

THE STATE
versus
JAPHET CHIMUNHONDO

HIGH COURT OF ZIMBABWE
MUNGWARI J
HARARE, 6 July & 15 November 2023

Criminal Trial

Assessors: Mr Mabandla
Mrs Chitsiga

A Masamha, for the State
N Zvidzai, for the accused

MUNGWARI J: This murder occurred on the night of 6 September 2020 at Kadowa village, Dotito in Mt Darwin. Two suspects, Nomore Mavhura and Japhet Chimunondo also known as Martin Daiton Mutuvha were implicated in the crime. Nomore Mavhura (Mavhura) was arrested first, tried and convicted of the murder. The accused in this case, Japhet Chimunondo was apprehended a year later after the police tracked him. He now stands accused of the murder of Clifford Kadowa (hereinafter the deceased) as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

The charge is based upon the following allegations by the state: Nomore Mavhura's spouse worked in some capacity as chairperson of the Tobacco Growers Association. By virtue of that position, she was privy to payments which were made to tobacco farmers. She informed the accused and Mavhura that the deceased had received a payment of USD 6000 from the sale of his tobacco. Motivated by greed, the two men devised a plan to rob the deceased. On the fateful day, at approximately 2200 hours they went to the deceased's residence with the intention to rob him of the money. As fate would have it and unbeknown to the accused, the deceased and his wife Mary Kamucheka (Mary) had had a fallout resulting in the deceased sleeping alone in his bedroom while Mary slept separately in the kitchen.

Upon their arrival, the accused forcefully opened the door to the deceased's bedroom abruptly waking him from his slumber. Startled by the presence of an intruder, the deceased confronted him but was swiftly stabbed twice with a sharp object, once on the left shoulder and once on the left cheek. In desperate need of assistance, the deceased called out for help prompting Mary to rush out from the kitchen. She arrived just in time to witness the accused and his accomplice fleeing from the scene. Mary turned to examine the deceased and noticed blood oozing from his chest and cheek. Frantically she called for help from her in-laws and other villagers. Special Kadowa, the deceased's brother responded to the call. On his arrival, he confirmed that the deceased had passed away. He then tracked footprints that led to Mavhura's homestead. It was the footprints which connected Mavhura to the offence and led to his and ultimately this accused's arrest. A post mortem which was conducted upon the body of the deceased concluded that his death was due to exsanguination resulting from a traumatic wound to left shoulder.

The accused denied the allegations and provided the following account: Prior to the incident, he was contacted by Mavhura, who asked for his help in cutting and supplying firewood in exchange for a fee. He travelled to Mt Darwin for this purpose and stayed at Nomore Mavhura's homestead. The next day, they went to cut the firewood. Afterwards, Mavhura asked the accused to accompany him to visit his girlfriend and he agreed. The two made a stop at Mudzengerere business centre. In anticipation of the visit to his lady friend, Mavhura changed his trousers and spruced up. He however misled the driver and loader about their destination. They proceeded to the girlfriend's house where upon arrival Mavhura entered the bedroom hut. A short while later, the accused, who remained outside, heard a commotion inside the hut and then saw Mavhura quickly emerge from the hut. Startled, the accused panicked and fled in a different direction. They later met up, and Mavhura explained that he had a scuffle with a man inside the hut. They returned to the lorry, and Mavhura changed and hid his clothes near a river. He however remained clad in the same clothes that he was wearing throughout the incident which were a denim trousers, a denim shirt and black shoes. The next morning, the accused received a call that his child was sick and left after Mavhura generously gave him USD \$5.00 for bus fare. Later, Mavhura called and informed him that the man he had had a scuffle with had passed away and that on account of that he had been briefly detained by the police but had been released after paying off the authorities. Mavhura further advised him not to return due to the negative impact the matter had had on his employment contract. The

accused subsequently started a business in buying and selling kapenta fish. A year later he was once again contacted by Mavhura who asked him to visit Mukumbura border post so that they could team up in the kapenta fish business. Upon arrival at Katarira business centre, the accused said he was surprised when he was suddenly seized and shot on the left front shin. He was arrested and handcuffed. While being transported to the police station, Mavhura advised him to comply with the police's instructions. The accused denied agreeing or confessing to stabbing the deceased. He claimed to have told the police that it was Mavhura who went into the bedroom hut and that he had no knowledge of the knife. He alleged that the police had forced him to sign a statement which they had written and made him indicate certain things.

From his account, it is clear that the accused admits to being present when the deceased was stabbed but shifts the blame to his accomplice, Mavhura. He denies any participation in or knowledge of the deceased's death.

The state case

The State applied to tender a variety of exhibits. The defence agreed to the production of them all, which included the post-mortem report, the accused's detailed confirmed warned and cautioned statement, and a series of photographs taken during indications allegedly conducted at accused's behest. The sketch plan, green slippers, khaki trousers and brown lace up shoes were also tendered as exhibits and marked numbers 1-8 respectively.

The post-mortem report marked as exhibit 1 made the cause of death uncontentious. The deceased died as a result of stab wounds. Dr Munyoro, the medical practitioner who examined the deceased's body at Mt Darwin on 7 September 2020 observed two significant stab wounds, one on the left shoulder and another on the left cheek. In addition, the accused's confirmed warned and cautioned statement which we reproduce below given its centrality to the determination of this case stated that:

"I have understood the warned and cautioned statement. I do admit to the allegations levelled against me of murdering Clifford Kadowa. I was phoned by Normore Mavhura on the 5th day of September 2020 to go and see him. I left my home on the 6th day of September 2020 and arrived in Mt Darwin Business Centre and I called Normore Mavhura who told me to wait for him. I later met with him and we both proceeded to his home where we put up. On the 7th day of September 2020 in the morning we both left for Chesa area to cut some firewood with a lorry and I have forgotten the name of the driver. On the same day in question I was wearing brown shoes, white trousers, a grey jacket and a jean shirt. We stopped in Mt Darwin Business centre. We proceeded to the market stalls where Normore Mavhura bought a knife. We then proceeded to Chesa. Whilst we were cutting firewood, Normore Mavhura told me that Clifford Kadowa had some money he had realised from selling his tobacco. Normore Mavhura had a plan to the money from Clifford Kadowa. He told me that we were going to use the knife to scare him so

he can give us the money. We agreed to steal the money from him. He told me that it was me who was supposed to enter Clifford Kadowa's house then threaten him with a knife then hands over the money to me. Normore Mavhura told me that he knew Clifford Kadowa so it was impossible for him to enter his house. We left chesa and then disembarked from the lorry at Mudzengerere Primary school at around 2230 hours. We told the driver of the lorry that we were going to see our girlfriends.

After disembarking Normore Mavhura handed me a knife which he had bought. We walked towards Clifford Kadowa's home. Upon arrival at Clifford Kadowa's home, there were two houses a kitchen hut and a bedroom. I peeped the hut through the window and I saw people sleeping. We then proceeded to the bedroom and Normore Mavhura kicked the door and it slightly opened. I then opened the door and entered the house Normore Mavhura remained outside. When I entered inside Clifford Kadowa's house I saw him sleeping on the bed and then he then woke up. There was dull solar light. I told Clifford Kadowa to keep quiet and I pointed him with a knife. He then rushed to me and grabbed me intending to apprehend me. Since I was holding a knife the deceased was stabbed like on the chest. When I was wrestling with Clifford Kadowa he was again stabbed on the face. The door eventually closed and Normore Mavhura who was hearing everything kicked the door wide open. I then got a chance to flee from Clifford Kadowa's bedroom. We both ran away from Clifford Kadowa's home. Soon after leaving we heard some alerting noise but we did not stop. We arrived at Normore Mavhura's homestead where he gave me a pair of trousers and shoes to wear. I had to hide my blood-stained trousers and shoes at the river near Normore Mavhura's homestead. We departed for another village where we met with the lorry driver. Upon our arrival we spent the night there. Normore Mavhura took the knife from me, gave me us \$5.00 and he told me to go home. I proceeded to my home in Mangare. Whilst in Mangare he communicated to me to the effect that Clifford Kadowa had passed on. I then proceeded to Mozambique to look for kapenta fish”.

The above statement was confirmed by a magistrate sitting at Mt Darwin on 3 February 2022 the prosecution relied on s 256(2) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (the CP & E Act) for its admission into evidence. The section allows the admission of such a statement on its mere production without further proof. Whilst acknowledging that prosecution was permitted to tender the statement the accused indicated an intention to challenge the admissibility of both the confirmed statement and the indications. Exhibit 3 comprises a series of photographs taken by the police as the accused made indications. Each page of the exhibit contains explanations of the indications tantamount to written confessions. Exhibits 7 and 8 are blood-stained clothes that the accused is alleged to have worn on the fateful day.

In addition to all the exhibits the state applied to expunge the evidence of Ngonidzashe Banda, Spencer Mututwa and Gift Masarirambe and sought to substitute it with the evidence of Nomore Mavhura. With the consent of the defence an addendum to the State's summary of evidence was tendered and the evidence of Nomore Mavhura admitted in the line-up of the state's summary of evidence.

Further, with the consent of the defence, the evidence of Takawira Sigireta, Gumbo Sermon, Dr Munyoro and Special Kadowa was formally admitted into evidence in terms of s314 of the CP & E Act as it appeared in the state's summary of evidence. It is summarised as follows:

Special Kadowa a brother to the deceased arrived at the scene shortly after receiving information about the stabbing. He confirmed that his brother had passed away. He along with other villagers tracked footprints to Mavhura's homestead. He witnessed the accused leading detectives to deceased's homestead and making indications.

Takawira Sigireta and Gumbo Sermon both duly attested members of the Zimbabwe Republic Police stationed at Dotito received the murder report and attended the scene. They transported the body of the deceased to Mt Darwin Hospital for post mortem examination.

Doctor Innocent Tatenda Munyoro a Government Medical Doctor stationed at Mt Darwin Hospital examined the body of the deceased on 7 September 2020. He concluded that death was a result of exsanguination due to a traumatic wound to the left shoulder.

As is evident, the testimony of these witnesses did not provide any probative value to the state's case as all their evidence had already been made common cause through the accused's defence outline.

The state also led *viva voce* evidence from Mary Kamucheka, Damascus Machivenyika, Vincent Chare and Nomore Mavhura. They narrated their evidence as follows:

Mary Kamucheka (Mary)

She was the deceased's wife. Her testimony was that on the fateful day she and the deceased retired to bed at night but slept in separate rooms due to a misunderstanding over the deceased's perceived infidelity. She slept in the kitchen with her two children while the deceased slept alone in their bedroom. She woke up to the sound of the deceased's voice calling out to her and informing her that he had been stabbed. She rushed to the bedroom where she saw a man dressed in white bolt out of the hut. She noticed that the man wielded something as he nearly fell into a pit which was in the premises. He regained his balance and continued fleeing into the night. From a distance of about six metres, in the moonlight, she realised that the man was accompanied by another as they both fled in the western direction. She encountered her husband as he came out of the bedroom hut in pursuit of the assailants but he immediately

collapsed into her hands and she turned all her attention to him cradling him as she called out for assistance from the neighbours. Less than ten minutes later her husband died.

Mary provided crucial information regarding the arrest of Nomore Mavhura, who is somewhat a younger brother of her father-in-law. She told the court that Mavhura was arrested a day after the murder, while the accused was arrested a year later. Mary also revealed that the deceased had realised USD\$ 9000 from the sale of tobacco, which he had hidden under the mattress in their house. Three days before the incident, Mavhura had asked her husband for money, but the deceased had turned down the request. Mary suggested that the presence of the money in the house might have motivated the accused to attack the deceased. The defence counsel did not conduct any meaningful cross-examination challenging Mary's evidence, leaving her testimony intact.

As the closest eyewitness, Mary's testimony placed two men at the scene, a fact that was not disputed by the accused, who confirmed his presence and that of his accomplice. Mary's evidence also indicated that the man in white clothes was the one she saw fleeing from the deceased's bedroom hut. However, she was unable to identify the assailants, leaving it up to the state to establish which of the accused and his accomplice wore light-coloured clothes.

Damascus Machivenyika

The witness a duly attested member of the Zimbabwe Republic police stationed at CID Mt Darwin informed the court that he was roped in to investigate the murder of the deceased after the accused had already been apprehended in September 2021. On 7 September 2020 he was among the investigating team and was present during accused alias Daiton Mutuvha's interview. He was assigned duties of recording the indications by Sgt Nheta. He stated that the accused, freely attended to the indications and was photographed as he made the indications. He confirmed Exhibit 3 as being the bunch of photographs taken during the indications.

Vincent Chare

The witness another member of the Zimbabwe Republic Police stationed at CID Mt Darwin served as the investigating officer in this matter. He informed the court that on 7 September 2020 he attended the scene at around 7 am and found the body of the deceased already at Mt Darwin mortuary. He was present when accused's accomplice Nomore Mavhura was handed over by villagers who tracked his shoeprints from deceased's homestead to his own homestead. He was part of the interviewing team when Mavhura informed the team of detectives that the accused in this case was the one who had stabbed the deceased and caused

his death. With Mavhura's assistance the officer said he recovered a khaki blood-stained trousers and brown shoes belonging to the accused hidden along Nyagura River. He was also part of the team that waylaid and arrested the accused at Katarira Business Centre, Mukumbura, after receiving information that he had fled to Mozambique and was involved in the illegal trade of red mercury. In arresting the accused, the witness explained that the detectives set a trap and apprehended the accused when he crossed the border back into Zimbabwe to sell the red mercury. He said the accused resisted arrest and was only subdued after being shot in the leg. After the accused's arrest, the witness was among the detectives who interviewed him. The accused voluntarily led the detectives to the scene of the crime, demonstrating how he had peeped into the hut where the children were sleeping and then entered the deceased's bedroom after which he left. The witness confirmed that he had obtained a detailed warned and cautioned statement from the accused, in which the accused freely and voluntarily narrated the events he had indicated during the investigation. The account provided by the accused in the statement aligned with the information he had given through indications and the officer's own investigations. Through this witness, a pair of khaki blood-stained trousers and a brown pair of shoes were presented as the recovered clothing worn by the accused on the day of the incident.

During cross-examination, the defence counsel focused extensively on the circumstances of the accused's arrest rather than challenging the investigations conducted by the witness. The fact that the accused resisted arrest and was shot as a means of subduing him had already been confirmed by the witness. The defence missed an opportunity to challenge the admissibility of the accused's statements. This oversight left these crucial pieces of evidence standing.

Nomore Mavhura (Mavhura)

The witness, a convicted accomplice, took to the stand and informed the court that he is currently serving a 30-year jail term for the murder of the deceased. The state applied for his evidence to be treated with caution under s 267 of the CP& E Act. My understanding of s 267 (2) is that the caution does not apply to convicted accomplices but to those who are yet to stand trial or who are undergoing trial but not yet been convicted. My conclusion finds support from the case of *S v Ncube* SC 152/11 at p. 6. Where GOWORA J (as she then was) remarked in relation to s 267 that:

“A reading of the section in question confirms that the warning is primarily aimed at an accomplice witness who is yet to be tried and charged. The procedure to be adopted is that the

prosecutor is required to advise the magistrate that the witness is an accomplice who is yet to be charged. In turn, the magistrate is required to warn the witness that he is required to give evidence and to answer any questions truthfully notwithstanding that the questions might tend to incriminate him.”

The reasoning behind this is obvious. An unconvicted accomplice is likely to withhold the truth due to fear of giving testimony which implicates him/her in the commission of the offence. That fear cannot reasonably be held by an accomplice whose trial has already been concluded and whose testimony on what transpired would not change his/her fate. The only other instance where the prosecutor is required to advise the court that a witness is an accomplice is to be found in s 270 of the CP & E Act which prescribes the procedure of dealing with an accomplice witness where the state seeks to rely on the single evidence of that accomplice. Further, the ‘beware accomplice giving evidence’ warning is made necessary by an acknowledgement that an accomplice is either a “self-confessed criminal” or a certified one through the conviction attaching to him. In addition, there exist a number of other factors which may force an accomplice to lie against an accused. These include a motivation to protect the actual perpetrator of the crime, or the reasonable or unreasonable belief that he/she may receive a diminished punishment in cases where the sentence has not yet been imposed. Further, an accomplice, may use his knowledge of the intricate details of how the offence was committed as a tool to spin a compelling description of what took place. All he needs to do is ‘substitute the accused for the real culprit.’ It was because of this realisation that the court, despite it being unnecessary, accepted the prosecutor’s request that it warns Nomore Mavhura that he was an accomplice witness whose own case had long been concluded; that he stood to benefit nothing from falsely downplaying or exaggerating the role played by the accused if any or his own role in this matter.

Mavhura then swore to tell the truth. He advised the court that the accused, who is his relative and friend, called him on the fateful day and asked for a lift in his motor vehicle, which he used to transport firewood. The accused thereafter asked him to accompany him to see his girlfriend and he agreed. They left Gift Masarirambi with the motor vehicle while he escorted the accused. He claimed that he knew the accused’s girlfriend as Maraline, a prostitute who frequented beer halls. Mavhura regarded the accused's relationship with Maraline as nothing more than a fling as he also knew the accused as a promiscuous person. The witness further told the court that on the fateful day, the accused was wearing a denim shirt, khaki trousers, and brown shoes and was carrying a small green bag. Approximately one hundred meters away

from Maraline's house, he stayed behind, playing on his phone, while the accused entered the house. A short while later, the accused came out running amidst cries and screams. The two men fled the scene and caught up some distance away. They proceeded to where the truck had been parked by Gift. It was then that Mavhura noticed bloodstains on the accused's trousers. When he inquired from the accused about the bloodstains, the accused had attributed them to a fight that had occurred inside his girlfriend's house, where he claimed to have been attacked by three men. The accused then took off the khaki trousers, brown shoes, and green bag and hid them. They both stayed in the truck afterwards.

The following morning, the witness received a call from his wife, who informed him that there was a crowd of people at his house and that the deceased had been attacked. After taking the call, he turned around to discover that the accused had fled. He tried calling the accused on his mobile phone, but he did not answer. He was later arrested and released on bail. He confirmed that he assisted the police in luring the accused and causing his arrest after the accused had reached out to him and informed him that he was never coming back and that he had fled to Tete in Mozambique.

The witness's evidence corroborated that of Vincent Chare regarding how the accused had been apprehended. The accused had violently resisted arrest and had to be shot by the police to subdue him. Despite the court's advice to the witness, it was apparent that he was intent on minimising his role in the murder. He denied knowing that the deceased had been paid for the sale of his tobacco or that he had requested a loan from the deceased and been denied. He also denied knowing that Maraline's place was the deceased's place of residence, despite being related to him and living in the same village just a hundred meters away.

Under cross-examination, he failed to explain why he did not properly question the accused about his bloodstained clothes or why he hid them within his sight. He however, confirmed some material facts, such as the accused being the owner of the recovered bloody clothes and shoes and that he wore them on the fateful day. The witness had himself worn slippers, not shoes. Furthermore, he confirmed that it was the accused who entered the deceased's hut and stabbed him. He also confirmed causing the arrest of the accused and denied instructing him to cooperate with the police. On its own, the witness's evidence would have been difficult to rely upon, but with the added benefit of the other two witnesses and the accused's own defence evidence, we found the highlighted material parts of his evidence safe to rely upon, as we will demonstrate hereunder.

Defence case - Japhet Chimunhondo

The accused adopted his defence outline, incorporated it into his evidence in chief and added minor details to it. He explained that on the fateful day, he was wearing a blue denim pair of trousers, a denim shirt, and pointy black shoes. As he did not reside in the area, he was led by Mavhura, a local resident, to Mavhura's girlfriend's place. When they arrived at the homestead, he was asked to sit on a rock within the yard, about fifteen meters away from the deceased's door, while Mavhura entered the hut. Approximately thirty to forty minutes later, Mavhura emerged from the hut running, and the accused simply followed suit. The accused insisted that it was Mavhura who stabbed the deceased and that he merely accompanied him and did not know what happened inside the hut. In six sentences, he alleged harassment by the police in signing the warned and cautioned statement and making indications. However, the details of the harassment and the names of those who allegedly harassed him were conspicuously missing from his testimony.

Under cross-examination, he added that he was forced to attend to the indications and stated that while the photographs depicted only him and three other unarmed officers, there were others behind the scenes who were armed. When asked who forced him, he simply reiterated that it was the police, without providing further details. The accused also claimed that he was assaulted by police who were armed, the first time any such allegations were made against the police. While he agreed that this was new evidence, he claimed that his legal representative may have forgotten to state that. He confirmed that he had not informed the magistrate at the confirmation proceedings, even though he had been asked. Further in cross-examination, he told the court that he was a successful cotton farmer and would realize about \$4,000 - \$5,000 annually. He had known Mavhura as a friend since 2018 and enjoyed cordial relations with him. During the tobacco season, Mavhura often hired his firewood cutting machine for a fee of \$250. He also explained that he was invited by Mavhura to engage in the business of cutting firewood at \$150 per load. At the time he left to attend to his sick child, he had accrued \$150 from the single load he delivered. He was however only given \$5 by Mavhura, with the promise of receiving the rest once the child recovered. He confirmed that at the time of testifying, Mavhura still owed him \$250 - \$300 and that Mavhura still had his chainsaw valued at \$480. He even denied having fled to Mozambique and claimed to have been at his homestead all this while tending to his sick child. The accused denied being the owner of the clothes marked exhibit 7 and 8 and stated that those were the clothes that Mavhura wore

on the fateful day. He confirmed that from the blood stains on the pair of trousers, it can be inferred that the wearer of the trousers must have committed a heinous and violent crime.

Issue for determination.

That the deceased was murdered on the night of 6 September 2020 is common cause. It is also common cause that the accused and his accomplice Nomore Mavhura were at the crime scene that night. One of them stabbed the deceased and they both left the premises in haste, leaving the deceased dying in their wake. The issue for determination is whether the accused participated in the murder of the deceased.

Analysis of evidence

In its closing submissions the prosecution relied on the indications, the confirmed warned and cautioned statements made by the accused as well as other evidence in their call for the court to convict the accused of murder. On the other hand, the accused through his counsel waived his right to make closing submissions and opted to abide by the evidence filed of record. In view of the accused's lukewarm challenge on the conduct of the indications and the fact that they were not confirmed, we hold that the state's evidence from the indications is debatable. For that reason, no probative value will be attached to it.

That notwithstanding the state led evidence from Victor Chari to show that the provisionally accepted confirmed warned and cautioned statement was made by the accused and dealt with by the authorities in accordance with the law. In terms of s 256 (2) of the CP &E Act, the accused was expected to lead evidence to show on a balance of probabilities, that the statement was not made by him and that it was not made freely and voluntarily. The accused neglected to do so. In a show of lack of seriousness, he in six sentences reiterated that he was harassed but did not provide any further details. He missed out on an opportunity to discharge the onus reposed on him. He could have called in evidence of his own to support his allegations of impropriety. Up to now we still do not know what it is it he says was done to him by the police or who is alleged to have done what. He chose instead to rely on his own unreliable evidence. We hold the view that the accused made his statement freely and voluntarily and that its confirmation was as presumed by the law, regular.

The confirmed warned and cautioned statement is sufficient evidence to implicate the accused in the commission of the offense. It provides an account that significantly differs from the accused's testimony. According to the confirmed statement, the accused and his accomplice went to the deceased's house with the intention of robbing him. The accused entered the

deceased's house and stabbed him, resulting in his clothes being soiled with the deceased's blood. The accused then changed his clothes and disposed of them.

This version of events in the confirmed warned and cautioned statement is further supported by the independent evidence presented by the state. For instance, Mary Kamucheka witnessed an unidentified man wearing light-coloured clothes fleeing from the deceased's house together with another unidentified man. In his confirmed warned and cautioned statement, the accused admitted that he was the one who fled and that he was wearing white clothes and brown shoes. The state produced blood-soaked khaki trousers and brown shoes (exhibit 7 and 8), which corroborated this fact. The accused even tried on the clothes, and the brown lace-up shoes fit him perfectly. Although the trousers were slightly loose, they still provided a reasonable fit, indicating that the accused only needed a belt to secure them. This is in contrast to Mavhura, who had a larger shoe size and a bulkier build. Observing the accused trying on the exhibits convinced us that the accused was the owner of the clothes. Therefore, we conclude that the blood-spattered light-coloured khaki trousers, which may appear white to one who is colour blind, belong to the accused, and he wore them on the day of the incident.

This conclusion is further supported by the evidence of Mavhura, who confirmed that he was with the accused and witnessed him entering the deceased's bedroom and subsequently running out. The accused's attempt to discredit Mavhura's testimony by claiming that Mavhura was trying to implicate him to save himself is unfounded, as Mavhura has already been convicted and is serving a 30-year sentence. Mavhura's testimony did not affect his own conviction or sentence. Furthermore, Mavhura did not owe anything to the accused. The accused's claim that he was owed money but failed to pursue payment for over a year and three months raises doubts about his credibility. Additionally, his assertion that he remained at his homestead during this time was not substantiated. It is undeniable that the accused was arrested at the border town of Mukumbura. He even admitted in his confirmed warned and cautioned statement that he fled to Mozambique after the commission of the offence. His actions indicate an attempt to defend the indefensible.

The accused's version that they went to visit Mavhura's girlfriend, which he now presents as his defense, is clearly false. Mary Kamucheka testified that the deceased was at the homestead, and they slept separately that night. It is logical to assume that anyone intending to visit their girlfriend at the homestead would enter the kitchen hut where she slept, rather than the bedroom hut where the deceased was. Neither Mavhura nor the accused were aware of the

separate sleeping arrangements, which undermines the accused's story about the girlfriend. The fact that the accused went straight to the deceased's sleeping area after checking through the window supports this version. In any case, Nomore Mavhura was a relative of the deceased. They lived in the same locality. There is no allegation that there was any other female adult at the deceased's homestead who could by chance have been Mavhura's girlfriend as alleged by the accused. The woman called Maraline in the accused's story is clearly a fictitious person. If she wasn't the accused must have made efforts to secure her attendance as his witness. He could even have asked the court to subpoena her to attend court and testify that there was a fight which took place between Nomore Mavhura and some men at the deceased's homestead on the fateful night.

In addition, the evidence of Mary Kamucheka was that the deceased had recently received payment after selling his tobacco crop. Mavhura knew about that money. He had earlier requested the deceased to advance him a loan but the request had been turned down. Mavhura and the accused both clearly had a motive to attack the deceased and rob him. Their plans were however thwarted by the deceased's resistance. The accused's confirmed warned and cautioned statement made this a fact. He confirmed having entered the bedroom hut with intention to rob. He was armed with a knife when he did so. He thrust the knife deep into the deceased chest and cheek. A fight broke out. The accused was saved by Mavhura who opened the door and he managed to flee. The accused had been elected to enter the hut because he was unknown to the deceased unlike Mavhura who was a relative of the deceased and could easily be recognised.

To cement his guilt, the accused could not explain why if he was innocent he would run away with the murderer. He even stumbled and nearly fell into a ditch while fleeing. According to his own narrative, when he caught up with Mavhura, he watched him remove his blood-stained clothes and accompanied him to hide them. If he had not committed a crime but suspected Mavhura had, why did he not report the matter to the police? Why did he not return to the village to check what had happened. Instead, his child conveniently fell ill. In fact, he was expressly informed by Mavhura that the man he had fought with had died. If he knew who had killed that man, it was only logical for him to go to the police and advise them that it was Mavhura who had killed the man and that he had played no part but simply accompanied Mavhura to see his girlfriend, He did not do any of those things but disappeared and skipped the country for over a year. Such behaviour is not consistent with an innocent person. The only

logical inference which can be drawn from the totality of the evidence and the accused's behaviour is that he was running away from the crime he knew he had committed. The numerous inconsistencies and improbabilities in the accused's version, leaves us with no apprehension that he was an untruthful witness, and that his evidence cannot be relied upon.

In fact, once it is proved and admitted that Maraline the alleged girlfriend did not exist and that there was no such person at the deceased's homestead, it became unnecessary to prove who between the accused and Mavhura had entered the hut and stabbed the deceased. Their common arrangement to go and rob the deceased would make both of them equally liable for the murder in terms of s 196A of the Criminal law Code. They acted in common purpose. The act of one perpetrator is therefore attributable to the other. The prosecution showed that this accused was in the vicinity of the crime scene in circumstances that made him intricately linked to the commission of the offence. It was further proved that the accused and Mavhura had pre-arranged the botched robbery and proceeded to the deceased's homestead in the full knowledge of what they wanted to do. They were armed with a knife and must therefore have been fully aware that the deceased could resist the robbery and that the knife could possibly be used with fatal consequences.

Disposition

In conclusion, our view is that the accused's version is demonstrably false. He had both the means and the motive to commit the crime. He armed himself with a knife and intended to rob the deceased of his money. He conspired with his convicted accomplice Nomore Mavhura. They had information that the deceased had money. Mavhura had always been bent on getting a chunk of the money the deceased had made from the sale of his tobacco crop as shown by an earlier request for a loan. They saw an opportunity and pounced on the deceased while he was asleep in his bedroom. The accused's choice of a knife as a murder weapon, the stab wound injuries sustained by the deceased and the inadequacies of the accused's account cumulatively weigh to prove the accused's intention to kill. In the circumstances we are convinced that the state managed to prove the accused's guilt beyond reasonable doubt. He is accordingly found guilty of murder as charged.