

IN THE SOUTH GAUTENG HIGH COURT  
(JOHANNESBURG)

Case No: 252/2012

In the matter between:

THE STATE

and

TOFT-NIELSEN, PAUL

Accused 5

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AGREEMENT IN TERMS OF SECTION 105A(1) OF ACT 51 OF 1977

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**A. INTRODUCTION**

1. WHEREAS the accused has been informed, in terms of Section 105A(2)(a), that he has the right to:

1.1 Be presumed innocent until proven guilty beyond reasonable doubt;

1.2 Remain silent and not to testify during the proceedings; and



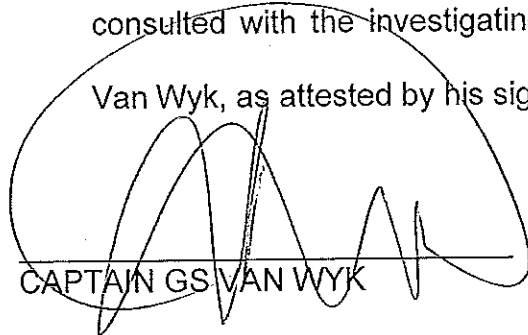
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- 1.3 Not to be compelled to give self-incriminating evidence.
2. WHEREAS the Deputy Director of Public Prosecutions, Advocate HJ Broodryk SC, has been duly authorised in writing by the National Director of Public Prosecutions, as required by Section 105A(1)(a) of Act 51 of 1977, to negotiate and enter into a formal Plea and Sentence Agreement with the Accused. (A copy of the authorization is attached as per Annexure "A")
3. The Accused , who is legally represented herein by Mr JC Kruger from the firm of BDK Attorney's have negotiated and entered into this Plea and Sentence Agreement in respect of the offence which he may be convicted, as well as a just sentence for such offence to be imposed by the above Honourable Court.
4. WHEREAS the State has consulted, in terms of Section 105A (1)(b)(ii), with the police official, Captain G S van Wyk charged with the investigation of this case, in respect of the terms of the Plea and Sentence Agreement and is satisfied with the terms thereof including the proposed sentence.
5. WHEREAS the State has consulted with the family of the deceased, Thandiwe Betty Ketani and afforded them the opportunity to make representations, in terms of Section 105A(1)(b)(iii).



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6. The accused freely and voluntarily, whilst being in his sound and sober senses, pleads guilty to being an accessory after the fact (in terms of section 257 of Act 51 of 1977) to the murder of the deceased, referred to in Count 8 of the indictment, i.e. Thandiwe Betty Ketani.
7. The Deputy Director of Public Prosecutions is prepared to accept the plea of guilty as aforementioned.
8. AND WHEREAS the prosecution before entering into the said agreement consulted with the investigating officer , to wit Captain Gerhardus Stephanus Van Wyk, as attested by his signature.



CAPTAIN GS VAN WYK

9. AND WHEREAS an opportunity was granted to the family of the deceased to wit, the brother of the deceased, Mr. Mankinki Eric Kula, to make representation pertaining to the content of the agreement . The brother of the deceased, Mr. Mankinki Eric Kula, agrees with the terms of the plea and sentence agreement, as attested to by his signature.



MANKINKI ERIK KULA

10. NOW THEREFORE in this agreement the parties hereto set out the terms of the agreement, the substantial facts of the matter and all other facts relevant to the agreed sentence as well as certain admissions made by the accused.



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**B. THE TERMS OF THE AGREEMENT**

**AD CHARGES**

11. The State will require the Accused to please guilty as follows:

Count 8: Guilty, in terms of Section 257 of the Criminal Procedure Act 51 of 1977, as an accessory after the fact to murder

The charges in respect of the remaining counts are to be withdrawn.

12. The Accused has made a full and frank disclosure pertaining to his involvement in the matter. The Accused has provided the State with a full and detailed affidavit pertaining to his and other person's involvement in the kidnapping and murder of the deceased. The Accused will provide his co-operation as a witness in the trial that will follow.

**THE SUBSTANTIAL FACTS OF THE MATTER**

13. The Accused admits the truthfulness and correctness of the averments in the charge as well as the substantial facts.

14. The Accused knows and understands the charge he agreed to plead guilty to.

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15. The Accused admits that he freely and voluntarily entered into the agreement, whilst in his sound and sober senses and without having been influenced thereto by anyone and has at all relevant times been assisted by his legal representative.
16. During the early part of 1999 the deceased worked for a restaurant in Rosebank. A labour dispute between her and her employer caused her to be kidnapped and murdered.
17. Her body was transported to 21A Leo Street, Kenilworth, Booyens, the residence of accused 2 at the time. The body was buried in the garden and covered by concrete.
18. Accused 5 was unaware of the abovementioned facts as set out in paragraphs 16 and 17 (*supra*) and was only informed about these facts when he assisted Carrington Laughton and Conway Brown to exhume the remains of a human body on or about 19 February 2004 and disposed of the remains.
19. This happened after accused 5 was requested by accused 2 to assist him to remove some plants in his garden at 21A Leo Street, Kenilworth, Booyens. Accused 5 agreed and after arriving at the address an open shallow grave with body parts encased in concrete blocks was pointed out to him. He was shocked but agreed to assist.

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20. Accused 1 arrived in a vehicle with an open trailer. He also provided big thick plastic bags to be used to place the remains and concrete inside. Rubber gloves were also provided by accused 1.
21. Accused 1 and 2 admitted that they with the help of Monique Lemkis and Mark Lister buried the corpse in the shallow grave and covered it with concrete in order to conceal the body.
22. The accused was at the time aware that the remains cast in concrete were that of a human being who died at the hands of accused 1 and that the body was hidden in the shallow grave in order not to be found. He then assisted in digging up portions of the body, encased in concrete, and then assisted to dump it at the municipal dumping ground and a river.
23. The accused was aware that he was assisting in the concealing of evidence and was committing a crime.
24. The accused pleads guilty to the crime of being an accessory after the fact of murder of the deceased, Thandiwe Betty Ketani, by disposing of her decomposed remains, approximately four to five years after her death.



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**C. THE FACTS RELEVANT TO THE AGREED SENTENCE**

**AGGRAVATING CIRCUMSTANCES**

25. The following aggravating circumstances were taken into consideration:

- (a) The nature of the offence is such, that it was both brutal and heinous;
- (b) He assisted in concealing the murder by assisting in the dumping of the remains of the body;
- (c) His actions were callous;
- (d) He remained silent for nine years and only came to the fore and handed himself to the police once a "confession style" letter, purportedly drawn up by accused 1, was uncovered at the house of Accused 2;
- (e) His actions perpetuated/contributed to the trauma suffered by the family of the deceased as they remained unaware of her death, and remained hopeful for 13 years, that she would return;
- (f) As a result of his actions, the family of the deceased have been deprived of the opportunity of burying the body of the deceased;
- (g) The deceased was 36 years old at the time of her disappearance;




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- (h) The actions of the accused robbed the family of the deceased of a mother, sister and daughter;
- (i) The deceased was a single mother of three, the oldest was seventeen years old and the youngest of her children was a child of not even a year old, at the time of her disappearance;
- (j) She was employed at Cranks Restaurant and was a sole bread winner to her three children;
- (k) After her disappearance the three children had to be taken care of by the mother of the deceased;
- (l) The mother of the deceased died during 2004, without any knowledge of her daughters whereabouts and the children of the deceased were then taken care of by the rest of the family.

#### D. MITIGATING CIRCUMSTANCES

26. The accused did not take part in the murder either as a perpetrator or accomplice.

27. The accused is not a person with a violent history.

28. The accused went to school with accused 1 who was always "the leader" with a  dominating personality.



29. The accused was employed by accused 1 and the latter had a hold on him.
30. Accused 1 always had corrupt policemen on his side protecting him and the accused was threatened with violence or death if he speaks out or report any crime to the police.
31. The accused on occasions contacted police to inform them of the criminal activities of accused 1 but no cooperation or assistance came forth.
32. The accused was manipulated and influenced by accused 1.
33. The accused is 39 years of age, single with no children.
34. The accused is still living with his parents who are pensioners.
35. The accused was a travel guide but could not work as his bail conditions restricted him from leaving Gauteng.
36. The accused cooperated with the police from the outset after the arrests of accused 1 and 2.
37. The accused made a confession statement to a magistrate which is clearly indicative of a man who has been granted an opportunity to reveal his moral blameworthiness.

38. From the confession statement it is also clear that the accused has remorse.
39. The accused attempted to assist the police to find the remains of the deceased.
40. The accused is willing to testify as a State witness in the trial against his co-accused.
41. The accused did not benefit from the commission of the main crime.

**E. THE AGREED SENTENCE**

42. It is agreed that the State and the representatives of the accused and the complainant's representative have had extensive negotiations and discussions with regard to the charge and have considered the following factors:

42.1 The length of the trial potentially involved should the accused plead not guilty;

42.2 The expense to which the State would be put by such a trial, which would be a lengthy one, and in which experts would have to testify;

42.3 The burden to the prosecution and to the court of being engaged in such a lengthy trial;

42.4 A number of factors considered on a 'without prejudice' basis.

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**F. THE AGREED SENTENCE**

43. The interest that the State has in securing a conviction against the accused, that interest having a number of purposes which are:

43.1 The interest of the State in securing a conviction on the charge because of its seriousness;

43.2 The society will be satisfied that the perpetrators were brought to book;

43.3 The family and loved ones of the deceased had an interest and say in an appropriate sentence.

44. NOW THEREFORE the parties have agreed in terms of Section 105A of the Criminal Procedure Act that an appropriate sentence in respect of the accused would be:

The accused is sentenced to five (5) years' imprisonment suspended for five (5) years on the following conditions:


- (i) that the accused is not convicted of the offence of being an accessory after the fact to murder in terms of Section 257 of the Criminal Procedure Act, Act 51 of 1977 or defeating the ends of justice and/or an attempt thereto, committed during the period of suspension; and




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- (ii) that the accused testifies frankly and honestly in respect of the matters referred to in his statement.

SIGNED at JOHANNESBURG on THIS <sup>18<sup>th</sup></sup> DAY of JULY 2013.

  
\_\_\_\_\_  
PAUL TOFT-NIELSEN  
Accused 5

  
\_\_\_\_\_  
J.C. KRUGER  
Attorney for the accused

  
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H J BROODRYK SC  
Deputy Director of Public Prosecutions  
South Gauteng High Court  
Johannesburg

**ANNEXURE "A"**



The National Prosecuting Authority of South Africa  
gunya Jikelele Lobetshe: Bo-Mzantsi Afrika  
Die Nasionale vervolgingsgesag van Suid-Afrika

**AUTHORISATION IN TERMS OF SECTION 105A (1)(a) OF CRIMINAL  
PROCEDURE ACT, 1977 (ACT NO. 51 OF 1977)**

I, Menzi Simelane, National Director of Public Prosecutions, in terms of Section 105A (1)(a) of the Criminal Procedure Act, 1977, hereby authorise HERMAN JACOBUS BROODRYK, SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS to negotiate and to enter into plea and sentence agreements in respect of matters over which he has jurisdiction within the SOUTH GAUTENG HIGH COURT.

This authorisation is subject to the Policy Directives issued in terms of Section 105(A) (11) of the Criminal Procedure Act, 1977, read with Section 179(5)(b) of the Constitution.

GIVEN AT PRETORIA ON THIS THE 22<sup>nd</sup> DAY OF July 2010.

ADV. M. SIMELANE  
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

