

THE STATE
versus
JEREMIAH SAUNGWEME

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 29 November 2023

Assessors: Mrs Chitsiga
Mr Chimonyo

Criminal Trial

A Chogumaira, for the state
P Chikangaise, for the accused

MUTEVEDZI J: Jeremiah Saungweme (the accused) was a security officer with a private security company called VS Security. He together with others was deployed to guard Shamva Gold Mine against the somewhat incessant invasions of its gold fields by illegal artisanal miners colloquially called *amakorokoza*. In his zeal to discharge his duties, he is alleged to have shot and killed one of the illegal miners called Willard Silas (the deceased). The formal allegations are that on 15 May 2020 at Shamva Mine Lease 32 the accused unlawfully and with intent to kill or realizing that there was a risk or possibility that his conduct may cause death continued to engage in that conduct despite the risk or possibility shot the deceased on the back of the head with a Taurus revolver. The deceased sustained mortal injuries. His death was instant.

The background to the charge as alleged by prosecution is that on 15 May 2020 the accused was on duty at Shamva Gold Mine. He received intelligence that there were illegal gold miners who had pitched camp at Shamva Mine Lease 32. He was duty bound to act. He enlisted the assistance of Elvis Ngoma (Elvis), Collias Zhau (Collias) and Trust Tsabasvi (Trust) and proceeded to the site. The accused was armed with a Taurus revolver. Collias and Trust carried 303 rifles. About two hundred meters from the panning site the security officers split into two groups. The accused and Elvis went northwards whilst Trust and Collias proceeded southwards. When the accused and his colleague got closer to the panning site the

accused fired a shot into the air. The gunshot startled the panners who ran in all directions. The accused and Elvis did not relent. They gave chase whilst still firing shots into the air. About sixty meters into the chase, the accused is alleged to have shot the deceased on the occiput.

The accused tendered a plea of not guilty. In the outline of his defence, he said on the fateful day he was on duty at Shamva Gold Mine (the mine). He was advised by Elvis of the presence of illegal gold panners who had invaded Lease 32, a site owned by the mine. He summonsed Trust and Collias both security guards who were apparently under his command to accompany him to the site. He was armed with a revolver which had four rounds in the chamber. He also had a pair of handcuffs. Trust and Collias were armed with 303 rifles. Elvis led them to the place where the panners had been seen but a short distance before arriving at the site they deemed it strategic to split into two groups in order to flank the illegal panners. The accused went with Elvis whilst Trust partnered with Collias. The accused further said just before they ambushed the panners they observed and estimated that there were about sixty of them. They appeared armed to the teeth as some carried machetes whilst others had an assortment of dangerous weapons. Once they saw the guards the illegal gold miners charged towards the accused and Elvis. They were chanting war cries and threatening the two with their weapons. The accused said he then fired a warning shot into the air but the panners were not deterred. They continued charging towards the accused clearly determined to kill him and his colleague. He said he had no option but to fire three more shots into the air. At that point, the panners scattered in different directions. The accused claimed that in all the melee he heard six gunshots from different directions as the panners ran away. He said he only heard about the death of the deceased when he and the others returned to their control station. He prayed for his acquittal.

State Case

The State opened its case by applying, with the consent of the defence, to produce the post mortem report by doctor Mayedo detailing the cause of the deceased's death. The pathologist found that death was due to brain injury, global subdural hematoma and severe head trauma due to bullet injury. He further observed a bullet entrance hole on the right area of the nape and an exit hole on the right temple on the frontal region of the occiput. The state also tendered a forensic ballistic report in relation to the gun which the accused allegedly used. It was a contentious issue. The accused queried why it was the only gun which had been examined yet more than one gun was fired on the fateful afternoon. The Taurus revolver which

the accused was carrying on the doomed mission was also tendered as an exhibit. As will be shown later the accused's protestations that the other guns should have been the subject of inquiry appeared to have no basis because indeed those guns were investigated. They were however quickly discounted as being potential murder weapons in this case.

Evidence of Collias Zhau

He is accused's workmate and were both employed by VS Security. On the day in question around 1300 hours he was called by the accused to go for reaction, a term that literally meant responding to a security breach. The accused directed him to get a firearm from an armoury of sorts and to check how many rounds the firearm had. The witness said he did. The gun had one round. Upon advising the accused, he directed him to get two more rounds. The accused further advised that they would meet up with Elvis. The witness indicated that Elvis was a security detail at the mine but was not employed by their security company. They were joined by Trust. As was also narrated by the accused Elvis led them to the site where the panners were. They later split into two groups just like detailed by the accused in his defence outline. He went with Trust and accused with Elvis. In the direction they went one of the panners noticed them. He ran to inform his colleagues of their presence. They stayed put where they were but whilst they waited they heard gunshots. That alerted them that the accused and Elvis must have reached the point where the panners were. He said he knew that it was the accused who had fired the shot because ordinarily gold panners don't carry firearms. At that signal they also started running towards the site where the panners concentrated. He observed most of the illegal miners fleeing into the bush. When they got to the pits, the witness said he fired a shot into the air. He proceeded for about six to twelve meters and fired three times into the air. He then ran out of rounds. The panners went further into the bush. He followed Trust whom he advised that he had ran out of rounds. Trust lend him one round. They took the direction which led to a place called Magobo but before going far the accused called and advised them to return. Elvis also called and directed them to cross the river from where they were and head to the pits. They did. The accused directed them that at the pits they had to check if the illegal panners had left any weapons and to ascertain if any of them were still hiding nearby. When they inspected the place, they recovered only dishes used for panning. They later returned to their base. On arrival, the security officer asked them to detail what had transpired. The accused narrated how the mission had gone on the team's behalf. It was then that the security officer advised them that someone had been shot dead during their raid on the illegal miners. He ordered them to go to their barracks.

Under cross examination it came to light that when the police initially investigated the matter, the witness was also once arrested but was released. He conceded that he could not have been aware of what had taken place when they split from accused and Elvis. What he was sure of was that it was the accused who had fired the gunshot which he had heard from the direction that he and Elvis had taken. He had personally fired three shots into the air from a 303 rifle the first time they got to the pits. He had then fired again in the hope of scaring the panners to sit down. He also admitted that had he not ran out of ammunition he would have fired more. Quizzed on the possibility that he could have shot the deceased, the witness said it was practically impossible because the place where the deceased was shot was the opposite of the direction which he and Trust had taken. Counsel for the accused did not achieve much in her attempt to discredit the evidence of this witness.

Trust Tsabasvi

He was also the accused's workmate. Like Collias, he was also summoned by the accused to respond to the security breach. The accused ordered him to carry his firearm. He did. The firearm had three rounds of ammunition. His evidence was in the material respects similar to that of Collias and to the accused's defence outline. After they had split into two groups he also said they heard a gunshot from the direction the accused and Elvis had taken and realized that the accused must have arrived at the pits. From their direction they proceeded to the pits. On arrival, Collias fired into the air. The witness said he did the same. The panners scattered into the bush. They tried to follow them and to order them to stop. They heard another gunshot. He said his gun had jammed because a cartridge had not been expelled. He sought Collias's assistance. They failed to rectify the problem. It was at that point that Collias asked to borrow a round. He gave him. The accused later asked them to cross the river so that they would meet on the other side. They passed through the pits to check if there were any items left by the panners in the pits. They returned to base where they met the chief security officer who told them that someone had been shot during the raid.

Elvis Ngoma

He equally used to work with the accused at Shamva Gold Mine in the capacities already described. In the morning of the afternoon of the murder, he was deployed at Musambanyama boom gate. At around 1300 hours he noticed that there were illegal gold panners in the mine fields. He alerted control room. Accused answered the call. After about an hour the accused came with two other security guards. He teamed up with the three and

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proceeded to where the panners were working. He also confirmed that they later split into two groups. He and the accused took the route that the panners would use to get to the pits close to the bush. When they got to the pits they heard a gunshot from the direction in which the second group of guards had gone. The panners must also have heard the shots because they fled from the pits in their direction. They ordered the panners to sit down. No one heeded the order because they continued fleeing. The accused fired one shot into the air using the revolver he was carrying. The panners were about twenty meters in front of them. The illegal miners suddenly changed directions and took a path which led to the nearby bushes. The witness said he was not armed. He remained standing at the pits when the accused pursued the panners. A little while later he heard a gunshot from the direction the accused had taken in pursuit of the illegal miners. There was commotion in the bush. A third shot was fired but he unfortunately was unsighted. Later on the accused returned to where he was. His gun was fastened to his belt. He said the panners had not stopped. The other two guards arrived a while later. The team had not managed to apprehend anyone. They only recovered some items used by the illegal miners. They returned to the offices. There were photos on a WhatsApp group showing that someone had been shot and killed at Lease 32 close to Magobo farm. He said he was surprised by the developments because much as he had taken part in the patrol he was not aware that one of the panners had been shot.

Trust Kavhu

He is a police officer who holds the rank of Assistant Inspector. On 15 May 2020 he received a report of murder and attended the scene in the company of other officers. At the scene, he noted important issues. First he observed that the deceased was lying on his stomach which to him meant that he had been shot from behind. He had a wound on the occiput and on the right side of the head. There were no blood trails. To the officer that was an indication that the deceased had been shot at close range. He added that they later called in details from the Criminal Investigations Department. He also gathered that the accused and his colleagues were the ones who had chased the panners from the pits where they had been operating. In the company of Sergeant Dzivarimwe they met the manager of the mine and the chief security officer. They were given the names of the four security details who had gone to chase the illegal miners. From their investigations, they found that out of the four security officers, three had guns. The firearms were a Taurus pistol and two 303 rifles. The accused was in possession of the Taurus pistol and the other two had 303 rifles. He arrested the guards who were armed.

The next day the CID details attended the scene of crime being led by Detective Sergeant Matanhire. Through the witness the Taurus pistol was tendered as exhibit.

John Sithole

He was friends with the deceased. They were both artisanal miners. On the fateful day he and the deceased went to Shamva Mine Lease 32. At around 1500 hours whilst they were busy at the panning site they heard gunshots. He said he fled from the pits together with the deceased. He saw the accused chasing them down. At some moment they thought they had outrun him and rested. He looked back and saw the accused approaching. They took off again. He looked back and saw the accused firing his gun. The shot hit the deceased on the back of the head. The witness said he hid himself in a ravine. The deceased was groaning close to him. The witness further stated that he later left his hiding place and went home where he informed the deceased's brother of what had happened. The deceased had been shot on the occiput and bled profusely. The police came and attended the scene. Under cross examination, he was adamant that he saw the accused clearly as he chased them. It was between 1500 and 1600 hours and in clear visibility. He maintained that he could not have been mistaken about the accused's identity because even at the police station, he easily identified him. He added that although he had initially saw all the guards the accused was alone when he chased them into the bush and as such he couldn't have mistook him for anyone else.

Prosperous Matanhire

He is the investigating officer in the case. He is also the one who took and recorded witnesses' statements. He took the firearms for ballistics examination and compiled a docket. He also attended the post mortem examination carried out to determine the cause of the deceased's death. During that process the officer advised the court that he closely observed the bullet wounds on the deceased. From his experience in dealing with firearms and shooting incidents his conclusion was that the wounds had been caused by a small firearm. They were consistent with injuries which could be inflicted by a Taurus revolver. The other guards carried 303 rifles which are far more powerful weapons. If either of those guns had been used to shoot the deceased, his head would have been blown to smithereens. The deceased's body was about 300 metres away from the panning sites. He refuted the claim that the shots which the accused had fired were warning shots because the accused had pursued the panners who included the deceased for 300 metres. Under cross examination the police officer insisted that that three guns were fired was not in issue. The question was who shot the deceased? Whether there were ten guns and ten ballistic reports would not have mattered either. That on its own would not

have pin pointed the person who shot the deceased. He also revealed that distance matters in cases of shooting. A Taurus revolver has an effective range of about fifty metres whereas a 303 rifle has a range of about half a kilometre. It can kill an elephant from that range. If a human being is hit by a 303 rifle at that range the head can be blown to pieces. Asked if any cartridges had been recovered from the scene, he said none had been recovered because a revolver does not produce no cartridges. He again emphasised that a ballistic report is neutral. It does not point a finger at anyone. Equally the post mortem report did not accuse anyone of the shooting. What it showed was that a small firearm was used. He concluded his answers in cross examination by indicating that from his experience with guns, it would be mysterious if one fired into the air and the bullet come back hit someone's head.

Defence Case

Jeremiah Saungweme

He gave evidence in his defence. He largely stuck to his defence outline. He is employed by VS Security as a security guard. His evidence was in many respects similar to that of the majority of the state witnesses. What he added which is different was that the reason why they carried guns is that the illegal panners are dangerous. As a security guard when you go after them and you are not careful they panners can capture you. Once they do they can kill you because some of them are usually armed with guns. We pause here to note that this is a statement which is materially different from the evidence of Collias who in his testimony advised the court that ordinarily illegal miners do not carry firearms.

The accused went further and stated that when they spilt into two groups he went in the left direction with Elvis. The other two details took the right direction. He instructed those two to shoot into the air when they confronted the panners in order to disperse them. He continued and said when they got to the panners, he estimated that they numbered about sixty and were armed with dangerous weapons. Upon noticing the guards' presence the illegal miners erupted and ran towards their direction. They were chanting military songs. He said they intended to attack him and his colleague. It was at that point that the accused then fired a warning shot into the air. The panners unfortunately did not relent. He shot the three rounds of ammunition which remained in his weapon resulting in the panners scattering in different directions. As the panners ran off he said he heard six gunshots fired from different directions. He could not determine who had fired the shots because of the long grass. He denied firing the fatal bullet. He disputed the ballistic report because on the basis that only his gun was tested yet there had been other gunshots. He disputed the testimony of John Sithole because he had only fired his

gun into the air and there had been many people around. He only heard of the death of the deceased when he went back to the control room. Three people were arrested in connection with the case. The other two were released only because the deceased had been shot closer to the area he and his colleague had been. He said he was wearing a black uniform set and a cap which would have made him conspicuous. It was not easy for John Sithole to see his face. It was getting dark and the place had tall grass. The police officers had arrested him simply because the gun wound was small and they thought it was consistent with that which could be caused by a small firearm like a revolver.

Common Cause Issues

The following issues are either common cause or were admitted to by the accused:

1. The accused and three of his colleagues reacted to an alarm advising of the presence of illegal miners on Shamva Gold Mine fields on the day in question
2. The accused was carrying a small firearm, a Taurus revolver whilst Collias and Trust were carrying larger guns. Both had 303 rifles. Elvis was not armed.
3. Before they raided the panners, the group split into two groups of two. The accused teamed with Elvis. Collias and Trust went together.
4. The accused's team got to the pits where the panners were working earlier than their counterparts
5. The panners fled upon seeing the guards
6. The deceased was amongst the panners. He did not attack the guards but appears to have fled with the rest of his colleagues
7. He was shot on the back of the head apparently from close range as illustrated by the fact that there were no blood trails at the area where he was found dead.
8. The wounds were indicative of a small weapon having been used to shoot him
9. The cause of death was brain injury, global subdural hematoma and severe head trauma due to bullet injury.

The Issues for Determination

The only issue which stands for determination is whether or not it was the accused who shot the deceased and if he did whether he was acting in self defence.

Contrary to the defence's argument, the evidence which points at the accused as the shooter in this homicide is quite strong. It is not true that the evidence implicating the accused is circumstantial. Circumstantial evidence is indirect evidence that does not, on its face, prove

a fact in issue but gives rise to a logical inference that the fact exists. There is a difference between disputing the evidence of a witness on the ground that it is not credible and alleging that there is no evidence at all. In this case there is direct evidence from John Sithole that he saw the accused firing his weapon at him and the deceased. The shot hit the deceased on the back of his head. When John Sithole was being led by the prosecutor the following exchange took place:

Q. Did you see who fired the shot which killed the deceased? How far apart were you from the deceased as you fled the guards?

A. The deceased was barely a metre behind me. I clearly saw the person who fired the shot. It was the accused.

Under cross examination by counsel for the accused, he stood his ground when the following exchange took place:

Q. You didn't see the one who shot your friend?

A. I saw the person who shot my friend. It was the accused. He was wearing a black shirt. I managed to observe him.

Another question went thus:

Q. When the shot was fired, were you looking in front or behind, what was going on?

A. I was looking behind. We had rested after fleeing. We briefly stopped thinking that the pursuer was no longer coming. I then saw the accused coming

When a court is presented with such testimony there can be no question of the evidence being circumstantial. It is direct. It is the evidence of any eye witness. So what we have in the instant case is a witness who claims to have personally perceived the accused shooting the deceased. As already said, the only issue which the court must deal with is the credibility of that witness's evidence. In other words the court assesses to see whether he was truthful or not?

Admittedly, it would have been difficult to pin the accused on the evidence of John Sithole standing on its own because it was his first time to see the accused. He observed him in circumstances of fear. Although visibility was good the duration of the observation was short. The identification of the accused by John Sithole is the kind of identification which the law has said requires corroboration. See the case of *S v Nkomo* 1989(3) ZLR 117 (S), for the proposition that poor identification requires corroboration. Our view is that despite the inadequacies pointed out, the evidence of John Sithole was sufficiently corroborated. To begin with the evidence of Elvis is critical in this regard. He said he does not know who shot and killed the deceased but that when they got to the pits their colleagues fired shots from the direction they had taken. He therefore was not incriminating the accused in any way. He was simply telling

the story as it happened. He continued and stated that when the panners heard the gunshot they scattered from the pits in the direction where he and the accused were coming from. They ordered the illegal miners to sit down but they continued running. At that point the accused fired one shot into the air and the panners immediately changed direction. They ran into the bush. The accused also ran into the bush in pursuit of the panners. The witness said he remained standing. That evidence settles two issues. First it dispels the accused's claim that the panners menacingly advanced towards him and the witness chanting military songs. They apparently did not. Elvis neither saw any threat from them nor heard any singing. If anything the picture portrayed is that the panners desperately wanted to escape. Second it clearly shows that the witness and the accused were never under any form of danger from the panners because if they had been, the accused would not have had the temerity to follow the illegal miners into the thickets.

Another important consideration is that when the accused tracked the panners into the bushes, Elvis said he heard a second gunshot fired by the accused. He could also hear footsteps which betrayed that the panners were still running. Another shot (a third one) was fired very close to the direction the accused had taken. After about five minutes, the accused returned to where he had left him. When this evidence is taken together with that of John Sithole it forms an unbroken chain. The accused ran into the bush in the direction of where the deceased ended up dead. John Sithole said he saw him pursuing them. He saw him firing the shot which killed his friend. What is undisputed is that none of the other guards entered the thicket where the deceased was killed. It was only the accused. The other guard who was nearest to the thicket did not have a gun. That testimony supports John Sithole's story in all material respects. But the links do not end there. There is further supporting evidence.

The investigating officer concluded that the gun wounds which were on the deceased's head had been inflicted by a small firearm. I am not sure how a man becomes a gun expert but Prosperous Matanhire appeared to know a lot about firearms. It is not only academic qualifications that make one an expert in some field. One can become an expert through experience. His deductions were not plucked from the sky but from the size of both the entry and the exit wounds on the deceased's head. They were small and consistent with injuries from a weapon such as a Taurus revolver. He supported his basis for that conclusion by further noting that if the deceased had been shot by a more powerful weapon such as 303 riffle he would have been ripped to pieces. He additionally told the court that the absence of blood trails nearby illustrated the fact that the deceased had been shot from close range. If that is accepted it meant

that the only individual as testified to by John Sithole, who was that close to the deceased with a gun was the accused. The accused wanted this court to believe that the rounds which were fired by his colleagues from the other side of the pits possibly killed the deceased accidentally. The investigating officer however dispelled that notion by advising us that it would be next to a miracle if a gun were to be fired into the air and the bullet came back to hit a man's head from the occiput area. In short the officer was saying such a proposition cannot happen because it defies the laws of both physics and logic. Further, if a bigger firearm had been fired close to the area where the deceased was shot the officer said spend cartridges would have been recovered from there. None were recovered because the revolver which was used does not produce spend cartridges.

Against the above background, it becomes clear that the evidence of John Sithole is heavily supported by other independent testimonies. That witness was not remotely linked to the supporting evidence. He was not known to Elvis, he was not even aware of the evidence of the investigating officer or the findings of the pathologist. In criminal trials, courts do not assess evidence piecemeal. Rather, the courts look at the totality of the evidence put before them to come to the conclusion that an accused is guilty or not guilty. In this case, given the above findings, we have no apprehension that it is the accused who shot the deceased.

The question whether the accused acted in self defence becomes academic given the nature of his defence. He completely denied having shot the deceased. By that he inadvertently disgorge himself of the benefit of that defence. In any case, we have already accepted the evidence of Elvis that the panners did not threaten him and the accused. Instead, they were fleeing from the guards. They escaped into the thickets. A man who is threatened does not follow the person who is threatening him into a bush. The cornerstone of the defence of person in murder cases as provided for in s 253 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] is that when an accused attacked the deceased, he was trying to avert an unlawful attack which had commenced or was imminent or that he believed on reasonable grounds that the unlawful attack had commenced or was imminent. Other than his bald assertion which was contradicted by the evidence of Elvis, there is no indication that any of the panners threatened the accused and or any of his fellow security guards. There was no unlawful attack on him. That he pursued the panners shows that he was the aggressor. He did not even lay the basis for that defence. As already said he did himself a disservice by concentrating on the excuse that he did not at all shoot the deceased.

It is against those considerations that the court was convinced that the state managed to prove its case against the accused beyond reasonable doubt as prescribed by law.

Accordingly it is directed that the accused be and is hereby found guilty of murder as charged.

*National Prosecuting Authority, State's legal practitioners
Maposa & Ndomene Legal Practitioners, accused's legal practitioners*