

THE STATE

Versus

SHELTON BRITO NDLOVU

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mr P Damba and Mr M Ndlovu
BULAWAYO 28 MARCH 2023

Criminal Trial

Ms T C Mujokoro with K Jaravaza, for the state
Mrs B Mushaninga, for the accused

KABASA J: You appear before us on a charge of murder to which you pleaded not guilty but tendered a plea of guilty to culpable homicide. The state accepted the limited plea.

The statement of agreed facts and post mortem report were subsequently produced in evidence.

The agreed facts are to the effect that the now deceased and a friend visited your home for spiritual deliverance. You are a prophet with the African Christian Council of Zimbabwe. On this day, the 8th of November 2020 there were 3 other people also seeking spiritual deliverance. You gave all 5 people a mixture of aluminium sulphate which they all drank. They all started vomiting and had bouts of diarrhoea. You thereafter prepared a concoction of a crushed herb and all 5 took the concoction. They all reacted the same, vomiting and diarrhoea. The now deceased's friend recovered and proceeded back to Bulawayo whilst the now deceased opted to remain behind so as to complete her course. She however did not recover from the vomiting and diarrhoea and subsequently died.

A post-mortem was conducted by Doctor Jekenya on 12th November 2020 and the Doctor concluded that the cause of death was:-

- a) Acute chemical peritonitis
- b) Gastro – oesophageal perforation and bleeding

- c) Muti chemical ingestion
- d) N'anga muti poisoning damage

There is no doubt that the now deceased died as a result of ingesting the concoction which you prepared.

The question is did you intend to kill her or did you foresee that possibility. The circumstances clearly show that you were out to help her with whatever it is that she believed the concoction would assist her with. The facts show that she wanted to be able to obtain a Canadian visa.

The dosage you gave to the other four people was the same that the now deceased also ingested. It can therefore not be said you intended to kill or foresaw the possibility of death. You however were negligent as not only are you not medically qualified to know what dosages will be safe but you also did not monitor the now deceased's condition when her condition was deteriorating.

We are therefore satisfied that the state's acceptance of your limited plea is indicative of an appreciation of the facts and the law.

In the result you are found not guilty of murder but guilty of culpable homicide.

Sentence

You are a first offender who showed contrition by accepting responsibility for causing the deceased's death.

You were 22 years old at the time and you are now 25 years old. The delay in finalising the matter must have weighed heavily on you as one cannot underestimate your anxiety over the 3 year period.

At 22 you were youthful. It is odious to impose the same sentence on a youthful offender as would be appropriate if imposed on a more mature offender. (*S v Zaranyika and Ors* 1995 (1) ZLR 270 (H)). The sentence must fit you the offender, the offence and be fair to society. This is not to mean that the deceased and her family's interests are given scant regard to. That is why you have to be censured for causing the deceased's death.

You are married and have a 1 year 2 month old baby. Your family is still very young.

As earlier stated you intended to assist the deceased who approached you for such assistance. The death was unfortunate.

Aggravating is the fact that a life was lost. Society expects and demands respect of the sanctity of life. Courts have said this time without number. One life lost is one too many.

You took the deceased from her loved ones and their pain must have been unbearable, still is as it has only been 3 years since the deceased's demise.

People who administer concoctions must be wary of such practice as such concoctions can prove fatal as happened here. You have no way of knowing whether the person has some allergy or condition which will be exacerbated by the ingestion of such toxic herbal concoctions.

That said however the punishment must not be unduly harsh.

“It is also well to remember that too harsh a sentence is as ineffective and unjust as is a sentence that is too lenient. In arriving at a just and fair sentence the court should never assume a vengeful attitude.” (*S v Ndlovu* HB 46-96)

You have to pay for your crime but you must be sentenced rationally and fairly. It is one of the principles of criminal justice requiring the punishment to be just and fair. (*S v Harington* 1988 (2) ZLR 344).

The approach requiring mercy and compassion has nothing to do with maudlin sympathy for an offender. Mercy is a balanced and humane quality of thought which tempers one's approach when considering the basic factors of letting the punishment fit the criminal as well as the crime and being fair to society. (*S v Rabie* 1975 (4) SA 855 (A), *S v Narker and Anor* 1975 (1) SA 583).

With that said Community Service will meet the justice of the case. It is in itself a punishment that speaks to a censure of your conduct whilst acknowledging that imprisonment may be too harsh and counter-productive.

Considering all these factors, you are sentenced to:-

3 years imprisonment of which 1 year is suspended for 5 years on condition you do not within that period commit any offence of which violence on the person of another is an element and for which upon conviction you are sentenced to a term of imprisonment without the option of a fine.

The remaining 24 months is suspended on condition you perform 840 hours of Community Service at Tshalimbe Primary School. The Community Service is to be performed every Monday – Friday between 8 am – 1 pm and 2 pm – 4 pm excluding public holidays. The Community Service is to start on 3 April 2023.

National Prosecuting Authority, state's legal practitioners
Legal Aid Directorate, accused's legal practitioners