

STATE  
versus  
TITUS MABVUREGUDO

HIGH COURT OF ZIMBABWE  
HUNGWE J  
MUTARE, 24 & 27 October 2017 and 1 November 2017

### **Criminal Trial**

**Assessors: 1. Rajah**  
**2. Chagonda**

*Mrs J Matsikidze*, for the state  
*Miss T Gutuza*, for the accused

HUNGWE J: The accused faces a charge of murder it being alleged that on 4 January 2017 at Mavhuka Village, Buhera he unlawfully and with intent to kill, or realising the real risk or possibility that his conduct may cause death, struck Rejoice Bulelwa with a stone on the head twice thereby inflicting injuries from which Rejoice Bulelwa died.

The facts in this case are largely common cause. These can be summarized as follows. On the morning of 4 January 2017, accused quarrelled with his common law wife Rejoice Bulelwa (“the deceased”). One of the reasons for the quarrel was that accused had announced that he intended to go out in search of employment without the company of his wife. The wife did not want to be left at home with her mother-in-law. Notwithstanding her wishes, he was determined to undertake the journey. At the appropriate time, she packed a suit-case in which both their clothes were contained. His mother was aware of this source of disagreement when they both left home. What happened along the way is not clear. What is not in dispute, however, is that it is during this journey that the wife lost her life at her husband’s hands.

The accused initially vehemently denied that he killed his wife. However, under cross-examination, he eventually agreed that he had killed his wife. His version regarding how he

had done so varied depending on whom he was addressing. On 3 January 2017, in his statement to the police, he had created the impression to the police that he did not kill his wife. He said, in the statement, that when they both left home they had a disagreement as she did not want him to go on a job-hunting journey. She did not want him to go alone, so she had accompanied him when they left home. Along the way, after a discussion, he convinced her to go back home. She asked for the suit-case. He gave it to her. She then took her way home. He continued on his journey in the opposite direction. He found employment and was engaged. He later learnt of his wife's death when police officers arrested him on 10 January 2017.

To his legal practitioner, *Ms Gutuza*, the accused gave a different version from which she prepared his defence outline. In it, the accused described the unhappy differences that arouse between himself and his wife on the day he left home. He says that as she had refused to remain behind, they had embarked on this journey together. Along the way, she had suddenly grabbed away their suit-case of clothes away from him and began to run away. He had chased after her. As she ran, she tripped over and fell to the ground. When he got to where she had fallen, he realised that she had hit her head against a stone and injured herself. He tried to render first aid. He realised that the wound was mortal. He lost her in the process. In shock, anguish and panic, he was confused by the sudden turn of events. He, in the heat of the moment made the foolish decision to bury her. To this end, he decided to use a shallow pit nearby as a makeshift grave. After the unceremonious burial of his wife, he had continued with his journey in search of employment as if nothing had happened. He explained that he did so because he feared that no-one would believe him. As such he would be wrongly accused of murder if he had decided to notify anyone of the accidental death of his wife.

In court he gave yet another version. He testified that he had left home alone initially. His wife however soon followed and caught up with him. When she caught up with him, they had quarrelled over the issue as to whether she should remain at home or go with him. After going about 300m he testified that they got to the edge of their field. There is an open space. They pushed and shoved and eventually after he pushed her, she then ran away. He continued with his journey. All of a sudden, he realised that she had returned and caught up with him. Again, after a brief struggle with her she had taken to her heels. He again gave chase. In the chase that followed, the deceased outpaced him. Out of frustration, he picked up a tennis-ball size stone which he hurled at her. The stone found its mark on the deceased's head. The deceased fell down. He approached her where she lay. When he got to where she had fallen, he discovered that she had died in the fall. The fall had been caused by the stone blow to the

head. He panicked and buried her in a shallow grave. After burying her, he testified that he went on his way as he had initially planned. He had subsequently secured employment at one of the witnesses' homestead. He was arrested a few days afterwards after the body of his dead wife had been discovered.

The inconsistencies in his stories was pretty obvious even to the accused himself. To begin with, when he led the police in making indications at the scene of crime on 10 January 2017, he had told the police that he had pushed the deceased to the ground; she had fallen down; he then picked a huge stone which he then used to crash the deceased's head. He pointed the stone to the police and the police produced this stone here in court as exh 6, it weighed 11.6 kilograms. The injuries observed on the deceased by Doctor Nyafesa are consistent with the stone of the size of exh 6 rather than the tennis ball size stone which he claimed to have used to strike her when he was chasing her. When subjected to extensive cross-examination by Mrs *Matsikidze*, he buckled under that pressure and admitted that he had no defence to the charge of murder. The question is whether, by using exhibit 6 to crash the deceased's head, he intended to kill her. In our view, this question must be answered in the positive. The stone is a big one. One can describe it as a small boulder. To aim a stone of that size to another person's head is a clear indication that one's objective is to kill that person. Indeed this was the obviously intended result.

Indeed, Miss *Gutuza* had no option but to concede this position. It is clear to us that the accused had the motive, the opportunity and the tools as well as the time to commit this grizzly crime. What he lacked, however, was an objectively reasonable excuse for committing this crime.

In our view, he cannot escape a finding of guilty of murder as defined in s 47 (1) (a) of the Criminal Law Codification and Reform Act [*Chapter 9:23*].

### **Sentence**

In assessing sentence we take into account what your learned counsel submitted on your behalf. We thank her for her submissions which we find quite forceful. This is in spite of the

fact that she faced a truly bad case to present to court. I make this observation in light of the fact in our view there are more aggravating features in your case than the mitigatory ones. Not least is the fact that you killed your wife. This is the worst form of domestic violence. She died because she was your wife who only wanted to be with you. She did not want to be separated from you. That was her only crime. You failed to advance to the court why else you brutally killed her. Society expects husbands to love, cherish and protect their wives, not to brutalise them as you did on this occasion. Your conduct offends public expectation and everything society stands for. The brutality in the manner in which you committed this crime exhibits exceptional cruelty. In our view, there is every reason to pass a harsh sentence which reflects appropriately the shock with which your conduct was received by the community.

After having killed her, you subjected her to sub-human treatment by burying her remains in a shallow grave and not announcing her death to her people. The killing itself was just as vicious as much as it was brutal in light of the fact that you used the brute force of a huge bolder to crash her head. We were quite perplexed as to how a human being can perpetrate such an atrocity on another. This crime, as I have pointed out, is another bad example of domestic violence. There is nothing that can bring her back to life. It only remains with this court to pass a sentence which expresses society's abhorrence of this type of conduct.

You are, therefore, sentenced to **25 years' imprisonment.**

*National Prosecuting Authority, state's legal practitioners*  
*Bere Brothers, accused's legal practitioners*