

THE STATE  
**versus**  
LESLEY MPAMBA

HIGH COURT OF ZIMBABWE  
MATHONSI J  
BULAWAYO 27 FEBRUARY 2018

*Ms N Ndlovu* for the state  
*R Dzete* for the accused person

**MATHONSI J:** The accused was initially jointly charged with Thathindaba Ndlovu who is at large and has had a warrant of arrest issued against him after he skipped bail. He has been arraigned before this court charged with murder as defined in section 47 (1) of the Criminal Law [Codification and Reform] Act [Chapter 9:23] it being alleged that he and his co-accused who is at large assaulted the deceased Bongani Ncube using clenched fists, a log and a rock all over the body on the night of 29 February 2016 along Falcon-Sacred Heart Road resulting in his death.

The accused pleaded not guilty to the charge of murder but tendered a plea of guilty to the lesser charge of culpable homicide. The state graciously accepted the limited plea. Accordingly the matter is now proceeding by consent of the parties in terms of a statement of agreed facts. The agreed facts are that at the time of the offence the accused was 21 years old while the deceased was 45 years old residing at Plot 4, Longridge Esigodini. Both of them were employed at Eureka MAT Mine in Esigodini where the deceased was a mine supervisor.

At about 0100 hours on 29 February 2016 the accused, his co-accused and others who included the deceased were coming from a beer drink at Falcon Compound Bar walking along Falcon-Sacred Heart Mission gravel road. After the deceased rebuked the accused for demanding payment of a debt from Mthandazo Ndlovu, a misunderstanding ensued between them during which they exchanged blows. Although the fight ended, the accused and his co-accused later assaulted the deceased again with clenched fists, and booted feet all over the body. The accused broke off a branch from a jacaranda tree with a length of 1,23m and weight of

0,665kg which he used to indiscriminately assault the deceased. His co-accused used a log to also indiscriminately assault the deceased until he lost consciousness.

During the course of the assault, the accused's co-accused picked a rock which he placed on the deceased's chest and sat on it. The rock weighs 21,260kg. As they did all this they were shouting "beat this dog."

The beating was only stopped by Thembelani Moyo and two others who rushed to the scene. Those are the people who also reported the matter to members of the neighbourhood watch committee leading to the arrest of the accused persons. The deceased was conveyed to hospital where he died on admission as a result of the injuries sustained when he was being assaulted by the accused and his co-accused who is at large. The deceased's remains were also subjected to post-mortem examination.

According to the post mortem report compiled by Dr Roberto Trecu, who examined the body of the deceased at United Bulawayo Hospitals on 2 March 2016, the deceased died as a result of severe brain damage and oedema, subdural and subarchnoid haemorrhage and severe head trauma due to beating. We notice that although the deceased had head injuries, meaning that the beating was also directed to that vulnerable part of the body, he did not sustain any skull fracture. That may be indicative of the fact that the degree of force used was not very severe. In our view that may have informed the state's acceptance of the limited plea which we accordingly agree with.

In the result, the accused is hereby found NOT GUILTY of murder but guilty of culpable homicide.

#### Reasons for sentence

In assessing an appropriate sentence we take into account submissions made by counsel in mitigation of sentence. The accused is a first offender who is youthful having been only 21 years old at the time of the offence. He has co-operated with the court by tendering a limited plea acceptable to the state. This may however be a case where he had no choice having been caught *in flagrante delicto* as it were, and had no escape route.

We appreciate that at the relevant time he was intoxicated. He has been in custody for a continuous period of 2 years after arrest as he was never admitted to bail. Against that should be

juxtaposed the aggravation. The accused assaulted a person who was 24 years his senior in the most callous manner in the dead of the night. He and his co-accused continued clobbering the deceased until he lost consciousness. A fresh branch of a tree as well as a log were used to assault the deceased inflicting fatal wounds.

It is completely uncultured, unAfrican and indeed uncivilized in the extreme for young people not only to disrespect their elders and indeed their superiors at work but to even go to the extent of assaulting them the way the accused and his colleague did. Whatever it is that is happening at the mining pits out there which turns young people into disrespectful and violent rogues is not really apparent to us. It has however destroyed our cultural values and social fabric. It calls for immediate intervention by everyone concerned including our government. Needless to say that as the courts we will play our part in ensuring that justice is done.

It is the duty of the courts to uphold the sanctity of human life by imposing deterrent sentences which reflect society's revulsion at such unbecoming conduct. A precious and indeed useful life was needlessly lost when the accused and his friend took leave of their senses. It has not escaped our gaze that this is a borderline case in which the accused could have easily been convicted of murder.

We will however take into account the fact that the accused has remained in custody for 2 years because he was not granted bail. That period will be discounted from the sentence.

Accordingly the accused is hereby sentenced to 9 years imprisonment of which 2 years imprisonment is suspended for 5 years on condition he does not, during that period, commit any offence involving violence for which he is sentenced to imprisonment without the option of a fine.

Effective sentence: 7 years.

*National Prosecuting Authority, state's legal practitioners*  
*Maseko Law Chambers' accused's legal practitioners*

