

**KUDAKWASHE MTETWA v THE STATE**

**SUPREME COURT OF ZIMBABWE  
MALABA DCJ, GOWORA JA & HLATSHWAYO JA  
BULAWAYO, NOVEMBER 26, 2013**

*R Mahachi*, for the appellant

Miss *S Ndlovu*, for the State

**GOWORA JA:** The appellant was convicted of two counts of murder with actual intent. He was sentenced to death following a finding by the High Court that there were no extenuating circumstances surrounding the commission of the offences. Although a notice of appeal against both the conviction and the sentence was filed, Mr Mahachi who appeared for the appellant indicated that he had no meaningful submissions to make against both conviction and sentence. He properly highlighted to the court the overwhelming evidence against the appellant on the basis of which the court *a quo* made the finding that there were no extenuating circumstances. The court is of the view that the concession is properly made.

The facts which are common cause are as follows. The first deceased, Meck Mtetwa was aged 66 at the time of his death. He had two wives. The appellant was the son of his senior wife Marita Mtetwa. The second deceased, Freddy Mtetwa was aged 23 when he met his death. He was the first deceased's son from the junior wife. The couple had another child, a daughter called Charity who was aged 16 at the time the offences were committed. The appellant was therefore a half brother to her and the second deceased.

On 30 January 2009, the two deceased, the appellant, the first deceased's junior wife and their daughter Charity were at the appellant's stepmother's homestead having supper. The appellant had an altercation with his half-sister Charity as a result of which the appellant stabbed her with a knife. When she protested he struck her several times with a sjambok.

The first deceased intervened and requested the appellant to surrender the knife to him. The appellant turned against the first deceased and struck him with a clenched fist on the face. He pushed the first deceased to the ground and when he fell he stabbed him with a knife several times. The stepmother and Charity ran to Farison Chemai's homestead to seek help. The second deceased who had remained behind attempted to stop the appellant from assaulting the first deceased but the appellant turned against him and stabbed him on the stomach causing his intestines to protrude.

Marita Mtetwa returned with Farison Chemai only to find Meck and Freddy lying dead. The first deceased had several penetrating wounds on the chest and left armpit. The second deceased's womb was open and his intestines were protruding out. The appellant was no longer on the scene.

The two deceased were taken to hospital where an autopsy was conducted on their remains. The post-mortem report in respect of the first deceased revealed the following injuries:

- (1) Three deep lacerations in the left axilla;
- (2) Three deep laceration on the left precordium;

- (3) One deep laceration and three superficial lacerations on the left arm; and
- (4) One deep laceration on the left intercostal space.

The cause of death was the following:

- (1) Tension pneumothorax due to stab wound to the chest and
- (2) Severe bleeding resulting in hypovolaemic shock and cardiac arrest due to multiple stab wounds.

In respect of the second deceased the post-mortem report had the following findings - abdominal stab wound on the left flank at least 7cm in length with loops of intestines extruding through the open wound. The cause of death was described as hypovolemic shock as a result of stab wound to the abdomen resulting in cardiac arrest.

In his defence the appellant stated that he, the two deceased and his step-mother had been drinking marula wine. The appellant admitted that he had struck Charity with a sjambok. He alleged that the first deceased had assaulted him and ordered him to stop the attack on Charity. He suggested that the second deceased had also joined in and started assaulting him and they overpowered him. It was his allegation that the second deceased tripped him causing him to fall. According to him the second deceased then picked up a log from the fire and started assaulting him. As the assault continued they bumped into a plate rack. The appellant said he heard a knife fall, although he thought it was a stick. He picked it up and when his father kept saying put that thing down he stabbed him with it. He said he did not realise that it was a knife, but thought it was a stick used for cutting marula fruits to prepare wine. He told the court that he only realised that it was a knife after he had stabbed the first deceased.

He said that after the fight with his father he got up and the second deceased approached him from behind and got hold of him tightly and as he turned to face him, the second deceased was accidentally cut by the knife. He said he had not intended to stab the second deceased. It was his statement that when he completed the turn, the second deceased fell down. He said when he realised that they were both dead he went to inform his mother that the two deceased had been calling him in order to fight him.

In his confirmed warned and cautioned statement the appellant stated as follows:

“I have understood this caution and I do admit the allegations levelled against me that I murdered Meck Mtetwa and Freddy Mtetwa. I first stabbed Meck Mtetwa with a knife which was in my right hand on the chest and left armpit, but I cannot remember how many times after a misunderstanding when we were drunk with ‘MUKUMBI’. I later stabbed Freddy Mtetwa with the same knife once on the stomach after he had got hold of me trying to stop me from further stabbing Meck Mtetwa. After I had stabbed them I ran away leaving them struggling with their lives. That is all I can say.”

Defence counsel conceded before the trial court that the defence of intoxication could not be sustained in the circumstances of the case, and that to do so would be misleading the court. She also conceded that the nature of the weapon used was disproportionate to the dispute and that it had been used on delicate parts of the body. She also took into account that the post-mortem report on the first deceased showed numerous injuries and use of severe force. It was conceded as well that on the fateful day the appellant was the aggressor.

On these facts, the court *a quo* correctly found that the appellant was guilty of murder with actual intent to kill in respect of both counts. Having considered all the

circumstances of the case, the court is of the unanimous view that there was no misdirection on the part of the court in respect of both convictions. The appellant deliberately and repeatedly stabbed his father who was unarmed with a dangerous knife to bring about his death. In the same tempo he attacked his brother with the same vicious knife on the stomach slashing it and exposing the intestines.

No extenuating circumstances were found because the court *a quo* held that the appellant had not taken any alcohol on the day in question as he had suggested. The evidence which was accepted by the court *a quo* was that the allegation by the appellant that he had been drinking marula wine with Farai Chemai at Chemai's home and with his father and stepmother at their own home was false. Chemai gave evidence and denied that there was any wine drinking at his home on the day in question. He said the appellant, the brother and their father had not come to his home that day. He even went on to say that he does not drink alcohol. The evidence by the appellant's stepmother was also to the effect that there was no drinking of alcohol at their home that evening. She went on to say she does not drink alcohol. It became clear from the evidence that the violent actions of the appellant were motivated by a desire to assert authority over his father and his siblings when he considered it to be challenged.

On appeal, Mr *Mahachi* was constrained to indicate that he was unable to advance any submissions in respect of extenuation. His concession cannot be faulted.

The court holds that there was no misdirection on the part of the court *a quo* in its ruling on extenuating circumstances.

The appellant was clearly intent on imposing his authority on his father and his siblings. He provoked an incident with his young sister and stabbed her with a knife. He thereafter proceeded to assault her with a sjambok in the presence of his father and stepmother and when his father remonstrated with him, he stabbed him several times with a lethal weapon. When his half-brother attempted to stop the assault on their father, the appellant cut his stomach open with the same knife. The knife which was admitted into evidence was a lethal weapon. Its blade was 14cm long and the cutting side was described by the learned judge in the court *a quo* as being very sharp. So was its tip. Both deceased died soon after being stabbed.

This Court is of the unanimous view that the appeal is devoid of merit. It is dismissed.

**MALABA DCJ:** I agree

**HLATSHWAYO JA:** I agree

*T Hara and Partners*, appellant's legal practitioners

*Attorney-General's Office*, respondent's legal practitioners