

THE STATE  
**versus**  
GIFT MOYO

HIGH COURT OF ZIMBABWE  
MATHONSI J  
GWERU 24 MAY 2018

### **Criminal Trial**

*M Shumba* for the state  
*Ms G Nyabawa* for the accused

**MATHONSI J:** The accused has been brought before this court on a charge of murder in breach of section 47 (1) of the Criminal Law Code [Chapter 9:23]. The allegations are that on 19 August 2015 and at “C” Mine Beerhall in Mberengwa he unlawfully caused the death of Stephen Mpofo (the deceased) by stabbing him with a knife once on the abdomen, intending to kill him or realizing that there was a real risk or possibility that his conduct may cause death.

The accused has pleaded not guilty to the charge of murder. He has however tendered a limited plea of guilty to culpable homicide which has been embraced by the state. As a result, the matter is proceeding by way of a statement of agreed facts penned by both counsel. According to that statement the accused was aged 28 at the material time and resided at Chigigwa village under chief Mapiravana Mberengwa while the 33 year old deceased lived at Ganunu village under Chief Mapanzure in Mberengwa.

On 19 August 2015 at about 2015 hours both of them were at a gambling school near “C” mine beerhall veranda when a misunderstanding arose over a sum of \$5-00 which the deceased owed the accused. The deceased threatened to beat up the accused causing the accused to flee. Although the accused returned to the scene later to demand his money the deceased once again chased him at the same time assaulting him with open hands. It was during the course of that second chase that the accused pulled out a knife which he used to stab the deceased once in the abdomen inflicting an injury, before running away.

The deceased was taken to Zvishavane Hospital before being transferred to United Bulawayo Hospitals where he died on 3 September 2015 after apparently developing post-surgery complications. It is significant that the moment the accused and the deceased came on a collision course during the course of gambling at "C" Mine Beerhall in Mberengwa the accused's immediate reaction was to take flight which is commendable indeed. The deceased however would not relent giving chase to the accused right into the night. It was only after the accused had taken flight for a distance that he pulled out a knife and stabbed the deceased the way he did inflicting an injury from which the deceased died exactly two weeks after the attack.

In those circumstances there is no way the accused could have had an intention to cause the death of the deceased. The acceptance of the limited plea by the state is therefore meritable.

#### Reasons for sentence

In assessing sentence we take into account what has been said by counsel in mitigation of sentence. The accused was 28 years at the time of the commission of the offence. He is married with two minor children going to school and look up to him for survival. He is a first offender who has pleaded guilty. Generally our courts treat such offenders with leniency.

The deceased was the aggressor even as he owed money to the accused exhibiting bullish tendencies by first threatening to assault the accused causing him to flee and then actually assaulting the accused. In those circumstances the conduct of the accused could be said to have been desperate. In addition, the accused paid \$2000-00 and 22 head of cattle as compensation for the death of the deceased.

The accused has remained in custody from 1 September 2015 which is 2 years 8 months while awaiting trial. That period will be credited to the accused. We agree with counsel that these are very weighty mitigatory factors. Indeed it is commendable that when the deceased threatened the accused he initially took flight. Clearly the deceased may be said to have brought this upon himself given what he did. Significantly the state has made a concession in that regard. We accept therefore that the accused's moral blameworthiness is at the lowest ebb.

Unfortunately it is the conduct of the accused which caused the death of the deceased. It is the duty of the court to safeguard the sanctity of human life by imposing sentences that inform

members of the public that resort to violence under whatever circumstances cannot be tolerated. It is our duty to ensure that society is informed that every person is expected to exercise self-restraint even under extreme provocation. In that regard a custodial sentence is unavoidable so that like-minded people are guided accordingly.

In the result the accused is sentenced as follows:

“4 years imprisonment of which 3 years is suspended for 5 years on condition he does not during that period commit any offence involving violence for which upon conviction he is sentenced to imprisonment without the option of a fine.  
Effective sentence 1 year imprisonment.”

*National Prosecuting Authority, state’s legal practitioners*  
*G Nyabawa Legal Practitioners, accused’s legal practitioners*