

THE STATE

Versus

FRANCIS MARIGA

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr Matemba and Ms Baye

GWERU 28 JANUARY 2020

Criminal Trial

Ms V Chikuni, for the State

Ms V Kwande, for the accused

MAKONESE J: On 14th August 2018 in the evening hours the deceased arrived home from a beer drink and found accused and his second wife preparing food on a fire place. The deceased who was visibly drunk proceeded to kick a zinc metal sheet that was used to shield wind from extinguishing the fire. Deceased demanded his items which were missing. A misunderstanding ensued between the deceased and accused. The deceased was accused's biological son. The accused threatened to assault the deceased with a hammer. Sensing danger, the accused's wife ran to a neighbour's residence seeking assistance. During the scuffle that ensued the accused picked a kitchen knife and stabbed the deceased once in the chest. Deceased ran for a short distance and collapsed. Deceased died hours later. His body was conveyed to UBH for a post mortem examination.

The accused aged 70 years at the time of the commission of the offence has been arraigned in this court facing a charge of murder in contravention of section 47(1) of the Criminal Law (Codification and Reform) Act (Chapter 9:23). Accused denies the charge and tenders a limited plea of guilty with respect to the lesser offence of culpable homicide. The state accepts the limited plea. The state tendered a statement of Agreed facts summarising the events surrounding the commission of the offence. The state then tendered a post mortem report compiled by Doctor Roberto Lara Diaz, a pathologist based at United Bulawayo Hospitals. The Post mortem lists the cause of death as:

- (a) acute anaemia
- (b) aorta artery injuries

(c) stab wound

The state tendered the knife used in the stabbing. It is a kitchen knife with a black handle measuring 12cm. The length of the blade is 15 cm. The weight of the knife is 0.017 kgs. The knife has a very sharp ended blade. It is an extremely lethal weapon.

We are satisfied that on the evidence presented before the court the plea of culpable homicide was properly made. The accused acted negligently in causing the death of his own son. The accused is acquitted on the charge of murder. The accused is accordingly found guilty of culpable homicide.

Sentence

In assessing sentence this court shall take into consideration the weighty mitigating factors of this case as set out by accused's defence counsel. Accused is a 72 year old pensioner. He lost his first wife. He is now married with two children who are both majors. Accused has shown a degree of contrition and remorse. He caused the death of his own son. That stigma will forever remain with the accused for the rest of his life. Accused is a first offender. He has taken full responsibility for his conduct and has assisted in the speedy disposal of the case by tending a plea of guilty with respect to the lesser charge of culpable homicide. In arriving at an appropriate sentence this court must strike a delicate balance between the interests of justice and that of the accused. The court must deliver a sentence that does not break the accused. The sentence must not trivialise the offence. Where a life is lost these courts must hand down sentences that indicate that the sanctity of human life is paramount. The accused is an elderly man. Sending him to prison would not be appropriate. He has already spent 4 months in remand prison pending his admission to bail. That should be taken into consideration in the sentence the court imposes. It is the trend in these courts to spare the elderly from custodial sentences. We are satisfied that at his age the accused has already learnt that crime does not pay. He ought to have acted with restraint. The stabbing occurred at the spur of the moment and in the heat of the scuffle. In the result, we consider the following to be an appropriate sentence;

“Accused is sentenced to 4 years imprisonment wholly suspended for 5 years on condition accused does not within that period commit an offence involving violence

for which he is convicted and sentenced to a term of imprisonment without the option of a fine.”

National Prosecuting Authority, state’s legal practitioners
Kwande Legal Practitioners, accused’s legal practitioners