

THE STATE  
**versus**  
SAMSON MASUKU

HIGH COURT OF ZIMBABWE  
MOYO J  
BULAWAYO 2 JUNE 2016

### **Criminal Trial**

*T. Hove* for the state  
*S Mlaudzi* for the accused

**MOYO J:** The accused person in this matter faces a charge of murder, with being alleged that on or about 16 March 2002, at Nelson Nare Mudau's homestead the accused person acting in common purpose with others assaulted Nelson Mudau who subsequently died from the injuries sustained in that assault.

The accused person pleaded not guilty to the charge of murder but instead offered a limited plea to the charge of culpable homicide. The state counsel accepted that limited plea. The parties drew and tendered a statement of agreed facts and it read as follows:

1. The deceased Nelson Nare Mudau was aged 68 years at the time of his death.
2. The accused person was 46 years at the time of the commission of the offence.
3. On the 16<sup>th</sup> day of March 2002 after the results of the general election had been announced the accused person attended election victory celebrations with a group of ZANU PF members and perpetrators who were found guilty of culpable homicide and who have since served their sentences.
4. As these ZANUPF members were walking from the celebrations in groups, another group which was ahead made largely of ZANUPF youth and the perpetrators an altercation ensued as they passed the homestead of the now deceased person.

5. The accused's group which was following behind became aware of the commotion. Realizing that the perpetrators were in the homestead of the now deceased person, the accused person also ran to the now deceased homestead.
6. The accused person entered the homestead of the now deceased person and because it was dark and there were a lot of people and the accused is well known in the area he was identified as one of the perpetrators acting in common purpose with the perpetrators who were assaulting the deceased and the deceased's family members with fists and sticks resulting in deceased suffering injuries.
7. The accused understands the elements of common purpose and realizes that he associated himself with the acts of the principal perpetrators and did not do enough to disassociate himself with their said culpable conduct which led to the deceased's demise.
8. The following morning the deceased was taken to Beitbridge Rural Hospital and was later transferred to Gwanda Provincial Hospital.
9. On the 22<sup>nd</sup> day of March 2002 the deceased passed away at Gwanda Provincial Hospital as a result of the injuries sustained during the assault.
10. On the 27<sup>th</sup> day of March 2002 a post mortem was conducted on the remains of the now deceased and the cause of death was found to be:
  - a. Septic Shock;
  - b. Severe Peritonitis; and
  - c. Assault.
11. The State and Defence Counsel agree that the accused and the perpetrators' negligence and actions caused the death of the deceased.

The post mortem report was also tendered and gives the cause of death as

- a. Septic Shock;
- b. Severe Peritonitis; and
- c. Assault.

The facts before us do not sustain the charge of murder but instead point towards a verdict of culpable homicide. The accused person is thus found not guilty on the charge of murder but is convicted on the lesser offence of culpable homicide.

### Sentence

The accused person stands convicted of culpable homicide. He pleaded guilty to this charge, he is a first offender, he is a family man and a breadwinner. The deceased was related to him through his wife. He is nearing the afternoon of his life considering that he is now 60 years old. He has waited for justice for 14 years not because of his own actions. He acted in common purpose with others in committing this offence. His co-accused were sentenced to an effective 10 years imprisonment. This court should however be alive to the fact that a life was unnecessarily lost, through violence, political violence is a cancer in our Society that needs to be addressed as our constitution grants everyone freedom of conscience and political belief. There is no need for people to butcher each other simply because one's ideology differs from theirs. Politics is like religion, whilst it can be a sensitive subject, people should learn to respect other's views whilst believing in their own. Again, its surprising that the accused and his team were celebrating victory after winning an election, how could they then be fighting when they had already won? The accused and his co-accused acted in an immature manner on the day in question. A life was lost in circumstances that did not call for a loss of life.

It is our considered view, that despite the mitigating features on the accused's personal circumstances, and the circumstances of the commission of the offence, this court has to maintain a proper balance between those two, and the interests of society. These three pillars constitute the interests of justice. It cannot be the interests of justice that the court views the accused's circumstances and that of the commission of the offence without considering in the interests of the society at large, lest we undermine the confidence of the public in our courts. It is for these reasons that, after considering the mitigation and balancing it with the aggravating features, also taking into account the period of imprisonment given to his co-accused, the accused person will be sentenced to 8 years imprisonment.

*National Prosecuting Authority, state's legal practitioners  
Samp Mlaudzi and Partners, accused's legal practitioners*

HB 153-16  
HC (CRB) 62-14