

THE STATE

Versus

HLUPEKO MABUZANE

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessors Mr A. B. Mpofu & Mr W. T. Matemba
GWERU 17 MAY 2022

Criminal Trial

M. Ndlovu for the state

B. A. Chifamba for the accused

MOYO J: The accused faces a charge of murder, it being alleged that on the 28th of August 2017 and at or near Village Germany in Mberengwa he unlawfully caused the death of Malambani Makondo by hitting him with a stick all over the body several times. The accused pleaded not guilty to the charge but tendered a limited plea to the charge of culpable homicide. The state counsel accepted the limited plea. The parties drew a statement of agreed facts which was tendered and marked exhibit 1. It reads as follows:

1. Hlupeko Mabuzane (hereinafter called the accused) was aged 48 years at the time of commission of the alleged offence. He resides at Village Germany, Chief Maturuse, Mberengwa in the Midlands Province. He is not employed.
2. Malambeni Makondo (hereinafter referred as deceased) resided at Germany Village, Chief Maturuse, Mberengwa during his lifetime. He was aged 64 years at the time he met his death.
3. On the 24th August 2017 the accused bought a donkey from Gin Zihwa and the deceased witnessed the sale. The donkey was not delivered to the accused person. On the 28th August 2017 the accused person approached the deceased at his homestead making a follow up on the donkey and a misunderstanding arose between the two. The now deceased accused the accused of being greedy and hit him once with a walking stick. This resulted in the accused person dispossessing the deceased of the stick and using it to assault the deceased all over the body.
4. Marise Makondo heard the noise and rushed to the deceased's homestead where he found the accused assaulting the deceased. He managed to refrain the accused from assaulting the deceased further.

5. The deceased was transported to Zvishavane District Hospital where he passed on. Matter was reported to the police leading to the arrest of the accused person.
6. Post mortem examination was conducted on the 1st September 2017 at United Bulawayo Hospitals by Dr S. Pesanai. He concluded that the cause of death was:
 - (a) Asphyxia
 - (b) Broncho aspiration
 - (c) Haemopneumothorax
 - (d) Multiple rib fractures
 - (e) Assault

Post mortem report number 829-828-2017 was compiled thereafter.

7. The accused accepts the evidence of the state witness and contents of the post mortem report. The accused person denies having requisite intention to kill in the form of *dolus directus* or *dolus eventualis*. Rather the accused person acknowledges that through his conduct aforesaid, he was negligent in causing the death of the deceased.
8. The state concedes to the fact that the accused person was negligent in the manner he assaulted the deceased and therefore accepts the accused person's plea of culpable homicide.

Also tendered was the accused's confirmed warned and cautioned statement and the post mortem report. Also tendered was the stick that was allegedly used in the commission of the crime. They were all duly marked. From the evidence before us, the accused person is found not guilty of murder but he is convicted on the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is an elderly first offender. He pleaded guilty to the appropriate charge. The deceased was the aggressor although accused then acted unreasonably thereafter by repeatedly assaulting the deceased. The accused has been waiting for justice for almost 5 years not through a fault of his own. However, a life was unnecessarily lost, in the circumstances, these courts always frown at the loss of life through violence. The weighty mitigation in the circumstances of the commission of the offence in this case is that deceased was the aggressor and that accused has waited for justice a period in

excess of 4 years through no fault of his own. Had he been tried timeously and sentenced he would be towards the end of his sentence. It is for these reasons that accused will be given a custodial sentence that befits the circumstances of this case.

Accordingly, accused is sentenced to 5 years imprisonment with 3 years imprisonment suspended for 5 years on condition, the accused is not within that period convicted of an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, state's legal practitioners
Mkusi, Maupa Legal Practitioners, accused's legal practitioners