

THE STATE  
versus  
FENIOUS PETROS MACQUIA

HIGH COURT OF ZIMBABWE  
MUNGWARI J  
HARARE, 3 March 2023

**Assessors:** Mr *Barwa*  
Mrs *Chitsiga*

*R S Mushonga*, for the State  
*G Sithole*, for the defence

**MUNGWARI J:** Fenious Petros Macquia a 25 year old vendor at Boss K’s bar in Domboramwari Epworth (“herein after the accused”), faces a charge of murder in contravention of s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (hereinafter the Code). The allegations against him are that he unlawfully and intentionally caused the death of Edward Bhauleni ( “herein after the deceased”) by stabbing him on the chest and striking him on the head with a brick, or realising that there was a real risk or possibility that death may occur, persisted with his conduct despite the risk or possibility. The deceased sustained mortal injuries.

Upon his arrest the accused was committed and detained at Chikurubi Psychiatric unit. After examination and treatment he was declared fit to stand trial.

At his trial, the accused pleaded not guilty to the charge. He prayed for a verdict of not guilty due to insanity in terms of s 29(2) of the Mental Health Act [*Chapter 15:12*]. His defence was that at the time he committed the offence he was mentally disordered to the extent that he cannot be held responsible for his actions.

The state conceded to this assertion and consequently sat down with the defence and prepared a statement of agreed facts. The statement of agreed facts prepared by both parties, made the following narrative common cause and it is that:

On 5 August 2019, at around 3am in Epworth, the accused a known psychiatric patient had an altercation with the deceased a fellow resident in the locality. The parties quarreled over

monetary issues and a cellphone. They tussled, and in a fit of rage the accused stabbed the deceased on the chest 4 times with a sharp object. As if this was not enough, he picked up a brick and assaulted the deceased with it twice on the head. He left the deceased lying in a pool of blood as he stormed off wearing blood stained clothes. He was seen by witnesses walking away from the scene. A mob gathered and assaulted the accused, admonishing him for the assault on the deceased. He was rescued from the hands of the angry mob and escorted to the police station where he was immediately placed under arrest. Meanwhile, the deceased succumbed to the injuries sustained.

Following investigations by the police on the alleged murder, an okapi knife handle belonging to the accused was recovered at the scene of the crime. It was tendered into court with the consent of the defence as an exhibit. On 10 August 2019, at Chitungwiza Central hospital, an autopsy was conducted on the remains of the deceased by Dr Salvator Aleks Mapunda a forensic pathologist. He concluded that the cause of death was due to haemorrhagic shock from multiple injuries sustained from an assault with the use of blunt and sharp weaponry. The report was also tendered as an exhibit by the state counsel without issue from the defence and the court duly admitted the report.

A psychiatric nurse practitioner Mr Christopher Njanjeni examined the accused after he was detained at Chikurubi Psychiatric Unit. In coming up with his report the psychiatrist expert, made reference to 2 other medical certificates by medical practitioners, nurses notes, a clinical psychologist report and Dr Mangezi's notes. He also took into consideration, affidavits from the members of society and the state outline and charge sheet. He thereafter chronicled his findings under oath. His affidavit was tendered with the consent of the defence and marked exhibit no 2, to the record. According to the report the accused has a long standing history of mental illness dating back to 2006. His grandfather suffered from mental illness and so the presumption is that the disease is hereditary and runs in the family. It became worse when the accused started abusing the cannabis drug in 2018 on a daily basis. He started hearing voices inside his head and would laugh and talk to himself. He would have bouts of extreme aggression as well as sleepless nights. He often refused to bath. His mental health deteriorated to the extent that he had to undergo treatment at Chipinge District Hospital. He was treated and became stable. He suffered a relapse when he resumed his self-destructive habits of substance abuse. Mr Christopher Njanjeni, concluded that the accused was mentally disordered at the time he committed the offence. He also told the court that accused has since been put back on

medication CPZ 100mg po nocte and FD 25mg imi monthly. Accused's condition has stabilised making him able to comprehend and fit to stand trial.

It is clear to us from the accused before us and from the facts that the accused was not responsible for his actions. We are convinced that at the time of the commission of the offence he was labouring under a mental disorder. We therefore find the state's concessions thereto well placed.

Accordingly, we hereby return a special verdict: The accused is found not guilty of the offence of murder because of insanity as is provided for in s 29(2) of the Mental Health Act[Chapter15;12]

In determining the fate of the accused following the return of a special verdict, we are mindful that as a court we are guided by the provisions of s 29(2)(a) and (c) of the Mental Health Act [Chapter 15:12]. We however wish to voice our concern over the rise in the number of cases of murder committed by drug induced mentally ill persons in the country. There is a greater need for friends and relatives of those suffering from such ailments to be trained on how to monitor those members of society who abuse drugs and are mentally disordered as a result thereof. This is to ensure that they do not as a consequence commit crimes as *in casu*. All measures should be taken to ensure that such persons religiously adhere to treatment in order to avoid a relapse. *In casu* the accused was abusing drugs despite his known mental state. As a result a life was lost .A life of someone known to him and who he resided in the same community with.

From the facts before us, the accused had become a menace to the family and community at large to the extent that none of his relatives and friends are willing to take him or even associate with him. Defence counsel in her address to the court outlined the difficulties she encountered in trying to reach out to them. She told the court that those who she managed to get hold of told her that they are scared of him and worried about the wrath and shame that the accused has brought upon the family and community at large. It is therefore our considered view that we have a duty to protect the society from the accused and also protect the accused from himself. On the evidence before us, we cannot guarantee that the accused will not relapse and re-offend, particularly if no one is willing to assist him. In any case it would be injudicious to release the accused back into society without comprehensive information on his state of recovery. The pre-trial psychiatric report, Exhibit 2 shows that the accused was last examined on 11 October 2022.This translates to some 7 months ago. The purpose of the examination was to outline the accused's mental status at the time of the commission of the offence and

determine if he was fit to stand trial. No examination has been carried out to determine if the accused is now fit to be released back into society. As a result we do not have sufficient evidence or information on whether it would be safe and in the interest of justice to release the accused back into society. For purposes of protecting society against the accused re-offending it is important for the court to get medical assurances on his recovery in order to eliminate the chances of him committing further offences. There being none, the proper course of action therefore is to send the accused back to Remand Prison so that he will be transferred to Chikurubi psychiatric unit for examination and possible treatment. Thereafter the accused can only be released back into society after a proper evaluation by the experts upon being satisfied that he is no longer a danger to himself or to society.

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

*National Prosecuting Authority, state's legal practitioners  
G Sithole Law Chamber, accused's legal practitioners*