

**THE STATE**

**Versus**

**NKOSIKHONA NCUBE**

IN THE HIGH COURT OF ZIMBABWE

KABASA J with Assessors Mr G Maphosa and Mr J Ndubiwa

HWANGE 27 JUNE 2023

**Criminal Trial**

*Mrs M Cheda*, for the state

*Mr D Ncube*, for the accused

**KABASA J:** You are charged with murder as defined in section 47 of the Criminal Law (Codification and Reform) Act, Chapter 9:23, in that on 15 October 2022 at MH Bottle Store, Dulutsha Business Centre, Siganda in Inyathi, you unlawfully caused the death of Ardlife Sema by striking him once on the head with a log, intending to kill him or realising that there was a real risk or possibility that your conduct may cause death but continued to engage in that conduct despite the risk or possibility.

You pleaded not guilty to the charge of murder but tendered a limited plea to culpable homicide which the state accepted.

A statement of agreed facts was produced and marked Annexure 'A'. These facts are to the effect that on 15 October 2022 at around 2000 hours you were drinking beer at MH Bottle store and the now deceased was in your company. You had a misunderstanding with the now deceased over his use of your donkey without your permission. You traded insults but one Hlonipani quelled the dispute. The now deceased then left to visit the toilet and upon his return sat on a concrete bench smoking a cigarette. You approached him, picked up a log from the fire and hit him once on the head. The deceased bled from the mouth and nose. You fled. The deceased was then ferried to hospital where he succumbed to his injuries.

On 17 October 2022 the deceased's body was examined by a pathologist who gave the cause of death as subarachnoid haemorrhage, cranial trauma as a result of an assault.

The log you used was not recovered. The post-mortem report was produced and marked exhibit 1.

From these facts it is not disputed that the deceased met his death as a result of the assault perpetrated by you.

The issue is whether you intended to kill him or realised that your conduct would result in death but continued nonetheless. The facts show that you were negligent in causing the deceased's death. There was therefore no intention to cause the death or the realisation that your conduct may cause death.

The facts do not therefore support a finding of murder and the state's acceptance of the limited plea was informed by an appreciation of the facts and the law.

You are accordingly found not guilty of murder but guilty of culpable homicide.

### **Sentence**

You are a 26 year old first offender who pleaded guilty. The plea of guilty is a sign of remorse and contrition. You are a father to 3 minor children.

The deceased's death was very unfortunate as it was over a relatively minor issue. This death is likely to haunt you for a long time to come.

You are most likely to face the stigma of being labelled a murderer and that will undoubtedly affect you psychologically.

Aggravating is the fact that this death was avoidable. You had been restrained from quarrelling and the deceased had removed himself from where you were. He must have been totally unaware of what you had in mind and your attack must have caught him unaware.

All the deceased had done was use your donkey to pull his scotch cart. The donkey was not maimed or killed and its use by the deceased did not lead to its depreciation in value.

You had been drinking beer and although it is not suggested that you were intoxicated but the fact is even if you were that would not lessen your moral blameworthiness. It is not a mitigatory factor either as the law is clear on that as provided in s221 (2) of the Criminal Law Code.

The rate at which people take another's life for reasons that are far from being reasonable is alarming, not that it can ever be deemed reasonable to take another's life.

Life ought to be respected and the courts have time without number urged members of the public to respect the sanctity of life.

You used a log to hit the deceased on a very sensitive part of the human anatomy. Your moral blameworthiness is high. You ought to have exercised self-restraint especially as the deceased had removed himself from your presence.

An exemplary sentence is called for. The sentence must fit the offence, the offender and be fair to society. (*S v Zinn* 1969 (2) SA 537.

The punishment must serve to encourage society to be cognisant of the safety of others and to exercise caution and restraint at all times. (*R v Richards* 2001 (1) ZLR 129 (S)).

In the circumstances you are sentenced to 7 years imprisonment of which 1 year is suspended for 5 years on condition you do not within that period commit an offence of which an assault or violence on the person of another is an element and for which upon conviction you are sentenced to a term of imprisonment without the option of a fine.

Effective: - 6 years imprisonment.

*National Prosecuting Authority*, state's legal practitioners  
*Legal Aid Directorate*, accused's legal practitioners