

THE STATE  
**versus**  
MODRICK MATIKI

HIGH COURT OF ZIMBABWE  
MATHONSI J  
GWERU 27 JANUARY 2017

### **Criminal Trial**

*T Mupariwa* for the state  
*T Kamwemba* for the accused

**MATHONSI J:** This case graphically illustrates how so many of the young people of this country have become so embolden in the cycle of alcohol consumption they literally worship it and would kill for alcohol. Youths spend endless hours partaking in alcohol consumption which numbs their reasoning and renders them incapable of contributing meaningfully to the development of this country. So many precious lives are lost at the hands of drunken young people strutting among communities in zombie mode with no sense of respect for human life it is in fact disheartening. It's a disgrace.

The accused is facing a murder charge in breach of s47 (1) of the Criminal Law Code [Chapter 9:23] it being alleged that on 22 August 2011 at Vungwi Business Centre Chief Mazvihwa in Zvishavane he unlawfully caused the death of Abraham Moyo (the deceased) who was 38 years old by kicking him once in the face and stamping on his face with a booted foot intending to kill him or realizing the risk or possibility that his conduct might cause death.

The accused has pleaded not guilty to the charge of murder but has tendered a guilty plea to culpable homicide. The state has accepted the limited plea.

The agreed facts are that on 22 August 2011 the deceased went to Vungwi Business Centre in the company of his friend for a beer drink. Upon arrival at the business centre he found the accused in the company of his friends at Hansienda Bottle Store. They were drinking

beer. The deceased joined the group and together they drank beer. In the process of their carousing they moved from one bar to the other.

At some point when the group of merry makers were changing bars they left the accused at Hansiendra Bottle Store which he did not like. Upon the deceased's return to Hansiendra Bottle Store the accused took him to task for leaving without buying him beer. The accused grabbed the deceased by the collar and violently shook him. The deceased, who was drunk, did not offer any resistance.

It was while they were moving to another bottle store that the accused tripped the deceased felling him to the ground. He proceeded to kick him with a booted foot once in the stomach. The accused rushed to seek help from the local clinic but the deceased was pronounced dead at the scene.

According to the doctor who carried out the post mortem examination the deceased died due to asphyxia, bronchoaspiration, acute alcoholic intoxication due to assault. Clearly therefore drunkenness on the part of the deceased also contributed to the complications which caused his death. The accused was however the locomotive which conveyed that misfortune. We are therefore satisfied that the concession by the state is proper.

In the result the accused is hereby found not guilty of murder. He is however found guilty of culpable homicide.

#### Reasons for sentence

In considering sentence we have taken into account the fact that the accused is a first offender who has pleaded guilty to the lesser offence. The accused is married with a two year old child. He was 24 at the time of the offence and therefore youthful to a certain extent. There has been a 6 year delay in bringing the accused for trial. We accept that it was the state of drunkenness which impaired his reasoning. He was made to pay compensation in the form of two beasts and 15 goats to atone for his actions. After the assault the accused tried to seek help, showing contrition.

However this is a bad case because the behaviour of the accused person on the day in question was senseless in the extreme. You do not assault someone because he has not bought

you a beer. What comes out clearly is that the accused behaved like a village bully who would coerce others to buy him beer failing which they would be assaulted, even to death. He attacked a person 14 years his senior exhibiting shocking disrespect which is as unAfrican as it was senseless. This was an unprovoked attack on an individual who had bought the accused beer but was for strange reasons, targeted for a beating. It is unacceptable. As a result of the accused's penchant for beer, a precious life was lost in very tragic circumstances. Those who have taken to worshipping beer and are prepared to kill for it should know that the courts will not treat them with kids gloves. We need to express our revulsion as well as that of society at such kind of behaviour. However we will remove another year from the sentence we would have imposed in consideration of the delay.

Accordingly the accused is sentenced to 9 years imprisonment of which 2 year imprisonment is suspended for 5 years on condition he does not, during that period commit an offence involving violence for which upon conviction he is sentenced to imprisonment without the option of a fine.

Effective sentence: 7 years

*National Prosecuting Authority, state, legal practitioners*  
*Tavenhave-Machingauta, accused's legal practitioners*