THE STATE

versus

TENDAI TOGARA

HIGH COURT OF ZIMBABWE

CHITAPI J

HARARE, 21, 22 & 30 March 2016

ASSESSORS: 1. Mr Msengezi

2. Mr Mhandu

**Criminal trial**

*A Muziwi*, for the State

*B. T Kativhu* with *C Malaba*, for the accused

CHITAPI J: The accused charged with the crime of murder is defined in section 47 of the Criminal Law (Codification & Reform Act) [*Chapter 9:23*]. The State alleges that on 24 July, 2015, at the single women’s quarters, Suri Suri or Flyde Airbase, Chegutu the accused acting with intention to kill or realizing the real risk or possibility that his actions might result in death, unlawfully killed Martha Dondo by stabbing and slicing her throat with an okapi knife. The accused denied the charge and a plea of not guilty was entered by the court.

The facts of this matter are largely common cause. When the trial commenced, the prosecutor sought admissions of fact from the accused through his legal counsel in terms of s 314 of the Criminal Procedure & Evidence Act, [*Chapter 9:07*]. The admission sought and made were

1. The evidence as set out in the summary of State case of State witnesses Nyarai Katsande, Daristo Khozi, Collen Mtomba, Takunda Lynet Kapeta, Jabulani Muhlanga, Peter Matsika, Doctor Mauricio Gonzalez.
2. The post-mortem report compiled by Dr Mauricio Gonzalez on 28 July, 2015 as provided for in terms of s 278 (2) of the Criminal Procedure & Evidence Act.
3. Accused’s confirmed warned and cautioned statement as provided in s 256 (2) of the Criminal Procedure & Evidence Act.

For purposes of sequence, the evidence in respect of which admissions were made will be dealt with after the analysis of *viva voce* evidence given by State witnesses Bornaparte Watadza, Kudzanayi Magaya and Leornard Njikiza. These witnesses’ evidence was to the following effect:

1. Bonarparte Charles Watadza:

He is an attested airforce of Zimbabwe member and so is the accused who is a co-worker. The deceased was also an attested member of the force. He did not have personal knowledge of the marital relationship between the accused and the deceased but understood through rumour that the accused and deceased had once been married and had a child together. He understood that the accused had denied paternity of the child. He was aware of rumours doing the rounds at the airforce base that the deceased was involved in a love relationship with one of the senior officers, flight lieutenant Kurwaisimba. He did not deem it his business to investigate the authenticity or otherwise of the rumours.

The witness described the accused as being on the reserved side, a man of few words who did not have many friends and was not known for violence. On the fateful day, the witness was seated on the verandah of block C female quarters flat conversing with one, Nyarai Katsande when the two suddenly heard two loud screams in the nature of a shrill. The two of then quickly rushed up the two floors from the ground floor where they were to the 2nd floor where the source of the screaming had come from. They got to the source of the screaming within five minutes and discovered that the screaming had its source from the deceased’s room and had come from the deceased. From the accused’s indications at the scene which indications were produced by consent as exh 4; the deceased’s flat is described as room 216 Flat 8 Women Quarters.

When the witness and Nyarai Katsande got to flat No 216, the door into the flat which comes off a corridor was open. The witness had formed the opinion that the person who screamed was fighting with someone. On entry into flat 216, the witness saw the accused seated astride the deceased’s chest. He then held the accused by the shoulder and asked the accused what he was doing. The accused did not say anything but stood up off the deceased’s chest. He noted that the accused was holding a knife and that the deceased lay in a pool of blood. The deceased lay still and did not make any sounds except to try and get her hand to her throat but was failing to do so. She appeared too weak to move her hand to the throat. The witness stopped the witness Nyarai Katsande from approaching or getting to where the deceased lay on the ground and shouted at Nyarai Katsande to get out from the flat because the deceased had been slit on the neck. The witness and Nyarai left the accused inside the flat leaning against the wall and rushed to report to their superiors. The deceased was bleeding profusely from the neck area and she was not armed nor were any weapons seen around her. The witness returned with the superiors after about 20 minutes and found the deceased still in the same position but accused was no longer in sight. The witness did not seek to try and render assistance to the deceased because he was afraid of the accused and the knife. The witness thought that the accused had run away or left the flat to escape mob justice by other officers and not making away from the military police. With regards how cases of infidelity or love affairs between senior ranked and junior ranked members are dealt with, the witness said that it was not allowed and an act of misconduct for a senior ranked member to have an affair with a junior ranked member.

This witness impressed the court. He gave a simple narration of events and refused to make conclusions on matters to which he did not have personal knowledge. It was not surprising that his cross examination lasted for less than ten minutes and was not eventful. The witness’ evidence dovetailed with the admitted evidence of Nyarai Katsande as outlined in the summary of State case. Nyarai’s admitted evidence with regards the events of the fatal day corroborated the evidence of this witness. The court therefore accepted the evidence of this witness without reserve.

2. Kudzanayi Magaya

Is a warrant officer class 2 and knows the accused and deceased as workmates albeit her juniors in rank. She knew the accused and deceased as husband and wife who had a child together. She received a report from the last witness and together with four other officers they proceeded to the deceased’s flat. She opened the door to the flat and observed the deceased who was attired in full military uniform lying on the floor on her back with her head turned to one side. The deceased lay in a pool of blood. She called out her name but the deceased did not respond. She shook the deceased’s body and observed no sign of life. She observed that the deceased’s throat had been slit and that blood was still oozing from the deceased’s throat.

The witness summoned the military doctor and secured the scene awaiting the arrival of the police who had been summoned. The witness did not have knowledge of any strains in the accused/deceased’s relationship and thought that the two got along quite well. She had known the deceased for just two years and the accused for over three years as work colleagues.

The witness only got to hear of rumours about the deceased and accused’s strain in their relationship after the death of the deceased. She was asked in cross examination as to what rumours she had heard and she replied that the rumour concerned the appearance of the deceased and accused at court fighting over custody of their child. The deceased worked under the witness command and carried out guard and office duties. It was put to her that the deceased had been relieved of office duties because of her extra-marital affairs and she denied this and said that this rumour was pedalled by the accused after the deceased’s death.

Nothing eventful came out of the cross-examination of this witness who gave her evidence in a forthright manner. The court accepted her evidence as a simple narration of what transpired after she had received the report of the occurrence at flat 216 from the last witness and Nyarai Katsande.

3. Leonard Njikizana

Knows both the accused and deceased as workmates. He worked in the same office with the accused. He worked well with the accused whom he described as a loving person who loved his wife, the deceased and child. The witness on the fateful day, was off duty. On his way back to the airforce base he came across some of his workmates who were manning a roadblock trying to apprehend the accused. His workmates then told him of what the accused was alleged to have done. The witness given his close work relationship with the accused then telephoned the accussed and persuaded the accused to own up and report himself to the police. The accused who was initially evasive as to his whereabouts then revealed that he was wondering in the bush within the Kadoma area. The witness persuaded the accused to meet with him and after the two met the witness drove the accused to Chegutu where the accused surrendered himself to the police.

The witness under cross examination said that he was shocked by what the accused had done which he considered to be out of character because the accused was not a person of violent disposition. The witness agreed that the accused had complained to him about deceased’s alleged acts of infidelity involving her and work superiors and that the deceased was being given private work by her superiors to take home to type hence depriving the accused of quality time with the deceased. The accused according to the witness also complained about the deprivation of custody of his child with the deceased by the deceased’s parents who also showed a negative attitude towards him. At one time the deceased’s father reportedly attacked the accused with the back of an axe. When the witness picked up the accused from Waverly bus stop in Kadoma enroute to surrender himself to the police, the accused confided in the witness that he had lost a custody case the previous day and the deceased had reproached or scolded him that he would defecate as he would never again see his child. The accused had enquired of the deceased as to how he would exercise access to the child since he had lost the custody case.

As with the other two witnesses, the court found the witness credible. He played a pivotal role in persuading the accused to own up to his misdemeanor. The witness acted in a mature and exemplary manner. He did not take sides and told the court about the accused’s reported sources of unhappiness with the deceased as outlined here in before including the issue of the deceased’s parents prevarication regarding the formal handover over of the deceased to the accused’s family after lobola payments as per custom in what he called ‘kuperekwa’ ceremony. The court was impressed with the witness demeanor and accepted his evidence.

In addition to the *viva voce* evidence as outlined, the court considered the admitted evidence. The evidence of Nyarai Katsande has already been commented upon. The brief outline of the admitted evidence of the other state witnesses is hereunder as set out.

4. Daristo Khozi

Is a police officer stationed at Chegutu police station. He attended the scene of the offence on 24 July, 2015 at around 1300hours. He was in the company of other police officers. On arrival at Suri Suri airforce base he was shown to the deceased’s flat by Kudzanayi Machaya. Inside the flat, the witness observed the deceased in complete army uniform lying spread eagled on a red carpet facing upwards. He noted a deep cut on the deceased’s throat consistent with the use of a sharp object. There was blood clotting on the floor near the deceased’s head and there were splashes of blood on the walls on some plates within the room. The deceased was motionless. He looked around for any weapons which could have been used to inflict injuries on the deceased to no avail. The suspect, that is, accused was nowhere to be seen. The witness with the help of other police officers removed the deceased’s body from the room and ferried it to Chegutu General Hospital where Doctor Nhende certified the deceased dead.

5. Collen Mtomba

Is a police officer attached to Criminal Investigations Department and stationed at Chegutu police station. He effected the arrest of the accused when the accused reported at the police station with Bernard Njikizana. He searched the accused and recovered a blood stained cloth and blood stained okapi knife from the right side trousers pocket which the accused was putting on. It is common cause that the knife which the witness recovered is the one which the accused used to inflict the injuries which the deceased succumbed to.

6. Jabulani Mhlanga

Is a police officer and the investigating officer. He formally charged the accused with the murder of the deceased on 26 July, 2015. He recorded the accused’s warned and cautioned statement with Peter Matsika another police officer acting as witness. The witness also took the accused for indications and drew a sketch plan. The indications were witnessed by another police officer Takunda Lynet Kapeti. The indications and warned and cautioned statement were produced as exhibits 4 and 2 respectively in evidence.

7. Mauricio Gonzales

Is a forensic pathologist whose qualifications are legal medicine specialist. He examined the remains of the deceased on 28 July, 2015 at Parirenyatwa Hospital in Harare. He compiled a report which as already alluded to was admitted by the accused. The highlights of his report are that when he examined the body of the deceased, he concluded that:

(a) the deceased body showed her to have been in good health.

(b) the deceased had no abnormalities

(c) the deceased had an acute marked wound on the left side of the neck

(d) the body had other injuries on the neck vessels

He concluded that the deceased died of a combination of :

(i) hypovolemic shock

(ii) neck vessels damage

(iii) stab wound

According to Dr Rachel Nall as accessed on [www.healthline.com](http://www.healthline.com) accessed on 29 March 2016 Hypovolemic shock which is also called hemorrhagic shock is a condition which results when a person loses more than 20% (one – fifth) of the body’s blood or fluid supply. The severe fluid loss makes it impossible for the heart to pump a sufficient amount of blood to the vital parts of the body. It is a condition which requires immediate and urgent medical attention and unless attended to immediately, death occurs rapidly or immediately. The learned author states in his article that heavy loss of blood is life threatening because blood carries oxygen and other essential substances to vital organs and tissues. Therefore when the body loses the essential substances faster than they are replaced the organs shut down and as the heart stops receiving enough blood to pump, it also shuts down leading to blood pressure plummeting, a severe drop in body temperature and death. In the court’s assessment of the evidence hypovolemic shock was therefore the proximate cause of the deceased’s death and was secondary to the loss of blood suffered by the deceased as observed by the witnesses who saw the deceased bleeding profusely from the neck. The neck vessels were damaged and they are the ones through which the blood circulates. The deceased’s neck vessels were not only cut but she was stabbed as well.

8. The confirmed warned and cautioned statement by the accused is the last piece of evidence produced by the State in evidence by consent and was marked exh 2. In the statement the accused admitted to ‘murdering’ the deceased with an okapi knife by slitting her throat four times following an altercation over domestic issues including custody of their child Lennon Togara and alleged illicit love affairs between the deceased and the deceased’s’ bosses at work. Another issue over which the two had a misunderstanding concerned a Bank loan which the accused had borrowed to use to pay the bride price (lobola) to the deceased’s parents. The accused in the said statement alleged that some of the couple’s issues were known at the work place as they used to approach the authorities to mediate over them. The authorities according to the accused swept the issues under the carpet because of them involved persons in higher authority. Apart from admitting to killing the deceased, the accused in his statement at least provided the motive for acting in the manner he did.

The accused elected to give evidence on oath. He said that on the day in question he woke up and took a bath before he proceeded to the mess for breakfast. It was around 7:20am. He passed through the women’s single quarters’ area and saw the deceased doing her laundry. He spoke to the deceased about clothes which he had bought for their child and the deceased asked him to bring the clothes because she was going to visit the child that day. He went back to his quarters and collected the clothes. On his return the deceased had finished her laundry and was inside her flat.

The accused said that he asked the deceased to inspect the clothes but the latter refused and told the accused to do the checking himself. He then showed the deceased the clothes. He asked the deceased as to how he would get to see the child following the custody case which he had lost the previous day. He said that they continued to discuss the deceased’s love affairs with chefs (superiors) at work. It is this issue of the deceased love affairs with the superiors which preceded the incident i.e the attack upon the deceased.

The accused then gave a history of his married life and said that he met and fell in love with the deceased in 2012 and they had a child in January 2013. The two stayed together as husband and wife although he only paid lobola in December, 2013. The marriage was not registered. The deceased’s parents did not live to their promise to officially hand over the deceased to the accused’s family as a daughter in law i.e they did not perform the ‘kupereka’ ceremony and continued to shift goal posts with the deceased’s father demanding further payments on the lobola. The accused and deceased also argued over the weaning of the child at 11 months with the deceased seeking to justify her early weaning on the basis that she wanted the child to be left in her mother’s custody. The accused was not receptive to this arrangement and suggested to the deceased that since the two did not have a marriage certificate and could not qualify to be allocated married accommodation at work, they should rent out a place in Chegutu where they would stay as a family with the child.

The suggestion to rent out a place in Chegutu was not welcomed by the deceased who cited affordability as the stumbling block because of low salaries. The deceased did not therefore warm up to the idea of getting rented accommodation whilst the accused was strained in his capability to pay the rental alone because he was servicing a bank loach which he had taken to pay lobola charged when he customarily married the deceased.

Apart from quarrelling over the child’s weaning and deceased’s refusal to take up rented accommodation, the couple quarreled over what the accused considered to be acts of infidelity by the deceased whom he suspected of having illicit relationships with her superiors at work. The accused was not happy that the deceased was being asked to perform extra chores for her superiors which were not work related like typing documents for one of the wing commanders on the commanders laptop. The accused reported his unhappiness on the conduct of the supposedly offending commander to another commander and to a warrant officer but nothing was done except that the deceased was then relieved of office duties and instead assigned guard duties. The accused’s conduct did not amuse the deceased and she blamed him for causing her demotion to guard duties. The demotion of the deceased is the straw that broke the camel’s back because the two stopped doing things together. The deceased accounted for her salary to her parents. When the accused sought to find out if that was how the two would live their lives, the deceased said that she had a duty to support her parents. The deceased just went about her life as she wanted.

The accused was also experiencing a strain in relations with his in-laws. They denied him permission to see his child and refused to allow him access to the child when he asked to be with the child for two weeks. The father in law also demanded for and wanted to keep the child’s birth certificate.

When asked by his legal counsel to now focus on the events of 24 July, 2015, he testified that he asked the deceased whether it was not in the interests of the child that the child be brought up in a conducive environment. He further dwelt on the rumours of the deceased’s love affairs with senior work commanders and that the deceased then said “What is bothering you? Even if you find me in bed with them, you can’t do anything?” The accused then asked the deceased why if she was not interested in him, she had left him to borrow a loan to pay for her lobola to which she responded that it had been his decision and that it was his problem.

Asked by defence counsel as to what torched the incident, the accused said that the deceased started shouting at him using vulgar language and spat at him. The deceased also told the accused not to bother her because she wanted to take a bath in preparation to go and sleep with the chefs. The deceased tried to leave the flat but the accused blocked her. She then sat on the bed before rising therefrom and started to fight with the accused. The accused said that during the fighting the deceased was screaming to attract attention because she had heard voices of people and also said “yah people have come.” He said that the fighting continued and they both fell to the floor. He then took out his okapi knife and used it on the deceased. When asked what he wanted to do with the knife he said that he moved around with it and used it to cut fruits. He wanted to frighten the deceased with it and ended up using it on the deceased.

The accused testified that witnesses Watadza and Katsande came and asked him what was happening but he did not reply them. They left him with the deceased and he then left the place going into the bush because he was afraid to report the incident to the bosses as they were the very persons whom he had a grudge with over his wife, the deceased. He was afraid that the bosses would cause a mob to assault him. He walked in the bushes towards Kadoma and confirmed what transpired thereafter as testified to by Njikizana. When he left the deceased’s flat he assumed that she was still alive.

Under cross-examination, the accused admitted that his harboured thoughts that the deceased was involved in love affairs with superiors was based on rumours. He said that the deceased’s behaviour seemed to confirm the rumours. He said that the deceased had previously assaulted him and the couple was counselled. He admitted that the deceased had wanted to leave the flat but he blocked her. The deceased was not armed and did not use any weapon during the fighting. The accused agreed that the lobola loan was put to good use as the deceased turned out not to be the good wife her wished for. He said that what happened or what he did was not something which he had anticipated he would do and it just happened on the spur of the moment and it took place in a space of about two minutes. He denied the suggestion that he formed a deliberate intention to harm the deceased and said that if this had been his plan, the time lapse of just after 7:00 am when he was with the deceased and his use of the knife around 12 noon would not be capable of justification.

The State and defence counsels correctly submitted that the task or issue before the court was to determine the accused’s intention when he committed the offence because, the physical element or *actus reus*, that it is the deceased’s act or acts which caused the death of the deceased was a common cause fact. State counsel conceded that the accused was under stress and prayed for a verdict of murder as defined in s 47 (1) (b) of the Criminal Law (Codification and Reform) Act. Counsel for the defence did not expressly conceded nor argue on the correctness of the State’s submission. Ms Malaba was content to leave the matter to the court and submitted that the only issue for the court to determine was whether the accused’s legal responsibility was diminished to the extent that he could not appreciate what he was doing.

The accused during cross-examination sought to introduce self-defence as a ground for avoiding liability. He said that he was attacked first and that the deceased had previously had the better of him when they fought. The feeble attempt to introduce this defence was clearly an afterthought by someone cornered under cross examination. The accused did not raise this defence in his defence outline or in his warned and cautioned statement. Miss Malaba very wisely did not pursue this line of defence in her closing submissions electing to instead dwell on the aspect of the accused’s state of mind. In the court’s view, the accused’s attempt to introduce the aspect of self-defence was clearly an afterthought and not worthy of belief. In any event, the accused would have found the requirements of self-defence as set out in s 253 of the Criminal Law (Codification and Reform) Act insurmountable. The accused’s defence outline proffers a defence of diminished responsibility. He argued that he was provoked and insulted by the deceased who taunted him over her affairs with superiors boasting that even if he was to catch the deceased in *flagranto delicto* with the superiors there was nothing that he could do to her. It was argued that he had many pressures operating upon him and that given previous altercations, the insults and provocation, he momentarily lost his sanity and attacked the deceased without realizing the possibility that his conduct could result in death.

In terms of s 218 of the Criminal Law (Codification and Reform) Act, where the capacity of an accused is diminished on account of an acute mental or emotional stress, such diminished responsibility shall not be a defence to the crime charged but should be treated as a mitigating factor in assessing sentence. Diminished responsibility is only a complete defence in circumstances where it is proved that the accused suffered from a mental disorder or defect of such a nature as to negate rather than diminish the capacity of the accused to appreciate the nature or lawfulness of his or her conduct. Such defence is a complete defence were the accused is certifiable in terms of the Mental Health, [*Chapter 15:12*]. This is set out in s 229 of the Criminal Law [Codification and Reform] Act.

Counsel referred to the case of *State* v *Alfred Gambanga* 1997 (2) HC (1). In that case the court found that accused who had presented evidence of emotional stress in the form of a psychologist’s report had suffered from diminished responsibility as a result of being affected by his wife’s behaviour and infidelity. The accused was convicted of murder with constructive intent, the equivalent of the present s 47 (1) (b) of the Criminal Law(Codification and Reform) Act on the basis that despite the provocation he was subjected to, the accused still had legal intention in committing the offence of killing his wife whom he shot with a gun. The court held *obiter dictum* that in an appropriate case, a state of diminished responsibility could completely negate *men’s rea*. The *Gambanga* case is therefore pursuasive authority and relevant to the present case and s 218 aforesaid has simply codified the judge’s findings made therein.

Section 15 of the Criminal Law (Codification and Reform) Act defines realization of real risk or possibility as consisting of two elements or components. These are, a component of awareness by the accused that his conduct might give rise to the consequence or that the consequence in question would exist given the nature of conduct engaged in by the accused and the second component consists in recklessness as to whether the consequence will ensue or not through the continued engagement in the conduct. Where awareness is proved, recklessness shall be inferred from the fact that the consequence actually ensued or the consequence actually existed when the accused continued to engage in the conduct.

The accused in this case deliberately armed himself with a dangerous weapon, an okapi knife. He appreciated its potential to cause injury or death because he said that he intended to use it to scare the deceased. The deceased was not armed. The accused did not give a convincing explanation as to why he carried the knife when he went to the deceased’s flat. The court found the accused’s explanation that he always carried the okapi knife for use in cutting fruits to be ludicrous. The accused blocked the deceased from leaving the flat. He was clearly capable of managing faculties. The use of the knife was totally uncalled for. The accuse aimed at a dangerous part of the body and by his own admission slit the deceased’s throat 4 times. The accused consciously left the hopeless deceased at the murder scene and made away from the camp to escape from likely retribution by other persons at the camp.

The accused clearly appreciated what he was doing and cannot escape the consequence of his actions. In his favour, it is accepted that he did not deliberately form the intention to murder the deceased. His evidence that he was in a strained relationship with the deceased was not controverted. There was no eye witness to what happened in the flat. The accused was able to give an account of what happened and the defence of loss of sanity or momentary loss of sanity is not open to him. He did engage in an altercation with the deceased and he acted under emotional stress and a degree of diminished responsibility. However the accused could appreciate the goings on and the court finds that when he slit the deceased’s throat, he appreciated what he was doing and did so in full realization of the possibility that his conduct could result in the death of the deceased and continued to engage in that conduct nonetheless.

In the circumstances the accused is found guilty of the murder of Martha Dondo as defined under s 47 (1) (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*]

SENTENCE

In assessing sentence in this matter, the court takes into account the mitigating factors which have been submitted by your legal practitioner. We will take into account that you acted in circumstances of provocation. We already made a finding that there was some element of diminished responsibility that you suffered from. We have pointed out that in terms of the law; diminished responsibility is relevant to sentence. We are guided accordingly and we will take that aspect into account.

We take into account that you are a first offender. Regrettably you are a first offender whose first conviction relates to a very serious offence. That notwithstanding, we will take into account that it is the first time you have had a brush with the law. You are a young man 28 years old. We have been told that you have dependants following the death of your father and that these dependants rely on you. We have been told that you are apologetic for what you did. Indeed it was the evidence coming from the state witnesses that your actions were out of character. We were told that you were otherwise a loving husband whose interest was to make your marriage succeed.

Against you is as indicated the fact that you committed have been convicted of a very serious offence. Section 48 of the constitution provides as a fundamental human right, the right to life. And that right can only be taken away by law or by natural processes. Where such life is lost unlawfully, the courts must play their part in showing that society is loathe to persons who take other persons lives. We agree with the state counsel that the courts must be safeguard the sanctity of human lives.

You are a trained person. You used a dangerous weapon to attack the deceased. The way you attacked the deceased and the injuries you inflicted can be likened to somebody who was slaughtering a chicken. You slit the deceased’s throat, not once, not twice, not thrice but four times. And clearly after committing that gruesome act, you decided to leave the deceased in that hapless and helpless condition. Your moral blameworthiness is high in the extreme. We accept that the proper approach is not for the court itself to be retributive. Your legal practitioner Miss *Malaba* has submitted that the court should not adopted a measure for measure approach. We agree. We will not be clouded by the callousness or the gruesome nature of the way you committed this offence to the exclusion of other relevant factors that the court must take into account in assessing sentence. The most important factor is your degree or level of moral blameworthiness.

Cases of domestic violence as submitted by the prosecutor unfortunately are on the rise. It is high time and the court must continue to drum it upon persons that domestic disputes should not be resolved through recourse to violence. We are a civilised society.

In circumstances where there is a marriage relationship, there are ways of trying to deal with issues of disagreements in marriages. Couples must be reminded that our society promotes dialogue between families where there are disagreements in marriages

Turning to the use of violence where there is no referee ends up with disastrous consequences as in this case. You had your misgivings and suspicious about your wife’s behaviours. You said that most of the arguments that you had were centered on alleged acts of infidelity. We assume that in as much as you went through the processes of lobola, you would be aware; that such issues are best discussed with the wife’s aunties. Once you take it upon yourself to personally resolve your problems, the risk or potential for violence cannot be discounted.

This is a bad case where life was needlessly lost. We take into account that the death of the deceased is something that you will have to live with for the rest of your life. It is a stigma that you can no longer remove from your being. You are shall always be referred to as a wife killer. That in itself is a punishment. We have considered the aggravating features that the prosecutor has alluded to including the cases that he has citied. We have in equal measure considered the mitigatory circumstances submitted by Miss *Malaba* on your behalf.

Sentencing is a process that involves a discretion that is reposed in the trial court. Therefore any decided cases are more persuasive than binding. Indeed it would be a misdirection if this court were to adopt a tariff approach to sentence. Each case depends on its merits. And the sentencing provisions for an offence of murder under the Criminal Law Codification and Reform Act leaves the court with a discretion which ranges from passing a sentence of death to any other sentence.

As we have indicated this was just a senseless killing. We consider it appropriate to impose a lengthy custodial sentence. But because of its length we will not suspend a portion of that sentence. We take guidance from the Supreme Court authorities which are to the effect that where a lengthy sentence is to imposed, there is no useful function to be saved by suspending a portion of it because if the lengthy sentence does not reform the offender then the suspended sentence would be unlikely to have that effect.

Therefore taking into account all the circumstances of this case including all the aggravatory and mitigatory factors, you are sentenced to imprisonment for a period of 18 years.

*National Prosecuting Authority*, State’s legal practitioners

*Kantor & Immerman*, accused’s legal practitioners