

**THE STATE**

**Versus**

**BONGANI LUNGA**

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr. Ndlovu and Mr. Ndubiwa  
HWANGE 5 March 2024

**Criminal trial**

*M. Dube* for the State

*C. Muleza* for the accused

**DUBE-BANDA J:**

[1] The accused is appearing before this court charged with the crime of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that on 12 July 2023 he unlawfully caused the death of Confidence Ndlovu referred to as deceased by stabbing him once on the chest with a knife intending to kill him or realising that there was a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[2] The accused pleaded not guilty to the crime of murder and offered a plea of guilty to the lesser crime of culpable homicide. The State accepted the plea of guilty to the crime of culpable homicide. The State tendered into the record of proceedings a statement of agreed facts, which is before court and marked Annexure "A". The statement reads as follows:

The State and the Defence are agreed that the following issues are common cause being that:

- i. The accused was aged 34 years of age at the time of the commission of the offence and he resides at Maskei Ndlovu's homestead, Sizinke Village, Chief Mabhikwa, Lupane.
- ii. The deceased was aged 17 years at the time he met his death. He used to reside at Mbuma Ndlovu's homestead, Sizinke village, Chief Mabhikwa, Lupane.
- iii. Accused and deceased were neighbours.
- iv. On the 31<sup>st</sup> of August 2023 and at 1900 hours, accused and deceased were at a gambling school at Lusulu Business Centre.

- v. Whilst they were still gambling, deceased snatched away USD 10.00 from the accused. Accused asked deceased why he had done so. Deceased insulted accused and there was an exchange of words.
- vi. Deceased who was holding an axe struck the accused on the elbow using the back side of the axe. Accused withdrew an okapi knife from his pocket and stabbed deceased once on the left side of chest.
- vii. Deceased bled profusely, fell to the ground and died on the spot.
- viii. Accused left the scene and threw away the knife he had used to stab deceased.
- ix. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently caused the death of the deceased.

[3] The State tendered the following exhibits; a post mortem report compiled by Dr. Maibelys Gavilan Acosta who concluded that the cause of death was hypovolemic shock; pulmonary wound and hemothorax; and stab wound in the chest.

[4] The totality of the facts and the evidence adduced in this trial show that the injuries sustained by the deceased were caused by the accused. The post mortem report shows that the injuries inflicted by the accused caused the death of the deceased.

[5] The accused stabbed the deceased with an Okapi knife in the chest. He exceeded the limits of self-defence. By stabbing the deceased in the manner he did a reasonable man placed in the same circumstances as the accused would have foreseen the possibility of death and would have guarded against it. The conduct of the accused shows that he fell below the reasonable person standard. The accused ought, as a reasonable man, to have foreseen the death of the deceased and guarded against it. The accused was negligent and it was his negligence that led to the death of the deceased. On the basis of the facts and the evidence of this case, the court is satisfied that the State's concession was properly taken.

In the result: the accused is found not guilty of murder and found guilty of the lesser crime of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].

#### Sentence

[6] In determining an appropriate sentence, a court has regard to the personal circumstances of the accused, the nature of the crime, and the interests of society. The courts have stressed the

importance of proportionality and balance between the crime, the criminal and the interests of society. It remains the paramount function of the sentencing court to independently apply its mind to the consideration of a sentence that is proportionate to the crime committed. The cardinal principle that the punishment should fit the crime should not be ignored. This court must also factor into the equation the provisions of the Criminal Procedure (Sentencing Guidelines) Regulations, 2023.

[7] It is trite law that sentencing is about striking the correct balance between the crime, the offender and the interests of the community commonly referred to as the triad. See *S v Zinn* 1969 (2) SA 537 (A). A court should, when determining sentence, strive to accomplish and arrive at a judicious counterpoise between these elements in order to ensure that one element is not unduly emphasised at the expense of and to the exclusion of the others. In its consideration of an appropriate sentence, the court is mindful of the need to apply the established principles of deterrence, prevention, reformation, and retribution.

[8] The personal circumstances of the accused have been conveyed to the Court by your legal representative who informed the court that accused is 34 years old and he is a widower. He has four minor children. He is a communal farmer and has two cows. Further in considering sentence it is important to take into account that the accused is not repeat offender, and he pleaded guilty to the offence of culpable homicide. He is remorseful for having caused the death of a fellow villager. The court further takes into account that it was the deceased who provoked the offender. Again, he has been in pre-trial incarceration for six months.

[9] It is stating the obvious but it bears repeating that culpable homicide is a serious of crime. In wrongfully causing the death of the deceased the accused's actions have impacted on the lives of the deceased's family, relatives and friends. They must now deal with the emotional trauma that his violent and premature death has thrust on them.

[10] The sentence the court imposes must be one that will not only rehabilitate the accused but it should also serve as a deterrent to other likeminded individuals. Members of society must know that the courts will protect their rights. It is the kind of sentence which we impose that will drive ordinary members of our society either to have confidence or to lose confidence in the judicial system. The sentences that our courts impose when offences of this nature are committed, should strive to ensure that people are not driven to take the law into their own

hands, but rather to scare away would be offenders. In our constitutional order every person is entitled to expect and insist upon the full protection of the law.

[11] The offender stabbed the deceased in the chest, a delicate part of the human body. The deceased was aged 17 and just a child. He used an Okapi knife a dangerous weapon. The post mortem report shows that severe force was used in inflicting the injuries sustained by the deceased. The stab wound was 3cm deep, and had an injury in the left lung. The attack was so vicious and brutal. The offender fled from the scene and did not offer assistance to the deceased. The aggravating factors in this case makes a sentence of direct imprisonment warranted and in the interest of justice. This is so because members of society depend upon the courts to protect them against the infringement of their right to safety as a symbol of an orderly society.

[13] Having taken all the factors into account, the following sentence will meet the justice of this case. In the result the offender is sentenced as follows:

“10 years imprisonment of which 2 years is suspended for 5 years on condition accused does not commit within that period any offence involving the use of violence upon the person of another and or causing the death of another through violent conduct and of which if convicted the accused is sentenced to a term of imprisonment without the option of a fine.”

*National Prosecuting Authority* State’s legal practitioners  
*Legal Aid Directorate* accused’s legal practitioners