

THE STATE

Versus

WIKLOVE VURAYAI

And

MUNYARADZI VURAYAI

HIGH COURT OF ZIMBABWE  
MAWADZE J,  
MASVINGO, 14, 15, 17 MAY & 15 JUNE, 2018

**Assessors**

1. Mr Mutomba
2. Mr Nish

**Criminal Trial**

*T. Chikwati* for the state

*C. Maboke* for accused 1

*M Mureri* for accused 2

MAWADZE J: This is a rather unusual case in which both accused persons are facing two counts of murder as defined s 47(1) of the Criminal Law (Codification and Reform) Act [Cap 9:23] committed on the same day and at the same place.

Initially both accused persons were jointly charged with Calvin Vurayai and Tafara Joramu who are now at large and a warrants for their arrest were issued. A separation of trial was granted hence the proceedings are only in respect of Accused 1 Wiklove Vurayai (Wiklove) and Accused 2 Munyaradzi Vurayai (Munyaradzi).

The charges are that on 10 March 2016 each of the accused persons or all of them caused the death of Saul Kani (hereinafter the 1<sup>st</sup> deceased) and Pauro Stanslas Masimura (hereinafter the 2<sup>nd</sup> deceased) by assaulting them with iron bars and booted feet at Shashe business centre in Mashava.

Accused 1 Wiklove is aged 28 years and accused 2 Munyaradzi is 25 years. They are both brothers with one Calvin Vurayai. Tafara Joram is their nephew. They all reside in Hwarikwari Village, Headman Madamombe in Chivi, Masvingo.

Both the now deceased, that is 1<sup>st</sup> deceased Saul Kani (Saul) and 2<sup>nd</sup> deceased Pauro Stanssus Masimura (Pauro) resided in Murove Village, Headman Madamombe, Chivi, Masvingo. The 1<sup>st</sup> deceased Saul was, 31 years and the 2<sup>nd</sup> deceased Pauro 65 years old.

On 10 March 2016 the accused persons together with their alleged accomplices Calvin Vurayai and Tafara Joram were at Shashe business centre at night. The now deceased persons and other patrons were also at the same business centre. They were all enjoying themselves drinking beer at the bottle stores at the said business centre.

It is alleged that the accused persons had an altercation with one Thomas Ndambira inside Mudziro bottle store and that the 2<sup>nd</sup> deceased Pauro inquired what was wrong as Thomas Ndambira sought refuge behind 2<sup>nd</sup> deceased Pauro. The state alleges accused persons attacked the 2<sup>nd</sup> deceased Pauro and that the 2<sup>nd</sup> deceased Pauro sons Golden Masimura and Simbarashe Masimura also present in the bottle store intervened to rescue their father 2<sup>nd</sup> deceased Pauro. During the said melee Thomas Ndambira is alleged to have hit accused 1 Wiklove with an iron bar on the head causing a deep cut and briefly rendering accused 1 Wiklove unconscious. It is said accused 1 Wiklove was resuscitated by 1<sup>st</sup> deceased Saul who poured water on him.

It is the state case that accused 1's brothers that is accused 2 Munyaradzi, Calvin and their nephew Tafara Joram attacked the 2<sup>nd</sup> deceased sons Golden Masimura and Simbarashe Masimura who both fled leaving their 65-year-old father Pauro Masimura.

The state alleges that all the accused persons turned on to the 2<sup>nd</sup> deceased Pauro whom they assaulted with iron bars and bricks until he was unconscious. The 1<sup>st</sup> deceased Saul tried to assist the 2<sup>nd</sup> deceased Pauro and it is alleged the 1<sup>st</sup> deceased Saul was also attacked by the accused persons in the same manner until he was unconscious. The police were later called in

and both deceased persons were ferried to Masvingo Provincial Hospital after which they were transferred to Parirenyatwa hospital due to the severity of the injuries where the 1<sup>st</sup> deceased Saul died on 14 March 2016 and the 2<sup>nd</sup> deceased Pauro died on 17 March 2016.

The defence proffered by accused 1 Wiklove is that he never attacked any of the deceased persons at all on the day in question. Accused 1 Wiklove said all started when Thomas Ndambira confronted accused 1 Wiklove in Madziro bottle store ordering him not to illegally mine gold in Thomas Ndambira's village, an activity accused 1 and his accomplices were engaged in together with many other local gold panners. Accused 1 Wiklove said this altercation degenerated into a fist fight with Thomas Ndambira and that his alleged accomplices stopped the fight. Accused 1 Wiklove said villagers from Thomas Ndambira's village then declared war against accused 1 Wiklove and his alleged accomplices who were thereafter attacked inside the bottle store. Accused 1 Wiklove said he tried to flee but was struck on the head with an iron bar by Thomas Ndambira as he tried to get out of the bottle store causing him to fall unconscious. As a result, accused 1 Wiklove said he is unaware as to what befell the now deceased persons as he was unconscious. Accused 1 Wiklove said he had no cause at all to fight or injure both deceased persons.

This is the same version accused 1 Wiklove maintained in his evidence in chief and under cross examination. Accused 1 Wiklove insisted throughout the trial that he does not know how both the 1<sup>st</sup> deceased Saul and 2<sup>nd</sup> deceased Pauro were fatally injured. In fact, accused 1 said he is surprised to be falsely implicated in their demise. Instead he maintained that he was a victim of this brawl as he sustained a serious head injury inflicted by Thomas Ndambira.

Accused 2 Munyaradzi's version as per his defence and evidence is that a fist fight ensued among deceased persons and their relatives against accused 1 Wiklove accused 2 Munyaradzi, Calvin Vurayai and Tafara Joram. During the ensuing fight he said accused 1 Wiklove was attacked with a machete on the head by Thomas Ndambira and fell unconscious. Accused 2 said the 1<sup>st</sup> deceased Saul was mistakenly struck by Thomas Ndambira with a stone as Thomas Ndambira intended to strike accused 2 Munyaradzi and his alleged accomplices. Accused 2 Munyaradzi said this is how 1<sup>st</sup> deceased Saul was fatally injured. Accused 2 Munyaradzi said the 2<sup>nd</sup> deceased Pauro was injured in the same manner, a deflected blow scenario, by one of 2<sup>nd</sup> deceased's sons who intended to hit accused 2 Munyaradzi but missed and fatally injured 2<sup>nd</sup> deceased Pauro. Accused 2 Munyaradzi said we did not attack any of the deceased person. Instead he said he carried accused 1 Wiklove who had been seriously

injured and unconscious until they got home. Accused 2 said when he and accused 1 Wiklove left, his alleged accomplices Calvin Vurayai and Tafara Joramu were still engaged in the fist fight with the now deceased persons and their relatives.

Accused 2 maintained in his evidence that he never attacked any of the deceased persons but that he and his alleged accomplices were victims of an attack by people from the now deceased persons' village over disputed gold claims which they were all illegally exploiting. Accused 2 Munyaradzi said indeed 1<sup>st</sup> deceased Saul poured some water on accused 1 Wiklove who had been rendered unconscious by Thomas Ndambira after being hit with an iron bar on the head. He said it was during that process that Thomas Ndambira threw a stone and mistakenly hit 1<sup>st</sup> deceased Saul who fell down. Accused 2 Munyaradzi said after he carried his unconscious brother Wiklove home he later surrendered himself to Mashava police after he gathered police were looking for him and that he had nothing to fear as he was innocent.

Our task is to assess whether the version given by both accused persons is indeed correct. As already said accused persons' alleged accomplices Calvin Vurayai and Tafara Joramu are not part of this trial. Further Thomas Ndambira who is continuously implicated in this brawl did not testify.

The cause of death of both 1<sup>st</sup> deceased Saul and 2<sup>nd</sup> deceased Pauro is not in issue. They both died as a result of injuries inflicted upon them as per the post mortem reports Exhibit 3 and Exhibit 4, which show the cause of their deaths as subdural haematoma and head trauma arising from assault. The 2<sup>nd</sup> deceased Pauro also suffered from pneumonia aspiration. The evidence of Doctor Gonzalez who carried out the post mortem examinations is uncontested and was admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:23*].

During the course of the trial two iron bars Exhibit 1 which is 1-metre-long and weighs 2.809 kg and Exhibit 2 which is 1,95 m long and weighing 5.045 kg were produced by consent. These implements are used for illegally gold panning and the state alleges they are part of the arsenal accused persons used to attack the now deceased persons. All we noted is that these iron bars are indeed lethal weapons which can inflict fatal injuries.

We now turn to the evidence led from 7 state witnesses.

What emerges from the evidence is that accused persons initially had an altercation with the 2<sup>nd</sup> deceased Pauro's nephew one Vincent over some \$1.00 allegedly owed to one of the accused persons and that the 2<sup>nd</sup> deceased Pauro intervened as an elderly person by telling his nephew to go home. This is clear from the evidence of 2<sup>nd</sup> deceased Pauro's sons Isheunesu Masimura and Golden Masimura.

The state led evidence from Nyengeterai Zvavatonga a bar lady in Mudziro bottle store; John Kaza a fellow patron and villager who was in Mudziro bottle store; Isheunesu Masimura, Golden Masimura both sons of the 2<sup>nd</sup> deceased Pauro; the investigating officer Sgt. Shepherd Musindo and Lloyd Mutombo also a fellow villager, who was at Shashe business centre.

We now turn to that evidence.

1. Sgt Shepherd Musindo (Sgt Musindo)

Sgt Musindo testified that when he attended the scene he found three people, that is the two deceased persons Saul and Pauro and one Lloyd Mutombo severely injured at Shashe business centre. He said they all had serious head injuries and bleeding from the nose and mouth. None of them could talk. He recovered iron bars Exhibit 1 and Exhibit 2 although he was advised some stones or farm bricks were also used to injure the now deceased persons and Lloyd Mutombo. He ferried the 3 injured persons to Masvingo General Hospital and said due to the severity of the injuries they were transferred to Parirenyatwa hospital where both deceased persons later passed on. A separate docket was opened in respect of Lloyd Mutombo who survived the injuries and also Golden Masimura who was stabbed with a knife. These matters are yet to be finalised. Sgt Musindo confirmed accused 1 Wiklove was injured on the head and that he was arrested while being hospitalised at Chivi District hospital. He confirmed that accused 2 Munyaradzi and his alleged accomplices surrendered to the police. His evidence is largely uncontested and does not take the state case much further.

2. Lloyd Mutombo (Mutombo)

Mutombo was at Shashe business centre on the day in question and at Makava bottle store separate from Mudziro bottle store where this altercation started. His evidence is that he was just caught in the cross fire as it were and ended up severely injured after which he was hospitalised at Masvingo General hospital and Parirenyatwa hospital.

Mutombo said on that day at about 2200 hrs he left Makava bottle store proceeding to Mudziro bottle store unaware that “a war” had erupted at the latter. He said as he innocently walked Calvin Vurayai who was in the company of accused 1 Wiklove and accused 2 Munyaradzi confronted him demanding that he identified himself. His “crime” was that he stays in the same village with the deceased persons. Mutombo said Calvin held him by the throat and accused 1 Wiklove pronounced that he was to join fellow villagers whom accused persons said they had disciplined. He said both Calvin Vurayai and accused 1 Wiklove tripped him as accused 1 Wiklove throttled him. As he fell accused 1 Wiklove hit him with an iron bar at back of head rendering him unconscious. Mutombo said he only gained consciousness the next day at 1600 hrs when he found himself admitted in Masvingo hospital from where he was transferred to Parirenyatwa hospital in Harare.

Mutombo said he does not even know why he was attacked by accused persons.

The evidence of Mutombo rebuts accused 1 Wiklove assertion that he was unconscious throughout this incident. It also shows that accused persons were virtually on a warpath attacking persons for no apparent reason. Mutombo’s evidence is uncontroverted and implicates both accused 1 Wiklove and accused 2 Munyaradzi.

### 3. Christopher Hofisi (Hofisi)

Hofisi is a fellow villager and was in Mudziro bottle store on that night. He said accused 1 was hit with an iron bar on the head and fell down. He did not see the assailant. Hofisi said the 1<sup>st</sup> deceased Saul rushed to fetch water and assisted accused 1 Wiklove by pouring water on accused 1. He said accused 1 Wiklove regained consciousness and woke up.

Hofisi said after about 45 minutes he left Mudziro bottle store for the other bottle store. On his way he was surprised to see the 1<sup>st</sup> deceased Saul lying down injured, he tried to help him but some young men came running threatening to also injure him wielding iron bars. He was unable to identify them he fled for dear life and sought refuge in one of the bottle stores until police arrived at 0400 hrs and when he came out he found out that both deceased persons and Mutombo had been severely injured. His evidence is not challenged and it confirms that on that night Shashe business centre had been turned into a war zone and no one was spared or safe.

#### **4. Golden Masimura (Golden)**

As already said he is the son of 2<sup>nd</sup> deceased Pauro and was in Mudziro bottle store. Golden said after their nephew Vincent had left for home accused persons started an altercation with one Thomas Ndambira who in turn sought refuge behind the 2<sup>nd</sup> deceased Pauro. He said the 2<sup>nd</sup> deceased Pauro tried to calm down accused persons but Tafara Joramu assaulted the 2<sup>nd</sup> deceased Pauro. Golden said realising his father Pauro was under attack he rushed to assist him but accused 1 Wiklove, accused 2 Munyaradzi and Calvin Vurayai blocked him. During the altercation he said accused 1 Wiklove stabbed him with a knife on left shoulder and twice on the head. He showed us a healed stabbed wound on the shoulder.

Golden said his brother Isheunesu Masimura intervened to disarm accused 1 Wiklove and this gave Golden a chance to flee. As he fled his father the 2<sup>nd</sup> deceased Pauro was being held by Tafara Joramu. He managed to get home after which he went to the police to report and was hospitalised.

The evidence of Golden shows that accused persons were indeed the aggressors and not innocent victims. In fact, when Golden fled none of the deceased persons had been injured and accused 1 had not been injured also.

#### **5. Nyengeterai Zvavatonga (Nyengeterai)**

Nyengeterai was the bar lady in Mudziro bottle store and well known to both deceased persons and accused persons as local persons.

She testified that her attention was drawn when accused 1 Wiklove had an altercation with Thomas Ndambira and that Thomas Ndambira sought refuge behind 2<sup>nd</sup> deceased Pauro who inquired why there was the altercation. She said accused 1 Wiklove turned to 2<sup>nd</sup> deceased Pauro and assaulted him. This caused 2<sup>nd</sup> deceased Pauro's sons to rush to protect their father and a fight ensued between accused persons and 2<sup>nd</sup> deceased Pauro's sons. Nyengeterai said in the ensuing melee accused 1 Wiklove was hit on the head with an iron bar but she did not identify the assailant. Accused 1 Wiklove fell down and patrons fled from the bottle store.

Nyengeterai said 1<sup>st</sup> deceased Saul took water and helped accused 1 Wiklove by pouring water on him until accused 1 Wiklove gained consciousness. She remained in the bottle store fearful of the commotion which was going on outside.

Nyengeterai said 1<sup>st</sup> deceased Saul later came into the bottle store asking for a torch saying he wanted to check on 2<sup>nd</sup> deceased Pauro who was lying down outside injured. She had no torch. She explained how 1<sup>st</sup> deceased was attacked.

Nyengeterai said as 1<sup>st</sup> deceased left the bottle store accused 2 Munyaradzi and Calvin Vurayai tripped him as accused 2 held him. The 1<sup>st</sup> deceased fell just outside the bottle store and was assaulted as follows;

- (i) Calvin Vurayai picked a big stone and hit the 1<sup>st</sup> deceased on the head who cried out in pain.
- (ii) Accused 2 Munyaradzi and Calvin Vurayai then used iron bars Exhibit 1 and Exhibit 2 to assault the 1<sup>st</sup> deceased Saul with severe force directing blows on the head and ribs.
- (iii) Accused 1 Wiklove who had now gained consciousness joined in the assault of 1<sup>st</sup> deceased Saul using the shorter iron bar which he took from Calvin Vurayai and shouted that he would kill the 1<sup>st</sup> deceased Saul.
- (iv) That accused 1, accused 2 and Calvin Vurayai only stopped the assault when the 1<sup>st</sup> deceased Saul was unconscious, no longer crying out and seemingly dead.
- (v) She did not witness how 2<sup>nd</sup> deceased Pauro was injured.

Nyengeterai refuted than accused 1 Wiklove was unconscious for a long time but that he gained consciousness when the 1<sup>st</sup> deceased Saul assisted him by pouring 3 buckets of water after which he joined accused 2 and Calvin Vurayai in attacking the 1<sup>st</sup> deceased Saul. She indicated that she clearly saw how accused persons attacked the 1<sup>st</sup> deceased Saul as the scene of crime was well illuminated by lights on verandah of her bottle store. She only came out of the bottle store after the police came and realised that both deceased had been severely injured all over the body especially on the head and bleeding from the nose.

In our assessment Nyengeterai's evidence is very clear on how the 1<sup>st</sup> deceased Saul was fatally injured. She was on duty and sober hence clearly perceived what happened. Nyengeterai is unbiased. She is not related to either the deceased persons or accused persons.

Clearly she has no interest in the matter. Both accused persons and the victims were patrons in her bottle store. She was an impartial witness who stated that indeed accused 1 Wiklove was injured and rendered unconscious for a brief period. Indeed, she limited herself to what she perceived as she said she did not see how the 2<sup>nd</sup> deceased Pauro was injured. To show her objectivity and sincerity she confirmed that the 2<sup>nd</sup> deceased Pauro's sons fought accused 1, 2 and Calvin Vurayai with clenched fists initially inside the bottle store. It is for these reasons that we accept her evidence.

#### 6. John Kaza (John)

John is well known to both deceased persons and accused persons. He too was in Mudziro bottle store and corroborates in material respect Nyengeterai's evidence.

John said after Thomas Ndambira had an altercation with accused persons and Calvin Vurayai he sought refuge behind 2<sup>nd</sup> deceased Pauro and that Calvin Vurayai assaulted 2<sup>nd</sup> deceased for inquiring what was wrong. This resulted in 2<sup>nd</sup> deceased Pauro sons, Golden, Simbarashe and two others to intervene resulting in a fist fight with the accused Tafara Joram. He said during the fight the 2<sup>nd</sup> deceased Pauro's son Golden was stabbed with a knife inside the bottle store and many patrons fled out of the bottle store. He realised accused 1 Wiklove had been injured and was lying on the verandah of the bottle store. He did not see the assailant. He said the 1<sup>st</sup> deceased Saul administered first aid by pouring water on accused 1 Wiklove as 2<sup>nd</sup> deceased's sons were still fighting with accused 2, Calvin Vurayai and Tafara Joram. The 2<sup>nd</sup> deceased Pauro also got out of the bottle store. John said when he got out of the bottle store he found 2<sup>nd</sup> deceased Pauro lying near a shop injured and that accused 2 Munyaradzi and Calvin were holding one Isheanesu saying they wanted to discipline him and cause him to lie near his father 2<sup>nd</sup> deceased Pauro already injured. John said he intervened and told accused 2 Munyaradzi and Calvin Vurayai to let go Isheunesu and that Isheunesu managed to flee. John said accused 2 Munyaradzi and Calvin Vurayai were incensed by his intervention and turned to John who in turn fled from the menacing brothers and hid behind a grinding mill. He said from this vantage position he witnessed the conduct of accused persons as follows;

- (a) Accused 1 Wiklove, who had gained consciousness teamed up with accused 2 Munyaradzi, Calvin Vurayai and Tafara Joram to assault the 2<sup>nd</sup> deceased Pauro

who was already lying down injured, they took turns using iron bars Exhibit 1 and Exhibit 2. Severe force was used and blows were directed at 2<sup>nd</sup> deceased Pauro's head and chest.

- (b) Accused 2 Munyaradzi picked a very big stone and hit the 2<sup>nd</sup> deceased with it.
- (c) The 2<sup>nd</sup> deceased groaned in pain and unable to get up and John was scared to intervene
- (d) John said he also realised that 1<sup>st</sup> deceased Saul had been injured as he said accused persons also moved to where 1<sup>st</sup> deceased Saul lay injured and further assaulted him with iron bars and would interchange the assault between the 1<sup>st</sup> deceased and 2<sup>nd</sup> deceased persons. The blows were indiscriminate and delivered with severe force.
- (e) As John was hiding he saw a passer-by Lloyd Mutombo coming from Makava bottle store oblivious of what was going on and he was held by accused 1 Wiklove and assaulted with iron bar. Lloyd Mutombo was left for dead as accused persons resumed the assault on the deceased persons.
- (f) John said he telephoned the police fearful of deceased persons' lives and when police later came he realised both deceased persons had severe head injuries.

In our assessment John gave clear and free flowing evidence. He has no interest in the matter. There is nothing to suggest he was unable to see what happened. His testimony rebuts accused 1's evidence that he remained unconscious throughout this incident but that accused 1 Wiklove participated in the assault which John said lasted for an hour. He also dismissed as untrue that accused 2 Munyaradzi carried accused 1 Wiklove but participated in the assault.

#### 7. Isheunesu Masimura (Isheunesu)

Isheunesu is the son of the 2<sup>nd</sup> deceased Pauro and a sculptor.

Isheunesu said when he got into Masimure bottle store his father the 2<sup>nd</sup> deceased Pauro wanted to discuss certain family issues with him but failed as accused persons had an altercation with their nephew Vincent over a \$1.00 Calvin Vurayai said he was owed. The 2<sup>nd</sup> deceased Pauro told Vincent to go home and Vincent complied.

Isheunesu said moments later accused person had another altercation with one Thomas Ndambira whom they assaulted. Thomas Ndambira sought refuge behind 2<sup>nd</sup> deceased Pauro who inquired why accused persons were violent. He said accused

persons turned to 2<sup>nd</sup> deceased Pauro manhandling the 2<sup>nd</sup> deceased. This caused his brothers Simbarashe, Golden and nephew to intervene to restrain Tafara Joramu resulting in fists fight between accused persons and Isheunesu's relatives. He said both accused 1 Wiklove and Tafara Joramu had knives and accused 1 Wiklove stabbed Golden on the left shoulder and head. Isheunesu then intervened to restrain accused 1 Wiklove and managed to rescue Golden who was severely injured. He decided to take Golden home but realised their father 2<sup>nd</sup> deceased had remained behind hence he came back. When he returned to the bottle store he saw Thomas Ndambira hitting accused 1 Wiklove with an iron bar on the head and accused 1 Wiklove fell down unconscious. His father the 2<sup>nd</sup> deceased called for help and the 1<sup>st</sup> deceased Saul poured water on accused 1 Wiklove who moments later regained consciousness and got up. Isheunesu then explained how his father the 2<sup>nd</sup> deceased Pauro was attacked as follows;

- (i) He said accused 2 Munyaradzi, Calvin Vurayai and Tafara Joramu encircled or surrounded the 2<sup>nd</sup> deceased Pauro saying he was not clever by pretending to be a good Samaritan in asking for help in respect of accused 1 Wiklove and had caused accused persons not to recover their \$1.00 from Vincent.
- (ii) Accused 2 Munyaradzi hit the 2<sup>nd</sup> deceased with a fist.
- (iii) Calvin Vurayai delivered a blow with short iron bar causing the 1<sup>st</sup> deceased to fall down and delivered further several blows.
- (iv) Tafara Joramu picked a big stone and hit 2<sup>nd</sup> deceased Pauro in the head.
- (v) Realising that the life of his father was in danger Isheunesu pleaded with the accused persons to stop the savage attack but he was held by accused persons who said he too was to be their prey. He was hit with a brick on back and hands but John Kaza arrived and intervened which enabled him to flee.
- (vi) Isheunesu fled to the bottle store and called the 1<sup>st</sup> deceased Saul to come and possibly help the 2<sup>nd</sup> deceased and they both returned to where the accused persons and 2<sup>nd</sup> deceased Pauro were.
- (vii) The accused persons immediately attacked 1<sup>st</sup> deceased Saul with iron bars, exchanging the iron bars amongst themselves vowing to also kill the 1<sup>st</sup> deceased Saul.

- (viii) Isheunesu realised he was helpless and he fled to make report to police who returned later to the scene with him.

Isheunesu said the 2<sup>nd</sup> deceased his father had been severely injured as he could not even recognise him as his face and head were swollen. The 1<sup>st</sup> deceased Saul's head was also swollen. The 1<sup>st</sup> deceased Saul's head was also swollen. Lloyd Mutombo was also lying injured. All were helpless, unconscious and were ferried to hospital.

Despite that Isheunesu is a son to the 2<sup>nd</sup> deceased Pauro and regarded 1<sup>st</sup> deceased Saul as his nephew he gave a very clear and graphic account of what happened. Indeed, he was emotional and broke down as he narrated how his father 2<sup>nd</sup> deceased Pauro was attacked. We appreciate and understand his emotional disposition. This was not in our view some feigned demeanour but genuine emotional distress.

Isheunesu was truthful and fair minded as he admitted and revealed that accused 1 Wiklove was also attacked with iron bar and lost consciousness albeit for a brief period. He was clear on how the 1<sup>st</sup> deceased Saul was attacked and how the assault on his father the 2<sup>nd</sup> deceased unfolded. He revealed that accused persons' families paid for transport costs of ferrying both deceased's bodies from Harare for burial in Chivi and paid a beast to each deceased's family for relish to be used at both funerals. All in all, we assessed Isheunesu to be a calm, clear and truthful witness.

Our findings are that the version given by both accused persons is false. They are both clearly implicated by the state witnesses who materially corroborated each other. It is untrue that accused 1 Wiklove was perpetually unconscious and did not know how the now deceased persons were fatally injured. The evidence of accused 2 Munyaradzi is false in how both deceased persons were injured. In fact, it is so incredible that no reasonable court can accept such a poorly thought out account.

The fact of the matter is that both accused 1 Wiklove and accused 2 Munyaradzi assaulted both the 1<sup>st</sup> deceased Saul and 2<sup>nd</sup> deceased Pauro in the clear manner explained by the eye witnesses. The assaults were both brutal and prolonged rendering both victims unconscious and severely injured. Both deceased had to be hospitalised at our highest referral public hospital. They both nonetheless lost their lives. The accused persons used lethal weapons Exhibit 1 and Exhibit 2 iron bars together with stones and farm bricks. They delivered several blows indiscriminately targeting vulnerable parts of deceased persons' bodies including the

head and ribs. It is clear that both accused persons acted in common purpose as they took turns to assault their victims who were helpless and never fought back. The accused persons vowed to kill both deceased persons and left them for dead.

While we are hard pressed to find that accused persons contravened s 47(1)(a) of the Criminal Code [*Cap 9:23*] it is clear that they realised that there was a real risk or possibility that their conduct may cause death but continued to engage in that conduct despite the risk. We accordingly find both accused guilty of murder as defined in s 47(1)(b) of the Criminal Code [*Cap 9:23*].

**VERDICT:** Both accused guilty of contravening section 47(1)(b) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] – Murder with constructive intent in respect of both counts.

**SENTENCE:**

As we pointed out in the reasons for judgment this is an unusual case involving two counts of murder. This has prompted the state to point out that in terms of s 47(2)(b) of the Criminal Law (Codification and Reform) Act, [*Cap 9:23*] it is an aggravating circumstance. In that vein the state has prayed for a sentence of imprisonment for life.

Indeed, this is a very serious case when one considers the manner the offences were committed. Two people lost their lives and in the process the other two were severely injured. The sanctity of human life cannot be overemphasised. This court has said times without number that cases of murder are worryingly prevalent in Masvingo province and that young people are shockingly exhibiting scant respect for human life. They easily resort to violent conduct with an assortment of dangerous weapons at the slightest provocation or at times for no reason at all.

In this case the level of violence exhibited by the accused persons is shocking to say the least. This was a gang offence as it were. What is saddening is that the victims had not provoked or wronged the accused in any way. In fact, the victims were good Samaritans who went out of their way to ensure that peace prevailed and even tried to help the injured including accused 1. That is precisely why even accused persons conceded in their evidence that they had not been wronged by either of the deceased persons.

The assault perpetrated on both the deceased persons was prolonged and sustained. As articulated in our reasons for judgment lethal and dangerous weapons were used with severe force targeting the vulnerable parts of human anatomy. The accused persons literally turned Shashe business centre into a war zone. It should be appreciated that business centres are places of leisure and not war zones or death places. The accused persons should be disabused of the notion that they can be village bullies. In that regard a deterrent and exemplary sentence is called for more so as accused persons are not contrite at all. Their degree of moral blameworthiness is too high.

We are however mindful of mitigatory factors which have dissuaded us from imposing a sentence of life imprisonment.

Accused 1 who is now 30 years old is married with one minor child. Accused 2 is 27 years old and single. Both accused persons are unemployed and survived by engaging in illegal gold panning. Apparently they have no meaningful savings or assets.

The accused persons deserve to be treated by some measure of leniency as they are first offenders. It is apparent that the accused persons had taken alcohol although they fully appreciated what they were doing. Despite the violent conduct exhibited by the accused persons there is no evidence to suggest that these offenses were premeditated. It is a fact that the accused have been in custody from March 2016 to date and are still to stand trial in respect of other victims of their violent conduct. We have considered that the accused persons assisted in the burial of the deceased persons by transporting the bodies from Harare to Chivi, providing coffins and two beasts to be used as relish at both funerals.

In the circumstances the following sentence is appropriate.

Each accused is sentenced as follows;

**Count 1:** - 18 years imprisonment.

**Count 2:** - 18 years imprisonment

**Total** for each accused is 36 years imprisonment.