

STATE
versus
PIAS MUKANDI alias JAMBA

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 31 October; 1-3; 6-9 November & 4 December 2023

CRIMINAL TRIAL

Assessors: Mr Chakuvinga
Mrs Chitsiga

M Mugabe with T Mukuze, for the State
G Mhishi, for the accused

MUREMBA J: The accused stands accused of committing a heinous crime of murder. A crime so brutal that it has left the family of Moreblessing Ali shattered and the community of Nyatsime in shock.

This case can be summarised as follows. In the evening of 24 May 2022, the deceased who was a resident of Nyatsime went to Chibhanguza Nightclub in Nyatsime with her dog and her friend, one Kirina Mayironi. However, the deceased did not return home that night, while the dog returned home alone. The friend also returned home. On the next morning the friend went looking for the deceased, but did not find her. On that very day, she reported the deceased missing to the police. The police searched for the deceased everywhere in Nyatsime area, but did not find her. On 11 June 2022, the deceased's body was found in a disused well at the accused's mother's Plot number 321 Dunmoter Farm in Beatrice. The body was dismembered into three pieces. The right leg and the left leg were separated from the body. They had been severed from the waist line and placed in a sack that was tied at the end. The body was in an advanced state of decomposition and due to decomposition, the cause of death could not be ascertained. The deceased's family is still far away from finding peace and closure because it is now 1 year 6 months since the death of the deceased, and her body is still lying in the mortuary of Parirenyatwa General Hospital.

It is the State's allegation that on the night of 24 May 2022, the accused was at Chibhanguza Nightclub. He was seen by the deceased's friend, Kirina Mayironi assaulting the deceased and dragging her away. That was the last time the deceased was seen alive. The accused also went missing and the police could not locate him. After the deceased's body was discovered on 11 June 2022 in a disused well at the accused's mother's plot in Beatrice, the accused was arrested on 16 June 2022 in Hurungwe. It is further alleged that after the accused was arrested, he led to the recovery of the deceased's clothes, cell phone and a kitchen knife that was used in the commission of the offence.

On being arraigned before this court, the accused pleaded not guilty to the charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23] (hereinafter called the Criminal Law Code). In denying the charge and throughout the trial, the accused did not dispute that he was at Chibhanguza Nightclub on the evening of 24 May 2022. In his defence outline he said the following. As he was in the nightclub dancing to some music, he saw a dog inside the nightclub. He did not find it proper to have a dog inside a bar. So, he kicked it so that it would go outside the bar. However, this did not go down well with some of the patrons who started to insult him and kick him as they asked him why he had kicked the dog. He said that he ran out of the bar to escape the attacks. Since he was drunk, he decided to go home. On his way home, he was followed by two male persons who were in the company of the deceased. The deceased asked him why he had kicked her dog. The deceased who appeared heavily drunk and exhausted was pushed to him by one of the two men. The deceased fell on him and got hold of his shirt. She asked him to lead her to his place of residence. Out of fear of the two men who had threatened him, the accused could not deny the demands of the deceased. He started walking with the deceased towards his place of residence. The two men were following behind at a distance. After walking for about two kilometres, the deceased fell down. When the accused checked for the two men, he saw that they were far away. He took advantage of the darkness and disappeared into the night leaving the deceased lying on the ground. He ran home. However, the accused did not go on to tell us what happened after he went home or how he was later arrested by the police for the murder of the deceased. He finished his defence outline by saying that he suspected that the deceased was "*imposed on him when she had already been drugged and poisoned by her murderers.*" The accused went on to say that he had admitted to the charge at the police because he was under duress.

The evidence led by the State

The State started by producing the post mortem report with the consent of the defence. It states that the remains of the deceased were examined on 14 June 2022 at Parirenyatwa General Hospital. The forensic pathologist, Dr Olay Yoandry Mayedo observed that the body of the deceased was in an advanced state of decomposition and that it had no visible trauma. The cause of death could not be ascertained due to decomposition. The post mortem report was marked as exhibit number one.

Mr *Mukuze* then applied to produce the accused's confirmed warned and cautioned statement, but the defence objected to its production. Mr *Mhishi* submitted that the basis of the objection was that during confirmation proceedings, the accused was under duress from the police officers who had investigated the case and recorded the warned and cautioned statement from him. It was submitted that the police officers who investigated the case were many and they all took the accused to court. It was submitted that some of the police officers were seated in the gallery and some were milling outside the court room during the confirmation proceedings. It was submitted that these police officers had made threats to the accused that if he was going to deny the statement in court, they were going to take him back to the police station where they were going to torture him and kill him. It was submitted that these threats were made at the police station before the accused was taken to court. Mr *Mhishi* submitted that as a result of these threats, the accused had no option but to have the statement confirmed in court. Mr *Mhishi* further submitted that on that basis the defence was proposing that a trial within a trial be conducted. In response Mr *Mukuze* submitted that it was not true that the accused had had the statement confirmed under duress. He submitted that accused persons have a habit of lying that there was duress during confirmation proceedings. Since Mr *Mukuze* was now leading evidence from the bar, the court asked him if he had attended the confirmation proceedings in the lower court. His response was in the negative. Clearly, Mr *Mukuze* had no appreciation of how he was supposed to handle the objection. The court asked him to research on the issue and to also get assistance from his colleagues. The court then took an adjournment. When it resumed, Mr *Mugabe* had come to assist Mr *Mukuze*. Mr *Mugabe* submitted that the State was going to call the magistrate who conducted the confirmation proceedings to give evidence on how he had conducted them. He said that since the magistrate was not in attendance, he was going to be called later on during the course of the trial. It was submitted that in the meantime the State was going to lead evidence from its other witnesses.

The State then led *viva voce* evidence from the following witnesses. Kirina Mayironi; Washington Mutswiri; Mercyline Mavhiza; Muchaneta Shoko; Stanley Nhamo Fusire; Laina Mukandi; Stella Mukandi; Sydney Jumbe; Memory Zvenyika; Phineas Matubu; Arimon Mirimbo and Simbarashe Maruziva.

The first witness to testify was Kirina Mayironi, the friend of the deceased with whom she went to Chibhangiza Nightclub on the fateful night. At the start of her testimony, she was asked to identify the accused. In response she said that she did not know him and that she had never seen him before. She said that it was her first time to see him in court. She then gave her evidence as follows. The deceased was her friend. The two were next door neighbours in Nyatsime. They were also workmates at Chitungwiza Municipality but they worked in different departments. The witness was working as a security officer whilst the deceased was working in the sewer department. The witness said that on a date she could not remember, they proceeded to Chibhanguza Nightclub for a drink. It was in the evening around 6pm. They went with the dog of the deceased. They found their neighbour one Washington Mutswiri in the nightclub drinking beer. They sat with him and the three started drinking beer together. The dog was lying down at the centre of their chairs. As they were drinking, they were joined by the now late George Murambatsvina who was a workmate of Kirina Mayironi and the deceased. Between 9pm and 10pm the witness and the deceased decided to go home. When the two rose, the dog rose and ran outside ahead of them. The deceased followed the dog outside whilst the witness remained talking to Washington Mutswiri for about ten minutes. She was telling him that he needed to go home with them since they were now all drunk. Washington Mutswiri was refusing to go home. The witness eventually left him and left the nightclub. When she was outside, she jumped a bench and faced the home direction. She then saw the deceased lying on the ground on her left side. She was being assaulted by a young man who was wearing a yellow t-shirt. She did not know the young man. She had never seen him before. The light outside the nightclub was dim and one could only see where they were stepping. She walked three to four steps towards the young man who was assaulting the deceased and asked him why he was assaulting her. He answered her by saying, "*Your dog is disturbing me from doing what I want to do.*" Because of the dim light it was impossible to identify someone you had never seen before. She was only able to observe that the person who was assaulting the deceased was a young man. The young man went on to hold the deceased by the collar of her jacket. He started dragging her as he was assaulting her with fists. When the witness acted as if she wanted to strike him with the bottle that she

was holding, the young man put his hand in the back pocket of his trousers and produced a catapult. He struck her on the chin using the catapult. She felt dizzy and fell down. She quickly rose and ran back into the nightclub.

When Washington Mutswiri saw that she was injured, he asked her what had happened. She told him that she had been struck by a certain young man who was assaulting the deceased outside. Many people who were in the nightclub saw that she had been injured as she was bleeding profusely from the chin. Her blouse was blood stained. People rushed outside to see what was happening. Washington Mutswiri and the witness also followed suit. They found the young man still assaulting the deceased. Kirina Mayironi said that she cried out for people to rescue her friend but no one came to her friend's rescue as the young man started to pelt at people using his catapult. Afraid of being injured, people ran back into the nightclub. Kirina Mayironi and Washington Mutswiri also followed suit. Whilst inside the nightclub Kirina Mayironi pleaded with Washington Mutswiri to accompany her home as she was now afraid of what was happening to the deceased. Washington Mutswiri reluctantly agreed to escort her home. From the nightclub, they took the opposite direction from where the deceased was being assaulted. They found the deceased's dog already at home.

Kirina Mayironi said she asked Washington Mutswiri to go back to the nightclub and look for the deceased and bring her home. Kirina Mayironi said that after Washington had left, she phoned the deceased thrice on her cell phone. The phone rang twice but it was not answered. The third time she called, the phone was no longer reachable. When Washington Mutswiri returned that night, he said that he had failed to locate the deceased. By day break of the following morning, the deceased had not returned home. The deceased was staying alone. The witness went looking for her at the nightclub and other beer outlets but she failed to locate her. On her way back home, she met a certain lady who had also been in the nightclub the previous night. Kirina Mayironi said she knew this lady as 'Wasu' which was her nickname. She said she asked her if she knew the person who was assaulting the deceased the previous night. Wasu said that she knew him and his name was Pias Jamba. Kirina Mayironi said that she asked where he stayed and Wasu gave her the directions. However, she realised that she could not go to Pias Jamba's place of residence alone.

Kirina Mayironi said she decided to phone the deceased's children and inform them that their mother was missing. When she phoned them, they came together with the deceased's brother. She went with them to the local police base to file a report that the deceased was missing. However, the matter was later transferred to Beatrice Police Station.

Kirina Mayironi said that the body of the deceased was later discovered at a certain house after some days. However, she could not recall the date when this happened. She went there and found people gathered, but she could not get closer to the scene because it had been cordoned off by the police. She said that she left the place after the body of the deceased had been taken away by the police. The witness said that people then gathered at the deceased's house for her funeral, but then there was violence by people of two different political parties. The witness did not go into the details of the violence as the State counsel told her that that detail was not necessary in the present proceedings.

The witness was shown some clothing items which she identified as those of the deceased. She said that the deceased had these items on the night she went missing. She said the items had been shown to her by the police and she had positively identified them. These items were produced as exhibits with the consent of the defence. They were as follows. A brown jacket which was marked as exhibit two; a black pair of trousers which was marked as exhibit three; a pair of black tennis shoes with white spots which was marked as exhibit four; a Huawei cell phone which was marked as exhibit five; and a small pink face towel which was marked as exhibit six. The witness said that she did not know where these items were recovered from, but the police brought them to her place of residence to show her. She said that when she was shown the clothes, they were wet and did not have any blood stains.

Under cross examination Kirina Mayironi said the following. She did not know what caused the death of George Murambatsvina her former workmate with whom they drank beer on the night of 24 May 2022 at Chibhanguza Nightclub. She said she had not seen the young man with the yellow t-shirt inside the nightclub before he assaulted her and the deceased outside the nightclub. She said that this young man was the only person that she saw wearing a yellow t-shirt on the night in question. On being asked questions by the court she said that she was aged forty-two years whereas the deceased was aged forty-six years. She said that she did not know whether the deceased had been buried or not. She said that from the day the body of the deceased was taken away by the police, it was never brought back to the deceased's house for burial. The deceased's place is deserted as there is no one staying there. The children of the deceased no longer come there. It later turned out during the course of the trial that the person Kirina Mayironi was referring to as Wasu was one Mercyline Mavhiza.

The evidence of Washington Mutswiri was similar to the evidence of Kirina Mayironi in all material respects. As such we shall not repeat all of his evidence. He is aged 36 years

old. He said that he did not know the accused person. He said that on the fateful night he was drinking beer with the deceased and Kirina Mayironi in the nightclub. He said that there were 40 to 50 people in the nightclub. He said that after some time the deceased and Kirina Mayironi bade him farewell saying that they were now going home. A few minutes later Kirina Mayironi came back into the bar bleeding saying that she had been hit by a catapult on her chin. Kirina Mayironi also said that the deceased was being assaulted by the man who had hit her with a catapult. People in the nightclub reacted to this by going outside. When people went outside to see the person who had assaulted Kirina Mayironi, the witness also followed suit. He saw a man who was wearing a yellow t-shirt holding a brick. The man was close to where the witness was. The man then threw the brick he was holding and it hit the wall of another complex which is next to the nightclub. People ran back into the night club. He said that he then advised Kirina Mayironi to go home. She indicated to him that she was afraid and asked him to accompany her which he did. He said that when he went back to the night club, he did not see the deceased. He took his young brother with whom he had been drinking beer and they went home in their motor vehicle. He said that he had last seen the deceased at the time she left the nightclub saying that she was going home. He said at the time that he went outside and saw the man who was wearing a yellow t-shirt holding a brick, he did not see the deceased because people were many and were scattered all over the place. He said that people were afraid to confront the man wearing the yellow t-shirt because it had been said that he had a catapult. Since it was dark, people were afraid of being injured. The witness said on the following morning, he learnt that the deceased was missing.

During cross examination the witness said that he was not able to say the man he had seen wearing a yellow t-shirt on the night of 24 May 2022 at Chibhanguza Nightclub was the accused person. He said that he had never seen the accused before. He also said that Kirina Mayironi did not know her assailant because she did not identify him by name and neither did she tell the witness that she knew him.

Mercyline Mavhiza's evidence was as follows. She is 30 years old. At the time material to this case, she was staying in Nyatsime, but at the time of giving evidence she was now staying in Mabvuku. The accused is a person that she knew before the fateful night at Chibhanguza Nightclub. She used to be friends with the accused's blood sister, Stella Mukandi. The witness had met and became friends with Stella Mukandi at the time the witness was staying in Nyatsime. Stella Mukandi is the one who had introduced the accused to her as her brother. The witness said that she had known the accused for about a month

because she did not stay in Nyatsime for long. She said that on the fateful night she was in Chibhanguza Nightclub drinking beer with her boyfriend. She then saw the deceased, Kirina Mayironi and a certain young man enter the night club. The trio bought beer and started drinking. There were about 45 people in the nightclub. People in the nightclub were drinking beer and dancing to music. After some time, the deceased who was now drunk sat on the floor and started to feed her dog with beer. The accused who was also in the nightclub dancing by the snooker table went to where the deceased was seated. The deceased stood up and went outside the night club. The deceased's friend Kirina Mayironi also followed her. Within a short while Kirina Mayironi came back into the nightclub holding her chin. The witness said that she asked Kirina Mayironi what had happened to her. Kirina Mayironi said that she had been assaulted by a certain young man. The witness said that she then went outside to see what was happening. She then saw the accused person at an unfinished building. Kirina Mayironi indicated to him as the person who had assaulted her using a catapult. Mercyline Mavhiza said that since the accused was a person that she knew, she approached him and said to him, "*Uncle don't do that.*" In response he said to her, "*Tetes endai munogara mubhawa mamanga muri,*" meaning "Aunt go and sit in the bar where you have been." The witness said with that she went back into the nightclub and so did Kirina Mayironi and the rest of the people who had gone out. Whilst inside the night club Kirina Mayironi told her that she was now going home and she left. The witness said she also followed suit and went home with her boyfriend. This witness said that she could no longer remember some of the things that happened on the night in question because she was very drunk that night. She said that she learnt that the deceased was missing on the following day.

Under cross examination the witness said that she had no recollection of what the accused was wearing on the fateful night. She was asked whether it was not possible that she had mistakenly identified someone else for the accused. She said that despite being heavily drunk, she knew very well that she had seen the accused on the fateful night because he is a person that she knew. She said that personally she had not seen the accused assaulting the deceased that night. She said that Kirina Mayironi is the one who had identified the accused to her as the person who had assaulted her and the deceased and this happened as they were standing by the verandah of the nightclub. She said that in identifying the accused, Kirina Mayironi did not mention him by name. She said that this showed that Kirina Mayironi did not know her assailant.

Muchaneta Shoko testified as follows. She resides in Nyatsime and is a vendor at Chibhanguza Nightclub. On the fateful night she was at the nightclub doing her vending business with her husband. However, it was cold outside. So, she would sometimes leave her husband at their vending stall and get inside the nightclub for some warmth. Their vending stall was just outside the nightclub by the door, one step down. She said that around 8.00 or 9.00 p.m. as she was seated inside the nightclub by the corner, she saw people running out of the nightclub. She followed suit and went and stood by her vending stall just close to the entrance to the nightclub. She then saw the deceased coming from a place where it was dark. The deceased was bleeding and her clothes were soaked in blood around the chest area. Since she knew the deceased as they resided in the same neighbourhood, she asked her what had happened to her. The deceased answered saying that she had been assaulted. When she asked her who had assaulted her, the deceased said that she did not know the person. The deceased then proceeded into the bar. The witness said she did not see how and at what stage the deceased then left the nightclub. The witness said that she never saw the deceased again. On the next day she then learnt that the deceased was missing. A couple of weeks later she learnt of the death of the deceased.

During cross examination the witness said that before the deceased was assaulted, she bought popcorn for her dog from her vending stall and fed the dog with the popcorn. The witness said at that time she (the witness) was seated in the nightclub in a corner. The witness said that she however did not see how the deceased moved or where she went after feeding her dog. She only saw her coming back injured.

Stanley Nhamo Fusire, the husband to Muchaneta Shoko also testified. His evidence was as follows. On the evening in question, he was at his vending stall when the accused came and took some groundnuts from his stall. The accused left without paying. At that moment the witness stood up and followed the accused. He took away the groundnuts from the accused. The accused did not say anything. The accused came back and proceeded into the nightclub. At that juncture the deceased who had bought popcorn for her dog from his vending stall and was busy feeding her dog told the accused that the items that were on the vending stall were for sale. She told the accused that he needed to pay for what he wanted to take. She also told him that she had paid for the popcorn that she was feeding her dog with. The accused did not answer her. After some time, the deceased stood up and went away. The witness assumed that she was going to the toilet. Within a short while the deceased came back with her clothes soaked in blood. She said that she had been assaulted. The witness said

when he asked her who had assaulted her, she said that it was the young man she had spoken to about the need to pay for the groundnuts. The witness said that he then asked the deceased what they were supposed to do about what had happened. The deceased said that there was nothing they could do about it, but she said that she wanted to go home. The witness said that they also decided to pack their things and go home since people were now fighting. As they were packing their things, they saw some stones that were being pelted from a catapult. The stones were coming from the direction where there were no people. The deceased indicated that it must be the young man who had assaulted her who was pelting the stones. The witness said that this young man was the accused. The witness said that when he then indicated to the deceased that they were now going home, the deceased said she was also going home. She then took the direction where she said the assault had taken place. The witness said that he did not see in whose company she was when she left the business centre. He was however certain that she did not go back into the bar. The witness said he had no recollection of what the accused was wearing on the night in question because this is something that he did not put in his mind or pay attention to. He said that he did not realise that he would be required to give such information in future. He also said that it was his first time to see the accused at Chibhanguza Nightclub. He however said that despite that, he remembered the accused because the accused had taken his groundnuts and had attempted to leave without paying for them. The witness also said that he did not know Kirina Mayironi and that on the evening in question the only person that he saw injured was the deceased. He said that she was a person that he knew.

Laina Mukandi the mother of the accused testified as follows. She is a widow who resides at a plot in Dunmoter Farm in Beatrice. This is a peri urban area in Nyatsime. Her daughter Stella Mukandi ordinarily resides at her stand in Nyatsime and the accused who is a divorcee also ordinarily resides at his stand in Nyatsime. Both Stella and the accused occasionally visit her at the plot. She has five children and the accused is the fourth born. He was born in 1990.

Laina Mukandi said that on a date she could no longer remember, the police came to her place of residence at night after she had retired to bed. It was on a Tuesday night. The police said that they were looking for her son, the accused, Pias Jamba in connection with a lady, one Moreblessing Ali who had gone missing. It was alleged that the accused had had an altercation with her at Chibhanguza Nightclub the previous night. She said she told them that she had not seen the accused on that day and that he was not around. She said that personally

she did not know Moreblessing Ali. Laina Mukandi said that on the subsequent days, different police officers kept on coming to her plot making inquiries about the whereabouts of the accused. She said that she had no idea of the whereabouts of the accused. Then one day in the morning at around 6.00 a.m., she went to relieve herself in a bush where people used to mould bricks. In that bush there is a pit. She said that when she arrived in the bush, she smelt that there was an overpowering stench that was hard to ignore. It was the stench of something rotten. She was compelled to investigate the source of the stench. As she was moving around the area, she smelt that the stench was more intense towards the pit. Inside the pit there is a well. She went and peeped inside the well. To her horror, she saw a sack. Gripped with fear, she quickly retreated as she staggered backwards. She said what immediately came to her mind was the story of the missing woman, Moreblessing Ali, whom the police were looking for. She said she wondered if this was the body of the missing woman. She said she then called out to her daughter Stella Mukandi who was at home to come and see what she had seen. When Stella came and peeped inside the well, she suggested that they inform the police, which they did. When the police came, they confirmed her worst fear. What was inside the well was a human body, the body of Moreblessing Ali. The body was retrieved and taken away.

During trial the witness was shown a kitchen knife by the State counsel. She confirmed that she had seen the knife before. It was once shown to her by the police. When the State counsel asked her to comment on it, she said she had no knowledge of it. She said that it was not hers. She said that when the police had asked her about the knife, she had told them the same thing. She said that the police did not tell her where they got the knife from. She disputed that she had told the police that it was her kitchen knife. The witness said that she had last seen the accused in the afternoon preceding the evening the police came to her place looking for him in connection with Moreblessing Ali who was missing. This must have been the 25th of May 2022. She said that the accused was at Munashe's grandmother's plot where he was doing some piece job of harvesting some crop in the field. Laina Mukandi said that was the last time that she saw the accused until he was arrested in Chidamoyo in Hurungwe. She said that in between the accused never contacted her. She said that Chidamoyo is where she relocated from before moving to Dunmoter Farm where she is now residing. She said in Chidamoyo she left some of her daughters who got married there.

The evidence of Stella Mukandi was as follows. She resides in Nyatsime where she owns a stand. She is a vendor. The accused is her young brother. He is a divorcee and

ordinarily resides in Nyatsime in rented accommodation with a woman who is not the mother of his children. His two children and her two children stay with their widowed mother Laina Mukandi at her two-hectare plot in Dunmoter farm in Beatrice. On a date she could no longer remember, her friend Wasu (Mercyline Mavhiza) came to see her at her house in Nyatsime in the morning. Wasu told her that the accused had had a misunderstanding with some people at the nightclub the previous night. Wasu did not say much. Stella said that on that day she then proceeded to her mother's plot in Dunmoter farm. She got there around 3pm and started to assist her mother with some chores. Wasu then phoned the witness asking her if the accused was at the plot. At that time the accused was at a neighbour's plot doing some piece job. The accused then arrived at his mother's plot just after the witness' phone call with Wasu. The witness said she then told the accused that Wasu had just called telling her that there were many people who were looking for him. Stella said that she then asked the accused what he had done at the nightclub and he said that he had done nothing. Stella said that she then left her mother's plot for her residence in Nyatsime. On the next morning she went back to her mother's plot where she learnt from her mother that the police had come to her place the previous night at midnight looking for the accused. Stella Mukandi said after this visit, the police continued to come to her mother's plot looking for the accused. She went on to say one day in the morning whilst she was at her mother's place, her mother called her from the well which is situated in her field. When she got there, her mother asked her to smell the air at the well. She said that she smelt a strong stench and peeped inside the well. When she saw a sack inside, she panicked and retreated. She suggested to her mother that they inform the police, which they promptly did. When the police came, they said what was inside the well was the body of Moreblessing Ali, the woman who had been missing and they retrieved it. The witness said that she had last seen the accused at around 3pm on the day that she asked him about what he had done at the nightclub. She said that she later learnt that he had been arrested at Chidamoyo police base in Hurungwe.

Stella Mukandi said that the well where the body of the deceased was found was a well which they found on the plot when they relocated from Hurungwe. She said that the whites who used to occupy the farm were the ones who were using the well for moulding bricks. She went on to say even the accused was using the same well to mould bricks. She said that the well is about 40-50m away from her mother's homestead. She said that at the time the body was discovered in the well, there was no maize in the field.

Sydney Jumbe an assistant inspector in the Zimbabwe Republic Police testified as follows. He is the officer in charge of crime at ZRP Beatrice. At the time material to this case, he was the leader at Hurrage Police Base in Beatrice. On 25 May 2022 around 5.00 p.m., Solomon Ali came in the company of four people and they made two reports. The first one was that Kirina Mayironi had been assaulted on her chin with a stone. The second one was that Moreblessing Ali had gone missing after being taken away by a person called Jamba. It was reported that the two incidents had happened at Chibhanguza Nightclub in Nyatsime. As police officers they started to investigate the matter. They got information that Jamba could be found at his mother's plot. They proceeded there at night and found the mother already asleep. When they spoke to her, she said that she had last seen the accused two days before. The witness said that the plots in Dunmoter farm and the residential stands in Nyatsime are demarcated by a road. He said that from Chibhanguza Nightclub there is one plot before the accused's mother's plot. The witness said that the police proceeded to look for the accused at his girlfriend's place in Nyatsime but the accused was not there. The girlfriend said that she had last seen him on the morning of 25 May 2022.

The police then made a ground search for the deceased in unfinished houses, wells and bushes in the area of Nyatsime but they did not find anything. They continued searching until 11 June 2022 when the witness then received a phone call from a police constabulary, one Chayano around 7.00 – 8.00 a.m. He advised that the accused's mother had reported to him that she had smelt a stench at a well at her plot. The witness said that after getting authority from his superiors, he led a team of police officers to the accused's mother's plot. When they arrived there, the accused's mother led them to the well in question. It was about 30 metres due south from the homestead. The well is not in full glare as it is situated inside a shallow pit, at the edge. As a result, a person can only see the well when they get inside the pit. This is a pit where people mould bricks. The witness said that when he peeped inside the well, he saw a female body that was lying on its back facing upwards. The breasts and a nipple that was black in colour could be seen clearly. The body was floating in water. Beside the body, there was also a white sack that was floating. The diameter of the well was 1 metre. The depth of the well was 5 metres. They measured it using a ladder which they placed inside. The bottom part of the body had turned pale because of being immersed in water. The water was not clear. It was 0.7 metres deep. Constable Magodo who went down the well to retrieve the body started by opening the sack which was tied with a wire at the end. When he opened it, he said that there were some legs inside. The sack was taken out using a rope. The body

was placed inside a bag and taken out as well. When the body was taken out, the witness noticed that the dreadlocks were peeling off the head. The witness said that when Moreblessing Ali was reported missing, it was said that she had some dreadlocks. The body had decomposed. The skin was whitish and peeling off the body. The body showed that it had been in the water for a long time. The neck of the deceased was tied with a black pair of ladies' pants. The upper part of the body was covered with a white top which was pulled up above the breasts. Solomon Ali who is the brother of the deceased and Silence Ali who is the deceased's son were both present at the scene. After the body of the deceased had been retrieved from the well, they both positively identified it as that of the deceased. The body was then ferried to Chitungwiza General Hospital.

Memory Zvenyika a detective constable in the Zimbabwe Republic Police testified as follows. She is stationed at CID Counter-terrorism Unit in Harare. She was also involved in the search for the deceased from 27 May 2022. She was also part of the police officers that retrieved the body of the deceased from the well on 11 June 2022. Her evidence was similar to the evidence of Sydney Jumbe. As such we will not repeat it. She said that she is the one who recorded the statement of Silence Ali after he had identified the retrieved body as that of his mother.

Phineas Matubu a detective inspector in the Zimbabwe Republic Police testified as follows. He is the officer in charge at CID Law and Order, Mashonaland East Province, Marondera. He was tasked to lead a team of detectives that was investigating the disappearance and kidnapping of the deceased starting on 27 May 2022. They did not get information on the whereabouts of the deceased until 11 June 2022 when her body was discovered in the well at the accused's mother's plot. He also attended the scene. His evidence on what happened at the well was similar to the evidence of Sydney Jumbe and Memory Zvenyika in all material respects. We will not repeat it. He said that he is the one who recorded the statement of Solomon Ali after he had identified the remains of the deceased as that of his sister. He also said that on 18 June 2022 he was at Chibhanguza business centre where he observed the accused making some indications to a team of detectives, but he was not part of the indications team. He was just an observer. He did confirm a huge presence of police officers during the indications. He also confirmed that the accused was in handcuffs and leg irons as he made the indications.

Arimon Mirimbo a detective inspector in the Zimbabwe Republic Police testified as follows. He is stationed at CID Law and Order in Harare. He was the investigating officer in

the matter. He was assigned to investigate the case on 27 May 2022. The allegations were that Moreblessing Ali had been kidnapped by one Jamba (the accused). The witness accompanied by Detective Assistant Inspectors Mugaviri and Gimo proceeded to do investigations at Chibhanguza Business Centre where they gathered information to the effect that the accused was linked to the assault of Kirina Mayironi and the disappearance of the deceased. The investigating officer said that their initial investigations led them to the accused's girlfriend's place in Nyatsime. The accused was not there. The girlfriend told them that she had broken up with the accused. She supplied them with the accused's mother's plot address in Beatrice. They proceeded there and saw the accused's sister Stella Mukandi and the accused's half brother Simba Chisango. Both stated that the accused was not there. Stella Mukandi said that the accused was last seen at the plot on 25 May 2022. A thorough search for the deceased was conducted at the homestead but nothing was found. The witness said that they then proceeded to the deceased's place of residence in Nyatsime where they found the deceased's daughter Nyasha Ali at home. She said that she did not know the whereabouts of her mother. The witness said that on 4 June 2022, they returned to the accused's mother's plot where they saw the mother. She said that she had last seen the accused on 25 May 2022. Checks for the deceased were again made at this plot but nothing was found. The witness said that they then got information that the accused was being seen in Mashonaland West Province. He said that on 8 June 2022, he proceeded there in the company of Detective Assistant Inspector Gimo and Detective Sergeant Munonoki. They searched for the accused in Chinhoyi, Sadoma, Chikuti and other areas where the accused was said to be frequenting with no joy. On 11 June 2022, the team was then informed by Detective Assistant Inspector Mugaviri, a member of their team that the body of Moreblessing Ali had been found in a well at the accused's mother's plot. On 14 June 2022, Dr Mayedo examined the remains of the deceased and intimated to Detective Assistant Inspector Mugaviri who was in attendance during the post mortem examination that the dismembering of the deceased's body could have happened after the deceased had died.

The investigating officer said that his team was boosted with two more officers from CID Homicide. These were Detective Assistant Inspector Tsambatatare and now Detective Sergeant Chidziva. The team was now investigating a case of murder. The team now had information that the accused had now gone to his rural home in Patsikadova Village under Chief Dandawa in Hurungwe. They proceeded there. Between 14 and 15 June, they carried out raids at the accused's parents' old home which was almost in ruins, but they did not find

him. However, they managed to locate his sister's place – Maria Mukandi's place and other relatives' places, but they did not find the accused. The team engaged the local police at Chidamoyo police base, members of the community and heads of schools. It was announced everywhere that the accused was on the run and was wanted by police. The team got information that the accused was still in the area as he had been seen by members of the community. The investigating team remained in the area searching for him and he had nowhere to run. On 16 June 2022 at 8.00 a.m., the accused succumbed to the pressure exerted upon him by the community and the police and surrendered himself to the police at Chidamoyo Police base. The witness said that Sergeant Forget Zhou who was in charge of the police base is the one who called him and informed him that the accused had surrendered himself at the police base. The team then proceeded to the police base where they found the accused there.

The investigating officer said that he warned the accused that he was arresting him for the charge of murder. He said that he further warned the accused of his rights as an arrested person and that he was not forced to make a confession. The accused then freely and voluntarily made a confession without having been unduly influenced thereto that he was the one who had killed Moreblessing Ali. The accused opted to reduce his confession to writing. He was given pen and paper. He then wrote what had happened and signed. When he was done, the team came with him to Harare on the very day. The witness said that on 17 June 2022, and at CID Law and Order offices, Harare, he recorded a warned and cautioned statement from the accused in the presence of Detective Assistant Inspector Gimo. The accused was not legally represented, but he had been informed of his right to be legally represented if he so wished. He had dispensed of that right. The accused went on to give his statement in Shona freely and voluntarily. He outlined how he had ended up killing the deceased. He also said that he had committed the offence alone. The investigating officer said that in recording the statement, he also asked the accused questions about the whereabouts of the deceased's cell phone and the knife that he had used. The accused gave answers. The investigating officer said that on the same day he took the accused to Harare Magistrates Court where he applied for the accused's further detention so that the accused could do some indications for the police to recover the knife the accused had used in the commission of the offence and the deceased's cell phone before the accused was placed on remand. The application for the accused's further detention was granted until the 18th of June 2022.

The accused subsequently made indications to the police. The investigating officer said that Detective Assistant Inspector Maruziva is the one who led the indications team. From the feedback the investigating officer got from Detective Assistant Inspector Maruziva, the accused freely and voluntarily participated in the indications. He caused the recovery of the deceased's Huawei cell phone and two sim cards, a Net-one and an Econet one. The investigating officer said that investigations that were later made with Netone and Econet service providers using the sim cards serial numbers revealed that the two sim cards were registered in the names of the late Moreblessing Ali. The investigating officer said that from the well where the body of the deceased was recovered, the accused later caused the recovery of the deceased's brown jacket; one pair of tennis shoes; a white ladies' pants with black stripes; a small pink face towel and a kitchen knife which had a black plastic handle. He said that all this property was handed over to him by Detective Assistant Inspector Maruziva. He said that he later took the property excluding the knife to Kirina Mayironi's place in Nyatsime where Kirina Mayironi positively identified it as the property of the deceased. She said that this was the property that the deceased had on her person when she went missing on 24 May 2022. The investigating officer said that they took the recovered knife to the accused's mother and she positively identified it as her knife which had gone missing. During trial the investigating officer positively identified exhibits two, three, four, five and six as the property that he received from Detective Assistant Inspector Maruziva. The investigating officer said that the recovery of the deceased's property at the instance of the accused, linked him to the commission of the offence.

The investigating officer said that on 18 June 2022, in the company of Detective Assistant Inspector Gimo and Detective Inspector Munonoki, he took the accused to Harare Magistrates Court where he requested that the accused's warned and cautioned statement be confirmed by the court. He said that the statement was confirmed by Provincial Magistrate Dennis Mangosi. The investigating officer said that before the magistrate conducted the confirmation proceedings, he cleared the court except for the court officials and the police officer who acts as the court orderly. He said that he and his team went outside and were only recalled after the confirmation proceedings had been done. They were invited to collect the accused's confirmed warned and cautioned statement. Thereafter the accused was placed on remand. The investigating officer vehemently denied that the accused was subjected to duress by the police during confirmation proceedings. He denied making any threats to the accused either during the recording of the statement at the police station or at court. He said

that he is the one who personally recorded the warned and cautioned statement from the accused.

During cross examination the investigating officer said that when they took the accused to court, there was heavy escort by police officers. He however said that he could not remember the number of police officers who were there, but he remembered that they used more than one motor vehicle to go to court. He confirmed that some police officers were armed. He said that some were in uniform and some were in plain clothes. It was put to the investigating officer that in the statement that the accused wrote on his own on, on a piece of paper at Chidamoyo police base, he denied the charge. The investigating officer disputed it. It was also put to the investigating officer that when they brought the accused to Harare, he told the accused what to say in his warned and cautioned statement. The investigating officer vehemently denied it and maintained that the accused had given his statement freely and voluntarily without having been unduly influenced thereto. It was also put to him that the accused had been tortured whilst in police detention. The investigating officer denied it. It was also put to him that when the accused was taken to court for confirmation proceedings, he was promised by police officers that if he would have his statement confirmed, the magistrate was going to release him. The investigating officer denied it. He said that he is the one who took the accused to court and he never made such a promise to the accused. The investigating officer said that if the accused's mother denied any knowledge of the knife that was recovered, she was trying to mislead the court. The investigating officer also said that although some State witnesses had said that the accused was wearing a yellow t-shirt on the fateful night, the accused denied owning a yellow t-shirt when he was arrested. So, the yellow t-shirt was not recovered. He said that upon arrest, the accused was wearing a red t-shirt and upon being questioned about what he was wearing on 24 May 2022, he said that he was wearing the same red t-shirt. He said that he then took that red t-shirt from the accused and sent it to CID Forensic for examination. However, when this trial commenced, more than a year later, he had not yet received the t-shirt back from CID Forensic. The investigating officer said that the case of the deceased's death was later politicised.

However, neither the defence counsel nor the State counsel sought clarification from the investigating officer on how the matter was politicised. The court sought to understand why the accused could have killed the deceased. As a result, it asked the investigating officer some questions. It asked him what his investigations had revealed about the relationship, if any, between the accused and the deceased prior to 24 May 2022. He said that he had

established from Kirina Mayironi that the two did not know each other. Apparently, the deceased and Kirina Mayironi who were next door neighbours and workmates were very close. The deceased was staying at Stand number 11729 whilst Kirina Mayironi was residing at Stand number 11728 in Nyatsime. The investigating officer said that he had also asked the accused this specific question and in response the accused said that he did not know the deceased before meeting her at Chibhanguza Nightclub on the night of 24 May 2022. The court asked if the deceased was buried. He said that she had not yet been buried. He explained that there were two reasons for this. The first reason is that the family of the deceased is divided. Some family members want to bury her, but some are refusing for the reason that no one from the accused's family has approached them accepting responsibility for the death of the deceased. The second reason is that the matter was politicised and this resulted in some of the deceased's relatives saying that they can only cooperate and bury the deceased after Job Sikhala whom they refer to as their family lawyer has been released from custody. The court asked what caused the matter to be politicised because during the course of the trial and from the evidence that had been led from the eye witnesses who were present at Chibhanguza Nightclub, nothing showed that this matter had anything to do with politics. The investigating officer said that whilst it is true that there is nothing political about this matter, during the initial investigations of the case, some politicians were claiming that the deceased was a member of CCC political party. He said that these politicians were alleging that the accused's half-brother, Simba Chisango who is a member of ZANU PF and the branch chairman of Nyatsime area is the one who had instigated the kidnapping and murder of the deceased by the accused. He however said that the investigations the police did, did not establish any involvement of Simba Chisango in the death of the deceased. The investigating officer said that the accused and Simba Chisango are half-brothers in that they share the same mother but have different fathers. The accused is younger than Simba. The investigating officer said that he also interviewed the deceased's daughter one Nyasha Ali who said that from 2010, her mother dissociated herself from any political activities. The investigating officer said that when he asked the accused if he belonged to any political party, he said that he does not. He said that none of the witnesses he interviewed indicated that the accused belonged to any political party. The investigating officer said that his investigations had revealed that the murder was not politically motivated.

Dennis Mangosi the Provincial Magistrate who confirmed the accused's warned and cautioned statement testified as follows. He is a magistrate of 13 years. He said that when the

prosecutor applied to have the accused's statement confirmed, he cleared the gallery by ordering everyone to leave the court room except the court officials. The prosecutor then handed over the accused's statement. He said that he explained to the accused that he had a statement that was recorded from him by the police which the State wanted confirmed. He said among other things he explained to the accused that if he says that he did not make the statement freely and voluntarily or that he did not make the statement at all, he was not going to confirm the statement. He also said that he also explained that if the accused admitted that he made the statement freely and voluntarily without having been unduly influenced thereto, he was going to confirm the statement and that that statement would be used by the State in any court upon its mere production. He said that he then asked the interpreter to read out the statement to the accused. He said thereafter he asked the accused if he is the one who had made that statement and he answered in the affirmative. He said he then asked the accused if he had made the statement freely and voluntarily and the accused's answer was in the affirmative. He said that he asked the accused if had been unduly influenced to make the statement and his response was in the negative. The magistrate explained that from the responses that the accused gave to his questions, he was satisfied that the accused had given his statement freely and voluntarily without having been unduly influenced thereto. He said that he thus confirmed the statement.

Under cross examination the magistrate said that the only police officer who was in attendance during confirmation proceedings was the court orderly who was supposed to be in court for the court to be properly constituted. The magistrate said that he was not aware that the accused had been promised that if he had his statement confirmed, the magistrate was going to release him. He said that the accused did not bring this to his attention. Mr *Mhishi* put it to him that the accused had believed that the male interpreter who was in attendance was one of the police officers who were investigating his case. The magistrate said that the accused had no reason to believe that the court interpreter was a police officer because the interpreter was the person who was interpreting for him during the confirmation proceedings and he is the one who read out the warned and cautioned statement to him.

Simbarashe Maruziva the police officer who conducted the indications with the accused and led the indications team testified as follows. He is a detective assistant inspector stationed at CID Homicide, Harare. On 17 June 2022, he was tasked by his officer in charge to take the accused for indications. He then formed a team comprising Detectives Gimo, Mugaviri, Chindove, Marisa and one police detail from CID Studios who was to record the

indications by video camera. The indications were recorded. The indications commenced at ZRP St Marys in Chitungwiza. He said that from the indications form he read out the preamble of the charge to the accused. He said that the indications form has a portion where the accused is asked whether he wants to participate in the indications or not. If the accused wishes to participate, he is then told everything that he is to do. The accused was using the Shona language and Detective Sergeant Marisa was interpreting for him. The accused agreed to participate in the indications. The proforma for indications that the accused signed to show his willingness to participate in the indications was produced by consent as exhibit no. 9.

The witness said that however, as they were about to leave the police station, he received communication from other police officers that the atmosphere at Chibhanguza Nightclub was not conducive for indications. The witness said that he duly advised the accused and the indications proceedings were cancelled. The witness said that on 18 June 2022, he again assembled the same team. He went on to read to the accused the preamble which is similar to the warned and cautioned statement preamble. The accused again consented to take part in the indications. To show his consent, the accused went on to sign on the proforma for indications. The proforma was produced with the consent of the defence as exhibit no.10. The witness said that this time the indications started from Harare Central Police Station. The indications team and the accused were travelling in a police vehicle. The accused led them to Dhliwayo bar in Nyatsime where he said he had bought some beer. From there he led them to Chibhanguza Business Centre where he said he had met the deceased for the first time. He made indications of what had happened there. From there he led the police to a place or a point in Dunmoter Farm where he said he had taken the deceased to. The witness said that because of the terrain, sometimes they would disembark from the motor vehicle and walk on foot as the accused led them through the foot paths, that he said he had used with the deceased. The witness said that from Chibhanguza Business Centre they walked for a short distance and then drove in the vehicle for about 6km before the accused asked the driver to stop. The accused said that the motor vehicle could not drive into the field because of the long grass. So, he took them on foot for about 20 minutes into the field. The witness said that the accused reached a point where he said that was where he had struck the deceased. It was in the middle of the field. The accused then showed them the place where he said he had dragged the deceased to after hitting her on the chin. The witness said that he observed some blood stains on the ground at that place. The witness said that the accused explained that this was the point where he had dismembered the body of the deceased into

three parts. He said that the accused explained that he had cut the legs from the points where they join the body at the waist line.

Simbarashe Maruziva said that he asked the accused what weapon he had used in dismembering the body. The accused explained that he had used his mother's kitchen knife. The witness said that the accused explained that from that place he had walked to his mother's home three times. Firstly, to collect the knife and some sacks which he used as loading bags. Secondly, to throw the legs into the disused well. Thirdly, to throw the body into the well. The witness said that from that point they walked back to the motor vehicle. From there the accused led them to his mother's home. On the way, the accused caused the motor vehicle to stop. He then led them on foot to a thicket of Mupangara trees where he said he had hidden the deceased's cell phone. He then took it from underneath a small mountain of bricks. The witness said that he wondered if this was a grave. The witness said that the accused told them that he had removed the sim card from the cell phone and hid it together with the cell phone. The witness said that they looked for the sim card until they located it underneath the bricks. From there the accused led them to his mother's homestead where he said he had thrown the knife and everything else into the well. However, the accused said that he did not know how the items could be retrieved from the well. The witness said he then asked the accused if he had made the indications freely and voluntarily without having been forced and he answered in the affirmative. The accused then went on to affix his signature as confirmation that he had freely and voluntarily participated in the indications. The witness said together with Detective Sergeant Marisa who was interpreting for the accused also went on to sign on the indications form. The State produced the signed indication form as exhibit no. 11 with the consent of the defence.

The witness said that he went on to seek the services of the police Sub Aqua Unit to retrieve the items from the well on the very day of the indications. The police from Sub Aqua Unit came and retrieved the items from the well in the presence of the indications team and the accused. They removed some grass that was in the well together with the following clothes. A jacket, pant, small face towel, tennis shoes and a pair of trousers. A kitchen knife with a black handle was also retrieved from the well. The witness said that he handed over all these items to the investigating officer. It was through this witness that the knife was produced as exhibit no. 8. The witness also positively identified the clothing items that were before the court and had already been produced as exhibits through Kirina Mayironi. The

witness also explained that the well where the items were recovered is approximately 20 metres from the accused's mother's homestead.

The State counsel went on to apply to play the video camera so that the court could see the indications that were recorded. There was no objection by the defence. The video recording which was three hours long was played. It captured the indications the accused made to Detective Maruziva and his team right up to the time when the police from the Sub Aqua Unit retrieved the clothes and the knife from the well. When the video finished playing the witness said that the accused had made the indications on his own without anyone telling him what to say. The witness said that he would only ask the accused some questions seeking clarification. The witness said that the accused made indications whilst handcuffed and in leg irons for security reasons. He said that based on past experience, this was done in order to restrain the accused from running away. The witness said there are accused persons who have run away during indications. The witness said that there are people who even try to assist accused persons to escape during indications. He said that mechanical restraints are used during indications to minimise such incidents. The witness said handcuffs and leg irons do not impede an accused person from making indications. The witness said that the video recording is a correct reflection of the indications that were made by the accused to him and his team. With the consent of the defence, the video recording was produced and marked as exhibit no. 12. The video recording captured what the witness said *viva voce*.

Under cross examination it was put to the witness that the accused was made to make some indications on 17 June 2022, as a way of rehearsing for the indications which were to be done on the next day, 18 June 2022. The witness denied this. Mr *Mhishi* said that it was not true that the indications of 17 June had been aborted due to an uncondusive atmosphere at Chibhanguza business centre. The witness denied this. He insisted that no rehearsals for the indications were ever done on 17 June 2022. He maintained that the indications of 17 June had been aborted because of the uncondusive atmosphere at Chibhanguza business centre. The witness was asked to explain why the indications of the 17th had started at St Mary's Police Station instead of starting at Harare Central Police Station as what happened on the 18th. The witness explained that this was because on the 17th he had been handed over the accused late in the afternoon at 1530 hours. So, they decided to start the indications in Chitungwiza as a way of beating traffic jam in town at that time of the day. The witness said that on the next day they started the indications in town because they started the indications in the morning when the traffic flow was still light and it was also because the accused was

detained at Harare Central Police Station in town. It was put to the witness that the accused did not know any of the places that he indicated. It was said that these places were indicated to him by some police officers. The witness disputed this. The witness further explained that when they went to the well, the purpose was to retrieve the knife which the accused had said he had thrown into the well. He said that they were all surprised when the police from the Sub Aqua Unit also retrieved some clothing items belonging to the deceased. The clothes were just found in the process in the process of looking for the knife. Nobody had seen these clothes before. They had not been floating on top of the water.

The evidence of the defence

The accused person was the sole witness for his case. He testified as follows. He is 33 years old. He survives on piece jobs. On 24 May 2022, he was at his mother's plot in Dunmoter Farm. He decided to go and buy himself some alcohol. He went to Dhliwayo bar in Nyatsime around 11.00 a.m. He bought some alcohol whose name he could no longer remember, but the alcohol was in a 750 ml bottle. From there, he decided to go and see his girlfriend. On the way he decided to pass through Chibhanguza Nightclub. When he got there, it must have been around 12 noon. He drank alcohol with some young men who had joined him in drinking a 750 ml bottle of 2 Keys that he had bought. They then drank alcohol together until 11.00 p.m. It was his first time to see these young men, but it was not his first time at the nightclub. These young men then asked him to come with them outside. They said they were going to give him something that was going to make him more drunk. He complied because he had been drinking with these young men for a long time. When they got to the toilet, the young men lit something which when pressed would produce some smoke. The young men started to inhale the smoke and asked him to do the same. He complied. He then asked them what it was and he was told that it was crystal meth also known as mutoriro. He said that he then went back to the nightclub where he started to dance to music. As he was dancing to the music, he then saw a dog inside the nightclub. The dog was coming towards him and it was not even on a leash. He then kicked the dog. Patrons in the night club started to attack him as they were asking him why he had attacked the dog. He ran out of the bar and escaped the attacks. He decided to go home. After walking for a while, he turned and saw three people following him. He stopped. When they got to him, they asked him why he had kicked the dog. The other two pushed the third one towards him. He noticed that the one who had been pushed was a woman. She grabbed his shirt as she was saying something he did not

hear because she was drunk. He told the trio that he was on his way home, but the two men said that he was supposed to go with the lady. The lady also said she was going with him. He started walking with her. He did not know who she was. He had not seen her before. He also did not identify the two men who were in her company.

The accused said after walking for 2-3km, he noticed that the lady had difficulties walking. She was supporting herself by holding on to him. As they were walking, the lady just let go of his shirt and fell down. He checked for the two men and noticed that they were far behind. He left the lady lying on the ground and proceeded home. His mother's home was about 1½ km away from that place. When he got home, he retired to bed. On the next morning he proceeded to a neighbour's plot to do some piece job. When he finished, he was paid. He had already planned to visit his rural home in Hurungwe. Now that he had the money for the journey, he then went home and informed his sister and mother that he was now leaving for Hurungwe. He then left. He was at the rural home in Hurungwe for two weeks before he decided to visit his sister in the same area. When he arrived at her place, the sister told him that the police had been to her place looking for him. He decided to go to the police base to inquire why the police had come looking for him. At the police base, he was told that it was police officers from Harare who were looking for him. When these police officers from Harare were phoned, they came to the police base. As they saw him, they started to label him a murderer. They even said that he was lucky because he was at a police station, otherwise they would have shot him dead. They asked him if he was at Chibhanguza Nightclub on 24 May 2022, when a dog was attacked. He admitted and was given a piece of paper to write down what had happened. He said that the narration that he gave in this court is exactly what he wrote on the piece of paper. He said that he was not asked to sign on the piece of paper. He said that when the police officers read what he had written on the piece of paper, they were enraged. They started assaulting him by kicking him. They said that he had murdered the deceased.

The accused said the police officers asked him where he had put the knife he had used to cut up the deceased. They also asked for the catapult which they said he had. When he said he did not know anything about the knife and the catapult, they further assaulted him. On the same day the police then brought him to Harare. Police officers at the police station in Harare who were seeing him for the first time said that he was the one who had caused the war that was happening in Nyatsime. It was said that Job Sikhala was fighting with the chairmen in Nyatsime because they had caused the death of someone. At midnight some police officer

took him from the cell where he was sleeping to a certain room. There were six men in civilian clothes who said that they were in a position to assist him if was willing to accept their assistance. He agreed. They said that if he was not willing to cooperate, he was going to be taken by some people whom he did not know who were going to kill him. He agreed to cooperate with them. At day break he was taken to Detective Mirimbo's office where he was asked to write what had happened on a piece of paper. He did not write what he had written at Chidamoyo Police Base. He was taken back to the cell.

The accused said on 17 June 2022, he was informed that he was supposed to go to Chibhanguza Nightclub. He was taken to St Mary's Police Station where he was told that he was supposed to go with the police for indications. He told them that there was nowhere he could make indications to them as he did not know anything. He asked them to assist him. The police officers told him that they were going to practice what was going to be captured by video camera on the following day. The police took him to Nyatsime. In Nyatsime the police officers showed him different places that had been shown to them by some people. From the nightclub he was taken to the place where it was said the deceased was murdered. He was also taken to the place where it was said the deceased's cell phone was hidden, but he did not see the cell phone on that day. From there, he was taken back to the police station where he was taken to Detective Murimbo the investigating officer. He was handed some papers which he was told to sign but some police officers said that he would sign the papers after the indications.

The accused said that on the next day, 18 June 2022, he was taken back to Nyatsime for indications. He said that this is why Melody the bar lady at Chibhanguza Nightclub upon seeing him again, asked him if they had come back again and he replied in the affirmative. The accused said that in the video his lips could not be seen moving because he was wearing a mask. The accused said from there, he started making indications as he had been shown by the police the previous day. He said that this is why at some point in the video, he appeared lost as he was trying to locate the cell phone. He said this was because he had seen the place once and he could not clearly remember it. The accused said that after making the indications he was taken back to the police station where he was made to sign some papers in Detective Mirimbo's office without reading the contents. The accused said that it was said that they were behind time as they wanted to go to court. He said before leaving for court, the police officers emphasised that he was not supposed to change anything that was said during the

indications. The accused said the police officers explained that this was the only way to calm the violence that was happening in Nyatsime.

The accused said that when he was taken to court, the interpreter read out a statement which was saying that he had committed the offence. When the magistrate then asked him some questions, he did not dispute anything. He did not tell the magistrate the truth because he was afraid for his life. The police officers who had threatened him were still around. He said that although the magistrate had cleared the court, some of the police officers who had threatened him were just outside the door of the court room. Some had remained in the car park.

The accused said that he did not know Mercyline Mavhiza who is also known as 'Wasu' at all. He said that he saw her for the very first time in the court room when she came to testify against him. He said that it is not true that she is a friend of his sister. He disputed that he was wearing a yellow t-shirt on the night of 24 May 2022. He said that he was wearing a red t-shirt. The accused said that he was adopting his defence outline as part of his evidence in chief.

During cross examination the accused said that he did not know Kirina Mayironi. He denied striking her with a catapult. He said that the only person that he told that he was going to Hurungwe was his mother. When Mr *Mugabe* put it to him that in his evidence in chief, he had said he had also told his sister Stella Mukandi that he was going to Hurungwe, he maintained that he had told his mother only. The accused said that his mother had lied to the court that he had disappeared from home without telling her where he was going. The accused said that in the video he did not look like he was under duress as he made the indications because he was now cooperating with the police. The accused said that he did not object to the making of the indications because he had been assaulted and he had also been told that he needed to cooperate because the matter was political. He disputed that he made the indications freely and voluntarily. The accused said that he did not realise that when he appeared before the magistrate, this was his opportunity to tell the truth of what happened. The accused said that he never got to know the two men who followed him in the company of a lady. He said on the night in question he was very drunk such that he was staggering as he was walking home. He said that the lady who was following him was saying that she wanted to see where he stayed. Her issue was that she wanted to know why the accused had attacked her dog. When he was asked to explain what he was talking about with the deceased for two kilometres, he said the deceased was not talking. It was him who was talking to her as

he was drunk. The accused said that the deceased was thrown into his mother's well so that it would look like he was the one who had killed her since he had attacked her dog earlier in the nightclub.

Analysis of evidence

Issues that are not disputed

From the evidence led from both the State and the defence a number of issues are common cause.

It is common cause that on the night of 24 May 2022, the accused was at Chibhanguza Nightclub where he was drinking beer. The deceased was also there drinking beer in the company of her friend Kirina Mayironi. The accused and the deceased did not know each other prior to this date. This was made clear by Kirina Mayironi who said that neither herself nor the deceased knew the accused person before the night of 24 May 2022. Kirina Mayironi told the court that she identified him as the person who had assaulted her and the deceased because of the yellow t-shirt that he was wearing. She said that he was the only person that she saw wearing a yellow t-shirt on the night in question. She said that on the next day she had to ask Mercyline Mavhiza also known as Wasu for the name of this man who had assaulted the deceased. Even during trial when she was asked to identify the accused, she said that she did not know him and that she had never seen him before. Mercyline Mavhiza also confirmed that Kirina Mayironi did not know the accused as she never mentioned him by name. Mercyline Mavhiza also said Kirina Mayironi indicated to the accused as the person who had assaulted her and the deceased on the fateful night. Even the investigations that were done by the investigating officer established that the accused and the deceased did not know each other before meeting at Chibhanguza Nightclub on the fateful night.

It is common cause that the deceased and the accused interacted on the night in question. However, they did not interact in a positive way. They had a misunderstanding, but the misunderstanding had nothing to do with politics. No evidence was presented to show that the deceased or the accused belonged to any political party and that the misunderstanding had anything to do with politics. Kirina Mayironi who was a very close friend of the deceased did not tell the court if the deceased was into politics and the political party that she belonged to if she was into politics. The accused also did not tell the court that he is into politics and the political party that he belongs to if he is into politics. The investigating officer said that his investigations had revealed that neither the deceased nor the accused was into politics.

The investigating officer said that he learnt from the deceased's daughter Nyasha Ali that the deceased had last participated in politics in 2010. The only person who was said to be into politics is Simba Chisango the half brother of the accused who is said to be a ZANU PF branch chairman in Nyatsime. However, the evidence presented before the court does not show that the misunderstanding that happened between the deceased and the accused had anything to do with the accused's half-brother Simba Chisango or that the accused had been sent by his half-brother.

It is common cause that on the night of 24 May 2022, after the beer drink at Chibhanguza Nightclub, the deceased did not go back home. Her dog returned home alone. Her friend and next-door neighbour Kirina Mayironi also returned home alone. This is the night the deceased was last seen alive. On the next day she was reported missing. Her body was discovered in a disused well on 11 June 2022 at the accused's mother's plot in Dunmoter farm in Beatrice, a place that is approximately 6 km away from the place where she had been last seen alive by those who were drinking beer with her on the night of 24 May 2022. The person who discovered the deceased's body was the accused's mother. According to the police officers who were present when the body was retrieved, it was positively identified by Solomon Ali and Silent Ali as that of Moreblessing Ali. Solomon Ali is the brother of the late Moreblessing Ali while Silent Ali is the son. The clothes of Moreblessing Ali were also recovered from the same well. These were positively identified by Kirina Mayironi. She said that these were the clothes Moreblessing Ali was wearing on 24 May 2022 when they went to Chibhanguza Nightclub together. From the onset of the trial, the accused never disputed that the body that was retrieved from his mother's disused well was that of the deceased. It was only during the State case that the defence counsel posed some questions to the police officers who retrieved the body of the deceased from the well suggesting that the body that was retrieved was not that of Moreblessing Ali. It was also during the defence's closing submissions that Mr *Mhishi* submitted that the court needs to determine whether the body that was retrieved from the well is that of Moreblessing Ali. We take note that this issue was not disputed in the accused's defence outline. In the defence outline the accused even said that when he left Chibhanguza Nightclub, he was followed by two men and the deceased. Even during the defence case the accused never mentioned that he was disputing the identity of the body that was retrieved from the well in his mother's plot. In fact, he said that he suspected that the people who killed the deceased are the ones who dumped her body in the disused well at his mother's plot to make it appear as if he is the one who murdered her. He said that

these people were trying to take advantage of him because they knew that he had had a misunderstanding with the deceased in the nightclub after he had kicked her dog. If the accused was disputing the identity of the body, he would not have said all this. Instead, he would have made it clear right from the start in his defence outline because it is a material issue. We hasten to point out that a defence outline outlines the nature of the accused's defence. As such it defines the issues for trial between the State and the defence. It is the defined issues that define the trajectory of the trial. The defence outline should therefore include all material facts that the defence intends to rely on during the trial. In a murder trial if the identity of the deceased is in issue, that should be stated at the onset of the trial in the defence outline. We also need to make it clear that questions that are asked in cross examination by the defence do not constitute evidence given by the accused. So, the mere fact that Mr *Mhishi* asked some questions to the State witnesses disputing the identity of the body that was retrieved from the well does not mean that this is evidence that was given by the accused. There was therefore no basis for Mr *Mhishi* to raise the issue of the identity of the deceased as a disputed issue in the closing submissions. Throughout the trial the accused never disputed the identity of the body that was retrieved from the well at his mother's plot.

It also common cause that the deceased left Chibhanguza Business Centre alive. Stanley Nhamo Fusire said that the deceased bade him farewell and disappeared into the night. That was about the same time the accused left the nightclub going to his mother's plot. In his own words the accused said that the deceased followed him as she demanded to know why he had kicked her dog. The accused said that in the nightclub he had kicked a dog. There is overwhelming evidence which shows that the only person who had a dog was the deceased. She is therefore the only person who could have argued with the accused over the issue concerning the dog. From the evidence given by the accused, he walked with the deceased for 2-3km from the business centre towards his mother's plot. This is the last time the deceased was seen alive by anyone. It is not in dispute that on the following day, 25 May 2022, the accused then left for Hurungwe where he was arrested on 16 June 2022 after he had surrendered himself to the police. The deceased's body had been recovered in a disused well at his mother's plot about 20-40 metres away from the homestead.

It is also common cause that after the accused was arrested, he gave a warned and cautioned statement to the investigating officer Detective Arimon Murimbo which statement was later confirmed at the magistrates court. The accused also made indications to the police about how he killed the deceased. In making the indications the accused caused the recovery

of the deceased's Huawei cell phone and two sim cards that were registered in the names of the deceased. He also caused the recovery of the knife that was said to have been used to cut off the legs of the deceased. In the process the deceased's clothes were also recovered.

Issues that are disputed

From the evidence led a number of issues are disputed.

What the accused did at Chibhanguza Nightclub on the night of 24 May 2022 is disputed. The accused said that he only kicked the deceased's dog inside the nightclub when he was annoyed by seeing a dog in the nightclub. We do not believe his version of events because none of the five eye witnesses who testified for the State gave evidence to this effect. Nobody saw him kicking the dog. Instead, the State witnesses led evidence which shows that the accused assaulted the deceased and Kirina Mariyoni outside the nightclub as they were about to go home. When the deceased left the nightclub, Kirina Mayironi remained inside talking to Washington Mutswiri. When Kirina Mayironi eventually followed outside, she found the deceased being assaulted by a young man who was wearing a yellow t-shirt. The same young man struck her with a catapult. That she ran back into the nightclub as she was bleeding profusely was confirmed and corroborated by Washington Mutswiri, Mercyline Mavhiza (Wasu) and Muchaneta Shoko. These witnesses said that the assault on Kirina Mayironi is what prompted the patrons to rush outside the nightclub. Washington Mutswiri also saw the man with a yellow t-shirt throwing stones. Kirina Mayironi identified him as the man who had assaulted her. She indicated this man to Mercyline Mavhiza (Wasu) as the man who had assaulted her. Apparently Mercyline Mavhiza knew this man as her friend's blood brother. This man was the accused and she confronted him. The accused told her to go back into the nightclub.

The defence submitted that this is a case of mistaken identity but we do not believe it. During the defence case the accused said that he did not know Mercyline Mavhiza at all yet this was never put to her when she was being cross examined by the defence counsel. Mercyline Mavhiza was not mistaken about him. She had known him for a month and when she confronted him, she addressed him as uncle and in response he addressed her as aunt which was a sign that the accused knew her. Mercyline Mavhiza said that on the following day she approached her friend Stella Mukandi who is the accused's sister asking for the accused's whereabouts. She even told the sister that people were looking for the accused in connection with the disappearance of the deceased. The accused's sister who also testified as

a State witness corroborated what Mercyline Mavhiza said. The sister said upon being informed about this, she went to her mother's plot on the same day and whilst there, Mercyline Mavhiza phoned and asked about the accused's whereabouts. Stella Mukandi said that as soon as she finished that phone call, the accused who had been working at a neighbour's plot doing some piece job arrived home. Stella Mukandi said that she told the accused about Mercyline Mavhiza's phone call. Stella Mukandi said that was the last time she saw the accused until after he was arrested in Hurungwe. She said when he left home he did not bid farewell to anyone, not even to his mother. No one knew where he was. Stella Mukandi had no reason to lie against her brother. Her evidence serves to show that Mercyline Mavhiza did not lie that she knew the accused and that she had seen him at Chibhanguza nightclub on the night 24 May 2022. If anything, it is Mercyline Mavhiza who caused the accused to leave for Hurungwe because she is the one who alerted his sister that the accused was a wanted man. Moreblessing Ali had disappeared from the face of the earth and she was being looked for. It is thus clear that the accused was not mistakenly identified at Chibhanguza Nightclub. He was wearing a yellow t-shirt and not a red t-shirt as he wanted this court to believe. The investigating officer said that the red t-shirt is the one that he was wearing on 16 June 2022 when he was arrested in Hurungwe. The State witnesses impressed the court as credible witnesses. They gave evidence which was corroborative of each other on the issue of identity. They correctly identified the accused person as the person who assaulted Kirina Mayironi and the deceased.

The accused said that he did not assault the deceased at Chibhanguza Nightclub, but evidence led from the State witnesses show that he did assault the deceased. Kirina Mayironi said that when she got out of the nightclub, she saw deceased being assaulted by a man with a yellow t-shirt. Although no other person saw the accused assaulting the deceased, there are two people who saw the deceased injured and bleeding profusely. These are Muchaneta Shoko and her husband Stanley Nhamo Fusire who were vendors at the entrance of the nightclub. They saw the deceased bleeding and coming from the dark. Stanley Nhamo Fusire said that when he asked her what had happened to her, she said that she had been assaulted by the young man whom she had reprimanded for taking some groundnuts from his stall without paying for them. Stanley Nhamo Fusire said this young man was the accused. He said he would not forget a person who took his groundnuts and walked away without paying for them. The foregoing shows that on the fateful night the accused was aggressive. Evidence led from the State witnesses show that no one was able to restrain him and to rescue the

deceased. People who had come out of the nightclub rushed back inside the nightclub when the accused started throwing stones and pelting at them using a catapult. People feared for their lives. Kirina Mayironi even sneaked out of the nightclub and went home as her friend was being assaulted by the accused.

The ultimate question is: is it the accused who killed the deceased?

It is common cause that there was no eye witness to the killing of the deceased. Kirina Mayironi only saw the accused assaulting the deceased at the nightclub. Then after more than two weeks, the deceased's remains were found dumped in a disused well at the accused's mother's plot. The remains were in an advanced state of decomposition. Coincidentally, the accused had absconded to Hurungwe where he eventually surrendered himself to the police after the remains of the deceased had been found in a well at his mother's plot. The accused had left for Hurungwe without bidding farewell to his mother and sister. Upon his arrest, the accused had a warned and cautioned statement recorded from him. The statement was later confirmed by a magistrate at the magistrates court. In terms of s 256(2) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (the CPEA), once a statement has been properly confirmed by a magistrate in terms of s 113 of the CPEA, it must be admitted by the court into evidence on its mere production by the prosecution without any further proof. In other words, a confirmed statement is admissible on its mere production by the prosecution. In terms of the proviso to s 256(2), if the accused challenges its admissibility, the onus is upon him or her to prove on a balance of probabilities that he or she did not make the statement or that the statement was not made freely and voluntarily without having been unduly influenced thereto. See *S v Woods & Ors* 1993 (2) ZLR 258 (S). The accused therefore has to lead evidence to prove this.

In *casu* when the State counsel applied to produce the confirmed warned and cautioned statement, the defence objected to its production on the grounds that the confirmed statement was confirmed under duress in the magistrates court. Mr *Mhishi* submitted that some of the police officers who had taken the accused to court were in the court room during confirmation proceedings and that as such the accused had no choice but to have the statement confirmed out of fear. It was submitted that these police officers had threatened to kill him if he would not have the statement confirmed. The accused was therefore challenging the validity of the proceedings in which his statement was confirmed. Mr *Mhishi* submitted that there was need for a trial within a trial to be conducted. Two things arise from this submission by Mr *Mhishi*. Firstly, a trial within a trial is only conducted in respect of an

unconfirmed statement. As already stated elsewhere above, a confirmed statement is admitted into evidence upon its mere production by the prosecution. In other words, it is admissible by virtue of it being confirmed. If the accused is challenging its admissibility, the onus is on him or her to prove its inadmissibility. Secondly, a trial within a trial is conducted at the instance of the prosecution and not the defence. In other words, when an accused challenges the admissibility of an unconfirmed warned and cautioned statement, the State can decide to either do a trial within a trial or not to depending on the evidence it has against the accused. If it has other evidence upon which it can secure a conviction against the accused, it can dispense with conducting a trial within a trial. It is not for the defence to tell the State how it should prosecute its case.

When there is a challenge to the validity of the confirmation proceedings, the onus is on the State to prove that there was no irregularity in the confirmation proceedings. The State discharges the onus by leading evidence from the magistrate who conducted the confirmation proceedings and by producing the magistrate's record of proceedings. See *S v Woods & Ors* 1993 (2) ZLR 258 (S). In *casu* the State called the confirming magistrate, Dennis Mangosi who outlined the procedure that he followed when he confirmed the accused's warned and cautioned statement. He made it clear that the police officers who brought the accused were not in court as he had cleared the court. He said the only police officer who was in court was the court orderly. We took note that the defence did not challenge him on this issue. Instead, Mr *Mhishi* put it to the magistrate that the accused had thought that the court interpreter was one of the police officers who had been investigating his case and had brought him to court. It was submitted that the accused was thus afraid of him. Mr Mangosi said that the accused had no reason to believe that the interpreter was a police officer because he is the one who was interpreting for him in court and he is the one who actually read out his warned and cautioned statement to him during the proceedings. This issue of the accused thinking that the interpreter was a police officer did not form the basis for objecting to the production of the confirmed warned and cautioned statement. It was raised for the first time after the magistrate had told the court that he had cleared the court of all police officers except for the court orderly. The defence failed to challenge him on that issue. This goes on to show that the accused was not being truthful when he said that the police officers who took him to court were present in the court room during confirmation proceedings. This explains why during the defence case when the accused was giving his evidence in chief, he said that the police officers who took him to court were outside just by the door during confirmation

proceedings. He had already forgotten that in objecting to the production of the statement, his legal practitioner had submitted that some police officers were inside the court room during confirmation proceedings. We are satisfied that the State managed to discharge the onus it had of showing that the confirmation proceedings were properly conducted in the absence of the police officers who had taken the accused to court.

Although in the defence outline the accused person said that at the police station he admitted to the charge under duress, we noted that during the defence case the accused did not lead any evidence to show that he did not make this statement at all or that if he did, he did not make it freely and voluntarily. He did not explain the circumstances in which his warned and cautioned statement was recorded. He only said that he was tortured at Harare Central Police Station, but he did not say that this was linked to the recording of the statement. He did not even give the details of how he was tortured and by whom he was tortured. We are thus not satisfied that the accused managed to prove that the statement is inadmissible. He failed to discharge the onus on him on a balance of probabilities. It is our ruling therefore that the confirmed warned and cautioned statement is admissible. The confirmed warned and cautioned statement which was produced as exhibit no. 7 reads:

“I have understood the caution. I admit my charge. My name is Pias Mukandi Jamba. I was born on the 21st of June 1990. I grew up in Gokwe under Chief Gumunyu, at Danhai village. I later stayed in Hurungwe and eventually came to Harare. Whilst in Harare on the 24th of May, 2022 I proceeded to Chibhangauza beerhall where I drank beer. At that point in time some young men approached me and joined me in drinking beer in that beerhall. After some time, the young men called me into the Chibhanguza toilet wherein they showed me something that they alleged was the stone. As we were coming out, one of them who addressed me said that he had caused me to join Satanism. After his utterance, we went back to the beerhall. He alleged that something was about to happen. At that point in time, I saw a dog which was roaming about in the beerhall. I raised my voice as I enquired as to who had brought the dog into the beer hall. I got no response. I was in possession of a pair of catapults which I always had as I grew up given that I used to go hunting. I produced my pair of catapults and stretched it aiming for the dog so that the dog would leave the beerhall. Some men who were seated where there were some ladies then stood up. These men who had stood up approached me intending to attack me. At that point I again stretched my pair of catapults and I would not know as to who got struck by the missile. They surrounded me as they attempted to get hold of me, however I managed to elude them and left the beer hall. When I was now outside the beerhall, they followed me in their large numbers. I was scared of their large numbers. I picked up some stones which appeared to be some bricks. At that point I threw one of the three bricks that I was carrying. I warned them not to get to the point where I was. I walked into one of the rooms which is attached to the beer hall in which I had been drinking. The room was not roofed. At that point in time, I thought of exiting through the other side of the room. I then positioned myself at the point where they usually roast meat. As I was standing by at that point, I saw three men approaching me. I warned the three men not to approach me.

One of the men said, “here is your person”. At that point in time a dog emerged and approached me. Upon approaching me, the lady grabbed me by my shirt and said, “for what reason did you assert that my dog should leave the beer hall”. I then said, “we do not want your dogs in the beer hall, right now we are missing our monies from our pocket(s)”. The lady quizzed me as to why I had struck her with a missile from the pair of catapults. I advised her that I had not directed it to anyone in particular. At that point I thought of leaving the place where I was standing. The lady continued grabbing me by my shirt as I proceeded to where I was now heading to. She indicated that she wanted to know where I was staying. I realised that given the altercation that had occurred, she intended to bring some at my residents (sic). I did not proceed with her to my place of residents(sic). As she kept on grabbing me, I headed towards another direction. We got into Dennotar farm with her grabbing me. I later left the road that we had been using as I advised her that that was the way to my place of residents (sic). I realised that she was also going through all the places that I was going through. I then struck her with my right hand fist. She then fell down and appeared to be unconscious. I made an attempt to turn her over and over again. I realised that she was now dead. I thought of proceeding home to collect a sack so as to bury her. I got to my mother’s residence and got into the kitchen which she uses for cooking purposes. I found her knife which she uses. I took the knife and proceeded to the vehicle and collected a sack. I went back to the point where I had left her. When I got there, I found that the body was already cold. I took her pair of trousers and tied her neck in an attempt to remove her from that point. Upon realising that the body was relatively heavy, I then made the attempt to cut off the legs. I slashed her between the legs and separated the legs apiece. I carried the legs in a sack and disposed it in a pit which I had used in the moulding of bricks. That was in my mother’s field. I went back to the scene and collected the body which I deposited in the same pit. Thereafter, I went home and started warming myself around the fire. My mother eventually got out of the bed and was surprised as to the time that I was warming myself around the fire in her hut.

I am sorry for all that happened, given that I had never encountered any event involving the stone in my mind. That is all.

QUESTIONS

Question: Before meeting Moreblessing Ali on this day was she known to you or not?

Answer: I did not know her.

Question: Besides following to the outside after you had struck her dog, had there been any misunderstandings between the two of you before (sic)?

Answer: No

Question: You are talking about the stone what exactly is the stone about?

Answer: They say crystal methamphetamine.

Question: There is a body part of Moreblessing Ali which is missing from the recovered deceased’s body, where did you put it?

Answer: In respect of that I did not take away any other body part of hers.

Question: Were you in love with Moreblessing Ali or not?

Answer: I was not in love with her.

Question: Moreblessing Ali had a cell phone do you want to comment about that cell phone.

Answer: I place that cell phone somewhere

Question: Are you able to indicate to police the phone’s location?

Answer: Yes

Question: Where did you place the knife that you used in the commission of the offence?

Answer: I placed it in a sack in which was contained the body, and I deposited same in the pit into which I threw the body.

Question: What would be the colour of the knife?

Answer: It has a blue handle.”

From this statement it is clear that the accused admitted and confessed that he killed the deceased. On this basis alone he is guilty of killing the deceased. However, in addition to the confirmed warned and cautioned statement, the State chose to lead evidence on the indications that were made by the accused. In the closing submissions Mr *Mugabe* submitted that the court must rule that the indications were made freely and voluntarily. On the other hand, Mr *Mhishi* submitted that the indications were not admissible as they were made under duress and were stage managed and rehearsed. It is common cause that the indications that were produced by the State were not confirmed. The State had made it clear in its summary of the case that was served on the defence before commencement of trial that it was going to lead evidence on the indications that were made by the accused and that it was also going to produce the video recording of those indications.

Section 66(6) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (the CPEA) provides that:

“Where an accused has been committed for trial in terms of subsection (2) there shall be served upon him or her in addition to the indictment and notice of trial—

(a) a document containing a list of witnesses it is proposed to call at the trial and a summary of the evidence which each witness will give, sufficient to inform the accused of all the material facts upon which the State relies; and

(b) a notice requesting the accused—

(i) to give an outline of his or her defence, if any, to the charge; and

(ii) to supply the names of any witnesses he or she proposes to call in his or her defence together with a summary of the evidence which each witness will give, sufficient to inform the Prosecutor-General of all the material facts on which he or she relies in his or her defence.”(my underlining)

Despite this provision being clear that an accused needs to make his or her defence known in the defence outline, the accused did not indicate any objection to the production of the indications in his defence outline. He did not even indicate that he made the indications under duress. Furthermore, during trial when the State applied to lead evidence on the indications made by the accused, there was no objection by the defence counsel. As a result, the State went on to lead evidence on the indications made by the accused. The video recording of the indications was also played with the consent of the defence. It was only during cross examination of Detective Maruziva that the issue of the indications not having been made freely and voluntarily was raised for the first time. It is at that stage that it was alleged that the indications were made under duress and that they had been rehearsed and

stage managed. During the defence case the accused went on to say that he was assaulted and threatened with death. He said that he did not make the indications freely and voluntarily. He said that the video recording does not show that he was under duress because he was now rehearsing what he had been shown by the police the previous day. He said that he had been threatened with death if he did not comply with the orders he had been given by the police. In short, the defence was therefore saying that it was challenging the admissibility of the indications on the basis that they were not made freely and voluntarily.

At law when there is a dispute as to whether indications by the accused were made freely and voluntarily, a trial within a trial must be held before such indications can be admitted in evidence. See *S v Ndhlovu* 1988 (2) ZLR 465 (S); *S v Mazono & Anor* 2000 (1) ZLR 347 (H) and *S v Makombe & Anor* HH-204-94. In *casu* the court was not alerted of the existence of that dispute until after the indications had been admitted in evidence. The defence ought to have objected to the indications before they were admitted in evidence. If such a challenge had been made, we would not have allowed the State to lead evidence on the indications without first conducting a trial within a trial. In other words, if unconfirmed indications are challenged, they may not be produced until their admissibility has been determined at a trial within a trial. By admissibility, the issue is simply whether or not the accused was made to make the indications freely and voluntarily without having been unduly influenced. The contents of the indications are not relevant until the issue of admissibility has been determined. In the circumstances of the present case, the defence consented to the production of the indications. This means that there was no challenge to their admissibility. So, the issue of whether or not the indications are admissible is now water under the bridge. It is no longer an issue for determination at this stage.

What remains is for the court to consider the truthfulness of these indications. The explanation by the accused was that the indications were stage managed as the police had taken him through the indications the day before. He said that it was the police who had shown him all the places that he then pointed to when the indications were then recorded by video camera on the next day. We do not believe that the accused was telling the truth for the following reasons. In making the indications the accused led the police to Dhliwayo Bar where he said he bought some alcohol. This is the same thing that he said in his evidence in chief during the defence case. He said that he left his mother's plot and proceeded to Dhliwayo Bar before proceeding to Chibhanguza Nightclub. In making the indications in Chibhanguza Nightclub, the accused indicated the place where he said he struck the dog

using a catapult. During trial the accused said the same thing. He said that he struck the dog with a catapult inside the nightclub. Outside the bar the accused indicated where he said he picked up the bricks that he threw at the people that were now attacking him for having attacked the dog. In making the indications the accused indicated the place where he said he saw three people following him and one of them a lady grabbing him by his clothes and asking him why he had assaulted her dog. These indications are consistent with what the accused said in his defence outline, confirmed warned and cautioned statement and evidence in chief. In making the indications the accused led the police to the place where he said he had struck the deceased with a clenched fist and she died. This is also consistent with what he said in his confirmed warned and cautioned statement. In making the indications the accused said that he went to his mother's home where he collected some sacks and the kitchen knife which he then used to cut off the legs. The accused said the same thing in his confirmed warned and cautioned statement.

In making the indications the accused said that he then carried the legs in a sack and proceeded to the disused well in his mother's field where he dumped them. He said that he went back for the body and took it to the same well where he dumped it too together with the knife. This is the same thing that the accused said in his confirmed warned and cautioned statement. In making the indications the accused also led the police to a place where he said he had placed the deceased's cell phone and the sim card that he said he had removed from the cell phone. In the video he appeared to be getting lost in very long grass but after a while he was able to locate the place. The accused is seen retrieving the cell phone from underneath some bricks. He also says that he removed the sim card from the phone and starts looking for it. A police officer is seen helping him look for it and it is the police officer who manages to locate it underneath a brick, just close to where the cell phone was retrieved. In his confirmed warned and cautioned statement, the accused was asked to comment on the deceased's cell phone and in response he said that he had placed it somewhere and that he was able to indicate to the police its location. In the video the accused finally led the police to the well where he said he dumped the remains of the deceased. This is the same well where the body of the deceased was found. In the video a man is seen inside the well in the water. He is seen searching and taking out some grass and clothing items which were later identified to be the clothes of the deceased by Kirina Mayironi. The man inside the well is lastly seen taking out a kitchen knife with a blue handle from underneath the water. In his confirmed warned and cautioned statement, the accused had said that he threw the kitchen knife in the same pit

which he threw the remains of the deceased. He was asked a specific question about the colour of the knife and he said, "*It has a blue handle.*"

The foregoing shows that the indications that the accused made are consistent with the contents of his confirmed warned and cautioned statement. We have already ruled that the confirmation proceedings were properly conducted in terms of the law. The indications and the confirmed warned and cautioned statement point to the guilt of the accused as the person who killed the deceased. We are satisfied that it is him who killed the deceased because from the evidence that was presented before this court it was the accused person who was the last person to be with the deceased when she was still alive. He even said it himself when he said he walked with the deceased for 2 to 3km from the nightclub on the night of 24 May 2022. This issue about the deceased having followed the accused in the company of two men was just but a lie. The accused was not able to tell the court who these two men were and why they were lagging behind as he walked ahead with the deceased.

What shows that it is the accused who killed the deceased is the following. The accused led the police to the same well where the deceased's remains were found in order to recover the knife, yet when the deceased's remains were found in that well, the accused was in Hurungwe and by that time he had not yet been arrested. In explaining how he killed the deceased, the accused said that he had gone on to dismember the body into three pieces by severing the legs from the body. When the deceased's remains were retrieved from the well, they were in three pieces just as the accused described. The accused said that he had placed the legs in a sack and it is true that when the deceased's remains were retrieved from the well, the legs were placed in a sack. The accused said that he threw the knife that he used to cut off the legs in the well and indeed the knife was recovered from the well. It was the exact knife that the accused described in his warned and cautioned statement, a kitchen knife with a blue handle.

The accused is the one who led the police to the recovery of the deceased's Huawei cell phone and sim card in a field with very long grass. There is no way the police would have known all this had it not been for the accused who told them and led them on indications. If the accused had not killed the deceased, he would not have known that the knife that was used to cut off the deceased's legs was in the well. Apparently, the accused is the only person who knew about the existence of this knife. The accuracy with which he described the knife in his confirmed warned and cautioned statement puts beyond doubt that he is the person who killed the deceased. He said that the knife had a blue handle. When the

knife was then retrieved from the well on the basis of the indications the accused later made, it suited that description. Further, if the accused was not the person who killed the deceased, he would not have known that the deceased's cell phone was hidden under some bricks in a field. In the warned and cautioned statement, he had said that he had placed the cell phone somewhere. This place was quite some distance from the well where the remains of the deceased were recovered. In the circumstances of this case these are details that only the person who killed the deceased would know. This shows that the indications that the accused made are the truth of what happened to the deceased on the night of 24 May 2022. That was the night that she was killed by the accused before he escaped to Hurungwe. The police had no way of knowing this information and could therefore not have stage managed the indications as the accused wanted this court to believe.

In the confession that the accused made he said that he struck the deceased with a clenched fist as she insisted on going with him to his place of residence. We find this explanation by the accused highly improbable. The deceased did not know the accused. The accused had assaulted her at the nightclub and people had failed to restrain him. In fact, the accused started throwing stones at the people who had rushed out of the nightclub when they heard that the deceased was being assaulted. We do not see how the deceased would have followed a person who had assaulted her to the extent of injuring her and causing her to bleed profusely. The accused said that the deceased followed him in the company of two men. There was nothing to confirm this. No evidence was placed before this court about the existence of these two men. They remain mysterious. The deceased was staying by herself. On the night in question, she had gone to the nightclub in the company of her female friend and neighbour. They did not go in the company of any man. The only men they associated with in the nightclub were Washington Mutswiri and George Murambatsvina whom they left in the nightclub when they said they were now going home. Stanley Nhamo Fusire, the vendor was the last person to see the deceased leave the business centre. He said the deceased told him that she was now going home and she disappeared into the night alone. She took the direction where she had come from injured. This is the direction where the accused was since he is the one who had just assaulted and injured her. The accused said that he walked with her for 2-3km. We do not believe that this was with the consent of the deceased. She had no reason to want to see the accused's place as the accused wanted us to believe. The accused was a stranger to her. He must have taken her against her will. We do not believe that the

accused told the truth that the deceased followed him in the company of two men. The deceased was by herself.

The next thing that happened is that the deceased was found dead and her body was dismembered. Unfortunately, the cause of death could not be ascertained due to decomposition. In the indications the accused said he struck her with a clenched fist on the jaws and she fell down and died. We find it difficult to accept the accused's version of events on how he killed the deceased for the simple reason that the accused was not truthful about how he took the deceased from the business centre and why he did so after having been violent to her. He had already injured her and she was by herself. When her body was retrieved from the well, the neck was tied with a pair of leggings. It is possible that he strangled her with that pair of leggings. Her body had been dismembered into three pieces. It is his word that he dismembered the body after she had died, but we do not know for sure if this is the truth of what happened. The accused is the only person who knows how he killed the deceased. By taking her against her will for a distance of more than 2 to 3 km, it means that he was being violent towards her. He had started assaulting her at the nightclub. He ended up killing her. The accused's conduct towards the deceased on the night in question shows that he had the intention to kill her. We find him guilty of murder as defined in s 47(1) (a) of the Criminal Law (Codification and Reform) Act.

*National Prosecuting Authority, the State's legal practitioners
Mhishi Nkomo legal practice, accused's legal practitioners*