

THE STATE
versus
LEWIS MAPURANGA

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 16 November 2017

Assessors:

1. Mr Mutomba
2. Mr Dauramanzi

Criminal Trial - Sentence

Mr M. Tembo, for the State
Ms Y. Chandata for the accused

MAWADZE J: The accused who was facing the charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform Act [*Cap 9:23*]) was convicted of the permissible verdict of culpable homicide as defined s 49 of the same Act.

. The agreed facts are that the 45-year-old now deceased and the 24-year-old accused were well known to each other as they resided in the same Village 6 B Area Pension in Triangle. On the fateful day 25 June 2017 they had spent the better part of the day drinking beer together until late evening at Jatala Business centre. The now deceased left first for home with his wife. Accused with other two persons later followed to now deceased's residence where accused was then heard by now deceased talking to the now deceased's step daughter.

Apparently the now deceased was not happy with the accused's presence at his residence as the now deceased alleged the accused was in love with the now deceased's wife.

Consequently, he ordered the accused to leave but accused took his time. This incensed the now deceased who then slapped the accused twice in the face and the two were engaged in a brawl, wrestling each other. The accused tried to use a machete but was dispossessed of it by a colleague. As the two pushed each other the now deceased fell to the ground on his head hitting the hard surface and fell unconscious. The now deceased could not be revived and he passed on in the morning the next day on 26 June 2017. The cause of death was the head injury as he sustained skull fracture as per the post mortem report. The accused sustained bruises on his elbow, forehead and knee.

It is clear from the facts that this was an unfortunate incident. The reason for the scuffle was clearly minor and both parties were inebriated or intoxicated. The loss of life could have been avoided as both parties were well known to each other and could have amicably resolved the dispute.

The court will always frown upon the loss of human life no matter the circumstances. The sanctity of human life cannot be over emphasised. *In casu* a life was needlessly lost. It is precisely for this reason that the accused should be punished. There are however very strong mitigatory factors in this case.

As already said both parties were intoxicated. The accused is a first offender and deserves some measure of leniency. Accused has 2 children aged 3 years and 3 weeks. His wife is currently in hospital. Accused looks after an extended family of 2 children aged 13 years and 11 years. This means that an effective prison term would cause immense hardship to his family.

The accused did not waste the court's time and resources as he pleaded guilty to the charge. The accused also apologised to the now deceased's family and paid compensation in the form of 3 goats and one beast all valued at US\$500. It is clear that the accused is contrite.

The fact that the accused caused deceased's death albeit negligently will haunt him forever. This type of stigma is traumatic and is some form of punishment as he will be treated by society as an outcast. The pre-trial incarceration of 3 months which he suffered in the circumstances is substantial.

It is clear that the now deceased was the aggressor.

It is the now deceased who first struck the accused after needlessly accusing accused of being in love with the now deceased's wife. This means that the accused was indeed provoked.

The accused acted at the spur of the moment as this was not a premeditated offence. He simply pushed the now deceased who unfortunately hit his head on a hard surface. No weapon was used by accused and minimal violence was employed. One can say this was an unfortunate accident.

This is a matter which cries out for the court's leniency rather than its wrath.

In the circumstances accused should be spared an effective custodial sentence as the mitigatory factors far outweigh the aggravatory ones.

The accused is sentenced as follows;

The accused is sentenced to 30 months imprisonment of which 12 months imprisonment are suspended for 5 years on condition accused does not within that period commit any offence involving the use of violence upon the person of another for which the accused is sentenced to imprisonment without the option of a fine.

The remainder of 18 months are suspended on condition accused performs 525 hours of community service at ZRP Samba Police Base under the following conditions: -

- i. Community service to commence on Monday – 20th November, 2017 and to be completed by Wednesday - 14th March 2018.
- ii. The community service shall be performed on week days between 8.00 hrs to 13.00 hrs and 14.00 hrs to 16.00 hrs i.e. 7 hours a day excluding weekends and public holidays.
- iii. The community service shall be performed under the supervision and to the satisfaction of the Officer in Charge of Samba Police Base or his/her assignee.
- iv. The accused shall be granted leave of absence by the Officer in Charge of the police base or his or her assignee on good cause shown and such leave shall not constitute part of work done.

Muzenda & Partners, pro deo counsel for the accused.