

**IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CRIMINAL TRIAL NO. 49/06**

In the matter between:

**REX**

**VS**

**SIFISO MAVUSO**

CORAM

MBC MAPHALALA, J

FOR CROWN

MR. T. VILAKATI

FOR DEFENCE

MR. L. GAMA

**JUDGMENT 16<sup>th</sup>  
DECEMBER 2009**

The accused is charged with murder in that on or about the 19<sup>th</sup> June 2005 and at or near Sisingeni area in the Shiselweni district, the accused unlawfully and intentionally killed Zigizendoda Mavuso. When called upon to plead, the accused made a statement that he did not recall the events leading to the death of the deceased as he was insane at the time. The accused further told the Court that he was a member of the Zionist Church and that all that he remembers is that he had gone to a waterfall to pray, and on his return he was told by the police that he had killed the deceased.

Mr. Leo Gama who appeared for the accused confirmed that his instructions were that the accused was relying on the defence of insanity at the time of commission of the offence. In the circumstances, a plea of not guilty was entered on behalf of the accused.

A postmortem report on the death of the deceased compiled by a police pathologist was handed into Court by consent of both Counsel. This report indicated that the deceased died as a result of multiple chop wounds on the head, left shoulder, right hand, right foot and right thigh. The right foot was amputated at the level of the ankle. The right hand was cut at the wrist level.

Two psychiatric reports prepared at the National Psychiatric Hospital in Manzini in 2005 and 2009 confirm that the accused is a known psychiatric patient having been admitted at the hospital since 2002, that at the time of commission of the offence, the accused was suffering from a disease of the mind. Both reports were admitted by Consent of both Counsel.

Siphesihle Kunene, a young girl of nine years gave evidence that they were playing with other young children named Nonkululeko,

Mfanomusha Kunene, Thabani Magagula and the deceased. The accused who was also present at the scene grabbed the deceased and started chopping him several times with a bushknife. Seeing the brutal assault on their friend, the children ran away to report what was happening at home. The Defence accepted this evidence and did not cross-examine the witness.

The defence further admitted the summary of evidence prepared by the Crown as setting out the manner in which the deceased was killed. Mfanomusha Kunene who was also present at the scene corroborated the evidence of his younger sister Siphesihle Kunene in all material respects.

The Crown conceded that on the evidence presented in Court, the accused had discharged the onus of proving on a balance of probabilities the defence of insanity. In the circumstances, I return a special finding in terms of Section 165 (1) of the Criminal Procedure and Evidence Act No. 67 of 1938 which provides that:

" 1. If an act either of commission or omission is charged against any person as an offence and it is given in evidence on the trial of such person for such offence that he was insane so as not to be responsible according to law for his act at the time when it was done, and if it appears to the court before which such a person is tried that he did the act but was insane as aforesaid at the time when he did it, the court shall return a special finding to the effect that the accused did the act charged, but was insane as aforesaid when he did it.

2. If a special finding is returned the court shall report to the Attorney General for the information of His Majesty and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as it directs."

The Court finds that the accused committed the act charged but was insane at the time. A report will be made to the Attorney General in terms of Section 165 (2) for the information of His Majesty. In the meantime, I hereby make an Order that the

accused be detained in the Criminal Lunatic Asylum.

**M.B.C. MAPHALALA  
JUDGE OF THE HIGH COURT  
OF SWAZILAND**