



**IN THE HIGH COURT OF SWAZILAND**  
**JUDGMENT**

Criminal case no. 20/01

Rex

V

**VUSI THEMBA SIBANDZE**

Accused

**Neutral citation:** *Rex v Vusi Themba Sibandze (20/10) [2013] SZHC 47*

**Coram:** **OTA J.**

**Heard:** **11<sup>th</sup> February 2013**

**Delivered:** **12<sup>th</sup> February 2013**

**Summary:** Accused charged with murder: Psychiatric report disclosed that Accused was mentally ill at the time of commission of the offence: Section 165 (1) and (2) of the Criminal Procedure and Evidence Act 67/1938 (as amended) applicable.

## OTA J.

- [1] The Accused Vusi Themba Sibandze is charged with murder. The indictment alleged that on or about the 28<sup>th</sup> March 2000 and at or near the Raleigh Fitkin Memorial Hospital in the Manzini District, the said accused acting unlawfully and with intent to kill, did assault one Makelu Nyawo inflicting wounds upon him from which the said Makelu Nyawo died at Raleigh Fitkin Memorial Hospital on 28<sup>th</sup> March 2000.
- [2] When the indictment was read to the Accused he pleaded guilty but I deemed it expedient to still proceed with the trial in consideration of the nature of the offence alleged which is murder.
- [3] Thereafter, Crown Counsel moved an application in terms of section 165 of the Criminal Procedure and Evidence Act, which provides as follows:-

*“165 (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 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.*
- (3) His Majesty may order such person to be confined during His pleasure in a place of safe custody.*
- (4) Notwithstanding anything in this section, in the case of such special finding by a magistrate, his finding shall be subject in the ordinary course to review by the High Court and the provisions of section 89 of the Magistrate Court Act, No. 67 of 1938, shall mutatis mutandis apply thereto.*
- (5) Any person in respect of whom a special finding has been made under this section shall have the same right of appeal or review as if he had been convicted of the offence with which he has been charged”*

[4] The defence are not opposed to this application. Consequently, the parties filed a statement of agreed facts exhibit A which demonstrates the following:-

**Statement of agreed facts**

- 1. The accused is charged with murder in that upon or about 28<sup>th</sup> March 2000 and at or near Raleigh Fitkin Hospital in the Manzini District, the said Accused did unlawfully and intentionally kill one Makelu Nyawo and did thereby commit the crime of Murder.***
  
- 2. It is agreed between the Crown and the Defence that the accused was at the hospital (RFM) where he had gone to remove his bandages from his head. The accused saw the deceased in the premises and he pounced on him and took the knobkerrie of the deceased and started assaulting the deceased all over the body.***
  
- 3. PW1 by the name of Sdumo Maphosa who had also gone to the hospital for treatment heard the sound of beatings and attended the scene. Upon arrival he saw the accused beating one of the patients with the knobstick. He together with other patients intervened and disarmed***

*the accused and thereafter took the deceased to the emergency for treatment where he subsequently died. PW 4 Dr. C RAMMOHAN examined the body of the deceased to ascertain the cause of the death. The Dr. opined that the cause of death was due “to cranio cerebral injury”*

- 4. PW3 as reflected in the indictment arrested the accused and took him to Matsapha Police Station. At the Police Station the accused acted strangely showing some signs of mental illness and that behavior prompted PW3 to take the accused to the Psychiatric Centre for a checkup. At the Psychiatric Centre the accused’s mental illness was confirmed.*
  
- 5. The accused has been kept at the Matsapha Criminal Mental Hospital where he has been receiving medication since then. The accused has been declared fit to stand trial by the Psychiatrist and report has been filed herein. The contents of the Report show that the matter should be dealt with in terms of S165 (2) of the Criminal Procedure and Evidence Act, 1938.*

**6. It is agreed that**

**6.1 The accused acted unlawfully in the circumstances**

**6.2 The accused caused the death of the deceased as there was no novus actus interveniens between his action and the death of the deceased.**

**6.3 The accused admits that he was insane when he committed the offence.**

**6.4 The accused admits that he killed the deceased without being provoked by the deceased.**

**7. It is further agreed that the following will be handed in as exhibits to form part of the evidence of the crown:**

**(i) Statement of agreed facts**

**(ii) The post mortem report compiled by DR.C Ramohhan**

**(iii) The Psychiatric Report**

[5] To buttress the application Crown counsel tendered the Accused's Psychiatric Report exhibit C dated the 18<sup>th</sup> of July 2011 from the National Psychiatric Hospital signed by one Dr Iheanyi Fehiobuchi M.D, P.H.D. a

psychiatrist and addressed to the Commissioner of Police. The content of the psychiatric report is as follows:-

*“ Re: Psychiatric Report for Themba Nsibandze*

*At your request I have conducted a psychiatric evaluation of the above named person former patient of this hospital.*

*I have also signed his medical and psychiatric records which show that he was suffering from mental illness at the time of commitment of alleged offences.*

*He is now stabilized on psychiatric medication and therefore considered fit to stand trial”*

[6] The Crown also tendered the post mortem report compiled by Dr. C. Ramohhan, exhibit B, which confirms the cause of death as detailed in the statement of agreed facts.

[7] I have carefully weighed the facts of this case as demonstrated in the statement of agreed facts vis a vis the Psychiatric Report and it appears to me that the accused committed the offence but was insane at the time the

offence was committed. This case therefore falls within the contemplation of section 165 (1) and (2) of the Criminal Procedure and Evidence Act.

[8] In the circumstances, I order as follows:-

*“That the Accused person be and is hereby kept in custody as a criminal lunatic at the Criminal Lunatic Asylum pending directions from the Attorney General”*

**For the Crown:**

**D.M Nxumalo  
(Crown Counsel)**

**For the Accused:**

**N. Mazibuko**

**DELIVERED IN OPEN COURT IN MBABANE ON THIS  
THE ..... DAY OF ..... 2013**

**OTA J.  
JUDGE OF THE HIGH COURT**



**b**