

THE STATE
versus
ELISON GUMBO

HIGH COURT OF ZIMBABAWE
MATHONSI J
GWERU 30 JANUARY 2017

Criminal Trial

M Shumba for the state
A Sakunje for the accused

MATHONSI J: The accused is charged with murder in contravention of s47 (1) of the Criminal Law Code [Chapter 9:23] it being alleged that on 26 August 2014 at Timire Village under Chief Maziofa in Mberengwa he unlawfully caused the death of Egineta Gumbo by striking her with a log all over the body intending to kill her or realizing that there was a real risk or possibility that his conduct may cause death but continued with such conduct notwithstanding the risk or possibility.

The accused has pleaded not guilty to the charge. The matter is proceeding in terms of statement of agreed facts read into the record. The state has also produced a medical report prepared by Nemadire Mawere a psychiatrist at Mlondolozhi Special Institution in Bulawayo who examined the accused on a number of occasions between 4 February 2016 and 14 July 2016. According to the doctor at the time of the alleged offence the accused was mentally disordered suffering from delusional disorder (paranoia) and as such did not appreciate the wrongfulness of his actions. He is however fit to stand trial.

The state has, as a result, urged of us the return of a special verdict. In terms of s29 (2) of the Mental Health Act [Chapter 15:12], if a judge presiding over a criminal trial is satisfied from the evidence, including 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 s248 of the Criminal Law Code, the judge shall return a special verdict.

We are indeed satisfied from the uncontested medical evidence placed before us that the accused was mentally disordered.

Accordingly it is ordered that;

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

National Prosecuting Authority, state's legal practitioners
Pundu and Associates, accused's legal practitioners