

THE STATE

Versus

MAPIWA NCUBE

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessors MRS BAYE & MR MATEMBA

GWERU 18 SEPTEMBER 2023

Criminal Trial

Ms C. Hungwe for the State

Ms T. Masaka for the accused

MOYO J: Accused faces a charge of murder, it being alleged that on the 10th of December 2021 at Village Kufa, Headman Chirima, Chief Mkoka, Gokwe South, he unlawfully caused the death of Nkosiyazi Mpofu by striking him with an axe on the back of the head, trampling upon the deceased's head with booted feet, striking him with a sjambok several times and with an iron bar all over the body and thereby causing his death. Accused pleaded not guilty by reason of insanity. The parties drew a statement of agreed facts, it was tendered and marked Exhibit 1 it reads as follows:

- “1. Mapiwa Ncube (hereunder called the accused person) was aged 49 years at the time of the commission of the alleged offence. He resides at Kufa, Headman Chirima, Chief Mkoka, Gokwe South in the Midlands Province.
2. Nkosiyazi Mpofu (hereinafter referred to as deceased) was aged 36 years old at the time he met his death. He resided at Kufa Village, Headman Chirima, Chief Mkoka, Gokwe South during his lifetime.
3. The accused and deceased are related as cousin brothers.
4. On the 10th of December 2021 the accused and deceased were seated together with deceased's wife Sibusisiwe Sikumisawa and Precious Ncube when a misunderstanding arose between the accused and deceased. Accused struck the deceased once on the back of head with a small axe and deceased fell on the ground. Accused trampled upon the deceased's head several times with booted feet. Accused went on to assault deceased with an iron bar and sjambok accusing the deceased of bewitching him. The accused was refrained by his

neighbours George Mashame and Joel Sibanda. Deceased was ferried to Gokwe Hospital and was pronounced dead upon arrival.

5. Matter was reported to the police leading to the arrest of the accused person.
6. On the 16th of December 2021 Dr S. Pesanai examined the remains of the deceased and cause of death could not be ascertained due to advanced decomposition.
7. The accused person was examined by a psychiatrist Dr Elena Poskotchinowa on 16/03/22, 14/04/22, 11/09/22, 20/07/22 and 15/09/22 at Mlondolozi Special Institution.
8. Dr Elena Poskotchinowa concluded that the accused was suffering from mental disorder, substance induced psychosis. She concluded that the accused was mentally disturbed to such an extent that he should not be held highly responsible for his actions.
9. The accused accepts the evidence of the state witnesses as well as contents of the post mortem report and that at the time of the commission of the alleged offence he was suffering from a mental disorder to such an extent that he should not be held responsible for his actions.
10. The state concedes to the fact that the accused was suffering from a mental disorder at the time of the commission of the alleged offence and it is appropriate for the court to return a special verdict of Not Guilty by reason of insanity in terms of section 29(2) of Mental Health Act Chapter 15:12.”

The post mortem report and the psychiatrist’s report were also tendered and duly marked. Also tendered was the axe, the sjambok that was allegedly used they were all duly marked. From the evidence before this court, it is this court’s finding that the accused person cannot be held criminally liable for his actions as he was mentally challenged.

However, he is a danger to society and must be committed.

I accordingly make the following order:

1. Accused is found not guilty of murder by reason of insanity.

2. Accused is committed to Mlondolozhi Special Institute as he is a danger to society.

National Prosecuting Authority, state's legal practitioners
Farai & Associates, accused's legal practitioners