

THE STATE  
**versus**  
DAVID MWANZA

HIGH COURT OF ZIMBABWE  
MOYO J  
HWANGE 10 NOVEMBER 2015

### **Criminal Trial**

*Miss N Ngwasha* for the state  
*T. Mukuku* for the accused

**MOYO J:** The accused person faces a charge of murder it being alleged that on 30 May 2015 and at Ndajila village, Dete he unlawfully and intentionally killed Onias Zulu.

The accused person pleaded not guilty to this charge but instead offered a limited plea to a charge of culpable homicide. The state counsel accepted this plea. A statement of agreed facts drawn and signed by both parties was read and tendered into the court record and it has marked Exhibit 1.

It reads as follows:

1. Accused resides at Daina Mpala's homestead Ndajila village, Mabale Dete and was aged 31 years at the time of the commission of the crime.
2. The deceased used to reside at Edward Zulu's homestead Ndajila village, Mabale, Dete and was aged 26 years at the time he met his death.
3. The accused and deceased were not related.
4. On 30 May 2015 accused and deceased went to see Gladmore Mnkandla who resides at Sithembiso Mnkandla's homestead.
5. While there deceased produced a cellphone to show Gladmore Mnkandla and said it was for sale.
6. Accused identified the cellphone as his which had been stolen from him the previous day.

7. Accused took the cellphone opened it and discovered that it had no sim card.
8. He asked for the sim card from deceased who insisted that Trust Mnkandla had given him the cellphone without netone sim card.
9. An argument ensued between the two leading to accused striking the deceased twice on the cheeks with open hands.
10. Accused picked up a log and struck the deceased once on the ribs and deceased ran away.
11. Accused ran after him and caught up with him and pushed him to the ground.
12. Gladmore Mnkandla intervened and restrained the accused person, however accused struck deceased once on the centre of the head.
13. The deceased fell to the ground unconscious.
14. Accused poured water onto the deceased to regain consciousness.
15. Deceased was found unconscious the following day by family members who were looking for him as he had not returned home the previous night.
16. Deceased was ferried to Mabale Clinic where he was pronounced dead on arrival.

The post mortem report was also produced and marked as Exhibit 2. It gives the cause of death as

- 1) subdural haematoma
- 2) skull fractures
- 3) skull head injury (post assault)

From the facts before me, I accordingly find the accused person not guilty on the charge of murder but I convict him on the lesser charge of culpable.

### Sentence

In mitigation it is noted that the accused offered a plea of guilty to this charge. He was aged 31 years at the time of the commission of this offence. He is a father of two minor children, he was

provoked by the deceased's conduct in that he found his lost or stolen cellphone in the possession of the deceased.

However, as these courts have expressed time and again, nothing is worth dying for, be it a stolen cellphone or a sim card that cannot be accounted for, for a sim card is just a dollar. Life has no price tag, once lost its lost, no amount of money can replace life so likewise no amount of money or value of any property can be compared to life. These courts have time and again expressed their discontent with the manner in which the citizens have found it fashionable to resort to violence on every little dispute that occurs. The sanctity of life needs to be emphasized and a strong message needs to be sent out there, that those who resort to violence and lead to a loss of life, will not be treated lightly by the courts lest the public loses its confidence in the justice system. There is absolutely no reason why accused assaulted deceased in this case, he had found his cellphone. The accused hit the deceased who never hit him back but instead decided to run away from violence. He nonetheless followed him to continuously beat him despite the fact that the deceased had fallen down and was now defenceless. The accused also did not heed the intervention by Gladmore Mnkandla. The accused's conduct is deplorable and a sentence that would meet the justice of the case is one in the range of 10 years imprisonment.

The accused person is accordingly sentenced to 10 years imprisonment.

*National Prosecuting Authority, accused's legal practitioners*  
*Maronedze, Mukuku & Partners, accused's legal practitioners*