

THE STATE  
versus  
EPHRAIM TINASHE MUNGAREKA  
and  
FAITH GUMBO  
and  
MAKAZVEI ZVIHARI  
and  
EUDIBORN MUNGAREKA  
and  
TELLMORE MUNGAREKA

HIGH COURT OF ZIMBABWE  
MAWADZE J  
MASVINGO 6 OCTOBER, 2020

**Assessors**

1. Mr Gweru
2. Mr Mutomba

**Criminal Trial – Sentence**

*Ms M. Mutumhe*, for the State  
*Ms E.Y. Zvanaka*, for accused 1  
*M. Vengesai*, for accused 2  
*Ms P. Chimwanda*, for accused 4  
*L. Muvengeranwa*, for accused 5  
*Ms M. Moffat*, for accused 6

MAWADZE J: At the commencement of the hearing of this matter which had 8 accused persons the State withdrew charges before plea in respect of accused 3 Ratidzo Ndambakuwa, accused 7 Robert Mungareka a juvenile aged 17 years and accused 8 Garikai Mungareka also a juvenile aged 15 years who was being assisted by his mother Agnes

Mungareka. These proceedings are therefore in respect of the remaining 5 accused persons 2 of which are adult women, 2 are adult men and one juvenile Tellmore Mungareka aged 17 years.

Initially the accused were arraigned for murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Cap* 9:23]. However the State counsel and the respective counsel for all the accused managed to find each other. All the 5 accused persons pleaded guilty to the lesser charge of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [*Cap* 9:23]. The matter therefore proceeded on the basis of a statement of agreed facts and all the 5 accused were dully convicted on their own pleas of guilty.

Accused 1 Ephraim Tinashe Mungareka is aged 24 years, accused 2 Faith Gumbo is aged 44 years, accused 4 Makazvei Zvihari is aged 42 years, accused 5 Eudiborn Mungareka is aged 22 years and accused 6 Tellmore Mungareka is aged 17 years and is in Form 3.

The now deceased Ephraim Hlazo Mungareka was 77 years old. He was a grandfather to accused 1, 5 and 6 and a father in law to accused 2 and 4.

The agreed facts giving rise to this charge are as follows;

Sometime in 2017 the now deceased is said to have been arraigned before Chief Ziki in Bikita for practising witchcraft which allegation it is said he admitted. He was ordered to pay a beast. Thereafter son of accused 2 Faith Gumbo and a sibling of accused Ephraim Tinashe Mungareka one Clive Mungareka died. The accused persons and other relatives smelt a rat as it were. They consulted 4 different traditional healers. The now deceased was implicated as the culprit who had bewitched Clive Mungareka resulting in his death. The family members who strongly believe in witchcraft including the accused persons were incensed.

The now deceased who was implicated in the death of Clive Mungareka was approached by the accused persons on 21 June, 2019. He was labelled a witch and accused of having caused the death of Clive Mungareka. The accused persons decided to take matters into their hands by assaulting the now deceased. They used an assortment of weapons which included leather whip, electric cables, sjambok, mulberry tree switches and whips. This assault was prolonged and sustained. It was done in the full glare of fellow villagers from morning until noon when the accused persons indicated that they were tired. They left the now deceased severely injured and helpless but they nonetheless promised to return in the evening to resume the assault. The now deceased was ferried to his homestead in a wheelbarrow by his daughter Sipiwe Mungareka who

vainly tried to nurse him. The now deceased passed on at his homestead on 23 June, 2019, just 2 days after this assault.

The doctor who examined the remains of the now deceased as per Exhibit 2 the post mortem report observed the following;

- “1. *Multiple whip lashes on trunk, abdomen and chest*
2. *Distended abdomen*
3. *Bruising of intestines, ruptured spleen with intra-abdominal bleeding”*

The cause of the now deceased’s death is said to be;

- “1. *Haemorrhagic shock*
2. *Abdominal bleeding*
3. *Abdominal trauma”*

There is no doubt that the accused persons are facing a very serious offence which entails loss of life through their negligent conduct. The degree of negligence is very high and this elevates their moral blameworthiness.

The assault on the now deceased was both prolonged and sustained by a group of visibly fit and younger persons compared to the now deceased. The assault itself was indiscriminate with an assortment of weapons. The now deceased was injured all over the body. It is without doubt that severe force was used as the now deceased’s internal organs being the intestines and the spleen were damaged.

At 77 years of age the now deceased was at the sunset of his life. There was no reason why the accused persons literally pushed him into his grave as it were. The conduct of the accused persons shows total disrespect of their elderly relative. It is taboo in our African custom for the accused persons to administer corporal punishment to their grandfather and father in law even if they believed he was wrong. There are proper lawful traditional ways of resolving such disputes rather than taking the law into their own hands.

None of the accused persons offered any help, medical or otherwise to the now deceased. They simply left him to die. The sacred nature of human blood and the sanctity of human life cannot be over emphasised. It is therefore the duty of the courts to protect human life and to punish those who fail to value human life. In that vein therefore deterrent sentences are called for due to the alarming prevalence of offenses of a violent nature leading to loss of life.

There is no objective basis to treat the accused persons differently except for accused 6 Tellmore Mungareka who is a 17 year old juvenile and is in Form 3. It is very possible that he acted under the influence of the other 4 adult accused persons. Further, there is need to give him a chance to continue with his education and allow him to mend his ways. A wholly suspended prison term would be proper for him.

It would be remiss for me to treat the other 4 accused persons differently on the basis of gender alone. They all took active roles in assaulting the now deceased.

The common mitigatory factor in respect of all the accused are that they are all first offenders. They therefore deserve some measure of leniency.

All the accused persons pleaded guilty to the charge of culpable homicide. They all cooperated with the police. They all admitted to have assaulted the now deceased. In court they did not waste time raising flimsy defences. Less resources were used in prosecuting them. The State witnesses were saved the time and trauma of testifying in this matter. This matter was expeditiously completed thus contributing to the smooth administration of justice. The accused are therefore contrite and should be rewarded by being treated with some degree of leniency.

All the accused are related to the now deceased. They will forever live with the stigma that they caused the now deceased's death, moreso as society generally does not distinguish murder from culpable homicide. They will just be viewed by their relatives and other people as murders.

The accused persons who are unsophisticated rural people from Bikita, Masvingo clearly share strong belief in witchcraft. This explains why they consulted traditional healers after the death of their relative. To them death may not visit anyone naturally. After the now deceased was implicated they rightly felt provoked. They believed it was probably their duty to lynch the witch and revenge the loss of their beloved relative. To our minds this explains the accused persons' conduct as they are not inherently wicked persons.

We have taken on board the personal circumstances of each of the accused persons. These include inter alia their ages, marital status, family responsibilities and that they are generally rural people of no means. Their incarceration would no doubt negatively impact upon their families and dependants as they survive on manual labour.

Be that as it may a fine is inappropriate in such a serious matter. In the same vein a sentence of community service would send wrong and harmful signals to the society who. may harbour the view that those accused of witchcraft should be violently dealt with. It is only fair and just that each of the accused save for accused 6 Tellmore Mungareka should be visited with a minimal custodial sentence.

In the result, we believe the following sentence will meet the justice of this case;

SENTENCE

Accused Ephraim Tinashe Mungareka; accused 2 Faith Gumbo, accused 4 Makazvei Zvihari and accused 5 Eudiborn Mungareka: - Each accused is sentenced to 3 years imprisonment of which 1 ½ years imprisonment is suspended for 5 years on condition each accused does not commit within that period any offence involving the use of violence upon the person of another for which each accused is sentenced to a term of imprisonment without the option of a fine.

Effective for each accused is 1 ½ years imprisonment.

Accused 6 Tellmore Mungareka is sentenced to 2 years imprisonment wholly suspended for 5 years on condition accused does not within that period commit an offence involving the use of violence upon the person of another for which accused is sentenced to a term of imprisonment without the option of a fine.

*National Prosecuting Authority, counsel for the State*  
*Saratoga Makausi Law Chambers, pro deo counsel for accused 1*  
*Mugiya and Macharaga, pro deo counsel for accused 2*  
*Nyawo Ruzive Legal Practitioners, pro deo counsel for accused 4*  
*Legal Aid Directorate, pro deo counsel for accused 5*  
*Legal Resources Foundation, Masvingo, pro deo counsel for accused 6*