

**THE STATE**

**Versus**

**GELI MUNKULI**

IN THE HIGH COURT OF ZIMBABWE  
KABASA J with Assessors Mr G Maphosa and Mr J Ndubiwa  
HWANGE 26 JUNE 2023

**Criminal Trial**

*Mr M Dube*, for the state  
*Mrs J Change*, for the accused

**KABASA J:** You appear before us on a charge of murder to which you pleaded not guilty. You tendered a plea of guilty to the lesser crime of culpable homicide which the state accepted.

The statement of agreed facts, post-mortem and the weapon used were produced in evidence and marked Annexure A, exhibit 1 and 2 respectively.

The statement of agreed facts are to the effect that on 5 July 2022 the now deceased's 11 year old sister advised you that the now deceased had lost his pen. The now deceased admitted as much. You then told the now deceased to look for a switch which you then used to assault him several times until the switch broke. The switch was 60 cm long, 3 cm in diameter and 0,020 kg in weight.

The deceased bled as a result of the assault and you took him to a clinic when his condition deteriorated. He was then transferred to St Luke's hospital where he succumbed to his injuries on 7 July 2022.

On 11 July 2022 the deceased's body was examined by a pathologist who gave the cause of death as:-

Traumatic shock

Subdural hematoma and soft tissue injuries as a result of an assault

There is no doubt that the deceased died as a result of the injuries he sustained from the assault.

However the issue is whether it can be said you intended to kill him or realised the real risk or possibility that your conduct may cause death but continued nonetheless.

We are of the view that the state's acceptance of the limited plea is an appreciation of the law and the application of the law to the facts. You were negligent in causing the deceased's death.

In the result you are found not guilty of murder but guilty of culpable homicide.

### **Sentence**

You are a first offender, a female first offender. At the time you committed the offence you were 19 years old, you are now 20. You were youthful then and you are still youthful now.

By pleading guilty albeit to the lesser offence of culpable homicide, you showed contrition.

You took the life of an innocent 10 year old. This is likely to haunt you for the rest of your life. Society will also judge you harshly and even label you a murderer and this is likely to affect you psychologically. It is a heavy burden to bear for anyone and not any easier for a youthful offender.

Aggravating is the fact that defence counsel explained that although the facts said you were the deceased's step-mother, the correct position is that you were employed as a housemaid by the deceased's father who you were then involved with after you fell in love with him.

You were expected to look after the deceased and nurture him as any 10 year old child deserved to be.

It was not your place to assume the role of a disciplinarian and what you did cannot be seen as discipline. You physically abused the child and caused his death.

Cases of housemaids who abuse their charges make sad reading and appear to be on the increase.

A life was unnecessarily lost. A young life was snuffed out, killing whatever potential this boy had had he been allowed to live.

Courts have stated time without number that life is sacred and society should respect the sanctity of life. Life is a gift, given to each one of us once and once taken it cannot be brought back.

In assessing an appropriate sentence however we are mindful of the need to mete out a sentence that recognises your youthfulness. It is odious to impose on a youthful offender the same penalty that would be appropriate for a more mature offender.

The immaturity of youth brings with it a lack of appreciation of the consequences of their behaviour. (*S v Zaranyika and Ors* 1995 (1) ZLR 270 (H)).

The sentence must therefore fit the offence, the offender and be fair to society.

We were implored to consider community service. Community service is a form of punishment that has to engender confidence in society. In our view the brutalising of a young defenceless child for nothing grave but the loss of a pen ought not to attract community service. It is therefore inappropriate.

For these reasons you are sentenced to 3 years imprisonment of which 1 ½ years is suspended for 5 years on condition you do not within that period commit any offence of which an assault 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: - 1 ½ years imprisonment.

*National Prosecuting Authority*, state's legal practitioners  
*Muviringi and Associates*, accused's legal practitioners