

THE STATE
versus
WITNESS MUTENGWI

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 5 November 2019

Criminal Trial: Mental Health Act- Section 29

ASSESORS: 1. Mr Mudzinge
2. Mrs Mawoneke

M Musarurwa, for the State
BN Mungure, for the Accused

MWAYERA J: The accused pleaded not guilty to a charge of murder as defined in Section 47 (1) of the Criminal Law (Codification) and Reform Act [*Chapter 9:23*]. The brief allegations forming the basis of the charge being that on the 26th June 2018 at Mapinge Village, Mutema, Chipinge, the accused unlawfully caused the death of Patikai Madaro by stoning him and striking him several times on the head with a machete and a stone realising that there was a real risk or possibility that conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which Patikai Madaro died.

Both State and defence counsel mutually agreed that the matter proceeds in terms of the Mental Health Act [*Chapter 15:12*] and came out with a statement of agreed facts. As discerned from the statement of agreed facts the accused and deceased are son and father respectively. The accused is alleged to have struck his father the deceased with a stone and a machete on the head several times. The deceased's body was taken for post mortem and cause of death was established as exsanguination. He bled to an extent that there was no sufficient blood to sustain life.

Evidence of Doctor Patience Maunganidze confirmed that at the time of commission of the offence the accused was mentally disordered and that at the time of hearing the accused had recovered and was fit to stand trial. Further the doctor stated that the accused had stabilised and was on medication for mental disorder namely chlorpromazine. The affidavit statement by Doctor Maunganidze was tendered as exhibit 1 by consent. The post mortem report was

tendered as exh 2 and the certificate of weight and measurements of the stone and machete exh 3. The stone and the machete were produced in court by consent as exh 4 and 5 respectively.

Upon considering the circumstances of the alleged commission of the offence and the statement of agreed facts as submitted by both State and defence counsel, the court agreed with both counsels' statement and request for the court to proceed with the matter in terms of the Mental Health Act and return a special verdict. This naturally flows from the fact that the offence of murder which the accused is facing compromises of the *actus reas* and the *mens rea*. In view of the undisputed fact of the mental disorder, the accused could not have been able to formulate the requisite intention. It is with that in mind that a special verdict of not guilty by reason of insanity has to be returned.

Pursuant to the special verdict, the defence and State counsel made further submissions as regards the fate of the accused after the special verdict. We must comment that such consideration of the fate after the special verdict is an administrative function which is important as a measure to protect not only the accused but society at large. The defence presented that the accused's maternal grandmother is willing to stay with accused. Evidence adduced from Angeline a daughter to the grandmother is to the effect that that grandmother is 69 years old and hypertensive and that the husband to that grandmother who would be the father is someone who has suffered a stroke because of being hypertensive.

When testifying Angeline Sakubaya emotionally showed the attachment to the accused as is naturally expected. She actually pointed out that the accused's other name is 'Jesus'. Decisions are not however supposed to be arrived at on emotions. The interests of justice are paramount. The administrative measure is for purposes of ensuring protection of not only the accused but the community at large. Given the vicious component of the physical aspect of the alleged striking of the father using a stone and a machete several times on the head, one cannot rule out that since it occurred just barely a year ago the accused still requires further management and treatment for purposes of his own protection and protection of those who are offering to take care of him who appear to be vulnerable people who are old and also of ill health.

There is need for adherence to medication, the court takes judicial notice of the likelihood of relapsing in the event of defaulting on medication for mental disorder. Retention at a psychiatric unit for further management and treatment is therefore seen as a protective measure to assist the accused with regular intake of medication and when he fully recovers will be released by the relevant tribunal in terms of the law. It is therefore our considered view that

it is desirable for the accused to be institutionalised. This will guarantee the safety of the accused and community at large in that the accused will continue to receive special assistance at an appropriate institution.

Accordingly it is ordered that:

1. The accused is found not guilty by reason of insanity.
2. The accused is to be returned to Chikurubi Psychiatric Unit or any other suitable institution for further management and treatment until he is released by a competent tribunal in terms of the law.

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