

That the accused stabbed the deceased to death is a foregone conclusion. The cardinal issue for determination is whether or not he was acting in self defence when he fatally stabbed the deceased.

Samuel Mpofu is a 27 year old young man. He resides in the same village and is a friend of the accused. He knew the deceased by sight as a mine worker in the locality. On the day in question he was in the company of the accused in the kitchen when the scuffle leading to the deceased's death occurred. He gave a detailed eye witness account of what transpired on that day.

It was his testimony that he was seated in the kitchen together with the accused, Sibongile Ruvimbo and Munyaradzi shelling some ground nuts when the deceased and his nephew came to the homestead. They confronted the accused accusing him of stealing the deceased's pair of trousers. A scuffle then ensued resulting in the accused arming himself with a knife. What then transpired can best be said in Samuels own words. This is what the witness had to say:

“The accused was seated on the bench with me. Munyaradzi entered the hut. He confronted the accused. He asked the accused to give him back his pair of trousers.

The accused denied any knowledge of those allegations. The altercation then ensued. I got up and stood in between the 2 of them. I told them that they were not going to settle the dispute. I suggested that they should go and see the accused's uncle. When I said this the deceased was standing outside the kitchen hut.

I then heard Sibongile saying to the deceased he was supposed to leave the knife. Munyaradzi then went outside the hut. I had not seen the accused taking the knife but when Sibongile said this I then saw the knife.

Sibongile stood up and tried to disarm the accused. At that stage I observed Munyaradzi standing by the door holding 2 bricks. He was saying ‘ You cannot stab me considering that I came here asking for my pair of trousers’ At that stage I did not try to disarm the accused. I politely asked the accused to give me the knife that he was holding.

Munyaradzi was still standing by the door holding 2 bricks. I then walked towards him. I told him that I had suggested that they go and see the accused's uncle. Now they were all armed over a pair of trousers. Munyaradzi dropped to the ground the bricks that he was holding. At that time Munyaradzi pushed me aside and he walked into the hut.

Sibongile and the accused were still wrestling for the knife. Munyaradzi grabbed the accused by the right shoulder telling him to come outside. It is at that stage that the accused got the strength to snatch the knife from Sibongile and he held the knife with his raised arm pointing at Munyaradzi. The blade was open. The deceased was still standing by the door outside.”

It is clear from Samuel's narration of events that the accused was the aggressor rather than the victim. He armed himself with the knife to chase away and prevent the deceased and his nephew from questioning him about the alleged theft of the trousers. Samuel continued with his evidence.

"Munyaradzi turned back and fled with the accused running after him. The deceased remained standing in the same position where he was standing. The deceased picked up the bricks that had been dropped by Munyaradzi when the 2 were chasing each other. They took the rightward direction and I could not see what was happening.

When I reached the door I saw the deceased stepping backwards and the accused was advancing towards him. The deceased was asking the accused why he was doing that. The deceased simply turned and started running away and the accused was in hot pursuit. Initially they took the opposite direction towards where I was. I observed that his left shoe was now covered with blood and he was holding the upper part of his stomach and his shirt was also blood stained.

I did not actually see the accused stabbing the deceased with a knife. When the now deceased started running towards us the accused stopped chasing him and the deceased fell down. He acted as if he was coughing but in pain. I called his name twice but he was groaning."

Munyaradzi Ncube who was in the company of the deceased at the material time corroborated Samuel's evidence in every material respect. He however added the dimension that the accused resorted to the knife after he had missed him with a slap on the face.

Sibongile Mahlatini the accused's sister in law confirmed that there was a scuffle concerning theft of Munyaradzi's pair of trousers. The accused then armed himself with her knife from the kitchen and chased after Munyaradzi. The deceased remained standing by the door holding 2 stones. When the accused returned from chasing Munyaradzi he attacked the deceased with the knife killing him in the process.

The accused confirmed that the deceased did not enter the hut to attack him. He however stated in his defence that when he attempted to escape from the hut the deceased who was standing by the door holding stones pushed him back into the hut so that he could be assaulted by Munyaradzi. The deceased held him from the back while Munyaradzi was assaulting him. During the scuffle he managed to overpower the deceased and picked up the knife that had fallen down near the door. In an attempt to free himself he somehow stabbed the deceased but he does not know exactly how.

The accused's testimony has no ring of truth. It is a concoction of self serving lies that goes against the grain of evidence. Sibongile and Samuel were his relatives aligned to him.

They had no reason to lie against him and yet their evidence clearly establish beyond question that when the accused returned from chasing Munyaradzi he turned and attacked the deceased who was no longer participating in the scuffle at all. They were honest and credible witnesses. I accept their evidence without any reservation. That being the case, the Court has no hesitation in rejecting the accused's uncorroborated evidence and unreservedly accepts that of the state witnesses. The accused's conduct in attacking a defenceless person who was no longer participating in the scuffle with a lethal knife can only amount to intentional killing of a fellow human being.

The attack on the deceased was however not premeditated or planned as it was a result of spontaneous action in the course of a casual brawl. For that reason the court unanimously finds that the accused is guilty of murder with constructive intent.

Sentence

The accused was convicted of murder with constructive intent. He fatally stabbed the deceased with a lethal Okapi knife following a dispute over a pair of trousers he is alleged to have stolen from the deceased.

In assessing sentence the court takes into account that he committed the offence at the tender age of 17 years of age. At that age he was young, excitable and susceptible to the indiscretions of youth. The crime was not premeditated but the product of a spontaneous scuffle following a heated misunderstanding. He is now 21 years of age and at college to improve his education.

The accused unfortunately entered crime at the deep end. The murder was committed with brazen courage and determination during which the accused defied his relatives who were at pains to restrain him. He went on to stab to death the deceased who was no longer participating in the conflict and as such had ceased to pose any danger to the accused. His moral blameworthiness in this respect is of a very high degree indeed. Murder is the ultimate crime which is inherently serious. Thus the courts invariably take a serious view of the offence whenever precious human blood is needlessly lost. This prompted the trial judge in the case of *Masimba Chininga v The State SC 79 / 02* to remark that,

“Young persons cannot and should never be allowed to go about committing serious crimes and hiding behind youthfulness.”

The defence sought to rely on that case and am in respectful concurrence with the learned judge's wise sentiments. In that case the accused person who had committed murder at the tender age of 21 years was actually sentenced to death by the trial court but had the

death sentence commuted to life imprisonment on appeal. This is ample demonstration that both the trial court and the appeal court took a very serious view of the crime of murder despite the accused's tender age.

In the case of *Witness Sululi v The State* SC 146/04 again cited by the defence, a young first offender convicted of murder with actual intent was sentenced to 13 years imprisonment. The mere fact that the defence was unable to cite any case law where a youthful first offender managed to escape imprisonment on account of youthfulness means that that option is not open to the accused. Having regard to the accused's tender age, moral culpability at the time and the 3 years he spend in prison awaiting trial, a sentence in the region of 9 years imprisonment will meet the justice of the case.

The accused is accordingly sentenced to 9 years imprisonment.

*The Prosecutor General's office, the State's legal practitioners
Masawi & Partners, the Accused's legal practitioners*