

THE STATE

Versus

CLIFFORD SIBANDA

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr J. Sobantu & Mr E. Mashingaidze
BULAWAYO 8 MARCH & 25 MARCH 2022

Criminal Trial

B. Gundani for the state
N. Mpofu for 1st accused

MOYO J: The accused person faces a charge of murder it being alleged that on the 28th of December 2020, at Garikai intersection, in Cowdray Park, Bulawayo, the accused stabbed the deceased Blessing Taruwona with a flick knife on the abdomen, assaulted him several times on the head with a knobkerrie and a stone on the ribs and thereby causing the death of Blessing Taruwona. The accused pleaded not guilty.

The following were tendered into the court record as exhibits and they were all duly marked:

- The state summary
- The defence outline
- Affidavit of Constable Ncube
- The post mortem report
- The accused's confirmed warned and cautioned statement

- The flick knife

The evidence of:

Isaac Nyawiyanga,

Sheron Xolisani Sithole,

Detective Sergeant Mehluli Sibanda'

Detective Otumell Mudya Zvavanhu,

Dr Juana Rodriguez Grigori,

was admitted into the court record as it appears in the state summary in accordance with the law.

The state led *viva voce* evidence from Justice Mukombero who told the court that on the fateful day they were standing when 3 people including accused came and started harassing him and searching him. They then assaulted the deceased, they started assaulting the deceased after he had asked them why they were assaulting his young brother, one Toro. He said that the deceased was not armed. He said when the accused and his crew were taking out weapons deceased was fleeing towards the garage, they then gave chase and started assaulting him. Under cross-examination he was asked how the fight had started he then said, the accused and his colleagues harassed Toro, the deceased intervened, then they ganged up against him. Those were the material aspects of this witness's testimony.

The state also called Talton Jere who told the court that he was with the deceased and the 1st state witness. He found the 1st state witness being searched and he intervened by telling accused that the way he was asking for money was not proper. Accused then knocked this witness on the head and he cried. Deceased then asked what was happening and accused answered in a harsh tone. Three people then ganged up and assaulted deceased, accused was one of them. Deceased requested them to put their weapons down but they refused. Deceased was then stabbed in the abdomen. This witness then left for his home and changed his clothes so that he would not be recognized. He came back to find deceased now surrounded by people and now bleeding on the head. He saw a knobkerrie and a knife amongst the weapons that accused and his crew had. Those were the material aspects of this witness's testimony. The state then closed its case.

The post mortem report gives the cause of death as subarchnoid haemorrhage, head trauma.

Accused gave evidence for the defence. He said that on the fateful day he went to Garikayi intersection and saw the 1st state witness. He asked for \$5. He said the 2nd state witness then came and he pushed him away. The deceased came with another person holding beer bottles and drinking. He said the person accompanying deceased assaulted him with a beer bottle. Another one followed

and they started kicking accused. He fell down then they fled in different directions. He then followed the deceased and they had a fist fight. He then got a knife from Bizwelihle Ncube and that he wanted to stab the deceased in the stomach but he jumped backwards. Deceased fled, they followed him. Fisani hit him with a stone and he fell down. Accused then took a log and hit him as he lay down. The deceased had fallen face down and they left him there. He said he hit deceased on the head and on the knee. Under cross-examination he confirmed that deceased had fled and was no longer a threat to him. He admitted that he acted in common purpose with Fisani who struck deceased with a stone. He said the log had a diameter of about 5cm and was about one and half meters long. He admitted that he hit the deceased when he was already lying down. He confirmed that at all times deceased never used a weapon on him. Those were the material aspects of accused's testimony. The defence then closed its case.

What then is accused guilty of?

From the facts it is clear that accused and his colleagues hit deceased with a stone, a log and at some stage stabbed him with a knife. At the final stage of the assault on the deceased, deceased had already fled, accused followed him and hit him with a log while deceased already lay down injured. In doing this accused was reckless in that in hitting a man on the head with a log the size he

described, clearly there was a real possibility of death but he did that nonetheless. The accused therefore had the requisite legal intention to commit murder in the circumstances.

It is for these reasons that the accused will be found guilty of murder with constructive intent.

Sentence

The accused is convicted of murder. He is a first offender. He is youthful in a way as he is aged 26 and was 24 at the material time. He is a breadwinner. He has spent more than a year in remand prison. However, against the accused are the facts that he started an unnecessary brawl and persisted in violent behavior even after the deceased had fled and had been injured. These courts frown at the loss of life through violence. A sentence that speaks to the court's displeasure at the loss of lives through violence should surely be meted out. Ordinarily the accused would have been sentenced to 15 years imprisonment but because he has already spent 1 year in prison, this court will discount that one year.

It is for these reasons that the accused shall be sentenced to 14 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Liberty Mcijo & Associates, 1st accused's legal practitioners