

April / May 2014

KHASHO



ENSURING PROSECUTIONS WITHOUT FEAR, FAVOUR OR PREJUDICE



**First
Ukuthwala
case in WC**

**Muti
murderer
sentenced**

**From
protector to
predator**

**Khumalo's
killer
sentenced**



Ms Bulelwa Makeke
Chief Director: Communications

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Letter from the Managing Editor

The use of social media tools in governments around the world has been gaining acceptance as part of the information dissemination and public education arsenal and the South African government has not been left behind in this development. This provides an opportunity for two-way communication between government and citizens, partners and stakeholders thereby increasing the frequency and speed of engagement. We are thrilled to see the NPA Facebook page growing in leaps and bounds. We have started to experience large volumes of people interacting with us on the page. We urge you to join our page, if you haven't yet (The National Prosecuting Authority of South Africa)

The NPA participated in the Royal Show in Pietermaritzburg and like in previous years, our exhibition stand was awarded a gold medal. Winning a medal means we have achieved over 80% for service excellence and overall look of our exhibition stand. Well done to all who made it possible, particularly the KZN staff and aspirants for making the NPA brand stand out at the Royal Show.

On the 2nd of May the NPA welcomed a new group of Aspirant Prosecutors into its fold. We have embarked on a journey to document the Aspirant Prosecutor Programme in the form of a DVD, which we will use to market the programme, especially when we visit universities for recruitment drives. As part of this programme, we have started visiting the current aspirants and those who have recently completed the programme across the country, to capture their views

about their expectations and experiences on the programme. We look forward to meeting all the Aspirants and judging from the visits we've already done, this is one of the most exciting projects that we've undertaken and it is such a wonderful experience meeting each and every one of the Aspirants.

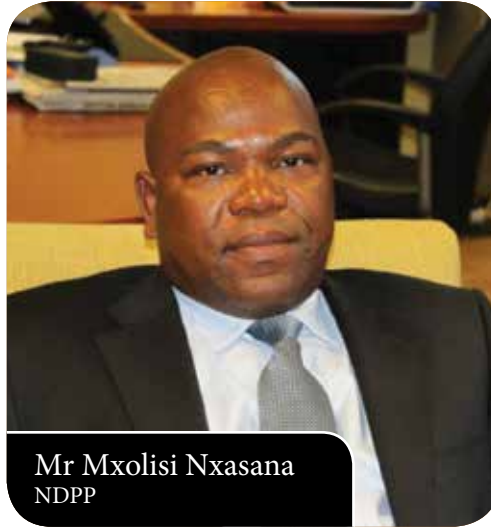
The Oscar Pistorius trial is certainly putting the prosecution profession in focus, and as we say, prosecutions is now the new sexy. The NPA communication mailbox has been inundated with messages of support and from the public from across the globe since the trial started. We have also received hundreds of enquiries from interested students and aspiring prosecutors who express their interest in joining the profession. This exposure is very pleasing in that it has brought to sharp focus the calibre and quality of the prosecutors we have, and it can sure serve as motivation for younger, up and coming prosecutors as to the expected levels of skill and finesse that will keep the NPA ahead of its game.

Right next to the hall where Oscar Pistorius trial is taking place in the Pretoria High Court there was equally another intriguing case where a young lady also died in the hands of her boyfriend and her name is Zanele Khumalo. This edition of Khasho brings you the details of the events that led to the gruesome murder of this young lady and how justice was delivered to the alleged murderer.

We hope you enjoy going through the variety of articles in this edition. Till next time.



Letter from the NDPP



Mr Mxolisi Nxasana
NDPP

The rate of attrition among prosecutors saddens me as it constitutes a great loss to the organisation. The tragic and gruesome loss of Mr Louis Heunis, who was a prosecutor in the Northern Cape DPP office left us all in shock. Our sincere condolences go to all those families that have lost their loved ones recently. Our thoughts and prayers also go to the family, friends and colleagues of Mr Danny Kubai, a prosecutor based at the Protea Magistrates Court who was ferociously assaulted, robbed of his property and left for dead.

The political tolerance that was displayed during election campaigns is noteworthy. All South Africans must be applauded for the manner in which they conducted themselves. The NPA, through its participation in the joint security forces, called the NatJoints, played a pivotal role in ensuring that the elections went off smoothly. Coordinators and prosecutors were on standby to assist in any eventuality that may have arisen.

The scourge of violence and crimes against women and children cannot go on unabated. It must be completely rooted out from our communities. We reaffirm our commitment to bring to book, all perpetrators of violence against these vulnerable groups. Communities have a significant role to play and are urged to report these crimes so that they may be dealt with speedily and obliterated from society.

Crimes committed during service delivery protests are on the increase. While we acknowledge the rights of members of the public to demonstrate within certain boundaries, every effort will be made to bring the crimes under the guise of service delivery to book.

I reiterate my call to the officials to familiarise themselves with the NPA policies and directives

so that we are aware of our limitations and boundaries.

There are officials who provide the media with false information and unfounded allegations about other NPA members. This unsavoury practice must stop immediately. If anyone, for any reason, is aggrieved with their employment agreement, due process should be followed.

I congratulate all prosecutors for the manner in which they have handled NPA high profile cases. It makes us proud and restores the confidence in this organisation. The NPA prides itself with a wealth of expertise and my wish is that every prosecutor should be afforded the opportunity to display their skills, knowledge and expertise.

The performance by the Lower and High courts has been impressive, but the need to do better still exists. My special thanks to Corporate Services, for providing the support to prosecutors that enables them to execute their duties in the manner in which they do.

We have not achieved all annual targets that were outlined in the Annual Performance Plan but concerted efforts were made by all prosecutors to ensure an improved performance, despite the challenges experienced by the courts.

The time has arrived once again, where we are required as the organisation, to submit our annual performance to the Auditor General. I thank all officials who have worked hard to produce a report which will hopefully be unqualified.

Let me welcome our new Minister, Michael Masutha and also promise that we will all give him our support. I also thank Minister Jeff Radebe, SC and his Director General, Ms Nonkululeko Sindane for fostering good work relations with us in the NPA during his tenure.





Letter from the CEO



Ms Karen van Rensburg
CEO

I acknowledge the leadership of the Deputy CEO, Ambassador Sisulu, who was left at the helm of Corporate Services (CS) during my three weeks of absence in April. My sincere appreciation to all who supported her in ensuring that service delivery to the prosecutors continued, in an uninterrupted manner.

The 2013/14 financial year ended on a high note as far as expenditure is concerned. We were able to once again spend 100 percent of the budget. This was achieved through the commitment and efforts of all staff. I pride myself on a good team that supports me - a winning team of highly professional individuals driven by their commitment to the organisation.

During the new financial year, the formula and the approach will remain unchanged. We are committed to continue with our quest to keep our prosecutors satisfied and endeavor to improve on the quality of service that we discharge.

The 2014/15 Annual Performance Plans (APP) are signed off. This year's APPs are a continuation of the strategic direction embarked on by the NPA with refined measures and targets. Most importantly, the implementation of these plans will involve personal sacrifice together with the actualisation of best management practices, with the ultimate goal of achieving these targets.

The daunting task of completing the Annual Report, including Annual Financial Statements is upon us once again. We rely on you to get this work done and I thank those that provided us with required information on time. I thank the team that continues to work tirelessly to ensure that we put together a cutting edge document that mirrors the organisation's state of affairs and financial statements of the previous fiscal year.

The auditing period is continuing in earnest and this is a busy time when much is asked of people. I urge you to exercise patience whilst you deal with the auditors and provide the assistance that is required of you. I reiterate my previous position on the attainment of a clean audit. As we discharge our daily duties, we must be prudent in our actions and remember that governance is at the centre of a clean audit.

I call upon all staff to be familiar with the Public Service Regulations and abide by it. In particular, refer to office hours which is not being complied with by everyone. Non-compliance to regulations and policies is not in keeping with the NPA values which must be upheld at all times. I also take this opportunity to remind you to be vigilant with your salary payments. Any discrepancy in your salary must be reported to the Finance office as soon as it occurs, otherwise you will find yourself liable for repayments.

Stepdaughter subjected to eight months of hell

Frank Lesenyego



A 46 year old man was sentenced to life imprisonment in the Lehurutshe Magistrate Court for the rape of his 12 year old stepdaughter. The girl was subjected to his reprehensible behaviour for almost eight months before he was caught, attempting to rape the child. He was finally reported to the police and was arrested.

The court heard that Thekiso Morake was 43 years old, at the time of the offence, and sexually raped his 12 year old stepdaughter when her mother was at work. It is alleged that he demanded that return immediately after school to her home and threatened to tell her mother if she failed to do so. The victim was afraid of her mother, whom she testified was an abusive woman.

The child was referred to the Court Preparation session and was later referred for counselling by the Court Preparation Officer.

During consultation process, the mother denied giving a statement to the police and also denied being present when the child told the family about her traumatic experience.

The Prosecutor then made an application for a trial within a trial. During the cross examination of the mother by the prosecutor, the mother confirmed that she gave her statement voluntarily, which corroborated the evidence of the child. The mother lied to protect her boyfriend at the expense of her child.

The NPA welcomed the judgement. Because the sentence will serve as a deterrent to perpetrators who intend to commit this type of barbaric crime

KHASHO asked Mashudu Muliwa, the State Prosecutor, some questions about the case.



Mr Mashudu Muliwa

KHASHO asked Mashudu Muliwa, the State Prosecutor, some questions about the case.

How do you feel that this case is now finalised?

I am relieved and happy that justice has been served. This has greatly assisted the victim to move on with her life.

What was your position during the trial?

I took strain because of the breakdown in the relationship between the mother and the daughter. It was very challenging but I had to constantly encourage the victim to give her side of the story.

Any lessons learnt as you move forward to deal with other cases?

It is important that all the relevant stakeholders are involved in dealing with these types of cases. It is also crucial not allow your emotions to override your judgement.

NPA Performance April/May 2014



From protector to predator

Phindi Louw

In passing sentence on the rape accused, Mokolo Karpos Molekoa, aged 38 in the South Gauteng High Court on 24 January 2014, Judge Mabuse said that this was “an embarrassment to the State.” Malekoa, who was a Randburg police official turned out to be a serial rapist. He was sentenced to five life terms and 284 years imprisonment. By virtue of being a policeman, Molekoa was placed in a position of trust to protect the members of the public. He abused his position, using his police uniform which symbolises protection and safety, to lure his victims into the predator’s den.

Mokolo Karpos Molekoa was charged for 47 counts ranging from rape, robbery and kidnapping. All the crimes were committed between 2011 and 2012 around Randburg, Tembisa, Ivory Park and Olifantsfontein.

An investigation into two rape cases unlocked the mystery and linked the policeman to other unresolved cases. The investigating officer brought a few dockets from Randburg and the surrounding areas to the office of the Director of Public Prosecutions in South Gauteng. As it often happens, the investigations were incomplete and the prosecutor had to guide the investigations to establish the link between the accused and other similar crimes committed. The case docket was queried with a view of conducting DNA analyses and identification parades. The DNA results came back positive and in few case dockets, the accused was positively identified by the victims.

After drafting the indictment, and upon receiving the positive DNA results from the laboratory, a number of dockets were forwarded to the office of the prosecutor for further screening. Upon assessing the facts, Adv Lwazi Ngodwana established circumstances and trends, clearly indicative of one offender (the accused). The indictment had to be amended to include case dockets from different police stations around Randburg.

The modus operandi was the same and the state relied heavily on similar fact evidence. Adv Ngodwana requested Professor



Adv Lwazi Ngodwana, prosecutor South Gauteng High Court

Labuschagne, a clinical psychologist to profile the accused, conduct linkage analysis and to testify in court in this regard. There were many challenges during this trial. “Dealing with rape cases is always a difficult assignment. In this case, the media reports about the rapes and exposing the accused, even before a formal identification parade was held, frightened most of the witnesses and added to my burden,” recalled Adv Ngodwana.

After lengthy consultations and reaching a common understanding with the complainants, they were taken through the layout of the court, the entire court process and what was expected of them as witnesses in a court of law. One complainant passed away just before the commencement of trial. The State relied on Section 3(1)(C) of Act 45 of 1988 (Admissibility of Hearsay Evidence in terms of Section 3(1)(C) of Act 45 of 1988) in presenting her evidence, the medical evidence and the first report in proving the state’s case on this count.

With the experience that Adv Ngodwana acquired from the Regional Court of Port Elizabeth where he dealt with cases of this nature, the victims were victorious. “Finally I believe that we must all play our part in eliminating the scourge of gender based violence by prioritising cases of this nature at all costs” he said.

The sentence passed on the accused vindicated the victims and brought finality to a painful chapter in their lives.

Ficksburg muti murderer sentenced to Life Imprisonment

Phaladi Shuping



NPA Performance
April/May 2014

A 33-year-old man from Ficksburg was sentenced to life imprisonment in the Free State High Court after he was convicted of killing two women. Tebogo David Ramakatsa was found guilty of two counts of murder, two counts of robbery and one of sexual assault. Judge Corne Van Zyl sentenced him to life imprisonment for each count of murder, seven years for each count of robbery and four years for sexual assault. The sentences will run concurrently.

Ramakatsa was linked to the murder of Malintle Anastacia Qothelo, aged 30, from Lesotho, through phone records that showed that he called the family of the victim from the vicinity where she was murdered. Warrant Officer Koos Muller, who arrested Ramakatsa, told the court that investigations showed that Ramakatsa's call to Lesotho was made from near the crime scene as it was picked by a nearby mobile phone booster. He phoned the family to inform them that Qothelo had arrived safely in Ficksburg yet her body was lying lifeless after being murdered for muti.

Ramakatsa, together with his wife, Lorraine Modise and mother-in-law, were allegedly part of a syndicate that was under investigation for allegedly selling South African identification books to Lesotho citizens at the Ficksburg border.

A traditional healer had allegedly told the members of the syndicate that in order to make the investigation "disappear", they had to find a pregnant woman and remove the foetus while she was still alive. When they could not find a pregnant woman in Ficksburg, they decided to go to Lesotho. They lured Qothelo to South Africa after they claimed that they could organise a South African identity document for her.

Qothelo, who was pregnant at the time of the killing, had her belly ripped open while she was still alive because her killers wanted to take her foetus for muti purposes. They also removed

her nails, eyes and tongue. Ramakatsa's wife and mother-in-law turned state witnesses.

Ramakatsa was also charged for the murder of Nthathi Alice Mothoko who was killed in 2009 and her body parts were harvested to make muti. Mothoko was lured to her death by Modise who suggested that they go to Johannesburg to buy some clothes for resale in Ficksburg, as a way of getting her to an isolated place and killing her. Mothoko was also robbed of her cell phone. Since no one came forward to identify her body, Mothoko was given a pauper's burial. However, the death of Qothelo convinced the police that the two deceased could have been murdered by the same person. They exhumed her body and her identity was established.

Ramakatsa was charged with six other men who were found not guilty by the court.

Commentary by Adv Jannie Botha

The biggest challenges that the prosecution faced in this matter was that there were no eyewitnesses and that the body of Alice Mothoko was identified two years after the crime was committed. It was therefore difficult for the police to follow leads.

Fortunately one of the accused, Lorraine Modise who is Ramakatsa's wife, assisted the police through the statement that she made. The police followed the leads that emanated from her statement, and found the clothing and other property belonging to the deceased in possession of the accused.

In order to prove our case, we had to turn the wife and mother-in-law of the accused into Section 204 witnesses. They were however, atrocious in the witness box. Inconsistencies in their testimonies resulted in the State conceding that they did not prove the involvement of the other accused in these matters.

The six accused were consequently acquitted on all charges.



Harshest sentence in South Africa in the first Ukuthwala case in the Western Cape

Eric Ntabazalila

April/May 2014
NPA Performance

Mvumeleni Jezile was handed down the harshest sentence that the NPA has secured in the country. He was convicted in the first ukuthwala case in the Western Cape and was sentenced to 22 years imprisonment. This case was the second successful prosecution in a human trafficking in the province.

In 2011, the Lusikisiki Regional Court sentences an accused person to seven years for human traffic which was the highest sentence handed in South Africa before Jezile's sentence.

Jezile was convicted on three counts of raping a 14 year old girl, trafficking for sexual purposes, assault with intent to do grievous bodily harm and assault common.

The ordeal for the 14 year old girl from Gqaba Location in Mbabakazi Section, Ngcobo, in the Eastern Cape started on January 2010, after her uncle sent her to buy him cigarettes. Strange men grabbed her and took her to a strange house where she was told that she was an umakoti to a stranger who was twice her age. The next day she learnt that R8 000 was paid to her uncle and her grandmother as lobola and that the marriage was concluded through the ukuthwala custom where the complainant's grandmother and her uncle entered into negotiations with the family of the accused. Neither the consent of the teenager nor her mother was sought before the marriage was concluded and she was handed over to the accused.

The Grade 7 learner made it clear to her grandmother, uncle and would be husband that she was more interested in her studies and vehemently objected to the marriage.

The 'strange man' started demanding sexual intercourse. The young girl was subjected to assault whenever he demanded sexual intercourse and she refused. He then took her to Philippi in Cape Town where his brother lived. After arriving in Philippi, the demands for sexual intercourse continued and the beatings became more severe and finally escalating to rape. The young girl was continuously raped. In one incident, the brother of the accused held her arms down while the accused raped the 14 year old girl.

In Philippi, the 14 year old girl was kept locked inside a shack as the accused feared she would flee. A few days later, she asked the wife of accused brother not lock the burglar gate of the shack that she was locked in, as she wanted to do her washing. She managed to escape by jumping over the fence and took a local taxi to the police station and reported the matter. The police contacted her mother and Jezile was arrested.

In November 2013, Jezile was convicted. During the trial, Jezile never showed any remorse nor took responsibility for the ordeal the young girl was subjected to. He persisted throughout the trial that the girl was a willing partner who gave her full consent. He blamed religion, tradition and the young girl but never himself. At one time during the trial, he described her as cheeky, disobedient and a fake.

In aggravation of sentence, prosecutor Ms Deidre Rossouw asked the court to sentence Jezile to life imprisonment. She argued that the young girl was angry with her family and felt betrayed by them for forcing her to marry a stranger and an old man. Rossouw added that the trauma the young girl experienced will remain with her for the rest of her life.

Commentary by Ms Deidre Rossouw

Rossouw summarised the impact on the young girl:

- She suffers from insomnia and when she eventually sleeps, she is haunted by nightmares
- She is not on par with her peers in class; she cries easily when recalling the events and has flashbacks
- She fears males, including her own male family members and feels they cannot be trusted. Her fear is compounded by the fact that her own uncle forcibly married her off
- She is fearful of sexual intercourse as a result of her rape and assault
- She has become reclusive and spends most of her time indoors
- She has intense feelings of anger towards Jezile for the suffering she had to endure and wanted him imprisoned for life
- She is moody, angry and defiant at home and at times uncontrollable.



The mother of the young girl feels helpless and at times blames herself for not being able to protect her young girl. It needs to be pointed out that at the time of the forced marriage, the mother was not at home as she was at work far from home. In court she expressed feelings of hatred towards Jezile and her own brother who negotiated the forced marriage in her absence.

Vryheid man sentenced to 125 years for rape

Natasha Ramkisson-Kara



In 2010, a 23 year old man, Mzothule Sizwe Gabela from Vryheid raped a girl from his neighbourhood for almost eight months. He would accost the girl as she was on her way to either her home, the shop or on her way to school, drag her into his house or the bushes and rape her. He threatened to cut off her neck if she reported the rapes to anyone.

Eventually, one of the neighbourhood children asked her what was going on and she was overheard by an aunt whilst relaying the story to the child. The aunt told her parents and a visit to the doctor confirmed that she had been raped.

In mid-February 2014, Gabela was sentenced to five life sentences, amounting to an effective 125 years imprisonment. The Presiding Officer, Mr LB Phoswa ordered that the sentences run concurrently.

Mrs Dibi Symington, a prosecutor who worked for the past 16 years at the Vryheid Magistrates Court prosecuted Gabela. Khasho spoke to her about this matter.

Commentary by Ms Dibi Symington



How does this case differ from other child rape cases that you have prosecuted?

This case does not differ much. There are way too many children who are victims of this type

of offence. This young girl was unique. She was well prepared. I had worked with her for a long time. She is a chubby little girl with doe eyes and she stood like a rock. I am proud of her.

The rapes occurred over a period of eight months period and was not reported immediately. What evidence did you rely on to get this conviction?

I relied on the girl's evidence as well as the medical evidence. She was just so thoroughly believable. It was difficult because due to the passing of time, crucial witnesses had died, etc. but this little girl stood her ground.

How do you feel about this sentence?

I feel that the sentence is justified. He accosted the victim on multiple occasions, threatened to kill her and tried to mislead the court. He showed no remorse. We need to protect our mothers, daughters and sisters against people like him. He chose to do this. He brutally took away her innocence and ostracised her from her peers. For example, she will never be able to participate in the reed dance through no fault of her own.

Were there any pertinent comments made by the Magistrate?

The Magistrate had much to say about the young men who like Gabela prey on innocent victims such as this one. He viewed it as a shame. He commented that these men shame their communities, peers and country. He also took into consideration the accused lack of remorse as an aggravating factor.

Are there any further comments from your side?

Personally, I feel that people need to understand that there is absolutely no justification for child rape. In the absence of mental illness, the offence never happens by accident.

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Supermarket killers sentenced to life imprisonment

Phaladi Shuping

Two men who killed a police officer during a robbery that took place on 8 January 2013 at Mi-Ning supermarket in Ipopeng Township, Bloemfontein, have been sentenced to life imprisonment on 9 April 2014 after they were convicted of two counts of murder and robbery with aggravating circumstances by the Free State High Court.

Acting Judge Sesele sentenced Motlatsi Namane, 29 and Thabo Mapuru, 26, both from Lesotho, to life imprisonment for murder of Sergeant Ephraim Mokhasi. They were also held accountable for murder of their partner in crime, Thabo Marabe who was shot dead by the police during the shoot-out. They also received another 15 years imprisonment each for robbery with aggravating circumstances while Mampuru was slapped with a further five year imprisonment for unlawful possession of firearm and three years for unlawful possession of ammunition.

The court heard that the two accused were part of a group of five men who planned to rob the supermarket on 8 January last year. They first went to the shop to assess the situation. When they arrived, three of them went into the shop while the other two stayed outside. They found out that there are cameras in the supermarket and it is busy at there are many customers. They concluded that they would need more weapons and a second getaway car and left.

Later that day, the five men came back to the supermarket, two of them carrying firearms. They entered the supermarket and pointed firearms at the customers and employees. All the people were taken to the back of the shop. One of the robbers went outside to keep watch and prevented people from entering the shop.

A police vehicle arrived at the shop while robbery was in progress. Two police officers got out and approached the shop. The robbers started shooting at them and they returned fire.

A shoot-out ensued and Sergeant Mokhasi was shot dead. One of the robbers shot him again at point blank and took his firearm. The robbers flee with about R30 000 and cellphones.

Police reinforcement was called and the police hunted the robbers. One robber was cornered but refused to surrender and was shot dead by the police. Three of the robbers were arrested. The other one evaded the police and is still on the run.

State Prosecutor, Adv Moipone Moroka, argued in court that the accused should be held accountable for the murder of their accomplice who was killed by the police based on a doctrine of common purpose.

Acting Judge Sesele was convinced that the state has proved the doctrine of common purpose and sentenced the two accused to life imprisonment for murder of Marabe.

"The accused should have foreseen that a shoot-out may ensue, but they were willing to shoot their way out. They should have foreseen that in the process of this robbery they may encounter resistance. I am convinced that the state has proved the doctrine of common purpose and therefore, the accused should be held accountable for murder of their accomplice." said the Judge.

The Judge ordered that the sentences will run concurrently making their sentence an effective life imprisonment.

The third accused, Louis Mphou, pleaded guilty last year and was sentenced to 20 years in prison by the Bloemfontein Magistrate's court.

Killing of men and women in blue has reached an alarming rate and has become a national crisis. The deceased in one of the murder counts was a police officer who was shot during the execution of his duty in full police uniform and was robbed of his firearm in the process.

Commentary by Adv Moipone Moroka



I feel very relieved that ultimately justice has been done. It felt like the whole of the SAPS family was relying on me to bring the perpetrators to book.

The accused were very difficult to handle amid overwhelming evidence against them. Their faces were slightly depicted on the video footage that was played and there was evidence from one of their own, who was earlier convicted. He was linking them to the crime but they were steadfast that they were not around the scene of crime. The State had to prove each and every aspect of this case.

The deceased's wife was absent throughout the whole proceedings due to the trauma this whole incident brought to her and her family. I managed to persuade her to come to testify on aggravation of sentence on the impact that the deceased's death had on her family.

I have learnt that thorough preparation and research play a vital role in every case that is in the hands of a prosecutor. Cooperation between investigating officer and the witnesses is also very important.

There was doubt whether a conviction based on the second murder count is in order as the deceased was one of the robbers who was shot by police, a distance from the scene of the crime. I managed to persuade the court that the doctrine of common purpose applies, although leave to appeal was granted on the ground. However, I am convinced that no other court will come to a different conclusion



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She still had a life ahead of her as a teenager

Medupe Simasiku

On 15 November 2013, a 26 year old man, Thato Kutumela was found guilty in the Pretoria High Court on various charges, including the murder and rape of 18 year old Zanele Khumalo, who was expecting his child at the time of her death. Zanele was found dead at her parents' home in Garsfontein – Villa Dine Complex, Pretoria East, in April 2011.

On the night of 20 April 2011 and into the early hours of 21 April 2011, a total of 19 calls were made between the accused and the deceased. Several of these calls were made from the accused to the deceased. When the deceased failed to answer the last three calls made by him, the accused went to her home in Garsfontein on the morning of the 21st April 2011 at about 7h00. He disguised himself in a blue two-piece overall, a cap and carried an empty back-pack. When he arrived at the complex and pressed the intercom, the

deceased denied him access. He waited until the gates were opened for a car that arrived and slipped in.

He managed to gain access into the house, raped and strangled the deceased, and took her underwear, gown and slippers and put them in his back-pack. He placed the deceased on her bed, face down and covered her in a blanket, put her cell-phone on silent, erased all the data on it from 20-21 April 2011 and threw it under her bed. He left the complex at about 10h30, changing his disguise. Once again, he waited for someone to open the gate and then left the complex.

He then went to his place of work at Woolworths in Lynnwood Bridge, a 30 minute trip by taxi. He told the security officer at the staff entrance that he was late because he was not feeling well and that he had been to see





a doctor. He falsified the attendance register, indicating that he had arrived at 9h02, when the person before him arrived at 09h50.

The court found that Kutumela was extremely possessive and over bearing in his relationship with Zanele. He also had a temper and the thought of losing Khumalo had frightened him.

In sentencing, Judge Johan Kruger said that: "violent crime must be dealt with in ways that will serve as a deterrent to criminals." He said that the reports of both the psychologist and the social worker were "helpful and each in its own way"

The state presented, inter alia, evidence of cell-phone records that indicated that the accused was in the vicinity of the deceased's house and the length of his stay there. This was picked up by the base stations in the area and on his way to work. The evidence of a data analyst from the War Room of the police, who analysed the allincoming and outgoing calls on the phone of the deceased, indicated that data of all calls on the night before the incident was erased but they managed to retrieve it. The forensic evidence coincided with the state's version that the incident happened between 10h00 and 11h00.

There were small bruise marks on either side of the neck and an underlying a bleeding of the carotid bodies. The pathologist conducted a bloodless dissection, which revealed a haemorrhaging of the strap muscles (the Omohoid, Sternohoid and thyrohoid), indicating that pressure/squeezing was applied on the neck, causing reflux of the heart and thereby slowing the heart rate, resulting in acute neurogenic cardiac arrest. The cause of death was manual strangulation.

On 28 March 2014, the accused was sentenced to 20 years imprisonment for murder, 10 years for rape and six months for theft, all to be served concurrently.

The defence led the evidence of a clinical psychologist in mitigation of sentence and the state, through Advocate George Baloyi, led the evidence of a probation officer in aggravation of sentence. The court found that the following personal circumstances of the accused, which was agreed upon by both experts, constituted substantial and compelling circumstances,

justifying a departure from the prescribed life sentence:

- That the accused is 28 years old and thus still young. He can still be rehabilitated by receiving psychological treatment.
- That he showed concern for the deceased by visiting her at hospital and intended to give her money for sonar on the day of the incident.
- That there was no sign of extreme violence on the deceased.
- That the accused had a troubled childhood, losing a grandfather whom he was close to, his father was absent during his upbringing, he had a poor work record, he developed mood swings and temper outbursts.

He was granted leave to appeal his conviction to the Full Bench of the Gauteng Division, Pretoria but his application for bail was refused. He has thus commenced serving his 20-year sentence.

Commentary by Adv George Baloyi

The highlight of the case for me was leading the evidence of two unassuming and unsophisticated tilers who were looking for piece jobs at a Tile Warehouse across the entrance of the deceased complex, who saw the accused entering and leaving the complex. Instinct also kicked in and I decided to phone the first number that the accused called when he emerged from the deceased's house, which turned out to be a colleague of the accused. She testified that the accused called her in the morning at about 07h00 to say that he was going to be late for work as he was not feeling well and was going to consult a doctor, which points to premeditation on the part of the accused. He called her again at 10h35 to say that he was on his way to work, which contradicts his version that he was at work at that time.



Meet Michael Mabunda Director of Administration in the DPP North Gauteng office



How would you describe your development within NPA?

I joined the NPA in 2007. During that period, the provision of services to our clients was quite challenging due to the high vacancy rate. To succeed, I had to perform both the management and operational work of the DPP Office. However, my involvement in operational work made it easier for me to understand the working environment of the NPA.

What is your role in the DPP North Gauteng office?

My role is to ensure that the legal component at the DPP and at the cluster level are provided with essential services which are necessary for their day to day operations. It is also important to account on how such services were provided. This can be achieved by maintaining proper records of processed transactions.

Do you believe that directors of administration are making their presence felt in running the NPA?

Directors of Administration are stationed at the various offices of the Directors of Public Prosecutions where the budget is implemented and the entire administration of the region takes place. They are stationed at the coal face of service delivery hence they become the entry point on all matters relating to delivery of services to the core - component of the NPA. All queries relating to service

delivery will ordinarily be directed to the office of the Director: Administrations.

You have a staff complement of over 700 people, how do you cope with their requests/needs?

The issue of staff complement within the Division used to be a very difficult matter to manage, especially during the implementation of the first phase of the delegation of authorities by the accounting officer. During this period, my function as the Director: Administration was quite demanding as the responsibilities to approve leave forms and trip authority was only delegated to me as the Director Administration. Difficult as it was, I had no choice but to work extra hours and to work over the weekends. As of now, the issue of staff complement is managed by means of communicating all queries to the offices of the Chief Prosecutors and if necessary, to the offices of Senior Public Prosecutors. The quarterly Senior Management meetings which are attended by all Chief Prosecutors is also used as a vehicle for addressing administrative queries and for implementing new procedures and processes.

What are the most challenging aspects of your duties and how do you overcome them?

The major challenge is failure to comply with NPA policies and procedures which may result in audit queries. The monthly and quarterly management meeting which are chaired by the DPP are used to predominantly address matters of non-compliance in time and diligently.

You work with people scattered in three provinces, what is the best strategy employed to ensure that they receive equal attention, despite the distances from the DPP?

The DPP North Gauteng is indeed the biggest region of the NPA. The issue of distance is not a serious concern, as we have regular meetings with Chief Prosecutors. Chief Prosecutors are in close contact with the staff and usually present their issues at the management



meeting for us to address. I also prepare presentations for discussions at management meetings. Apart from management meeting, urgent matters faced by staff members are communicated through emails, faxes and telephones

How do you see yourself contributing towards government's five key priorities?

My role as the Director: Administration is to ensure that the legal component is adequately supported with creating an enabling environment and providing the necessary

resources required for the achievement of the government's key priorities.

Where do you see the NPA in the next ten years?

The implementation of the Superior Court Act is a step in the right direction. The establishments of the new high courts will without any doubt, improve service delivery to customers. Decentralisation of corporate services functions to provinces should also be investigated and implemented as it will improve our efficiency and effectiveness.

NPA Interns 2013/14

Participants from the 2013 Internship Programme at the end of their contract share some of their experiences at the NPA.

This is what they had to say:



The journey at the NPA has come to an end but the lessons learnt will always remain. My appreciation to the Communications team for empowering with skills and giving me workplace experience. I know that the knowledge that I have acquired will enable me to perform and achieve high standards for success.

Simphiwe Mdlalose – Communications



My experience at the NPA within the OD directorate was a very good learning curve; I learnt a great deal about OD and look forward to using the knowledge and skills that I have acquired here. Thank you and God Bless,

Relebogile Mashishi – Organisational Development



The NPA exposed me to the world of work and has given me real life and work experience,

Lebotsa Manamela – IMS



My NPA experience was great; it exposed me to different aspects that I will need to build a successful career going forward,

Joseph Mchari – IMU



My experience was great; the management and employees were supportive and willing to give advice and motivating us in ways to further develop our careers.

Thank you NPA, **Thulile Mtshiza – ISM**



NPA Interns 2013/14

Know your library

Sibongile Mogale



April/May 2014
NPA News

The Library is a sub-directorate of the Information and Systems Management Service Centre (ISM).

Records Management and Library encompasses the following:

- Setting up of a holistic library and information service by incorporating the newly established and existing libraries to function as a single library service to NPA staff. This was done by implementing a library system that binds all libraries, growing the collections, ensuring that the latest information is available and providing all prosecutorial staff with books that will enable them to prosecute successfully.
- Establishment of a Library Forum in order to manage the activities in all 18 libraries throughout the NPA. The Library Forum meets bi-annually to discuss and share relevant information and continued in-service training, if required.
- Change in focus from providing information to ensuring that all books are accounted for since library books were declared as assets in 2012. This remains the greatest challenge as books are highly mobile.

Services provided by the library:

Electronic databases

The established library and information service was modelled as a hybrid library, meaning a combination of electronic and printed material. The motivation for this was based on the fact that most books are available in hardcopy and remains the preferred form of published usage.

It is a well-known fact that the law changes daily, therefore, the NPA library provides access to up-to-date information, access to online databases such as LexisNexis, Jutastat and Sabinet Online.

These databases are also available on the Intranet platform. This platform will be phased out as the development focusses only on the Internet platform.

When this occurs, the NPA will migrate to the Internet platform. This is dependent on bandwidth which the ISM is currently in the process of testing and monitoring in terms of its impact. The access will be seamless and users will be unaware when they exit the NPA environment.

Library books

- The library collects and supplies information and books that are relevant and supportive of the core functions of the NPA. The main focus however, remains on legal material.

The collections are divided into reference works such as law reports, statutes, encyclopaedias and dictionaries that may not be loaned from the library. Although the journal collection is not strictly a reference collection, it is also not allowed out on loan.

All the material that cannot be loaned, is photocopied for use.

- Other shelved books may be loaned for 14 days and the loan is renewable.
- Our last category of books are the books that are allocated to prosecutors and issued out on permanent loans.

The older editions of the Snyman Criminal law (4th) and the Zeffert SA law of evidence (1st) will be disposed of during this year and replaced with new editions.

The library catalogue is available via the Intranet under quick links. By searching this access point, it can be established if a book that you are looking for, is available and in which library is it located. If you are a registered library user, additional functions can be conducted such as renewal of books and editing of your profile. The log in identity is a Persal number and the pin code, is a 4 digit code generated by the system and available from the library. Nozuko Mdingi, Lindiwe Mogwaneng or any regional librarian can be contacted for assistance in this regard.



A new exciting development in the law publishing field is the availability of a selection of legal titles as e-books. A pilot will be run to test this version and depending on the feedback and usability of these books, a decision on implementation will be taken. The advantage of the e-book is that a copy will be loaded onto a laptop which will substitute the hard copy.

Inter-library loans

If a book that is required is not available at any of the the NPA libraries, it can be borrowed through an interlibrary loan from any library in SA.

Challenges

- Ignoring the overdue notices sent out by the library system. This is a tool that the library uses to monitor the books issued out. As books are assets, we need to know at all times where the books are. If members of staff receive a notice, do not ignore it but contact the library and have the book renewed. This assists the management of our collections.
- Books are removed without signing them out, in libraries without librarians. Books are assets and must be accounted for at all times
- Updating of loose leaf binders issued to prosecutors. Currently the libraries are faced with the distribution of issue 51 of the Commentary on the Criminal Procedure Act (CPA). This issue includes a third binder, thus expanding the current set of 2 binders

- Lost books that are not reported to the libraries in time.
- The managing of books in offices

All library staff are currently in the process of compiling asset sheets for all offices in order to ensure that this process is managed. The aim is to have all asset sheets signed off for all offices by June 2014.

Sub-units

The Deputy Director, Ms Nozuko Mdingi, is responsible for managing the daily operations and main regional support

She is responsible for the following departments:

- Technical services under Mr Buwa Chawuke, this section is responsible for sourcing new library material and the processing and allocation of the material upon delivery.
- Administrative services under the leadership of Ms Malindi Botha deals with updating of loose leaf material, reception desk duties, issuing and return of books and the overdue notices. Other duties include stock take, compiling of asset sheets, distribution of material and ensuring that all library equipment is in working order.
- Information Services - the post has been vacant but the process to fill this vacancy is underway. This section is responsible for attending to information requests, marketing of the library services and the delivery of current awareness services.



Head office Library staff

“Operation clean audit”

Did you know the non-recovery of salary overpayment may lead to an audit query?

How vigilant are you with your salary overpayment and the debt recovery process that follows?

Overpayments are not often identified and reported timeously which often results in employees having to pay back large amounts that were wrongfully paid to them by the organisation. This may result in an audit query which can adversely impact on the audit opinion. In order to address this issue, all NPA employees must ensure that any debt that arises as a result of overpayment is reported to the Finance Section in writing, within 30 days for recovery. Finance will act in accordance with the approved Debt Management Policy, which is available on the intranet, in order to ensure that all monies owed to the NPA are recovered timeously from the debtor.

The total outstanding debt owed to the NPA as at 31 March 2014 is R8,621 million. This amount includes R5,3 million related to salary overpayments and R1,3 million related to bursaries.

Overpayment of salaries is not the only means where a debt can arise:

- Any misuse of government resources such as private telephone calls and faxes
- Losses and damages to government assets such as laptops and vehicles
- No shows on travel arrangements
- Salary overpayments – all permanent staff who receive a salary on the 15 of each

month are paid in advance for the remainder of the month. Resignation in the middle of a month will result in a salary overpayment and a debt will be created. This overpayment will be recovered from the official's pension payment.

- Tax debt – Officials whose tax deduction for bonuses are structured to be spread over 12 months (recurring), will incur a tax debt if they resign after the service bonus payment and before the end of the tax year. The tax debt will be recovered from the official's pension fund.

A debt raised by the Debt Section will only be reversed on instruction from the Unit Head that requested the Debt Section to raise the debt in the first place.

Recommendation:

Any official who receives an overpayment from the NPA, must contact the Finance Section in order to avoid a recovery process.

Officials should engage early in the process with the relevant section to ensure that matters are not referred to the Debt Section for recovery. After debt matters are referred to the State Attorney for recovery in terms of civil law, the official will have to engage with the State Attorney and may be liable for additional legal costs.

Please remember to confirm outstanding liabilities with the Finance: Debt Section before exiting the services of the NPA in order to avoid any nasty surprises.



Reverend Banzana's corrupt gifts forfeited to the state

Tsepo Ndwalaza

The Port Elizabeth (PE) High Court, after reserving on 31 October 2013, handed down judgment effectively forfeiting three motor vehicles worth R1 442 529 and R1 481 840 paid into Rt. Revd. Banzana's mortgage bond account. The Court held that the huge payments made by the Directors of MOM Construction to the Rt. Revd. Banzana, Bishop Ordinary of Umzi Wase Topiya, are proceeds of corruption and declared that they be forfeited to the State. The forfeiture application was brought against the payments by the Asset Forfeiture Unit and Bishop Banzana was legally represented. The Court rejected Mrs Banzana's claim of half the value of the corrupt payments (in terms of her marriage in community of property).

On 30 April 2013, the PE High Court granted the AFU a preservation order (in terms of the Prevention of Organised Crime Act) against valuable assets of the Bishop. The Mzingisi Development Trust, which employed the Bishop as a manager, has been, amongst others associated with the late Mr Raymond Mhlaba, Canon Xundu, Dr Dilima and Mr Silas Nkanunu. The trust was established in 1992 as a charitable organisation that aimed to alleviate the suffering of the needy and improve the standard of living of the PE communities. It employed the Bishop to manage these noble objectives.

The mortgaged property refers to the Bishop's Italian styled house situated at Erf 1808, Theescombe, Nelson Mandela Bay Metropolitan Municipality also known as 14 Overdale Street, Threesome, Port Elizabeth with an estimated value of R2.5 million. The vehicles include a grey BMW 7 Series 750i Sedan Auto with an estimated value of R775 912.29, a silver Nissan Pathfinder SUV Automatic, with an estimated value of R473 616.51 and a red BMW 1 Series Convertible, with an estimated value of R193 000. The payments were made on four

separate occasions, during which time MOM Constructions handed guaranteed cheques to the Bishop, who in turn made the deposits into his bond account, thereby settling it and purchasing the vehicles. The initial BMW 7 Series and a VW Polo were traded in for the BMW and the 1 Series. The three vehicles have been in the custody of the appointed curator since their seizure in May 2013.

The AFU argued that these assets are proceeds acquired in the commission of corruption and are therefore liable for forfeiture to the State. The Bishop submitted in the papers to the court that the assets were 'gifts' from the directors of MOM Construction, who believed that he deserved it for job well done. In response, MOM Construction sued the Bishop alleging that the payments were a loan but did not pursue the civil action due to monetary constraints. It is significant to note that the Prevention of Organised Crime Act (POCA) defines, amongst others, gratification as: money, whether in cash or otherwise or any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage or any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

The forfeiture order stems from the warning made by the Specialised Commercial Crimes Unit (SCCU) to the Bishop in March 2013 that he will face prosecution for the offences. Bishop is yet to appear in Court.

The Court papers revealed that from 11 April 2008 to 24 March 2009 the Bishop received and retained corrupt payments totalling R2.9 million from Wetzel Charles Meyers and/or Jocelyn Brian Meyers, the Directors of MOM Construction in return for ensuring that MOM Construction continued to be



awarded the tender to build RDP houses in Bethelsdorp. The corrupt payments refer to the four guaranteed cheques handed to the Bishop by MOM construction. This was used by the Bishop to settle his outstanding bond of R1.4 million with Nedbank and purchase the BMW, Pathfinder and a VW Polo vehicles.

MOM Construction sued the Bishop in the PE High Court in a civil action in which the corrupt payments were labelled as a 'loan'. In response, the Bishop denied that there

was ever any 'loan' agreement entered into between MOM Construction and him or that he was liable to pay back any amount. The AFU agreed with the Bishop in this regard and argued in the forfeiture Court papers that neither MOM Construction nor the Bishop are entitled in law to retain the corrupt payments, the true nature of which were disguised by the Bishop as legitimate funds. It is alleged that when MOM Construction stopped making payments to the Bishop, he gave the tender to other service providers.

Khasho spoke to Glynn Fraser, Senior Financial Investigator attached to the asset forfeiture unit in Port Elizabeth.

How did you get involved with this case?

The matter was brought to my attention by my Regional Head who requested that I have a look at the set of facts he furnished and establish whether there was any merit for AFU involvement.

What were your initial thoughts on the case?

In the beginning my gut feel was that the respondent had used proceeds of crime to purchase the motor vehicles and his house. The challenge was to confirm my prima facie viewpoint.

How do you feel about the case at this stage?

I feel vindicated. It proves that even though no charges have been brought against the Respondent the value of POCA has been confirmed.

Any lessons learnt as you move forward to deal with other cases?

Yes, most definitely! It proves that each case is unique and one should have a tenacious approach to any investigation.



Glynn Fraser - Senior Financial Investigator,
AFU Port Elizabeth

Stepmom killer jailed for life

Mashudu Malabi

Tshepo Kennedy Tau 31 years old, was sentenced to life imprisonment in the Northern Cape High Court for the rape and murder of his 51 year stepmother, Sedia Meriam Moemedi in 2011. Tau's stepmom was found raped, assaulted and murdered in her home at Lerato Park on 11 June 2011, approximately six days after her death.

The accused's semen was found on the deceased's clothing while phone records confirmed that he had used Moemedi's sim card which he stole during the incident. Tau told the court that he was involved in a love affair with his stepmother (Moemedi) after he grew closer to her following the death of his father. These claims were rejected by Judge Bulelwa Phakathi, who said that she believed that this was a fabrication to explain the existence of his semen that was found on the deceased. Phakathi said "the two fatal wounds inflicted, out of the many injuries sustained shortly before, during and after her death, were to ensure that the deceased was dead".

Tau had previous convictions on sexual offences, it became clear that he was a serial sexual offender. Previous convictions did not deter the accused from re-offending and if he was not apprehended he would have continued to commit these crimes.

The judge said he will remain a risk to society and all women if he is not incarcerated. He has no respect for the law or the rights of others and no type of non-custodial sentence would

suffice, she added. Concluding the sentencing, the judge said Tau's behaviour bordered on incest because he raped and murdered in cold blood someone who was like a mother to him and his actions were heartless and inhumane.

Tshepo Tau was handed down life imprisonment for the murder, 15 years for rape, 18 months for theft and 12 months for assault to run concurrently.

His defence had previously recommended a sentence of direct imprisonment of between 25 and 30 years, while the state advocate, Adele van Heerden called for life imprisonment.

Comment by Advocate Adele van Heerden

There were no eye witnesses. The body of the deceased was found days after she had died and in a state of decomposition. The pathologist couldn't determine an exact time of death. It was however a challenge to prove that only did the accused raped her and did not just make him guilty of incest, but also that he was the one that killed her.

Cellphone evidence was not only used to prove that the accused was at the house of the deceased at the approximate time of her death, but also to establish the approximate time of her death.

It was not easy to get conviction on circumstantial evidence.

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