

THE STATE

Versus

TINASHE SHUMBA

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessors Mr P. Damba & Mr E. Mashingaidze

BULAWAYO 23 & 24 SEPTEMBER 2021

Criminal Trial

T. Muduna for the state

C. Mhaka for the accused

MOYO J: The accused faces a charge of murder it being alleged that on the 11th of September 2019 he stabbed the deceased Lifaletu Johnson Ncube resulting in deceased's death. The accused denies the charge. The state called Pamela Mpfu to give *viva voce* evidence. Accused gave evidence for the defence. Pamela Mpfu's testimony did not prove any allegations against the accused. She could not disprove what accused said. The following were tendered into the court record.

- State summary (The evidence of Paul Bimbo, Student Moyo, Florence Muwuchiri, Joseline Davidzo Mufunda, Abel Chumbazaza abd Dr Gregori was admitted into the court record as it appears in the state summary)
- Defence outline
- Accused's warned and cautioned statement
- Post mortem report

Accused, deceased and Pamela Mpfu were at Shangani Business Centre on the day at a bar. Pamela Mpfu said she left before accused and deceased fought so she does not know what transpired between the 2.

The only evidence on the narration of what happened between accused and deceased is that of the accused who told the court that as accused left the bar deceased accosted him, attacked him and he could not extricate himself until when he had to produce a knife to defended himself. Such evidence has not been disproved by the state. In fact accused's version on what transpired is the only version this court has. This court finds that accused did act in self defence but

was negligent in introducing a knife and thereby exceeded the bounds of self defence since deceased was not armed. It is for these reasons that accused is acquitted on the charges of murder but will be found guilty of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a 1st offender, who is also youthful. He has spent 2 years in remand prison.

An effective sentence in the region of 7 years imprisonment would meet the justice of this case, but since accused person spent 2 years in remand prison this court will knock out that 2 years and give him an effective 5years imprisonment. The accused is accordingly sentenced to 7 years imprisonment with 2 years' imprisonment suspended for 5 years on condition accused does not within that period commit an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine. He shall thus serve an effective 5 years imprisonment.

National Prosecuting Authority, state's legal practitioners
H. Tafa & Associates, accused's legal practitioners