

THE STATE

Versus

LIBERTY MUTEKURE

HIGH COURT OF ZIMBABWE

MAWADZE J,

MASVINGO, 23 JULY, 2018

**Assessors**

1. Mr Chikukwa
2. Mr Gweru

**Criminal Trial - Sentence**

*B.E. Mathose* for the state

*Mrs S. Mpofo* for the accused

MAWADZE J: The accused who was initially facing a charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] was subsequently convicted on his on plea of guilty of contravening section 49 of the same Act which relates to culpable homicide. This was after the matter proceeded on the basis of a statement of agreed facts.

This is a borderline case between murder and culpable homicide. The state may have found its work cut out as there was no eye witness to the fatal assault of the now deceased. In addition to that the now deceased was the aggressor who in fact followed the accused who had decided to walk away from the confrontation. To compound matters the state could not rebut that the now deceased is the one who possessed the lethal weapon being an okapi knife

and that he pulled it out to stab the accused but was dispossessed and instead fatally stabbed. The defence of self-defence in the circumstances is available to the accused although the means he used were not reasonable. This is brief informs the conviction of the accused on a lesser charge of culpable homicide.

The agreed facts are that both accused and the now deceased who are aged 22 years were patrons at Day and Night Club, Zano business centre, Chief Chikwanda, Masvingo on Christmas day, 25<sup>th</sup> December 2017. As usual they were merry making partaking beer and playing a game of snooker. Apparently as the alcohol took its toll at around 21.30 hrs a quarrel ensued between them as to who was to play the snooker first. A fight nearly ensued but one Lebison Sithole restrained the two. The accused decided to take his snooker tokens and left the bar for home using a foot path which passes through some maize fields.

The now deceased Tinashe Shepherd Shindi had other ideas. He followed the accused and caught up with him some 400m from the night club. The altercation between the two resumed. There was no other person present. Accused said the now deceased pulled out an okapi knife. It weighs 0.058kg with a 13 cm long handle and the blade is 10 cm long. The accused said the now deceased tried to stab him and a scuffle over the knife ensued. The now deceased was dispossessed of the knife and stabbed three times. The now deceased rushed back to the night club where he fell unconscious on the verandah and passed on upon arrival at Zano clinic the same night. The accused fled from the scene and did not even proceed to his homestead. Instead he hid at his aunt's resident in Matende Village where he was finally apprehended at 0200 hrs on 26 December 2017. The accused had hid the knife in a shoe and wiped it of blood. The accused produced the knife and confessed to what he had done.

The post mortem report shows that the now deceased died of haemorrhage shock arising from stab wounds. In fact, there were three stab wounds described as follows;

- “ - ± 2cm stab wound on right subclavian area, piecing through chest wall to lung.*
- ± 2cm left subclavian stab wound piercing through muscle but not chest wall.*
- ± 1cm superficial stab wound left subclavian area.”*

Our task in this matter is to assess the appropriate sentence.

The offence of culpable homicide arising from violent conduct is a very serious offence and invariably attracts a custodial sentence unless there are special mitigatory factors.

This is so because the sanctity of human life cannot be over emphasised. Human blood is sacred hence once life is lost whether intentionally or through negligence it cannot be replaced.

This court is saddened by the fact that offences of this nature are alarmingly prevalent in Masvingo Province. A lot of lives are needlessly lost over minor disputes like a game of snooker. It is unfortunate that these offences are being committed by our young persons who are the future of this country. The mind boggles why young persons easily resort to violent conduct using lethal weapons like knives to settle very petty disputes. Our nation has the onerous task to inculcate some sense of moral responsibility within the young generation so that they value human life.

It is clear from the facts of the case that the accused used severe force. An okapi knife is a lethal weapon. Three stab wounds were inflicted targeting the neck, one of the stab wound pierced through the chest wall to the lung. The attack was vicious, barbaric and unfeeling. In the circumstances the degree of negligence is extremely high. As already said it borders on intention to kill.

The accused's conduct after fatally injuring the now deceased deserve severe censure. The accused saw it fit to flee from the scene. He did not render any assistance to the now deceased. Instead he decided to avoid the long arm of the law by deserting his residence, concealing the weapon used after wiping it of blood. The moral blameworthiness of the accused is very high. In such circumstances our courts can only play their role by handing down deterrent sentences.

We are alive to the mitigatory factors in this case. The accused is married with two children said to be 6 years old and 8 months old respectively. We just wonder whether accused had his first child at 16 years of age as he is 22 years old. At that age accused is fairly youthful. The accused is unemployed and the family relies on his manual labour.

As a first offender accused deserves some measure of leniency. Further, he did not waste the court's time and resources by admitting to the charge without raising flimsy defences. To that extent he exhibited contrition. This matter has been finalised in a short space of time.

It is in accused's favour that his family assisted in the burial of the now deceased. They provided a coffin and the food consumed at the funeral.

We take note that the now deceased was the aggressor. He is the one who followed the accused, was in possession of the okapi knife and was ready to use it. To that extent his was the author of his demise.

In the circumstances we believe the following sentence will meet the justice of the case,

*“10 years imprisonment of which 2 years are suspended for 5 years on condition the accused does commit within that period any offence involving the use of violence upon the person of another for which the accused is sentenced to a term of imprisonment without the option of a fine.*

*Effective term; 8 years imprisonment.”*

*National Prosecuting Authority, counsel for the state*

*Pundu & Company, pro deo counsel for the accused*