

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(TANGA DISTRICT REGISTRY)**

**AT KOROGWE**

**CRIMINAL SESSION CASE NO. 18 OF 2020**

**(ORIGINAL JURISDICTION)**

**THE REPUBLIC**

***-VERSUS-***

**MARIAM JUMA**

**SPECIAL FINDING**

Date: 07/12/2021

Coram: Hon. U. J. Agatho, J

For the Republic: Paul Kusekwa (S/A) and Sarah Wangwe SA

For the Accused: Justus Josephat Advocate

Accused: Juma Salehe Mwinjuma Present under custody

Assessor: (1) Burton Daniel Makalla (50 years)

(2) Sauda Munga (43 years)

(3) Salma Mponda (52 years)

JLA: Husna Mwiula

C/C: Abubakari Jumanne

**Court:** The matter is fixed for delivery of special findings.

Sgd: U. J. Agatho, J

08/12/2021

**Kusekwa State Attorney:** My Lord, we are ready for the delivery of the special findings.

**Justus Ilyarugo, Advcoate:** We are ready too, My Lord.

**Court:** From what has been presented by the prosecution, the Accused person, Mariam Juma was arraigned before this court facing a charge of murder c/s 196 and 197 of the Penal Code [Cap 16 R.E. 2002]. The prosecution alleged that on 11/11/2019 at Suwa Village, Handeni District, Tanga Region she murdered Juma Salehe. The accused person pleaded not guilty to the charge and raised the defence of insanity. To prove the charge the prosecution brought four (4) witnesses and tendered two (2) exhibits.

In criminal offence it is important to prove actus reus and mens rea. As for actus reus, it is obvious from the testimonies of PW2 and PW3 they testified that the Accused was the last person to seen with the deceased. In **Gody Katende @ Godfrey Katende v R, Criminal No. 399 of 2018 Court of Appeal at Iringa**, the Court of Appeal held that the person who was last seen with the deceased in the absence of explanation he is responsible for the death of that deceased. This was proved in our case with the evidence of PW2 and PW3.

As for the death of the deceased, it was unnatural, this was shown by the postmortem report (exhibit P2) tendered by PW4 that the death was caused by severe head injury. Thus, actus reus was proved.

Regarding the second element (*mens rea*), the intention or malice afore thought, the testimony of PW3 show that the Accused had mental disorder at certain times. Also looking at the accused's mental status report from Isanga Mental Hospital, it shows that the Accused was insane (organic brain syndrome) at the moment of commission of the offence. From this evidence under section 13 of the Penal Code [Cap 16 R.E 2002] a person shall not be criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind.

In this case the Accused counsel stated that the Accused will raise the defence of insanity as per section 13 of Penal Code [Cap 16 R.E. 2002]. This was done immediately after the Accused pleaded not guilty to the charge. The same was also supported by the court order given on 21/08/2020 under provisions of section 220(1) and (2) of the Criminal Procedure Ac [Cap 20 R.E. 2019] that the Accused be sent to Isanga Mental Hospital for examination of the

state of her mind at the time of commission of the offence. And the report of Isanga Mental Hospital dated 18/02/2021 showed that the Accused was insane.

Following these series of events and at the trial the Court by virtue of Section 219(2) of the Criminal Procedure Act [Cap 20 R.E. 2019] made a special finding. From the evidence given it is clear that the Accused did not know what she was doing thus she is not criminally responsible under Section 13 of the Penal Code [Cap 16 R.E. 2002]. However, the Court is empowered under Section 219(3) of Cap 20 R.E. 2019 to make special finding and order the accused be detained in mental hospital as mentally disordered offender so that she can be examined until when seen that she is no longer a threat to the public. This has been held in **Charles Manyono v R, Criminal Appeal No. 109 of 1999 Court of Appeal at Arusha** (unreported). The Court of Appeal ordered the Accused to be detained in mental hospital as criminal lunatic. The prosecution prayed that the Accused to be committed to mental hospital until when she is fit to be returned to the public.

While it is true that the Accused is the last person be seen with the deceased, she did not know what she was doing as she was insane.

This has been confirmed by the medical report from Isanga Mental Hospital. The prosecution might have proved the actus reus but not the mens rea of the Accused at the time of the commission of the offence. I concur with the Hon. Assessors who found the Accused to be insane at the time of the incident.

The Accused did kill the deceased but due to her insanity at the time of commission of the offence I find her incapable of having the requisite malice aforethought (under Section 13 of the Penal Code [Cap 16 R.E. 2002]) and hence not guilty of the offence (Section 219(2) of Cap 20 R.E. 2019). And since the medical report from Isanga mental hospital has confirmed that she is progressing well, I hence discharge her (under the provision of Section 219(3)(b) of Cap 20 R.E. 2019) on condition that the family will look after her for her own safety and welfare and that of the public, and if she shows symptoms of insanity she shall be committed to mental institution.



A handwritten signature in blue ink, appearing to read "U. J. Agatho", with a stylized flourish at the end.

U. J. Agatho

**JUDGE**

08/12/2021