

**THE STATE****Versus****NGONI TSHUMA**

IN THE HIGH COURT OF ZIMBABWE

BERE J with Assessors Mr J. Sobantu &amp; Mr E. R. M. Nyoni

BULAWAYO 27 SEPTEMBER 2016

**Criminal Trial***T. Muduma* for the state*V. Ndlovu* for the accused

**BERE J:** The accused was initially charged with the crime of murder of his 4 year old daughter at Anna Ndlovu's homestead, Madlambuzi in the Province of Matabeleland South. The accused pleaded not guilty and offered a limited plea of guilty to the lesser charge of culpable homicide, which plea was accepted by the state culminating in a statement of agreed facts to the following being submitted.

- “1. That the accused resides at his own homestead at stand number 12 Village 5, Anna's homestead, Madlambuzi in the Province of Matabeleland South. The deceased was aged 4 years and was also resident at stand number 12 Village 5, Anna's homestead, Madlambuzi.
2. On the 26<sup>th</sup> September 2015 at around 1700 hours accused arrived at Anna's homestead, where he resides, from a part time job. The accused had passed through a friend's homestead where they drank opaque beer.
3. Upon his arrival, the accused as the deceased's father, was informed that the accused was now disobedient and did not take instructions from other people at the homestead. At that time the deceased was playing at a neighbour's homestead.
4. When the deceased arrived home the accused told her to go and fetch the goats. The deceased took longer than anticipated and the accused decided to follow her. After the accused left to look for her, the deceased arrived in the company of Zodwa Moyo. The accused rounded up the goats and penned them.
5. When accused returned home he reprimanded the deceased for her disobedience, coming back home late and failing to do chores like rounding up the goats and penning them.
6. The accused then took the deceased to his bedroom where he chastised her by hitting her with a Jathropha switch. The accused then took the deceased to the kitchen so that she could eat her supper. The deceased however did not eat much as she was still grumpy for being chastised. The accused then slapped her once on the face with an open hand and then took her to the bedroom where he chastised her again with Jathropha switch.

7. The accused then laid the deceased on the floor where she slept and he slept on his bed. Towards the early hours of morning the deceased woke the accused up as she felt pressed and needed to use the toilet. The accused accompanied her outside and came back to bed.
8. In the morning the accused went to the field and left the deceased sleeping. When the accused person returned, he asked his sister Pasca Tshuma where the deceased was and she told him that the deceased was still sleeping. The accused tried to wake up the deceased but to no avail. The accused then informed his young sister Pasca Tshuma and Gladys Ncube, a neighbour.
9. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he did not intend to kill the deceased. He only sort to chastise the deceased and did not foresee that death will ensue”.

The post mortem report (exhibit I) gave the following as the cause of death of the minor child.

1. Traumatic Shock
2. Multiple Traumas on the body, subarchnoid haemorrhage
3. Multiple Traumas due to beating injury

Having considered the circumstances of this case the court found the accused not guilty to murder but guilty of culpable homicide.

In our assessment of sentence we have considered the following factors in mitigation.

At the time this offence was committed the accused was aged 23 years and a youthful offender. He has spent 1 year in prison awaiting the conclusion of this case.

We are also alive to the fact that the accused has pleaded guilty and registered remorse for his conduct.

The negligent killing of the deceased is likely to haunt the accused for life and the fact that the accused has spilt his own blood is significant.

In aggravation we have taken note of the following; the manner of chastising this little girl was excessive, it went beyond the bounds of moderate chastisement.

As correctly pointed out by the state counsel, the manner in which it was carried out borders on recklessness.

The little girl looked up to the accused as her father and protector who unfortunately turned out to be her killer.

As a court, we pride ourselves as the upper guardian of all children in this country and this case represents extreme child abuse by any standard and the conduct exhibited by the accused in persistently hitting the child with several switches of different sizes summarises the seriousness of this offence.

The accused is sentenced to 8 years imprisonment 3 years of which will be suspended for 5 years on condition the accused does not within that period commit any offence involving violence upon the person of another and for which upon convicted shall be sentenced to a term of imprisonment without the option of a fine.

Effective sentence 5 years imprisonment.

*Prosecutor General's Office, state's legal practitioners*  
*Mweli Ndlovu & Associates, accused's legal practitioners*