

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION  
HELD AT OSHAKATI

RULING

Case No: CC 06/2018

In the matter between:

**THE STATE**

v

**GERSON NDEITUNGA TASHIYA HAUULU**

**ACCUSED**

**Neutral citation:** *S v Hauulu* (06/2018) [2021] NAHCNLD 14 (22 February 2021)

**Coram:** JANUARY J

**Heard:** 8 December 2020

**Delivered:** 22 February 2021

**Flynote:** Criminal procedure – Inquiry in terms of s 77 and 78 of the Criminal Procedure Act 51 of 1977 – Findings made by the psychiatrists disputed – Psychiatrists testified in terms of s 77(3) – Court found the testimonies of the witnesses’ credible — No evidence before court that the accused cannot stand trial — Psychiatrists report upheld

**Summary:** The accused is indicted for murder read with the provisions of the Combating of Domestic violence Act, Act 4 of 2003. Counsel for the accused was able to get instructions from the accused. He perused the health passport of the accused

and realized that the accused was periodically treated for schizophrenia. Counsel then applied that the accused be referred for mental observation. Copies of the health passport were handed up to court. The entries for treatment of schizophrenia is the basis for the application. The State did not object the application. The accused was eventually referred by this court for observation in terms of the Criminal procedure Act, Act 51 of 1977 (the Act.)

A psychiatrist who was the head of a panel of a multi-professional panel testified and read her report into the record. The finding is that the accused is fit to stand trial and capable of understanding the court proceedings to make a proper defence. He was also capable of appreciating the wrongfulness of his actions at the time of commission of the crime.

The accused is disputing the report. The court accepted the report and ordered that the trial proceed in the normal course.

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### **ORDER**

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1. The Psychiatric Evaluation Report is accepted by this court:
2. The accused is fit to stand trial and he is capable of understanding the court proceedings to make a proper defence.

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### **JUDGMENT**

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JANUARY J:

*Introduction*

[1] The accused was referred for mental observation in terms of sections 77, 78 and 79 of the Criminal procedure Act, Act 51 of 1977 (the CPA) by this court. The accused was found to be fit to stand trial and capable of understanding court proceedings to raise a proper defence. The matter is before me in terms of section 78(4) of the CPA. The accused is disputing the report.

[2] He stands indicted for:

1. Attempted murder;
2. Assault by threat;
3. Murder;
4. Assault by threat; and
5. Arson. All counts are read with the provisions of the Domestic violence Act, Act 4 of 2003. The accused is the son of the deceased.

### *Background*

[3] It is alleged in the summary of facts that the accused is the biological brother of all victims and the son of the deceased. He co-resided with the victim in count 2, the deceased and the biological son of the deceased in count 3.

[4] The allegations in the summary of substantial facts are further:

That on the evening of 6 December 2015 at Ontanda village in the Tsandi Constituency in the district of Outapi, the accused arrived home from shebeens. He found everyone in the house already gone to sleep. He went to the bedroom of Malakia Kleopas, the victim in count 2 and knocked on the closed door. Eventually the accused kicked the door open and entered. He stayed in the room for a while where after he left the room and went to the hut of Wilhelmina Haufiku, the victim in count 1. He requested her to open the door as he wanted to tell her about people who wanted him dead. Wilhelmina opened the door and the accused entered.

[5] Then the accused started complaining why she liked to lock herself inside the room. He told the victim that she is going to die on his behalf. He left the room but shortly thereafter returned with an iron rod. He lifted the iron rod to hit Wilhelmina. The victim got hold of the rod in mid-air and screamed for help. The deceased and the victims in counts 2 and 4 came to rescue her.

[6] The deceased and victims fled into a Mahangu field to hide in fear of the accused. The accused pursued them. He eventually chased after Wilhelmina. She fled to hide in a neighbouring house.

[7] The accused returned to the homestead and shouted that he will set on fire the bedroom of the deceased. The threat prompted the deceased to emerge from hiding in order to evacuate three children from her bedroom. The accused picked up a stick, chased the deceased out of the homestead and hit her on the head with it. The deceased fell to the ground. The accused continued hitting her while she was on the ground.

[8] Whilst the accused was assaulting the deceased, the victim in count 4, Hafeni Haufiku, threw stones at the accused in an attempt to stop him from assaulting the deceased.

[9] The accused turned from Wilhelmina to Hafeni and started chasing him with the stick. Meanwhile Wilhelmina evacuated the 3 children from the bedroom of the deceased. When the children were removed, the bedroom of the deceased was already set ablaze by the accused. The deceased died where she was assaulted due to head injuries sustained as a result of the assault by the accused.

#### *The Observation and Report*

[10] The accused was observed by a multi-professional panel. The Psychiatrist, Dr Lahija E K Hamunyela is the head of the panel of specialist who observed and

evaluated the accused. She compiled the report submitted to the prosecution, accused and the court. The panel consisted of herself, a psychologist, occupational therapist, a social worker and daily psychiatry nursing staff. During the observation period the panel did observations on the behaviour, speech (the speed rate, volume and tone), thought process, short, intermediate and long term memory of the accused. They also looked at his capability of concentration, how he pays attention to the interview, his judgement by giving a scenario and what his responses are, abstract thinking (if he can distinguish between differences and similarities), insight and if there are signs of mental illness.

[11] The enquiry consisted of:

1. Copies of witness statements;
2. Copy of the court record;

The nature of the enquiry conducted in terms of section 79(4) of the CPA was:

1. Psychiatric interview;
2. Physical examination;
3. Collateral interview by medical social worker (interviews with family members);
4. Assessment by Occupational Therapist;
5. Assessments by Clinical Psychologist;
6. Daily observation and report by Psychiatry Nursing staff.

The accused was presented on 4<sup>th</sup> July 2019 to the panel of multi-professional team at the forensic conference room.

[12] The mental history of the patient is relevant in the enquiry as it is informative about the mental capacity of an accused. The history is received from interviews with relatives. The accused was able to engage positively throughout his observation period. Dr Hamunyela did not have interviews with the family of the accused but gained information through the social worker who held interviews with relatives. The witness (Dr Hamunyela) was satisfied with the social worker's report.

[13] This report reflected that the accused was treated for mental illness (schizophrenia) which could be alcohol related according to Dr Hamunyela. The health

passport of the accused reflects various entries where the accused was treated for schizophrenia. The psychiatrist testified that this diagnosis could be wrong. The accused's behaviour at the time of diagnosis could be triggered by his realization of what he has done on the day of the incident. He could have malingered at the time. The accused did not suffer from schizophrenia during the time of observation. He was also not on medication for schizophrenia.

[14] The accused was arrested on 13 December 2015. It appears from the health passport that he was diagnosed with schizophrenia after his arrest on this case.

### *Submissions*

[15] Mr Grusshaber submitted that the accused's past medical history was not considered or there is doubt whether it was appropriately considered. He submitted that the accused is indicted with a serious charge. He contended that the court should direct that the accused should again be referred for mental observation in the circumstances.

[16] Ms Nghiyoonanye submitted that the report is clear that the accused is triable and accountable. He does not suffer from a mental illness and was accountable at the time of the crime. She submitted that the matter should go to trial.

[17] I am in agreement with counsel for the State. The report meets the requirements in terms of s 79 (4) in that the report included:

- (a) a description of the nature of the enquiry;
- (b) a diagnosis of the mental condition of the accused;
- (c) a finding as to whether the accused is capable of understanding the proceedings in question so as to make a proper defence;
- (d) In terms of section 78(2) includes a finding to the extent to which the capacity of the accused to appreciate the wrongfulness of the act in question or to act in accordance with an appreciation of the wrongfulness of that act whether or not, at

the time of the commission thereof he was affected by mental illness or mental defect.

*Conclusion*

[18] I am satisfied that the report covers and contains the essential details. It is a reflection of the unanimous decision of the constituted panel of professionals. It is reliable and persuasive. I accept the findings in the psychiatric evaluation report.

[19] In the result I make the following order:

1. The Psychiatry Evaluation Report is accepted by this court;
2. The Accused is fit to stand trial, and he is capable of understanding the court proceedings to make a proper defence.

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H C JANUARY  
JUDGE





**APPEARANCES**

For the State: Ms M Nghiyoonanye  
Office of the Prosecutor General, Oshakati

For the Accused: Mr P Grusshaber  
Directorate of Legal Aid, Otavi