

THE STATE
versus
SILVESTER SAKASU

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 29 July 2021, 6 and 13 September 2021

Criminal Trial – (Murder)

ASSESORS: 1. Mr Mudzingo
2. Mr Chipere

Ms *T. L Katsiru*, for the State
Ms *C. Danha*, for the accused

MUZENDA J: The accused was arraigned for Murder as defined in s 47 (1)(a) or (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. It is alleged that on 23 December 2019 and at 44 Leslivlei Farm, Chief Mutema Chipinge, accused unlawfully caused the death of Mathew Mucherere by shooting him with a Bikal Shotgun on the right side of the abdomen intending to cause death or realising that there was a real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which the said Mathew Mucherere died.

The accused pleaded not guilty to murder but tendered a plea of guilty to culpable homicide. The state did not accede to the plea of guilty to culpable homicide and the matter proceeded to trial on the charge of murder.

In his defence summary Annexure “B” the accused states the following: On the fateful day he was in the company of five (5) other security guards guarding the fields of Prince Goredema and a Mr Marezva which are adjacent fields. Accused was guarding the fields since there was a dispute over the fields. More than 20 people approached the guards armed with logs, stones and machetes threatening to attack whosoever would impede their entry into the fields. The mob threatened to take over the fields and take macadamia nuts since they claimed belonged to them. The other security guards were overpowered by the mob and ran away, that is when accused sensed danger and felt to be under imminent attack. He randomly fired a single shot into a certain macadamia shrub intending to scare away the mob. Unfortunately he later

discovered that he had shot some people who happened to be behind the shrub and those people included the now deceased. He denies intending to kill the deceased nor did he foresee that death may result due to his action or conduct.

The background of the matter as per State Summary Annexure “A” is as follows: On 23 December 2019 the accused shot the deceased on the right side of the abdomen and seriously injured him. The deceased was ferried to Chipinge District Hospital where he passed on, on 24 December 2019 whilst receiving treatment. On 26 December 2019 Dr Brian Makumbe carried out a post-mortem and concluded that the cause of death was due to exsanguination.

To prove its case that state applied in terms of s 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] to have the evidence of Munashe Masunungure, James Maredza, Trymore Nyakabau, Dowa Henry Sostane, Themba Nyoni, Dr Makumbe, Never Pasura and S. Gundumure be admitted into court as not being in dispute. The defence did not oppose the application. The post mortem was produced by the State with the consent of the defence and marked as exh 1 and the report shows that there were multiple entry points on the body of the deceased and bruises on the knuckles and on both knees. The doctor concluded that death was due to exsanguination. Exhibit 2 is the confirmed warned and cautioned statement of the accused and the salient portion of the statement reads:

“In the afternoon I was then joined by other five security guards whom I did not know by names who were guarding the plantation. A group of more than twenty people then approached us armed with logs, stones and machetes. The other group was attacking us and the other group was stealing some macadamia nuts. I realised that I was in danger when my three colleagues were assaulted. I then fired a single shot with the intention of scaring them away but I did not fire in the air I fired at the side, the bullet then hit Mathew Mucherere on his groin and on his right hand...”

The state led oral evidence from witnesses Panashe Masunungure, Mwarangana Makinasu Muyambo and Hussein Souza, Jealous Souza and Florence Mhlanga. Panashe Masunungure was in the company of her father, Mwarangana Makinasu Muyambo on the day in question. She saw accused firing towards Hussein Souza and the deceased. She saw Sheila Nzombe striking her father with a machete on the head. According to her evidence accused did not randomly fire into a shrub but was ordered to shoot at the deceased by a fellow security guard. Florence Mhlanga is the wife of deceased. She told the court that on 23 December 2019 at 1400Hrs when the settler farmers arrived at the fields in dispute they were stopped by armed guards, the guards were armed with machetes, sticks and accused had a firearm. She saw accused firing at both Hussein Souza and the deceased. Hussein Souza ran away shouting that deceased had been shot, deceased sat down groaning in pain. She observed gun wounds on

deceased's right lower abdomen. The now deceased died on 24 December 2019. Mwarangana Makinasi Muyambo told the court that he was told by Souza brothers that the pair had been chased away from their garden on the morning of that day by accused, Sheila Nzombe and five other guards. In the afternoon he accompanied other settler farmers to go to the fields to check on the plants with a view of fumigating them. Upon arrival a line was drawn and a declaration was made by one of the guards that whoever dares to cross the line would be history. Sheila Nzombe struck the witness with a machete on the head. He later heard a gunshot sound and was assisted by his wife from the scene. Hussein Souza confirmed the morning confrontation with the accused and Sheila Nzombe. He reported the matter to the police at Junction Gate Police Base. Police advised him to go back and carry out his garden duties until the matter was resolved by the issuing Ministry of Lands. At 1400hours he was with fellow farmers when deceased was fatally shot. He was also shot on the right elbow and deceased was shot on the abdomen. Richard Mukokodo is the one who drew the line on the ground. When deceased arrived at the scene the security guards shouted that he was the one they had been waiting for and Richard Mukokodo told accused to shoot deceased and accused shot him. He denied that accused shot in the shrub but was adamant that accused deliberately shot at them. Jealous Souza's evidence is on all fours with that of his brother and added that macadamia nut trees on the fields are full grown trees with a clearance below the branches of about 1,2 metres. One could see a long distance without hindrance if people are on the fields. The distance between the lines of the trees is above 3 metres wide and can allow a tractor to drive through during fumigation or harvest hence he denies the accused's version that a mob of people were hiding behind shrubs of the macadamia trees.

All the state witnesses were subjected to an extensive cross-examination by the defence counsel but they remarkably and consistently stuck to their evidence. What emerged from the evidence of the state is that the settler farmers legally settled on the plots long back in 2001 and their first harvest was in 2010, nine years later. They have established homesteads and gardens which are separated from the fields though certificates of occupation include the portions for each settler. The guards were employed by recently allocated claimants whose ownership of land is still a subject of dispute. On the day in question evidence is abundant that the deceased due to his age was the last to arrive at the scene and did not talk to any of the guards. Upon his arrival deceased was shot at because he was the chairperson of the settlers. When he was shot he was visibly standing under a macadamia tree and accused knew his target and shot him and the splinter injured Hussein Souza in the process. Contrary to what accused

alleges that he heard movement of leaves and felt that he was under threat, accused was urged by his colleagues to shoot at the deceased. In accused's own warned statement he did not speak of firing on the side, he did not admittedly give warning shots at all. In his defence outline he did not allude to anyone stealing macadamia nuts as what appears in his cautioned statement. We accept the argument by the state that a comparison of accused's extra curial statement and his defence outline exhibits a diametrically opposite version which shows that accused is concealing the truth by these contradictions.

During his oral evidence he failed to clarify these inconsistencies and attempted to remove Sheila Nzombe from the scene regardless of evidence which shows that she is the one who struck Mr Muyambo with a machete. On one occasion he told the court that he did not witness the scuffle between the two groups but later changed saying when three of his guards were assaulted, he felt endangered and decided to fire the gun. The colour of accused's defence is based on defence of self and of property. However there is no proof placed before the court to prove that the fields legally belonged to Marozva and Goredema. Hence private property defence does not arise. It appears the guards were mercenaries specially hired to wrestle the fields from the settler farmers. In his own admission the accused states that he is a trained security guard he understands and knows rules applicable to the use of gun to protect oneself or property. He conceded under cross-examination that the first thing a security guard should do is to fire at least three warning shots, if the attacker does not heed, the next step is to fire on the side towards the target, and if the assailant continues to attack, then the gunmen should aim at the lower part of the body, like on the legs. He conceded that shooting on the target is the last option if all warnings had been futile. He did not professionally act on the day in question and admitted his mistakes.

Accused did not convince the court that what he intended to do was to injure the deceased. He was persuaded by his fellow guards to shoot the deceased in order to resolve the land dispute.

Accused directly targeted deceased. We accept the evidence of the accused that he shot only once as opposed to the evidence of the state which speaks of two shots. Accused shot deceased from a distance estimated to be 20 metres, for a gun the distance can be regarded as close proximity and this is so given the gravity of deceased's injuries and the subsequent death. Accused ought to have foreseen that his action would lead to death and we are satisfied that he was reckless of such a result. He was overzealous. He took the task to protect the property too far and was too ambitious and trigger free to shoot at the deceased. None of the security guards

were injured, the accused himself was not under threat. We reject his evidence in chief when he spoke of the group uttering to advance towards him to attack him, it's only his words and version barely supported by any evidence from independent sources.

We are not convinced by defence's version and we reject it. However we do not agree with the state that accused actually intended to kill the deceased but should be found guilty of murder with constructive intent and he is so convicted of such.

Verdict: Guilty of murder with constructive intent in contravention of s 47(1)(b) of Criminal Law (Codification and Reform) Act.

Sentence

In assessing the appropriate sentence the court will take both mitigatory and aggravatory features in this matter. Cases of murder involving security guards on macadamia nuts are on the increase in Manicaland Province especially in the districts of Chipinge and Chimanimani. It appears the security companies do not properly train their guards as to when they should shoot to injure and attack in self-defence or defence of property. I would call upon police department to carry out massive awareness campaign and advocacy among security companies to extensively train them and avoid loss of life in situations where such can be avoided. Legislation should also make provisions to cancel operating licences of such companies where security guards do not abide by safety precautions to protect and value life.

The conduct of the accused led to the unfortunate loss of life. The only positive aspect in your favour is that you committed this offence whilst on duty where you believed wrongly that you were performing your work. That reduces your moral blameworthiness but yet still the offence you have been convicted of remains quite serious.

You are sentenced as follows:

10 years imprisonment.