

THE STATE

Versus

CLEVER NGWENYA

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr. Ndlovu and V.L.M Zulu

BULAWAYO 11 March 2024 & 6 December 2024

Criminal trial

Ms. M. Musaka for the State

Ms. Kunda for the accused

DUBE-BANDA J:

[1] The accused is appearing before this court charged with the two counts of murder as defined in section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].

[2] In count 1, it being alleged that on 21 September 2023, the accused unlawfully caused the death of Mildress Ngwenya (“deceased 1”) by stabbing her with a knife once on the elbow and three times on the neck, intending to kill her or realising that there was a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[3] In count 2, it being alleged that on 21 September 2023, the accused unlawfully caused the death of Simon Tshumaka Ngwenya (“deceased 2”) by stabbing him twice on the neck, intending to kill her or realising that there was a real risk or possibility that his conduct may cause the death of the deceased and continued to engage in that conduct despite the risk or possibility.

[4] At the commencement of trial, the accused pleaded not guilty. Consequently, the State produced, with the consent of the accused the following exhibits: a confirmed warned and cautioned statement and two post mortem reports. The accused made admissions in terms of s 314 of the Criminal Procedure and Evidence Act [Chapter 9:07] (CP & E Act). The admissions relate to the evidence Fedelis Ngwenya; D/S Muchemwa and Doctor Acosta as it appears in the summary of the State case.

[5] The State adduced the oral evidence of Khulukani Nyathi. At the conclusion the testimony of this witness, it became doubtful whether the accused was not suffering from a mental disorder as defined in the Mental Health Act [Chapter 15:12]. It was so because these murders were seemingly motiveless, odd and bizarre. See *Ndzombane v The State* SC-77-17. The court

directed that the accused be taken to a psychiatrist for mental examination. As a result of the psychiatrist's report, the State and the defence draw up a statement of agreed facts, which reads as follows:

[5.1] The accused was aged 33 years of age at the time of the offence and he resides at Simon Tshumaka Ngwenya's homestead, Gwalubha Village, Lupane.

[5.2] The first deceased was aged 71 years at the time she met her death. The second deceased was aged 73 years at the time he met his death. Both used to reside at the same homestead with accused. The deceased were husband and wife and they were accused's parents.

[5.3] On the 21st of September 2023 and at 0900 hours Khulekani Ngwenya who is accused's brother got home and discovered that a solar panel had been stolen. As Khulekani was tracking the footprints of the alleged perpetrator, he met accused whom he informed about the theft.

[5.4] Accused advised Khulekani that they had to go to their parent's homestead to discuss a burning issue which needed to be resolved. The two proceeded to deceased's homestead. The two were present as well as their sister Fidelis.

[5.5] The first deceased served everyone some food. After the meal, Khulekani asked the accused to present his matter to the family. The first deceased urged the accused to speak up so that the issue may be resolved.

[5.6] The accused instead, pulled out an okapi knife from his pocket and said "let me show you". The accused then approached the first deceased and stabbed her once on the neck and she fell down.

[5.7] Khulekani fled from the homestead. Accused chased after Fidelis who was running away but she outpaced him.

[5.8] The accused caught up with the second deceased who was by the gate and stabbed the second deceased on the neck and he fell down.

[5.9] Fidelis sought help from neighbours and together they proceeded to the deceased's homestead. The two deceased were lying dead in pool of blood with stab wounds on the neck.

Prayer

The State and the Defence pray that the honourable court returns a special verdict in terms of section 29(2)(a) of the Mental Health Act [Chapter 15:12] since the accused suffered from a mental disorder, Clinically Temporal Epilepsy. Accused was mentally

disturbed to such an extent that he should not be held legally responsible for his conduct.

[6] The operative part of the psychiatric report compiled by a psychiatrist Dr. E. Poskotchinova states that:

“In my opinion there is a reasonable possibility that at the time of the alleged crime the accused was suffering from mental disorder (Clinically Temporal Epilepsy). He was mentally disturbed to such an extent that he should not be held legally responsible for his actions. He is dangerous to society and needs special verdict to return. He is fit to stand trial.”

[7] The facts and the evidence show that the injuries inflicted on the deceased 1 and deceased 2 were caused by the accused. The post mortem report shows that the injuries inflicted by the accused caused the death of deceased 1 and 2.

[8] In the circumstances of this case, and having regard to the expert evidence before court, it is clear that at the time of the commission of these offences the accused was suffering from a mental disorder as defined in the Mental Health Act and as such he cannot at law be held criminally liable for his conduct, i.e. the crimes of murder. In the circumstances, it is appropriate for the court to return a special verdict, i.e. the accused is not guilty because of insanity.

In the circumstances, it is ordered as follows:

- i. The accused is found not guilty of murder by reason of insanity.
- ii. In terms of section 29(2)(a) of the Mental Health Act [Chapter 15:12] the accused is to be returned to prison pending transfer to an institution for treatment.
- iii. The accused person is still a danger to society.

National Prosecuting Authority, state’s legal practitioners
Dube and Associates, accused’s legal practitioners