

THE STATE

Versus

TAPIWA MEREKA

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
GWERU, 22 MAY 2025

T. Tadenyika for the state
S. Chivivi for the offender

Criminal Trial- Sentencing judgment

MUTEVEDZI J: If it is true that on some day God will destroy the world, then that time is nigh. Some of the crimes that we preside over suggest that Armageddon is imminent. Tapiwa Mereka (the offender) has a head but it is doubtful that he has a brain inside it. If he does, then his mind is so perverted and depraved that he should not be living amongst human beings. The crime that he committed is unconscionable and would possibly win an Oscar award for horror movies. Every one of us who took part in the trial would be thinking about this for a long time to come. It lays bare, the oft-repeated myth that judges are inanimate. The reality is that judicial officers and other court officials who work in the criminal courts and hear these horrific stories almost on a daily basis may suffer what is called vicarious trauma. They all may end up requiring therapy in one form or another.

- [1] 27 January 2023, started off as normal a day as any other for Mary Mereka (the deceased). She could have never imagined she was going to die the ignominious and brutal death which awaited her. She lived in bliss with her old mother and the offender at their plot in an area called Maywood, around the town of Kwekwe. The offender is a son to the deceased's sister. The deceased was therefore the offender's 'mother' for all intents and purposes. The deceased woke up early that fateful morning. She intended to go to the fields

but before she did, she gave the offender money and instructed him to go and purchase a bag of maize. She left her young child in the custody of her mother.

[2] The offender did as what had been instructed. He brought back the maize. He then inquired from his grandmother whether the deceased had gone to the fields. She had. He advised the old woman that he was following the deceased to the fields to help her. Later around 1100 hours, the infant who had been left in the old woman's care started crying. She decided to take the baby to its mother to be fed. When she arrived at the fields, she was horrified to discover the deceased's lifeless body sprawled on the ground. She noticed a trickle of blood on her forehead. The first idea that came to her mind was that the deceased had been bitten by some highly venomous snake. She rushed back home to alert others. Her wailing attracted her neighbours and other villagers who soon gathered.

[3] Those who thought they were brave, some who were overly curious and others who just could not be passed by a moment in which they could create a story for the social media soon trekked to the fields. When they arrived, someone suggested that they throw stones close to where the deceased's body was to scare away the snake that could have attacked and killed her. But other more observant ones argued that there could not be any snake around because there were dogs that were licking the deceased's blood. Apparently dogs and snakes do not cohabit and any interaction between the two usually does not end well. The crowd then drew closer to the body. They inspected it and that was when they noticed the wounds on the deceased's head which did not resemble snake bites. The injuries could not have been inflicted even by a boa constrictor which kills by suffocating its victims. Their panic became heightened. They enquired from the deceased's mother as to who the deceased had been with at the fields. She disclosed that it was the offender and that she had been looking for him but had not seen him from the time she had made the gory discovery. The offender's footprints were detected from the fields. A group of some men were soon on his trail. The spoor led them to Sebakwe river where they found him. He noticed them before they did and immediately dived into the river. We were not advised whether Sebakwe was in flood or not. But his pursuers were as brave as he was. They followed and soon apprehended him and took him back to the scene.

- [4] By the time they got back, the police had also arrived. They interviewed the offender who admitted that he was the one who had killed the deceased. He showed them where he had thrown the murder weapon- a large axe. He also showed them a place where the deceased's black under garment was. He was arrested and taken to the station. There, he gave a warned and cautioned statement which we will revert to later in this sentencing judgment.
- [5] We detail all this because the law stipulates that in the sentencing of offenders convicted of murder, the court's point of departure is as a rule, to assess whether or not the murder was committed in aggravating circumstances. Murder sentences fall into two categories. The determination of the existence or otherwise of aggravating circumstances is critical because it informs the court of the sentencing regime it ought to follow.
- [6] Section 47(4) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] ("the CODE") provides that a person convicted of murder is liable to imprisonment for life or any other definite period of imprisonment of not less than 20 years if the crime was committed in aggravating circumstances. What constitutes such aggravating circumstances is specified under subsections (2) and (3) of the same section. In addition, subsection (5) permits a court to find any other circumstances which in its wisdom, may aggravate a murder. The law maker also intervened and extended the list of such factors under the crime of murder in the Criminal Procedure (Sentencing Guidelines) Regulations, 2023. As such, there appears to be no shortage of sources of aggravating circumstances.
- [7] In this case, prosecution argued that the murder was aggravated by a number of occurrences. First, they said that the murder was committed in the course of a rape. Second the prosecutor said the offender premeditated the murder and, in its commission, used a dangerous weapon. To her credit, Ms *Chivivi* who appeared for the offender conceded that there could not be an argument about the issue.

[8] Clearly both counsel's submissions were correct if regard is had to the facts which we found irrefutable during trial. In fact, the offender unequivocally confirmed them himself. They are that for some time, he had been devising plans to rape the deceased. He was biding his time and waiting for an opportune moment to strike. He said the idea became maddening some three days before the murder. He could not shake off the desire and lust to have sexual intercourse with his aunt. He convinced himself to carry out the satanic idea on the fateful morning. His statement to the police which we alluded to earlier was as telling as his testimony in court. Below, we reproduce the confirmed, warned and cautioned statement in full and complete with its errors. He said:

"I do admit to the allegations levelled against me. The deceased was my aunt but I had quite some time admiring her and I wished that I have some time to rape her. I also had the intention to kill her. I had no valid reason but I just felt that I have to kill her. So, when I was with her in the field weeding together with her I then got the chance and took an axe which was in the field and struck her three times on the head whilst she was not expecting it. After striking her she fell down. I removed her pant and had sexual intercourse with her. After I finished I dressed her and took the axe and threw it outside the field and went to Sebakwe river with the intention to stay there."

[9] Besides being strange and frightening, the statement also reveals the offender's depraved mind. He sounds in that statement, completely unhinged. At the conclusion of the trial in preparation for the presentencing hearing, we implored Ms *Chivivi* to endeavor to find if the offender did not have psychological disorders. We could not and still do not understand how a young man of his age could desire to rape his mother's sister and to declare that he had always felt the urge to kill her for no reason. Those issues demonstrate the traits of a psychopath. He appeared to have wanted to kill for enjoyment. If only someone had found it earlier maybe the demons could have been exorcised. But they were engraved in his warped brain. He was the only one who was aware of his cravings until it was too late and he had carried out his horror plan. He killed the deceased without blinking an eye.

[10] As if butchering the deceased was not enough, he told us that soon after she had fallen, he undressed her and had sexual intercourse with her. Mr *Matose* for prosecution said the sequence of events was exactly like the offender told the court. He savagely struck the deceased first and then had sexual intercourse with her when she was helpless. He said at the time the time of the sex, the deceased was still alive although in a vegetative state.

[11] Those events, therefore, reveal that whichever way it was, the offender committed more than the murder. If he forcibly had sexual intercourse with the deceased and then killed her, he committed rape and murder in separate transactions. That he did so and that he formulated the two intentions is apparent from his caution to the police. He unequivocally states that he had always longed to rape the deceased. He also stated that he wanted to kill her. It must have only been fortuitous that he managed to simultaneously achieve both. Nothing would change if the two crimes are interposed and the physical attack occurred first and the sexual intercourse followed or vice versa. The prosecutor's uncontroverted assertion is that at the time he ravished her, the deceased was still alive. That would have again amounted to rape. Even imagining that his victim was dead by the time he committed the abomination, his actions would have amounted to the crime of violating a dead body in contravention of section 111 of the CODE. In other jurisdictions, it would have been the crime of necrophilia which criminalizes any sexual attraction to a dead person.

[12] The above demonstrates that prosecution was not diligent in drawing the charges against the offender in the first place. The offender ought to have been charged with both murder and rape separately.

[13] That said, it is clear that the murder was committed in extremely aggravating circumstances. In fact, there is a multiplicity of the factors as shown above. In line with the provisions of subsection (5) of section 47 of the CODE, the court finds that it must be an additional aggravating circumstance where an offender commits murder and, thereafter, sexually violates the dead body.

[14] Having found that the murder is aggravated there cannot be escaping the severest punishment. Before the abolition of the penalty of death from our statute books this was a case that would have undoubtedly attracted capital punishment. Needless to state, that option is no longer available. The only two choices which the court has are sentencing the offender either to life imprisonment or to a determinate term of not less than twenty years.

Which of the two is a discretion reposed in us. The exercise of that discretion is guided by the general mitigatory and aggravatory factors that the offender and the state may submit respectively.

[15] In mitigation, Ms *Chivivi* advised that the offender is an unsophisticated young man who resides in the rural areas. He dropped out of school as early as grade seven. His parents' marriage broke up when he was only four years. He stayed with his mother for a year longer after which she remarried. From then on, he became his grandmother's child. It is clear therefore that the offender may be a young man who lacked fatherly guidance as he grew up. His sexual socialization may have gone wrong because of that. Fathers play a critical role in modelling the sexual behaviour of their sons. In this era of the internet, young boys are exposed to many lies and other sexual inaccuracies that are peddled by pedophiles and other people with ulterior motives. Boys, and girls even can only learn the realities of life from those that are close to them. The relationship of an adolescent boy and her old grandmother is hardly the best when it comes to his schooling on sexual education.

[16] As if the challenges were not enough, counsel further advised us that when he divorced the boy's mother, his father relocated to some place called Lalapanzi. The man's father was said to have demanded that the boy be handed over to his father's family but the offender's mother resisted the importunity. The court further heard that since then there have been a series of misfortunes on the offender's family. Sadly, none of such tribulations were disclosed in court. But, whatever they are, they were said to be so bad that the family tried the avenues of faith and traditional healers to have peace. Counsel said they went as far as Binga although we are not privy to what happens in Binga that made the family single it out. The insinuation we discern from those submissions is that a spiritual curse may have been cast over the boy which drove him into committing the detestable and despicable crime. Unfortunately, once again, the court cannot without more rely on such issues. Courts rarely if any, delve into the spiritual realm. We restrain ourselves from doing so not because we look down upon such practices and beliefs but

because of their unscientific nature. Accepting such claims without concrete proof may expose the administration of justice to hitherto unforeseen challenges. It can easily result in a free for all where anyone may claim anything.

[17] The offender's grandmother Winnie Murega, who is also the deceased's mother submitted the victim impact statement. Understandably, she appeared torn between the offender and the deceased. She must have loved the deceased as much as she loves the offender. She recounted the emotional trauma that she went through after her loved one killed another loved one. She then recommended that the court sentences the young man to perform community service. She said he was a good boy despite the murder. One could only feel for her. But her wish is impossible.

[18] Section 47(4) of the CODE provides that:

- (4) A person convicted of murder shall be liable—
(a) subject to sections 337 and 338 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], to death, imprisonment for life or imprisonment for any definite period of not less than twenty years, if the crime was committed in aggravating circumstances as provided in subsection (2) or (3); or
(b) in any other case to imprisonment for any definite period.

[19] It must follow therefore that, when a court has convicted a person of murder, that person must be sentenced to imprisonment. It is the only permissible punishment. Once imprisonment is imposed it cannot be suspended in part or wholly on conditions such as the performance of community service. Suspending the whole or part of a prison sentence imposed for murder is proscribed by s 358 (2) as read with the 8th schedule to the CPEA. Section 358(2) provides as follows

- (2) When a person is convicted by any court of any offence **other than an offence specified in the Eighth Schedule**, it may—
(a) postpone for a period not exceeding five years the passing of sentence and release the offender on such conditions as the court may specify in the order; or
(b) pass sentence, but order the operation of the whole or any part of the sentence to be suspended for a period not exceeding five years on such conditions as the court may specify in the order;

The 8th schedule in turn provides that:

EIGHTH SCHEDULE (Section 358)

OFFENCES IN RELATION TO WHICH POSTPONEMENT OR SUSPENSION OF SENTENCE, OR DISCHARGE WITH CAUTION OR REPRIMAND, IS NOT PERMITTED

1. **Murder**, other than the murder by a woman of her newly born child.
2. Any conspiracy or incitement to commit murder.

3. Any offence in respect of which any enactment imposes a minimum sentence and any conspiracy, incitement or attempt to commit any such offence.
(bolding is my emphasis.)

[20] Our view that the case must attract the most severe punishment is supported by precedent. In the case of *Cuthbert Mpofo v The State* SC-63-13, an 18 year old offender was convicted of murdering a 10 year old female juvenile. He was sentenced to death. On appeal, and dismissing the appeal against the sentence of death, MALABA (DCJ) (now CJ), remarked that:

“It had been suggested in the court a quo which argument was not pursued by Miss *Ncube* on appeal that the youthfulness of the appellant at the age of 18 years was an extenuating circumstance. In dismissing the argument the court a quo correctly observed that the facts surrounding the commission of the offence show an element of courage and wickedness on the part of the appellant wholly inconsistent with youthful behaviour. The court shares the same view.”

In the case of *Samson Mutero v The State* SC-53-18, where the appellant had raped and killed the deceased and had been sentenced to death, the Supreme Court held that:

“Clearly this was a sadistic attack on a defenseless three-year-old toddler who had done nothing wrong. It is unclear why he decided to ravish the toddler in the manner he did. He tried to cover up the crime by alleging that the deceased had had epileptic seizures. This was obviously not a very convincing cover-up as it was clear that the deceased had been physically assaulted owing to the blood oozing out of her nostrils. The deceased must have experienced a very painful death. Faeces found on her private parts and on her anus bear testimony to this.”

In *Bernard Dube v The State* SC-224-14, the Supreme Court again confirmed the sentence of death on the appellant who had raped and killed the deceased.

[21] As such even if regard is had to the offender’s age and all his trials and tribulations discussed above, in this case, his wickedness far transcends those issues. What is worse is that he said he was prepared to kill for no reason. He is therefore a dangerous individual whom the court cannot risk letting back into society. He may kill again- for nothing else other than his enjoyment. He appears worse than a robber who kills for financial gain because it is possible to resist that more than a desire that one cannot explain. It is like the offender gets possessed by some irresistible spirit.

[22] Given then above our hands are therefore tied. It is difficult to empathize with the offender. If he could be so sadistic as to easily kill his own mother and still find sexual

gratification from her in that state of helplessness, we shudder to think what he could possibly do to a stranger or to children. He is someone whose soul must be left to God to correct. As a Court, we can do no more than administer justice. We will permanently remove him from society and confine him to the secure walls of a prison. Accordingly, the offender is sentenced to **LIFE IMPRISONMENT**.

MUTEVEDZI J.....

National Prosecuting Authority, State's legal practitioners
H. Tafa & Associates, accused' legal practitioners.