

THE STATE  
**versus**  
WONDER MUNSAKA

HIGH COURT OF ZIMBABWE  
MOYO J  
HWANGE 9 NOVEMBER 2017

### **Criminal Trial**

*Miss M Munsaka* for the state  
*K Dingani* for the accused

**MOYO J:** The accused person faces a charge of murder, it being alleged that on 7 October 2014, he chopped his wife Fortunate Mutale decapitating her head with an axe.

Documentary evidence was tendered in the following nature, state summary defence outline, the post mortem report, accused's confirmed warned and cautioned statement, and the psychiatrist's report. They were duly marked. The axe that was allegedly used in the commission of the offence was also tendered and duly marked. The state called two witnesses gave *viva voce* evidence. They witnessed the aftermath of the deceased's death. The first witness was called by deceased who was screaming alleging that accused was killing her. She went there to find deceased's decapitated body aside a pool of blood with no head.

The second state witness also found the deceased's body aside a pool of blood with no head. The deceased's head was in a box in the bedroom hut underneath the bed. It was recovered by the police. The evidence of Cuthbert Shonhiwa, Shadreck Tanikai, and Dr S. Pesianai was admitted into the court record in terms of section 314 of the Criminal Procedure and Evidence Act [Chapter 9:07].

The accused person murdered the deceased in the absence of any other witness. It is his version that the court has to assess in a bid to establish what transpired.

In his confirmed warned and cautioned statement, he admits to killing the deceased he says;

"I admit to the allegations of killing Fortunate Mutale on the 7<sup>th</sup> of October 2014 around 2100 hours. By striking her with an axe on the head, and once on the thumb of the right

hand, then several times on the neck, until I chopped off the neck, she then died. I took the head and put it in the hut and closed the door.”

In his evidence in court he sought to disown the confirmed warned and cautioned statement. Its important to note that in his confirmed warned and cautioned statement he does not mention any infidelity on the part of his wife. The court is entitled to draw an adverse inference on the failure to mention this crucial point at the time when his memory was still fresh.

His grandmother and the other witness who is a neighbour knew accused and deceased to have a peaceful marriage and they never heard of her extra marital affairs as alleged.

Accused himself failed to explain to the court how many boyfriends deceased had as he alleged infidelity in his defence outline.

Accused also failed to explain precisely what happened on the night in question. In his defence outline, paragraph 6, he says as he approached the kitchen, he saw a man leaving and upon querying deceased, he was provoked. However, in court he says he entered the kitchen and found deceased with a man. He could not explain precisely to the court what happened as he entered. He says this man attacked him with fists and he in turn, turned on the deceased as he did not care much about this man.

He could not clearly explain at what stage he introduced the axe. The accused had so much difficulty in presenting the scenario that obtained on the night in question, because he is trying to create an event that never happened hence the difficulty. A concocted story will not stand the test of cross examination in this court as usual. That's the predicament the accused finds himself in. He tries to portray his marriage as a troubled one in his defence outline. But in court he failed to sustain that point and even admitted that there were no other problems save in the fateful day. He also gives various reasons for going to the kitchen, firstly in his evidence-in-chief he said he was going to check on his wife and children and later on when asked by the court he said that he had gone there to get his food. If his food was in the kitchen, and deceased knew he would come for his food obviously, would she then entertain a man in there before accused would have taken his food? The accused is a liar, he is the only person who knows why he committed this callous murder on the deceased. He is deliberately hiding the true reason to

the court and trying to throw in various defences, first that of provocation, which when he realized he could not sustain any longer, he changed to self defence. Even if one were to follow the fabricated defence of self what was he defending himself from the deceased, yet he told the court that it is the stranger who fought him with clenched fists and he then turned on the deceased instead of hitting back the person that was attacking him? The accused is lying and he is clearly a very bad liar, who tries to build his case as it goes.

Accused killed the deceased in cold blood, in a very callous way, chopping a person's head with an axe several times until when the head is decapitated can only mean one thing that he desired death. Death was his aim and object.

The accused is accordingly convicted of murder with actual intent.

### Sentence

The accused is convicted of murder with actual intent. He is a first offender, is a family man, a father of two children, he was 29 years at the time he committed the offence.

The murder was committed in a callous manner, he chopped the deceased on the head several times decapitating her head in the process this was after he had cut deceased on the head and on the finger.

He mercilessly chopped off deceased's head until when it was decapitated. This is a gruesome murder which was committed for no clear reason. The deceased died a painful death of being struck several times until when her head came off. As if that was not enough he took the head, put it in a box and put it under a bed in the bedroom and went away. Even animals do not behave in the manner that the accused did. In terms of section 47 (2) (c) as amended by the General Laws Amendment Act No. 3 of 2016 a murder is committed in aggravating circumstances where the murder was preceded or accompanied by physical torture or mutilation inflicted by the accused on the victim. Decapitation is mutilation on the deceased. The death sentence is therefore appropriate in these circumstances.

The accused is accordingly sentence to death.

*National Prosecuting Authority, the state's legal practitioners  
Mweli Ndlovu and Associates, accused's legal practitioners*