

**THE STATE**

**Versus**

**THALAZANI NYATHI**

IN THE HIGH COURT OF ZIMBABWE  
DUBE-BANDA J with Assessors Mr. Ndubiwa and Mr. Ndlovu  
HWANGE 11 March 2024

**Criminal trial**

*Ms M. Musaka* for the State  
*Ms. A. Kunda* for the accused

**DUBE-BANDA J:**

[1] The accused is appearing before this court charged with the crime of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that on 3 October 2023 he unlawfully caused the death of Brighton Mpofu (hereinafter referred to as the “deceased”) by stabbing him once on the thigh with a knife, intending to kill him or realising that there was a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[2] The accused pleaded not guilty to the crime of murder and offered a plea of guilty to the lesser crime of culpable homicide. The State accepted the plea of guilty to the crime of culpable homicide. The State tendered into the record of proceedings a statement of agreed facts, which is before court and marked Annexure “A”. The statement reads as follows:

The State and the Defence are agreed that the following issues are common cause being that:

- i. The accused was aged 39 years of age at the time of the commission of the offence and he resides at Obert Mpofu’s homestead, Mpumelelo Village, Chief Tshugulu, Nkayi.
- ii. The deceased was 21 years at the time he met his death. He used to reside at Edward Khumalo’s homestead, Tunke Village, Chief Sikhobokhobo, Nkayi.
- iii. On the 3<sup>rd</sup> of October 2023, the deceased was at Mpumelelo Business Centre and he was drinking beer in the company of his two friends Khulisani Ncube and Mihlayifani Zikhali.

- iv. The three later left the shops and realized along the way that they had forgotten their cellphones. They went back to the shops. Along the way they met the accused who accused them of making noise.
- v. Accused struck the deceased on the back with a stone from his catapult. Accused also assaulted Mihlayifani with a catapult. Deceased and Khulisani fled in one direction, while Mihlayifani fled in another direction.
- vi. Accused gave chase on deceased and Khulisani and caught up with them. Deceased asked accused why he had assaulted him. A fight ensued between the two. The deceased overpowered the accused.
- vii. The accused then picked deceased's knife which had fallen from deceased's pocket and stabbed the deceased once on the left thigh. The accused fled from the scene.
- viii. The deceased staggered for a short distance and fell down. He bled profusely from the deep cut on the thigh. Deceased was discovered dead the following morning near the scene.
- ix. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently caused the death of the deceased.

[4] The State produced a post mortem report number 1254-961-23 (exhibit 1). The report was compiled by Dr Juana Rodriguez Gregori who concluded that the cause of death of the deceased was hypovolemic shock; laceration to the left femoral artery; and stab wound. The State also produced an okapi knife with the following dimensions: length of handle 13cm; width of handle 3cm; length of blade 10cm; width of blade at wide end 2.5cm; width of blade at its tip 3mm; and weight 150g (exhibit 2). This is the knife that the accused used to stab the deceased, causing the injuries depicted in the post mortem report.

[5] The totality of the facts and the evidence adduced in this trial show that the injuries on the deceased were caused by the accused. The post mortem report shows that the injuries inflicted by the accused caused the death of the deceased.

[6] Ms *Musaka* counsel for the State submitted that this is a case of culpable homicide because of the following: that the accused and the deceased were engaged in a fight; the accused stabbed the deceased on the thigh, which is not a delicate part of the human body like the chest or the head. Counsel submitted further that the accused was negligent in that he introduced a weapon

in the fight and used excessive force in stabbing the deceased. The manner the accused stabbed the deceased shows that he fell below the reasonable person standard. The accused ought, as a reasonable man, to have foreseen the death of the deceased and guarded against it. The accused was negligent and it was his negligence that led to the death of the deceased. On the basis of the facts and the evidence of this case, the court is satisfied that the State's concession was properly taken.

In the result: the accused is found not guilty of murder and found guilty of the lesser crime of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].

#### Sentence

[7] Mr. Nyathi this court found you guilty of the crime of culpable homicide arising from the death of the deceased. The courts have stressed the importance of proportionality and balance between the crime, the criminal and the interests of society. It remains the paramount function of the sentencing court to independently apply its mind to the consideration of a sentence that is proportionate to the crime committed. The cardinal principle that the punishment should fit the crime should not be ignored. See *S v Zinn* 1969 (2) SA 537 (A). This court must also factor into the equation the provisions of the Criminal Procedure (Sentencing Guidelines) Regulations, 2023.

[8] In mitigation of sentence, your counsel addressed the court and placed factors which he urged this court to take into account in order to impose a lesser sentence in respect of the crime of which you had been convicted. Your personal circumstances are as follows: you are thirty-nine years old; married with three minor children and the youngest is nine months old. He is own a commuter omnibus and realises USD\$400 00 per month. The court will further take into account that you are a first offender and pleaded guilty to culpable homicide. The court will also take into account that you assisted the bereaved family to meet the funeral expenses of the deceased. In aggravation of sentence Ms *Musaka* submitted that you were the aggressor in this case. Counsel sought a direct term of imprisonment for this crime.

[9] In determining an appropriate sentence, the court takes into account that you have been convicted of a serious offence. A life was ended. It is incumbent on this court to emphasize the sanctity of human life. Society frowns against a person who by his own negligent conduct cause

the death of another human being. The courts must send a loud and clear message that causing death, *albeit* negligently of fellow human being will not be tolerated. You were the aggressor in this matter. You accused the deceased of making noise, and started to attack him with stone from your catapult. You struck the deceased with a stone. Sensing danger they ran away from you, but you gave chase and caught up with the deceased. You started a fight. You picked deceased's knife which had fallen from his pocket and stabbed him once on the left thigh. The accused fled from the scene. The injuries sustained by the deceased speak to the excessive force you used in stabbing him. After stabbing him you left him to bleed and die. You did not have the presence of mind to assist him get medical treatment. Your moral blameworthiness is very high indeed. A sentence of direct imprisonment is warranted in this case.

[10] The presumptive penalty provided in Criminal Procedure (Sentencing Guidelines) Regulations, 2023 is five years imprisonment. However, taking into account the circumstances of this case and your high level of moral blameworthiness a sentence exceeding the presumptive penalty is warranted. Having taken all the factors into account, we take the view that the following sentence will meet the justice of this case.

You are sentenced to 8 years imprisonment of which 2 years imprisonment is suspended for 5 years on condition the accused does not within that period commit an offence of which an assault or physical violence on the person of another is an element and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

*National Prosecuting Authority*, state's legal practitioners  
*Dube & Associates*, accused's legal practitioners