THE STATE
versus
NOMORE KUKA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 19 & 20 June 2023

Assessors 1. Mr Gweru
2. Mr Mutomba

Criminal Trial

B E Mathose, for the state

Ms P Chimwanda, for the accused

MAWADZE J: The narrow issue which falls for determination in this matter is whether the accused acted in self-defence when he fatally stabbed the now deceased one Learnmore Majoni.

According to the State the fatal stabbing of the now deceased with a knife by the accused was unprovoked.

Both the then 27-year-old accused and the 15year old now deceased were residing in Section 1, Hippo Valley in Chiredzi. They were apparently not known to each other.

On 16 October 2022 the accused at about 1930hrs was walking alone in Chiwaraidze Compound Hippo Valley. The now deceased and his friends Enock Umkonto aged 25 years and 17 year old Champion Mawere were seated in Chiwaraidze Compound, Hippo Valley as they were charging their cell -phones at a certain house. They were seated near a dump site.

The state alleges that the now deceased and his friends noticed the accused walking up and down a nearby road. This as per the state caused Champion Mawarire to inquire from the accused if he was lost and wanted to be assisted with directions. The state said the accused inexplicably felt provoked and disrespected. It is said the accused inquired if the now deceased and his friends were spoiling for a fight.

The state alleges that the accused proceeded to slap Enock Umkonto and stabbed him on both hands and the back with a knife. It is said the now deceased tried to intervene but was stabbed by the accused on the chest and back with a knife three times. The deceased and his friends fled to a nearby house, which is Tererai Kapera's house and were later ferried to Chiredzi hospital. Enock Umkonto was discharged the following day on 17 October 2022 and the now deceased on 20 October 2022. However, it is said the now deceased's condition deteriorated and was readmitted on 23 October 2022. The now deceased is said to have succumbed to the injuries the following day on 24 October 2022 leading to the accused's arrest.

In his defence the accused said he passed by the dump site where the now deceased and his friends were seated on the night in question. He said he was smoking and one of the young men asked for his cigarette in order to light their own cigarette and he obliged. The accused said one of the young man started to allege that accused was the culprit who had stolen his cellphone. The accused said all the three men suddenly attacked him and one jumped on to his back. The accused said as he tried to wrestle free one of the three young men dropped a knife. The accused said he picked the knife and decided to use it to defend himself from the assault by the 3 young men. The accused said he stabbed two of the young men after which he fled from the scene leaving his belongings. The accused said he proceeded to make a report to one Nebwere a security officer who in turn advised him to report to ZRP. The accused said it was only on 26 October 2022that the said Nebwere advised him that the now deceased had died and he was arrested.

The state led *viva voce* evidence from the now deceased's two friends Enock Umkonto and Champion Maware. The evidence of the now deceased's grandmother Dorika Lusenga, the investigating officer Assistant Inspector Noel Maumburudze and Dr Dhlandhlara was admitted in terms of section 314 of the Criminal Procedure Evidence Act *[Chapter 9:07*.

The accused gave evidence and did not call any witnesses.

The following exhibits were produced by consent;

Exhibit 1 is the post mortem report compiled by Dr Dhlandhara who examined the remains of the now deceased. The following injuries were noted;

> *"Three stab wounds seen in the chest ……..*
> *-Lung collapse*
> *- Haemothorax noted* ‵
> The cause of death is said to be ‵chest trauma due to stabbing. ″

The cause of the now deceased's death is not an issue.

Exhibit 2 is the accused's confirmed warned and cautioned statement in which the accused said;

> *"I do admit to the allegations levelled against me of killing Learnmore Majoni by stabbing him using a knife. I did this because they had talked to me in a manner which did not go well with me together with his companions.* ‵

The evidence of the now deceased's grandmother Dorika Lusenga is simply formal evidence which is of no value to the contentious issue.

Assistant Inspector Noel Maumburudze gave formal evidence which is not worthy regurgitating. Suffice to say he confirmed that the now deceased died ten days after being stabbed. What may be important is that accused's wife one Gladys Madhlane led police to a sewerage pond in Chiwaraidze Compound where she disposed of the knife,which she said accused had used. This brings into focus whether that knife belonged to the now deceased and his colleagues or to the accused.

It is the testimony of both Enock Umkonto [Enock]and Champion Maware [Champion] which is critical. We proceed to deal with that evidence;

Enock

Enock said he was seated in between the now deceased and Champion. He said after Champion had asked if accused was lost the accused became unexpectedly hostile. He said the accused slapped him once and as he inquired what was wrong the accused stabbed him once on right hand, twice on left hand and near the left armpit. This forced him to flee to the nearby house leaving the now deceased. He showed the court healed stab wounds.

Enock disputed the evidence of the accused. He said none of his colleagues had a knife. He denied that anyone of them ever alleged that accused had stolen a cellphone. He denied that

anyone of them asked for a cigarette to light a cigarette as none of them was smoking. Most importantly he denied that anyone of them attacked the accused.

Enock gave his evidence well. His account was free flowing and devoid of any fabrication. He was genuinely puzzled by accused's conduct. Enock readily answered all questions put to him. We are inclined to accept his evidence.

Champion

The version given by Champion dovetails with what Enock said precipitated the attack by the accused.

Champion said when the accused explicably slapped Enock, Champion jumped from where he was seated and fled. He sought refuge at a nearby house and did not know what transpired after he fled. He was later joined by both the now deceased and Enock who both said they had been stabbed and he saw the stab wounds which were bleeding. He accompanied his injured colleagues to hospital. He dismissed the accused's version of accused being attacked, or being accused to be a thief or asking for a cigarette light from the accused. In fact, he said none of them was smoking. He too was baffled by the accused's conduct.

As already said Champion materially corroborated Enock. The credibility of Champion is enhanced by the fact that he did not seek to exaggerate his evidence by professing to have witnessed how Enock and the now deceased were injured. If he was well bent on falsely incriminating the accused, he would have simply said he saw how the now deceased and Enock were injured by the accused.

The Accused

The accused's version of events can not possibly be true.

When the accused took the witness stand, he gave a long, winding and rumbling account of how he was attacked by the now deceased, Enock and Champion. The accused said one of the three young men asked for his cigarette light their cigarette and latter alleged he had stolen their cell phone. He said suddenly all the three of them attacked him with one jumping on to his back and strangling him as the other two attacked him from the front. The accused said his protestations of innocence fell on deaf ears as he was suffocated.

The accused said a knife fell from one of his attackers' pocket. He picked it and used to stab the two attackers who were in front of him forcing the one strangling him to release his grip

and they all fled. He said they quickly regrouped, came, back and attacked him with a catapult causing him to flee.

The accused said he made a report to the security guard who told him that his assailants had gone to the police. He decided to wait for the police until his arrest at his residence on 26 October 2022.

There are a number of improbabilities in the accused's account;

(a) The accused's confirmed warned and cautioned statement is at war with his evidence in court on the cause of the altercation between accused and the 3 young men. In that statement he said he stabbed the now deceased simply because he did not like how the 3 young men talked to him. This corroborates the evidence of Enock and Champion in court. The accused dismally failed to distance himself from that statement. In fact, he admitted making material omissions in that statement.

(b) In his defence outline the accused did not mention many of the issues he later raised in his evidence, like being attacked by a mob with catapult, let alone being suffocated.

(c) If at all the accused was a victim of an unprovoked attack, why would he fail to proceed to make a report to the police for 10 days until the now deceased died and he was arrested. The accused would simply have gone to police to explain that he had stabbed two unknown people in self-defence. His conduct betrays what he said happened to him.

(d) The accused's demeanour was poor. He seemed to be creating a new story each time he was confronted with a difficult questions.

(e) Why would the accused's wife advise the police that accused had come home with the knife used to stab Enock and the now deceased. This is the same knife the wife disposed of.

(f) The version of how accused said these three men attacked him is clearly contrived. He sustained no injuries. He never called for help. The 3 young men could not even use a knife they allegedly had in their possession only for the knife to kindly fall into accused's hands.

We dismiss the accused's evidence as false.

The defence of a person or self defence as outlined in section 253 (1) (a) to (d) of the Criminal Law [Codification and Reform] Act *[Chapter 9:23]* is not available to the accused. It fails on the first hurdle. The accused was not under any unlawful attack.

Lastly despite the fact that the now deceased died 10 days after being stabbed the accused's intention is clear. He used a dangerous weapon on the chest of the now deceased which is a vulnerable part of the body. Severe force was used as per the post mortem. Clearly the accused did foresee or realise that by stabbing the now deceased in the manner he did there was real risk or possibility that death may result from such as attack. However, despite that risk or possibility he stabbed the now deceased in the manner he did. In the premise he had constructive intent to cause death.

VERDICT: - Guilty of Contravening Section 47 (1) (b) of Criminal Law [Codification and Reform] Act *[Chapter 9:23]*: - Murder with constructive intent.

MAWADZE J