

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**SUMBAWANGA DISTRICT REGISTRY**

**AT SUMBAWANGA**

**CRIMINAL JURISDICTION**

**CRIMINAL SESSION NO. 27 OF 2021**

**REPUBLIC**

**VERSUS**

**EDITHA D/O ALBERTO**

**FINDING OF THE COURT**

The accused person one Editha d/o Alberto stand Charged with Murder Contrary to Section 196 and 197 of the Penal Code (Cap 16 R.E 2019).

It is alleged by the prosecution that on 2<sup>nd</sup> day of Novemba, 2019 at Chipapa village within Kalambo District and Rukwa Region the accused did murder one Agniwe s/o George Sinsimbi.

During plea taking and preliminary hearing, (on 01/03/2022) Mr. Kasuku, defence counsel raised the defence of insanity and prayed the court to invoke the provisions of section 219 and 220 of the Criminal Procedure Act to commit the accused person to Isanga Institute of Mental Health for examination. Following the order of the court, Editha d/o Alberto

was admitted at Isanga Institute on 23<sup>rd</sup> March 2022. The accused being examined and observed for a period of 42 days as require by law (section 219(1) of the Criminal Procedure Act) on 04<sup>th</sup> May, 2022 the institute transmitted to this court a written report on her mental status at the time and during the commission of the charged offence.

Upon the receipt of the medical report duly signed by the medical officer incharge, the prosecution was availed an opportunity to adduce such evidence relevant to the issue of insanity as required by subsection 3 of section 220 of the Act.

Given such an opportunity, the prosecution called two witnesses. G. 2094 D/COPLO Juma testified as PW1. His testimony was that on 05/01/2019 he was assigned to investigate the murder case file. The accused was called Editha d/o Alberto while the deceased was called Agniwe George Sinsimbi. That by then the accused was at the police station. That he took the accused from lock up for interrogation and recording her statement. PW1 told the court that he could not manage to interrogate her because they did not understand each other. That he went on investigation through the relatives and village chairperson where he got to know that the accused was of unsound mind. That he collected exhibits such as knife used to stab the deceased, sketch map and post mortem report.

PW1 went on saying the deceased was a two years child, the deceased is the biological son of the accused.

PW2 was Bright Simwita. His evidence was that he is a VEO of Chipapa village. That on 02/11/2019, he was at home. He was informed on the murder event. The deceased was a child aged two years old. The deceased was a biological child of the accused. That he rushed at the scene where he found the deceased lying on the mat with the deceased body being full of blood. When he interrogated the accused, she remained mute, when asked the accused relatives PW2 told the court that he was told that the accused has a longtime mental disorder. He then reported the matter to the police station.

When the defence counsel was accorded an opportunity to address the court, Mr. Kipesha brought to the attention of the court that, he submitted earlier that the defence would have relied on the defence of insanity.

The counsel prayed, the court to consider the prosecution evidence together with the medical report from Isanga Institution submitted to the court. He prayed the court to find that the accused was insane during the commission of offence.

As amply shown throughout the trial, the issue of insanity had been featuring. At this juncture it is desirable to examine closely the position of law regarding the defence of insanity as provided for under Section 220(1) of the Criminal Procedure Act.

The pertinent to address relates to the circumstances whereby the defence of insanity can be invoked. First I will set out the provisions of section 220(1) of the Act.

***220(1) – Where any act or omission is charged against any person as an offence and it appears to the court during the trial of such a person for that offence that such person may have been insane so as not to be responsible for his action at the time when the act was done or omission was made, a court may, notwithstanding that no evidence has been adduced or given of such insanity, adjourn the proceedings and order the accused person to be detained in a mental hospital for medical examination”***

From the provisions of this section, my understanding is that in criminal charge the court has a discretion to adjourn the proceedings and order the accused person to be examined in a mental hospital. However, in exercising the discretion it is necessary first to lay the ground upon which the court to find that the accused person might have been insane at the time the offence was committed **See Dastan. Antony Luambano Vs. Republic (1990) TLR 4.** The question is whether there were such circumstances to warrant the provisions of Section 220(1) of the Act.

On the basis of the evidence laid down before this court; and as stated earlier, there was indication from the defence side that suggested that the accused was insane at the time she killed the deceased (son). It is from that indication the case was adjourned and the court made an order the accused be detained at a mental hospital for medical examination.

The report on medical examination is that the accused one Editha d/o Alberto was suffering from mental disorder, known as **Epilepsy with**

**psychosis** and she was therefore **INSANE** during the time she committed the alleged crime.

Thus, taking into account the evidence at hand and medical report from Isanga mental Hospital, I am of the finding that the accused did the act or made the commission of the charged offence of murder, but was insane so as not to be responsible for her action at the time when the act was done.

I further make special finding that the accused did kill the deceased the offence which she is so charged. But by the reason of her insanity is not guilty of the offence.

Under the provisions of **section 219 (2) (b) of the Act**, I hereby order the accused person be kept in a mental Hospital as a mentally disordered offender.

It is so ordered



  
**D.B. NDUNGURU**

**JUDGE**

**11/08/2022**