

**THE STATE****Versus****MAKANDENI LOVEMORE DUBE**

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr Sobantu and Mr Ndlovu

HWANGE CIRCUIT COURT 5 MARCH 2018

**Criminal Trial***Mrs Gorerino* for the state*Miss J. Change* for the accused

**MAKONESE J:** The accused has been arraigned in this court on a charge of murder. The allegations are that on 31<sup>st</sup> August 2017 and along Lungwalala gravel road, Siabule Village, Binga, the accused person assaulted Sibangani Muzamba causing him to fall to the ground intending to kill the deceased or realising that there was a risk or possibility that his conduct may cause the death of the deceased. The accused pleads not guilty to the charge of murder and tenders a limited plea of guilt with respect to culpable homicide. The state accepts the limited plea.

The state and defence has tendered a statement of agreed facts into the record of proceedings. The agreed facts are briefly that the accused was aged 30 years at the time of the commission of the offence, whilst the deceased was 34 years old. Accused and deceased were cousins. On the 31<sup>st</sup> August 2017 accused and the deceased together with other villagers proceeded to Godfrey Tshuma's homestead where they were assisting him to thatch his hut. At the same gathering accused and others were partaking of traditional brew. After they had completed thatching, accused, deceased and other villagers proceeded to Lameck Munsanka's village where they were to continue with their consumption of traditional beer. Along the way deceased asked for his chicken which accused owed him. Accused indicated that he would give him the day after. Godfrey Tshuma who was walking with both accused and deceased asked for US\$1 from the deceased. When deceased gave Godfrey Tshuma the US\$1, this did not go down well with accused who quizzed the deceased why he had chosen to give the money to Godfrey

Tshuma instead of him. Godfrey Tshuma then parted way with them and promised to meet the two at the shops. Deceased started poking accused person in the face and this led to a misunderstanding between the parties. Accused assaulted the deceased with a clenched fist on the neck below the ear causing the deceased to fall to the ground. Accused left the scene. Later that day, Godfrey Tshuma saw deceased lying on the ground. Deceased told the witness that he had been assaulted by the accused. At around 0700 hours the following day Pardon Munsanka proceeded to the scene where he observed that deceased had died.

The state produced a post mortem report compiled by Dr S. Pesanai on the 5<sup>th</sup> September 2017 at United Bulawayo Hospitals. The findings of the pathologist were that the cause of death are; (1) subarchnoid haemorrhage; (2) blunt force trauma to the head; (3) assault.

From the evidence placed before the court we are satisfied that accused person negligently caused the death of the deceased. The accused person reasonably foresaw the death of the deceased.

In the result accused is found not guilty on the murder charge, but is found guilty of culpable homicide.

### **Sentence**

In assessing an appropriate sentence this court takes into consideration all the mitigating features of the case as outlined by the accused's defence counsel. Accused is aged 31 years. He has a wife and two young children. Any sentence this court will impose will affect accused's dependants who depend on him for sustenance. The court also takes into account the fact that the accused and deceased were intoxicated to some degree at the relevant time. Both accused and deceased had taken copious amounts of alcohol before the incident.

The accused spent close to 7 months in remand prison awaiting trial. He has to some extent served a portion of his sentence and his stint in prison should lead to some discount in his sentence. The accused has tendered a limited plea to the lesser charge of culpable homicide. His

plea is a sign of some measure of remorse and contrition. Accused has however been convicted of a serious offence. Accused's conduct led to the unnecessary loss of human life. The "chicken debt" was evidently so trivial that it should not have led to this tragic death. The accused lost his temper, acted irrationally and used excessive force against the deceased. Although the deceased was the initial aggressor, accused's conduct is deplorable and his moral blameworthiness was high. The court notes that cases involving violence committed by persons at beer drinks are on the increase. The courts have a duty to protect the sanctity of human life. In this respect sight must not be lost that the victim's family has now been left without a breadwinner. They have been robbed of a young man who was at a prime age.

This court finds the following sentence to be appropriate.

"Accused is sentenced to 5 years imprisonment of which 1 year is suspended for 5 years on condition accused is not within that period convicted of an offence involving violence and for which upon conviction the accused is sentenced to a term of imprisonment without the option of a fine."

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