



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**RULING – APPLICATION FOR FURTHER PARTICULARS**

Case no: CC 19/2017

In the matter between:

**THE STATE**

v

**GOTLIEB PANDULENI**

**1<sup>ST</sup> ACCUSED**

**DAVID TASHIYA**

**2<sup>ND</sup>**

**ACCUSED**

**DAVID SHIKUNDJA**

**3<sup>RD</sup>**

**ACCUSED**

**ELLY NDAPUKA HINAIVALI**

**4<sup>TH</sup>**

**ACCUSED**

**MALAKIA SHIWEDA**

**5<sup>TH</sup>**

**ACCUSED**

**Neutral citation:** *S v Panduleni* (CC 19/2017) [2018] NAHCMD 392 (30 November 2018)

**Coram:** USIKU J

**Heard:** 14 November 2018

**Delivered:** 30 November 2018

**Flynote:** Criminal Procedure – Request for further particulars – Section 87 read with section 85 (1) of the Criminal Procedure Act 51 of 1977 as amended.

**Summary:** Accused one stood jointly charged with four others with the offences of murder, attempted murder, contravening section 18 (2) of the Riotous Assemblies Act 17 of 1956, Conspiracy to commit housebreaking with intent to rob and or robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977, Housebreaking with intent to rob and robbery with aggravating circumstances as defined in section 1 of Act 51 of 1977, Contravening section 2 read with sections 1, 8, 38 and 39 of the Arms and Ammunition Act 7 of 1996, Possession of a firearm without a licence, Contravening sections 1, 8, 38 and 39 of the Arms and Ammunition Act 7 of 1996. Possession of ammunition. Having not been satisfied with the allegations as set out in the indictment accused sought to request for further particulars. Held that accused one had reasonably and sufficiently been informed of the charges to enable him to plead thereto.

---

### **ORDER**

---

Accordingly his application to be furnished with further particulars before he pleads to the charges is dismissed.

---

### **RULING – APPLICATION FOR FURTHER PARTICULARS**

---

#### **USIKU J**

[1] Accused one who stood jointly charged with four others appeared before Court on 28 June 2018 whereafter the matter was postponed by agreement to the 12 - 16 November 2018 for plea and trial. Accused one had been legally represented by Mr Ntinda.

[2] On the 29 October 2018, counsel for accused one, Mr Ntinda filed a notice of withdrawal which was received by the office of the Registrar of the High Court and

the Prosecutor-General on 1 November 2018. Consequently the Court granted Mr Ntinda his application.

[3] When accused one and his co-accused appeared before Court, on 12 November 2018, Mr Mbaeva appeared on his behalf. He informed the Court that he had only received the disclosure on 9 November 2018 and that accused one had requested to peruse the disclosure personally in order to give him further instructions. He then requested for a remand to allow accused one to peruse the docket. As a result of the request the matter was postponed to 14 November 2018 for plea and trial by agreement between the State and the Defence.

[4] When the Court resumed on 14 November 2018, Mr Mbaeva for accused one had filed a request for further particulars in terms of section 87 read with sections 85 (1) of the Criminal Procedure Act 51 of 1977 as amended.

[5] In his notice for further particulars accused one sought to be furnished further particulars on the following:

1. Ad Count three of the indictment:

- 1.1 Where specifically in Walvisbay was the deceased killed or murdered?
- 1.2 What time of the day was it?
- 1.3 With what was the deceased killed?

2. Ad Count three of the indictment:

- 2.1 How was the killing planed?
- 2.2 If it was by means of a meeting?
  - 2.2.2 Where did the meeting take place?
  - 2.2.3 What time did the meeting start?
- 2.3 Who convened the meeting?

- 2.4 Who was in attendance?
- 2.5 Where there any minutes taken, if so who took the minutes?
- 2.6 What were the points on the agenda?
- 2.7 If minutes were taken is a copy of minutes available?

3. Ad common purpose:

As the state alleges that the accused persons acted with common purposes who is the main perpetrator and how did the rest of the accused persons associate themselves with the conduct of the main perpetrator?

[6] It is important to make reference to section 84 of the Criminal Procedure Act which provides that, a charge shall set forth the relevant offence(s) in such a manner and with such particulars as to the time and place at which the offence is alleged to have been committed. In this case the summary of substantial facts clearly states that it was during June 2016 that a plan was hatched to break and enter into the residence of the deceased and the complainant in count two, which residence is situated in Walvisbay. That is reasonably sufficient to inform accused one of the nature of the charges he is facing.

[7] It is common cause that accused one is jointly charged with others in respect of the several counts and the State alleges common purpose. In order to determine whether further particulars are required or whether a defect in the indictment is material to the substantial justice of the case, the Court is required to have regard to the summary of substantial facts of the case, which are necessary to inform an accused of the allegations against him/her.

[8] Accused one, through his erstwhile attorney was furnished firstly with the case docket containing all relevant statements by the witnesses the State intends to call. A pre-trial memorandum was also furnished to accused one, to which he had replied. Furthermore, the summary of substantial facts of the case in which the allegations

against accused one and his co-accused were clearly set out was also furnished to each one of them.

[9] In the case, *Shabalala and Others v Attorney-General of the Transvaal and Another*, Mahomed DP held the following at para 37 of the judgment:

‘Ordinarily, an accused person should be entitled to have access at least to the statements of prosecution witnesses but the prosecution may, in a particular case, be able to justify the denial of such access on the grounds that it is not justified for the purposes of a fair trial. What a fair trial might require in a particular case depends on the circumstances. The simplicity of the case, either on the law or on the facts or both; the degree of particularity furnished in the indictment or the summary of substantial facts in terms of section 144 of the Criminal Procedure Act; the particulars furnished pursuant to section 87 of the Criminal Procedure Act; the details of the charge read with such particulars in the Regional and District Courts, might be such as to justify the denial of such access.’<sup>1</sup>

[10] In the present case before this court, all accused were provided with all the necessary documentations.

[11] Furthermore, the charges against accused one in this case and his co-accused allege common purpose and what is needed would only adduce further evidence whether it was an express or implied agreement amongst the alleged perpetrators. The State herein allege that at all material times the accused acted with common purpose. That in my view is sufficient to inform accused one about the allegations he is currently facing together with his co-accused.

[12] It is trite that a charge need not set out the manner in which or the means or instrument by which any act was done, unless the manner, means or instrument is an essential element of the offence charged. However, in this case in the summary of substantial facts the state alleged that the accused wielded a pistol and or knives and or tyre lever and or screw driver when the alleged offences were committed, thus informing accused one and his co-accused about the means they are alleged to have used in the commission of the alleged offences. The doctrine of common purpose implies that an act of one accused is imputed to the other. The dates of the

---

<sup>1</sup> *Shabalala and Others v Attorney-General of the Transvaal and Another* (CCT23/94) [1995] ZACC 12; 1995 (12) BCLR 1593; 1996 (1) SA 725 (29 November 1995).

alleged murder is clearly set out that being the 16 to 17 July 2016 in the district of Walvisbay.

[13] As to the alleged location where the conspiracy was hatched, location is not an essential element of the offence of conspiracy. Having taken all the facts of this case into consideration, I am of the view that accused one is reasonably and sufficiently informed about the nature of the charges he is currently facing and is in a position to plead thereto without further particulars being furnished to him by the state. In essence, the issue of further particulars ought to have been raised at the pre-trial stage before the matter could be allocated to the managing judge. His application for further particulars clearly borders on delaying tactics at its best.

[14] Accordingly his application to be furnished with further particulars before he pleads to the charges is dismissed.

-----  
D N USIKU  
Judge

## APPEARANCES:

- STATE: Mr Olivier  
Office of the Prosecutor-General, Windhoek
- ACCUSED 1: Mr Mbaeva  
Instructed by Directorate of Legal Aid, Windhoek
- ACCUSED 2: Mr Tjituri  
Instructed by Directorate of Legal Aid, Windhoek
- ACCUSED 3: Mr Dube  
Instructed by Directorate of Legal Aid, Windhoek
- ACCUSED 4: Mr Brockerhoff  
Instructed by Directorate of Legal Aid, Windhoek
- ACCUSED 5: Mr Ipumbu  
Instructed by Directorate of Legal Aid, Windhoek