

THE STATE

VERSUS

MILLION MUNGA

AND

OBERT MULEYA

AND

HEADMAN MUNKOMBWE

IN THE HIGH COURT OF ZIMBABWE

MOYO J

HWANGE 10 MARCH 2014

Mr Mpofu for the accused

Mr W. Mabhaudhi for the state

Criminal Trial

MOYO J: The two accused persons stand charged with the crime of murder as defined in section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] in that on the 26th day of August 2013 at Muntania Mufwakuchela's homestead they assaulted the deceased Jairos Chabwe Muleya with clenched fists and they also booted him all over his body several times, following a misunderstanding between the two accused persons and a third accused person who is since deceased. The accused persons pleaded not guilty to murder but tendered a lesser plea to culpable homicide. The prosecutor accepted this limited plea. A statement of agreed facts was tendered and marked as Exhibit 1. In terms of the statement the accused persons assaulted the deceased when he tried to intervene in an altercation they had with the deceased's son. The accused persons subsequently fled from the scene. The deceased was later taken to Binga Hospital. He was subsequently transferred to Mpilo Central

Hospital where he later died on 31st August 2013.

A post-mortem report was prepared by Dr Jekenya and it gives the cause of death as (a) Intracranial haemorrhage, head injury, assault. The post mortem report was marked Exhibit 11.

I accordingly find the two accused persons not guilty of the charge of murder but I convict them of culpable homicide as defined in section of section 49 of the Criminal Law (Codification and Reform) Act, [Chapter 9:23].

In sentencing the accused persons, I have considered the mitigatory features advanced on behalf of both accused persons which are similar to a large extent, they are both family men, they look after minor children, they pleaded guilty to the charge, they are both first offenders, they are unemployed and have a few cattle to their names, they have no personal savings. Accused 1 though is a lot older than accused two, him being 51 years old and accused two being 39 years old.

They were both drinking beer on the day in question and had been drinking for the entire day prior to the assault. The accused persons have not wasted this court's time. However, it is note worthy that the circumstances under which the deceased died are the most unfortunate. Here is an elderly innocent man, trying to quell a misunderstanding and achieve peace, he however, becomes a victim of violence himself. One wonders what got the accused persons so incensed by the deceased's conduct to the extent of assaulting him with excessive force in the manner that they did. The accused persons used force on a man, who was not the instigator, but a man who in fact wanted peace to prevail. The accused persons' conduct was unwarranted, and as a result an innocent life was lost. Both counsel have submitted that only a custodial sentence would meet the justice of this case and we hold the same view.

Having considered the foregoing, that is, both the mitigatory and aggravating features in this case, I accordingly sentence the two accused persons to 8 years imprisonment.

Cheda and partners, accused's legal practitioners
Criminal Division, Attorney General's Office, state's legal practitioners