

THE STATE  
**versus**  
NDUMISO MLILO

HIGH COURT OF ZIMBABWE  
MOYO J  
HWANGE 7 NOVEMBER 2018

### **Criminal Trial**

Mrs *C Gorerino* for the state  
Miss *S Change* for the accused person

**MOYO J:** The accused person faces a charge of murder. It being alleged that he assaulted the deceased Finet Ndlovu with an iron bar several times on the head dying from the injuries sustained in that assault.

The following were tendered into the court record.

- state summary
- defence outline
- accused's confirmed warned and cautioned statement
- post mortem report it gives the cause of death as
  - 1) subdural haemorrhage
  - 2) skull fracture
  - 3) head trauma

The iron rod that was allegedly used was also tendered. They were all duly marked.

- The evidence of Lungisani Ndlovu, Patson Mkanda and Dr Robert Trecu was admitted into the court record as it appears in the state summary.

Ketty Mhlanga and Johannes Ndlovu gave *viva voce* evidence for the state. The facts of the matter are largely common cause. Accused and deceased had an altercation at

Silibaziso's shop resulting in accused striking deceased with a metal rod on the thigh and head more than once.

- The accused person says the deceased pointed a finger at him as they spoke.

The state witness say deceased only used simply hand gestures. However it appears accused and deceased had a long standing grudge as accused did not like the fact that when he had previously said people don't like him so he would go away, deceased queried where he would go. He said later when he bought chunks at deceased's store they had a patch of soup that he did not want and he had issues with deceased when he wanted to return that soup and deceased refused to take it back but instead refunded him his money as the chunks were being sold as a package with the soup. The accused person has told the court that he is not liked by his family and the community at large. That he carried weapons since 2013, that he fought with his father as his father wanted to think for him. He said he did not want people to answer back at him and he attributed his failure to make a life in Mozambique and Malawi to the deceased who had insinuated that going away would not help the accused person. The accused person seems to be that kind of person who says it is my way or no way, he wants all the people around him to bend to his ways or words otherwise there would be no peace. He is of a violent nature, he admitted to this himself when he said he carried weapons since 2013 and that seeing his weapons people should realize that he can use the weapons on them. He seems to think that every other person is the problem except him hence his failure to do self-introspection and his failure to live peacefully with others in the community. His attitude borders on a personality disorder.

No facts have been shown that deceased provoked accused, because his comment on where accused would go would come naturally when a person says they will leave their community. Deceased was naturally expected to comment to say but where would you go because a person cannot solve problems by moving from one community to the other.

Again on the issue of chunks, accused was being unreasonable in seeking to force deceased to take back the soup that come as a package with chunks. If he did not want it, why did he not just throw it away or give it to relatives or friends than forcing the soup back on the deceased. Accused is the one who seems to have been of a provocative and violent nature and not the other way round.

The defence of provocation is thus not available to him. He was never provoked.

We then proceed to assess what the accused is guilty of. The accused struck deceased more than once on the head with an iron bar. He must have realized that doing so would result in death as a possibility in the circumstances since the head is a vulnerable part of the body and he used a metal rod more than once. Death was indeed a real possibility in the circumstances and the accused is accordingly found guilty of murder with constructive intent.

### Sentence

The accused person is convicted of murder. He is a first offender. He was aged 25 at the material time. He however started doing wrong right at the deep end. He is not contrite at all about deceased's demise. This court frowns at the loss of life through violence. The public should be conscientised on the sanctity of life through appropriate sentences. Communities are now under siege from people on the league of accused person. The accused person seems to take pride in his violent nature. Such conduct should be treated with the contempt it deserves. However accused should also be given a chance to reform due to his age and for that reason this court will suspend a portion of his sentence.

The accused person is accordingly sentenced to 20 years imprisonment with 5 years imprisonment suspended for 5 years on condition the accused person is not within that period convicted of an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

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