

**THE STATE**

**Versus**

**LIMUKANI DLAMINI**

IN THE HIGH COURT OF ZIMBABWE  
KABASA J with Assessors Mr G Maphosa and Mr J Ndubiwa  
HWANGE 26 JUNE 2023

**Criminal Trial**

*Mrs M Cheda*, for the state  
*Ms C Manyeza*, for the accused

**KABASA J:** You appear before us on a charge of murder as defined in section 47 of the Criminal Law Codification and Reform Act, Chapter 9:23. You pleaded not guilty to murder but tendered a plea of guilty to culpable homicide.

The state accepted the limited plea. Following such acceptance a statement of agreed facts was produced and marked Annexure A. The facts are to the effect that on 25 July 2022 at around 1800 hours you and the deceased were at Ellen Msebele's homestead. You had a misunderstanding which ensued after the deceased accused you of drinking his cane spirit without his permission. Ellen quelled the misunderstanding.

The deceased however continued with his accusations and slapped you. You fled but he pursued you shouting. You hid and proceeded home thinking that the deceased had left but as you got to your homestead the deceased emerged armed with an axe with which he proceeded to assault you on the leg. You then picked up a log and you assaulted him on the head twice

The log was produced and marked Exhibit 2, it measures 109 cm in length, 4,5 cm in diameter and 0, 500 kg in weight.

The deceased sustained a deep cut on the head and bled profusely. His condition deteriorated resulting in him being ferried to hospital on 28 July 2022. He succumbed to his injuries on 3<sup>rd</sup> August 2022.

After his death, a pathologist who examined his body gave the cause of death as

cerebral edema

encephalic contusion

cranial trauma

The post mortem report was produced and marked exhibit 1.

From these facts it was not in dispute you caused the deceased's death. The issue is whether you desired such death and brought it about or you realised the real risk or possibility that your conduct would result in death but continued nonetheless.

Section 254 of the Criminal Law Code provides that:-

“If a person accused of murder was defending himself or herself or another person against an unlawful attack when he or she did or omitted to do anything that is an essential element of the crime, he or she shall be guilty of culpable homicide if all the requirements for defence of person specified in section two hundred and fifty-three are satisfied in the case except that the means he or she used to avert the unlawful attack were not reasonable in all the circumstances.”

In your case the attack was unlawful and it had commenced, your conduct may have been informed by the fact that the deceased had an axe and you had already fled from him and was now at your own home. However the deceased had used the back of the axe to hit you on your leg. The fact that the back of the axe was used and the blow aimed at your leg speaks volumes of the fact that the deceased did not mean to inflict serious harm on you.

You however used a log, of the dimensions shown here and you used it on the head, not once but twice. The head is undoubtedly a delicate part of the body and you chose to hit the deceased with a weapon which by its appearance would have caused considerable harm even on any other part of the body.

The means you used were therefore not reasonable in all the circumstances.

The state's acceptance of your plea to the lesser charge of culpable homicide is therefore an appreciation of the facts and the applicable law.

In the result we find you not guilty of murder but guilty of culpable homicide.

### **Sentence**

You are 28 years old and you were 27 at the time the offence was committed. By pleading guilty, albeit to the lesser charge of culpable homicide, you showed contrition and saved time.

You are a divorcee with a 9 year old child. You also look after your aged and blind grandmother.

You had fled from the deceased but he followed you. The deceased can be said to have been the author of his own demise.

Aggravating is the fact that a life was lost. The deceased was 63 years old, he had lived up to this ripe old age and you snuffed out his life at such a ripe old age.

Violence does not solve anything and the courts have time without number discouraged the use of violence as it results in tragic circumstances.

That said however the circumstances of this case clearly call for leniency. The deceased's death is likely to haunt you for the rest of your life. Society can also be harsh and label you a murderer a tag which carries a heavy burden on you.

In *R v Richards* 2001 (1) ZLR 129 (S) the Supreme Court had this to say:-

“The accused is not being punished for his evil intent, for he had no intent at all, but for being careless. The function of punishment in this situation is not so much to punish wrong doing as to inculcate caution in the citizenry and encourage attentiveness to the safety of others. The function of the crime of culpable homicide is as much educative as it is corrective.”

That said, it is not so much the imprisonment that comes with the four corners of a prison cell but the psychological imprisonment itself which far outweighs the physical confinement which we are focusing on.

The term of imprisonment, whilst unavoidable, need not be too harsh.

You are accordingly sentenced to 4 years imprisonment of which 2 years is suspended for 5 years on condition you do not within that period commit an offence of which assault on the person of another is an element and for which upon conviction you are sentenced to a term of imprisonment without the option of a fine.

Effective: 2 years imprisonment

*National Prosecuting Authority, state's legal practitioners*  
*Mhaka Attorneys, Accused's legal practitioners*