

**THE STATE**

**Versus**

**CHARNO FERNANDES**

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr Matemba and Mrs Sithole

GWERU 26 MAY 2021

**Criminal Trial**

*M. Shumba, for the State*

*Mrs L Mavhondo, 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 *Mvura-Mavhondo*, 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.

Upon receiving instructions to provide *pro-deo* legal representation to the accused in this matter, she attempted on two occasions, i.e. on the 9<sup>th</sup> April 2021 and 19<sup>th</sup> May 2021, to take instructions for the purposes of preparing for trial. The first consultation on the 9<sup>th</sup> April 2021, lasted for 1 hour 30 minutes, counsel informed the court during the interview, accused was moving all over the place. He was fidgeting and incoherent. The second consultation, i.e. on the 19<sup>th</sup> May 2021, lasted 30 minutes, counsel says due to the erratic behaviour of the accused, she was again not able to take instructions to prepare for trial. Further, accused disclosed to counsel, that prior to his arrest, he was taking the following medication: chloropromazine and benzosazole. First, chloropromazine is a medication used to treat psychotic disorders such as schizophrenia, second, benzosazole is medication that regulates mood and behaviour. Mr *Shumba*, state counsel informed the court that state witnesses confirmed during interviews that accused suffers from a mental disorder. State counsel then supported the application for a further examination.

State counsel further 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 is fit to stand trial. This report is before court and marked Exhibit 1. Notwithstanding this psychiatrist report, counsel submitted that a further mental examination of the accused is necessary and is required.

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 disorder. 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 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. An Electroencephalogram (EEG) examination to be conducted on the accused.

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