

THE STATE
versus
ADIEL MATOYI

HIGH COURT OF ZIMBABWE
MUSAKWAJ
MASVINGO, 14, 15 and 19 October 2015

Assessors: 1. Mr Dhauramanzi
2. Mr Gweru

Criminal Trial

E. Chavarika, for the state
S. Sithole, for the accused

MUSAKWAJ: The accused pleaded not guilty to contravening s 187 as read with s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

It is alleged that on 18 April 2014 and at village 5, Chipinda, chief Nhema in Zaka the accused unlawfully mandated Linos Paunganwa to kill Joseph Matoyi and provided him with two iron bars, US\$20 with a promise to pay another US\$40 and a cow after execution of the mandate. It is common cause that there was a feud between the accused and his son Joseph Matoyi. The feud centred on accusations and counter-accusations of witchcraft practices between father and son.

In denying the charge the accused claimed that Linos Paunganwa owed him maize which he borrowed in 2012. Despite demands to return the maize Linos made several excuses. Linos was aware of the antagonism between the accused and Joseph. On two occasions Linos offered to deal with Joseph but the accused demurred. It is Joseph who supplied the would be murder weapons to Linos in order to falsely incriminate the accused. The accused further claimed that the plot to incriminate him was disclosed by Alexio Chakanyuka who was one of the persons Joseph hired in the plot.

Linos testified that he used to work at a home within the accused's village. He later relocated to another village having been hired to take care of the homestead of the Chinodas. Coming from a beer drink within accused's village on 17 April 2014 Linos met the accused who offered him some work. They did not discuss the details as Linos was tipsy. He suggested that they discuss the following day.

On the following morning the accused paid Linos a visit. He suggested that Linos escort him as Linos's in-laws were present. Along the way the accused told him Joseph was a problem and requested him to kill him. The reason given was that Joseph was practising witchcraft on family members. Linos asked why the accused had opted for him. The accused told him that the touts he had previously hired from Jerera had botched the plot and squandered the money. He was also told that he came from Manicaland Province and could escape easily. He was offered US\$60 and a cow.

Linos did not intend to commit the deed although he realised that the accused was serious. He pointed out that he did not have weapons. He was invited to accused's home. In the evening he was given US\$20 and two iron bars. He identified the iron bars before the court. The US\$20 note was also produced.

Linos contacted Mathias Musingarimwi a member of the neighbourhood watch. Together they devised a plan to foil the plot and account for the accused. It was agreed that they approach the accused and tell him that the money he was offering was inadequate.

Whilst Mathias waited by the accused's cattle pen, Linos approached the accused at his home. The accused was lured to where Mathias lay in wait. A discussion on payment was conducted. As the accused turned to go back home he was apprehended by Mathias.

It would appear after the accused's arrest the case was reported in the local press. A local court was convened at village 5. The accused is said to have admitted tarnishing the image of Linos and offered him a cow as compensation. The accused also offered a cow to the chief's court.

Mathias confirmed that he resides in the same village with the accused. Their homes are separated by a river. He is a member of the neighbourhood watch. He confirmed the feud between the accused and Joseph. At some stage there was a hearing at the local court. However, the outcome of the ceremony meant to appease the accused by Joseph is hearsay as Mathias did not attend.

He also confirmed receiving a report from Linos. He also corroborated Linos

regarding the accused's arrest. He elaborated that whilst Linos and the accused conversed, he squatted in the tall grass a short distance away. When the accused turned to go back the witness then arrested him. He handed the accused to Constable Mugande at Farmers' Hall Police Base.

During cross-examination this witness stated that he heard Linos telling the accused to increase the fee as there was an additional person involved in the assignment.

Joseph Matoyi confirmed the conflict between him and the accused regarding witchcraft. The summary of state case states that Joseph approached the accused several times following complaints of witchcraft by his wife. Somehow he did not testify on this during his evidence in chief. Nonetheless he confirmed it during questioning. He downplayed the encounter as not being a confrontation. He stated that having visited the accused it is the latter who broached the subject. As to how the accused got to know about Joseph's complaint he stated that it might have emanated from a sister in-law. However, he also stated that the accused had banished him from setting foot at his home.

Joseph also stated that he got to know about the plot against him either on the 18th or the 19th April through his in-laws. He also identified the iron bars. He previously used the longer bar as a digging rod. The shorter bar was used by the accused in his work as a tinsmith. He also said he joined the Johanne Marange apostolic sect as he did not want to be involved in consulting traditional healers.

The state also produced the accused's confirmed warned and cautioned statement. In the brief statement the accused stated that he sent Linos to assault Joseph and not to kill him.

The accused testified that Linos owed him maize. When he visited Linos the latter asked what he had done with his errant son. Linos suggested that he could deal with Joseph. The accused pointed out he could be arrested. Linos then mentioned several people he had assaulted with nothing happening to him.

Later when the accused visited Linos to follow up on his maize, Linos asked if he knew that Joseph had reported to him about the plot against him. Linos then suggested a person who could use knives. The accused later met Linos at night at his home. They sat in the shade after Linos Asked for some water to drink. Linos then asked for paper with which to prepare a cigarette and subsequently left the accused and his wife in the shade. Later he came back and as the accused escorted him he was then arrested.

The accused stated that a short distance away from them was another person who had

some iron bars. He identified this person as Elliot Chakanyuka. The accused seemed to suggest that Elliot and Mathias had been hired by his son to frame him.

Whilst confirming the rift with Joseph the accused further stated that the situation improved after a ceremony had been conducted.

Elliot testified for the defence. His testimony actually incriminated the accused. Basically he stated that he was roped in to thwart the machinations of the accused. This entailed him posing as the second hit man. He was present when the accused was arrested. The surprising thing about his testimony is that Linos and Mathias made no mention of this witness. Apart from that, Elliot stated that Police Officer Mugande knew about the plot and is the one who assigned them to entrap the accused.

In terms of s 187 (2) of the Criminal Law (Codification and Reform) Act:

“(2) It shall be immaterial to a charge of incitement that

- (a) the person who was incited was unresponsive to the incitement and had no intention of acting on the incitement; or
- (b) the person who was incited did not know that what he or she was being incited to do or omit to do constituted a crime.”

Mr *Chavarika* referred to *S v Nkosiyana and Anor* 1966 (4) SA 655 in which it was held that the decisive issue is whether the accused reached out and sought to influence the mind of another person towards the commission of a crime. We know that Linos never intended to carry out the plot. He said he gave the accused the impression that he was going to carry out the assignment. He did this in order to safeguard Joseph’s life. He then immediately informed Mathias.

It is too far-fetched to accept the accused’s claim that Linos incriminated him because he was failing to return the maize he borrowed. The exhibits produced deflate that claim. It is difficult to conceive how Joseph could have laid his hands on the weapons solely to nail the accused. Joseph was no longer welcome at accused’s home.

Any doubt regarding the accused’s guilt is removed by the confirmed warned and cautioned statement. The statement was produced with the consent of the defence. The accused belatedly sought to challenge it when he was being cross-examined. He went to the extent of seeking to impugn the confirmation proceedings.

Linus’s demeanour was good. He was forthright in his testimony. On the other hand the accused was a poor and dodgy witness. During the course of Linos’s testimony the accused behaved strangely whilst seated in the dock. He initially sat looking down as if he

was not paying attention. Then he sat whilst holding the left jaw and cheek with the left palm. It was not clear whether he was bewildered or overcome with the enormity of the testimony by Linos. A Prison officer who was in attendance eventually whispered something to him and he immediately sat up straight and paid attention.

Overall, we are satisfied that the accused committed the offence. He is accordingly found guilty as charged.

National Prosecuting Authority, legal practitioners for the state
Pundu and Company, accused's legal practitioners