

THE STATE
versus
KHETANI KASHA
and
ISAAC KASHA

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 9 June, 5, 20 July, 3 August, 15 & 10 November 2017

Assessors:

1. Mr J. Mushuku
2. Mr E.J. Gweru

Criminal Trial

Ms S. Busvumani, for the State
Mr J. Ruvengo, for the first accused
Mr J. Chipangura, for the second accused

MAWADZE J: Both accused persons who are siblings are facing a charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform Act [*Cap 9:23*]). The charge is that on 13 June 2016 at Chirove Village, Headman Mpapa, Chief Sengwe, Chiredzi both accused persons or one of them struck their father Shadreck Kasha with an axe on back of head and on the throat causing his death.

Accused 1 is an elder brother to accused 2. The now deceased is the biological father of the accused persons. At the material time both accused persons were not staying with the now deceased. They were staying with their sister in a different village. They were called by their father to assist him to ferry sorghum from the fields using an ox drawn scotch cart.

It is not in dispute that on 13 June 2016 both accused persons proceeded to their father's homestead the now deceased and later proceeded to the fields with their father and their nephew Hardlife Makwenyele a 10-year-old to ferry the sorghum. The juvenile was leading the ox drawn scotch cart.

It is common cause that the now deceased and accused 2 Isaac had a misunderstanding on the way to the fields as the now deceased wanted to exchange accused 2 Isaac's beast with some donkeys, a proposition which did not find favour with accused 2 Isaac. Prior to that accused 2 had exchanged his cell phone with the now deceased who had given accused 2 Isaac a goat. During the misunderstanding accused 2 Isaac demanded his cell phone back and the now deceased threw it at accused 2 Isaac.

The State alleges that at the fields accused 1 Khetani attacked the now deceased who was in a bending position putting sorghum into a basket. Accused 1 Khetani is alleged to have picked an axe and struck the now deceased at the back of the head causing him to fall down. Accused 1 is alleged to have delivered another blow on the now deceased's neck and killed him. At that time, it is alleged accused 2 Isaac who was inside the scotch cart disembarked, took the axe and washed the blood on the axe. Both accused persons are alleged to have covered the now deceased's body with grass and that accused 1 hid his blood stained shirt. It is further alleged that accused 1 Khetani threatened the juvenile Hardlife Makwanyele not to reveal the murder to anyone. It is the State's case that upon arrival home both accused persons lied to their mother who is the now deceased's wife that the now deceased had remained at the fields after which they proceeded to where they stayed at their sister's place one Tsitsi Kasha. A search of the deceased was made the next day leading to the discovery of his body at the fields. The accused persons were subsequently arrested after police investigations.

Accused 1 Khetani gave a rather lengthy defence outline. He confirmed that on the day in question the now deceased and accused 2 Isaac initially quarrelled over the issue of the now deceased's desire to exchange accused 2's Isaac's beast with donkeys as they were going to the fields to ferry sorghum with the ox drawn scotch cart. He also said this culminated in accused 2 Isaac demanding the cell phone accused 2 Isaac had exchanged with the now deceased's goat. Accused 1 Khetani said the now deceased gave accused 2 Isaac the cell phone but was angry as the now deceased tried to strike accused 2 Isaac with a machete. Accused 1 said he intervened and prevented this assault.

Accused 1 Khetani said the now deceased took issue with accused 1 Khetani's intervention hence he turned to accused 1 Khetani shouting at accused 1 Khetani until they got to the fields. At the fields accused 1 Khetani said accused 2 Isaac was inside the scotch cart, while the young boy Hardlife was in front of the spanned oxen. Deceased and accused 1

Khetani were the ones loading sorghum into the scotch car using baskets and that the now deceased during that stage continued to shout at accused 1 Khetani. He said the now deceased tried to strike accused 1 Khetani with a machete but accused 1 Khetani dodged, disarmed the now deceased of the machete and threw it away. Accused 1 Khetani said the now deceased then picked an axe and tried to strike accused 1 Khetani. Accused 1 Khetani said he held the axe and managed to disarm the now deceased. Thereafter accused 1 Khetani said he used the same axe to strike the now deceased firstly on the head. Accused 1 Khetani said he further delivered two blows with the axe as the now deceased was on the ground after which he realised the now deceased had died. In a state of panic accused 1 Khetani said he covered the now deceased's body with some harvested sorghum after which they proceeded home. Accused 1 Khetani said upon arrival home he lied to their mother that the now deceased had remained at the fields and would follow later. The next day accused 1 Khetani said he still misled their mother in the search for the now deceased until they found his body at the fields.

It is accused 1 Khetani's defence is that he acted in self-defence when he killed the now deceased with an axe as the now deceased was the aggressor. Thereafter accused 1 Khetani said he panicked and tried to conceal what he had done or happened. In conclusion accused 1 Khetani offered a plea of guilty to the charge of culpable homicide on the basis of self-defence.

Accused 2 Isaac in his defence outline denied having any hand in the now deceased's demise. While accused 2 Isaac confirmed quarrelling with the now deceased firstly over the issue of exchanging accused 2 Isaac's beast with donkeys and later over the cell phone he had exchanged with the now deceased's goat he denied assaulting the now deceased. Accused 2 Isaac said even after the now deceased handed over the cell phone to accused 2 Isaac the now deceased was still angry and continued to shout. In the process he said the now deceased tried to hit accused 2 Isaac with a machete but accused 1 Khetani intervened which caused the now deceased to turn to accused 1 Khetani. He said the now deceased was now shouting at accused 1 Khetani as they were at the fields and tried to hit accused 1 Khetani with a machete but accused 1 Khetani dodged, disarmed the now deceased and threw away the machete. As they were loading sorghum accused 2 Isaac said the now deceased picked an axe intending to strike accused 1 Khetani. The now deceased and Khetani wrestled over the axe until accused 1 Khetani disarmed the now deceased. Accused 2 Isaac said thereafter accused 1 Khetani struck the now deceased with the axe on the head causing the now deceased to fall down. Accused 2 Isaac who was in the scotch cart said he jumped off the scotch cart but accused 1

Khetani had delivered two further blows as the now deceased was on the ground killing the now deceased instantly. Accused 2 Isaac said it is accused 1 Khetani who covered the now deceased's body with sorghum after which they went home. At home accused 2 Isaac said accused 1 Khetani instructed them to lie that the now deceased had remained at the fields and would follow later. Accused 2 Isaac confirmed that the now deceased's body was found the next day. Accused 2 Isaac also alleged that accused 1 Khetani acted on self-defence. Further accused 2 Isaac said since he was young he also went along with whatever his elder brother accused 1 Khetani said or advised him to do.

The State led evidence from Hardlife Makwanyele, and deceased's wife Shaleteni Zaveni. The evidence of D/Sgt Tapiwa Maziti and Doctor A. Dube was admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*].

Both accused 1 Khetani and accused 2 Isaac gave evidence and did not call any witnesses.

The State in support of its case produced 4 exhibits which are;

- Exhibit 1 – being accused 1 Khetani's confirmed warned and cautioned statement,
- Exhibit 2 – is accused 2 Isaac's confirmed warned and cautioned statement,
- Exhibit 3 – is the post mortem report in respect of the now deceased and
- Exhibit 4 - is the axe used in the attack the now deceased

We noted that that the axe as per certificate of weight exhibit 4(b) weighs 1.43 kg. Its handle is 63 cm long and cutting blade is 13 cm with a width of 9 cm. Needless to say that an axe is indeed a lethal weapon.

As per the post mortem report Exhibit 3 the now deceased had a neck laceration described as a deep cut resulting in decapitation. His atlas and axial bones were exposed and separated. The clavicle or collar bone was exposed. The doctor was of the view that the injury was inflicted with a very sharp instrument. The cause of death is stated as decapitation or simply that the now deceased was beheaded. This is the same evidence given by Dr A. Dube based at Chiredzi District Hospital who examined the remains of the now deceased and compiled the post mortem Exhibit 3. The observations and findings by the doctor as per the post mortem report Exhibit 3 are not in issue.

It is therefore our finding that the now deceased was beheaded with an axe Exhibit 4. Further, severe force was clearly used to inflict such fatal injuries and it is very unlikely that such injuries would be inflicted to simply fend off an attack in self-defence.

The evidence of D/Sgt Tapiwa Maziti the Investigating Officer is that he recorded Exhibit 1 and Exhibit 2 which are accused persons' confirmed warned and cautioned statements. He also recovered the axe Exhibit 4 and accused 1 Khetani's shirt which accused 1 Khetani had buried in a field near deceased's body.

Although Shaletani Zaveni the now deceased's wife and accused persons' mother gave evidence, her evidence was not challenged. She told the court that she had 4 children with the now deceased who include accused 1 Khetani, accused 2 Isaac and two other girls. She confirmed that at the material time accused persons were not staying with their parents but their sister who had been married in another village.

Shaletani Zaveni said the relations between the now deceased and accused persons especially accused 1 Khetani were not good. This explains why she said accused persons were staying with their sister. She apparently blamed the now deceased for the bad relations saying he did not want especially accused 1 Khetani to stay at home as the now deceased always insisted that since accused 1 Khetani was emancipated he should fend for himself. Instead she said the now deceased was very close to accused 2 Isaac who even had beasts of his own at his tender age. As a result, she said the now deceased always insisted that accused 1 Khetani should look for a job and build his own home.

Shaletani Zaveni remained at home on the day in question when accused persons, the now deceased and Hardlife Makwanyele went to the fields to ferry sorghum. She confirmed that the now deceased did not return home. Upon her inquiry accused 1 Khetani told her that the now deceased had remained at the fields and would follow later. Both accused 2 Isaac and Hardlife Makwanyele did not respond although she said accused 2 Isaac seemed to want to talk to her using sign language which she did not comprehend. She said the now deceased did not return home that day hence the next day she followed accused persons at their sister's place and they all went to the fields to look for the now deceased. Her evidence is that accused 1 Khetani led the way and he apparently was the one who discovered the now deceased's body which was covered with grass near a heap of sorghum. The now deceased's body was clearly concealed. In view of the now deceased's state she said she simply collapsed and fainted.

As already said the evidence of Shaletani Zaveni is not contested and is peripheral. She indeed cast some light on the relations between the now deceased and accused persons. All we noted is that she was protective of accused 2 Isaac and before she left the witness stand she implored the court to free accused 2 Isaac whom she said was very young and blamed accused 1 Khetani for all what happened. Her stance is understandable as she realises she may now lose both her sons.

The key witness in this matter is the juvenile Hardlife Makwanyele (Hardlife).

Hardlife is 10 years old and he was declared a vulnerable witness. As per the extra ordinary Government Gazette dated 14 July 2017 this court heard his evidence at Masvingo Magistrates Court using the close circuit television after he declined to testify even in camera facing accused persons. This was by consent.

At the material time Hardlife was residing with the now deceased and Shaletani Zaveni and is born to the now deceased and Shaletani Zaveni's daughter.

Hardlife said on that day he was asked to lead the ox drawn scotch cart when the now deceased and accused persons proceeded to the fields to ferry sorghum. Accused persons had come from Bishoni area where they were staying with their sister.

Along the way he said a quarrel ensued between accused 1 Isaac and the now deceased who wanted to exchange accused 2 Isaac's beast with donkeys but accused 2 Isaac refused. He said the now deceased started to shout at accused persons as they proceeded to the fields but the accused person did not respond.

While at the fields he said he was standing in front of the spanned ox drawn scotch cart, accused 2 Isaac was inside the scotch cart receiving sorghum from both accused 1 Khetani and the now deceased who were using baskets to load the sorghum into the scotch cart. During that process he said the now deceased was using a machete to cut sorghum stalks used to support sorghum loaded into the scotch cart.

Hardlife then explained how accused 1 Khetani attacked the now deceased. He said as accused 2 Isaac was inside the scotch cart accused 1 Khetani suddenly attacked the now deceased with an axe which Hardlife did not see its origin. He said accused 1 Khetani delivered two blows to the now deceased, the first at the back of the head and the second on the neck. In the process he said the now deceased cried out in pain and accused 2 Isaac did not alight from the scotch cart or intervene in any manner. Hardlife said the two blows were delivered by accused 1 Khetani when the now deceased was in a bending position putting sorghum into the basket. He said when the first blow was delivered the now deceased tried to

defend himself but was immediately struck on the neck with the second blow. Hardlife said when accused 1 Khetani delivered further blows the now deceased was lying down and he was now blocked by the heap of sorghum hence he did not see where these blows landed. All he could see was accused 1 Khetani lifting up the axe and the thudding sound of the axe. Thereafter he said accused 1 Khetani took some grass and covered the now deceased's body after which he used water to wash some blood on the axe and on his forehead.

Hardlife said hitherto he had not seen the axe accused 1 Khetani had used. He disputed that on the way to the fields or at any stage the now deceased tried to attack either of the accused persons in any manner either with a machete or an axe. All he said was that the now deceased was initially quarrelling with accused 2 Isaac and later on turned to accused 1 Khetani saying accused 1 Khetani was a fool who had no wife but accused 1 Khetani retorted that he could not marry as the now deceased had bewitched him.

Hardlife said on their way back home accused 1 Khetani hid the axe and machete covering them with leaves. He said accused 1 Khetani then threatened him that he should not reveal what accused 1 Khetani had done to the now deceased saying if Hardlife revealed that he would kill him in the same manner accused 1 Khetani had killed the now deceased. He said when they got home accused 1 Khetani lied to Hardlife's grandmother Shaletani Zareni that the now deceased had remained at the fields and would follow. In fear Hardlife did not reveal what had happened.

Hardlife said after accused 1 Khetani had killed the now deceased he even searched the now deceased's pockets and took a cell phone pouch which had remained with the now deceased at time the now deceased had surrendered a cell phone to accused 2 Isaac. Accused 1 Khetani then gave the pouch to accused 2 Isaac.

Hardlife denied that the now deceased tried to attack any of the accused persons in any manner. He said all what the now deceased did was to shout at accused persons and threatening that he could cause the arrest of the accused persons. He denied that accused 2 Isaac tried to restrain accused 1 Khetani and that at no point did accused 1 Khetani restrain the now deceased as the now deceased never threatened to attack accused 2 Isaac. He said the attack by accused 1 Khetani on now deceased happened when the now deceased was no longer shouting but quietly loading sorghum into a basket.

Hardlife said while accused 2 Isaac did not take part in the attack of the now deceased the only role he played was to fetch grass and give accused 1 Khetani who was using the grass to cover the now deceased's body.

During cross examination especially by *Mr Ruvengo* for accused 1 Khetani, Hardlife stuck to his story. The colour of his evidence never changed. He remained steadfast on what he said he witnessed. *Mr Chipangura* for accused 2 Isaac had virtually nothing to challenge Hardlife on.

As we have already said Hardlife is the key and only eye state witness. Despite his tender age he clearly narrated what he said happened leading to the now deceased's demise. We find no motive for this 10-year-old boy to have falsified his evidence. He clearly exhibited admirable memory of the tragic event. Further, he did not seek to exaggerate his evidence. To his credit, he revealed that the now deceased shouted at the accused persons despite that both accused persons did not shout back. To that extent he was not a biased witness. It is important to also note that Hardlife's evidence to a great extent is materially corroborated by accused persons either in their confirmed warned and cautioned statements, their defence outlines or evidence in court.

In our view what is material about Hardlife's evidence is that the now deceased did not try at any stage to physically attack any of the accused persons. All he did was to insult the accused persons.

This tragic incident occurred in broad day light. There is therefore no reason as to why Hardlife would fail to see what happened in his presence. To his credit Hardlife was able to explain the role played by each of the accused person with accused 1 Khetani taking a dominant role. He implicates accused 2 Isaac in that he participated in gathering the grass used to conceal the now deceased's body. This is precisely why we dismissed accused 2 Isaac's application for discharge at the close of the State case as not only premature but misplaced. The threats accused 1 Khetani made to Hardlife are not disputed even by accused 1 Khetani himself. All in all, Hardlife's evidence rebuts accused 1 Khetani's defence of self-defence which accused 2 Isaac also tried to corroborate. We assess Hardlife as an impeccable witness whose evidence was not only free flowing but truthful.

We now turn to the evidence of the accused persons.

Accused 1 Khetani

We have already alluded to accused 1 Khetani's defence outline in which accused 1 Khetani alleges that he acted in self-defence and offered a limited plea to the charge of culpable homicide.

Accused 1 Khetani's confirmed warned and cautioned statement is completely at variance with his defence outline. In that statement accused 1 Khetani disowns the axe

Exhibit 4 which he admits in his defence that he brought it to the fields. Most importantly accused 1 Khetani denies having harmed the now deceased in any manner. In fact, he said in that statement that he had left the now deceased alive at the fields and that he did not know who had fatally injured the now deceased or that the now deceased had died. Throughout his evidence accused 1 Khetani was unable to reconcile his defence outline with his warned and cautioned statement or to proffer any reason for misleading the police in his statement other than to say he had panicked. This cannot possibly be true as his warned and cautioned statement is exculpatory.

When accused 1 Khetani testified in court he now had a third version of what he said happened. Accused 1 Khetani admitted that he had indeed brought the axe Exhibit 4 and hid it in a heap of sorghum. This in our view suggests an ulterior motive or a devious mind. It also confirmed Hardlife's evidence that Hardlife only saw the axe Exhibit 4 at the time accused 1 Khetani used it to attack the now deceased.

Accused 1 Khetani gave another different version on how the now deceased was fatally injured. He said the now deceased turned against accused 1 Khetani when accused 1 Khetani intervened and prevented the now deceased from striking accused 2 Isaac with a machete by snatching the machete, and putting it in a scotch cart. He said at the fields the now deceased tried to strike accused 1 Khetani with the said machete but he failed as accused 1 Khetani took it and threw it away. Accused 1 Khetani said he thought all was now over as he and now deceased continued to load sorghum into the scotch cart quietly. Suddenly he said the now deceased picked an axe Exhibit 4 and tried to strike him. Accused 1 Khetani said he held the axe and the two of them wrestled over the axe. He said during that tussle the now deceased was erroneously cut by the axe on the neck. Unperturbed he said the now deceased continued to advance towards accused 1 Khetani but accused 1 Khetani managed to take possession of the axe. Accused 1 Khetani said he then tried to move away but the now deceased held his leg. In a bid to free himself accused 1 Khetani said he used the axe to try and push the now deceased away but in that process he erroneously injured the now deceased for the second time on the neck with the axe. He said accused 2 Isaac then jumped from the scotch cart but by then the now deceased had died. Accused 1 Khetani said he erroneously inflicted two fatal injuries on the now deceased with the axe, one in front of the neck and the other on the side of the neck causing the now deceased to bleed profusely. He said he then covered the now deceased body with grass and hid the axe Exhibit 4. Accused 1 Khetani said he then told both accused 2 Isaac and Hardlife not to reveal what had befallen the now

deceased for fear of reprisals from their relatives. He said he intended to reveal the now deceased's death to their uncle who stayed very far away from their area.

What accused 1 Khetani said in his evidence is that he fatally injured the now deceased not in self-defence but as a result of a mistake. This is materially different from both his confirmed warned and cautioned statement and his defence outline.

Accused 1 Khetani said the now deceased was only mistakenly struck twice on the neck and not thrice as per his defence outline. In a bid to extricate himself from the contradiction emanating from his confirmed warned and cautioned statement, the defence outline and evidence in court accused 1 Khetani said police forced him to say what he said in his statement. He was however unable to explain his defence outline. Accused 1 Khetani insisted that accused 2 Isaac did not assist him in covering the now deceased's body with grass.

In our assessment accused 1 Khetani is simply an accomplished liar. In his warned and cautioned statement, he denied committing the offence or knowing how the now deceased was injured. It is illogical that the police would force him to give an exculpatory statement. In his defence outline he alleged that he acted in self-defence giving a very elaborate account of what he said happened. In fact, in his defence outline he said he took pre-emptive action by striking the now deceased thrice with the axe. In his evidence he was heard to say he struck the now deceased accidentally. All these three different versions cannot possibly be true. The simple explanation is that accused 1 Khetani is lying. No wonder why *Mr Ruvengo* his counsel in the written closing submissions found it difficult to persist with the limited plea on a charge of culpable homicide but conceded that indeed accused 1 Khetani is guilty of murder although he suggested that he lacked actual intent but constructive intent.

In our assessment accused 1 Khetani had not panicked at all as he alleges. There was clearly a method in his madness. He had the presence of mind to cover the now deceased's body with grass to conceal it. He threatened Hardlife not to reveal the heinous act. He proceeded to hide the axe and his blood stained shirt. Accused 1 Khetani even searched the now deceased's pockets for accused 2's pouch. He lied to his mother that the now deceased had remained at the fields covering sorghum.

The intention of accused 1 Khetani is clear as per Hardlife's evidence. He attacked the now deceased with an axe three times on the neck and severed the neck. Indeed, he intended

to cause the now deceased's death. Accused 1 can therefore not escape liability on a charge of murder with actual intent.

Accused 2 Isaac

From the evidence led accused 2 Isaac did not attack the now deceased in any manner. All what is before us is that after accused 1 Khetani had fatally attacked the now deceased accused 2 Isaac assisted him in concealing the body with grass. Thereafter accused 2 connived with accused 1 Khetani not to reveal the murder to their mother.

We are inclined to accept Hardlife's evidence as regards accused 2 Isaac's role because accused 2 Isaac was not a truthful witness. We say so because in his confirmed warned and cautioned statement accused 2 Isaac was clear how accused 1 Khetani attacked the now deceased but in his defence outline he vacillated and adopted accused 1 Khetani's version of acting in self-defence. In his evidence accused 2 Isaac changed and said he did not see how the now deceased was fatally injured. To his credit however he admitted giving accused 1 Khetani the grass to conceal the body.

In terms of s 205 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] an accessory is defined as;

“in relation to a crime, means a person who renders assistance to the actual perpetrator of crime, or to any accomplice of the actual perpetrator after it had been committed.”

The criminal liability of accused 2 Isaac is premised on s 206 of the said Act which provides as follows;

“206 Assistance after commission of crime

Any person, other than an actual perpetrator of a crime, who -

(a) knowing that an actual perpetrator has committed a crime; or

(b) realising that there is a real risk or possibility that an actual perpetrator has committed a crime; renders to the actual perpetrator or to any accomplice of the actual perpetrator any assistance which enables the actual perpetrator or accomplice to conceal the crime or to evade justice or which in any other way associates the person rendering the assistance

with the crime after it has been committed, shall be guilty of being an accessory to the crime concerned.” (emphasis is my own)

Accused 2 Isaac knew that accused 1 Khetani had committed the offence of murder and he gave accused 1 Khetani grass and assisted him in concealing the now deceased’s body thus becoming an accessory to the crime of murder.

Section 208 of the Criminal Law (Codification and Reform) Act [Cap 9:23] outlines the types of assistance to which accessory liability applies. While the provision is not exhaustive it includes *inter alia* concealing evidence of commission of the crime. See s 208(c) of the Code [Cape 9:23]. Indeed, by covering the now deceased’s body with grass accused 2 Isaac was concealing evidence of the crime accused 1 Khetani had committed. To some extent accused 2 Isaac as defined in s 208 (d) of the Criminal Law (Codification and Reform) Act [Cap 9;23] gave false information to the police concerning circumstances of the crime committed by accused 1 Khetani as he lied that accused 1 Khetani had acted in self-defence.

In our view accused 2 Isaac is guilt as an accessory to the crime of murder as is provided for in s 206(a) of the Criminal Law (Codification and Reform) Act [Cap 9:23].

VERDICT

Accused 1 Khetani: guilty of contravening s 47(1)(a) of the Criminal Law (Codification and Reform) Act [Cap 9:23] – murder with actual intent.

Accused 2 Isaac: guilty of contravening s 206(a) of the Criminal Law (Codification and Reform) Act [Cap 9:23] – an accessory to the crime of murder.

SENTENCE

The fact that we have entered different verdicts for both of you means that there is an objective basis to treat you differently in respect of sentence. Further to that accused 2 was a juvenile at the time of the commission of the offence.

In assessing the appropriate sentence, we have considered your personal circumstances as outlined by counsel. You are both first offenders hence you deserve to be treated with some measure of leniency. Both of you have suffered from pre-trial incarceration for a period of almost 1 ½ years. You are both single with no family responsibilities. You both are rural people, unemployed with no savings nor assets save for accused 2 who has some beasts whose number was not disclosed.

In respect of accused 2 there are indeed mitigatory factors surrounding the commission of the offence. Accused 2 has only been convicted as an accessory to the crime of murder. Accused 2 did not physically attack the now deceased in any manner. His role was simply peripheral as he only took some grass which he gave accused 2 to use to cover or conceal deceased's body. This may well have been as a result of immaturity, youthfulness or fear of the elder brother accused 1. To that extent therefore accused 2 deserve a great measure of leniency.

In respect of accused 1 we are not persuaded by the submissions that he is a youthful offender at the age of 26 years when he committed the offence let alone at the age of 27 years. We are equally not persuaded by the submission that accused 1's level of education which is grade 7 is a mitigatory factor.

The conduct of accused 1 is abhorrent and shocking. Words fail us to describe accused 1's conduct. One cannot find superlatives which befit that behaviour. To put it mildly accused 1 was simply callous, cruel and unfeeling in the manner he killed the now deceased. To make matters worse this was a premeditated cold blood murder as accused 1 had before the offence took the axe to the fields and hid it. Accused 1 stealthily attacked the now deceased in a very vicious manner. The murder was gruesome as accused 1 virtually severed the now deceased's neck with an axe. Accused 1 delivered more than one blow on his hapless father to ensure that he snuffed the life out of him. Accused 1's conscience was not even pricked by having committed such a heinous crime. Instead he had the presence of mind to conceal the body with grass, destroy evidence by washing blood on the axe and his forehead and also concealing the axe and his blood stained shirt. To cap it all accused 1 threatened those who were with him not to reveal the murder and went home pretending to his mother that all was well. Even the next day accused 1 pretended to be concerned by assisting his mother to look for the now deceased. This level of callousness is shocking.

Accused 1 was never contrite at all. He lied to the police and continued to mislead the court without any sense of remorse upto that last minute of the trial.

The mind boggles as to why accused 1 even attacked the now deceased in the manner he did. We really wonder as to what has gone wrong with the sense of morality of some of our young people. They do not value or respect life. They readily resort to extreme violence using lethal weapons like axes or knives even at the slightest provocation or none. *In casu* we wonder what really motivated accused 1 to behave as he did. Maybe it is simply inherent wickedness.

Cases of murder are very prevalent in Masvingo Province. The courts should send correct signals that the sanctity of human life should be respected at all costs. Human blood is sacred and no one has the right to take the life of another.

In our view, accused 1 does not deserve the sympathy of the court. He brutally killed his biological father. In the process he subjected a 10-year-old boy who witnessed this incident to psychological trauma. Accused 1 deserves to be removed from society.

In our view the following sentence meets the justice of the case;
Accused 1 is sentenced to imprisonment for life
Accused 2 is warned, cautioned and discharged.

National Prosecuting Authority, counsel for the State

Ruvengo, Maboke & Company, pro deo counsel for accused 1

Pundu and Company, pro deo counsel for accused 2