

THE STATE

VERSUS

MTHOKOZISI MASUKU

IN THE HIGH COURT OF ZIMBABWE
MOYO J
HWANGE 17 MARCH 2014

Mr *T. Nkala* for the accused
Miss *N. Ngwasha* for the state

Criminal Trial

MOYO J: The accused person faces a charge of murder in contravening section 47 of Criminal Law Codification and Reform Act [Chapter 9:23], in that on the 22nd day of June 2012 and at Sihlengeni Primary School in Nkayi in Matebeleland North, the accused did wrongfully, unlawfully and intentionally kill and murder Nqobizitha Nkiwane a male adult during his lifetime.

The accused pleaded not guilty to this charge and tendered a guilty plea to a lesser charge of culpable homicide. The State Counsel accepted this limited plea and a statement of agreed facts was then tendered. It was marked Exhibit 1 and reads as follows:-

- “1. Accused resides at Lackel Nkomo’s homestead Sihlengeni Nkayi and was aged 25 years at the time of the commission of the crime.
2. The deceased used to reside at Godone Nkomazana’s homestead and was aged 19 years at the time he met his death.
3. The accused and deceased were not related but stayed in the same area.
4. On the 22nd of June 2012 accused and deceased were at a soccer training session at Sihlengeni Primary School grounds
5. During the training session a misunderstanding erupted between accused and deceased over a ball tackle.
6. As deceased moved away from accused, the accused pulled out an okapi knife

from his trouser pocket and stabbed deceased once on the left side of the chest.

7. Deceased died on arrival at Dakamela Clinic
8. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently caused the death of the deceased.”

The post-mortem report was also read and tendered with the consent of Defence Counsel. It states that the cause of death was

- (1) aspiration
- (2) haemorrhagic shock
- (3) stab wound
- (4) homicide

It further states the deceased was stabbed with a sharp object like a knife.” The post-mortem report was marked Exhibit II. State Counsel said the murder weapon has since been misplaced by the police.

I accordingly find the accused person not guilty on the charge of murder but convict him of the lesser charge of culpable homicide. State counsel, accused is a first offender. The accused person is convicted of the offence of culpable homicide in that on the 22nd of June 2012 at Sihlengeni Primary School grounds the accused stabbed deceased with an okapi knife once on the left side of the chest. I have considered that the accused person is a first offender, who pleaded guilty to the offence of culpable homicide that he was aged 25 years at the time of the commission of the crime, that he has already spent 1 year 8 months in remand prison and that he surrendered himself to the police. When sentencing an accused person, the court has to look into his personal circumstances, which are the ones live alluded to above, they indeed give mitigation on his behalf. The court however has to look further than that, that is, also look at the circumstances of the commission of the offence and the interests of society at large. In this case the accused person, together with the deceased were at a training session at a school ground. An argument ensued between accused and deceased over a ball tackle, and as deceased moved away from deceased, the accused drew an okapi knife from his trouser pocket and stabbed deceased once on the left side of the chest. Such circumstances aggravate the accused’s conduct to a very great extent. Why did the accused person carry an okapi knife on his person at a soccer match? This is a specified weapon which is lethal hence its specification

and it is an offence to merely have it in your possession. As if the mere possession of the okapi knife was not bad enough, the accused uses it to stab the deceased in circumstances it did not warrant any physical force at all. Arguments are a normal thing in our day to day lives in society. We can't do things the same way, neither can we think our talk the same was, but we should be to laceration of each other's divergent views and opinions about anything. Surely a person can not be killed for an argument over a ball tackle.

Otherwise all of us will be killed in the most brutal of ways if a message is not sent out there, and strong, that people should desist from violence and learn to tolerate others who hold different views from theirs. The deceased was killed for absolutely no reason at all and this must be condemned in the strongest of terms. The weapon used also exacerbates the whole situation as in the league of an okapi carrying a knife on its own is aggravating in which the circumstances the accused committed the offence. The part of the body that was aimed at, the vulnerability of the left side of the chest as it contains prominent life organs should be condemned. The stab wound was 5 x 1 x 2cm and the left lung was perforated. The degree of force applied was severe to bring about such a laceration. We find the circumstances in which the offence was committed and to be grave in that all that happened leading to deceased's death had no basis at all. At this juncture the interests of society then come in. This court must indeed discourage people like accused from moving around carrying lethal weapons. The court must also show its disapproval of the unnecessary loss of lives where people are just killed for nothing, wherein if you differ in opinion with the next person, you are killed for that. That can not be allowed and a strong message surely must be sent out there, that the unnecessary loss of lives is unwarranted. See *S v Khumalo* HB 143/11. The accused is accordingly sentenced to 12 years imprisonment.

Dube company, accused's legal practitioners
Criminal Division, Attorney General's Office, state's legal practitioners

