

THE STATE
versus
TAKUDZWA TIMOTHY HAZVIRAMBWI

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 14 February 2023 and 17 February 2023

Assessors: Mr Kunaka
Mr Gweme

Criminal Trial

T Kamuriwo, for the State
W Bherebhende, for the accused

MUTEVEDZI J: The escalation of domestic violence cases remains cause for concern. The brouhaha which resulted in the tragic death of the Tineyi Mamvura (the deceased) was a direct consequence of domestic violence. Takudzwa Timothy Hazvirambwi stands accused of killing his best friend. The allegations are that on 2 May 2022 at No. 1220 Makomo Extension in Epworth the accused unlawfully and with intent to kill or realising that there was a real risk or possibility that his conduct could lead to death and continuing to engage in that conduct despite the risk or possibility assaulted the deceased with fists and strangled him with both hands. The deceased later died from the injuries sustained in the assault.

The accused pleaded not guilty to the charge of murder. He denied that he intended to kill the deceased. Instead he tendered a limited plea to the lesser charge of culpable homicide. The state accepted the accused's limited plea. Given the circumstances under which the crime was committed, the state's concession that the accused did not intend to kill the deceased appears to have been well made.

The allegations against the accused arose under the following circumstances. On the night of 2 May 2022, the accused and his wife Joyce Dzinzi (Joyce) had a violent domestic quarrel. The altercation was apparently triggered by the accused's reluctance to take responsibility for paying the rentals for their lodgings. A fight broke out when the wife asked

for money for the rentals. In fear of further physical abuse by the accused Joyce escaped and sought refuge at the deceased's homestead. Like any good friend would do the deceased escorted Joyce back to her house. On arrival, he enquired from his friend what the matter was and why he was abusing his wife. The accused suddenly attacked the deceased. They wrestled inside the house. It appears the accused got the upper hand. He assaulted the peacemaker. After realising that the deceased was being assaulted for coming to mediate in the dispute, Joyce ran out of the house to seek further help from the landlord Rosemary Mhandu. When they returned the deceased was sitting abreast the accused person but with the accused holding the deceased's neck with both hands and strangling him. They managed to restrain the two and pulled both of them outside the house. The accused left the deceased and resumed his fight with Joyce. He chased her. For the second time, she ran back to seek sanctuary at the deceased's house.

The deceased returned to his house together with Joyce. He arrived around 2030 hours. He was complaining of severe headaches and indicated to his wife that the pain was a result of the assault by the accused. The following morning on 3 May 2022 around 0500 hours the deceased's wife left for a market place called Mbare. She returned around 1100 hours. To her horror, she found the deceased lying helplessly. Froth was coming out of his mouth and he was struggling to breathe. Her suspicion was that he had had an epileptic seizure since he was a known epileptic patient. She called the deceased's brother called Blessing Chamunorwa to come to help. He later arrived and together, they took the deceased to hospital around 1500 hours. The deceased was unfortunately pronounced dead on arrival at the hospital.

The post mortem report which the prosecutor tendered as exhibit 1 was a culmination of the examination conducted by the pathologist who examined the deceased's remains. His conclusions, which were not disputed were that the deceased died as a result of acute respiratory insufficiency, contusion in the right lung and trauma in the thorax secondary to assault.

The above findings by the pathologist are consistent with the admissions made by the accused. He admitted that although he had no intention to kill the deceased, his conduct was negligent in that he did not regulate the amount of force he used when he assaulted him. Equally he conceded that his failure to foresee the danger of strangling the deceased on a vulnerable part of the body could be fatal was an act of negligence. The court however did not lose sight that this happened in the heat of the moment. Although the altercation had been provoked by the accused, the injuries which killed the deceased were inflicted in the course of a brawl.

It is against the above background that the court accepts that indeed the accused's conduct did not amount to an intentional killing of the deceased. He was negligent in causing that death. In

the circumstances, the accused is found not guilty and is acquitted of the charge of murder but is found guilty of the lesser charge of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

National Prosecuting Authority, state's legal practitioners
Bherebhende Law Chambers, accused's legal practitioners