

THE STATE

Versus

EVAN CHIKOORE

HIGH COURT OF ZIMBABWE
MUZOFA J
CHINHOYI, 11 & 16 July 2023

Date of written Judgment 14 September 2023

Assessors: *Mrs Mawoneke*
Mr Manyangadze

Criminal Trial

G. T. Dhamusi, for the State
M. James, for the accused

MUZOFA J: This murder case brings to the fore issues on care and wellbeing of people afflicted by mental illnesses. They are stigmatised and rejected. When they commit offences their woes multiply. Their lives become a sad tale that slowly pale into the dark soon to be forgotten. The accused was a well-known mental patient in the community he lived in. On the 9th of July 2021 he unleashed a series of murders resulting in the death of three people in separate incidents. Had he not been restrained, more fatalities could have resulted.

The accused was arrested and the Magistrate ordered that he be examined by two doctors in terms of s26 of the Mental Health Act. He was found to be mentally challenged. The background as set out by the psychiatric nurse Christopher Njanjeni is that the accused was not well since 2004. He received treatment for mental illness. His deceased father would accompany him for medical treatment. The accused would experience visual and auditory hallucinations. He later defaulted treatment. His deceased father took him for treatment at some church where a prophet assisted him. At this stage he had stopped taking his prescribed medication.

His illness progressed and he became acutely psychotic. He suffered from schizophrenia psychosis which led to the commission of the offences as set out. Had the

accused remained on treatment these unnecessary deaths could have been averted. It is therefore important that those responsible for people suffering from mental illnesses must make sure the patients adhere to their treatment regimes.

The brief facts are as follows:

The accused resided at village one Luwana, Kadoma with his wife. On the 21st of July 2021 he decided to visit his deceased father's homestead in the same village. When he arrived at his father's homestead, he demanded money to purchase beer. He was not given. The father had no money. He picked a stone and struck his father several times on the head. He then set 4 grass thatched huts on fire. He realised that the deceased was not dead. He attacked him several times with an axe until he died.

It seems the accused was not yet satiated. He took the axe with him. He proceeded to the next homestead, where the now deceased Tears Matara resided. On arrival the accused asked where Tears' husband was. He wanted his money from him. The accused was advised that he was in Bulawayo.

The accused would have none of it. He demanded money from the deceased. The deceased handed him ZWL\$30.00. The accused took that offer for an insult, it was too little. He struck the deceased with the axe several times on the head and set ablaze a hut and a car parked at the homestead.

As if that was not enough, the accused proceeded to the next homestead where he arrived with the blood-stained axe.

At this homestead, the deceased, a child saw the accused approaching. The accused demanded to see the deceased's father who once caused his arrest. When the deceased's father saw the accused, he could sense danger. Both the deceased's mother and father ran away leaving the deceased. The accused struck the deceased once on the forehead with the axe leading to his death.

The accused's conduct must have caused pandemonium in the village. He was subsequently apprehended. That's how his unprecedented murder track was stopped.

After his arrest and treatment, the state proceeded to prosecute him upon receipt of recommendations from Chikurubi Psychiatric Unit that he had recovered.

The state proceeded to prove its case. The affidavit by Christopher Njanjeni the nurse was produced and marked as exhibit I. He recorded that he examined the accused on 18 January 2023 and concluded that the accused had recovered. He could stand trial. In his opinion at the time of the commission of crime the accused was mentally challenged. He recommended that he be released in the custody of one Justice Chikoore.

Three post mortem reports were produced. The first post mortem report was for the deceased in the first count, one Oncemore Chikoore the deceased's father. The doctor concluded that death was due to acute anaemic and severe head and neck trauma. The details on the post mortem report show a gruesome attack on the deceased. The doctor recorded the following:

- i) Wound 12cm long on left lateral of the neck and 2cm of width.
- ii) A 4cm long wound on the occipital region.
- iii) An 8 cm wound on the left shoulder.
- iv) A multiplicity of abrasions on the thorax and abdomen.

The deceased was chopped like a piece of firewood. This was needless and barbaric.

The second post mortem report was for deceased Tears. The doctor concluded that death was due to brain damage. The detailed injuries were recorded as follows:

- i) Two wounds on the occipital region 4cm and 5cm long respectively.
- ii) A 4cm wound on the temporal.
- iii) Wound on the left corner of the back.

In respect of the third count the cause of death was head trauma.

The accused's warned and cautioned statements were produced. In respect of the murder of the deceased in the 2nd and 3rd counts he said he did not know anything about it. In respect of his father, he said he saw a short man at his house holding a spear. He fought the short man and took the axe and proceeded to the deceased's place. He did not know what he was doing. He did not know where he struck the deceased.

After considering the documentary evidence and the statement of agreed facts the court was satisfied that the accused was incapable of formulating an intention to commit the

offences due to his mental condition. A special verdict has to be entered. Therefore, in line with the provisions of s 29 (2) of the Mental Health the following verdict is entered.

Not guilty because of insanity.

Sentence

Both legal practitioners addressed us and urged the court to release the accused to Justice Chikoore as per the recommendation of the psychiatric nurse.

What transpired later perplexed the court. Justice was not in court on the day. The accused's mother was in court following the proceedings. The court asked her to take the witness stand so that she can express her views on the release of the accused. Surprisingly she denied that the accused had mental problems. She denied ever subjecting him to any treatment for mental condition. She did not want the accused back at the village and even at her homestead. She said she cannot control him and she was still grieving her husband who was killed by the accused. Besides that, the community was already up in arms against her family. To have the accused back in the community can lead to violence. No one wanted him back. He should remain in custody.

The accused cross examined her. We could tell there was something that the mother did not want revealed. The accused related to an incident when he would see "things" at a tender age while in primary school. She just dismissed it as children's talk then. It was evident though that she was aware of some treatment whether medically or by religious prophets that the accused went through with his deceased father.

As if that was not enough, Justice Chikoore was later summoned to court. He was clear. The accused had no mental problems, if any they were self-induced. He is a drug addict. As they grew up, the accused would imbibe in a drug commonly called "kambwa" and dagga. Every time he had no money to access these, he would be violent and commit offences. He has committed several offences and is on the police wanted list. He said he cannot take him. The court should deal with him.

Having gathered this information, we considered the alternatives available to the court. The accused is a high risk person to be unleashed into the unsuspecting society. In the event that he relapses he is a danger to society. Now that there is no one in his family willing

to take him back it would be irresponsible for the court to release him to nowhere. The accused himself admitted that he uses dagga. Whether drug induced or not the accused's mental condition requires monitoring and close monitoring for that matter by a person who the accused respects and can take orders from.

We are grateful to both legal practitioners for further submissions upon request having received evidence from the accused's relatives.

Both legal practitioners were agreed that it is in the best interest of justice and society that the accused be dealt with under s29 (2) (a) of the Mental Health Act. In *S v Noko* HH62/17 that the State referred us to, the court opined that the court can only proceed under s29 (2) (c) to release the accused from custody if there is clear evidence that there is no risk of a recurrence. In this case recurrence cannot be ruled out.

Although the accused is now mentally stable, the stability is drug induced. It would therefore require adherence to the prescribed medication. The accused's history shows that he has defaulted before. Releasing him back to society would be putting society at risk.

Accordingly, the accused is committed to Chikurubi Psychiatric Unit for further management in terms of the Mental Health Act (Chapter 15:12).

The National Prosecuting Authority, the State's legal practitioners

Chikwangwani Tapi Attorneys, accused's legal practitioners.