

THE STATE

versus

1. TUNGAMIRAI MADZOKERE
2. YVONNE MUSARURWA
3. REBECCA MFUKENI
4. LAST MAYENGEHAMA
5. LAZAROUS MAYENGEHAMA
6. GABRIEL SHUMBA
7. PHENEAS NHATARIKWA
8. STEPHEN TAKAIDZWA
9. STENFORD MANGWIRO
10. CYNTHIA MANJORO
11. STENFORD MAYENGEHAMA
12. LINDA MUSIYAMHANJE
13. TAFADZWA BILLIAT
14. SIMON MUDIMU
15. ZWELIBANZI DUBE
16. SIMON MAPANZURE
17. EDWIN MUINGIRI
18. AUGASTINE TENGANYIKA
19. FRANCIS VAMBAI
20. NYADZAWO GAPARA
21. AUDREY SYDNEY
22. JEPHIAS MOYO
23. ABINA RUTSITO
24. TENDAI MAXWELL CHINYAMA
25. MEMORY NCUBE
26. KERINA GWESHE
27. SOLOMON MADZORE
28. LOVEMORE TARUVINGA MAGAYA
29. PAUL NGANEROPA.

HIGH COURT OF ZIMBABWE

BHUNU J

HARARE 19 September, 2013

ASSESSORS: 1. **Mr. MSENGEZI.** 2. **Mr. Mhandu**

Mr. E Nyazamba and Mr. P Mpofu, for the State.

Mrs. B Mtetwa, Mr. Mutisi, Mr. Kwaramba and Mr. Zhuwarara, Mr Bhamu and Mr. S Hwacha.

BHUNU J: The accused persons stand charged with murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [Cap. 9:23]. In the alternative or concurrently they are charged with public violence as defined in s 36 of the Act. This seemingly unending marathon trial has now entered the home stretch to the relief of everyone concerned following the closure of the state case.

The Defence has however, now applied for the discharge of all the 29 accused persons at the closure of the state case in terms of s 198 (3) of Criminal Procedure and Evidence Act [Cap. 9:07]. That section provides that if at the closure of the state case the Court considers that there is no evidence that the accused committed the offence charged or any other offence of which he might be convicted thereon it shall return a verdict of not guilty.

The section is couched in peremptory terms. In other words, once the Court has made a finding to the effect that there is no evidence that the accused committed the offence charged or any other offence arising from that charge it has no option but to find the accused not guilty and discharged.

For that application to succeed, the onus lies squarely on the defence to satisfy the Court on a balance of probabilities that there is no evidence that each accused committed any of the offences charged or any other offence arising from the offences charged.

The 29 accused persons are alleged to have killed a Police Officer Inspector Petros Mutedza at Glen View 3 Shopping Centre Shopping centre on 29 May 2011 in the course of politically motivated mob violence. The facts leading to the death of the deceased are fairly simple and straight forward and easy to determine without any problem.

The accused persons are alleged to be members of the Movement for Democratic Change Tsvangirai (MDC-T). It is common cause that some of the accused persons are in fact members of that party. There is a dispute as to whether all the accused persons are members of that political party. The determination of the case does not however, hinge on whether or not one is a member of that political party. Each accused person's liability is based on whether or not he participated in the commission of the offence.

Counsel for the defence was at pains to raise preliminary points aimed at amending the state's summary of evidence on account that it had failed to lead evidence tending to prove certain factual statements made in that summary. Relying on the cases of *S v Bhaiwa 1988 (1) ZLR 412 (SC)* at p. 417A-B and *S v Nicolle 1991 (1) 211 (SC)* at p.216 A-B she forcefully argued that such unproven statements are prejudicial to the defendants and as such should be struck out from the summary of the State case.

In the *Bhaiwa* case McNally JA held that it is improper and highly prejudicial to an accused person for the prosecutor to leave damning statements in the outline of the State case when the prosecutor knows he is not going to call the evidence of the witnesses in question.

In my view the catch phrase is that the prosecutor must not deliberately put or leave prejudicial statements in his Summary of the State case with the full knowledge that he does not intend to call evidence in proof thereof.

In this case the prosecutor did call evidence to the effect that the bulk of the people who eventually killed the deceased were members of the MDC-T party celebrating their party's t-shirt visibility day. They could be identified by their regalia and the slogans which they were chanting. Some of the accused persons were personally known to some police witnesses as they frequented the local police station. Some t-shirts though not produced in court on account of having been misplaced were allegedly recovered during investigations.

The state case hinges on the doctrine of common purpose, thus anyone who is proven to have participated or made it his common purpose to attack the deceased rendered himself liable for his murder regardless of his political affiliation or the clothes he was wearing at the material time. For that reason, it is not necessary for the State to prove that each accused *person* is a member of the MDC-T party and was wearing party regalia when the offence was allegedly committed.

In my view the dictum in *S v Bhaiwa*, supra was not meant to strike out each and every factual statement that the State fails to prove in the State summary. The object was merely to guard against deliberately planting prejudicial statements therein without the intention of proving them. In most trials the state routinely fails to prove certain averments made in its summary of the State case. It would be laborious for the Court to make a follow up striking out each and every such statement.

The more convenient procedure in the circumstances of this case, was properly articulated by the learned Chief Justice in the well known case of *Attorney General v Bennett 2011 (1) ZLR 396 (S)*. In that case at the close of the State Case the prosecution had not led some of the critical evidence it alleged in the State outline that it would lead. Some witnesses departed from the State outline in some material respects. The learned Chief Justice concluded that none existent or evidence of no probative value may simply be held worthless and of no value to the state case. I propose to adopt that procedure in this case.

At this juncture the Court is not required to pronounce anyone guilty of any of the offences charged. All what is required of it is to have an over view of the evidence before it and then determine whether the state has established a *prima facie* case in respect of each accused person. The test is not whether the state has proved its case beyond reasonable doubt but whether a reasonable Court acting carefully might convict on the basis of the evidence before it. If however the Court is of the view that the State has failed to establish a *prima facie* case against the accused at the close of the State case it is obliged to acquit and discharge the accused person. See *Attorney General v Bennet* (supra).

It is however, not in dispute that a group of some MDC-T members gathered at Glenview 4 Shopping Centre on 29 May 2011 to celebrate what was termed the ‘MDC-T’ T-Shirt Visibility day.

It is common cause that security officials considered the gathering to be unlawful for want of compliance with security regulations and statutes. As a result the deceased was tasked to lead a troop of police officers to go and disperse the gathering.

The deceased teamed up with Assistant Inspector Nyararai, Sergeant Chikwanda, Sergeant Major Mutsigwa, Constable Solomon Mushaninga, Constables Magonangona, Magutarima and Dehwe. The team constituted the mobile reaction group on a mission to disperse the reported illegal gathering at Glenview 4 Shopping centre. Enroute to that place they passed through Glenview Police Station where they were accompanied by Inspector Nyararai.

At Glenview 4 Shopping centre they confronted and ordered the group of alleged MDC-T activists that was feasting, drinking and roasting meat to disperse. They met with no resistance at that stage. The activists in fact successfully negotiated for permission to finish roasting their meet before dispersing.

The group later relocated to Glenview 3 shopping centre. Upon learning that the group had relocated to Glen view 3 Shopping Centre the police followed in a bid to disperse them again. It is at this place that the police met with stiff violent resistance resulting in the stoning of the deceased to death.

As I have already stated elsewhere in this judgment, the state case is based on the common law doctrine of common purpose or conspiracy to commit a crime which has now been codified under s 188 of the Criminal Law {Codification and Reform} Act [Cap 9:23] which provides that:

“(1) Any person who enters into an agreement with one or more other persons for the commission of a crime in terms of this code or any other enactment-

- a) Intending by that agreement to bring about the commission of the crime; or
- b) Realising that there is real risk or possibility that the agreement may bring about the commission of a crime;

Shall be guilty of conspiracy-

(2) For an agreement to constitute conspiracy –

- a) It shall not be necessary for the parties –
 - (i) To agree upon the time, manner and circumstances in which the crime of the conspiracy is to be committed; or to know the identity of every other party to the conspiracy;
- b) It shall be immaterial that
 - (i) The crime which is the subject of the conspiracy is to be committed by one both or all of the parties to the agreement; or
 - (ii) One or more of the parties to the conspiracy, other than the accused, did not know that the subject matter of the agreement was the commission of a crime.”

To found liability on the basis of common purpose, conspiracy or collaboration to commit a crime Gardiner and Landsdown *South African Criminal Law and Procedure* Vol. 1. 6th edition 1957 at p. 145 states that:

“If two or more persons form a common intention to prosecute an unlawful purpose and to assist each other therein, then each one of them is a party to, and liable to punishment for, every act committed by the other or others in the prosecution of that purpose which was or must have been known to be a probable consequence of such prosecution...

Common purpose is a term which usually implies the presence of the mental element of intention or design. But as has appeared on p.144 supra, two or more persons may be so connected with such an offence, e.g. in culpable homicide so associated by common purpose to do the unlawful act or acts which caused the death as to become jointly and severally liable for the unlawful result, without the contemplation of death or the recklessness which would be necessary to constitute murder – see *R v Geere & others*, 1952 (2) SA. 319 (A.D.). It is not essential that the same intent or absence of it should be imputed to each of the persons associated in a common purpose: thus one may be convicted of murder and another of culpable homicide – *R v Hercules*, 1954 (3) S.A. 826 (A.D.).

In several well known cases it has been held sufficient for the prosecution, seeking to establish knowledge on the part of the accused to show that the late, as a reasonable man ought to have foreseen the consequences in question.”

The long and short of it all is that anyone who is shown to have associated himself or herself at the material time with the group that eventually killed the deceased in the process of resisting police orders to disperse has a case to answer.

The State has led evidence that tends to link some of the accused persons to the commission of the crime. Some were identified by State witnesses actively attacking the deceased and his companions while others were encouraging, aiding and abating the commission of the crime. One was observed by his victim throwing a stool at him in a lit bar. Some accused persons well known to police details under attack were observed and heard to shout obscenities, “*matatya ngaauraiwe*” that is to say frogs must be killed in furtherance of the common purpose to resist police orders to disperse.

It is therefore necessary to look at the defence of each accused person to see if he or she has a case to answer.

1. Accused one. Tungamirai Madzokere.

This accused person is the local councillor. He admits having attended the t-shirt visibility day celebrations on 29 May 2011 at Glenview 4 Shopping Centre. He voluntarily contributed \$10.00 to buy meat for the braai or barbecue. He accompanied the group to Glenview 3 latter in the day. He was present at Glenview 3 Shopping Centre when the police arrived leading to the commotion that led to the deceased’s Death.

He however denies having participated in the confrontation that led to the deceased’s death. His defence is that at the time of the commotion he was drinking beer in the council park with Gladys, Nohlahla and Yvonne Musarurwa among vendors, while Nohlahla’s shoe was being repaired by a cobbler.

Inspector Spencer Nyararai stationed at Glenview Police station had prior knowledge of the accused as a frequent visitor to the police station. It was his testimony that he observed the accused participating in the commission of the offence on the day in question. He saw him among people who were in front of Munyarari bar chanting slogans and shouting “Uraya datya” kill the frog. His evidence was amply corroborated by other state witnesses including Constable Solomon Mushaniga.

It is needless to say that the accused's defence also places him squarely at the scene of the crime. It again establishes an association with the group that eventually killed the deceased. His admitted presence and association with the marauding violent crowd undoubtedly establishes a *prima facie* case for the accused to answer.

I accordingly come to the conclusion that accused one Tungamirai Madzokere has a case to answer concerning the deceased's death.

2. Accused two. Yvonne Musarurwa.

Her defence is that she actively participated in the t-shirt visibility day celebrations organised by the Provincial Youth committee on the day in question, that is to say 29 May 2011. At the time of the commotion she was drinking beer in the Council Park in the company of The 1st accused, Nohlahla and Gladys while Nohlahla's shoe was being repaired by a cobbler at the entrance to Munyarari bar where the police were eventually attacked leading to the deceased's death.

The State led evidence to the effect that she was observed by eye witnesses including Constable Mushaninga and Inspector Spencer Nyararai actively participating in the crime chanting party slogans and encouraging members of her group to attack the police. Inspector Nyararai knew her very well prior to the commission of the offence.

This accused person's presence at the scene of the crime and close association with the marauding group of youths that eventually resisted and attacked the police lead inexorably to the conclusion that the state has established a *prima facie* case against her.

The accused Yvonne Musarurwa has a case to answer in respect of the deceased's death. She is accordingly placed on her defence.

3. Accused three. Rebecca Mafukeni.

On 14 August 2013 this Court received the sad news from state counsel that accused three Rebecca Mafukeni is now late. It is trite that death terminates criminal proceedings against any accused person.

The Court shall therefore refrain from pronouncing its verdict on the application for acquittal at the close of the state case.

4. Accused four. Last Mayengehama.

This accused's defence is that commonly known as an *alibi*. He flatly denies having been anywhere near the scene of the crime at the material time. He claims that he was at the City Sports Centre attending a church service of the United Family International Church led by prophet Emmanuel Makandiwa. The service was conducted by Pastor Kufa as prophet Makandiwa was not present. He may call at least four people who accompanied him to church on that day to confirm his defence.

There are however state eye witnesses who claim to have seen the accused at the scene of the crime actively participating in the commission of the crime. Constable Solomon Mushaniga who was in the company of the deceased when he met his death gave a graphic description of the accused's peculiar features as fitting the description of one of his attackers who threw a stool at him inside Munyarari bar. He identified the accused by his dark complexion, medium built and swollen forehead. That description fits the accused.

The evidence led by the State tends to link the accused person to the commission of the crime notwithstanding his *alibi*. His liability falls to be determined on the credibility of the evidence one way or the other. Thus the State case establishes a *prima facie* case against the accused. It is accordingly ordered that the accused last Mayengehama be and is hereby placed on his defence.

5. Accused five. Lazarus Mayengehama

This accused person is a brother to the 4th accused Last Mayengehama. His defence is that at the material time he was employed in Botswana but he was back home on a visit and residing at house number 4712 - 58th Crescent Glenview. He denies being a politician or political activist. He states in his defence outline that on the day in question he remained at home while his wife and others went to church. His wife found him at home upon her return from church around lunch time.

After lunch he was joined by Micah Muzambi and Willard Magaya in drinking beer at home. His relatives who had gone to church in the morning started to trickle home round about this time.

He only learnt of the disturbances at the shops from his wife who had been to the shops around 4 pm. He was surprised to be arrested during a night police raid. At 44 years

of age he is no longer a youth and as such he could not have been participating in the said MDC-T youths activities.

He intends to call his drinking mates to confirm his *alibi* but is yet to confirm their availability.

Despite his spirited denial Inspector Nyararai identified him as one of the persons he saw participating in the commission of the crime. It was his testimony that he knew the accused prior to the commission of the offence because he had previously seen him at Glenview 4 earlier that day.

Unless Inspector Nyararai is mistaken or deliberately telling a lie there is reason to place the accused on his defence so as to test the veracity of his defence of an *alibi*. The accused's guilty or otherwise falls to be determined on the credibility of evidence when everything has been said and done.

It is accordingly ordered that the accused Lazarus Mayengehama be and is hereby placed on his defence.

6. Accused six. Gabriel Shumba Banda.

This accused person's defence is that he was employed as a pool table attendant at Munyarari bar. At the time of the commotion which led to the deceased's death he was inside the bar attending to his duties. He witnessed youths clad in MDC-T regalia entering the bar and proceeding to the back of the building. Shortly thereafter he observed the police entering the bar armed in riot gear. He frantically locked up and fled together with others at the first sign of trouble.

The police were rather naive in their investigations in that they failed to check whether the accused was in fact employed in that capacity at Munyarari bar. The state's failure to rebut the accused's defence in that respect can only lead to the inescapable conclusion that the accused was at Munyarari bar for an innocent purpose.

I have carefully gone through the evidence against this accused person. Apart from his presence at the scene of crime, there is nothing to show that he participated or conspired in any way with the deceased's attackers. He has a perfectly innocent explanation for his presence at the scene of crime when the deceased met his death.

The operation of his defence as appears in his defence outline has not been shaken in anyway. For that reason, nothing is to be gained by placing him on his defence. The State having failed to establish any evidence upon which a reasonable court acting carefully might convict, this court has no option apart from absolving him from any wrong doing.

The accused is accordingly found not guilty and acquitted.

7. Accused seven. Phenias Nhatarikwa.

This accused person's defence is that he is employed by the MDC-T party as a driver. On the day in question he was on duty attending to the T-Shirt Visibility day at Glenview 3 Shopping Centre. At or about the time of the disturbances he was at the scene of crime attending to his duties with an MDC-T pickup truck. He had been called by one of the youths leaders to ferry utensils, and empty bottles.

As he arrived at Glenview 3 Shopping Centre he noticed police in riot gear arriving in a police vehicle and he decided to drive off. As he was driving off he was stopped by accused two, Yvonne Musarurwa in the company of accused one Tungamirai Madzokere and others who appeared to be fleeing from the commotion. He then drove off to avoid being caught in the crossfire.

The State led evidence to the effect that a truck was seen being used as a gate-away vehicle from the scene of the murder. The accused's presence at the scene with a truck and his association with the group of persons responsible for the death of the deceased renders him a prime suspect in the commission of the offence. He needs to be questioned on the extent and nature of his participation and involvement in furtherance of the group's cause. Is it likely that he could have failed to render assistance to his colleagues who were fleeing from the scene after they had stopped him? That can only be explained by the accused and his co-accused when he takes to the witness stand. The accused having associated himself with the group that allegedly killed the deceased, the onus is on him to satisfy this Court that his association with the group was innocent. Because of his admitted involvement in the group's activities at the scene of crime, he is also duty bound to satisfy this Court that he dissociated himself from the groups cause to resist police orders.

For those reasons this Court is satisfied that the accused has a case to answer. It is accordingly ordered that accused seven Pheneas Nhatarikwa be and is hereby placed on his defence.

8. Accused eight. Stefani Takaidzwa.

This accused person's defence is that he is a committee member for Harare Province in the MDC-T party. On the day in question that is to say, 29 May 2011 he spent the entire day at home save for the brief moment when he visited Kuwadzana Shopping Centre in the company of his wife around 1400 hours.

A perusal of the record of proceedings shows that the State has failed to lead any credible evidence tending to link the accused to the commission of the offence. That being the case, he is accordingly found not guilty and acquitted at the close of the State case.

9. Accused nine. Stanford Mangwiro

This accused's defence is that of an *alibi*. He denied being at the scene of crime. In his defence outline he states that at the time of the commission of the offence at Munyarari bar in Glenview 3 he was in Mbare with his girlfriend Tarirai Shelter Tugwete and one Elvis.

He only got back home in Budiriro around 1800 hours after the offence had already been committed.

The State came nowhere near rebutting his *alibi*. It alleged without proof that the accused was seen participating in attacking the police. The Investigating Officer Chief Inspector Ntini sought to rely solely on the inadmissible evidence of police informers whom he was not prepared to disclose or call to give evidence in Court.

Apart from the inadmissible hearsay evidence of police informers there was no credible evidence linking this accused person to the commission of the offence. That being the case the Court has no option but to hold that the State has failed to establish a *prima facie* case against the accused at the close of its case.

The Accused Stanford Mangwiro is accordingly found not guilty and acquitted at the close of the State case.

10. Accused ten. Cynthia Fungai Manjoro.

This accused person is a young Lady of 26 years of age. She was arrested on allegations that a motor vehicle registered in her name was seen at the scene of crime aiding and abetting the commission of the crime charged.

It however, emerged at the trial that in fact the accused was nowhere near the scene of crime at the material time. Her brother called as a State witness confirmed her defence that she was at Church while her motor vehicle was in the possession of her boyfriend one Darlington Madzonga when the offence was allegedly committed.

Darlington has since fled and has gone into hiding as a fugitive from justice. Upon discovering that Darlington had fled from justice the police decided to arrest and charge the accused using her as bait to capture her cowardly boyfriend. A real man does not flee from danger leaving his woman in trouble that he has created.

The police's conduct in this respect was however unprofessional and smacks of high handedness. The State compounded the police's errors by placing this accused person on remand with the full knowledge that she had no case to answer. For that reason it will be a gross travesty of justice for her trial to proceed beyond the closure of the State case.

It is accordingly ordered that the accused Cynthia Fungai Manjoro be and is hereby found not guilty and acquitted at the closure of the State case.

I now turn to deal with the cases of the following accused persons as the evidence against them is similar in nature.

11. Accused eleven. Stanford Maengehama

12. Accused twelve. Linda Musiyamhanje.

13. Accused thirteen. Tafadzwa Billiat.

14. Accused fourteen. Simon Mudimu.

15. Accused fifteen. Zwelibanze Dube

16. Accused sixteen. Simon Mapanzure.

The common denominator among the 6 accused persons is that they were all alleged to have been observed participating in the commission of the offence by police

informers who were not called to testify against any of the accused persons. Their evidence as presented through the investigating officer is hearsay and to that extent inadmissible and of no benefit to the State case.

All the accused persons deny any involvement in the commission of the offence. Each one of them relies on the defence of an *alibi*. In each case the State has failed to rebut the operation of that defence.

In any case in the absence of any evidence linking the accused to the commission of the offence the duty to prove their respective defences does not arise. In the circumstances of this case the Court cannot but find that the State has failed to establish a *prima facie* case against each of the 6 accused persons.

It is accordingly ordered that the 6 accused persons be and are hereby found not guilty and acquitted at the closure of the State case.

17. Accused Seventeen. Edwin Muingiri.

This accused person's defence is that on the day in question, that is to say 29 May 2011 he was selling airtime at Glen view 4 Shopping Centre. He mixed and mingled with the MDC youths who were clad in their party regalia to show that the party was still active in the area. They were merry making, drinking and roasting meat.

When the youths dispersed around 1400 hours he remained behind gathering empty bottles and dishes. Later on he decided to follow the youths to Glenview 3 to recover some empty bottles from the youths. On his way to Glenview he met someone who advised him that there were police in riot gear at Glenview 3. He then decided to abort his journey to Glenview 3 Shopping Centre. He therefore denies having been at the scene of crime at the time of the deceased's death.

It is common cause that the police ordered the group of youths celebrating the MDC-T t-shirt visibility day at Glenview 4 to disperse on account that the gathering was unlawful as it had not been sanctioned by the police. It follows that the group's relocation to Glenview 3 Shopping Centre was an act of defiance.

On the facts of this case it can safely be inferred that the accused who was mixing and mingling with the defiant youths was well aware of the police order to disperse. His act in deciding to follow the youths to Glenview 3 after they had been ordered to disperse by the

police was equally an act of defiance. He therefore consciously made it his common purpose to resist police orders, an act which eventually led to the deceased's death.

The accused having closely associated himself with the cause of the group being blamed for the deceased's death, he bears the onus of establishing that there was no collusion on his part and that he timely dissociated himself from the common design to resist police orders to disperse. For that reason the Court finds that the accused has a case to answer.

It is accordingly ordered that the accused Edwin Muingiri be and is hereby placed on his defence.

It is convenient to deal with the following three accused persons at once as the evidence against them has a lot in common.

18 Accused eighteen. Augustine Tengenyika

19 Accused nineteen. Francis Vambai.

20 Accused twenty. Nyamadzawo Gapara

The three accused persons are members of the MDC-T party. They were arrested on 5 June 2011 on their way to an MDC-T political rally. The kombi motor vehicle in which they were travelling was diverted by ZANU PF youths who handed them over the police. They are alleged to have attacked and chased after the police at Glenview 3 Shopping Centre on 29 May 2011 resulting in the deceased's death.

They denied that they were anywhere near the crime scene on the day in question. They gave their defences of an *alibi* right from the onset. They had spent the whole day assisting a builder one Brightmore Chidziva to build a house in Budiriro 4. While building the house, they frequented Budiriro shopping Centre to buy beer. They knocked off around 5:30 hours.

The investigating officer Chief Inspector Ntini initially denied in his evidence in chief that the three accused persons had advanced the defence of an upon their arrest. When confronted with irrefutable evidence that they had in fact raised the defence in their warned and cautioned statements, he made an about turn and said that he had received verbal reports from his officers that the alibi had been checked and it could not be confirmed.

Apart from the police's failure to deal effectively with the accused's defence of an *alibi*, the state failed to lead any credible evidence linking the accused to the commission of the offence. The State sought to rely on the inadmissible hearsay evidence of police informers who were not called to give evidence in Court. There being no credible evidence led by the State against the accused at the closure of its case the Court can only come to the conclusion that it has failed to establish a *prima facie* case against the accused person according to law. The three accused persons are accordingly found not guilty and discharged at the close of the state case.

21. Accused twenty-one. Oddrey Sydney Chirombe.

This accused person is the MDC-T councillor for ward 33 Budiriwo. Like the other accused persons before him the state sought to rely on the inadmissible hearsay evidence of police informers who were not called to testify against him. The accused denied the charge saying that he spent the day at home until 1400 hours when he left for a beer drink at Micky Job Bar in Budiriwo 3. He intends to call his eldest daughter to corroborate his evidence in this respect.

In the absence of any other admissible evidence linking the accused to the commission of the offence, it cannot be said that the state has established a *prima facie* case against the accused at the closure of the State case. For that reason it is accordingly ordered that the accused Oddrey Sydney Chirombe be and is hereby found not guilty and acquitted at the closure of the State case.

22. Accused twenty-two. Jephias Moyo and

23. Accused twenty-three. Abina Rutsito.

Both accused persons are employees of the MDC-T party. The 22nd accused Jephias is employed as a shop manager in the party's regalia shop whereas the 23rd accused Abina Rutsito is employed in the security department of the party.

There defence is that they both live very close to Glenview 4 Shopping Centre. They normally drink at that place. On the day in question they were at Glenview 4 Shopping Centre drinking beer as usual. When they got to their usual drinking place they noticed MDC-T youths. Some of them were clad in MDC-T t-shirts. They

enquired and were advised that the youths were celebrating their t-shirt visibility day to demonstrate the existence of their party.

Despite being employees of the party they kept to themselves and did not join in the celebrations. They did not relocate to Glen view 3 with the youths when they were dispersed by the police. They left Glenview Shopping Centre late that day without having set foot at Glenview 3 Shopping Centre where the deceased was killed.

Apart from the discredited evidence of police informers who were not called as witnesses against both accused persons the State had no other credible evidence linking them to the commission of the offence. Both accused Jephias Moyo and Abina Rutsito are accordingly found not guilty and acquitted at the closure of the State case.

The same line of reasoning applies to the following accused persons;

- 24. Accused twenty-four. Tendai Maxwell Chinyama.**
- 25. Accused twenty-five. Memory Ncube.**
- 26. Accused twenty-six. Kerina Gweshe Dhewa.**
- 27. Accused twenty-seven. Solomon Madzore and**
- 28. Accused twenty-eight. Lovemore Taruvinga Magaya.**

The five accused gave various alibis as their respective defences. In the case of accused 27 Solomon Madzore his alibi was actually confirmed by the police. Like the 10th accused Cynthea Manjoro, he suffered the same misfortune of being arrested and incarcerated despite the confirmation of his alibi by the police.

Apart from the discredited evidence of police informers who were not called as State witnesses, there was no other evidence linking the five accused persons to the commission of the offence. They are accordingly found not guilty and acquitted at the closure of the State case.

- 29. Accused twenty-nine. Paul Nganeropa Rukanda.**

This accused person is the MDC-T Organising Secretary for Glenview. He is 34 years of age. In his defence outline he admits having attended the MDC-T t-shirt Visibility Day Celebrations at Glenview 4 Shopping Centre to see how the

proceedings were progressing. Despite such involvement he denies having been part of the youths activities as his responsibilities lie with the main wing.

It is his defence that after monitoring events at Glenview 4 he went straight home. He denies ever going to Glenview 3 Shopping Centre on that day. Although the state has not provided independent evidence linking the accused to the commission of the offence, his own admission of involvement and association with the group's cause provides a nexus between the accused and the commission of the offence.

The accused having associated himself with the cause of the group suspected of having killed the deceased, he has a case to answer. He has the onus of proving that his association with the group was entirely innocent. The Court needs to know as a matter of fact how and at what point in time the accused stopped associating with the group suspected of have killed the deceased. That being the case the Court comes to the conclusion that the accused has a case to answer.

It is accordingly ordered that the accused Paul Nganeropa Rukanda be and is hereby placed on his defence.

In the final analysis it is ordered that the following accused persons be placed on their defence:

1. Tungamirai Madzokere.
2. Yvonne Musarurwa.
3. Last Mayengehama
4. Lazarus Mayengehama.
5. Pheneas Nhatarikwa.
6. Edwin Muingiri.
7. Paul Nganeropa

Zimbabwe Lawyers for Human Rights, legal practitioners for the 1st to 27th applicants.

Musendekwa – Mutisi, legal practitioners for the 28th to 29 applicants.

The Attorney General's office, legal practitioners for the respondent.