<sup>th</sup> he was not at 38 Chadd Road, he was in Cape Town, he didn't know the deceased, it is possible he knew Ryno as he had friends in the area. The fingerprint found on No 38 Chadd Road was possible as he might have been there in the house, the police never took him to the house or to Ryno. He had no visa when he came into the country. He applied for papers in Cape Town under Bernard Mussa Selestin. People called him Bernard. The ID card found at Erica Road is known to him. He got same in church, he joined the Tanzanian Christian church and joined its choir. He would attend meetings on invitation. The choir was invited outside town. One Charles who was selected to go did not turn up. The choirmaster then came to his home and asked for his ID so that he could step in. He had no card. Then he gave the ID photos to the choirmaster and the following day the choirmaster gave him this card. The card bore the names Charles Mussa (indistinct). He had the card for many years. As he travelled to Dar Es Salaam he wasn't aware that this card was still with him. He insisted that his name was Bernard Mussa Selestin. On the 27<sup>th</sup> he wanted to give

Ebrahim his car. He went to the 32 Poplar Avenue, people came to him demanding the keys, he gave them and the white man was also amongst the two men. They took him to the car, they pressed the immobiliser and the alarm went off. He told them that the car belonged to Ebrahim and he was taking the vehicle to Cape Town station, that is Salt River train station. He had a laptop and a wallet, inside there were cards and the phone which were in the Pick 'n Pay bag. When he was going to Poplar Road he had these keys and the Pick 'n Pay bag. The car and the bag belonged to Ebrahim Gumba, a friend of his. He drove it, he picked up his girlfriend, he was scared of parking it in his own residence and he parked it at a friend's place and 23 Poplar Road. That's where he was found with the car. He had known Ebrahim through his brother and they stayed with him in 2004. On the 26<sup>th</sup> he was in Cape Town looking for a job. In the afternoon he was called by this Ebrahim. He asked to meet him in Fish Hoek. That was at about three o'clock. They had to meet at Fish Hoek train station at three o'clock. He asked him to keep the car until the following day, the Pick 'n Pay bag was his as well, that is Ebrahim's as well. He said he must keep same. He couldn't tell the Court where Ebrahim was as he is in custody. He did not try to locate Ebrahim as he was in custody. He was arrested and incarcerated though he told the police about Ebrahim. That

basically was the evidence before the Court.

The Court wishes to highlight that when cross-examined the accused told the Court that he got the card the day following the  
5 visit of the choirmaster. Mussa was his other name, that he admitted. He never knew the address of this Ebrahim, all he knew is that he stayed at Site 5, Fish Hoek. He had had his telephone number but it got lost when he got arrested. He is not sure if he gave the police the number of Ebrahim.

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That basically is the evidence that the Court has to weigh and balance. Most of the evidence, I must say, was not disputed by the accused. He does not dispute that his fingerprints were found in the plate in the house of the deceased. He further does not  
15 dispute that a fingerprint of his was found inside the deceased's motor vehicle. He further does not dispute that the property of the deceased, other than the vehicle, were also found in his possession. He comes up with a certain Ebrahim who had given these items over to him. The Court must state at this stage that  
20 during the State's evidence he failed to oppose the version by one of the officer's that they took the accused round to locate this Ebrahim and they could not come up with the details of Ebrahim. They did everything to locate Ebrahim but there was no

cooperation from the accused and there is nothing that they could have done.

According to the accused he had to meet Ebrahim at Fish Hoek at about three o'clock that very day, being the 26<sup>th</sup>. On the day in question the deceased was on duty, the neighbours of the deceased heard shouting at about after six that evening. There is nothing to indicate that at work the deceased was robbed of his vehicle. What we have on record is evidence that the deceased was robbed of his items after, and not before, three o'clock. But it could have been after three o'clock which renders it impossible that Ebrahim could have had this vehicle before three o'clock. This the Court is saying because according to the accused Ebrahim called him to meet him at three o'clock, they had an appointment for three o'clock at Fish Hoek. Of course the keys were found with the accused, who admits having driven this vehicle to where it was found at no 23 Poplar Road. It is the owners who alerted the police of this suspected stolen vehicle that was abandoned there at night, and they did not know the owner.

In other words there were no arrangements made that the car be kept there. Furthermore the accused is coming with a story that he got the items belonging to the deceased from this Ebrahim to



keep, he would hand over same the following day, being the 27<sup>th</sup>. Surprisingly the property of the deceased was found in the rubbish bin at No 23 Poplar Road. The journals, the cards, *et cetera*. We did not hear from the accused that he had a mandate from  
5 Ebrahim to dispose of that property. This I am saying because this was allegedly in the car of the deceased, but the property was allegedly in the custody of the accused and it belonged to the deceased. That left many questions open.

10 What furthermore is puzzling is that there was a laptop bag found in the neighbourhood of No 23 Poplar Road, and the laptop found in the possession of the accused was wrapped in a plastic bag. The accused stays at the place where a hammer was found. The deceased's blood was found on the very same hammer. That is  
15 too much of a coincidence. There was a fingerprint of the accused found in the deceased's house on a plate. The food was very fresh, prepared on the 26<sup>th</sup>, that is the day of the death. This sort of tallies with the statement made by Mihlongi that he told the police that he heard a microwave and plate movement from the  
20 kitchen as he was tied in the backroom.

Coming to the staff ID card. The accused claims he got this card

in 2002, as the choir or the invitation was for 2002, but this card was issued in 2000, February. That is very, very strange, I mean it casts a shadow on the veracity of the accused evidence. The evidence that was tendered by the State witnesses was that the information they got from the accused was that he admit (indistinct) Ebrahim (indistinct). He did not know his surname, but later on the accused testified that he had stayed with this Ebrahim, he was introduced to Ebrahim by his brother. This Ebrahim was a friend of his, in fact they knew each other very well.


From the card it appears that it belonged to one Charles Mussa Darkwin. Of course the accused has come up with a version that he was standing in for an old man called Charles, but the middle name Mussa, the accused also shares that name Mussa. What a coincidence! He does not dispute that he is known as Mussa.

The police officer testified that in the area where the accused stayed he was known as Charles. Mr Mihlongi in his statement makes mention of a certain Charles, the Tanzanian. The staff card refers to Charles, that the Court finds strange. The Court is quite mindful of the fact that what we have is not direct evidence and regarding acceptance of circumstantial evidence there must

be two requirements that that evidence has to meet, and it is the duty of the Court to carefully distinguish inferences from conjectures or speculations. There can be no inferences drawn unless there are objective facts from which the inferences to be  
5 drawn are based. But if there are no positive proved facts from which these inference can be made the method of inference then fails, and what is left is speculation. The well known authority of R v Blom 1939 AD 188 still remains. The inference which the State pleads must be consistent with all the proved facts and  
10 there must be no other reasonable inference drawn unless the one that the State seeks to be drawn.

With all evidence having been weighed and considered the Court has arrived at the following verdict. The ACCUSED IS FOUND  
15 GUILTY OF ALL THREE COUNTS AS CHARGED.

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NGEWU, AJ