

THE STATE
Versus
TALENT NEVANJI

HIGH COURT OF ZIMBABWE
BACHI MZAWAZI J
CHINHOYI, 30 January to 26 February 2024

Criminal Review

BACHI MZAWAZI J: This is an automatic review matter brought in terms of s58 of the Magistrates Court Act, [*Chapter 7:10*] at the behest of the scrutinizing magistrate. There has been an apparent conflict in the interpretation of the concept of victim impact statement between the trial Magistrate and the scrutinizing magistrate. Both parties strongly maintain that their position is the most accurate even after exchanging notes. In view of those divergent views a brief over view on the concept is necessary.

The new sentencing guidelines S.I 146/23 ushered a new principle for the recording of a victim impact statement at the pre-sentencing stage as a mandatory pre-requisite to sentencing any accused person in a criminal case across the jurisdictional divides of all courts. Notably, this is not a new phenomenon. It is of foreign origin borrowed from other jurisdictions, in particular Western. It entails giving the victims of a criminal offence a voice and an opportunity to address the court assuming a role different from that of a mere complainant and witness in their own case.

Before delving deeper into the nitty gritty of the doctrine, a brief narrative of that which has given rise to this judgment is of significance. In the present case, Talent Nevanji was convicted of culpable homicide emanating from a car accident. A passenger he had abode his Honda vehicle died as a result of the accident he caused. He was convicted of

negligent driving on his own plea and sentenced to a fine of USD400.00 and in default of payment six months imprisonment.

On scrutiny what struck the Senior Magistrate is the fact that, the victim impact statement was recorded from a fellow passenger who was abode the same vehicle with the deceased at the time of the accident. From the Regional magistrate's point of view, that was a mis-direction as his construction of the term meant such statement is restricted to the actual person affected by the offence or his kinsmen not a distant individual from the same crime set -up with the deceased. The Senior judicial officer drew the interpretation section of the phrase as provided by the Statutory instrument in issue to the attention of the trial magistrate.

In response, the trial magistrate justified his position by stating that the deceased's co-passenger, in the absence of the deceased himself was the best person better placed to relate to the impact of the accident as he too was a victim of the same accident. Literally, what he went through must have been the same experiences felt by the deceased. Hence, that passenger's statement fitted squarely in the meaning of victim impact statement. It is clear that the trial court gave the term in contention a literal interpretation.

Neither side wanted to give in. A quick glance at the term victim impact statement, literally means a statement on how the victim was impacted or affected by that particular offence. This basically, in the narrow sense, denotes the personal individual experiences of the person directly involved in the offence, the victim. In its broader context the term victim for the purpose of the victim impact statement is multi-dimensional. It incorporates the effect of the crime not only on the actual person physically affected but on the relatives, colleagues, those in the vicinity or proximity of the offence, the community and society at large.

Re-owned scholars classify the victims in four categories. The direct or primary victim, that is the one who suffered an attack, an assault, rape, accident and so on. Then, the indirect victim, this includes those close to the primary victim, for instance most applicable in murder cases where the victim is no more.

The third group is that of what is termed secondary victim. This class is composed of witnesses to the crime. Those mentioned as being in the vicinity of the crime scene at the time of the commission of the offence. It also involves those who endured the same trauma and elicited some firsthand experience from the occurrence. However, even the family members can be grouped under this heading. Lastly, there is what is known as the tertiary victims. These are the people, society at large and the community whose lives are also forever changed by the experiences emanating from the commission of the offence. See, *Roberts, Julian V.; Manikis, Marie (2012), "Victim Personal Statements in England and Wales: Latest (and last) trends from the Witness and Victim Experience Survey". Criminology & Criminal Justice. (133):245" Victim Impact Statements" Government of South Australia, 4December 2020. Retrieved 22 August 2023.*

From the above observations, it is clear that both the Regional and the trial Magistrate where to some extent correct in their interpretation of the term victim impact statement. That brings us to what is a victim impact statement?

A **victim impact statement** is a written or oral statement made as part of the judicial legal process, which allows crime victims the opportunity to speak during the sentencing of the convicted person or at subsequent parole hearings. It is in some instances an account, in the victim's own words of the effect of the crime psychologically, financially or emotionally. See, *Payne v. Tennessee* 501 U.S. 808 (1991), Wikipedia, free encyclopaedia, "Victim Impact Statements.

Statutory Instrument 146/23, in the interpretation section, defines victim impact statement as a presentencing statement made by the victim of a crime or other person and presented to the court that details the physical, psychological, social or financial consequences of the offence on the victim or any other person connected to the victim. The key word for the purposes of this case in the above definition is 'consequences.' That is synonymous with aftermath, after effects or results.

This sits well, with a statement from the primary victim narrating and illustrating the economical, emotional, moral, physiological or psychological changes brought upon him or her or as a result of the offence during and after. It is more applicable when the victim is alive and in offences such as rape, robbery amongst others. It also encompasses the indirect category of those with familial ties with the victim who will no longer be available or is incapacitated and in no position to give the statement.

In most jurisdictions the process is meant to assist the victims to ventilate their feelings by re-living the events, in an effort to heal and in the process and find closure. The offender will also be made to feel the emotional stress and or pain from the victim's standpoint. This is some form of restorative justice. This has a bearing on the sentence. The sentencing court will walk through the anguish and pain of the victims. In other jurisdictions, the victims may suggest appropriate punishment. Nevertheless, the ultimate sentence is the domain of the presiding judicial office. See, *Roberts, Julian V.;* *Manikis, Marie (October 2011) Victim Personal Statements (PDF), Justice(Report). University of Oxford, Roberts V. Manikis, Marie (2012).*

Having noted that, contextually, whilst the trial magistrate's interpretation is not far -fetched, the Regional Magistrates' one is the more practical and ideal and in tandem with Statutory Instrument 146/24 especially in cases where the direct victim is dead. In light of the case

beforehand, the trial court was supposed to record statements from the relatives of the deceased accident victim. These are the people who bore the economical, psychological and emotional brunt of the loss of their loved one.

Since, the deed has already been done. The accused has already been sentenced it serves no purpose to revisit the case. The trial court should be guided accordingly.

National Prosecuting Authority for the State