

**THE STATE**

**Versus**

**RAIGHTON NKOMO**

IN THE HIGH COURT OF ZIMBABWE  
KABASA J with Assessors Mr. Maphosa and Mr. Ndlovu  
HWANGE 9 JUNE 2021

**Criminal Trial**

*B Tshabalala*, for the state  
*Ms. C Manyeza*, for the accused

**KABASA J:** The accused was facing a charge of murder as defined in section 47 (1) of the Criminal Law (Codification and Reform) Act, Chapter 9:23. He pleaded not guilty to murder but tendered a limited plea to culpable homicide as defined in section 49 of the Criminal Law Code.

The state accepted the limited plea and to that end tendered a statement of agreed facts.

The facts revealed that on the 16<sup>th</sup> of July 2019 at around 2000 hours, the accused and the deceased, who was his father, were at home at stand No. 6, Village 1 Lukona Kennilworth in Inyathi.

The two had a misunderstanding with the deceased accusing the accused of just eating food at the homestead without contributing anything. The deceased then picked up an axe intending to strike the accused. The accused also picked up an axe and proceeded to strike the deceased on the head. The deceased fell near the fireplace. The accused pulled him and placed his head onto the fireplace. The deceased's body was discovered by the accused's brother the following morning.

The accused was subsequently arrested while the deceased's body was examined by Doctor Pesanai who concluded that the cause of death was:-

- a) brain damage
- b) compound skull fracture

- c) chop wound
- d) assault

The post-mortem report was produced and marked Exhibit 1. The accused's confirmed warned and cautioned statement was produced and marked Exhibit 2 and the axe used to assault the deceased was marked Exhibit 3. The axe's weight was 2,045 kg, length of wooden handle 74 cm, circumference of the handle 11 cm, the blade 23 cm and the width of the axe on the sharp end 9 cm.

There were no eye witnesses to the incident and so it was largely the accused's version which the state had to contend with.

The contents of the accused's confirmed warned and cautioned statement were captured in the statement of agreed facts. He dragged the deceased and placed his head onto the fireplace in an attempt to hide or conceal evidence.

The post-mortem report however showed that the burn to the scalp had nothing to do with the cause of death. The post-mortem made no reference to the burn, clearly showing that as at the time the deceased was dragged to the fireplace he had already died. The accused said as much in his statement.

In terms of section 253 of the Criminal Law Code, self-defence can be a complete defence for as long as all the requirements thereto are satisfied.

*In casu* the attack on the accused was unlawful and it was imminent. There was no suggestion that the accused could have escaped as there was such an avenue of escape. However, the means used to avert the unlawful attack were not reasonable in the circumstances. He used an axe to strike his 61-year-old father on a very delicate part of the body. Blows to the head can have fatal consequences. He obviously used enough force to cause a compound skull fracture and the resultant brain damage.

But for the unreasonableness of the means used to avert the unlawful attack the accused could have had a complete defence.

In the circumstances his conduct only avails him a partial defence to murder.

The state's acceptance of the limited plea was therefore an appreciation of the circumstances and the law.

The accused is accordingly found not guilty of murder but guilty of culpable homicide as defined in section 49 of the Criminal Law Code.

### **Sentence**

The accused is a 28-year-old first offender who pleaded guilty to culpable homicide. The plea of guilty shows some measure of contrition and the acceptance of responsibility for his conduct.

The deceased was the aggressor although the accused also exceeded the bounds of self-defence. He is single with no children.

The fact that he killed his own father is likely to weigh heavily on him and haunt him for the rest of his life. He grew up without motherly care as his mother was not there to nurture him.

He has spent 1 year 10 months in pre-trial incarceration and the anxiety that comes with waiting to hear one's fate over almost 2 years cannot be under estimated.

Aggravating is the fact that a life was needlessly lost. The deceased had lived to a ripe old age of 61 and had to lose his life at the hands of his own son.

The use of violence persistently rears its ugly head within our society and a strong message must be sent out that violence does not solve anything. It only makes a bad situation worse.

People should respect the sanctity of life and society expects no less. The courts will be failing in their duty should they not impose exemplary sentences which speak to the fact that the taking of life will be visited with appropriate sanction.

The accused callously dragged his father and placed his head into the fire, all in a bid to hide evidence. Whilst medical evidence showed that the deceased had already died from the strike with the axe, the accused's moral blameworthiness is still high.

Society expects children to respect their parents. The accused showed lack of respect when he caused his father's death and dragged his lifeless body to the fire.

He might have acted in the heat of the moment in striking the deceased but dragging the body and placing his father's head in the fire was callous and disrespectful.

Life is a gift which is given once and when taken away cannot be replaced.

An effective term of imprisonment is called for. In sentencing the accused we do not lose sight of the 1 year 10 months he has spent in pre-trial incarceration.

The accused is also being punished not for his evil intent, for he had no intent but for being careless. (*R v Richards* 2001 (1) ZLR 129 (S)).

In *State v Liberty Mutekure* HMA 38-18, MAWADZE J imposed a sentence of 10 years with 2 years suspended on a 22 year old first offender who pleaded guilty to culpable homicide arising from his attack on the deceased using an okapi knife. The deceased was the aggressor who followed the accused even after the accused had left the bar where the altercation had started.

The learned Judge had this to say before imposing sentence: -

“The offence of culpable homicide arising from violent conduct is a very serious offence and invariably attracts a custodial sentence unless there are special mitigatory factors. This is so because the sanctity of human life cannot be over emphasized. Human blood is sacred hence once life is lost whether intentionally or through negligence it cannot be replaced.”

We respectfully agree with the learned Judge's sentiments.

But for the almost 2 years accused spent in pre-trial incarceration, a sentence in the region of 10 years would have been appropriate.

Considering the circumstances of this case, the mitigatory factors and the aggravating ones, we are of the view that the following sentence meets the justice of the case,

“8 years imprisonment of which 1½ years is suspended for 5 years on condition the accused does not within that period commit any offence of which an assault on the

person of another is an element and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

Effective: - 6 ½ years imprisonment.

*National Prosecuting Authority, state's legal practitioners*  
*Mashindi and Associates, accused's legal practitioners*