

THE STATE
versus
WASHINGTON MUCHANDIREKERA

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 30 July 2021 and 6 September 2021

Criminal Trial

ASSESORS: 1. Mr Chagonda
2. Mr Chipere

Ms *T. L Katsiru*, for the State
Ms *C. Danha*, for the accused

MUZENDA J: Accused is being arraigned for Murder as defined in s 47(1)(a) or (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] it being alleged by the state that on 30 June 2020 and at Section 3, Ratings Compound Middle Sabi, Chipinge, the accused unlawfully caused the death of Rofias Musarowa Marowa, by striking him with a log all over the body several times with intent to kill him.

Accused pleaded not guilty. In his evidence he stated that deceased was his uncle and both of them were involved in game poaching where they would lay traps in Sango or Pongo Range for game meat. Accused would skin the animal and ferry the meat to deceased's homestead for safety. On the day in question accused passed through deceased's homestead early in the morning so that they would go for poaching. Deceased was drinking and was actually inebriated so he chose to stay behind. Accused proceeded to Sango and Pongo Range to set traps. Later he returned to deceased's homestead carrying some meat. He borrowed a bucket from a neighbour and when he was approaching deceased's homestead two strangers appeared from behind and accused ran towards deceased's homestead. One of the strangers got hold of deceased, accused freed himself from one of the strangers who had tried to apprehend him. Accused fled from the scene. Accused believes that the two strangers were game rangers and they are the ones whom he believes to have fatally assaulted deceased. Accused denied causing deceased any harm and did not contribute to deceased's death. He

says that he is falsely implicated by deceased's locales who have bad blood with him and pray for his acquittal.

Facts

It is the state's side that on 30 June 2020, the accused assaulted deceased with a stick all over the body for failing to account for meat which the accused had left in the deceased's custody. The deceased's body was found the following morning. A post mortem conducted on the deceased's remains established that the cause of death was due to poly trauma secondary to assault.

The question for determination by the court is whether deceased was assaulted by accused or by unidentified strangers or game rangers?

The state led evidence to the following effect. Martin Kutsanzira was deceased's neighbour. He knows both accused and deceased. Accused used to stay with deceased. On that day 30 June 2020, the witness was going to his house from work. He was in the company of Locadia Marange. He passed through deceased's house, called out his name but could not get a response, he knocked on the entrance door, got no response and proceeded to slightly push it open. He then saw accused assaulting the deceased on the back with a log. He retreated from the door and went to inform Locadia Marange. He informed Locadia. Accused then came to where the witness and Locadia were and asked for water to drink. Locadia gave accused the water. Accused informed the two as to why he was having a misunderstanding with deceased. Deceased had sold accused's game meat and did not give accused the proceeds. Locadia advised accused not to assault the now deceased. The witness learnt of deceased's death the following morning and identified a log used by accused to assault deceased.

Locadia Marange's evidence was at all fours with that of Martin Kutsanzira's. She added that after Martin left his homestead, accused went back to deceased's house. After a few moments she perceived sound of something being struck and contemporaneously heard accused's voice asking deceased where his meat was. She heard accused asking someone she did not identify why the latter has flashed lights on him. She also heard the now deceased asking accused why he was killing him and that accused was inviting avenging spirits to him. The following day she learnt about deceased's death.

Dennis Madzonga knew both accused and deceased as his neighbours. He is the witness who flashed accused and saw him assaulting deceased. He saw accused striking the deceased several times on the back and buttocks using a stick. He saw accused pouring water

on the deceased using a white bucket whilst deceased lay on his stomach. The witness told the court that the assault took place outside deceased's house. Accused told the witness the reason for the assault. Deceased had failed to explain what had happened to accused's meat. The witness pleaded with accused to stop the onslaught but accused could not heed. He continued to assault the deceased. The witness requested Tendayi Manomwe to call Green Fuel Security to come and help deceased. He teamed up with Tendayi Manomwe and Mary Chikumbo to the scene in a bid to help deceased from being further assaulted, accused armed with a catapult approached them and threatened all the three with death. When Green Fuel Security Guards drove to the scene, accused upon seeing the vehicle lights he stopped assaulting deceased, dropped the bucket and disappeared. The witness examined deceased's body and noticed bruises on deceased's back, he also noticed that deceased's right arm had been broken, deceased was no longer talking. He assisted Tarusarira and Sithole to place deceased into the vehicle to ferry him to the clinic. The witness learnt about deceased's death the following morning.

Tendayi Manomwe, Mary Chikumbo and Taurai Tarusarira's evidence all confirm evidence of Dennis Madzonga. Martin Kutsanzira, Locadia Marange and Dennis Madzonga were all known to the accused. All the three spoke to accused that night, Locadia Marange gave accused water to drink. We are satisfied that all the three witnesses were not mistaken about the identity of the accused. They positively identified him as their neighbour, they conversed with him. We are further satisfied that all the witnesses had no reason to lie against the accused. Dennis Madzonga gave accused the bucket and accused admits that evidence as well. Accused admits being at the scene that night and conveniently chose to run away from rangers. We are unable to accept accused's version that he was suddenly attacked by a stranger and that those strangers are to blame for deceased's death. Accused was aggrieved about his game meat and embarked on an unrestricted and protracted assault on the now deceased. It appears on one or two occasions deceased lost consciousness leading to the accused pouring cold water to resuscitate him and after resuscitation accused went on to assault the deceased. The assault was gruesome and dangerous, moreso given the fact that deceased was aged, 58 years. He was advised to stop assaulting deceased but he did not heed. Onlookers tried to intervene but accused threatened them with death. The state has managed to prove its case beyond reasonable doubt and accused had the necessary intention to kill the deceased. He is found Guilty of murder with actual intent.

National Prosecuting Authority, state's legal practitioners
Gonese & Ndlovu, accused's legal practitioners