

STATE  
versus  
BRIGHTON NYAMUKOHO

HIGH COURT OF ZIMBABWE  
TSANGA J  
HARARE, 26 October 2017

ASSESSORS: 1. Mr. Mtambira  
2. Mr. Chakvinga

### **Criminal Trial**

*N Mazvimbakupa*, for the State  
*T Goro*, for the accused (pro-deo)

TSANGA J: The accused Brighton Nyamukoho was charged with murder in that on the 25<sup>th</sup> of July 2016 he killed his paternal aunt being his father's sister by striking her on the head with a log following accusations that she was a witch and had caused the death of her husband. The accused pleaded not guilty by reason of insanity. The state and defence counsel produced a statement of agreed facts as follows:

1. The accused was the deceased's person's aunt. On 25<sup>th</sup> of October 2016, the accused and his relatives were gathered discussing the death of the deceased's husband which was alleged to be a result of witchcraft.
2. The accused then interjected and accused the deceased of witchcraft. The accused took a wooden log from a nearby goat pen and struck the deceased three times on the head. The deceased died instantly due to injuries sustained.
3. A post-mortem report was carried out on the deceased's remains by Dr Maurico Gonzalez and he concluded that the death was a result of brain damage, compound skull fracture and head trauma.
4. On the 12<sup>th</sup> of June 2017 the accused was examined by Dr Patrick Mhaka a psychiatrist and he concluded that at the time the alleged offence was committed, the

accused was mentally disordered. Wherefore it is agreed that at the time the alleged offence was committed, the accused was mentally incapacitated to the extent that he failed to appreciate the consequences of his action.

The post-mortem report was produced as exh 1 whilst the affidavit by Dr Patrick Mhaka was admitted as exh 2. The affidavit which was sworn to on the 12<sup>th</sup> of June 2017 stated as follows regarding the accused's psychiatric condition.

“Brighton's first psychiatric episode was in 2006. He used to have paranoid delusions (an abnormal suspiciousness). Medical certificates indicate he had auditory hallucination (hearing voices in his head). He is now on treatment with Haloperidol (medication for mental disorder). He is no longer paranoid and is no longer hallucinating. I have examined him today and found him to be of sound mind. The paranoid (*sic*) made him not appreciate the wrongfulness of his actions when he committed the crime.

In my opinion at the time of the alleged crime the accused was mentally disordered. The accused is fit to stand trial.”

State and defence counsels submitted that the totality of the evidence showed that the accused was not criminally responsible for his actions by reason of his mental defect. They moved the court to act in terms of s 29 (2) of the Mental Health Act [*Chapter 15:12*]. We were in agreement with the State and Defence submissions and accordingly found the accused not guilty because of insanity and returned a special verdict as required by law.

As regards the enquiry into the recovery of the accused, the court noted that the medical affidavit by the psychiatrist is fairly recent. Furthermore, the accused's family members attended court and indicated their preparedness to have him released into their custody. The accused's uncle, Norman Nyamukoho being the younger brother to the accused's father who is now late, took oath and confirmed to the court that he will reside with him at his residence being stand 22416, Phase 6 Eastville, Goromonzi. Other relatives in attendance included his grandmother Snodia, his aunt Lindiwe and his sister Emma. It was impressed upon his uncle that the accused's recovery had been due to taking medication and that it was imperative that he continues to take the medication and to be monitored and supervised that he does so.

This court was satisfied that adequate arrangements have been put in place to ensure that accused upon his release remains on the right path that led to his recovery. Accordingly the court ordered as follows:

It is ordered in terms of s 29 (2) (c) of the Mental Health Act Chapter that the acquitted, Brighton Nyamukoho, is hereby released from custody.

He is accordingly released into the custody of his uncle Norman Nyamukoho who resides at stand 22416, Phase 6 Eastville, Goromonzi.

*National Prosecuting Authority; State's legal practitioners  
Kadzere, Hungwe & Mandevere, accused's legal practitioners (Pro deo)*