

**THE STATE**

**Versus**

**HONEST MOYO**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J with Assessors Mr P. Damba & Mr J. Sobantu  
BULAWAYO 7 & 8 FEBRUARY 2019

**Criminal Trial**

*Ms N. Ngwenya* for the state  
*Miss S. Mbondiya* for the accused

**MAKONESE J:** The 23 year old accused appears in this court on a charge of murder. It is alleged that on the 20<sup>th</sup> June 2017 and at Capital Block Farm, Colleen Bawn, the accused attacked the deceased, an unknown, homeless and mentally ill person and struck him with a blunt object on the head, thereby causing his death. The accused decapitated the deceased's head and cut off his testicles and packed them into a plastic bag. The accused proceeded to dig a shallow grave and buried the remains of the deceased before leaving the scene of the crime with the deceased's head and private parts. Accused is alleged to have made attempts to sell the body parts for a sum of US\$25 000. The accused denies the allegations. He claims that he stumbled upon the body of the deceased who was already dead. He admits that he harvested the deceased's body parts as he had been promised by one Cosmos Zhou that there was a buyer for the body parts at Chiredzi.

The state tendered the outline of the state case. In summary, the accused is alleged to have murdered the deceased before using an Okapi knife to cut off the deceased's head and testicles. The accused packed the body parts in a plastic bag

and took his satchel and proceeded to his home in Mawane, Gwanda. The matter came to light when accused's cousin Thandolwenkosi Ndlovu discovered the head in a kitchen hut. Thandolwenkosi bolted out of the kitchen hut and alerted other villagers leading to the arrest of the accused. Detectives from Gwanda police recovered the headless body and conveyed it to United Bulawayo Hospitals for a post mortem examination. In his defence outline the accused states that:

- “1. *The accused will give testimony that on the 20<sup>th</sup> of June 20117 and at around 2pm he went in search of cattle belonging to his grandfather near Capital Block Farm. Whilst pursuing his search for cattle, the accused found a motionless person near Colleen Bawn Farm dump site.*
2. *The accused observed that the motionless person was lying facing downward and had a lesion at the back of his head with a still pool of blood beside him.*
3. *The accused proceeded to turn the body over to face upward and checked for a pulse. The accused person observed that the person, who was unknown to him, was dead.*
4. *The accused admits that he then used his Okapi knife to sever the already deceased person's head and certain of his private parts with the intention of selling them.*
5. *The accused denies that he killed the deceased person.”*

The state produced a post mortem report, number 603/602/2017 compiled by Dr Sanganai Pesanai following an examination of the remains of the deceased. The cause of death is revealed as:

- (1) Subarchnoid haemorrhage
- (2) Blunt force trauma (head)
- (3) Assault

On marks of violence, the post mortem report indicates that there was a huge laceration between the skull and cervical spine measuring 10 x 4 x 6cm). The cervical spinal cord was sectioned. The pathologist observed that the headless body with missing testicles was decomposing. The last documentary exhibit tendered by the state is an affidavit by Zephaniah Dhlamini of the Applied Genetic Testing Centre at the National University of Science and Technology. The affidavit was compiled in terms of section 278 (3) of the Criminal Procedure and Evidence Act (Chapter 9:07). Zephaniah Dhlamini analysed the femur, bone and molar teeth samples obtained from the remains of the deceased. From these results he came to the following conclusion:

**“DNA profiles were obtained from both tooth and femur samples. The two profiles have a 100% match and it can be concluded that the samples were taken from one individual.”**

The state opened its case by calling **LOVEMORE MOYO** as its first witness. He confirmed that accused is his son. He resides at Mawane 2 Village, Guyu in Gwanda. He sometimes resides at house number N 95 Vumbachikwe Mine where he is employed. The witness testified that on 21<sup>st</sup> June 2017 and at around 2100 hours while at his workplace he received a call from the accused who asked to be picked up from Colleen Bawn, indicating that he had some meat which he intended to send to his mother in South Africa. The witness refused to go and pick up the accused but later gave in after accused persisted that he needed to be picked up. Upon picking up the accused he noticed that he was carrying a satchel and a small plastic bag. Accused did not disclose what was in the plastic bag but the witness detected a stench emanating from the plastic bag. At some point accused told the witness that the plastic bag “*contained money*”. On being

questioned what he meant the accused was evasive. The witness suspected that accused was lying to him and asked accused's elder brother and one Thandolwenkosi to search the accused's satchel. The witness intimated that if anything was amiss the matter was to be reported to the police. The witness was subjected to cross examination and he maintained that he did not witness the accused murdering the deceased. We found the evidence of this witness to be credible, consistent and reliable. The witness narrated what he knew in connection with the case and nothing more.

The second witness called by the state was **SAVEUS MWANAKWAYE**. He is a duly attested member of the Zimbabwe Republic Police stationed at the Criminal Investigations Department, Gwanda. He was the Investigating Officer in this case. He took over the case after the arrest of the accused. The witness invited the accused to make some indications at the scene of the crime. He warned the accused of his rights and accused proceeded to make indications freely and voluntarily, without any undue influence. The witness led his colleagues Detective Badson Ndlovu and Bhekimpilo Mangena in the indications. Accused indicated the point at which he killed the deceased after which he dragged him for some 80 metres and buried him in a shallow grave. The deceased's headless body was exhumed following accused's indications. The accused also led the police to the point at which he had hidden the pick and shovel he had used to dig the shallow grave. It is not in dispute that accused admitted cutting off the head of the deceased and testicles using an Okapi knife. The witness indicated that accused had confessed to murdering the deceased only to backtrack when a warned and cautioned statement was being recorded. The state did not seek to produce the accused's warned and cautioned statement. Under cross examination, the witness

was asked about the Okapi knife and it was put to him by defence counsel that the accused did not use the knife to murder the deceased. The witness in response stated that the accused had told investigators that he had used the knife to kill the deceased. We found the evidence of this witness to be credible. He did not exaggerate his evidence. He was a credible witness and was not controverted under cross examination in any material respects.

The state applied to have the evidence of Thandolwenkosi Ndlovu and Inspector Charara expunged from the record. The state could not locate these witnesses. The court accordingly expunged the evidence of the witnesses as contained in the outline of the state case. At that stage the state sought and obtained the admission of the evidence of the following witnesses in terms of section 314 of the Criminal Procedure and Evidence Act, namely:

- (a) Muchengeti Mazando
- (b) Michael Tsanangurai
- (c) Perseverence Damaseke

The state closed its case without leading further evidence.

### **Defence case**

The accused elected to give evidence under oath. He largely stuck to his defence outline. He stated that on the day in question he was herding cattle. He then came across the body of a person who was motionless lying down with his face facing down. The unknown individual had a wound at the back of his head. Accused says he approached the deceased and turned his face upwards and placed

his hand around the throat to ascertain if the still had a pulse. The accused quickly realised that the person was dead and there was some blood on the ground next to the body. The accused stated that he walked away from the already dead person. He then recalled that a friend of his, Cosmos Zhou had previously told him that there was a person in Chiredzi who could purchase body parts for US\$25 000. The accused made a decision to harvest body parts from the deceased. He returned to the deceased and produced an Okapi knife and severed the head before cutting off the testicles. Accused placed the body parts in a plastic bag. He obtained a pick and shovel, dug a shallow grave, and buried the remains of the deceased. The accused then boarded transport to his home at Mawane in the Guyu area. The following day accused observed that the severed head was rotting. Accused obtained a hair clipper and started shaving the hair. Accused states that there was an offensive stench from the remains of the deceased. He kept on trying to locate the phone numbers of Cosmos Zhou but failed to do so. Accused revealed that he was going to dispose of the body parts if he failed to locate Cosmos Zhou. Accused was subjected to extensive cross examination. The court found the accused's version to be highly improbable. Firstly, the accused had the tools to commit the murder in the form of an Okapi knife. Secondly, he had the tools to dispose of the remains of the deceased, a shovel and a pick. He was evidently prepared and the offence was premeditated. Thirdly, it could not be fortuitous that accused just stumbled upon the body of the deceased. Fourthly, the accused targeted the head and severed it. He then cut off the testicles. He obtained a plastic bag and placed these human body parts in this bag and left the scene. The behaviour of the accused is consistent with the killing of the deceased with an intention to harvest the body parts for sale. The coincidence that accused came

into contact with the body of a deceased person by chance is simply beyond human experience. This court notes, that the accused's own testimony places him at the scene of the crime. The accused's testimony fits in with the findings of the post mortem report. The examination by the pathologist indicates a cut between the skull of the deceased and the spinal cord. The accused used an Okapi knife to sever the head of the deceased. The accused's conduct of cutting off the deceased's testicles was clearly in furtherance of his desire to make money. When accused by his father what was contained in his plastic bag he pointed out that "*there was money*" in that plastic bag. The court finds that the accused's defence is not only false but palpably false, and not within ordinary human experience. A normal and reasonable thinking person who comes upon a dead body would ordinarily report the matter to the police or alert neighbours. The accused's endeavour to conceal the dead body by placing the body in a shallow grave is consistent with the murder of the deceased person by the accused.

### **Analysis of the law**

The court is alive to the fact that there is no direct evidence of an eye-witness account on how the deceased met his demise. The court is, in terms of our law, entitled to rely on circumstantial evidence. The law on circumstantial evidence is now well settled in this jurisdiction. See the case of *R v Blom* 1939 AD 188 at page 202.

Circumstantial evidence is essentially evidence that relies on an inference to connect it to a conclusion of fact. The court must, in relying on circumstantial evidence find evidence that tends to prove a fact by proving other events or circumstances which afford a basis for a reasonable inference of the occurrence of

the fact at issue. The two cardinal rules of logic relating to inferential reasoning in cases based on circumstantial evidence as set out in *R v Blom (supra)* are:

- “(1) *the inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.*
- (2) *the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.*”

Simply put therefore, circumstantial evidence provides a basis from which the fact in dispute can be inferred. The question to be asked is whether the accused is guilty of the crime of murder beyond reasonable doubt. We are satisfied that on the evidence led in this matter there is sufficient evidence to prove the guilt of the accused beyond reasonable doubt. In the result, accused is found guilty of murder with actual intent.

## **Sentence**

The accused was aged 22 years at the time of this offence. In terms of section 48 (2) (b) of the Constitution of Zimbabwe (Amendment No.20), 2013 a sentence of death may not be imposed on a person who was less than 21 years old when the offence was committed. Further, section 47 (4) (a) of the Criminal Codification and Reform Act (Chapter 9:23) provides that;

“A person convicted of murder shall be liable-

subject to sections 337 and 338 of the Criminal Procedure and Evidence Act (Chapter 9:07) to death, imprisonment for life or for any definite period of not less than twenty years, if the crime was committed in aggravating circumstances as provided in subsection (2) or (3).....”

The accused person had just turned 22 years old. From the circumstances surrounding this case the accused's actions were most heinous. Not only did he murder the deceased, he decapitated the head and harvested the deceased's testicles for the purpose of selling them. The crime was evidently motivated by greed and nothing else. The love for money clouded the accused's mental faculties and his behaviour sent shock waves in the community he resides. Accused's moral blameworthiness is very high. There can be no doubt that the murder was committed in aggravating circumstances. Had it not been discovered that accused was in possession of body parts, accused had covered his tracks by burying the body to conceal evidence. Accused has shown no regret or remorse for his conduct. He has brought shame upon his family. Were it not for the accused's youthfulness this court would not have hesitated to impose a death penalty. However, we have considered that accused acted out of foolishness and greed. The sentence we shall impose shall, however, reflect the view of the court that the sanctity of human life must be preserved. In the circumstances and accordingly the appropriate punishment is as follows:

“Accused is sentenced to life imprisonment.”

*National Prosecuting Authority*, state's legal practitioners  
*Webb, Low & Barry incorporating Ben Baron & Partners*, accused's legal practitioners