

**THE STATE**

**Versus**

**WILLIAM NCUBE**

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessors Mr T.E Ndlovu and Mr G. Maphosa

HWANGE 6 OCTOBER 2022

**Criminal Trial**

*Mrs C Gorerino*, for the state

*Ms T. Chikwandare*, for the accused

**MOYO J:** The accused faces a charge of murder, it being alleged that on the 9<sup>th</sup> of October 2021 at Fanwell Dube's homestead, he unlawfully caused the death of Fanwell Dube by striking him several times with a log on the head intending to kill him and thereby causing his death. Accused denies the charge but instead pleads guilty to culpable homicide.

The facts of the matter are largely common cause as accused is the only eye witness to the occurrence of the offence. The following were tendered into the court record and duly marked

1. the state summary
2. the defence outline
3. accused's confirmed warned and cautioned statement
4. post-mortem report
5. the log that was allegedly used in the commission of the offence

The evidence of Themba Ndlovu, Assistant Inspector Makoni and Dr Jekenya was admitted into the court record as it appears in the state summary.

The facts are fairly straightforward, accused's sister was married to the deceased. Accused visited their homestead and found his sister absent, deceased by himself. He

enquired as to the whereabouts of his sister, harsh words were exchanged until the 2 were engaged in a fist fight. Accused ended up plucking out a dropper from the perimeter fence and struck deceased with it on the temple. He says he did so to force deceased to relent so that he could flee as deceased was overpowering him. He then fled with deceased in pursuit, when he got near the gate, deceased grabbed him through the satchel that was on his back. He turned and struck deceased again on the head, in a bid to force him to release the grip on his satchel, deceased fell facing downwards and the accused ran away.

The court has to use accused's version as it is, as nothing has been shown that it cannot be accepted. It is the version of the day. That he is an accused does not mean that what he says should be rejected when there is no reason to do so. Accused and deceased were in a fight, accused plucked a log hit deceased twice with it, firstly to force deceased to relent and secondly to force deceased to let go of him after he had grabbed him with his satchel. This court has no right to take an armchair approach and find that accused should have acted in any other manner in the circumstances of a fight, where obviously his judgment was clouded by both anger and anxiety. A person's mind is obviously anxious during a fight as he would not know what follows next. This is a typical case where the accused should be found to have acted at the spur of the moment. The parties were engaged in a fight and that on its own reduces accused's moral blameworthiness. It is clear that accused could not have harboured any intention nor be found to have realised the possibility of death in the circumstances.

It is for these reasons that the accused shall be found Not Guilty on the charge of murder but will be convicted of the lesser charge of culpable homicide.

### **Sentence**

The accused is convicted of culpable homicide. He is a first offender, a family man and he pleaded guilty to the appropriate charge. He has shown remorse. The deceased was the aggressor. He has already spent a year in remand prison. However, a life was needlessly lost under very unfortunate circumstances. These courts frown at the loss of life through violence. Accused is accordingly sentenced to 3 years imprisonment with 1 year imprisonment suspended for 5 years on condition accused is not within that period convicted

of an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

*National Prosecuting Authority, state's legal practitioners*  
*Mhaka Attorneys, accused's legal practitioners*