

THE STATE  
versus  
DUMISO NGADZIORE

HIGH COURT OF ZIMBABWE  
MWAYERA J  
MUTARE, 21 May 2019

**Criminal Trial**

ASSESORS: 1. Mr Mudzinge  
2. Mr Magorokosho

*Mrs J Matsikidze*, for the State  
*Ms M Simango*, for the accused

MWAYERA J: In this case a 10 year old lost life in a cruel and violent manner. She must have died a painful death when she was struck with a sharp edged hoe causing the skull to crack and open. It is alleged by the State that on 28 March 2016 and at Nyikadzo Village, Chief Mutema Chipinge, the accused Dumiso Ngadziore unlawfully caused the death of Janet Mutisi by striking her with a hoe and stick on the head and knees intending to kill her or realising that there was a real possibility that his conduct might cause death and despite the realisation continued to engage in that conduct resulting in injuries from which Janet Mutisi died. The accused pleaded not guilty to the charge pointing out that he was not aware of what he was doing.

It is apparent from the summary of the state case and statement of agreed facts tendered in court by consent that the accused and deceased were related as uncle and nephew. The accused and his family including his sister the mother of the deceased enjoyed a cordial relationship. It is also common cause that on the fateful day when all family members had retired to bed the accused started to pray and he fell into a trance and started claiming that there were evil spirits within his family homestead. The accused moved from one homestead to the other. The accused's parents failed to calm him down as he was violent and they proceeded to seek help from the police. The accused remained violent and he dragged the deceased outside before striking her with a sharp edge of the hoe thereby opening the skull resulting in the

minor's death. The State and the defence counsel sought to proceed with the matter in terms of the Mental Health Act. At the time of hearing the following exhibits were produced by consent.

The notice of Discharge and recovery of the accused for purposes of conducting proceedings as he was certified capable of understanding the criminal proceedings exh 1 (a), further an Affidavit of Evidence by Dr P. Mavunganidze Psychiatrist exh 1 (b) wherein the doctor opined that at the time of the commission of the offence the accused was mentally disordered and as such could not appreciate the wrongfulness of his actions. Further adduced in evidence was the post-mortem report by Dr Mauricio Gonzalez exh 2. The doctor examined the remains of Janet Mutisi and observed injuries. The doctor concluded that the cause of death was brain damage secondary to compound skull fracture and head trauma. The hoe used to strike the deceased and the log were also tendered as exhibits 3(a) and 3(b) respectively.

Having considered the evidence presented and the statement of agreed facts we indeed proceeded with the matter in terms of the Mental Health Act. At the time of hearing the accused appreciated and understood the criminal proceeding. In view of the time of the alleged commission of the offence and the fact that the accused was mentally disordered, he thus lacked the requisite intention to commit the crime of murder.

Accordingly we return a special verdict of not guilty by reason of insanity.

Both counsels addressed us of the fate of the accused post the special verdict. By consent both agreed that accused was stable on his medication and that if he continued with his medication he would not endanger himself or society. Further evidence was adduced from the accused father one Mr Phineas Tsureyi Ngadziore who was willing to take the accused with him home and assist him continue with his medication. We agreed there was no need for further institutionalisation which is really a protective measure for the accused and society.

Accordingly it is ordered that:

1. The accused is not guilty by reason of insanity.
2. The accused is released to go and stay at his rural home with his father Phineas Ngadziore.