

THE STATE**Versus****TRANOS MASHOKO**IN THE HIGH COURT OF ZIMBABWE
MAKONESE J with Assessors Mr Sobantu & Mr Ndlovu
HWANGE CIRCUIT COURT 13MARCH 2018**Criminal Trial***Miss M. Munsaka* for the state
E. Mashindi for the accused

MAKONESE J: The accused appears in this court on a charge of murder. The allegation being that the accused assaulted Arthur Joel Mpofu several times all over the body with a knobkerrie, sjambok and a wire intending to cause his death. The accused has tendered a plea of not guilty on the charge of murder. The accused has however tendered a plea of guilty in respect of the lesser charge of culpable homicide. The state has conceded that the facts do not disclose an intention by the accused to bring about the death of the deceased. The state has accepted the limited plea.

The brief facts of the matter as gleaned from the statement of agreed facts are that the deceased was aged 21 years at the time of his demise. He was a known mental patient. On the 20th October 2003 and at around 0600 hours the deceased left Jefias Fuzane's homestead and proceeded to Collen Gumbo's homestead in Village 5, Mancott Resettlement area, Inyathi. Whilst there he entered the kitchen hut where he removed a pot stand from the fire place and threw it at Ntombiyelanga Sibanda who was washing dishes in the kitchen. Ntombiyelanga asked the deceased to leave but deceased refused and indicated that he was staying put. The deceased later departed and proceeded to Kesari Khumalo's homestead where he entered into a kitchen hut. Once inside this kitchen hut deceased met up with Linos Dube (who is on the run). Tinos Dube asked the deceased to leave the kitchen but deceased would have none of it and refused to leave. Tinos Dube decided to lock up the deceased in the kitchen. The deceased was barricaded inside the kitchen hut. Tinos Dube, in the company of Nkosilathi Siziba (also on the

run) proceeded to the village head to make a report. Upon their return they discovered that the deceased had broken the door with an axe and fled. Tinos Dube armed himself with a knobkerrie whilst Nkosilathi took into his possession a wire sling. The duo then decided to track the deceased. A few metres from Kesari Khumalo's homestead, Tinos Dube, Nkosilathi Siziba met the deceased in the company of the accused. Accused was carrying a sjambok. The trio then took turns to assault the deceased. Tinos Dube assaulted the deceased with the knobkerrie until it broke. Accused and Nkosilathi struck the deceased all over the body with a sjambok and wire sling respectively. The deceased sustained serious injuries as a result of the assault. On 21st October 2003 at around 1500 hours deceased was found dead on a road by Jefias Fuzane.

The deceased's body was conveyed to Mpilo Hospital for an examination. Dr I. Jekonya is a registered medical practitioner based at Mpilo Hospital. On the 24th October 2003 during the course of his duties he examined the remains of the deceased and recorded his findings in a post mortem report number 556/522/2003. The post mortem report reveals that the proximate cause of death was:

- (a) Subarchnoid haemorrhage
- (b) Multiple assaults

On marks of violence the pathologist observed multiple bruises of the head, face, neck, upper limbs, chest and abdominal wall.

The state produced the sjambok and wire sling used in the commission of the offence as exhibits.

From the evidence placed before the court we are satisfied that accused person and his associates caused the injuries that led to the death of the deceased. There is no evidence to suggest that the accused intentionally caused the death of the deceased. In the result, accused is found not guilty and acquitted on the charge of murder. Accused is convicted of culpable homicide.

Sentence

In terms of section 69 of the Constitution of Zimbabwe (Amendment) No. 20, 2013 every person accused of an offence has the right to a fair and public trial within a reasonable time. The accused in this matter has been convicted of culpable homicide. The facts giving rise to these allegations occurred almost 15 years ago on the 20th October 2003. The accused who is a first offender and his accomplices who are still at large, took turns to assault the deceased who was a known mental patient with a knobkerrie, a wire sling and a sjambok. The assault was sustained and indiscriminate. The accused was assaulted on the head, on the chest and abdomen. He died as a result of injuries sustained in the assault. The post mortem report compiled by Dr I. Jekonya at Mpilo Central Hospital on 24 October 2003 reveals that the cause of death was (a) subarchnoid haemorrhage; (b) assault. The pathologist opined that the force used was severe.

The accused is a first offender who has pleaded guilty to the lesser charge of culpable homicide. He has thus aided in the smooth administration of justice by tendering the limited plea. The accused is a family man. He earns a living as an artisanal miner. He is married with 3 minor children. The youngest is 5 years. A custodial sentence will have a direct impact on his family as he is the sole breadwinner. In assessing sentence the court takes into account all the mitigating factors advanced on accused's behalf. This is one of those cases where the court must carefully balance the interests of justice and those of the accused. This trial has taken an inordinately long time. It would seem the the reason for the delay should be shouldered by the state to a large extent. It has been indicated that the main reason for the delay is attributed to the failure by the state to secure the attendance of other accused persons. The state confirmed that in late 2017 a decision was taken to proceed with the accused in the absence of the other accused persons who are still at large. It is my view that it is not acceptable for the accused's constitutional right to a speedy trial to be violated for any reason whatsoever. The state should have prosecuted this accused person a long time ago. If he had been tried in a reasonable time, the accused would have long served his sentence. In my view it would unjust to sentence the

accused to a term of imprisonment after a delay of 15 years. The accused has been available for his trial and has not impeded the state in any way in bringing him to trial. Nothing would be served by sending the accused to prison. He is now 41 years old. He was 26 years old at the time of the commission of the offence. The following is deemed to be an appropriate sentence;

“3 years imprisonment, wholly suspended for 5 years on condition accused is not within that time convicted of an offence involving violence, and for which if upon conviction accused is sentenced to a term of imprisonment without the option of a fine.”

National Prosecuting Authority, state’s legal practitioners
Mashindi & Company, accused’s legal practitioners