

**THE STATE**

**Versus**

**OBVIOUS SIBANDA**

IN THE HIGH COURT OF ZIMBABWE  
MOYO J with Assessors  
GWERU 18 SEPTEMBER 2023

**Criminal Trial**

*M. Mhene*, for the state  
*Ms C. Hamadziripi*, for the accused

**MOYO J:-** Accused faces a charge of murder, it being alleged that on the 17<sup>th</sup> of May 2022 and at York Business Centre Mberengwa, he unlawfully caused the death of Musawenkosi Hungwe by striking him with a wooden log on the head three times.

Accused denied the charge and instead tendered a limited plea to the charge of culpable homicide. The state accepted the limited plea and the parties drew and tendered a statement of agreed facts which was marked Exhibit 1.

Also tendered was the post-mortem report and accused's confirmed warned and cautioned statement were also tendered, as well as the wooden log that was allegedly used in the commission of the offence.

The statement of agreed facts reads as follows:-

- 1) OBVIOUS SIBANDA (hereinafter called the accused person) was aged 26 years at the time of the commission of the alleged offence. He resides at Village Matshula, Chief Mlevu, Tsholotsho and in the Matebeleland North Province.

- 2) MUSAWENKOSI HUNGWE (hereinafter referred to as deceased) resided at Tamona Village, Chief Mataga, Mberengwa in the Midlands Province. He was aged 37 years old at the time he met his death.
- 3) Accused and deceased were not related.
- 4) On the 17<sup>th</sup> day of May 2022 and at around 0500 hours accused was at Muratu general dealer, York business centre, Mberengwa, warming himself on fire with Farisai Nyoni, who was selling her wares by the Dealer shop. He went on to assist Farisai to carry her wares to her room and came back to the fire smoking a cigarette. The deceased, who was drunk, approached the fire and began harassing people by the fire demanding a cigarette. He approached Peace Chikandigwa demanding a cigarette. Peace Chikandigwa moved away from the deceased when he saw the deceased holding a stone.
5. The accused came back to the fire smoking a cigarette. The deceased demanded a cigarette from the accused and the deceased began harassing the accused. The deceased followed the accused holding the stone threatening the accused.
- 6) The accused picked a wooden log and struck the now deceased on the head three times resulting in the now deceased falling down and started bleeding from the head. When the deceased fell to the ground the accused tried to raise him, but he could not raise him as he was unconscious.
- 7) Accused ran away from the scene.
8. The deceased was ferried to Mberengwa District Hospital where he was transferred to United Bulawayo Hospitals.
- 9) On the 19<sup>th</sup> of May 2022 the deceased passed away while admitted at United Bulawayo Hospitals.
- 10) Matter was reported to the police leading to the arrest of the accused.
- 11) On the 19<sup>th</sup> of May 2022 the remains of the deceased were examined by Dr Juana Rodriguez Grigori and the cause of death was:-

- Subdural Haematoma

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

From the evidence before this court, it is our finding that the accused person never formulated an intention to kill the deceased but instead, he was negligent.

It is for these reasons that an order will be issued as follows:-

The accused is found Not Guilty and is acquitted of murder but he is committed of the lesser offence of culpable homicide.

### **Sentence**

The accused is convicted of culpable homicide. He is a first offender. He pleaded guilty, he had been subjected to violence before, the deceased was the aggressor and accused has spent almost a year in remand prison. A life however, was unnecessarily lost in the circumstances, these courts frown at the loss of life through violence. In this case through the mitigation that stands out, is the fact that deceased was the aggressor and was clearly being a nuisance on the fateful day and also that accused has already spent about a year in remand prison. These mitigation features add weight to the usual ones of youthfulness, 1<sup>st</sup> offender and plea of Guilty. The circumstances of the commission of the offence are such that this court has to accept that deceased also acted in an unbecoming manner on the fateful day causing the young and immature accused to overreact.

A fair sentencing approach balances the accused's personal circumstances, the circumstances of the commission of the offence and the public interests. The aspect of deceased's conduct, and accused's stay in remand prison create a blend of facts where if such

are overlooked, a miscarriage of justice may ensue in the circumstances accused should be given a sentence in the region of 5 years with a portion suspended. Also to be discounted is the year that he has already spent in remand prison. He shall therefore be sentenced as follows:-

The accused is sentenced to 4 years imprisonment with 2 years 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*  
*MSU Legal Clinic, accused's legal practitioners*