

THE STATE
versus
CASPER MANYANJA

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 11 June 2013
ASSESSORS: 1. Mr. MUSENGEZI
2. Mr. MHANDU

D.H Chesa, for the State
B. Chipadze, for the defence

BHUNU J: The accused stands convicted on his own plea of guilty to a charge of culpable homicide committed under the most disturbing bizarre circumstances. The brief undisputed facts are that sometime in 2009 the deceased raped and infected the accused's wife with the deadly aids virus. She in turn infected her husband and their newly born baby.

Aggrieved by the deceased's conduct in this respect the accused successfully sued the deceased in the headman's court. The deceased was ordered to pay 4 head of cattle. His appeals found no favour in both the chief and magistrate's courts. Having failed to recover his cattle through the legal route the deceased decided to embark on a rigorous violent self help exercise. He kept on threatening and pestering the accused and his wife demanding the return of his cattle that he had lawfully lost to the accused.

To avoid further trouble the accused relocated to a different district. The deceased was however not deterred from pursuing the accused in a bid to recover his beasts. On 11 September 2011 in the early hours of the morning around 5:30 am he arrived at the accused's new home in a savage and belligerent mood. Armed with a stick he attacked the accused demanding the return of his cattle.

The accused fought back in self defence with the aid of his wife and son. The deceased was eventually overpowered and tied to a tree. While our law protects the right to life it recognises the right to self defence, defence of property and a third party as provided for under section 12 of the Constitution which states as follows:

“12 Protection of right to life

- (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.
- (2) A person shall not be regarded as having been deprived of his life in contravention of subs (1) if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable in the circumstances of the case—
 - (a) for the defence of any person from violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) for the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or
 - (d) in order to prevent the commission by that person of a criminal offence; or if he dies as the result of a lawful act of war.
- (3) It shall be sufficient justification for the purposes of subs (2) in any case to which that subsection applies if it is shown that the force used did not exceed that which might lawfully have been used in the circumstances of that case under the law in force immediately before the appointed day.”

While the accused was entitled to use reasonable force to ward off the unlawful attack perpetrated upon him, his family and property, he was not supposed to exceed the bounds of self defence. The accused however, continued to attack and bash his adversary with a stick long after he had subdued and tied him to a tree thereby exceeding the bounds of self defence. His conduct in this respect rendered him liable to culpable homicide. His wife who stopped attacking the deceased once he had been subdued was accordingly acquitted and absolved of any wrong doing.

I now turn to consider the appropriate sentence in this case. In doing so I am mindful of the wise counsel of HOLMES JA in *S v Sparks* 1972 (3) SA 396 to the effect that punishment must fit the criminal as well as the crime and be fair to the accused, the state and society at large. While the court recognises the sanctity of human like it takes cognisance of the fact that the deceased met his death in circumstances where he was acting in the most abominable and abhorrent manner. His conduct in this respect was criminal and contemptuous of the courts and civilised behaviour. Those who are given to attacking and

placing the lives of others in danger only have themselves to blame when their victims fight back with ghastly consequences as happened in this case.

The accused is a responsible family man with five minor children. Apart from raping his wife the deceased infected her with the deadly incurable aids disease thereby virtually sentencing him, his wife and child to death. When rightfully ordered to pay damages by the courts the deceased turned on the accused and attacked him in a bid to defeat the course of justice I cannot contemplate any worse provocation beyond the circumstances of this case.

Section 238 of the Criminal Law Codification and Reform Act [*Cap. 9:23*] enjoins the Court to give due regard to the element of provocation as a mitigating feature. As I have already stated, the offence was committed in circumstances of gross provocation such that the deceased was virtually the author of his own death. That being the case, I find that the accused's morale blameworthiness is negligible and the enormity of that of the deceased beyond measure. The accused is a law abiding citizen who resorted to legal remedies available to him only to be attacked and abused by the deceased for his lawful conduct. Nothing is to be gained by punishing the accused beyond what he has already endured. The accused is accordingly **cautioned and discharged**.

The Attorney General's office, the State's legal practitioners
Lawman Chimuriwo Attorneys At Law, defendant's legal practitioners