

THE STATE  
Versus  
SHINGAI MAKURA

HIGH COURT OF ZIMBABWE  
**MUZOFA J**  
CHINHOYI, 18 February & 5 March 2025

Assessors:     1. *Mr. Mutombwa*  
                  2. *Mr. Mutayiwa*

### **Criminal Trial**

*G. T. Dhamusi*, for the State  
*BT Ncube*, for the accused

**MUZOFA J:** [1] On the 27<sup>th</sup> of October 2023 a 6-year-old an innocent child was brutally murdered. The author of this atrocious crime was merciless, he stripped her naked and probably raped her. There was no direct evidence of who committed the offence. Such cases leave the investigators and prosecutors struggling to link criminals to crimes. It is an indictment for the investigators to think outside the box and identify sources of scientific ways to link criminals to crimes where possible.

[2] This is what happened, Nomsa Temani the deceased was sent by her mother , Mary Temani ‘Mary’ to get some groceries on credit from one Priscilla Mutangadura’s shop at Pamashedhi shops situated under Chief Dandawa Hurungwe.

[3] The deceased left her parents’ homestead in the morning around 0930 hours. That was the last her mother saw her alive.

[4] By midday the deceased had not returned. Mary became concerned and she made enquiries. As she made inquiries many villagers became aware of the dire situation until the whole village took it up to search for the deceased.

[5] The following day, the villagers continued to search with the assistance of the accused, Silas Kadozora and Nathan Lameck who had seen the deceased on the day she disappeared.

[6] Eventually the deceased’s body was located stark naked between two large rocks. The body was bruised and had a wound on the forehead. Some whitish discharge was observed on her private parts.

[7] The accused was immediately arrested by the villagers who later invited the police. The accused was charged with murder in contravention of s47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

[8] The accused denied the offence. Despite his denial he did not give details how he spent the day. His defence outline rather focused on the confirmed warned and cautioned statement. That he was threatened, assaulted to confess. In short, he did not make the statement.

### **The State Case**

[9] The prosecution sought and obtained consent from the defence to produce the testimonies of certain witnesses in terms of s314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. “The CPEA”

[10] Many a time, the court is seized with such instances where the defence admit certain evidence in terms of s314 of the CPEA. Surprisingly, the defence turns around and contest the issues already admitted, as happened in this case.

[11] The import of s314 is that once the evidence is admitted, the prosecution need not adduce evidence, to prove the admitted issue. The accused is taken to have admitted the evidence. The court accepts it at face value. This is called “judicial admission”,

“Which is conclusive, rendering it unnecessary for the other party to adduce evidence to prove the admitted fact, and incompetent for the party making it to adduce evidence to contradict it”<sup>1</sup>.

Although the sentiments were stated in a civil matter they apply in criminal proceedings with equal force. The party who has made such admissions must first withdraw the admissions before adducing evidence to contradict it.

[12] The defence admitted the evidence of Silas Kadozora, Nathan Lameck, Cecilia Jope, Cotman Mazerenganwa and Doctor Brankley Madondo. The following was their evidence admitted by the defence:

#### **[12.1] Silas Kadozora**

He knew both the deceased and the accused. On the 27<sup>th</sup> of October 2023 around 1000 hours, he was in the company of Nathan Lameck. He did not state where he was going. They met the deceased who was coming from the shops. Immediately thereafter they saw the accused walking behind the deceased. The accused later joined them at the shops after an hour. He later learnt that the deceased was missing. He joined the search for the deceased until her body was discovered.

#### **[12.2] Nathan Lameck**

He was in the company of Silas Kadozora. His summarised evidence was similar in all respects to Silas’. They were together when they met the accused.

#### **[12.3] Cecilia Jope**

She is a female adult who resides at Mavhondo Village, Chief Dandawa Hurungwe. She joined the search team when she learnt that the deceased was missing. As the villagers searched for the deceased on the 28<sup>th</sup> of October, she was the first to see the deceased’s clothes scattered near some rocks. As fate would have it, she drew closer to the clothes and to her shock

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<sup>1</sup> Moresby-White v Moresby-White 1972 (1) RLR 199 @ 203 E-H

she saw the deceased's body lying between two rocks naked, she observed a head injury and blood.

**[12.4] Cotman Mazerenganwa**

A mortuary attendant at Karoi Hospital. He received the deceased's body after it was certified dead by Doctor Brankley Madondo.

**[12.5] Doctor Brankley Madondo**

He was a medical doctor based at Karoi Hospital at the time. He conducted a post mortem examination and concluded that death was due to head injury due to blunt trauma.

[13] The oral evidence was led from the following witnesses:

**[14] Mary Temani**

The deceased was her second child. On the fateful day she sent the deceased to get some groceries at their local grocery shops Pamashedhi around 0900 hours. She did not return within a reasonable time, she called the shop owner. She could not get through. She inquired from other villagers about the deceased but none had seen her.

[15] Eventually she reported to the village head. A search was conducted and Silas advised her that earlier in the day he met the deceased and behind her was the accused. The accused was roped into the search team. By 0100 hours the accused had been collected from his homestead. The camadarie village spirit had set it. Most villagers put up at Garikayi Masocha's place, a police officer. They were all geared and intent to get to the bottom of this mysterious disappearance of the deceased.

[16] The following morning the search team resumed searching. They started searching from the point Silas last saw the deceased with the accused behind her. Eventually Cecilia identified the deceased's clothes and then her body. The deceased was naked and there was evidence that she was raped. When the accused saw the deceased's body he sat down. She denied that she once had a love affair with the accused.

[17] Garikayi directed all villagers not to interfere with the scene and the police were eventually advised.

**[18] Garikayi Masocha**

He is an Assistant Commissioner based at ZRP Head Quarters. He resides in the same community with deceased's family. He knew both the deceased and the accused as fellow villagers.

[19] On the 27<sup>th</sup> of October 2023 he was at his homestead, since he was off duty. Unbeknown to him, the call to duty presented itself. Indeed he was equal to the task and demonstrated that a police officer is on duty at all times. Exemplary conduct must be commended as we will show, he left everything and got on to this case until he formally handed over the case to the police for investigations. If more police officers would conduct themselves likewise, our communities would be a better place.

[20] Around 1920 hours he was at his village, he received a report from one Mavhondo that the deceased was missing since morning. Mavhondo was the village head. He advised him to search for the deceased.

[21] Around 0100 hours the same Mavhondo returned and advised that they had received information that one Nathan Lameck had met the deceased along the road. He interviewed Nathan, sadly Nathan was drunk. He was incoherent but he indicated that he was in the company of Silas. He drove his vehicle to Silas' place and interviewed him. Silas disclosed where they had met the deceased with accused just some distance from the deceased. The two were walking from the shops. He asked Silas to accompany him to the accused's homestead.

[22] At accused's homestead, he interviewed the accused. The accused denied seeing the deceased the previous day. However, he admitted seeing Silas along the road. He asked the accused to accompany him to his homestead. At this time most villagers had gathered at his homestead. Silas and the accused joined the other villagers who spent the night at his homestead. He offered them a place to sleep, so that at the break of day the search for the deceased would continue starting from where these two saw the deceased.

[23] True to plan at the earliest they could at dawn, the villagers under his directions resumed the search for the deceased. Silas showed them where he met accused. The accused explained that he was on his way to Chiroti. He however abandoned his trip to Chiroti when he realised he had forgotten his bicycle at the shops. Meanwhile as the discussions continued the villagers were searching around the area. One Cecilia discovered the deceased's body.

[24] The deceased's body lay naked, her clothes thrown a short distance from the body. There were signs that deceased could have been raped. He observed some struggle marks, a jean label was at the scene. He suspected it was from accused's trousers. He asked the accused if he wanted to show them the point he decided to abandon his trip to Chiroti. The accused was not forthright, he then indicated that he had killed the deceased. He immediately arrested the accused. The accused's hands were tied with a rope and taken to Garikayi's homestead. The homestead had become central in the resolution of the deceased's disappearance.

[25] He then called the local police to take over the investigations. He was cross examined extensively particularly on whether he was on police duty when he did what he did. Garikayi was clear he had a dual role both as a villager and a police officer. He did not need anyone's authority to do the preliminaries that he made on the day. We found nothing amiss in what he did, it is actually commendable.

[26] He denied assaulting the deceased. However, he said at some stage he had to drive through a rough road rushing back home where the villagers had started attacking the accused. At that time, he had gone to a high spot in the village where he could get connected so that he could call the Police. This is colloquially known as "looking for network" since connectivity on the cellphones is difficult to come by especially in the rural communities.

[27] **Zililo Munyati**

He is a member of the Zimbabwe Republic Police, at the time he was based at Magunje. He was the investigating officer. When the report was received on the 28<sup>th</sup> of October 2023, he teamed up with other officers from CID Karoi and proceeded to the scene of crime.

[28] The accused was already under arrest, courtesy of the villagers. The accused and a stone were handed over to them by Garikayi. At the scene of crime, he observed some struggle marks, the deceased's naked body lay facing downwards. Deceased's clothes were about a metre from the body. He drew a rough sketch plan from accused's indications and Cecilia Jope. On the same day the 28<sup>th</sup> he recorded a statement from the accused. The statement was later taken to the interpreters for certification of translation. It was then sent to prosecution for confirmation.

[29] Garikayi had observed some whitish discharge from the deceased's private parts, he had taken some samples. They were also handed over to them by Garikayi. The police in turn caused extraction of some blood samples from the accused. Both samples were sent for forensics. At the time of trial, the results had not been received. A year and 4 months had lapsed.

[30] Many issues arise from what transpired. Although counsel for the accused did not explore the points maybe because the results were not before the court. It exercised our mind whether Garikayi could extract samples for onwards transmission to forensics. Issues of storage arise and time lapse which may interfere with the quality of the sample.

[31] Secondly, it was disconcerting that after a year there were no forensics results. Both the investigation and prosecution lost invaluable scientific evidence which is usually conclusive. More could have been done by the Police. Murder is a serious offence and the responsible authorities must make sure that such results are always procured. We were not told if any follow up was made. What is the purpose of investigations if no follow ups are not made? There was no explanation why the results could not be found. It seems the prosecution was also at bay, nothing was done about this very important piece of evidence.

[32] It cannot be overemphasized that, where there is room to secure scientific evidence, the investigators must prioritise getting such. This evidence is conclusive. Its probative value is high since it is real evidence. Thus, where there is opportunity to uplift finger prints, or extract bodily fluids an investigating officer must do so or cause such to be extracted promptly and in terms of the law. His or her duty does not end there, they must be submitted to the responsible office and follow ups are important.

[33] He was cross examined at length on the recording of the warned and cautioned statement. The point taken was that the statement was recorded on 28 October but confirmed in January 2024. It was suggested that during the period the police assaulted the accused and threatened him to confess. He had initially denied the offence but succumbed to the pressure and admitted. Thus, he even caused it to be confirmed. This was all denied by the investigating officer.

[34] He explained that a charge of rape was preferred against the accused but he was instructed to separate the charges, hence the delays in the confirmation of the statement.

[35] **Takesure Machineryaifa**

He is a police officer based at Magunje at the time. He accompanied Sergeant Zililo Manyati to the scene of crime. His evidence was similar to Zililo's evidence in all material respects. He denied assaulting the accused.

[36] The State's case relied heavily on circumstantial evidence, and the confirmed statement by the accused.

[37] The State then closed its case.

### **The Defence Case**

[38] The accused testified on his behalf. He called his mother Miriam Makura, who unfortunately was in court throughout the court proceedings. We decided to hear her evidence albeit bearing in mind that she had listened to all the evidence. It is up to the Court to decide on the probity of her evidence.

### **[39] Shingai Makura**

He adopted his defence outline as his evidence in chief and added some detail. He said on the 28<sup>th</sup> of October 2023 Garikayi arrived at his family homestead in the company of Lameck and Silas. He was advised that a child went missing and an explanation was required from him. Garikayi threatened him that he was a black boot police officer and could kill him. He was taken to Garikayi's homestead. The three were locked in a room. The following morning the villagers including the three of them went to search for the deceased. The deceased was located. This is when Lameck and Silas alleged they saw him walking somewhere near the deceased.

[40] His hands were tied together and his body tied to a tree. The villagers assaulted him including Garikayi. It was Garikayi who then restrained the villagers from further assaulting him.

[41] When the police arrived, they untied him and interrogated him. He denied admitting the charge to the villagers or even the police. He said a statement was recorded on 28 October 2023 he denied the charge. When he was at prisons the Police took him and assaulted him advising that he must confess. One day he was taken from Prisons for indications the police dog handler threatened to set the dog on him if he changed his statement.

[42] The police then visited him at Prisons and took him to Magunje Police Station. They caused him to sign certain documents that were not read to him. He signed out of fear.

[43] On the confirmation proceedings he confirmed that the statement was read to him and he understood. However, he was afraid of the prior treatment by the police.

[44] On his relationship with deceased's mother he said they were ex-lovers. He also did not understand why the deceased's mother denied their relationship. He had spent some money on her. Despite that, he indicated that he had no grudge against her to kill and rape her child the deceased.

[45] He denied ever going to Chiroti nor even planning to go there.

[46] During cross examination he intimated that the confirmation proceedings were done properly although he still harboured the fear from the Police assaults and threats.

### **Miriam Makura**

[47] The accused's mother who sat in court also gave evidence. She was not properly directed where to sit. She knew Garikayi as a villager and police man. Her evidence was simple and forthright. She resided with the accused at Madudzo Village Zvipani. On the 27<sup>th</sup> of October 2023 the accused left in the morning for Pamashedhi shops and returned in the evening.

[48] At night Garikayi arrived at their homestead and advised her that a child (the deceased) had disappeared. He wanted to talk to the accused. When the accused woke up, he was questioned and later invited to join Garikayi so that he will help to search for the deceased since he was also at the shops.

[49] Under cross examination she expressed her concern on the accused's mental condition. She said he once worked in South Africa and fell sick. He had mental challenges. However, when he returned, he did not show signs of mental sickness. He is violent only when drunk. We did not take this as a serious issue except a gesture to assist her son. The accused himself denied the assertion. Her evidence established and corroborated the State case that the accused was at the shops.

[50] The defence then closed its case.

### **Closing Submissions**

[51] The State urged the court to find the accused guilty of murder. It conceded that there was no direct evidence but circumstantial evidence. It listed the proved facts as that, the accused was seen walking near the deceased, that he showed the police the stone he used and had a score to settle with deceased's mother who had ended their relationship. The State also contended that he admitted in his defence outline that he had no intention to kill and even before this court under cross examination.

[52] According to the defence, the State witnesses were not credible and their evidence must not be accepted. The circumstantial evidence was remote and the warned and caution must be held to be inadmissible since it was made after undue pressure was exerted on him.

### **Issues for determination**

[53] The only issue is whether the State proved its case beyond a reasonable doubt.

### **The Law**

[54] The onus falls on the State to prove that the accused was both the factual and legal cause of the deceased's death. Murder consists of the unlawful, intentional, and causing of the death of a human being<sup>2</sup>. The causation part requires the State to prove that but for the accused's conduct the deceased would not have died.

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<sup>2</sup> Dube v The State SC 83/22.

[55] It is accepted that the duty to prove the case beyond a reasonable doubt on the State is not proof beyond a shadow of doubt. It is proof of a high probability that a reasonable person presented with the facts may as well conclude that the accused committed the offence. If the courts were to look for absolute certainty then it will fail to protect society<sup>3</sup>. Where the evidence relied on is circumstantial evidence there must be proved facts upon which inferences may be drawn. The proved facts must make a chain of evidence that points to the accused. If there is a possibility that it can point to some other person then the inferences cannot be relied upon<sup>4</sup>.

### Analysis

[56] There is no doubt that the State case hinges on circumstantial evidence and what can be garnered from alleged confessions, we will deal with the confessions separately.

[57] The proved facts are that the accused was seen near the vicinity where the deceased was last seen walking. Although the accused denied that he saw the deceased the probabilities are that he did see the deceased. The accused was not truthful or rather not forthright on how he spent the day. He actually indicated at some point that he spent the day at home. His mother laid the issue to rest, she said the accused left home early morning and went to Pamashedhi shops. The evidence by Silas and Lameck that was formally admitted placed the accused near the deceased. The accused cannot lead evidence to controvert what he admitted. We therefore accept this as a proved fact.

[58] That on its own is not conclusive that he committed the offence for Silas and Lameck and any other persons for that matter could have met the deceased on the day. More is required. We do not accept that the accused led to the recovery of the stone allegedly used in the commission of the offence as alleged by the State. The evidence did not establish so. Garikayi said at the scene there were two bloody stones they did not touch them. We believe as a seasoned officer he may not have interfered with the scene of crime.

[59] What probably destroyed the State's case on the recovery of the stone is Zililo the investigating officer's evidence. He said Garikayi handed over the stone to him. It remained unclear from the State witnesses who recovered the stone. The State witnesses contradicted themselves. The State cannot possibly persuade the court that the accused led to the recovery of the stone. None of the officers indicated so.

[60] The label seen at the scene of crime was not linked to the accused's clothes. Even Garikayi said he suspected that it belonged to the accused but it was for the investigators to get to the root of the evidence. Apparently they did not even pursue that line of investigation.

[61] The State also opined that the accused had a motive to kill since the deceased's mother had terminated their relationship after squandering his money. Two issues arise from this, they relate to the reason that accused would have killed.

[62] The accused admitted under cross examination that he had a love relationship with the deceased's mother. That he had spent some money on her. He had a grudge but that he would not kill for that. The statement to the Police captures the terminated love affair as the

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<sup>3</sup> Isolano v The State 1985 (2) ZLR 62 (SC)

<sup>4</sup> John Mada v the state CHHC 228/22



reason for the killing. Garikayi said the accused explained why he killed the deceased. He said the accused indicated that he saw the deceased at the shops and followed her thing she had money. It had nothing to do with the love affair.

[63] As matters stand there was no conclusive explanation why he would kill. In our considered view if the accused had decided to come clean he would tell the truth and be consistent in the reason why he killed the deceased. The State therefore cannot simply ignore one version and urge the Court to accept the other without any explanation. It did not ask Garikayi about what the accused said to the Police so that he can comment. We also make a finding that Mary was not truthful when she denied her affair with the accused. There are high probabilities that they once were lovers. Even her demeanour when she responded to the questions on their relationship was not convincing.

[64] The proved facts therefore are that the deceased did not die from natural causes, that the accused was seen within the vicinity of the scene of crime and that he was once in love with the deceased's mother.

### **The Confessions**

[65] We refer to the "confessions" because the accused is said to have confessed when the body of the deceased was discovered and to the police. The State also referred to his defence outline and what transpired in Court.

[66] We address the first confession. According to Garikayi, when the accused arrived where the body was, he took a deep breath, sat down and exclaimed in the Shona language that he did it. This is when he was arrested.

[67] The accused did not directly challenge this piece of evidence. What he did was to outline how he was assaulted by the villagers. Of note, which we believe, is that Garikayi gathered persons who allegedly saw the deceased along the road to assist other villagers. These were to give the villagers a starting point in their search. By that time there was nothing that distinguished the accused on one hand and Silas on the other. But these three must have been treated as 'suspects'. They had all met the deceased. He did say he was assaulted before the body was discovered, he did not tell us that Silas and Lameck were also assaulted.

[68] The accused clearly exaggerated the assaults and threats. He said when Garikayi arrived at his homestead he threatened him. Contrary to his evidence his mother's evidence showed that Garikayi approached her with all due respect. She affectionately referred to him as uncle. Her evidence was that Garikayi requested accused to accompany them since he was at the shops to assist others to search for the deceased.

[69] It is therefore difficult to believe and accept that the accused was threatened or assaulted at his homestead.

[70] We accept that before the discovery of the body the accused, Silas and Lameck were central in so far as to identify where they last saw the deceased. What separated the accused from Silas and Lameck must have been his utterances if he made any after the body was discovered.

[71] We also accept that the accused was assaulted by the villagers. We did not believe Garikayi that he was not assaulted. Garikayi had to drive through unroadworthy places rushing back to where the villagers were gathered. There is no way he could have done so if there were no assaults. He confirmed eventually that he is the one who saved the accused.

[72] From the chain of evidence, there is one persuasive inference that accused was assaulted after the alleged confession.

[73] The next issue is whether the statement is admissible. According to Reid Rowland, the CPEA make no distinction as to whom the confession or statement is made. The requirement that the statement must be made freely and voluntarily must be met. The term freely and voluntarily means “not induced by any treat or promise proceeding from a person in authority”.

[74] Where the statement is not made to a person in authority then it becomes unnecessary to comply with the free and voluntary requirement. What constitutes a person in authority is tested subjectively, it is any person who the accused believes rightly or wrongly has power over him. It could be a police officer, a headman, the accused’s employer or a school teacher<sup>5</sup>. The extent to which the person was involved in the case is also considered. Such statements cannot be admissible unless the rules on admissibility are satisfied<sup>6</sup>.

[75] In this case Garikayi was a well-known police officer. He obviously was a person in authority. The State must have satisfied the rules of admissibility. What is concerning though is that the confession by the accused was heard by Garikayi only, although he said one Adonia heard it. Adonia did not give evidence. How could that be if the accused exclaimed when he saw the deceased’s body? Obviously when the body was discovered all the people must have gathered to see for themselves. Some people must have heard the accused especially Mary the deceased’s mother. She only said the accused sat down. Garikayi did not tell the court how he and Adonia could only hear the confession.

[76] The other possibility is that Garikayi had isolated the accused excluding the other villagers as he continued to interrogate the accused. If this is what happened then the more reason why the State must have satisfied the rules of admissibility. The accused on his part said he did not make any confession to the villagers.

[77] Garikayi also gave a completely different reason for committing the offence. He said the accused indicated that he saw the deceased at the shops with items. He followed her suspecting that she had some money. The initial intention was probably to rob her. However, when he failed to get the money, he reckoned that deceased could identify him thus he struck her to death. This version was completely different from what the statement before the court stated.

[78] In a nutshell the confession to Garikayi if it was made it was not shown to have been made freely and voluntarily made. The accused said they were locked in a room which

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<sup>5</sup>John Reid Rowland , *Criminal Procedure in Zimbabwe 1997* LRF @ 20-2 and cases cited therein

<sup>6</sup> *S v Nkomo 1989 (3) ZLR 117 (5)*.

means he was already a suspect. We therefore come to the conclusion that the statement is inadmissible.

[79] In terms of s256 (2) of the CPEA a confirmed statement shall be admissible in court without further proof. Despite confirmation of the statement, the accused can still challenge it and if he proves that he did not make it or did not make it freely and voluntarily the statement will be inadmissible. On the other hand where the accused in his defence gives a detailed account of how he was compromised in making the statement, the onus reverts to the State to prove that the averments are incorrect. The State has to reopen its case and call further evidence that directly addresses the issues raised. If it does not then what is not denied is accepted as the truth.

[80] The circumstances surrounding the recording of the accused's statement does not form a complete chain demonstrating free will. Both the accused and Zililo the investigating officer indicated that the statement was made on 28 October 2023. A closer look at the statement shows that the translation was certified correct by a court interpreter on 8 January 2024 then confirmed on 25 January 2024. There was an attempt to explain the period between the recording and the confirmation. It is incomprehensible that the accused signed the statement on 25 January 2024 yet it was recorded on 28 October 2024. For this the officer could not explain.

[81] On the other hand, the accused indicated that he signed the first statement in which he denied the offence on 28 October 2023. However, while in custody the police collected him from prison and he was taken to Magunje police, threatened and assaulted. He was told to give some papers to sign and he did. Thereafter he was taken to court for confirmation. He positively answered all the questions freely but at the back of his mind he feared what happened at the Station.

[82] The accused's explanation was more probable than the State's. For instance, the statement confirmed that the date that the accused signed the statement was the date the confirmation proceedings took place. The confirmation proceedings took place at the end of the day around 1715 hours. The accused's explanation was that the delay was due to the fact that they were at Magunje police.

[83] The State in its wisdom opted not to reopen its case. It was content with the bare denials by Zililo who could not explain why the confirmation took place at the end of the day, why he caused the accused to sign a statement recorded on 28 October 2023 on 25 January 2024. Zililo was very casual that there are no timelines, but the truth is time is of essence in criminal investigations. We are persuaded that two statements were made, the one recorded on 28 October 2023 in which he denied the offence and the second one which resonated with police's expectations signed on 25 January 2024.

[84] In our view the strategy to take the accused to Magunje Police then straight to court was meant to exert some remote influence on confirmation proceedings. We do not lose sight of the fact that while the accused was in prison the police had on different occasions taken him. So if he entertained a thought that even after confirmation they could still have access to him, his fears were well founded. We therefore remain sceptical about the statement.

[85] The State sought to rely on the statement and his responses to questions in Court where he admitted. We do not believe that was a genuine admission. He immediately recanted the response which may have been made from a misunderstanding of the question by the State. An admission by an accused must be clearly made. In this case the State would just be clutching at straws.

[86] As already stated, the State missed an opportunity to use conclusive evidence from forensics. The investigations generally were not properly handled.

[87] The accused himself did not fair very well in his defence case. He simply lied, in fact at one point he almost admitted but quickly denied. The accused lied that he was at home his mother's evidence proved otherwise. In our view his lies did not corroborate the State case such that all the evidence points to his guilt.

### **Disposition**

[88] From the foregoing we believe the evidence before the court raises suspicion and not proof beyond a reasonable doubt. The facts the State sought to rely on did not form a chain so complete that there is no escape from the conclusion that within all human probability the accused committed the offence.

[89] Secondly the accused's statement (s) were not shown to have been made freely and voluntarily. There was evidence that he was assaulted that was not controverted by the State.

Accordingly, the accused is found not guilty and acquitted.

*National Prosecuting Authority, the State's Legal Practitioners  
Saizi Law Chambers, the accused's pro deo legal practitioners.*

