

**THE STATE**

**Versus**

**MTHABISI HADEBE**

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 C Manyeza*, for the accused

**MOYO J:** The accused faces a charge of murder, it being alleged that on the 3<sup>rd</sup> of March 2021 he assaulted the deceased Andreas Ncube with a cattle branding iron and a knobkerrie and thereby unlawfully causing his death.

The accused pleaded Not Guilty to the charge of murder but instead offered a limited plea to the charge of culpable homicide. The state accepted the limited plea. A statement of agreed facts was drawn. It was marked Exhibit 1 and tendered, it reads as follows:-

1. The accused was aged 26 years of age at the time of the commission of the offence and he resides at Stand Number 34 Remta Village 1, Chief Deli, Nyamandlovu.
2. The deceased was 58 years of age at the time of his death and he resided at Stand Number 37 Remta Village 1, Chief Deli, Nyamandlovu.
3. On the 3<sup>rd</sup> of March 2021 and at around 0600 hours, the accused and the deceased were both at stand number 35 Remta Village, Chief Deli Nyamandlovu after deceased had been looking for accused over an issue of a missing bottle of hot stuff. The deceased alleged that the accused had stolen it.
4. A misunderstanding ensued. The deceased attempted to strike the accused with a knobkerrie but the accused blocked the blow with his left hand. The accused ran away towards his homestead and deceased gave chase.

5. The deceased continued chasing after the accused several times around a kitchen hut within stand number 35 with the deceased still armed with the knobkerrie.
6. The accused picked a cattle branding iron bar and struck deceased once on the head. Deceased fell to the ground.
7. The accused dispossessed the deceased of the knobkerrie and proceeded to strike deceased with it several times all over the body until he was restrained by his sister Sidumisiwe Hadebe.
8. The deceased sustained a deep cut on the head and lacerations all over the body.
9. Deceased died on the 6<sup>th</sup> of March 2021.
10. The accused person pleads not guilty to culpable homicide in that he negligently caused the death of the deceased.

The post mortem report was also tendered and marked Exhibit 2. It gives the cause of death as traumatic brain injury, skull fracture, post assault head injury. The iron rod and the knobkerrie were also tendered and duly marked.

The accused is accordingly found not guilty of murder but is convicted on the lesser charge of culpable homicide.

### **Sentence**

The accused is convicted of culpable homicide. He is a first offender. He pleaded guilty. He was provoked by the deceased and fled but deceased nonetheless gave chase. Deceased was twice the age of the accused. A life was unnecessarily lost due to acts of violence involving deceased himself as he provoked the accused and would not relent on chasing after him.

The accused has weighty mitigation in his favour. He will accordingly be sentenced to 5 years imprisonment with 2 years imprisonment suspended for 5 years on condition 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*

*Mashindi And Associates, accused's legal practitioners*