

THE STATE

Versus

THABANI MGUNI

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr T.E Ndlovu and Mr W. Zulu
HWANGE 4 OCTOBER 2021

Criminal Trial

Mrs M Cheda, for the State
Ms M Mthombeni, for the accused

MOYO J: The accused faces a charge of murder, it being alleged that on the 2nd of January 2021, he struck the deceased Patrick Moyo with a log once on the head and thereby causing his death. He pleaded not guilty to murder but offered a limited plea to culpable homicide. The state counsel accepted that limited plea. The parties drew a statement of agreed facts. It was tendered and marked Exhibit 1. It reads as follows:-

1. The accused was aged 37 years at time the offence was committed and he resided at his own homestead, Zamani Village, Chief Mabhikwa, Lupane.
2. The deceased was aged 55 years of age at the time he met his death and he used to reside at his own homestead, Zamani Village, Chief Mabhikwa, Lupane.
3. The accused and deceased were neighbours.
4. On the 2nd day of January 2021 and at 1345 hours the deceased, accused's brother Chrispen Mguni and other villagers were drinking

homemade beer at deceased's homestead. There was also gambling in the kitchen hut.

5. A dispute arose over a United States \$10 note that was at stake. Chrispen Mguni took the \$10 note and pocketed it. The other gamblers protested.
6. The deceased stood up and blocked Chrispen from leaving the kitchen hut while demanding the money back.
7. The accused intervened. Chrispen then gave the accused the \$10 note and the accused ran away from the homestead and stood outside the yard.
8. Chrispen armed himself with an axe and threatened the villagers and gamblers with an axe and then with logs but he was disarmed on each occasion.
9. Deceased pleaded with the accused and Chrispen to take the money back. The accused then picked a log and struck the deceased once on the head and he fell to the ground unconscious.
10. The accused fled from the scene.
11. The deceased was ferried to the hospital where he died.

The post mortem report was also tendered and marked Exhibit 2. It gives the cause of death as head injury, assault.

From the facts before us, the accused person is found not guilty of murder but is instead convicted of the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a first offender and a sole bread winner. He pleaded guilty to the appropriate charge. He spent 9 months in remand prison. A life was unnecessarily lost. Violence in all forms should be discouraged by these courts. An appropriate sentence would be 5 effective years in prison but since accused has spent 9 months in pre-trial incarceration a year will be knocked off the effective sentence. He shall be sentenced as follows:-

7 years imprisonment with 3 years imprisonment suspended for 5 years on condition the accused is not within that period convicted of an offence involving violence, whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

*National Prosecuting Authority, state's legal practitioners
Dube, Nkala And Company, accused's legal practitioners*