

THE STATE

Versus

MUZILAWEMPI HLUPAI

And

TAHWINA MVUTI

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J with Assessors Mr Matemba & Mrs Baye
GWERU CIRCUIT COURT 24 MAY 2017

Criminal Trial

Mupariwa for the State
T. Kwamwemba for 1st accused
C. Makwara for 2nd accused

MAKONESE J: The accused persons have been arraigned in this court on a charge of murder. Both accused persons deny the allegations and tender limited pleas of guilty with respect to culpable homicide. The charges against the accused as reflected in the charge sheet are that on 3 May 2010, the accused persons did both or one of them cause the death of Nelson Sithole a male adult in his lifetime by striking him with sticks on the chest and head. The state has accepted the limited plea and has tendered the statement of agreed facts (exhibit B). The brief facts are that both accused persons resided at village Bango, Chief Nemaungwe, Gokwe at the relevant time. The deceased Nelson Sithole resided at village Mutendi, Chief Sani, Gokwe. He was aged 31 years. On the 3 May 2010 the accused persons were at a beer drink at Pharoah Manyonde homestead. They were in the company of Norman Maparo and Tapuwa Manyonde. The deceased was also present at this homestead. The deceased then left and went to Thabiso Mangena's homestead in the same village. Norman Maparo informed the accused persons that deceased was having an affair with his sister whom he visited during the night. The accused persons and Norman Maparo hatched a plan to follow the deceased and then assault him as a means of inducing him to stop the nightly visits to Maparo's sister. Accused persons armed themselves with sticks in furtherance of their plan and pursued the deceased. The accused

persons found the deceased chatting with Thabiso Mangena. Norman Maparo remained outside the gate of the homestead. The accused persons then assaulted the deceased with sticks on the head, chest and all over the body. The accused persons pursued the deceased who had started running away and when they caught up with him continued with their assault until deceased fell to the ground unconscious. The deceased had been injured badly. He was ferried to Gokwe Hospital and later transferred to Gweru General Hospital for further treatment. The accused died upon arrival at Gweru Hospital as a result of injuries sustained during the assault. Dr I. Jekonya compiled a post mortem report (exhibit 2) which reveals that the proximate cause of death was:

- (a) Brain haemorrhage
- (b) Skull fracture
- (c) Head injury

The state tendered into evidence exhibit (3), (4) and (5) being the sticks that were used during the assault. The sticks weighed between 0.19 kilograms and 0.5kg.

On the evidence placed before the court we are indeed satisfied that the accused are responsible for negligently causing the death of the deceased. The accused are found not guilty on the charge of murder, but convicted of culpable homicide.

Sentence

The accused have been convicted of a very serious offence which would ordinarily attract a prison term. The accused persons are 1st offenders who pleaded guilty. They have expressed their remorse and contrition. They are both family men with the usual responsibilities. The court takes into account the mitigating factors which have been articulated by the accused's defence counsel. This matter has taken an inordinate period to finalise. A period close to 7 years is undoubtedly in violation of the accused's rights to a fair and speedy trial as enshrined in the Constitution. The accused persons spent 3 months in prison before being released on bail and an additional one month and one week from the time of their indictment to their trial. The courts

are alive to the fact that the sentences imposed where life is lost must indicate that the sanctity of human life is guarded jealously. In this matter the accused's' moral blameworthiness is on the high side. There was no rationality in the assault on the deceased. The accused persons bore no grudge with the deceased. They fought for a cause which was not theirs. They acted foolishly and recklessly. The assault on the deceased achieved no purpose and was totally uncalled for. The deceased was defenceless and even when he fled the scene the accused persons pursued him with courage and determination. They assaulted him with sticks upon the head leading to serious injuries. The accused persons only refrained from further assaulting the deceased when they realised that he was unconscious. No human being must treat another with such callousness and cruelty. Had this matter been tried within a reasonable time, a prison sentence would have been inevitable. The court is however swayed in favour of a non-custodial sentence because of the time it has taken to finalise this case.

In the result, the following is considered to be an appropriate sentence.

“Each accused to pay a fine of \$100, in default of payment 12 months imprisonment, in addition 5 years imprisonment wholly suspended for 5 years on condition accused is not within that period convicted of an offence involving violence and for which he is sentenced to a term of imprisonment without the option of a fine.”

The Prosecutor General's Office, state's legal practitioners
Gundu & Dube, accused one's legal practitioners
Mutatu & Partners, accused two's legal practitioners