

**THE STATE**

**Versus**

**CLAYTON JENKINS**

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr. Ndubiwa and Mr. Ndlovu

HWANGE 4 March 2024

**Criminal trial**

*Mrs. M. Cheda* for the State

*Miss. J. Change* for the accused

**DUBE-BANDA J:**

[1] The accused is appearing before this court charged with the crime of murder as defined in section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. It being alleged that on 4 June 2022 the accused unlawfully caused the death of Jelous Viki Sibanda referred to as the deceased by striking him once on the head with a log intending to kill her or realising that there was a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[2] The accused pleaded not guilty and contended at the of the commission of this offence he was suffering from a mental disorder as defined in the Mental Health Act [Chapter 15:12]. The accused admits that he caused the death of the deceased but pleads lack of culpability based on mental illness. He contended that at the material time he was suffering from a mental disorder, and therefore he could not be held criminally liable for his conduct. The prosecutor accepted the plea of not guilty premised on insanity.

[3] The prosecutor tendered a statement of agreed facts. The statement is marked Annexure "A" and contains what the State and the accused have agreed constitutes common cause facts, which are these:

- i. The accused was aged 36 years at the time of the commission of the offence and he resides at Stand 1, Village 1, Riverbank Nyamandlovu.
- ii. The deceased was aged 85 years at the time he met his death. He used to reside at the same address as accused.

- iii. Accused was deceased's nephew.
- iv. The accused is a mental patient.
- v. On the 4<sup>th</sup> of June 2022 and at around 1100 hours, the accused brought home a brown cow which he claimed was his and he penned it in the kraal. The deceased asked the accused why he was penning a cow that did not belong to him but accused went ahead and penned the cow indicating that he wanted to treat the cow.
- vi. Deceased instructed Thokozani Sibanda to drive the cow out of the kraal and he complied. The accused however chased Thokozani away and threw a knobkerrie at him but missed.
- vii. The deceased went to the kraal intending to drive out the cow. The accused then picked a log from the corner of the kraal and struck the deceased once on the head and the deceased fell down. Accused fled from the scene.
- viii. The deceased sustained some injuries on the head. He was ferried to the clinic where he was referred to Tsholotsho hospital. Deceased's condition deteriorated and he died on the same day at 2130 hours.

The State and the Defence pray that the honourable court returns a special verdict in terms of section 29(2)(a) of the Mental Health Act Chapter 15:12 since the accused suffered from a mental disorder (Schizophrenia). Accused was mentally disturbed to such an extent that he should not be held legally responsible for his conduct.

[4] The prosecutor, with the consent of the accused tendered two documentary exhibits, i.e., the post mortem report (exhibit 1) and a psychiatric report (exhibit 2). The post mortem report was compiled by Dr. Juana Rodriguez Gregori who examined the remains of the deceased. The doctor opined that the cause of death was subarachnoid haemorrhage; cranial trauma and assault. The psychiatric report compiled by a forensic psychiatrist Dr. E. Poskotchinova who opined that:

“In my opinion there is a reasonable possibility that at the time of the alleged crime the accused was suffering from mental disorder (schizophrenia). He was mentally disturbed to such an extent that he should not be held legally responsible for his actions. He is dangerous to society and needs special verdict to return.

He is fit to stand trial.”

[5] The facts and the evidence show that the injuries inflicted on the deceased were caused by the accused. The post mortem report shows that the injuries inflicted by the accused caused the death of the deceased.

[6] In the circumstances of this case, and having regard to the psychiatric report before court, it is clear that at the time of the commission of the offence the accused was suffering from a mental disorder as defined in the Mental Health Act and as such he cannot at law be held criminally liable for his conduct, i.e. the crime of murder. In the circumstances, it is appropriate for the court to return a special verdict, i.e. the accused is not guilty because of insanity.

In the circumstances, it is ordered as follows:

- i. The accused is found not guilty of murder by reason of insanity.
- ii. In terms of section 29(2)(a) of the Mental Health Act [Chapter 15:12] the accused is to be returned to prison pending transfer to an institution for treatment.
- iii. The accused person is still a danger to society.

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