

THE STATE  
**versus**  
MAJOR MAKUMBE

HIGH COURT OF ZIMBABWE  
MATHONSI J  
GWERU 23 JANUARY 2017

### **Criminal Trial**

*M Shumba* for the state  
*V Masvaya* for the accused

**MATHONSI J:** The accused person is a male juvenile who, at the time of the alleged offence on 24 February 2016 was aged 16 years. He was brought before this court on a charge of murder in contravention of s47 (1) of the Criminal Law Code [Chapter 9:23]. The allegations are that on the day in question he unlawfully caused the death of Freddy Dombo (“the deceased”) by kicking him once on the neck with a bare foot, intending to kill him or realizing that there was a real risk or possibility that his conduct may cause death.

The accused person has pleaded not guilty to the charge of murder but offered a limited plea of guilty to culpable homicide. The state has accepted the limited plea as a result of which the parties submitted a statement of agreed facts. The agreed facts are;

On 24 February 2016 the accused and the deceased were playing football when the deceased took away the accused’s pair of trousers and started walking away. The accused requested him to leave it but he refused as he was holding it as surety for his pair of stockings given to the accused on a previous occasion. When an altercation ensued the accused assaulted the deceased first with open hands. There was also a fist fight between the two which saw the deceased falling to the ground. When he was on the ground the accused kicked him once on the neck with a bare foot as a result of which the deceased became unconscious. He later died on arrival at Zvishavane Hospital.

According to the post mortem report compiled by Dr Roberto Trecu, a pathologist at United Bulawayo Hospitals, who conducted a post mortem on the body of the deceased, the deceased died as a result of cerebral oedema, subarchnoid haemorrhage and severe head trauma.

In our view the acceptance by the state of a limited plea was properly made. It cannot be said from the agreed facts that the accused person intended to cause the death of the deceased which was quite unfortunate indeed.

Accordingly, the accused is hereby found not guilty of murder but guilty of culpable homicide.

#### Reasons for sentence

The accused person was only 16 years old when he committed the offence. He is now 17. This incident occurred at a football pitch at Gresham Primary School in Zvishavane at a time when the accused and other boys were playing football. The deceased had confiscated the accused's pair of trousers as security for the return of his stockings he had given to the accused, conduct which led to a misunderstanding between the two kids. He slapped the deceased before kicking him with a bare foot during a scuffle. It was as a result of that kind of assault that the deceased died.

There can be no doubt that the accused was the vehicle through which that misfortune befell the family of the deceased. However the conduct of the accused may be attributed more to immaturity and youthfulness than anything else. Young people do engage in such behaviour stemming from childishness and ordinarily it does not give rise to loss of life. It is for that reason that the death was unfortunate indeed.

Whichever way, causing the death of a colleague must have traumatised the accused very much and he will now live with the stigma of having taken the life of a friend or colleague under tragic circumstances. That on its own is punishment enough. It must be a lesson to him that resort to any form of violence in order to resolve differences does not pay.

While it is the duty of this court to uphold the sanctuary of human life, nothing will be achieved by sending a young offender to any form of custody for what was a regrettable incident which ordinarily should not have resulted in death. The thrust here should be reform the young

offender and hopefully retrieve that which is left instead of destroying everything. We will therefore suspend the sentence so that it remains hanging over his head as a constant reminder that he should always behave himself.

Accordingly the accused is sentenced as follows:

4 years imprisonment which is wholly suspended for 5 years on condition the accused does not during that period commit any offence of which violence is an element for which upon conviction he is sentenced to imprisonment without the option of a fine.

*National Prosecuting Authority, state's legal practitioners*  
*Chitsa, Masvaya and Associates, accused's legal practitioners*