

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**ARUSHA DISTRICT REGISTRY**  
**AT ARUSHA**  
**CRIMINAL SESSION CASE NO. 2 OF 2021**  
**REPUBLIC**  
**VERSUS**  
**DAMIANO S/O NAKEY DEEMAY**  
**PROCEEDINGS**

**Date:** 13/10/2021

**Coram:** D. C. Kamuzora, J

**Ms. Lilian Aloyce Mmas**, State Attorney for the Republic

Damiano Nakey Deemay is present under custody and represented by Mr. Fridoline Bwemelo, Advocate

B/C: Mariam

Notice of trial of information for murder c/s 196 of the Penal Code [CPA 16 R.E 2002] was duly served to the accused person in court.

**Sgd: D. C. KAMUZORA**  
**JUDGE**  
**13/10/2021**

**Ms. Mmas:** The matter is for preliminary hearing; we are ready to proceed.

**Mr. Bwemelo:** We are ready to proceed.

**Court:** Information for murder read over and explained to the accused person in language understood to him who is asked to plea thereto:

**Mr. Bwemelo:** Before the accused plea to the information for murder, I pray to inform this court that the accused will rely on the defence of insanity. We inform this court that, at the time of incident, the accused person was temporarily insane as he did not know what he was doing.

The caused person has suffered such a problem for so long. He sometime becomes angry without a reason and he sometimes used to run into bushes or isolated places.

There was a time he even pushed himself into fire.

The accused claim that on the date of incident he did not know what was happening to his head and he did not intend to kill the deceased. For that reason, we pray that under section 220(1) of the CPA CAP 20 R.E 2019 this court be pleased to issue an order committing the accused person to mental Hospital for examination to ascertain his mental stability and if at the time of commission of the offence he was suffering from mental illness that caused him to do things not intended to.

**Ms. Lilian Mmas:** I do not object the prayer by the Counsel for the accused person which shows that there is a need for the accused to be examined on his mental status.

My concern is on the provision cited by the counsel for the accused. I think the proper provision is section 219 of the CPA.

**Mr. Bwemelo:** The provision is the correct one as it is the provision which gives powers to the court to issue an order. Section 219 is the provision used to plea defence of insanity.

**Court:** I have considered the prayer made by the counsel or the accused person and the fact that such a prayer is not disputed by the Republic.

The law is clear that defence of insanity is prayed for under section 219 and the order for committal to mental hospital for examination is issued by court under section 220 of the CPA. Taking all that into consideration. I hereby allow the prayer by the defence counsel.

The accused person one Damiano Nakey Deemay is hereby ordered that he be detained in a mental hospital (Mirembe) for Medical Examination.

The report shall be made to this court within forty-two (42) days as required under Section 220(2) of the CPA Cap 20 R. E 2019. The proceedings are therefore adjourned to another session to be notified to the parties.

**Sgd: D. C. KAMUZORA**  
**JUDGE**  
**13/10/2021**

**Date:** 29/6/2022

**Coram:** D. C. Kamuzora, J

**Ms. Alice Mtenga**, State Attorney for the republic

Damiano Nakey Deemay I present under custody and represented by Mr. Fridoline Bwemelo, advocate

B/C: Mariam Kimomwe

Notice of trial of information for murder c/s 196 of the penal code [CAP 16 R.E 2022] was duly served to be accused person in court this 29/6/2022

**Court:** Notice of trial of information for murder c/s. 196 and 197 of the Penal Code [Cap 16 RE 2019] was duly served on the accused person who is before this court this 29/06/2022.

**Sgd: D.C. KAMUZORA**  
**JUDGE**  
**29/06/2022**

**Ms. Alice Mtenga:** The matter was scheduled for plea taking, we are ready to proceed.

**Mr. Fridoline Bwemelo:** We are ready to proceed.

**Court:** Information of murder c/s. 196 of the Penal Code [Cap. 16 RE 2019] is read over and explained to the accused person in Swahili language which he understands and he is asked in terms of section 275 of the CPA to plea thereto.

**Accused:** Ni kweli nilimuua ila sikukusudia kumuua maana haikuwa akili yangu (It is true that I killed the deceased but it was not intentional as I was not in normal state of mind)

**Court:** Enters Plea of Not guilty to the charge/information for murder.

**Sgd: D.C. KAMUZORA**  
**JUDGE**  
**29/06/2022**

**Ms. Alice Mtenga:** - I Pray to use the provision of section 276 of the Penal Code and charge the accused with lesser offence of manslaughter C/S. 195 and 198 of the Penal Code as he killed without malice aforethought.

**Mr. Bwemelo:** No objection.

**Court:** this court cause the information of manslaughter C/S. 195 and 198 of the Penal Code Cap 16 RE 2019 to be read over and explained to

the accused person in Swahili language which he understands and the accused is asked to plea to thereto.

**Accused:** - Ni kweli nilimuua bila kukusudia kwani haikuwa akili yangu (It is true I killed him but not intentional as I was not in a normal state of mind).

**Court:** - the plea of guilty to the offence of manslaughter is entered against the accused person.

**Sgd: D.C. KAMUZORA**  
**JUDGE**  
**29/06/2022**

**Ms. Alice Mtenga:** Fact are ready, I pray to read facts.

**Mr. Bwemelo:** We are ready to proceed.

### **FACTS OF THE CASE**

1. That, the accused in Damino Makey Deemay, Iraqw, adult, peasant, and resident of Sabato village within Karatu District in Arusha region.
2. That, the accused is charged for the offence of manslaughter contrary to section 195 of the Penal Code Cap. 16 RE 2019
3. That, the deceased in this case is Hollo s/o Margwe @ Sipto, was an adult, Iraqw, and he was a resident of Sabato village at Karatu District.
4. That, the incident occurred on 12/06/2020 at Sabato village within Karatu District in Arusha region.

5. That, the accused was mentally unfit for a long time thus, he was sometimes furious without reason and sometimes he used to run into bushes or isolated areas.
6. That, on the date of incident the accused was sleeping in the same house with his brother and the deceased and he woke up asking his brother for fire to light his cigarette.
7. That, while his brother was trying to give fire to him, the accused resisted and wanted to attack his brother using a cane/stick on his head.
8. That, the accused tried to stop the deceased from fighting with his brother and they both went outside the house.
9. That, as the accused was looking abnormal and violent started the deceased's brother went to look for help leaving behind the accused and the deceased.
10. That, the accused did push the deceased into the house and attacked him with panga in his head and face causing his death.
11. The report was made to the police station who went to the scene and did prepare the sketch map of the scene and collected the panga used to attack the deceased.
12. The accused was sent to the police station and interrogated and he confessed attacking the deceased but claimed that he was not aware of what he was doing.
13. On 15/06/2020, the accused was sent to the justice of peace to record extra judicial statement and he also confessed to have committed the offence.

14. The post-mortem examination was conducted to the deceased's body and discovered that the cause of death was brain injury and shock.
15. On 13/10/2021, the accused was brought to this court to for plea taking and the defence side raised the defence of insanity and the court ordered for the medical examination.
16. The accused was sent to mental hospital for examination and the report was sent to this court which we pray to form part of evidence.

Together with the facts and medical examination report we also pray to tender, the accused cautioned statement, extra-judicial statement, sketch map of the scene and report on post-mortem examination as exhibits in this case if no objection from the defence side

**Mr. Bwemelo:** No Objection.

**Court:** Medical examination report of the accused, cautioned statement, extra-judicial statement, sketch map of the scene and report on post-mortem examination are all admitted collectively and marked as Exhibit PE1. The contents of the exhibits are read over in court.

**Sgd: D.C. KAMUZORA**  
**JUDGE**  
**29/06/2022**

**Court:** In terms of section 192 (2) of the CPA, the accused person is refreshed of the facts read over by Ms. Alice Mtenga and he is now asked to state the facts which are admitted and the facts not admitted.

**Accused:** I admit to all facts read to me by the State Attorney as correct and true.

**Court:** The accused person has voluntarily admitted to all the facts read over to him which in my considered view they constitute the offence of manslaughter. However, due to the fact that the doctor's report on the mental status of the accused person reveals that at the time the accused committed the offence he was suffering from the mental disorder, in considering the provision of section 219 (2) of the Criminal Procedure Act Cap 20 R.E. 2019, I find that by reason of insanity, the accused person is not guilty of the offence charged.

**Sgd: D.C. KAMUZORA  
JUDGE  
29/06/2022**

Accused person Damiano Nakey Deemay (signed)

Defence Counsel Mr. Fridoline Bwemelo (signed)

State Attorney Ms. Alice Mtenga (signed)

**Sgd: D.C. KAMUZORA  
JUDGE  
29/06/2022**

### **COURT FINDING**

The accused has unequivocally pleaded guilty to the offence of Manslaughter c/s. 195 of the Penal Code Cap. R.E. 2019. Following the defence of insanity that was raised by the defence and supported by the doctor's report from mental institution and in considering that the circumstances of this case would have warranted a sentence of not less than 5 years, I make a finding to discharge the accused under section 219(3)(b) of the Criminal Procedure Act Cap. 20. R.E. 2019.



  
**D.C KAMUZORA**  
**JUDGE**  
**29/06/2022**

**Court:** Right to appeal to the Court of Appeal against sentence is fully explained.

  
  
**D.C. KAMUZORA**  
**JUDGE**  
**29/06/2022**