

THE STATE
versus
COLLET BAIRA MANZONZA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 28th and 29th September and 10th October, 2016

Assesors

Mr S. Mutomba
Mr E. Gweru

Criminal Trial

Ms S. Busvumani, for the state
Mr D. Hwacha, for the accused

MAWADZE J: The accused is facing a charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

The charge is that on the 10 January 2014 at Number 20583 Nzungu Street, Rujeko 'C', Masvingo the accused unlawfully stabbed Antony Manzonza with a knife once on the upper right thigh intending to kill him or realising that there was a real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility.

At the material time the then 19-year-old accused was residing with the 36-year-old now deceased who was his uncle (young brother to accused's father) at No. 20583 Nzungu Street in Rujeko 'C', Masvingo together with the accused's sibling Innocent Manzonza then

aged 17 years, accused cousin Piniel Manzonza then aged 18 years and their aunt (sister to their father) Esnath Manzonza who was the eldest. The house in question belonged to accused's parents. The accused's father is said to have been in Beit Bridge prison at the material time and accused's mother was at the family shop in Zvishavane. The deceased was employed by the accused's parents as a commuter omnibus driver plying the Masvingo to Gweru route. The deceased had a wife and child who were not staying at this house.

The facts which are common cause in this matter are as follows;

On 10 January 2014 the accused arrived home and found his young brother Innocent Manzonza (Innocent) alone at home watching television at about 20.00 hrs. Accused asked Innocent to accompany him to ZAOGA church which they attended but Innocent refused. The State alleges that this was because the accused was drunk but Innocent said he refused because he had spent the whole day at church. This did not go down well with the accused who believed Innocent was prioritizing watching television. The accused proceeded to disconnect the DVD player and took the AV cables and left the house.

The deceased later arrived from work and asked Innocent to accompany him to go and park the commuter omnibus at a local car park and Innocent agreed. When the accused arrived home thereafter he realised Innocent had agreed to accompany the deceased. The accused did not take kindly to this.

Meanwhile Innocent had advised the deceased about his altercation with the accused earlier on and that accused had removed AV cables and took them away. The deceased then ordered the accused to connect the AV cables but accused refused and instead started to demand money, US\$15 owed to accused by deceased for a jean trousers accused had sold to deceased in 2013. A misunderstanding arose and deceased took a broom stick or feather duster stick inside the house and assaulted the accused who sustained swellings and bruises and the broom stick got broken. The accused fled the house and picked stones which he threw at deceased who ran into the house and closed the door. A neighbour Gloria Mugweni (Gloria) intervened, and counselled the accused who calmed down and after about an hour accompanied accused to the house where Esnath Manzonza (Esnath) opened the door for accused and Gloria returned to her house as accused entered the house.

The accused while in the house took a knife from the kitchen. The reason for taking the knife is in issue. The State alleges that he wanted to use the knife to threaten to kill the

deceased but accused says he wanted to use it to fix the AV cables which he had connected but were no

longer working. It is not in dispute that a misunderstanding arose again between accused and deceased. The cause of this dispute is in issue. The State alleges that it was caused by accused who blocked deceased's way as deceased wanted to go and bath threatening to kill deceased. The accused on the other hand said it was because of the deceased who insulted accused saying he was not going to give accused the money for the jean trousers and that deceased went on to spite the accused by taking the jean trousers and throw it at the accused. The accused said he could not take the jean trousers as it was now worn out and instead demanded that deceased should pay for the jean trousers which irritated the deceased.

The deceased proceeded to pick a log outside the house intending to assault the accused. The accused fled into the bedroom with the deceased in pursuit. The accused failed to escape from the bedroom and was held by the deceased as the two struggled. During that brawl accused stabbed the deceased on the right thigh once after which deceased released the accused who fled. The deceased bled profusely, collapsed and was moments later pronounced dead on arrival at Masvingo General Hospital.

The issues raised by the accused in his defence outline are mostly not in dispute. We shall therefore only highlight those aspects which are in dispute. The accused said what initially angered the deceased was accused's response that deceased was also a bully as deceased was refusing to pay for the jean trousers sold to deceased. The accused said this prompted deceased to arm himself with broom stick and assaulted accused several times causing accused to flee from the house.

The accused's story is that upon returning to the house it is the deceased who reignited the misunderstanding by boasting that he would not pay accused for the jean trousers alleging that the accused was ill disciplined and proceeded to impolitely throw the jean trousers at the accused which jean trousers were now worn out. The accused said he then insisted that deceased could not proceed to go and bath without resolving the issue of payment for the jean trousers. The accused said as he was working on the AV cables it is the deceased who went out to fetch a log in order to assault the accused. The accused's version is that he fled into the bedroom where he was cornered by the deceased who attempted to hit him with the log on the head. The accused said he ducked and the log hit the wall and fell out of deceased's hands. Accused tried to escape through the window but he said deceased held

him from behind and then pinned accused judo style with deceased's left hand around accused's midriff while the inner side of the deceased's elbow was tightly locked around accused's neck. The accused said

both Gloria and Piniel Manzonza (Piniel) who were at the scene did not assist him or intervene. The accused said he was still holding the knife in one hand and the cables in the other. He said he refused to drop the knife when Gloria requested him to do so because accused had first assaulted him with the broom stick, later tried to use the log and was now throttling him. Further, the accused said deceased ignored Gloria's plea for the deceased to let go the accused but instead tightened his grip, squeezing even harder as accused stretched his leg trying to free himself. The accused said when the bed on which they were standing slid to one side they both fell down facing upwards with the deceased below the accused but keeping his vice like grip around accused's neck using his fingers which caused accused to run out of breath. The accused said in order to avoid being strangled to death he proceeded to thrust the knife into deceased's thigh in order to inflict sufficient pain thereby compelling deceased to let go accused's throat. In essence the accused said he acted in self-defence when he stabbed the deceased with the knife.

In support of it's the State produced by consent three exhibits which are as follows;

Exhibit 1: is accused's confirmed warned and cautioned statement in which the accused indicated that he acted in self-defence. It may be prudent for us to quote what the accused said;

"I admit the charge levelled against me. I stabbed Antony Manzonza with a kitchen knife on the right thigh and he died. I did this because I wanted to free myself as he was tightly holding me."

Exhibit 2: is the post mortem report whose findings are not in issue. The deceased had a laceration from the right femoral triangle which was about 15 cm long. The findings by the doctor is that deceased died due to haemorrhage caused by perforated right femoral artery inflicted by the stab wound.

Exhibit 3: is the knife used by the accused to stab the deceased. It is a kitchen knife 33cm long with a 21cm blade which is very sharp at the end. The black handle is 12 cm long and it weighs 0.010kg.

The testimony of both Nyasha Mkonzo the Investigating Officer and Dr Samson Pomo who examined the now deceased and compiled the post mortem report Exhibit 2 was admitted by consent in terms of s 314 of the (Criminal Procedure and Evidence) Act [*Cap*

9:07]. In brief Nyasha Mkonzo attended the scene of crime where he recovered the kitchen knife Exhibit 3 and proceeded to record accused's confirmed warned and cautioned statement Exhibit 1. As already said Dr Samson Pomo examined deceased's body and compiled Exhibit 2 the post mortem report.

In order to resolve the narrow issue in dispute on whether the accused acted in self-defence we now turn to the *viva voce* evidence led from the State witnesses Innocent Manzonza (Innocent); Piniel Manzonza (Piniel), Esnath Manzonza (Esnath) and Gloria Mugweni (Gloria). We shall also look at accused's evidence. Thereafter we shall outline the law in respect of the defence of self-defence and apply it to the facts of this case as per the evidence before us in order to arrive at an appropriate verdict.

THE EVIDENCE

We have already alluded to the facts which are common cause and in dealing with the evidence of each witness no useful purpose would be served by repeating those facts.

Innocent said the reason why he refused to accompany the accused to church was not that accused was drunk but that Innocent had spent the whole day at church. Innocent said when accused tried to assault him he fled out of the house and accused proceed to remove AV cables of the DVD and TV. In retaliation Innocent said he also removed some cables. It was his evidence that when he accompanied the now deceased to the car park he reported to the now deceased his altercation with the accused and that upon their return from the car park Esnath and Piniel were at home and accused was still away with the AV cables.

Innocent said upon accused's return accused was ordered by the deceased to return the AV cables but accused refused retorting that the deceased owed accused money for the jean trousers sold to deceased by accused. According to Innocent this is what angered the deceased who then took a broom stick and assaulted the accused all over the body indiscriminately forcing accused to flee out of the house and throwing stones at deceased from outside. This promoted deceased to lock the door.

Innocent said when Gloria later brought accused home Innocent was preparing to retire to bed as they could not watch the TV. The accused had not reconnected the AV cables. Innocent said the deceased then left the bedroom intending to go and bath and he heard some exchange of words between the accused and the deceased in the lounge but was not able to tell the subject of discussion. All what Innocent said is that deceased came to the bedroom and took a jean trousers which the accused had sold to deceased and returned to where

accused was. He said the exchange of words continued between accused and deceased. He later on heard a thudding sound of a log in the kitchen and accused immediately came running into the bedroom with the deceased in pursuit. Innocent said the accused was holding the knife Exhibit 3 in one

hand and AV cables in the other hand and that deceased was wielding a log some 1 to 2 m long and about 12 cm in diameter.

Innocent went on to explain what happened inside the bedroom. He said upon entering the bedroom accused pulled the curtains at the window trying to escape through the window. He said accused picked a small table in order to smash the window panes but failed to do so as deceased had arrived and tried to hit accused with the log. He said accused ducked the blow jumping on to the bed and the log smashed into the wall causing deceased to lose grip of the log which fell down. At that point he said deceased also jumped on to the bed and held accused by the waist and thereafter put his hand around accused's neck and then used both hands round accused's neck as both were in a standing position facing the same direction with deceased behind the accused. Innocent said both accused and deceased struggled in a very violent manner and due to fear caused by the intensity of the struggle Innocent ran out of the bedroom. He later heard Gloria who had rushed to the scene shouting asking accused what he had done. Innocent said he immediately returned into the house and found deceased lying in the kitchen bleeding profusely and was later ferried to hospital as Innocent went to make a police report. He was advised that night that the deceased had passed on at the hospital.

Prior to this day innocent said accused and deceased enjoyed very cordial relations.

Under cross examination Innocent denied that he ever heard accused threatening to stab or kill deceased with a knife. Innocent's view was that was that when accused took the knife from the kitchen accused used it to try and fix the AV cables or chords and did not threaten the deceased. In fact, he said he later on realised that accused had cut one of the cables with the knife before accused ran into the bedroom holding both the knife and the cables.

In relation to how accused and deceased struggled Innocent said the way the now deceased held the accused was frightening as the grip was very tight and accused failed to

free himself. Innocent denied that the accused was drunk or smelling beer. Instead he said both accused and the deceased were sober.

Innocent gave his evidence very well with sufficient detail. In our view he was not a biased witness and limited himself to what he observed. He candidly blamed himself for possibly causing this altercation leading to the tragic events of that night. He did not witness how accused stabbed the now deceased as he had fled unable to withstand the vicious struggle which was ensuing between accused and the deceased especially the manner in which deceased

held the accused. We find no cause not to accept his evidence. We turn to Piniel Manzonza's (Piniel) evidence.

Piniel confirmed that when accused arrived home accused was confronted by the deceased in relation to AV cables and that a misunderstanding arose when accused demanded money owed to him by deceased resulting in accused being assaulted with broom stick and fleeing from the house. He described the assault with the broom stick as severe as deceased used a lot of force and that it was indiscriminate. He also stated that a neighbour Gloria brought accused back home.

Piniel testified that back home accused tried to put back AV cables using the kitchen knife Exhibit 3 and that a misunderstanding developed with the deceased when deceased wanted to go and bath and accused demanded money owed to him. He said deceased then took the pair of jean trousers and threw it at accused after which deceased got out of the house and came back holding a log. This caused accused to flee into the bedroom and deceased chased after him. He went on to describe what happened inside the bedroom.

According to Piniel the deceased tried to hit accused with the log but accused ducked and the log fell down. He said the deceased then grabbed accused by the neck tightly as accused tried to free himself to no avail. At that point he said accused was still holding the knife in one hand and the cables in the other hand. He said after accused failed to free himself from deceased's tight grip he stabbed deceased once on the thigh forcing deceased to release the accused. The accused then dropped the knife, got up and fled from the bedroom. He said the deceased tried to chase after the accused but he failed and fell down after which he was ferried to hospital where he was later pronounced dead on arrival.

Contrary to what Innocent said Piniel said accused was moderately drunk and was smelling of beer but deceased was sober.

Under cross examination Piniel said the log the deceased picked and chased after the accused was about 2m long and fairly thick. He categorically denied that accused took the kitchen knife from the kitchen in order to threaten deceased. Instead he said accused never uttered any words threatening to kill the deceased but, instead he said accused took the knife in order to repair the AV cables and proceeded to fix the cables as he quarrelled with the deceased demanding payment of the money for the jean trousers. In fact, Piniel said accused had cut one of the AV cables with the knife when he was chased after by the deceased and only handed over the AV cables to Piniel later at the Police Station.

Piniel was probed on how accused stabbed the now deceased. He said the deceased was older, of bigger stature and stronger compared to the accused. He said before accused stabbed the now deceased accused was being strangled by the deceased and had been overpowered as accused had failed to free himself from deceased's grip. He explained in graphic terms that deceased was using both hands to squeeze tightly around accused's throat and that accused could have suffocated to death. To quote his own words Piniel said in Shona; "pakange pakaipa" which means the situation was bad. He went further to say he too was afraid to intervene because of the intensity of the grip and the struggle which went on for some time before deceased was stabbed. Piniel said in his view accused was left with no other option other than to use the knife to force deceased to let go the accused as accused had totally failed to free himself from deceased's life threatening grip.

In our view Piniel gave his evidence well. Other than contradicting Innocent on accused's sobriety he corroborated Innocent on other material issues. Piniel is a critical witness who saw how the accused stabbed the now deceased. In fact he explained the accused's conduct especially why accused resorted to stabbing the deceased. Again we find no cause not to accept his evidence.

The evidence of Esnath Manzonza (Esnath) is not very material as she did not witness the struggle between accused and deceased in the bedroom nor how accused stabbed the now deceased. She however corroborated Innocent and Piniel on the genesis of the misunderstanding between accused and the now deceased from the time accused arrived home when he was ordered to put back the AV cables, the demand of money from the deceased by the accused, the assault of the accused by the deceased with what she said was

the handle of the feather duster, the fleeing of the accused, the intervention of Gloria and the return of accused to the house when accused took the knife Exhibit 3 from the kitchen where Esnath was.

Esnath said when she prepared some water for deceased to bath accused and deceased resumed quarrelling again and she warned deceased that accused had knife he had taken from the kitchen. She said when she realised that the accused and deceased were engaged in an intense quarrel she went to call their neighbour Gloria whom she believed as an elderly woman could intervene in the misunderstanding. She said as she was washing her dishes outside the house when Gloria who had gone to the room where accused and the deceased were alerted her that deceased had been stabbed. She only came back into the house to find deceased lying in a

pool of blood in the kitchen and ferried him to hospital in a hired motor vehicle where he was pronounced dead on arrival.

Esnath denied that the accused either by conduct or verbally, threatened to kill the deceased. She did not even see the log that deceased picked.

Gloria Mugweni's (Gloria) testimony is material on how accused stabbed the now deceased as she witnessed the assault inside the bedroom. Gloria, an elderly woman, said she was alerted to the events of this day when she saw accused throwing stones outside accused's house. She intervened and stopped accused. The accused then explained to her that deceased had assaulted him for demanding money owed to accused by deceased. She said accused showed her the swellings and bruises accused had sustained. Gloria said she nonetheless calmed and counselled the accused for about an hour after which accused reacted positively and she took him back to his house and she returned to her house.

Gloria said after some time Esnath called her advising her that accused and the now deceased were quarrelling again. She rushed to the house and found accused and deceased in the bedroom.

Gloria testified that inside the bedroom both accused and deceased were standing on the bed facing the same direction with deceased at the back of the accused. She said the accused had a knife in one of his hands and deceased was using both his arms to hold accused's both upper arms pressing them against accused's body. Gloria said accused was trying to free himself and fearful that accused could use the knife she asked the accused to give her the knife but accused refused saying deceased was strangling him and that he had

been assaulted before. She said she then pleaded with deceased to let accused free but deceased refused saying accused had a knife. Gloria said the two continued to struggle and in the process the bed they were standing on moved and they both fell down facing upwards with accused on top of the deceased. She however said the deceased kept his hold on the accused and accused then stabbed deceased on the thigh with a lot of force resulting in deceased releasing the accused who then threw down the knife Exhibit 3 and fled. Gloria said deceased tried to chase after accused but he collapsed in the kitchen, vomited and fell unconscious after which he was ferried to hospital where he later died.

Under cross examination Gloria said deceased was holding accused with a lot of force to such an extent that accused was unable to extricate himself from deceased's grip. She said accused had no other means except to use the knife to force deceased to release him.

Gloria gave her evidence very well. In fact all her evidence was not put in issue by either the State or the defence. We therefore accept her evidence in its totality.

We now turn to the accused's evidence.

We find no cause to summarise the accused's evidence in chief as it materially captures what the accused said in his defence outline. It also confirms what accused said in his confirmed warned and cautioned statement Exhibit 1. In brief the accused explained the following:

- (a) Accused's initial quarrel with Innocent and how he disconnected the DVD and television by removing AV cables.
- (b) Accused's first misunderstanding with the deceased and how he was first assaulted with the handle of the feather duster and fled from the house until his return after Gloria's intervention. Accused indicated that he sustained bruises and swellings as a result of the assault with the feather duster.
- (c) Accused's second quarrel with deceased which he blamed on deceased.
- (d) How accused tried to assault him with a log for the second time as he was trying to fix the AV cable with the knife Exhibit 3 he had taken from the kitchen and how he fled to the bedroom.
- (e) Accused explained how he failed to escape from the bedroom through the window and how accused cornered him in the bedroom and proceeded to strangle him in a near fatal manner.

- (f) Accused explained why he stabbed the now deceased acting in self-defence using the knife he had fled holding in his hands together with the AV cables after he had refused to let go the knife when Gloria requested him to do so as it was the only weapon he could use against the deceased.

The accused pointed out that he was sober.

In cross examination the accused was taken to task in relation to his dispute with the deceased. In response accused said he had sold a pair of jean trousers to deceased for US\$15 in 2013 and deceased had failed to pay that amount since 2013 giving many excuses and promises. The accused insisted that he took the knife Exhibit 3 not to threaten deceased but to fix AV cables. Accused was questioned as to why he kept holding the knife until he stabbed the deceased. In response he said deceased was strangling him hence he could not let go the only weapon he had to defend himself. The accused admitted that he used a lot of force to stab deceased in order to cause deceased to release him. Accused insisted that before he stabbed the

deceased he tried in vain to struggle to free himself for about 5 minutes and was losing breath due to deceased's firm grip around his neck.

Our view is that the accused was not shaken at all in cross examination. In fact he was consistent in his explanation of what happened and what informed his conduct. We therefore turn to the law.

THE LAW

In terms of s 253 (i) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] the defence of self-defence is a complete defence. It provides as follows;

“253. Requirements for defence of person to be complete defence -

- (1) Subject to this Part, the fact that a person accused of a crime was defending himself or herself or another person against an unlawful attack when he or she did or omitted to do anything which is an essential element of the crime shall be a complete defence to the charge if -
- (a) when he or she did or omitted to do the thing, he or she believed on reasonable grounds that the unlawful attack had commenced or was imminent; and
 - (b) he or she believed on reasonable grounds that his or her conduct was necessary to avert the unlawful attack and that he or she could not otherwise escape from or avert the attack; and
 - (c) the means he or she used to avert the unlawful attack were reasonable in all the circumstances; and

(d) any harm or injury caused by his or her conduct -

- (i) was caused to the attacker and not to any innocent third party; and
- (ii) was not grossly disproportionate to that liable to be caused by the unlawful attack.

(2) In determining whether or not the requirements specified in subsection (1) have been satisfied in any case, a court shall take due account of the circumstances in which the accused found himself or herself, including any knowledge or capability he or she may have had and any stress or fear that may have been operating on his or her mind.”

The requirements in s 252(1)(a) to (d) of the Code [*Cap 9:23*] are conjunctive and not disjunctive. In other words, for the defence of self-defence to succeed as a complete defence the accused should satisfy all those requirements.

The starting point to consider is obviously whether as a fact the accused was under any unlawful attack. An unlawful attack is that conduct which put one’s life into danger or

endangers one’s bodily integrity or freedom. See s 252 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

In assessing whether the requirements in s 253(1) of the Code [*Cap 9:23*] are met the court is enjoined to apply both the objective test and the subjective test. In other words the Court should consider what a reasonable person in accused’s situation would have done taking into account the specific circumstances of the accused person.

Our law therefore accepts that it is permissible for one to harm or cause death upon an unlawful attacker. The key issue is whether such harm caused was reasonably necessary to fend off or ward off the unlawful attack. In deciding what is reasonable in the circumstances of each case the Court as already alluded to should place itself in the shoes of the accused person and not expect the accused person to behave or act like movie star hero, a super human with papal infallibility or an angel. This point is well made by McNALLY J.A. in the case of *S v Banana* 1994 (2) ZLR 271 (S) at 274 F – H in which the LEARNED JUDGE OF APPEAL said;

“But also, HOLMES JA said in *S v Ntali* 1975 (1) SA 429:

‘the Court adopts a robust approach, not seeking to measure with nice intellectual callipers the precise bounds of legitimate self-defence.’

See Also *S v Nicolle* 1991 (1) ZLR 211 (S) at 217 B – D, and the CHIEF JUSTICE in *S v Mandizha* S – 200-01 which dealt specifically with the question of whether self-

defence was excessive. It repeated the point, made earlier in *S v Phiri* S-190-82, that one cannot take an armchair view of the events. They must be seen and judged in the light of the circumstances of the occasion. Finally, I refer to *S v Moyo* S-45-84 where the then CHIEF JUSTICE DUMBUTSHENA CJ, stressed the fact that it was for the State to negative the plea of self-defence.”

In applying the law to the facts of this case we find the following facts and sequence of events not to be in issue;

- (a) It is the deceased who first assaulted the accused indiscriminately with a broom stick or feather duster all over the body until the handle broke and inflicted swellings and bruises on accused’s body causing the accused to flee out of the house.
- (b) After a good Samaritan and neighbour Gloria counselled and calmed the accused it is the deceased who instigated the second misunderstanding by insisting that he would not pay for the pair of the jean trousers and proceeded to provokingly throw the pair of the jean trousers at the accused which pair of trousers deceased had worn since 2013.
- (c) Despite being aware that accused was in possession of a knife, whose purpose was not being rebutted by the State that accused was using it to repair AV cables, and being warned by Esnath that accused had a knife, the deceased went on to take a log and attempted to assault accused now for the second time causing accused to again flee
- (d) The deceased remained undeterred and blocked accused’s exit from the house. In fact, he went on to chase accused into the bedroom where he cornered the accused despite accused’s valiant efforts to try and escape through the window and again tried to assault accused with the log.
- (e) It is the accused who thwarted accused’s escape bid by holding him first on the waist and then around the neck using both hands to throttle or strangle the accused.
- (f) The deceased rebuffed the pleas by Gloria to let go the accused despite the fact that deceased was aware that accused was still holding the knife and had refused to drop the knife as accused viewed it as the only weapon accused had to defend himself.

- (g) The deceased was unrelenting because even after they both fell down he would not let go the accused. Instead deceased tightened his grip around accused's neck. Accused's version that he was losing breath and was now dazed has not been rebutted by the State.

Now, taking into account all these factors what was accused expected to do? The accused had tried to flee in vain and was now at the brink of losing his life through strangulation. No one came to help the accused.

The Learned Author Jonathan Burchell in Principles of Criminal Law 5th Edition 2016 at pp 129 outlines some of the factors a court would take into account in assessing whether an accused person acted reasonably in the manner in which he defended himself or herself. The list is not exhaustive but include *inter alia*;

- (i) the relationship between the parties. In this case deceased was an uncle to accused and accused regarded him as a father. This explains probably why he fled, tried by all means not to fight deceased or hit back but chose to flee.
- (ii) the respective ages, gender and physical strength of the parties. The deceased was much older to the accused. He was 36 years old and accused only 19 years old. The evidence placed before us is that deceased was of a bigger physical stature and stronger than accused. This explains why he possibly overpowered accused.
- (iii) the location of the incident. The fatal blow was inflicted when accused had been cornered inside a bedroom and had no other escape route.
- (iv) the nature, severity and persistence of the unlawful attack. *In casu* accused had been first assaulted with broom stick or feather duster. Accused had been bruised and had swellings. The deceased persisted by using a 1 – 2 m long and when he failed deceased decided to suffocate accused by strangling him to the point that State witnesses said accused could have died.
- (v) nature of weapon used in the unlawful attack. Despite that deceased ultimately used bare hands when he was fatally stabbed his conduct was nonetheless life threatening.
- (vi) nature and severity of any injury or harm likely to be sustained in the unlawful attack. The accused pointed out that his life was in danger as deceased throttled him. This was confirmed by the State witnesses Innocent, Piniel and Gloria.

- (vii) means available to avert the unlawful attack. The accused had a kitchen knife in his hand. He had tried to run away but deceased caught him. Accused failed to wrestle free from deceased's vice like grip. It is clear accused had no other option to save his life.
- (viii) the nature of means used to offer defense. The accused's irrefutable evidence is that he decided to stab deceased with a knife on the thigh in order to inflict pain and cause deceased to let him go.
- (ix) the nature and extent of harm caused or likely to be caused by the defence. In this case accused aimed the blow not necessarily on the most vulnerable part of the deceased's body but on the thigh. Indeed, he used a lot of force but it was fortuitous that he perforated the right femoral artery resulting in excessive bleeding. It remains a fact that all he intended was to inflict pain as the blow was not directed at an inherently fatal part of the human anatomy.

In conclusion, it is our view that the accused did not exceed the bounds of self-defence when one considers all the circumstances of this case. It is universally accepted that one is entitled to defend and protect both life and limb in self-defence. Our law clearly provides for this.

We are satisfied that the defence of self- defence is available to the accused. The accused has managed to meet all the requirements set of in s 253(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

Accordingly, we find the accused not guilty and he is acquitted.

VERDICT: Not guilty and acquitted.

National Prosecuting Authority, Counsel for the State

Ndlovu & Hwacha, Legal Practitioners, pro deo Counsel for the accused