

THE STATE

Versus

TANAKA SHIRI

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mrs Baye & Mr Matemba
GWERU 19 SEPTEMBER 2023

Criminal Trial

Ms T. Musoso for the state

Ms L. Mamombe for the accused

MOYO J: The accused faces a charge of murder it being alleged that on the 31st of October 2016, at Midlands Ranch Farm, Mberengwa the accused person unlawfully caused the death of Takuraisu Madimura by shooting him on the left side of the body with a 303 rifle.

Accused denied the charge of murder and pleaded guilty to the lesser charge of culpable homicide. State counsel accepted the limited plea and the parties drew and tendered a statement of agreed facts. It reads as follows:

- “1. Tanaka Shiri (hereinafter called the accused person) was aged 23 years at the time of the commission of the alleged offence. He resides at Mhloro Village, Chief Mazvihwa, in the Midlands Province was employed by Special Service Security Company.
2. Takuraisu Madimura (hereinafter referred to as deceased) was aged 34 years old at the time he met his death and he resided at village Runoza, Chief Mposi, Mberengwa, in the Midlands Province.
3. Deceased and accused person were not related.
4. On the 30th of October 2016 and at about 2100 hours the deceased entered Midlands Ranch Farm on a hunting expedition. He was in the company of Panashe Muzungu, Advine Zhou and Admit Runoza. They were able to kill 3 duicker and 2 impalas that they skinned and put the meat in sacks.
5. On their way back to the village on the 31st of October 2015 at about 0400 hours, the deceased and his colleagues met with the accused person armed with a 303

rifle. The accused person then ordered the deceased and his colleagues to stop but rather, the deceased's colleagues ran in different directions and dropped four sacks of meat. The deceased then approached the accused and wrestled with the accused and in the midst of the tussle, the accused fired his rifle at the deceased, killing him instantly.

6. The matter was reported to the police and accused was arrested.
7. The deceased's remains were ferried to United Bulawayo Hospitals where a post mortem examination was conducted. On the 1st of November 2016 Dr Ivian Betancourt examined the remains of the deceased and concluded that the cause of death was:
 - i. Hypovolemic shock
 - ii. Both lungs damaged and rupture of neck arteries
 - iii. Bullet injuries

Thereafter post mortem report number 990-975-2016 was compiled.

8. The accused accepts the evidence of the state witnesses and contents of the post mortem report. The accused person denies having requisite intention to kill in the form of *dolus directus* or *dolus eventualis*. Rather, the accused person acknowledges that, through his conduct aforesaid, he was negligent in causing the death of the deceased.
9. The state concedes to the fact that the accused person was negligent in the manner he assaulted the deceased and therefore accepts the accused person's plea of culpable homicide."

Also tendered was the post mortem report as well as the ballistics report. Also tendered was the 303 rifle serial number 11115. All exhibits were duly marked.

From the facts before us it is clear that the accused did not harbor the requisite intention to commit murder but instead he was negligent in his actions.

He is accordingly found guilty and is acquitted on the charge of murder but is instead convicted of the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a 1st offender, was aged 23 as at the material time. He pleaded guilty to the appropriate charge. He committed the offence in the line of duty. He has waited 7 years for justice through no fault of his own. The deceased was the aggressor. This court is active to the sanctity of life and that the right to life must be guarded at all costs by these courts. However, this does not mean that the court should take an arm chair approach to circumstances on accused person finds himself in. This accused was at work doing the job of guarding his employer's farm. Deceased and his colleagues were trespassers at the farm, they committed an offence of poaching. Accused met them and told them to stop, deceased's colleagues fled in different directions. This was in the wee hours of the morning at 4am. Deceased approached accused who was armed and wrestled with him. One wonders what deceased was up to wrestling with an armed man. Accused cannot be faulted for fearing for his life or acting fast in shooting the deceased so as to avoid deceased wrestling the firearm from him for what else would have been deceased's intention in wrestling with an armed man? Accused had to act and act fast. Deceased's conduct was very dangerous and any reasonable man could have taken it as a challenge to disarm him and harm him. There is only so much that an accused person can be expected to do in the midst of an attack. Deceased acted in an unreasonable manner and had he fled like his colleagues perhaps the situation would have turned out differently. Accused did not shoot at a fleeing intruder, he shot at a man that was challenging his territory and authority and putting his life at risk.

It even gives more weighty mitigation to the accused that he has waited for 7 years to be brought to justice through no fault of his own. He has anxiously waited for 7 years to know his fate. Had he been sentenced soon after the commission of the offence, he could still have escaped with a light sentence given the circumstances of the commission of the offence. This court rejects the state counsel's submission that the 7 years is justified as this is circuit court, this court sits 3 times a year and it is imperative that the state puts its house in order by not having cases unfinalised for such a period. Such a delay is inordinate and cannot be justified by the mere submission that this is a circuit court. He even alleges more leniency now with the added anxiety. This is one case where a wholly suspended sentence will meet the justice of the case. It is for these reasons that accused shall be sentenced as follows:

The accused is sentenced to 3 years imprisonment which is wholly suspended for 5 years on condition the 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
Kwande Legal Practitioners, accused's legal practitioners