

THE STATE

Versus

ADMIRE MAOVERE

And

WINDAS MUNZWERU

HIGH COURT OF ZIMBABWE
MAWADZE DJP,
MASVINGO, 24 April 2025

Assessors

1. Mr Nish
2. Mr Mutomba

Sentencing Judgment - Criminal

E. Mbavarira for the state
T. Chipangura for both accused

MAWADZE DJP: Both offenders were recalled for purpose of resentencing in light of the enactment of the Death Penalty Abolition Act (*Chapter 9:26*)

Section 2 (a) of the Death Penalty Abolition Act (*Chapter 9:26*) abolishes the death penalty. This court had on 15 October 2018 imposed the death penalty in respect of both the 1st and 2nd prisoners. The resentencing process is provided for and guided by Section 8 of the Death Penalty Abolition Act (*Chapter 9:26*).

In re sentencing both prisoners the court is enjoined to consider inter alia the provisions of Section 8 (4) (a) to (e) of the Death penalty Abolition Act (*Chapter 9:26*).

Both prisoners stand convicted of Contravening Section 47 (i) (a) of the Criminal Law [Codification and Reform] Act (*Chapter 9:23*) which is the offence of murder with actual intent.

In relation to the circumstances of the offence there is no need for me to regurgitate the facts which are well detailed in the reasons for judgment. Suffice to say both prisoners in the company of one Nyasha Sango still at large planned to rob motorist along the Gutu-Roy road. They were armed with a knife and a pepper spray. Late at night they were offered a lift by the now deceased, an army captain in Gutu as he was going to his rural home in Zaka. As they approached the Masvingo Mutare road they all asked to be dropped. The now deceased complied. The two prisoners and Nyasha Sango then demanded money from the now deceased who resisted. They ganged up to attack him with clenched fists, pepper sprayed him and fatally stabbed him all over the body several times. The deceased's body was loaded in the loading box of the lorry and they drove to Masvingo where they abandoned the lorry and the body along Masvingo Beit bridge road at Craft Centre after taking the now deceased's valuables. Police discovered the body of the now deceased and investigations led to the arrest of both prisoners.

The personal circumstances of both prisoners were outlined by *Mr Chipangura* for both prisoners. The first prisoner was 28 years old and the second prisoner was 26 years old at that material time when they committed the offences. Each prisoner has two minor children. They were both sentenced initially on 5 October 2018 and have now served for almost 7 years. The court is aware of the anguish they both suffered for those 7 years whilst on the death roll. It is unfortunate that both prisoners have previous convictions of robbery. This makes it imperative for society be protected from persons like both prisoners.

In sentencing both prisoners the court is guided by the provisions of both Section 47 (2) and (3) of the Criminal Law [Codification and reform Act] (*Chapter 9:23*) together with the Criminal Procedure (Sentencing Guidelines) Regulations Statutory Instrument 146/23. (Guidelines)

This offence was committed in aggravating circumstances as outlined in Section 47 (2) of the Criminal Law (Codification and Reform Act (*Chapter 9:23*) [the Criminal Code]. This offence of murder was committed in the course of a robbery as provided for in Section 47 (2) (a) (ii) of the Criminal Law Code. In terms of Section 47 (2) (c) the death of the now deceased

was preceded with torture as the now deceased was brutally assaulted, pepper sprayed, dragged out of his lorry and stabbed with a knife several times. There is clear premeditation in the commission of this offence as per Section 47 (3) of the Criminal Law Code. This was a gang offence involving people who obviously sat down, planned and agreed to commit this offence. Clearly there are aggravating factors in this matter.

In terms of the Sentencing Guidelines the presumptive penalty where there are aggravating factors is 20 years imprisonment. If mitigatory factors exist the presumptive penalty is 15 years imprisonment.

This court is at pains to find any mitigating factors as envisaged in the Sentencing Guidelines. The now deceased was not the aggressor. Instead he was a good Samaritan who innocently offered the prisoners a lift. The now deceased was not involved in any criminal conduct. He was proceeding to his rural home in Zaka to see his family. Both prisoners did not act out of passion but sheer cruelty and misguided greed. There is no provocation at all to mitigate their conduct.

What is clear is there are many aggravating factors which elevate the moral blame worthiness of both prisoners. As already said there was premeditation. The murder was committed in the course of a robbery. Both prisoners and Nyasha Sango acted in common purpose. It would be folly therefore for this court to try and treat each one of them differently. Again the now deceased was subjected to cruel degrading treatment or punishment which also involved torture. It is worse that weapons like a knife and pepper spray were used to subdue the now deceased. The now deceased died a painful death.

The state led evidence from the now deceased's eldest daughter one Memory Egnés Jeketera aged 33 years old. She is a teacher. In her testimony she outlined the pain and anguish they suffered as a family due to the now deceased's sudden death. The now deceased had two wives and 11 children. He was the sole bread winner. The family had to sell beasts to raise school fees for the children. The other children failed to complete secondary education and had to proceed to South Africa to fend for themselves.

The deceased's family was not given any funeral assistance by the prisoners or the families of the prisoners. No compensation was paid by the prisoners or members of their family. The demise of the now deceased therefore caused immense suffering to his two wives

and 11 children. One can sympathise with Memory Egnés Jeketera who asked for a sentence of life imprisonment.

After carefully considering all the relevant factors it is clear that there are no meaningful mitigatory factors in this case. In light of the aggravating factors it is clear that both prisoners are a danger to society. They should permanently be removed from society.

In result each prisoner or offender is sentenced as follows;

- a) The sentence of a death penalty imposed on each prisoner by this court on 5 October 2018 be and is hereby set aside in accordance with the provisions of the Death Penalty Abolition Act (Chapter 9:26).
- b) Each prisoner or offender being ADMIRE MAOVERE the 1st offender or prisoner and WINDAS MUNZVERU the 2nd offender or prisoner is sentenced to imprisonment for life.
- c) The sentence imposed as per paragraph [b] above shall be deemed to run from 5 October 2018 which is the initial sentence now set aside.
- d) Each offender or prisoner is advised of his right to appeal to the Supreme Court against the sentence imposed as per paragraph [b] above.

National Prosecuting Authority, Counsel for the State

Muzenda & Chistama attorneys, pro deo counsel for both offenders or prisoners.