

THE STATE**Versus****MELIINKOSI NDLOVU**

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessors Mr Ndlovu and Mr Maphosa

HWANGE 3 OCTOBER 2022

Criminal Trial*Mrs C. Gorerinho* for the state*Ms T. Chikwandare* for the accused

MOYO J: The accused faces a charge of murder, it being alleged that on the 9th of August 2021 at his own homestead in Nkayi he unlawfully caused the death of Rangisai Ndlovu by stabbing him once on the chest with a knife and thereby causing his death. The accused offered a limited plea to the charge of culpable homicide. State counsel accepted the limited plea and the parties drew and tendered a statement of agreed facts which was marked exhibit

1. It reads as follows:

- “1. The accused was aged 32 years at the time of the commission of the offence and he resides at his own homestead, Koto village, Sidulini, Chief Madliwa, Nkayi.
2. The deceased was aged 43 years at the time of his death. He used to reside at his own homestead, Koto village, Sidulini, Chief Madliwa, Nkayi.
3. On the 9th August 2021 accused, deceased, Ben Sibanda and Bornwell Ndlovu were walking towards their homesteads. When they were at a place called Gaweni when they had a misunderstanding over the performance of a certain traditional healer in Zoza area, Nkayi.
4. The deceased assaulted accused with a clenched fist and a fight ensued. Bornwell Ndlovu restrained the two and they continued arguing.
5. Accused then walked fast and left all the others behind. When they reached accused’s homestead, the deceased went into the yard and found accused standing at the centre of the yard.
6. Deceased grabbed accused by the collar intending to assault him, Bornwell Ndlovu grabbed deceased’s hand and force marched him out of accused’s yard and advised him to end the argument and proceeded to his home to sleep.
7. Deceased walked for about 40 metres towards his home after parting ways with Bornwell Ndlovu and returned to accused’s homestead. He stood by the door and began to shout at the accused.
8. Accused armed himself with a spear and knife, but his wife Grace Nkomo disposed him of the weapons. Accused then advanced towards the deceased. Deceased who was armed with a stick struck accused with a stick on the forehead. Accused and deceased both fell to the ground.
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9. Deceased attempted to assault the accused again on the head but he missed and hit him on the knee and the log broke. Accused then stabbed deceased on the chest with a knife. Accused then ran into the bush screaming that he had killed a person.
10. Bornwell Ndlovu returned to accused's homestead and observed that deceased had died.
11. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently caused the death of the deceased."

Also tendered was a post mortem report that gives the cause of death as;

1. Hypovolemic shock
2. Stab wound

The knife that was allegedly used in the commission of the offence was also tendered. They were all duly marked.

From the facts tendered as common cause before the court, the accused is found not guilty of murder, but is instead convicted on the lesser charge of culpable homicide.

Sentence

The accused person is convicted of culpable homicide. He is a 1st offender, who pleaded guilty to the appropriate charge. The deceased was the aggressor and in fact acted in an unruly manner persistently on the day in question.

Ordinarily accused would have been given a sentence in the region of 3 years imprisonment with the presence of weighty mitigation as is in this case, with a portion suspended, but because the accused has spent about a year in remand prison, awaiting trial, this court is duty bound to knock off such period from the appropriate sentence to 3 years imprisonment with 1 year suspended. It is for these reasons that accused shall be sentenced as follows:

The accused is sentenced to 2 years imprisonment with 1 year imprisonment suspended for 5 years on condition accused does not within that period commit 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 & Associates, accused's legal practitioners