

THE STATE
versus
GEDION SENYANI DHLIWAYO

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 23 July 2019

Criminal Trial (Mental Health Act)

ASSESORS: 1. Mr Magorokosho
2. Mr Mudzinge

M Musarurwa, for the State
TG Nenzou, for the Accused

MWAYERA J: The accused pleaded not guilty to a charge of murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. It is alleged that on 1 February 2018 and at Plot number 63, Nafaton Farm, Chipinge, the accused unlawfully caused the death of Nyashadzashe Maphosa by using unknown means and disposed the body which was later eaten by dogs intending to kill her or realising that there was a real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which the said Nyashadzashe Maphosa died.

The brief facts are that on the day in question, the accused picked the 5 month old deceased and went away with her to a bush. The accused used unknown means to kill the deceased and disposed off the body. The body was eaten by dogs leaving some body parts which were recovered in an advanced state of decomposition. On 5 February 2018, the recovered remains were examined by Doctor Joel Tapi who compiled a Post Mortem Report in which the cause of death was indeterminate because of decomposition and missing parts. The Post Mortem Report was tendered as exh 2.

Both State and defence counsel proposed that we proceed with the matter in terms of the Mental Health Act [*Chapter 15:12*]. This decision was informed by the manner the offence was allegedly committed and the medical evidence by Doctor Fungisai Mazhandu a Psychiatrist. The affidavit of evidence by Doctor Fungisai Mazhandu opinioned that the

accused is now fit to stand trial but however at the time of commission of the offence the accused was mentally unwell.

The State further adduced evidence by consent the sketch plan exh 3 showing general layout of the scene, the confirmed warned and cautioned statement by accused exh 4, indications by accused exh 5 and 3 photographs of the remains of the deceased exh 6. From the statement of agreed facts compiled by both counsels, the accused who was mentally disordered took his 5 month old child to the bush. The accused used unknown means to kill the deceased and then disposed off the body.

The charge the accused is facing consists of both the unlawful conduct and intentional killing of another. In light of the medical evidence the accused was thus not capable of formulating an intention to kill.

Accordingly therefore as prayed by counsels, this is a case in which the circumstances cry loud for returning of a special verdict of not guilty by reason of insanity. The accused is stable and both counsels have submitted that he is not a danger to himself or community. The relatives inclusive of the mother and brother have expressed willingness to have him released in their custody.

Accordingly it is ordered that:

1. The accused is not guilty by reason of insanity.
2. By consent the accused is released in the custody of his biological mother Mrs Senyani Masvosva Muhlauri and brother Senyani Admire Dhliwayo.

*National Prosecuting Authority, State's legal practitioners
Chibaya & Partners, Accused's legal practitioners*