

**THE STATE**

**Versus**

**KNOWLEDGE MASAVA**

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr Matemba and Ms Baye  
GWERU 17 MAY 2021

**Criminal Trial**

*M. Ndlovu, for the State*

*Ms. A. Mugari, for the accused*

**DUBE-BANDA J:** The accused appears in this court on a charge of murder. Before the charge was put to the accused, Ms *Mugari*, counsel for the accused informed the court that she had an application to make. The import of the application is that the accused be referred for further mental examination in terms of section 28 of the Mental Health Act [Chapter 15:12]. The basis of the application is that there are indications that accused suffers from a mental disorder or defect of the mind, such that at the time of the commission of this offence he was not fully aware of the consequences of his actions.

*Ms Mugari*, informed the court that she is *pro-deo* counsel for the accused. Upon receiving instructions to provide legal representation to the accused in this matter, she attempted on three occasions to take instructions for the purposes of drawing a defence outline and preparing for trial. Counsel indicated that during the consultations with the accused, she could neither understand nor make sense of what the accused was saying. Accused could not provide intelligible answers to the questions put to him by counsel, e.g. the court was informed that accused could not remember when he was born, he could not remember when he was arrested for this case, did not know the charge he was facing. As a result no meaningful progress was made in preparing for trial. Counsel further interviewed three witnesses, who have known accused for a considerable period, all indicated that due to his behaviour, they suspected that he was suffering from a mental illness. Counsel informed the court that accused had been examined by a Psychiatrist, who opined that at the time of the commission of the offence, the accused was not mentally disordered and that he was fit to

stand trial. Notwithstanding this psychiatrist report, counsel submitted that a further mental examination of the accused was required.

Mr *Ndlovu*, counsel for the State, informed the court that the application was not opposed. He indicated that he consulted with State witnesses in this matter who informed him that the accused was not normal prior to the commission of the offence, implying that he was suffering from a mental disorder. Counsel made the submission that a further examination of the accused will do justice to this case. State counsel placed before court a psychiatrist report. The report before court and marked Exhibit 1. The report concludes as follows:

In my opinion, at the time of the alleged crime, the accused was not mentally disordered. He was thus fully aware of the consequences of his action. The accused is fit to stand trial.

Mr *Ndlovu*, associated himself with the submissions of Ms *Mugari*, that notwithstanding the expert opinion expressed in the report, there is a need for further mental examination of the accused.

Notwithstanding the psychiatrist's report, on the totality of the factual material before this court, the court is unable to conclude whether or not the accused person is mentally disordered or intellectually handicapped, or whether he would be able to understand the nature of the proceedings or properly conduct his defence. A court cannot conduct a criminal trial for an accused person who might be mentally disordered or suspected to be suffering from mental illness. A court cannot reach a finding of criminal non-responsibility without hearing expert evidence. The court has to be guided by the specialist medical evidence as to the mental status of the accused. Therefore, further specialist medical examination is necessary to ascertain accused's mental status. In the result, the court makes the following order:

1. The accused is hereby returned to prison pending transfer to Mlondolozhi Special Institution for further examination and treatment in terms of section 28 of the Mental Health Act [Chapter 15:23].
2. A further Electroencephalogram (EEG) to be conducted on the accused.

*National Prosecuting Authority*, state's legal practitioners  
*Gundu, Dube, Pamacheche and Partners*, accused's legal practitioners

