

**THE STATE**

**Versus**

**NTOKOZO NCUBE**

IN THE HIGH COURT OF ZIMBABWE  
MOYO J with Assessors Mr Ndlovu and Mr Maphosa  
HWANGE 3 OCTOBER 2022

**Criminal Trial**

*Mrs Gorerinho*, for the state  
*Ms T. Chikwandare*, for the accused

**MOYO J:** Accused faces a charge of murder in that it is alleged that on the 21<sup>st</sup> June 2021 and in a bushy area in Tsholotsho, he unlawfully caused the death of Mfundo Ndlovu by striking him with a log several times all over the body and thereby killing him. He pleaded Not Guilty by reason of insanity.

The state accepted the plea and the parties drew and tendered a statement of agreed facts which was marked Exhibit 1. It reads as follows:

1. The accused was 38 years of age at the time this offence was committed and he resides at his own homestead, Dlamini Line, Chief Tategulu, Tsholotsho.
2. The deceased was aged 10 years at the time she met her death and she resided at Julia Masuku's homestead Dlamini Line, Chief Tategulu, Tsholotsho.
3. The accused is a known psychiatric patient.
4. On the 21<sup>st</sup> of June 2021 and at around 0800 hours the accused went to the deceased's home and asked him to accompany him, the deceased complied and they walked away together.
5. The deceased's mother who was not at home at the time they left together arrived home and was told that the accused had left with the deceased.
6. She tracked their shoe prints which led her to a bushy area where she found the deceased lying on the ground with blood coming out of his mouth and nose.

7. She screamed for help and villagers came to the scene.
8. The deceased was rushed to hospital where he died upon admission.
9. The accused's shoe prints were traced from the scene up to his grandmother's home where he was arrested.

The state also tendered a psychiatric report that was marked Exhibit 2 and it states that the accused cannot be held criminally liable for his actions as he suffered from a mental illness at the material time. It however, provides at paragraph 5 that he is a danger to society.

The post-mortem report was tendered and marked Exhibit 3, it gives the cause of death as:-

- 1) traumatic shock
- 2) assault

The evidence before us points to a conclusion that the accused cannot be held to be criminally liable for his actions as he was mentally challenged.

- 1) The accused person is accordingly found not guilty of murder by reason of insanity.
- 2) He shall be committed to Mlondolozhi Mental Institution as he is a danger to society.

*National Prosecuting Authority*, state's legal practitioners

*Mhaka and Associates*, accused's legal practitioners