

THE STATE  
**versus**  
MTHOKOZISI NCUBE

HIGH COURT OF ZIMBABWE  
MATHONSI J  
BULAWAYO 23 JANUARY 2018

### **Criminal Trial**

*W Mabaudhi* for the state  
*Ms M Ndlovu* for the accused

**MATHONSI J:** At the time of the commission of the offence on 31 March 2016 the then 28 years old accused person was a known mental patient. He has been brought before this court charged with the crime of murder in contravention of section 47 of the Criminal Law [Codification and Reform] Act [Chapter 9:23] it being alleged that at about 1100 hours on that date, at Zacheas Ncube homestead, Mloyi village in Kezi, he wrongfully and unlawfully killed his father Zacheas Ncube then aged 74 years by striking him on the head with a pestle inflicting mortal wounds.

The agreed facts are that on 31 March 2016 at around 0700 hours the deceased instructed the accused to go to the fields and guard crops against birds. He refused but at about 1100 hours the accused left the homestead leaving the deceased alone at home. The accused is said to have returned a short while later and proceeded to where the deceased was. Upon arrival, the accused struck the deceased on the head with a knobkerrie and a pounding log. The deceased collapsed and lost consciousness.

The deceased was later ferried to Maphisa District Hospital where he died upon arrival. According to the postmortem report compiled by Dr Robert Trecu who examined the body of the deceased the cause of death was severe brain damage, multiple skull bone fracture and severe head trauma due to beating.

The accused was examined by Dr Elena Poskotchinova a psychiatrist stationed at Inguthseni Central Hospital in Bulawayo on a number of occasions between 31 October 2016 and 4 February 2017. The doctor drew the following conclusion;

- “5. In my opinion there is a reasonable possibility that at the time of the alleged crime the accused was suffering from mental disorder (schizophrenia, substance use disorder). He was mentally disturbed to such an extent that he should not be held legally responsible for his actions. He is dangerous to society (five crimes of indecent assault in 2012 and murder in 2016) and need (s) special verdict to return
6. He is fit to stand trial.”

In terms of section 29 (2) of the Mental Health Act [Chapter 15:12], if the court is satisfied from the evidence, including the medical evidence, given at the trial that the accused person did the act constituting the offence charged but that when he did the act he was mentally disordered or intellectually handicapped so as to have a complete defence in terms of section 248 of the Criminal Law Code, it shall return a special verdict.

We are indeed satisfied that the accused person was mentally handicapped at the time he committed the offence charged.

Accordingly, it is ordered that;

1. The accused person is hereby found not guilty by reason of insanity.
2. The accused person shall be returned to prison for transfer to a special institution for treatment.

*National Prosecuting Authority*, the state’s legal practitioners  
*Ncube and Partners*, accused’s legal practitioners