

REPUBLIC OF NAMIBIA

NOT REPORTABLE



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: CC 15/2017

In the matter between:

THE STATE

and

LUKAS NEPELA NICODEMUS

ACCUSED

Neutral citation: *S v Nicodemus* (CC 15/2017) [2019] NAHCMD 271 (06 August 2019)

Coram: LIEBENBERG J

Heard: 22 October; 25-26 October; 07-08 November 2018;
23-26 April; 29-30 April; 06 May; 08 May; 22 May; 10 June and
29 July 2019.

Delivered: 06 August 2019

Flynote: Criminal Procedure – Deviation from the witness statement – Deviation only material where differences exist between statement and oral testimony – Witness statements are taken for purpose of obtaining details of

alleged offence and not for testimony in court – Witness statement is a summary of observations and not intended to be all-inclusive.

Criminal Procedure – Circumstantial Evidence – Evidence must not be assessed in piece-meal but in its totality.

Criminal Procedure – DNA Evidence – Expert evidence – When dealing with expert evidence, court must be satisfied that witness has the necessary expertise and competence to testify – Court must be satisfied that expert evidence is satisfactory and reliable.

Constitutional Law – Fair Trial – Right to Legal Representation - Right to remain silent - Right to not incriminate one's self – Question of law whether accused was aware of rights – Accused was aware of his Constitutional rights – Test is whether accused took an informed decision – Court satisfied that the accused's Constitutional rights not infringed.

Summary: The accused is charged two counts of murder, one count of defeating or obstructing or attempting to defeat or obstruct the course of justice; and a further count of failing to lock away an arm in contravention of section 38(1)(j) of the Arms and Ammunition Act 7 of 1996. It is alleged that the accused person murdered the two deceased persons, with whom he was romantically involved, by shooting them with his firearm and thereafter dumping their bodies on a dumpsite on the outskirts of Windhoek. The accused pleaded not guilty to all counts by raising an alibi defence. This defence was raised for the first time during bail proceedings held two years after his arrest. In his defence the accused claimed to have been in possession of his firearm at the time the murders were committed. Forensic evidence established the identities of the deceased persons who had been shot and killed inside the accused's vehicle. During the trial the credibility of the investigating officers came under attack when comparing their witness statements with their oral testimony. It was further averred that the accused's rights weren't explained to him before searching his residence.

Held, that a state witness is only at risk of being discredited if there is a material deviation from the witness statement and which the witness is unable to satisfactorily explain. Witness statements are not required to contain each and every aspect of the witness's testimony in court but is merely intended to state facts for purposes of possible prosecution.

Held, further that, it cannot for purposes of prosecution, be expected of an investigating officer to capture the extent of the investigation in all its detail and later be discredited during the ensuing trial for failing to do so.

Held, further that, when dealing with expert evidence, the court must be satisfied that a witness is competent to testify as an expert and has the necessary expertise on the subject called upon to testify. Evidence of expert witnesses were satisfactorily and reliable.

Held, further that, evidence established that the accused was informed of his rights prior to a search conducted on his residence. Moreover, where the accused admitted that he was familiar with his rights at the relevant time. Court is satisfied that the Constitutional rights of accused had not been infringed.

Held, further that, the accused's explanation was not reasonably and possibility true and to be rejected as false.

ORDER

- Count 1: Murder (*dolus directus*) – Guilty
Count 2: Murder (*dolus directus*) – Guilty
Count 3: Defeating or obstructing the course of justice – Guilty

Count 4: Failing to lock away an arm (c/s 38(1)(j) of Act 7 of 1996
– Not guilty and discharged.

JUDGMENT

LIEBENBERG J:

[1] On the morning of 07 January 2016 the charred bodies of two persons were found under smouldering tyres at the municipal dump site on the outskirts of Windhoek. Under one of the bodies a cell phone SIM card was discovered. Data retrieved from the card produced a list of contact numbers and amongst others, also that of the accused. This established the link between the accused and the bodies found, having been identified as that of Johanie Naruses and Clementia De Wee. It is not in dispute that both the deceased were in a romantic relationship with the accused at the time of their passing.

[2] During the ensuing investigation the accused was arrested and charged with the following counts: Counts 1 and 2: Murder; Count 3: Defeating or obstructing or attempting to defeat or obstruct the course of justice; and Count 4: Failing to lock away an arm, contravening section 38(1)(j) of the Arms and Ammunition Act 7 of 1996. The accused pleaded not guilty on all counts and elected not to disclose the basis of his defence.

[3] Mr *Siyomunji*, on the instruction of the Directorate: Legal Aid, initially acted for the accused but later withdrew and was substituted by Mr *V Lutibezi*, while Mr *C Lutibezi* represents the State.

Evidence not in dispute

[4] With the commencement of the trial a number of documents were introduced into evidence by agreement between the parties, the content of which was not in dispute. There is no need to individually deal with these documents in any detail and will only be referred to in the judgment where necessary. The accused furthermore made the following admissions in terms of s 220 of the Criminal Procedure Act 51 of 1977:

- The identities of Johanie Naruses and Clemencia De Wee as being the deceased persons.
- The admissibility of the post-mortem report compiled by Dr Vasin (PM 15/2016 – in respect of Johanie Naruses).
- The admissibility of the post-mortem report compiled by Dr Guriras (PM 16/2016 – in respect of Clementia De Wee).
- That the bodies of the deceased persons did not sustain any further injuries when transported from the crime scene and until the time post-mortem examinations were conducted.
- The contents being correct of National Forensic Science Institute (hereafter NFSI) Report 55/2016/R1¹ and Report 55/2016/R2,² both reports dated 15 January 2016.

The state case

[5] State witness Abisai Sebele's evidence relates to the events of 5 and 6 January 2016 when he visited the accused and Clementia at home, situated in the area called Police Camp. On the second day the accused fetched Johanie who then joined them whilst they indulged in drinking beer for most of the day. He was aware that the accused was in a romantic relationship with both ladies at the time. They eventually ended up at a bar where an altercation between the witness and the accused took place when Johanie asked money from the witness to play jackpot. Jealousy on the part of the accused seemed to have sparked the incident during which they swore at one another and besides the accused pointing a finger at the witness whilst touching his pistol on his side, nothing of significance flowed therefrom. They

¹ Exhibit 'N'.

² Exhibit 'O'.

parted ways and that was the last time Abisai saw the three of them. He was subsequently arrested as a suspect but released after a few days. According to him this came as a result of the accused having informed the police that he (the witness), was innocent.

[6] The witness further identified a cap, vest and tracksuit depicted in a photo plan³ as the clothing of the accused, worn on the 6th of January 2016. Although the accused disputed evidence about Abisai having slept over at his place, nothing turns on this evidence.

[7] Joseph Siwombe was present at the shebeen of his uncle when the accused arrived in the company of two ladies (identified in court from a newspaper clipping as the two deceased) and one male person. He confirmed that they at some point moved outside the yard where the accused and Johanie were quarrelling. The unknown male left on foot first, followed by Clementia. Shortly thereafter the accused and Johanie drove off, still arguing.

[8] Vaapi Marenga worked at the municipal dump site and arrived at work before 6 am on the morning of 07 January 2016. Shortly after two security guards reported for work, they summoned him to a spot where he observed an arm sticking out from under smouldering tyres. He then contacted the City Police. He testified about tyre tracks of a sedan vehicle observed on the scene.

[9] Detective Chief Inspector Vilho Amoomo, the initial investigator, was summoned to the municipal dump site that morning where he found the (burnt) bodies of two female persons under some smouldering tyres. With the removal of the bodies he observed a MTC SIM card lying under the one body and a cell phone next to it, damaged beyond identification. He observed tyre tracks at the scene which were possibly made by the vehicle used to drop off the bodies. He described these tracks being wide with straight grooves. He further observed shoeprints which he captured on his cell phone. As his cell phone subsequently got damaged, the photos of the shoeprints could not be

³ Exhibit 'P' at p 28 – 29.

reproduced as evidence. Samples and evidence collected were sealed in forensic bags and in the custody of the witness until such time when it was taken to the NFSI for forensic analysis.

[10] Warrant Officer Frans Nakangombe was tasked to investigate and obtain a MTC call register in respect of the SIM card retrieved from under one of the burnt bodies at the dump site. When calling a number most frequently used as per the SIM card, he established contact with the accused who said that the number called from, was that of his girlfriend Peres (Johanie Naruses). He met up with the accused who thereafter directed him to a house in Greenwell Matongo where they spoke to one Vernon who had been staying with Johanie. He learned that the accused had picked up Johanie on the 6th January 2016, which the accused confirmed but said that he was together with an unknown coloured (male) person driving a white Citi Golf when they dropped her off at the offices of the Ministry of Labour. The accused thereafter directed them to a house in Khomasdal where this person resided. However, the occupants of the house denied that such person lived there.

[11] Chief Inspector Amoomo joined Nakombonde and other police officers at a place near the Katutura Magistrate's Court. After the situation was explained to the accused, he was asked to take the police to his residence. Although he at first refused, he changed his mind after a while and took them there. The investigation then shifted to the flat occupied by the accused in the backyard of the house at erf no 8003 Richard Kamuhukua street, Katutura, where they met the two brothers and one sister of the accused. Permission was obtained from the accused to search his flat.

[12] During the search a pair of black Adidas sports shoes were found that were wet and, according to Chief Inspector Amoomo, the soles of the shoes matched the shoeprints observed at the scene where the bodies were found. Upon pointing this out to the accused, he appeared to be shocked and then kept quiet. Clothes that had been washed were also found hanging on the washing line to dry. Between the base and the mattress of his bed a pistol was found which the accused claimed to be his. Whilst waiting outside on the

arrival of officers from the Scene of Crime Unit to photograph the scene, the brother of the accused asked him as to what had happened. The accused replied that he would not incriminate himself but rather be arrested and then commit suicide. He was told to calm down where after he kept quiet.

[13] At a later stage and while the scene was being photographed, Constable Nelenge beckoned Chief Inspector Amoomo to come and listen to what the accused had to say. The accused when making a report was stopped by Chief Inspector Amoomo who explained his rights to him. He notwithstanding continued saying that on the 6th (January 2014) he was in his vehicle with the two ladies when an argument erupted between them and the one then grabbed his pistol and shot the other whilst seated inside the car. He managed to take the pistol from her and fired a shot at her. He went on to say that from there on he became confused not knowing what to do with the bodies and decided to dump them at the dump site. He was thereafter requested to take the police to where his vehicle was parked.

[14] From there the accused directed them to Otjomuise where his vehicle, a black Golf 4 sedan, was found parked in front of a shack. According to Chief Inspector Amoomo the accused took the keys from his pocket and unlocked the vehicle. The officer looked inside the vehicle and got the smell of fresh blood. As it had become too dark to photograph the inside of the vehicle, it was decided to move the vehicle to the Windhoek Police Station. The vehicle was in a running condition and had sufficient fuel to reach the station. It is common cause that between 10 – 14 June 2016 the vehicle was subjected to examination by Mr Kalipu Sem, a forensic scientist of the NFSI. The accused was not present during the examination. Samples taken at the time were placed in sealed forensic exhibit bags and subsequently handed over to Chief Inspector Amoomo for safekeeping.

[15] During cross-examination the witness was taken to task explaining why certain aspects of his evidence was not contained in his witness statement. He said that what was of importance was captured in the statement and denied fabricating evidence about the smell of fresh blood inside the vehicle

or his observation of a shoeprint at the dump site. It was further put to the witness that the officers did not first obtain permission from the accused to search his room; this was equally denied. It was also contended that the accused was not informed of his rights; again this was denied.

[16] Warrant Officer Ivanoi Vatilifa corroborated the evidence of Chief Inspector Amoomo in all material respects as regards the observations and findings made at the dump site; the search conducted at the accused's flat and findings there made. Also about the accused having been questioned by his brother and his response thereto. With regards to the explanation given by the accused about the shooting of the two ladies, the officer gave a more detailed account of what the accused would have said but, essentially – in respect of the shooting incident – corroborates Amoomo's version. When confronted in cross-examination as to why certain aspects of his testimony were not captured in his witness statement, he explained that the statement is merely a summary of his observations and not intended to be all-inclusive. With regards to differences between his version and that of Amoomo he explained that he could not account for what was testified by Amoomo.

[17] What is evident from the evidence of the two witnesses is that each testified about his own observations and the differences referred to, relate to either issues about their communication or matters of minor detail. He was not aware of Chief Inspector Amoomo having mentioned the similarity of the shoeprints to the accused inside the room, something he should have observed whilst with them inside the same room. He qualified his answer by saying that he was not familiar with each and every conversation of persons and officers present during their search of the accused's flat.

[18] Detective Warrant Officer Joseph Ndokosko is the current investigating officer who took over from Chief Inspector Amoomo in June 2016. He attended the scene at the dump site in the morning and testified about his observations made on tyre tracks, drag marks of a body and shoeprints. He also confirmed the SIM card that was found and handed to him in a sealed forensic exhibit bag. At a later stage and on the instruction of the Prosecutor-

General, he unlocked the accused's vehicle still parked at the police station and was present when the forensic scientist conducted an examination of the inside of the vehicle. On this occasion a projectile lodged in the arm rest of the rear seat was discovered. Warrant Officer Ndokosho took possession thereof, having been sealed in an exhibit bag and added it to the other exhibits already booked. He was adamant that no other person had access to the keys of the vehicle and could therefore not have entered the vehicle without his explicit instruction.

[19] Warrant Officer Ndokosho said he became aware of the accused's defence during the bail application when he learned that, according to the accused, the deceased persons were in the company of a certain Benny, a Coloured male person, before their passing. He then went in search of this person and made enquiries with the families of both deceased and the accused's sister but, without success. In view thereof, he had come to the conclusion that Benny's alleged involvement was the accused's own creation.

[20] During cross-examination the witness was confronted with his evidence given in the bail application about the date he visited the accused's flat to conduct a search for further clues and that nothing was found; also whether or not there was a safe in the flat. He conceded that although he testified earlier in the bail application about him having seen a safe in the flat, he afterwards consulted his notes and realised that he was mistaken.

[21] Warrant Officer Ello Hamukwaya is attached to the Scene of Crime Unit and his involvement concerns the taking of photos at the dump site and mortuary during the post-mortem examinations. He was extensively cross-examined on the visibility of tyre tracks photographed at the dump site, compared to measurements taken of the tyre width of the accused's vehicle.

[22] The importance of evidence relating to tyre tracks and drag marks of bodies observed at the dump site by the different witnesses who testified on this aspect of the case, seems to lose significant importance in light of the accused's evidence that it is possible that his vehicle could have been used

(by Benny) to dispose of the bodies at the dump site, but that it did not involve him.

[23] According to the post-mortem examination report compiled by Dr Vasin, the pathologist who conducted an autopsy on the body of Johanie Naruses, the cause of death was undetermined. Under the chief post-mortem findings the report reflects that, besides citing the charred body of a female person, the discovery of a single penetrating injury to the left plural cavity and mediastinum, with adjacent haemorrhages (Exhibit 'H').

[24] The post-mortem report compiled by Dr Guriras in respect of Clementia De Wee, equally reflects the cause of death as undetermined and changes to the body attributed to charring (PM 16/2016 – Exhibit 'L'). Other findings made on the body included a laceration to the apex of the heart and cooked blood in the left thoracic cavity and the pericardial space. There were also signs of bloody aspiration. Additional observations made on the body relate to penetrating trauma inflicted to the chest, causing injury to the heart and internal bleeding. Though concluding that this injury resulted in death, the cause of the injury was unknown. As regards PM 15/2016 compiled by Dr Vasin (who passed away in November 2017), Dr Gurirab interpreted the findings made about a single oval shape penetrating chest defect (para 10) and irregular lacerations of the heart on the left atrium (para 14) and concluded that the person died of a chest injury, most likely from a gunshot wound.

[25] Mr Simwanza Liswaniso is a Forensic Scientist with the NFSI and his evidence mainly deals with the collection of evidence at the scene where the bodies were found. Forensic evidence was also collected from a black VW Golf with registration number N86989W, registered in the name of L.N. Nikodemus. NFSI Report 55/2016/G-P1 dated 02 May 2018 comprises a photo plan from which the witness testified.⁴ At the dumpsite drag marks were visible, converging at the point where the bodies were found. In these drag marks human blood stains were observed and sampled. On the interior of the

⁴ Exhibit 'Z'.

vehicle stains were observed on the back seat which tested positive for human blood, while swabs were collected from the steering wheel, gear lever, handbrake, indicator lever and other spots. All samples were sealed in forensic exhibit bags on site and transferred to the investigating officer, Warrant Officer Amoomo.

[26] In cross-examination counsel for the defence in particular took issue with a correction made by Mr Liswaniso regarding the number (#1) indicated in the report where he collected swabs from two burnt human bodies. Also that markers were not in all instances used when the interior of the vehicle was photographed. He explained that in respect of the first issue, this was nothing more than a typographical error whilst, as regards the second issue, the photos depict the actual spots in the vehicle from where samples were collected, irrespective as to whether markers were used or not. He was emphatic that he collected swabs of the bodies and the interior of the accused's vehicle. No controverting evidence was adduced on the two concerns raised that could possibly render the witness's evidence unreliable.

[27] Ms Anne Lukas is also a forensic scientist with the NFSI and, in the present instance, was primarily tasked to examine exhibits collected at different scenes for the presence of human blood and the preparation of court reports capturing her findings.⁵ The exhibit bags in which the collected exhibits were received by her were sealed according to NFSI standards and after she swabbed the exhibits for possible epithelial cells, these were placed in a sealed envelope and stored at a safe place until collected for DNA analysis.

[28] Although the report reads that some of the exhibits tested positive for human blood, DNA analysis conducted on two of the exhibits resulted in mixed profiles, none of which could be linked with the deceased persons. Nothing further turns on the report.

⁵ Exhibit 'P' –Report 55/2016/R3 dated 16 August 2016.

[29] Mr Kalipu Sem specialises in ballistics, the examination of crime scenes, the tracing of evidence and the analysis of blood spatter. In January 2016 he examined the vehicle of the accused for bullet holes and found a single penetrating bullet hole in the backrest of the front passenger seat. In June of that year he again examined the said vehicle with the view of reconstructing the shooting incident and conduct an analysis of the blood spatter inside the vehicle (Report 55 + 56/2016/R2).⁶

[30] Observations and findings flowing from the examination conducted were supported by photographs taken and incorporated in the report. As depicted in the photo plan, the bullet hole through the backrest of the front passenger seat was fired from the front and exited at the back. An analysis of the blood spatter on the interior of the vehicle was indicative of medium velocity impact spatter and high velocity impact spatter during which blood was transferred onto the dashboard (air-conditioning knob), gear shift, handbrake, armrest, seat belt latch and the console area between the front seats. It was concluded that the cause of the blood spilling activities that resulted in the above spatter, referred to as 'back spatter', supported the inference that the shot was fired from the front (interior) of the vehicle. This inference was supported by the presence of a larger blood stain on the front passenger seat.

[31] Examination of the rear seat revealed a bullet hole into the backrest of the rear middle section and a spent projectile lodged in the rear of the backrest. From a large blood stain in the foot-well of the rear seat, it was inferred that the projectile hit someone sitting in the rear seat who then stooped forward, creating a pool of blood and 'satellite spatter' caused by the dripping of blood. It was also determined that the projectile trajectory showed that it was fired from the front, with a downward inclination. Blood smears on the right rear backrest and door of the vehicle were consistent with a bloodied object being dragged out of the vehicle.

⁶ Exhibit 'T'.

[32] On the 19th January 2016 Mr Sem took custody of exhibits sent to the NFSI for forensic analysis which, *inter alia*, included 1 (one) .380 ACP pistol,⁷ a magazine with live rounds and 1 (one) spent projectile.⁸ It is common cause that the firearm and ammunition belonged to the accused. Upon examination of the firearm the following findings were made:

- The firearm was in working condition and capable of firing.
- Three bullets were test-fired from the said pistol and the spent projectiles fired compared with the projectile found lodged in the backrest of the rear seat (Exhibit 'AH').
- Sufficient agreement of individual and class characteristics were found to conclude that Exhibit 'AH' was fired from the pistol Exhibit 'AG'.

[33] The evidence is such that it duly established that the bullet lodged in the rear seat of the accused's vehicle, was fired from his firearm. The accused denies having fired any shot into his vehicle and suspects the projectile to have been placed there by someone unknown with the intent to falsely incriminate him. This could only have happened whilst his pistol was in police custody.

[34] The testimony of Ms Maryn Swart, a Chief Forensic Scientist and reporting officer of the Genetics Section of the NFSI, concerns the DNA extraction and analysis of the various samples collected by the investigating team and NFSI officers during their investigation at the dump site, the accused's vehicle and the post-mortem examinations. It also included the collection of swabs taken from known persons for purposes of elimination. As a cost saving measure, not all exhibits collected were subjected to DNA analysis. As reflected in the report compiled by Ms Swart, some of the exhibits analysed were inconclusive and could not exclusively be linked up with either the two deceased or the accused; alternatively, it yielded insufficient amplifiable DNA to proceed with STR analysis. The focus for purposes of the

⁷ Exhibit 'AG' - It is not disputed that the accused is the owner of this firearm.

⁸ Exhibit 'AH'.

court's assessment of the evidence thus falls on those exhibits that yielded sufficient amplifiable DNA and which resulted in complete profiles.

[35] The DNA analysis of a swab taken from the SIM card⁹ resulted in a mixed profile of at least two individuals from which Johanie Naruses (PM 15/2016) cannot be excluded as a possible major contributor. A sample collected from a blood spot at the dump site yielded the same result. The DNA analysis of a swab taken from a burnt body resulted in a partial profile, from which Johanie cannot be excluded as a possible contributor. Several blood samples were collected from inside the accused's vehicle and of those the following yielded conclusive results. Samples collected at the right rear,¹⁰ on the handbrake,¹¹ and on the arm rest of the vehicle cannot exclude Johanie as a contributor to the profile found.

[36] The DNA analysis of blood samples collected from the mat and foot well,¹² and right rear seat¹³ of the vehicle resulted in a complete female profile from which Clementia De Wee (PM 16/2016) cannot be excluded as a possible contributor.

[37] In paragraph 3 of the report the technical considerations are enumerated and is a summary of Ms Swart's evidence where she expounded on the process of analysis adopted as regards the exhibits subjected to DNA analysis. The process or the reliability of forensic evidence adduced during the trial was not challenged in any way. With regards to the collection of forensic evidence up to the stage of DNA analysis of those samples tested and the conclusions reached therein, there is nothing showing that the witnesses involved in the process were not credible and that the court should not rely on their evidence. In the absence of evidence to the contrary, I accordingly find the conclusions reached and set out in the report of Ms Swart to be credible and reliable evidence.

⁹ Exhibit 'AD'.

¹⁰ Exhibits 'J' and 'K'.

¹¹ Exhibit 'AC'.

¹² Exhibits 'P' and 'T'.

¹³ Exhibits 'R' and 'S'.

The defence case

[38] Except for minor and irrelevant differences in the evidence given by state witness Abisai Sibela, the accused confirmed the events of 06 January 2016. It is common cause that he, Abisai Sibela and the two deceased enjoyed themselves in socialising, drinking and playing jackpot at a bar situated in the Damara informal settlement ('location'). At some point Clementia received a phone call and started crying, the accused not knowing what it was about. He said an argument erupted between him and Clementia during which she smashed a beer bottle on the floor while Johanie pulled the accused to one side. According to the accused this came about because the girls were jealous of one another. As Abisai Sibela had left their company, the accused and the two deceased proceeded to Khomasdal where Clementia directed him to a spot under a tree where she met up with a person called Benny. Johanie alighted from the vehicle and joined them in drinking alcohol while the accused remained seated in the vehicle. When they later approached him asking that they should go to another bar, he suggested that they rather go to his place. Benny joined them and they drove to the accused's place.

[39] Upon their arrival Clementia asked him for his car keys as she wanted to go and buy some 'stuff' while Johanie wanted to purchase ciders. He handed over his car keys and the three of them left. He assumed Benny would be driving. He dressed into something more comfortable and watched TV until Benny knocked on the door around midnight and handed him his car keys, saying that the vehicle got stuck in Otjomuise. He turned around to fetch his firearm and when he returned to the door, found that Benny had left; never to be seen again. He suspected that the vehicle might have run out of fuel and took along a container and watering can when boarding a taxi in search of his vehicle. He found his car and decided to park it at the house of his child's mother, Ursula Masaw. When asked why he did not push through with his plan to buy fuel and drive home, he said it was not a priority to him and that he decided to do it the next day.

[40] As regards the whereabouts of the two deceased, the accused said that he did not ask Benny upon his return, but thought of asking him later. He however contradicted himself when reminded about his evidence in the bail application where he said that he indeed asked Benny about the ladies' whereabouts and was told that they were with the vehicle. He then adopted the latter version to be correct. Not finding them at the vehicle, he, as might be expected of a person in the circumstances, did not call them on his phone as, according to him, they were not having their phones with them. When reminded that Clementia received a phone call whilst at the bar earlier that day, he explained that she must have made use of someone else's phone. As regards the remains of a burnt cell phone and SIM card found next to the bodies at the dump site, he explained that Johanie used to carry her SIM card with her, but not her phone. After parking his vehicle at Ursula's place, he proceeded home by taxi and put his pistol between the base and the mattress for protection.

[41] The following morning and whilst still in bed, he received a phone call from a police officer with the name Amoomo who wanted to see him. He directed the officer to his place of residence. Upon his arrival he was shown a telephone number which he identified as that of his girlfriend. Amoomo told him that she was dead and arrested him on a charge of murder. He was handcuffed and without his permission, the police started searching his room. He confirmed that his firearm was found between the base and the mattress of his bed and that clothes of his were seized. He however disputes having been shown photos of shoeprints on Chief Inspector Amoomo's cell phone matching that of sports shoes found in his flat. From there on they proceeded to the bar where he and the others had been visiting the previous day and the spot where they met up with Benny. Next he directed them to where his vehicle was parked. The vehicle was unlocked and Amoomo mentioned the presence of blood inside his car and a hole in the (front passenger) seat. He denied having any knowledge about that.

[42] With regards to the evidence of state witnesses testifying about the accused saying that he would kill himself when asked by his brother as to

what had happened, he disputes such conversation ever happening. Neither did he make any report to the police officers; nor did he proffer any explanation as to how the two deceased got shot as testified by state witnesses. He denied any involvement in their killing or the disposing of the bodies at the dump site.

[43] As for the person called Benny, it is the accused's evidence that this person in the past used to drop off Clementia at his place and on some days stayed on to visit her. He had no knowledge of Benny's residence or the type of vehicle he was driving. In fact, he knew very little about him; only that he associated with Clementia.

[44] On the accused's evidence, the fact that he was in a romantic relationship with both deceased at the time did not pose any particular problem to him or the ladies. The evidence of Abisai Sibebe as to what happened earlier at the accused's place when he hugged Johanie and again later at the bar, paints a different picture, though. According to Abisai the accused became visibly angry with him when he innocently hugged Johanie at home and again later at the bar when he gave Johanie N\$10 to play jackpot. On both occasions there was an altercation between them. This was accompanied by an implicit warning to Abisai that the accused might resort to using his firearm. On the latter occasion this prompted Abisai to leave their company due to the accused's behaviour, clearly prompted by jealousy. Although the accused denied any jealousy on his part, he could not come up with any plausible explanation as to why Abisai left their company early, or why Clementia smashed a beer bottle on the floor for no reason.

[45] Despite the material differences between Abisai's version and that of the accused, Abisai's evidence was left unchallenged. When asked why such crucial evidence was not challenged, he explained that he did not tell his lawyer about it during consultation because he was not asked about it. According to the accused, Abisai's evidence is motivated by jealousy because the accused had several girlfriends (4) while he had none. This aspect of his evidence stands in sharp contrast with what he earlier said about them being

good friends and a person to whom he, on a number of occasions in the past, had lent his car for private use. As stated in *Small v Smith*¹⁴ 'it was unfair and improper to let a witness's evidence go unchallenged in cross-examination and afterwards argue that he must be disbelieved'.

[46] During the bail application when the accused mentioned the name Benny for the first time, he was asked as to why he never made any mention of Benny to the police; his reply was that he was not sure. He was of the view that he could only have mentioned it to his lawyer, which came about almost two years down the line. He at no earlier stage mentioned the person (whom he must have considered to be the main suspect) in his warning statement; during the lower court proceedings when he pleaded in terms of s 119 of the Criminal Procedure Act, 1977; in the reply to the state's pre-trial memorandum; or in his plea explanation with the commencement of the trial.

[47] Photos 26 and 27 of the photo plan (Exhibit 'R') depict the accused's vehicle as found by the police. As can be seen from the photos taken of the vehicle, it was night time. This aspect of the evidence was not challenged. Because it had become dark, it was testified, it was decided to move the vehicle to the police station. During cross-examination the accused however disputed the place where the vehicle was found as depicted on the photos. He claimed that the vehicle was removed by the police during day time and then later on taken back and parked at a place other than where they originally found the vehicle. It is surprising that the accused did not point this material difference out to his counsel or the court when evidence to the contrary was being led. Against this background, the accused's explanation has somewhat of a hollow ring to it and seems highly improbable.

[48] He further confirmed that until the time when the deceased persons left with Benny, there were no blood stains in the vehicle or bullet holes in the seats. The vehicle was still locked when he directed the police there. He could not dispute forensic evidence showing that the blood traces found in the vehicle were that of the two deceased; neither that his vehicle could have

¹⁴ 1954 (3) SA 434 (SWA).

been used to drop off the bodies at the dump site. Furthermore, at all relevant times he had his firearm under his control or locked up in the safe. Lastly, it is the accused's contention that Benny had killed the two ladies, dumped their bodies, parked the vehicle and brought back the keys in order to incriminate him.

[49] Contrary to evidence about a statement made by the accused at the time of his arrest he disputed ever making such statement or his involvement in the killing of any of the deceased persons. During his testimony he named Benny as the suspect who likely killed the deceased persons, implicating the accused; citing jealousy as the motive. He further claims that, from the outset, he incriminated Benny. This the state disputed as it was only during the bail hearing that the name Benny came up and that the investigation included a search for this person, but to no avail. None of the family of the two deceased or the accused's own family knew of such person.

Withdrawal of defence counsel

[50] Mr *Siyomunji* who represented the accused at the trial, filed a Notice of Withdrawal as legal representative on the 6th of May 2019. He explained that this was brought about due to untenable instructions given by the accused as regards the calling of defence witnesses; witnesses the accused had made no mention of prior to that day. The accused was also dissatisfied with his counsel's inability to have the reply to the state's pre-trial memorandum (reply) amended in order to incorporate the name 'Benny' in respect of some of the answers given in response to the state's questions. When raised in court by Mr *Siyomunji*, the issue was argued and ruled impermissible, as the court was satisfied that what is stated in the reply was confirmed as correct when signed by the accused. During the filing of the reply the accused was represented by a different legal practitioner, Mr *Wessels*. The accused's belated complaint that the name Benny should have been reflected in the reply, remains a mere allegation in the absence of substantive evidence to the contrary. There is simply no evidence before court in support of his contention and the accused's answers set out in the reply therefore stand. The court then excused Mr *Siyomunji* as counsel for the remainder of the trial. Proceedings

were thereafter adjourned pending the appointment of other counsel by the Directorate: Legal Aid. Mr *V Lutibezi* then took over as counsel for the accused.

The use of witness statements in cross-examination

[51] It is common practice in our courts that counsel for the defence extensively make use of witness statements during cross-examination of state witnesses in order to test their credibility and establish discrepancies between a witness's statement and *viva voce* evidence. The same approach was followed in this instance.

[52] It is an established principle of law that a court should be careful in discrediting a witness who has slightly departed from the statement made to the police.¹⁵ A state witness is only at risk of being discredited if there is a material deviation from the witness statement and which the witness is unable to satisfactorily explain. When making the statement to the police, it is intended to obtain the details of the alleged offence for purposes of possible prosecution and not to anticipate the witness's evidence in court. It can therefore not be expected of a witness during his/her testimony to be limited to the statement given to the police. Such statement is often a mere summary or in skeletal form of events testified on in more detail by the witness when testifying in court.¹⁶ It is thus settled law that not every discrepancy between a witness's statement and what is later testified in court would affect the credibility of the witness. It is only when the discrepancy is found to be material and the court being satisfied that what is contained in the earlier statement correctly reflects the witness's version (but differs materially from his/her testimony), that the court may draw a negative inference as regards the credibility of the witness.¹⁷

¹⁵ *S v Aloysius Jaar* Case No CA43/2002 (unreported) delivered on 09.12.2009; 2004 (8) NCPL 52 (HC).

¹⁶ *S v Bruiners en 'n Ander* 1998 (2) 432 (SEC), endorsed in this Jurisdiction in *S v BM* 2013 (4) NR 967 (NLD).

¹⁷ *S v BM (supra)* at 1014E-F.

[53] When applying the afore-stated principles to the present facts where differences between the statements of the investigating officers and their testimonies in court were pointed out, the alleged discrepancies in my view are immaterial and properly explained by the respective witnesses. It cannot for purposes of prosecution be expected of an investigating officer to capture the extent of the investigation in all its detail in his/her statement and later be discredited during the ensuing trial for failing to do so. When called upon to give evidence in open court, a witness is afforded the opportunity to explain and elaborate on incidents and facts captured in the police statement in more detail. Material contradictions or omissions must in any event be considered against the evidence as a whole.

[54] I am accordingly unpersuaded that the alleged shortcomings or omissions pointed out in the statements of the state witnesses are such that it constitutes material deviations from their evidence in court and thus impacts adversely on their credibility. There is no basis for coming to such conclusion.

Explaining of rights to the accused

[55] Although the accused in his reply to the state's pre-trial memorandum disputed that his rights were explained to him by the police prior to or during his arrest, he said during cross-examination that he was acquainted with his rights at the relevant time. It then follows that when the accused gave permission that his residence may be searched and made subsequent statements to the police, these were informed decisions taken by the accused, fully appreciating the consequences of those decisions. His erstwhile counsel's contention that the accused did not understand the context of his rights is not consistent with the accused's own evidence. The accused's evidence that when a search was requested, he walked out in front and opened the door for the police to enter, is conduct consistent with that of a person acting voluntarily and co-operating with the police. During oral submissions counsel for the defence persisted in arguing that the accused's rights were not explained to him, rendering inadmissible all evidence obtained consequential to the search or report made by the accused. The argument

went further saying that even if the accused was aware of his rights at the time, the position remained unchanged as to the admissibility of evidence.

[56] Though stated in the context of the right to legal representation, the court in *S v Bruwer*¹⁸ said:

'I am also mindful of the fact that reference in our Constitution to a fair trial forms part of the Bill of Rights and must therefore be given a wide and liberal interpretation. However, I fail to see how it can be said, even against this background, that a trial will be less fair if a person who knows that it is his right to be legally represented is not informed of that fact. Whether the fact that an accused was not informed of his right to be legally represented, resulted in a failure of justice is, as in most other instances where a failure of justice is alleged, a question of fact.'

[57] Whether the dispute concerns the right to legal representation or any of the other rights enshrined in the Constitution, the principle in my view remains the same. The test is whether the accused took an informed decision. In the present instance several state witnesses testified about the extent of the rights explained to the accused and his acknowledgment thereof, whilst the accused himself confirmed having been aware of his rights. In my view counsel's submission is without merit and the court is satisfied that the accused's constitutional rights had not been infringed during the search conducted at his premises, pointing out or report made by the accused following his arrest.

Alibi defence

[58] Though not specifically pleaded, the accused's defence amounts to that of an alibi i.e. that he was at home on the night the murders were committed and unaware of the events that led to the death of the deceased persons. There is no burden on the accused to prove his alibi as the onus is on the state to show beyond reasonable doubt that the alibi of the accused is false. If there is a reasonable possibility that the accused's alibi could be true,

¹⁸ 1993 NR 219 (HC) at 223C-D.

then the state has obviously failed to discharge its burden and the accused must be given the benefit of the doubt.

The court's approach to expert evidence

[59] When dealing with expert evidence, the court must be satisfied that a witness is competent to testify as an expert and has the necessary expertise on the subject he or she is called upon to testify. In its determination whether the expert witness's evidence is relevant to the case, the court will follow a realistic approach.¹⁹ The evidence of Ms Swart undoubtedly amounts to expert evidence from which it is patently clear that through special studies in the particular field, training and with her experience as Chief Forensic Scientist with the NFSI, she is sufficiently qualified to express an independent opinion on DNA examination and interpretation. The function of an expert is essentially to assist the court to reach a conclusion on matters which the court, on its own, lacks the necessary knowledge to decide. Though guided by the opinion of an expert, the court must be mindful that it is not the expert's opinion which is decisive, but rather for the court to be persuaded by the special skill or expertise of the witness that the reasons for expressing the opinion, is acceptable.²⁰ It is therefore necessary that the court be apprised of all facts and reasoning on which the opinion is based. It is however not an absolute rule that the basis of the opinion must be stated because sometimes it may be impracticable to insist on a comprehensive explanation of how an apparatus or a device functions.²¹ If the Court is satisfied that the evidence of the expert can assist it in its determination of the facts and is as such found reliable, it may rely thereon. However, in the final instance it remains for the court to decide whether the opinion, in light of the evidence adduced, is correct.

[60] Where the court deals with highly technical evidence – as in this case – and is unable to draw a reliable inference on its own, the court is obliged to

¹⁹ *S v Nangutuuala* 1974 (2) SA 165 (SWA).

²⁰ *Menday v Protea Assurance Co Ltd* 1976 (1) SA 565 (E) at 569.

²¹ *Schmidt & Rademeyer: Law of Evidence (Eight' Issue)* at 17-14.

fully rely on the expert's opinion, even where the opinion would concern the very question that the court must decide. In such instance a high level of precision and care is expected from the expert witness when conducting the tests. It has also been said that the courts should not assume the function of the expert witness and base its judgment on own observations and deductions in what should be an area of expertise.²²

[61] When applying the afore-stated principles to the present facts, I am satisfied that Ms Swart is indeed an expert in the science of DNA and that she performed her examination, relating to samples taken during the investigation of the case, with the necessary care and precision. Also that the opinions expressed by Ms Swart on exhibits subjected to DNA analysis represent a well-reasoned conclusion, based on certain facts or data which are either common cause, or had been established through her analysis. There was no attack by the defence on the expert opinions of the witness regarding the compilation of DNA profiles of both the deceased and the accused. It is my considered opinion that it has been established that in respect of the expert evidence presented, the conclusions reached and opinions expressed and set out in the reports, are sound and founded on proved facts.

[62] The fore-mentioned approach would equally apply to the evidence of Mr Sem, the forensic scientist on ballistics who examined the accused's vehicle and later on conducted ballistic tests on a projectile found lodged in the armrest of the rear seat. His conclusion that there were sufficient characteristics found between the projectile collected from the vehicle and those obtained from test shots fired with the accused's firearm during the examination, is supported by the court chart and proven facts.

²² *R v Fourie* 1947 (2) SA 972 (O) at 974.

[63] It seems inevitable to come to the conclusion that the expert evidence of the two officials from the NFSI as regards the forensic analysis of evidence, linked to the murder of the two deceased, is satisfactory and reliable. I accordingly so find.

Evaluation of evidence

[64] When faced with circumstantial evidence, it is trite that the approach of the court should be what is stated in *S v Reddy*²³ namely, that evidence must not be assessed in piece-meal but in its totality. The court should carefully weigh together the cumulative effect of all the circumstantial evidence adduced, from which certain inferences may be drawn.²⁴ On circumstantial evidence the court in *R v Mtembu*²⁵ said the following at 679:

‘But in any event it is not clear to me that the Crown’s obligation to prove the appellant’s guilt beyond reasonable doubt required it to negative beyond reasonable doubt all pieces of evidence favourable to the appellant. I am not satisfied that a trier of fact is obliged to isolate each piece of evidence in a criminal case and test it by the test of reasonable doubt. But that does not necessarily mean that every factor bearing on the question of guilt must be treated as if it were a separate issue to which the test of reasonable doubt must be distinctly applied.’

And further at 680:

‘Circumstantial evidence, of course, rests ultimately on direct evidence and there must be a foundation of proved or probable fact from which to work.’

[65] In the present case the state case is entirely based on circumstantial evidence, except for the alleged statement made by the accused upon his arrest, but disputed during the trial. This includes the forensic evidence presented by state witnesses.

Counts 1 and 2: Murder

²³ 1996 (2) SACR 1 (A) at 8c-g.

²⁴ *R v Blom* 1939 AD 188 at 202-3.

²⁵ 1950 (1) SA 670 (A).

[66] What the evidence thus far has established is that the accused's motor vehicle was the scene of both murders where after the bodies were disposed of at the municipal dumpsite on the outskirts of Windhoek. Based on the evidence of Dr Guriras that penetrating injuries were observed on both the deceased bodies, these findings are consistent with bullet holes found in the upholstery of the accused's vehicle and a spent projectile lodged in the rear seat. From blood stains and spatter of both deceased found in the front and rear seats of the vehicle, it can reasonably be inferred that both persons were shot while seated in the vehicle. It was further established that the spent projectile found inside the vehicle was fired from the accused's firearm. With regards to tyre tracks observed at the dumpsite near to where the bodies were found, these were not proved beyond reasonable doubt to have been made by the accused's vehicle. However, the evidence did establish that they are at least similar as regards grooves found on tyres fitted to the accused's vehicle.

[67] Regarding shoe prints with a particular pattern observed by Chief Inspector Amoomo at the dump site and sports shoes with a similar pattern found in the accused's flat, this evidence was not substantiated in any form or manner as could be expected from an investigating officer in a case of this magnitude. Photos taken with his cell phone could not be developed as proof of the finding, neither were casts made of the imprints. Evidence about Amoomo having mentioned to two other officers about similar shoe prints he observed at the crime scene is self-corroboration and has no probative value. Though it might show consistency in his version, it does not constitute evidence on identification without it having been proved that the prints were identical.

[68] It is not in dispute that when the accused was in the company of the deceased persons earlier in the day, he had his firearm with him. Also not in dispute is that he was last seen together with the deceased when they left the bar. That jealousy played some role in the love triangle the accused found himself in is evident from the evidence of Abisai, as well from the accused's own evidence. It further features in the statement made to the police about the

one deceased having shot the other. Although the accused denies having harboured feelings of jealousy towards his girlfriends, the evidence adduced shows otherwise. It is therefore not unlikely that it could have provided the motive behind the killing of the deceased.

[69] It was argued on the accused's behalf that in light of the evidence adduced by state witnesses, the accused's version is reasonably possibly true and that he should be acquitted. The argument advanced by defence counsel embraced the view that it had not been established that the projectile found lodged in the rear armrest of the accused's vehicle could be connected to the accused's firearm. Furthermore, that the state failed to prove that the blood spatter and stains found inside the vehicle could be associated with the deceased persons.

[70] With deference to counsel, the argument advanced on this score is not supported by the established facts – as set out above – and therefore without substance. Neither had it been challenged during the trial, nor did the accused lead evidence to the contrary. In fact, the accused never disputed that the deceased had been killed and the blood found inside his vehicle to be that of the deceased persons. His defence is that he is not the person who murdered them while he suspects Benny to be responsible for doing so. As for the projectile found in the vehicle, there is evidence showing a direct link to the accused's firearm and proof that it had been fired from his firearm.

[71] It is the accused's evidence that up until that fateful night, there were no bullet holes in the seats of his vehicle or blood stains inside the vehicle as found in the morning. According to him, this must have been brought about after he had given his vehicle to the deceased persons and Benny to go and buy drinks.

[72] The problem with the accused's evidence on this score is that there is no logical explanation as to how it is at all possible that a shot(s) could have been fired from the accused's pistol that night if the firearm was under his control at all times. On his version, that could only have happened if he handed over the firearm either to Benny or any one of the deceased persons before their departure; this he did not do. Though the accused disputes having made a statement after his arrest and in the presence of the police when asked by his brother as to what had happened the previous evening, the gist of the statement revealed information about a shooting incident that occurred inside his vehicle at a time when the police had no information about the manner in which the deceased were killed, or the circumstances under which it took place. By then the vehicle had not been found where left by the accused as he only led them there at a later stage. Evidence about shots having been fired inside the accused's vehicle and the presence of blood of the deceased persons were only discovered later; well after the accused disclosed information related thereto.

[73] Although the accused disputes having noticed the blood stains and spatter on the interior of his vehicle when he moved the vehicle to Ursula's house, it seems highly unlikely that with all the bloodstains and spatter clearly visible, he could have missed it. When considered together with his inability to come up with a plausible explanation for moving the vehicle there in the first place and why he did not drive home, the only reasonable conclusion to come to is that this was done in an attempt to hide the vehicle. In light of the accused's evidence that he was eager to retrieve his vehicle, his decision to park the vehicle elsewhere instead of bringing it home, can only be described as awkward and inconsistent with his earlier intentions to bring his vehicle to safety. His behaviour would be consistent with that of a person with a guilty mind.

[74] The accused was not an impressive witness. His evidence is riddled with contradictions and improbabilities; neither is there any corroboration to be found in the evidence adduced that remotely supports his version. On the contrary, as shown above, shots fired inside his vehicle which caused the death of the two deceased took place at a time when the accused had sole control over his firearm. This not only excludes any other person(s) responsible for the killing, but renders his own evidence impossible. The accused's failure to immediately raise his suspicion about Benny whom he suspected to have committed the murders to the police, or to raise an alibi defence in response to the state's pre-trial memorandum, or in his plea explanation, is not consistent with the behaviour of a person or suspect who has nothing to hide. While it is the accused's constitutional right to remain silent and not to disclose his defence, it might be expected of an innocent suspect facing serious charges to state, from the outset, that it was not him who committed the crimes, but that the real perpetrator is someone else and furnish all information about that person to the police. This he did not do but instead let years pass before raising an alibi defence.

[75] Against this backdrop, it seems inevitable to come to the conclusion that the belated appearance of a suspect called Benny is a figment of the accused's imagination and therefore fabricated evidence. When considered against the evidence as a whole, the court is satisfied that it had been proved beyond reasonable doubt that the accused's defence is nor reasonably possibly true and falls to be rejected as false. There can be no doubt that the accused unlawfully brought about the death of Johanie Naruses and Clementia de Wee.

[76] Whereas the accused's testimony has been rejected as false, the court is deprived of the assistance of important information pertaining to the circumstances which led to the killing of the deceased persons – information the accused alone is privy to. In circumstances where an accused's account

has been rejected as false, the court in *R v Mlambo*²⁶ per Malan, J (dissenting) held the view that the court may draw an inference that the accused committed the assault with intent to kill, rather than with a less serious form of *mens rea*.

[77] In this instance the court does not have the benefit of knowing what the accused's subjective state of mind was when he caused the death of the two deceased. In order to determine the accused's intention regard may be had to objective factors such as the weapon or instrument used and at which part of the body it was directed. Based on the medical and forensic evidence presented in this instance, it could with reasonable safety be inferred that the deceased were shot through the upper body with a firearm which resulted in death. From these indicators it can be inferred that the accused acted with direct intent when he fired the fatal shots. I accordingly find that in respect of both murders the accused acted with the intention to kill (*dolus directus*).

Count 3: Defeating or obstructing or attempting to defeat or obstruct the course of justice

[78] Whereas the court has come to the conclusion that the accused murdered the two deceased, it could with reasonable certainty be inferred from the proved facts that he was equally responsible for dumping their bodies at the municipal dumpsite and setting them alight after covering them with tyres. Evidence of tyre tracks found at the scene similar to that made by tyres fitted on the accused's vehicle is consistent with the inference sought to be drawn. In the absence of any evidence to the contrary, that would be the only reasonable conclusion to come to. A further inference may be drawn namely that this was done in order to destroy evidence connected to crimes of murder; conduct constituting the common law offence of defeating or obstructing the course of justice. On this count I am equally satisfied that the accused's guilt has been established beyond reasonable doubt.

²⁶ 1957 (4) SA 727 (A).

Count 4: Failing to lock away an arm, contravening section 38(1)(j) of the Arms and Ammunition Act 7 of 1996.

[79] The section under which the accused is charged regulates the safekeeping and control of firearms and reads:

'Offences and penalties

(1) Any person who-

(a) ...

(j) fails to lock away an arm in his or her lawful possession in a strongroom or other place of safety or safe, device, apparatus or instrument for the safe-keeping of an arm referred to in section 3(8) when such arm is not carried on his or her person or is not under his or her direct control; shall be guilty of an offence.'

(Emphasis provided)

[80] What the evidence in this instance established is that during a search of the accused's room, the accused's pistol was found between the base and mattress of his bed. This took place at a time when the accused was at home. Although the accused did not carry his pistol on his person, there can be no doubt that he still had control over the weapon when placed under the mattress of his bed. From the section it is clear that a firearm need not be kept in a safe at all times. It then matters not whether the evidence established that there was no safe in the room. The charge relates to the time when the firearm was found by the police and while the accused was at home. In these circumstances I am not convinced that the accused has made himself guilty of the offence charged.

[81] In the result, the court's verdict is the following:

Count 1: Murder (*dolus directus*) – Guilty

Count 2: Murder (*dolus directus*) – Guilty

Count 3: Defeating or obstructing the course of justice – Guilty

Count 4: Failing to lock away an arm (c/s 38(1)(j) of Act 7 of 1996
– Not guilty and discharged.

JC LIEBENBERG
JUDGE

APPEARANCES

STATE

C Lutibezi
Of the Office of the Prosecutor-General,
Windhoek.

ACCUSED

V Lutibezi
Instructed by Kwala & Co.
Windhoek.