

THE STATE

Versus

MIKA NYONI

IN THE HIGH COURT OF ZIMBABWE

BERE J with Assessors Mr T.E. Ndlovu & Mrs E. Chazanga

HWANGE CIRCUIT COURT 9 NOVEMBER 2016

Criminal Trial

Miss N. Ngwasha for the state

G. Muvhiringi for the accused

BERE J: The accused was initially charged with the offence of murder to which he pleaded not guilty but offered a limited plea of guilty to culpable homicide culminating in the drafting of the statement of agreed facts which was framed as follows:

“The state and the defence are agreed that the following issues are common cause being that:

1. The deceased was aged 48 years at the time he met his death and he used to reside at his own homestead Siamputini 18 Kabongo Lusulu Binga.
2. The accused was aged 49 years at the time of the commission of the offence and he resided at his own homestead Siamputini 6 Kabongo Lusulu Binga.
3. Accused and deceased were step brothers.
4. On the 2nd of July 2016 at around 1600 hours the accused and deceased were drinking beer at Eklias Javula’s homestead when a misunderstanding arose between the two.
5. The deceased was alleging that the accused was having a love affair with his wife Leona Makumbe.
6. The deceased assaulted Accused using fists.
7. The two then fought using fists.
8. The accused then kicked the deceased on the testicles and he fell down.
9. The deceased was taken to the clinic the following day and he died on the 5th of July 2016.
10. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently caused the death of the deceased.”

The post mortem report speaks to the deceased having died due to:

1. Severe peritonitis

2. Intestinal perforation, and
3. Abdominal trauma.

Sentence

In assessing sentence we will be guided by the following factors in mitigation and aggravation.

This offence happened when the two brothers were drunk and fighting and it is possible the accused could have himself been injured. The assault that took deceased's life was a single blow. The accused has 10 children and a wife to look after and added to that he now has the added responsibility of looking after an additional 5 children belonging to his deceased brother.

The accused is a first offender and has already spent 4 months in custody as a result of this offence. There must be a reward for showing contrition as demonstrated by the accused who evidently appears to be sorry for what happened to his brother.

The accused and the deceased were step brothers who had been drinking together when they picked up a quarrel.

In aggravation we accept that life was needlessly lost in this case. The message must go loud and clear that it is only animals which are given to quarrelling and fighting but people must learn to discuss their challenges or seek the community elders to assist them.

We will give the accused a sentence that will allow him to continue looking after his minor children and the deceased's children including his wife because it is the accused who has deprived them of a breadwinner.

Sentence: \$300 or in default of payment 3 months imprisonment. In addition 5 months imprisonment is suspended for 5 years on condition the accused does not within that period commit any offence involving violence upon the person of another and for which upon conviction the accused will be sentenced to a term of imprisonment without the option of a fine.

Warrant is suspended until 30 December 2016.

The Prosecutor General, state's legal practitioners
Dube & Partners, accused's legal practitioners