

**THE STATE**

**Versus**

**LIMUKANI SIBANDA**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
HWANGE HIGH COURT CIRCUIT 4 & 5 NOVEMBER 2014

*Miss M. Munsaka* state counsel

*Ms D. Zihove* defence counsel

Criminal Trial

**KAMOCHA J:** The 27 years old accused was charged with the crime of murder. The allegations being that on 1 December 2013 at Acute and Crews Village 1 Nyamandlovu he did wrongfully, unlawfully and intentionally kill and murder Bhékinkosi Ndlovu a male adult in his lifetime therebeing.

When the charge was put to him his reply was that he did not admit the charge. He was fighting with one Mvelo and the deceased tried to stop the fight between him and Mvelo and he killed him accidentally. He had no intention to kill him at all. A plea of not guilty was entered on his behalf.

The state outline was then read and produced as exhibit 1 and I do not propose to read it again. The defence outline was also read and produced as exhibit 2.

In brief his story was that on the fateful day he had a misunderstanding with Mvelo Ncube when they were at a beer drink. He moved to another drinking place to avoid further trouble.

He drank until around mid-night when he decided to go home. On his way home he met Mvelo who accused him of spreading malicious rumours about him. Accused said he started fighting Mvelo who had a knife. When he saw the knife he also drew out his own knife.

As the fight continued the deceased tried to stop it by getting in between both parties who were armed with knives.

Accused claimed to have been intoxicated so when the deceased went in between to stop the fight he was accidentally stabbed in the process. Thereafter the accused went home and only

learnt the next morning that the deceased had died.

The accused finally prayed that he should not be convicted of murder but tendered a plea of guilty to culpable homicide. His limited plea was rejected by the state.

The third exhibit was the accused's confirmed extra curial statement which was recorded at Nyamandlovu Police Station a day after the alleged crime i.e. 2 December 2013 when matters were still fresh on his mind. He was brief in his statement and said this:-

“I do not admit the allegations leveled against me. I stabbed Bhekinkosi unintentionally. I wanted to stab Mvelo, we were fighting. I stabbed him once in the ribs and then left.”

The accused does not say Mvelo was armed with a knife. He also does not say Mvelo had accused him of spreading malicious rumours about him. He further does not say deceased had stood between the two of them trying to stop their fight. These are very material points that he left out in his extra curial statement. Neither did the accused bring the points to the attention of the magistrate who confirmed his statement on 13 December 2013.

The 4<sup>th</sup> exhibit was an affidavit by a police officer who identified the remains of the deceased to Dr Jekeny who performed a post mortem and compiled a report exhibit 5.

The doctor made the following observations. He noted gastric contents in the airway in the lungs which were over inflated. He noted haemothorax of about 400mls.

The abdomen had about 500ml of blood especially around the liver potential spaces. The lower part of the right anterior liver had a 6cm vertical and 5cm deep wound which ended 2mm before the inner posterior surface (lower part) of the right lobe of the liver.

The doctor concluded that severe force was used to inflict the injuries he observed. The immediate cause of death was asphyxia (lack of oxygenation) from the aspirated gastric stomach contents which moved from the stomach to airway as a result of the trauma. He went on to state that the deceased was still going to die within a few hours due to loss of blood from the chest and abdomen especially bleeding from the liver.

He summarised that death was due to: (a) asphyxia (b) gastric contents aspiration (c) chest – abdomen stabbing

Exhibit 6 was an Okapi knife which the accused admitted to have used in stabbing the deceased. It is what was commonly known as a 3 star knife. It has a locking device. Its blade

which measures 10.6cm is very sharp and so is its tip. It is 2cm at its widest point. Its handle is 13cm long. It weighs 60 grams. It is indeed a lethal and dangerous weapon.

State counsel applied for the evidence of the following witness to be admitted in terms of section 314 of the Code: Sinqobile Moyo, Muyangwa Bernard, Edwin Shambamuto, Lovemore Tshuma, Constable Karichi and Dr I. Jekenyia. The defence counsel had no objection and the application was accordingly granted.

The evidence of Somandla Moyo who could not be located was expunged from the defence outline and record.

*Viva voce* evidence was adduced from Mvelo Ncube who gave his evidence clearly and in a straight forward manner.

The witness told the court that he was not armed in any way. He had no knife and did not draw out a knife on that day. This court has no reason to disbelieve him. The accused's story that he was armed with a knife is clearly false and must be rejected as it was an afterthought.

It was the witness' testimony that the deceased did not at any stage try to stop the fight and did not stand between the two. Similarly the accused's story was false. The court finds that deceased never tried to do so. He was just a bystander. The witness said the accused struck at him with a knife but missed and the knife scratched the jacket he was wearing. Thereafter he ran away. At that stage the accused had not yet stabbed the deceased. He said accused could only have stabbed the deceased after he had run away. He did not stab him before that.

Mvelo was worth to be believed. The court finds that the accused only stabbed deceased after Mvelo had run away. He was not standing in between accused and Mvelo.

Accused gave evidence. He had three stories one that he told the police in his confirmed extra curial statement. The second one he told his legal practitioner and finally what he told the court. He blamed the police and his legal practitioner for the inconsistencies in his story. His new versions were clearly afterthoughts which are hereby rejected.

The accused was not worth to be believed. Wherever his story conflicts with that of the state witness this court prefers that of the witness.

The court makes the following findings:

- 1) Mvelo Ncube did not have a knife on the fateful day

- 2) He did not confront the accused and allege that he had been spreading malicious rumours
- 3) The deceased never tried to stop the fight and never went between the two
- 4) The accused did not stab the deceased accidentally as he allegedly wanted to stab Mvelo
- 5) Accused only stabbed deceased after Mvelo had run away
- 6) By stabbing the deceased with such a lethal weapon in the abdomen where death is substantially certain but nevertheless continued to do so the accused is guilty of murder with actual intention.