

**THE STATE**

**Versus**

**JUSTINE CHAKAUYA**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J with Assessors Mr E Shumba and Mr A B Mpofu  
GWERU 1 FEBRUARY AND 3 FEBRUARY 2023

**Criminal Trial**

*Mr M Shumba*, for the state  
*Mr T Zishiri*, for the accused

**MAKONESE J:** The facts of this matter make sad reading. The accused consulted a traditional healer who told him that his father was the source of his financial misfortunes. On the 17<sup>th</sup> of May 2020 the accused visited his father. He found him leaning against one of the poles that supported a granary. Accused took a jolly-juice drink laced with poison and gave it to his father to drink. Accused's father collapsed soon after drinking the juice. He bled from the nose and the mouth. He died on the spot. The accused left the deceased lying down and left for his homestead. The accused was aged 27 years at the time of the commission of this offence. The deceased was aged 88 years at the time he met his demise.

The accused has been arraigned in this court on a charge of murder as defined in section 47 (1) of the Criminal Law Codification and Reform Act (Chapter 9:23). The accused pleads not guilty to the charge.

The state has tendered a state outline summarising the events leading to the commission of the offence. It is not in dispute that on the 17<sup>th</sup> of May 2020 at around 1500 hours the accused visited the deceased at his homestead. Upon arrival at deceased's homestead, accused gave the deceased some jolly juice laced with a poisonous concoction. The deceased died soon after drinking the juice. The deceased's lifeless body was discovered by his wife Jeniffer Magasa who immediately informed neighbours. Vongai Munzava, a neighbour to the deceased passed through the deceased's homestead around 1500 hours. She saw the deceased sitting down, leaning against a granary. The deceased was in good health. At around 1530 hours the deceased's wife called Vongai Munzava. She informed her that the deceased was very sick. Vongai Munzava proceeded to the deceased's homestead. She found the deceased lying dead on the ground near the granary. Blood stained saliva was coming out of the deceased's nose and mouth. The matter was reported to the police, leading to the arrest of the accused.

In his defence outline the accused denied the offence. He stated that sometime in May 2020 he visited a traditional healer who revealed to him that his father (deceased) was responsible for the financial constraints he was experiencing. He indicated that the traditional healer gave him some medicine which he claimed would make him favourable to his father. Accused goes on to state that he administered the medicine to his father. He noted an improvement in the relations with his father. Accused claimed that on the day his father died he left him at home in good condition. He later received information that his father had died.

The state produced a confirmed warned and cautioned statement recorded from accused at Zimbabwe Republic Police, Nembudziya. The English version of the statement is in the following terms:

*"I do admit to the charges of causing the death of Benias Chakauya. I did it out of frustration, assuming that the now deceased was the one who was causing all the*

*misfortunes I have been experiencing in my life after taking the advice of a witchdoctor who then gave me the poison which I then administered to the now deceased by putting it in his jolly juice resulting in his death on the spot.”*

A Post Mortem Report compiled after an examination of the remains of the deceased by Dr Juana Rodriguez Gregori was tendered into evidence. The report reveals that the cause of death was:-

- (a) acute oedema of the lung
- (b) acute cardiac attack

The state lead *viva voce* evidence from one witness **Reason Chakauya**. This witness testified that the deceased was his grandfather. On the 17<sup>th</sup> of May 2020 he visited the deceased. The witness arrived at deceased's homestead sometime in the afternoon. He found the deceased lying on the ground. The deceased was crying. He saw saliva coming out of deceased's mouth. The witness asked the deceased why he was crying but he did not respond. The witness saw the accused running away from deceased's homestead into a bush. Later that day the witness went back to the deceased's homestead. He found people crying. His grandfather had died.

This witness was subjected to cross examination. The witness was not contradicted in any material respects. We found his evidence to be credible and reliable.

The state and defence introduced the evidence of the underlisted witnesses by way of formal admissions in terms of section 314 of the Criminal Procedure and Evidence Act (Chapter 9:07), namely:-

- (a) Vongai Munzava
- (b) Jeniffer Magasa

- (c) Tinashe Mambwa
- (d) Matisse Tavaraisa
- (e) Peter Chamunorwa
- (f) Dr Chikara
- (g) Welcome Dube
- (h) Dr Juan Rodriguez Gregori

The state closed its case without leading further evidence.

### **Defence Case**

The accused Justine Chakauya elected to give evidence under oath. The accused stated that he adhered and adopted his defence outline. Accused indicated that he approached a traditional healer sometime on May 2020. Accused was advised by the traditional healer that the misfortunes he suffered were caused by his father. Accused was given some herbs which he was told to administer to his father. Accused told the court that he went to his father's homestead. He averred that he made some porridge. He mixed herbs with the porridge. He ate the porridge together with the deceased. Accused testified that he had left the deceased in good health. Accused's evidence shifted under cross examination. He conceded that the version in his warned and cautioned statement should be taken as the truth. The accused's defence was simply unsustainable and he ultimately buckled under pressure. His defence could not withstand scrutiny. His defence was exposed. Accused's demeanour was very poor. He was very evasive.

Accused's defence counsel, *Mr Zishiri*, ultimately conceded in his closing submissions, that accused's defence outline had been shredded and shattered during cross-examination. He however argued that in spite of this, the state had failed to prove its case against the accused.

He argued that in his view, the state case failed to meet the requirements of factual and legal causation as set out in section 11 of the Criminal Law (Codification and Reform) Act (Chapter 9:23). This section provides that:-

- “(1) A person shall not be held criminally liable for a consequence unless the person’s conduct caused or substantially contributed to its occurrence.
2. A person’s conduct shall be deemed to have caused or substantially contributed to a consequence for the purposes of subsection (1) if the conduct -
- (a) is the factual cause of the consequence, that is, but for the conduct the consequence would not have occurred; and
- (b) is the legal cause of the consequences ...”

*Mr Zishiri* argued that the state failed to prove that the jolly-juice administered to the deceased contained a poisonous substance that caused the death of the deceased. He further argued that the Post Mortem Report did not prove that the cause of death was poisoning. For that reason he argued that the accused can only be convicted of attempted murder.

*Mr Shumba*, appearing for the state argued that the state proved its case beyond reasonable doubt. He contended that the accused’s confession is admissible in terms of section 273 of the Criminal Procedure and Evidence Act. The section provides that:-

“Any court which is trying any person on a charge of any offence may convict him of any offence with which he is charged by reason of a confession of that offence proved to have been made by him, although the confession is not confirmed by other evidence.

Provided that the offence, has by competent evidence other than such confession, been proved to have been actually committed.”

It is settled law that a confession is admissible as evidence provided that there is evidence aliunde proving that the offence was actually committed.

See: *Maseko & Anor v The State* 1994 (1) ZLR 330 (SC)

In *S v Mudenda* SC 54-2015, the court held as follows:-

*“The trial court correctly found on the analysis of the contents of the warned and cautioned statement that it was an expression of a genuine confession by the appellant of his involvement in the planning and murder of the deceased. The statement contains references to facts which could only have come to the knowledge of the appellant through direct participation in the conspiracy and the exemption of the agreement to kill the deceased for money and to extract warm blood from his body for ritual purposes. Not only did the appellant give a comprehensive statement of what he said happened, the facts to which it relates were presented in a coherent manner producing a convincing story into which all the known facts dovetailed perfectly. Edward Dima v The State SC 129-07.”*

The court held that there was sufficient evidence aliunde showing that the deceased was killed in the manner revealed in the warned and cautioned statement.

On the facts of the present case, there is the evidence of Vongai Munzava who saw the accused talking to the deceased. The deceased was in good health. Half an hour later deceased was lying on the ground. She saw blood coming out of his nose and mouth. Accused was seen talking to the deceased. Deceased was seated leaning on a granary. Accused admits both in his evidence and in his confirmed warned and cautioned statement that he gave the deceased a drink before he left the homestead. Blood stained saliva was coming out of deceased’s nose and mouth. The Post Mortem Report shows that death was caused by:-

- (a) acute oedema of the lung
- (b) acute cardiac attack

It has been shown that the cause of the death of the deceased was the ingestion of a poisonous drink administered by the accused. It has been suggested that inspite of the ingestion of a poisonous concoction, the deceased could have somehow survived. The defence suggests that attempted murder is the appropriate verdict. We respectfully disagree with defence counsel. The state proved beyond reasonable doubt that accused administered a poisonous concoction to the deceased moments before he died. The state proved that the accused was seen running away from the scene after the deceased had consumed the poisonous substance. The accused need not have foreseen the actual cause of death. On the facts proved, accused gave his father jolly – juice laced with poison. His intention was to cause his death. When accused realized that the poison had had its desired effect, he immediately left the homestead in a hurry. Accused has no possible defence to the charge of murder.

### **Disposition**

It is our view that the state succeeded in proving both the factual and legal cause of the death of the deceased. The state proved its case beyond reasonable doubt.

In the circumstances, and accordingly accused is found guilty of murder as defined in section 47 (1) of the Criminal Law Codification & Reform) Act.

### **Sentence**

The accused was aged 27 years at the time of the commission of this offence. The accused has been convicted of murder in aggravating circumstances. Accused gave his father a jolly juice laced with poison. Blood stained saliva oozed from deceased’s mouth. The deceased died on the spot. In assessing an appropriate sentence the court takes into account that accused is a family

man with the usual responsibilities. The accused believed that the deceased was bewitching him. The accused sought to end his financial misfortunes by terminating his father's life. He intentionally gave his father a drink laced with poison conscious that his father would die. The offence was pre-meditated. The accused fled from the scene after committing the offence. Accused knew that what he had done would end his father's life. It has been brought to my attention that accused has been in custody since May 2020. He has already spent close to 3 years in remand custody. In spite of this, the sentence this court shall impose must reflect the fact that these courts will always uphold the sanctity of human life. The accused showed no remorse throughout the trial. He did not express any regret about his conduct.

Accordingly, and for these reasons, this court deems the following to be an appropriate sentence: -

“Accused is sentenced to Life Imprisonment”

*National Prosecuting Authority, state's legal practitioners*  
*Kwande Legal Practitioners, accused's legal practitioners*