

THE STATE  
versus  
TAEDZA HONZERI

HIGH COURT OF ZIMBABWE  
MUSAKWA J  
HARARE, 24, 25, 26 & 30 September, 3, 7 & 8 October 2014 & 18 September 2015

Assessors: 1. Mr Gweme  
2. Mr Tutani

### **Criminal Trial**

*B. Murevanhema*, for the state  
*F. Chauke*, for the accused

MUSAKWA J: The accused person pleaded not guilty to a charge of murder arising from a family dispute. The incident happened on 1 September 2009 at Honzeri village, Chinhoyi. It is alleged that the accused unlawfully and intentionally caused the death of Steven Honzeri by stabbing him on the upper chest with an okapi knife.

The brief background to the matter is that a child within the Honzeri family fell ill and subsequently died. It was believed that the child had been bewitched. Consultations with healers and prophets led to this conclusion. It was suggested that a cleansing ceremony be conducted. Within the Honzeri family are two spirit mediums.

On the fateful day a delegation that included one medium arrived from Karoi. The medium got possessed and whilst in that trance he headed to the home of Everson Honzeri. The medium sought to induce Everson Honzeri to also get possessed. In the process Everson Honzeri was manhandled.

Word got to the accused who is Everson Honzeri's son. The accused rushed home where he interposed and struck Knowledge Honzeri the medium. In the ensuing commotion the accused is alleged to have attacked the deceased and his brother with a knife. The deceased tried to pursue the accused but he collapsed after a short distance. He was carried home where he died.

In his defence outline the accused states that he received a message to the effect that his father was being threatened for refusing to have the home cleansed. When he rushed

home he found his father on the ground and under attack from Knowledge Honzeri, the deceased and others. The accused tried to restrain the deceased and Knowledge who were more belligerent.

The group turned against the accused and started to assault him. Sensing danger the accused pulled out a knife and stabbed the deceased once in the chest. He then wrestled with Nixon Honzeri. The deceased tried to chase after the accused but he collapsed.

Thus the accused acted in defence of himself and his father since they were under attack.

From the evidence led it is common cause that the accused spent the day at his tuck shop. He sold an assortment of goods including opaque beer which it was said he would also imbibe. Within the Honzeri family Knowledge and Everson are known to be spirit mediums. Everson is regarded as the elder of the family.

Knowledge who resides in Karoi was sent for. There appears to be a rift regarding why Knowledge was summoned. State witnesses were of the view that they had agreed with Everson to engage a traditional healer. Even though that healer was identified he never got to perform the intended rituals. It is also clear that there was a rift amongst the Honzeris. The rest of the family claimed that Everson's family declined to participate in the ritual. On the other hand Everson's family claimed that they were not consulted. The initial discussion centred on bringing a traditional healer. This was discarded in favour of a spirit medium. This explains why Knowledge was summoned from Karoi.

Upon Knowledge's arrival a group set out for Everson's home. The group comprised Knowledge, Nixon, Etony, Charles, Stewart and Doubt. Everson was at his old home. When Everson arrived after being summoned, he demurred with what was being sought to be done.

The whole episode happened at night. Nixon testified that Knowledge tried to engage Everson to get possessed. Then he just saw the accused arrive at the scene.

Nixon was very defensive in his testimony. He disputed that Everson was ever attacked. Nevertheless he stated that Everson screamed. He then tried to calm him. Everson called out to his son Devine to inform the accused that he was under attack. Nixon was of the view that Everson thought that he was under attack. He attributed this to their numbers.

When the accused arrived Knowledge was talking to Everson. The rest of them were standing close by. He stated that none of them was possessed.

Nixon had no clear recollection of how he was injured. According to him, he was stabbed on the upper left arm. He showed the court the resultant scar. He stated that he realised that he had been injured when they were attending to the deceased. Others then also noticed that he had been injured. After the deceased was injured he tried to follow the accused for about fifty metres before he collapsed.

Under cross-examination he conceded that he is the one who led the group to Everson's home. They had not consulted Everson prior to paying him the visit. Everson had his locks of hair cut on the orders of Chief Mudzingu. It was believed that goblins resided in the hair. The situation improved after this incident. This is because incidences of illnesses had declined.

When the accused arrived at the scene he just stabbed without saying anything. The witness explained that the accused should not have acted without first establishing what was taking place. Further explaining how he was injured he stated that the accused hurriedly passed by him and he then realised that he had been injured.

In further explaining the background to the feud, Nixon stated that a child of his uncle, Stewart had spent three years without talking. The child died five months before the incident. The child was never taken to a clinic despite there being one within the village. No post-mortem examination was conducted.

Another brother of the deceased, Etony Honzeri testified that the deceased is the one who was sent to bring Knowledge. This followed a decision by the family, minus Everson's participation. Everson's family was believed to be the source of the problems. In addition, Everson's family refused to contribute bus fare for deceased to go to Karoi.

Apart from confirming other details stated by Nixon, Etony also stated that upon arrival from Karoi, Knowledge got possessed. Knowledge and others then left for Everson's home whilst Knowledge was in a trance. Etony followed behind. Everson was already asleep as he had been drinking. Knowledge's singing caused Everson to wake up. Etony's arrival at Everson's new home coincided with that of Everson. Knowledge had arrived earlier. This means that Etony could not have witnessed how Everson left his old home.

Everson then attacked Knowledge with a walking stick. Etony attributes this conduct to Everson's drunkenness. Everson and Knowledge fell to the ground after Knowledge grabbed the walking stick. Knowledge then invoked the spirits to possess Everson.

Devine went to call the accused. When the accused arrived he picked up some stones. When he got closer he dropped the stones. At that stage Knowledge and Everson were seated, with Knowledge grabbing Everson.

When the accused got to where the two were he struck Knowledge with a fist. Knowledge did not react. When they sought to intervene the accused advanced towards them. Since it was dark they were not aware that the accused was armed with a knife. The accused advanced towards the deceased whom he prodded. He did the same with Nixon. None of the victims raised alarm. Instead, the deceased tried to pursue the accused. He did so for a short distance and sat down. After they carried the deceased home they realised that he had been injured on the throat. That is when they also realised that Nixon had also been injured.

Concerning Everson, the witness stated that initially he was co-operative but he subsequently demurred. The idea behind Everson and Knowledge getting possessed was for them to establish through the spiritual realm how the cleansing was to be conducted.

During cross-examination he stated that when they followed Knowledge he was not aware that he was going to Everson's home. When Everson struck Knowledge with a stick, Knowledge grabbed it and threw it away. Knowledge then grabbed Everson and the two fell to the ground. Everson was overpowered as he could not free himself. Whilst confirming that Everson had dreadlocks, he disputed that they were cut off on that day. Rather, they were cut at the instance of the chief.

Concerning how the deceased was injured the witness further stated that the deceased made as if he was advancing towards the accused. The accused then made as if he wanted to clear his way. In another breadth he stated that when the accused struck Knowledge the group moved in to intervene. The accused then moved towards them and in the process that is when the deceased must have been injured.

Charles Ngwara Honzeri testified that he was summoned to Nixon's home. There he witnessed Knowledge getting into a trance. Knowledge then led the way to Everson's home. The witness and others followed. He found people gathered. Everson and Knowledge were seated whilst facing each other. Knowledge, whilst possessed was invoking the spirits to also possess Everson. Thus Everson was waiting to get possessed.

Later the accused arrived and went to where Everson and Knowledge were seated. The accused struck Knowledge with a fist. Nixon, the deceased and Doubt tried to restrain the accused. In the process, as they moved away, someone fell down. It turned out it was the

deceased. The accused fled. They then carried the deceased home. That is when they realised that Nixon had also been injured.

This witness further stated that Everson is the one who had sent for Knowledge. This came up at a family gathering. When Knowledge came Nixon induced him to get possessed. Thereafter, whilst in a trance Knowledge led the way to Everson's home.

Concerning the problems within the family the witness stated that Everson had been fingered as the cause. A traditional healer had been consulted. As to why they went to Everson's home at night he stated that spirits are invoked at night. Further explaining how the deceased got injured he further stated that when the accused arrived he advanced towards Everson and Knowledge, having passed by the witness and the deceased. However, he did not see how the deceased was injured. Everson and Knowledge were not fighting. He did not observe Everson assaulting Knowledge because that might have happened before his arrival. When Knowledge was struck by the accused he was still in a trance. That is when the witness clapped hands to cause the spirit to leave Knowledge.

The witness further described the accused as having an aggressive personality. He added that the accused does not forgive easily.

The evidence of Sergeant Matata was admitted as summarised. A sketch plan of the scene of crime was produced by consent as exh 3. It depicts the lay out of Everson Honzeri's homestead. It sums up indications made by the accused, Etony and Doubt Honzeri. The post-mortem report on the deceased was also produced by consent. It noted the following-

Left lung chest laceration 2cm

Depth 10cm

Penetrating chest stab wound

Lung perforation

Haemothorax

The cause of death was given as :

“Penetrating chest stab wound  
Lung perforation  
Haemothorax.”

The accused person testified in his defence. He was at his tuck shop when Defence (a young brother) summoned him. He then walked to the scene where he saw Knowledge sitting astride Everson. Everson was crying out that he was under attack. The deceased was shaving Everson's hair.

When the accused restrained Knowledge he was attacked by the deceased, Doubt, Knowledge, Stewart, Etony and Charles who all mobbed him. In trying to repel them he pushed them away. In the process he then stabbed the deceased. This is because he was being overpowered. He disputed that Knowledge was in a trance. He based this on the reasoning that a possessed person cannot attack another. After the stabbing he went to the home of a member of the neighbourhood watch. Thereafter he went home.

During cross-examination the accused was put to task regarding the manner in which he claimed he was attacked. He conceded that he had not explained it in detail. The same applied to his failure to mention a weapon.

Concerning the stabbing, he explained that he managed to push away his attackers. Then he took out the knife from his pocket. He further stated that when Nixon approached him he repelled him and took out the knife. When Nixon approached him for the second time he then stabbed him. When it was put to him that this version was not put to Nixon, he did not seem to appreciate the import.

Concerning the stabbing of the deceased, he stated that the deceased and others were pursuing him. They had switches. In warding off blows he sustained a swollen hand. Again, he could not explain why this version was not put to the state witnesses. He further stated that in going to where his father was he passed by the same people he said were armed. Yet they did not assault him. He justified this on the basis that when he arrived he did not intend to fight. Nonetheless Defence had informed him that their father was under attack and that he did not know if he would survive. The nature of the attack was such that whilst Knowledge was assaulting the father, the deceased was shaving off the hair. The accused could not explain why this version was not put to state witnesses. Again, he could not explain why he could not assault the deceased in the same manner he had assaulted Knowledge, that is, by pushing him. To this he simply explained that after pushing Knowledge the rest of the gathered people then attacked him.

Concerning the group of people he said they advanced towards him in a semi-circle. He was unable to escape in another direction as there was an obstacle in the form of a house. As for using a knife he said he did not foresee that he would use it. He could not explain exactly how the deceased and Nixon were injured. His simple explanation was that somehow they came into contact with the knife. He further explained that he realised when he was about to get home that he had a knife in his pocket. Although he had no intention to use it, the

stress he was subjected to caused him to use the knife. As he put it, “in the process of warding off the attacks the deceased and Nixon were stabbed.”

Under re-examination and from questions posed by the court, the accused further explained what happened at the time of the stabbing. He stated that everyone became aggressive after he pushed Knowledge aside. After the stabbing the deceased chased him for about seven metres. About the knife, he explained that he had acquired it for use at the tuck shop. As Knowledge assaulted his father all others had stood watch as they held some sticks. They later attacked him and he opened the knife as they surrounded him. Nixon and the deceased were hitting him with sticks when he stabbed them. He further stated that he pulled out the knife from the pocket using his right hand which was numb from a blow. When Nixon aimed a blow at him, he then came into contact with the knife which the accused had raised to ward off the blow. Then, as he tried to escape the deceased was stabbed. The deceased had tried to grab him. As the accused tried to free himself, the deceased then came into contact with the knife.

Everson Honzeri was originally a state witness. The state eventually abandoned him and he testified for the defence.

He told the court that he was roused from sleep around 1 a.m. Defence woke him up and told him he was wanted. He objected on account of the time. Devine then came crying.

Whilst semi-clad he eventually attended the scene. Knowledge head-butted him. The deceased held him by the hair as Doubt held the legs. Knowledge then straddled him as the deceased cut his locks. In all there were nine people.

As for the reasons for the attack the witness explained that he was accused of practising witchcraft. Stewart’s child was born with deformities. It was then alleged that the witness had bewitched the child.

As the witness was being attacked, the accused responded. One of the witness’s sons had gone to inform the accused.

When the accused arrived, he challenged the assailants. The accused was attacked. Knowledge was still in a trance.

Under cross-examination he stated that when he was attacked some teeth fell off and some got loose. As to why he did not also get possessed he stated that it was not possible under the prevailing circumstances. As for refusing to participate in the cleansing, he stated that such a ritual is not conducted at night. He further explained that he had not observed how the accused arrived at the scene. He also did not see the accused attacking Knowledge. He

again did not observe how Nixon and the deceased were injured. He further explained that parts of the dreadlocks were cut on that occasion and the rest were removed on another occasion. He denied that he had his hair removed at the instigation of the chief.

In written submissions the state urged the court to be circumspect with the evidence before it as there are no independent witnesses. That is a very valid submission. Having submitted that when the stabbing took place the accused was not under attack, the state urged that the accused be found guilty of murder under s 47 (1) (b) of the Code. In the alternative, it was submitted that the accused be found guilty of culpable homicide in terms of s 49. Unfortunately, the state did not elaborate in respect of the latter submission.

In his written submissions defence counsel referred to self-defence and provocation as the defences that need to be considered. It must be noted that provocation was never proposed in the accused's defence outline. Counsel for accused further submitted that having heard that his father was under attack, the accused rushed to the scene. He thus had lost self-control as a result of the attack on his father.

Regarding private defence it was submitted that the requirements for such a defence were met. This is because his father was under attack. The accused was also in danger as he was subjected to attack after rescuing his father. In this respect it was further submitted that the court has to consider the exigencies of the situation that the accused found himself in.

In summing up, it is quite correct that there are no independent witnesses to this incident. There was already bad blood between the accused's family and that of the deceased because of witchcraft that was imputed to the accused's father. It is common cause that the deceased and his family imposed themselves on the accused's father's home. They sought to impose that a cleansing ceremony be conducted. This happened late at night. Most of the state witnesses were not very clear on what exactly transpired when the deceased was stabbed.

Even though the state witnesses denied that they were belligerent the circumstances under which Knowledge engaged Everson need scrutiny. Unfortunately the state did not call Knowledge. Whilst in a trance Knowledge sought to induce Everson to also get possessed. The two of them were on the ground, with Knowledge astride Everson. To any observer, this would have been seen as an unlawful attack.



## **Provocation**

In terms of s 239 of the Code, provocation is a partial defence to murder. Such a partial defence is available to an accused person in the following circumstances:

- a) Where the accused lacks intention or the realisation of real risk as provided in s 47.
- b) Where the accused person has intention or the realisation of real risk as provided in s 47 but has completely lost self-control in circumstances where a reasonable person in such a situation would have self-control.

Having arrived at the scene and found Everson under attack, the accused struck Knowledge with a fist, thereby averting the attack on Everson. This was confirmed by Nixon and Everson. The accused himself claimed that he pushed Knowledge off Everson. We will accept the version of Etony and Everson on this aspect. This is because Etony was not challenged on this aspect. Then we have Everson, the victim of the attack who corroborated Etony.

Irrespective of whether the accused punched Knowledge or pushed him, what is clear is that he refrained from using a weapon. That dispels the claim that he had lost self-control. It is probable that he must have been angry when he saw his father under attack. But he could not have failed to lose self-control when he rescued his father and then in another breath, lost self-control when it came to defending himself. It must be noted that there was no discernible lull between rescuing his father and stabbing the deceased.

## **Defence of Person**

The requirements for such a defence are provided in s 253 of the Code which states that-

“(1) Subject to this Part, the fact that a person accused of a crime was defending himself or herself or another person against an unlawful attack when he or she did or omitted to do anything which is an essential element of the crime shall be a complete defence to the charge if-

(a) when he or she did or omitted to do the thing, the unlawful attack had commenced or was imminent or he or she believed on reasonable grounds that the unlawful attack had commenced or was imminent, and

(b) his or her conduct was necessary to avert the unlawful attack and he or she could not otherwise escape from or avert the attack or he or she, believed on reasonable grounds that his or her conduct was necessary to avert the unlawful attack and that he or she could not otherwise escape from or avert the attack, and

(c) the means he or she used to avert the unlawful attack were reasonable in all the circumstances; and

(d) any harm or injury caused by his or her conduct ·

(i) was caused to the attacker and not to any innocent third party; and

(ii) was not grossly disproportionate to that liable to be caused by the unlawful attack.

(2) In determining whether or not the requirements specified in subsection (1) have been satisfied in any case, a court shall take due account of the circumstances in which the accused found himself or herself, including any knowledge or capability he or she may have had and any stress or fear that may have been operating on his or her mind.”

It must be noted this defence is founded on the common law. The authorities dealing with this defence are well established.

We can discount from the outset that the accused intended to kill the deceased. This is because if he intended to use the knife the first victim would have been Knowledge. This is despite the claim by the accused that he found the deceased, Knowledge and Nixon attacking his father. Despite the generally unsatisfactory nature of the testimony of state witnesses, the accused contradicted himself on this aspect. This is because in another breadth he testified that the deceased and others attacked him after he had dissuaded Knowledge. In other words, it was only Knowledge who was attacking his father whilst others stood by.

It is accepted that when the accused stabbed the deceased, he was no longer defending his father. He claims that he was defending himself from unlawful attack. The same requirements regarding defence of another apply to defence of self.

Again we accept that the evidence led by the state regarding how the accused stabbed the deceased is generally not very clear. It is also compounded by the hazy explanation given by the accused. However, going by Etony and the accused’s testimony, after the deceased was stabbed, Nixon and others advanced towards the accused. The only state witness who appeared to say something cogent about the stabbing was Etony. He stated that after the accused struck Knowledge people advanced towards the accused.

The probabilities are that the accused believed that he was about to be attacked. He then lashed out precipitately. This happened at night and he would not have had time to reflect on his conduct. He should get the benefit of the doubt regarding whether he realised the real risk or possibility that his conduct might cause death and acted recklessly in the circumstances.

Counsel for the accused also submitted that the court must take a critical look at such a defence and avoid an arm chair approach. In support thereof he cited *S v Zikalala* 1953 (2) SA 568, *Ntsomi v Minister of Law and Order* 1990 (1) SA 12, *S v Manyerekete* HH-386-81 (questionable citation) and *S v Mandizha* S-200-91.

It does not appear like the accused was under attack from a mob at the time he stabbed the deceased. At the time he arrived he must have believed that Knowledge was attacking his father. That is why he proceeded to attack Knowledge. It is improbable that Nixon and the deceased were also attacking Everson at that stage. If that was the case the accused was expected to have attacked those two as well. According to Etony, after the accused struck Knowledge the group advanced towards him. The accused more or less confirmed the same thing. He must have believed that he was about to be attacked.

Concerning mistaken belief that one is under attack, s 255 of the Code provides that-

“If a person genuinely and on reasonable grounds, but mistakenly, believes that he or she is defending himself or herself or another person against an unlawful attack, he or she shall be entitled to a complete or partial defence in terms of this Part to any criminal charge in all respects as if his or her belief were in fact correct.”

It is our view that the accused acted precipitately in using a knife against the deceased. He could have retreated without using the knife. This means that the means he used in averting the mistaken attack were unreasonable in the circumstances. A similar situation arose in *S v Ngomane* 1979 (3) SA 859 (A). In that case, the appellant, a young man aged twenty years was locked up in a hut with a woman at night. The deceased, a well built man of 50 years knocked on the door and asked for cigarettes. When the appellant replied that he had none the deceased told him to open the door. When the appellant refused the deceased threatened to burn down the hut and he proceeded to fasten the door with wire. The appellant pleaded with the deceased to open the door and not to set the hut alight.

As the door opened the lamp went out. As the deceased entered the hut the appellant stabbed him with an assegai. The deceased's jugular vein was severed and the heart penetrated. The appellant and the woman then ran out.

The appellant's defence was defence of person. He believed in the deceased's threats. His intention was to escape from the hut when the door was opened. The trial court convicted him of murder with extenuating circumstances and sentenced him to seven years' imprisonment.

On appeal the appellate court found that there was no evidence that the appellant deliberately stabbed the deceased. Regarding self-defence, it was held that the question was whether the appellant acted reasonably and legitimately in order to protect himself against the deceased. The onus was always on the state to prove that the appellant exceeded the legitimate bounds of self-defence.

Although the appellate court noted that the trial court shifted the onus on the appellant to prove the existence of self-defence, the proved facts were found to negate that defence. It was thus held that the appellant acted too precipitately or used excessive force to effect his escape. A reasonable person would have first ascertained what the deceased's intention was before stabbing him. The conviction for murder was reduced to that of culpable homicide.

Coming to the specific facts of the present matter, there is nothing to show that the accused was attacked with sticks by the people who were gathered. Although during the course of his testimony the accused claimed to have been cornered and that he had no way of escaping, the place where he indicated that the stabbing took place does not show that he had his back against the house. In addition, he did not indicate that he was under siege from a mob. He therefore acted too precipitately in stabbing the deceased instead of either brandishing the knife or fleeing. In addition, in the absence of the group of people being armed with sticks, the means the accused used in defending himself against a perceived attack were not commensurate with the threat. It therefore means that the accused acted negligently in using the knife. A reasonable person placed in a similar situation would have avoided rash action in the use of a knife.

Accordingly, the accused is found guilty of culpable homicide in terms of s 49 of the Code.

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