

THE STATE  
versus  
JOHN MATIBILILA

HIGH COURT OF ZIMBABWE  
MUZOFA J  
CHINHOYI, 5 April 2024

Assessors: *Mr Chivanda*  
*Mr Mutombwa*

### **Criminal Trial**

*G. T Dhamusi*, for the State  
*B. T Ncube*, for the accused

**MUZOFA J:** The accused was charged with the murder of Timoti Lunga his neighbour in contravention of s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. It is alleged that on the 20<sup>th</sup> of June 2020 and at Matibilila Village, Chief Negande, Siakobvu, Kariba he unlawfully and with intent to kill, or realizing that there was a real risk or possibility that his conduct may cause death, continued despite the risk and struck the deceased with an iron bar several times on the head causing fatal injuries.

The accused tendered a special plea of not guilty by reason of insanity. The agreed facts as per Annexure one were as follows:

1. The accused and the deceased were neighbours living in the same Village. They were not related. The deceased was aged 70 years.
2. The accused was a known mental patient in the Village.
3. On the 20<sup>th</sup> of June 2020 the accused and other family members were gathered at Robson Matibilila's homestead. The deceased was one of the people in that gathering.
4. At around 22.40 pm the deceased left and proceeded to his homestead. He was singing along the way. Shortly thereafter the accused also left.

5. The deceased caught up with the deceased. The accused was armed with an iron bar. He struck the deceased several times at the back of the head.
6. One Robson Munsaka who was also at the gathering heard some sounds of beatings and also realised that the deceased who was singing had stopped singing. Some people then rushed along the path that the deceased and the accused had taken.
7. Along the path they found the deceased lying motionless on the road and the accused was pacing around the place holding a log in his hand.
8. None of the people caught the accused as they were afraid of him, the following day a report was made. The Police attended the scene and recovered a bloody crow bar at the accused's homestead.
9. The deceased's body was taken to hospital where a post mortem report was conducted. The Doctor concluded that death was due to severe head injury.
10. The accused was subsequently admitted at Chikurubi Psychiatric Unit following the commission of the offence that he is being charged with. On 5 July 2023 the accused was examined by Christopher Njanjeni a Forensic Psychiatric Nurse. He observed that the accused suffers from paranoid schizophrenia and became of sound mind after taking medication for the mental disorder.
11. He concluded in terms of an affidavit that he deposed to , that the accused was mentally disordered at the time of the commission of the offence but that he was now fit to stand trial.
12. The accused cannot be properly found guilty of murder as he lacked the requisite mental capacity at the time of the commission of the offence and should appropriately be dealt with in terms of the Mental health Act [*Chapter 15:12*].

The following documents and exhibits were produced by the State by consent.

- a. The notices of discharge from the Superintendent, Chikurubi Psychiatric Unit to the Office of the Attorney General advising of the intended discharge of the accused after his recovery, marked exhibit 1 & 2.
- b. The Psychiatric report by Christopher Njanjeni which certified that the accused suffered from a mental illness at the time of the commission of the offence. He

was stable on CPZ 100mg PO NOCTE and is fit for trial. The report was marked exhibit 3.

- c. An affidavit by Cotman Mazerenganwa who received the deceased' body at Karoi District Hospital marked exhibit 4.
- d. The post mortem report marked exhibit 5. The cause of death is recorded as severe head trauma.
- e. An iron bar whose weight was 2,54kg and one metre in length.

The state and the defence moved for a special verdict in terms of s 29 (2) of the Mental Health Act [*Chapter 15:12*] 'the Act'. We were in agreement with the submissions. Accordingly we returned a special verdict of not guilty by reason of insanity in terms of s29 (2) of the Act.

To determine the appropriate course the matter was postponed for some time for the State to bring at least one of the accused's relatives. It was a bit of a challenge for the State to get any of the accused's relatives to appear before the Court. This case is one of the many cases that the Court has dealt with which demonstrates how people with mental disabilities lack support and care from even the family. We were advised that the accused's brother who took care of him had passed away. The accused's wife and his only child had deserted him sometime back when the mental illness presented.

Eventually his brother's son Sanders Matibilila was located in Bumi Hills, he could not attend Court but filed an affidavit. His brief affidavit was as follows,

' I am the son of Mathews Matibilila who is the brother to John Matibilila who is the accused person arrested in connection with a case of murder Siakobvu CR 01/0620. If he is released in (sic) prison I cannot stay with him since he is a threat to the community because is the same area where he committed the offence and is said to be mentally challenged.'

The affidavit tells it all. The accused's brother who took care of him having passed on the other relatives were unwilling to take care of him despite the medical report that he has recovered. There is already a stereotype that he might commit the same offence. The fears are well founded. The accused's medical history shows that he was a well-known mental patient who defaulted on his medication and relapsed.

The fact that the accused was a well-known mental patient shows that members of the public generally do not know how to deal with mental patients. This calls for concerted efforts by all stakeholders that deal with mental health issues to widely disseminate information on mental health. The public must have basic knowledge on how to identify basic signs of a mental disorder and what to do. There must be room for members of the public to alert or report at the nearest Police or Clinic so that proper medical procedures can be activated before crimes are committed. This would go a long way to help the affected and also protect members of the society. It is high time mental health issues are prioritised in view of the increased number of such cases.

Section s29 (2) sets out how the Court may proceed after returning a special verdict. The Court may

‘(a) order the accused person to be returned to prison for transfer to an institution or special institution for examination as to his mental state or for treatment; or

(b) if the judge or magistrate considers that, had the accused person been convicted of the offence concerned, he would not have been sentenced to imprisonment without the option of a fine or to a fine exceeding level three, order—

(i) the accused person to submit himself for examination and additionally, or alternatively, treatment in any institution or other place in terms of Part VI; or

(ii) the accused person’s guardian, spouse or close relative to make an application for the person to be received for examination and additionally, or alternatively, treatment in any institution or place in terms of Part VII or Part VIII; and may give such orders as may be appropriate for the accused person’s release from custody for the purpose of such examination or treatment; or

(c) if the judge or magistrate is satisfied that the accused person is no longer mentally disordered or intellectually handicapped or is otherwise fit to be discharged, order his discharge and, where appropriate, his release from custody.’

The available recourses do not cover a situation where the accused is said to have recovered but no one is ready to take him into their custody. This is common in most cases and the reasons vary from fear of relapses to pure discrimination. I say this fully aware of the provision under (c) that the accused maybe released. A practice has developed in our courts that such an accused is not simply released, he is released into the custody of a responsible person who makes an undertaking to take care of him and try to the best of their abilities to monitor him or her. For instance, in the case of *S v Tswipa HH 669/18* the accused was released into the custody of his brother who was willing to take him back.

Having said that, despite the medical report that was placed before us and the non-availability of anyone willing to take care of the accused, we agree with counsel that the accused must be committed to the Psychiatric Unit. The Psychiatric report placed before us shows that it was compiled in July 2023 and the trial was finalised in March 2024 some 8 months later. As a Court we may not be aware of his current mental state. It is therefore in the best interest of justice that the accused be re-examined and maybe if a relative, willing to take care of him is identified the Board may release him. The Court is not inclined to release him to nowhere. He requires care and monitoring to continue taking his medication. He has already defaulted and maybe a danger to society.

Accordingly, it is ordered that the accused be returned to Harare Remand Prison and transferred to Chikurubi Psychiatric Unit for examination and or treatment in terms of s 29(2) (a) of the Mental Health Act. The accused can only be released in accordance with the provisions of the said Mental Health Act [*Chapter 15:12*].

*National Prosecuting Authority, State's legal practitioners*

*Saizi Law Chambers, accused's legal practitioners*