

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

SITTING AT BARIADI

CRIMINAL SESSION NO 110 OF 2022

THE REPUBLIC

VERSUS

MAHINA S/O JULIUS @ NHUMBU..... ACCUSED

RULING

15th September 2022

MKWIZU, J:

The accused person named above stands charged with the offence of murder contrary to Section 196 and 197 of the Penal Code, (Cap 16 RE 2002) (Now RE 2022). He is accused of murdering his own seven years daughter **Sara d/o Nhumbu** on 28th March 2018 at Ilamata Village within Maswa District in Simiyu Region.

The facts of the case narrated at the preliminary hearing are to the effect that, the Accused who is normally suffering from epileptic disorder went missing on 27/3/2018 and came back home on the morning of 28/3/2018 naked while screaming for no reason. On seeing that state of affairs, his wife ran to notify his in-laws staying just nearby in the same locality leaving behind her children, deceased inclusive. On coming back, she found the deceased lying down dead. The villagers went for the search of the accused who was at that moment out of reach and managed

to find him holding a club (Rungu). The incident was reported to the police who managed to visit the scene and upon interrogation of the accused relatives including **Hoga John**, accused's wife, **Simwanda Paulo**, accused sister-in-law and **Paulina Bundala**, accused's biological mother it was realized that the accused is suffering from *epileptic disorder* causing him to sometimes act strangely.

Accused who was by then at the police station denied the charges. According to the State Attorney, accused's case was later transferred to a magistrate with extended jurisdiction and was registered as Criminal Session Case No 27 of 2019. The Plea taking could not however proceed to its conclusion after it was observed that accused was behaving in a way that signaled a mental disorder that necessitated for an order detaining the accused to a Mental institution for examination of his mental state at the commission of the offence under section 220 of the CPA, Cap 20 RE 2002 (Now 2022). And that the accused was examined and the psychiatric examination reports from Isanga Mental institution dated 13/12/2020 was returned to the Court with a finding that accused was not mentally fit at the commission of the offence.

Ms Violeth Mushumbuzi, the learned State Attorney said, they have no intention of calling any other witness to establish the accused's mental disorder and thus she invited the court to consider the facts of the case, and the Psychiatric examination Report from Isanga and invoke the provision of section 219 of the CPA and order the accused to be detained in mental hospital as a Mental disordered offender.

When probed to submit on the legality of the Psychiatric examination Report from Isanga which was ordered by a Magistrate with extended jurisdiction, in the withdrawn proceedings, the State Attorney adeptly said, the validity of the report would not have been affected by the withdrawing of the criminal proceedings as it speaks of the actual condition of the accused and is supported by the facts of the case obtained from the accused's relatives establishing that the accused was even before the incident suffering from the identified mental disorder. He insisted on her earlier on prayer and that they do not intend to bring any witness to establish accused mental disorder.

Ms Zawadi Lazaro, defence advocate supported the prayer. She as well requested the court to consider the fact of the case and the exhibit P2, psychiatric examination report tendered in court to arrive at its finding on the accused's state of mind at the commission of the offence.

I have consciously considered the facts of the case, perused exhibits P2 tendered before the court and observed the accused in court. It doesn't need a medical understanding to realize that the accused is person with mental disability. My findings are supported by the facts of the case and the report from Isanga Mental institution diagnosing the accused to have been suffering from what is recorded as: "***Ictal Psychosis***" and its conclusion that "***He was therefore INSANE during the time he committed the alleged crime***".

I have sought of re-ordering the detaining of the accused in a mental institution for another medical examination after learning that the filed psychiatric examination report was facilitated by an order of a Resident

Magistrate with extended jurisdiction given in a withdrawn proceeding. My views are however that the outcome of the reports or its validity for that matter does not at all depend on who made the order for examination. It is the actual health condition of the accused that determines the outcome of the diagnosis. Thus, having been established by facts and physical observation that accused is not mentally fit, then I find it worthless to re send the accused to establish the already established fact.

I for that reason make a special finding under Section 219 (2) of the Criminal Procedure Act, (Cap 20 RE 2022) that the accused committed the offence by reason of his insanity and therefore not guilty of the offence. And since the offence committed involves physical violence for which, if not for the proved insanity, accused would on conviction be liable to a sentence of death, he is hereby for his own safety and that of the community detained in Isanga Mental Unit as a Lunatic Prisoner pursuant to section 219 (3) (a) of the CPA, until further orders by the Minister responsible under section 219 (5) and (6) of the CPA. The In-charge of the Isanga Mental Unit is ordered to comply with the provisions of section 219(4) of the CPA. Order accordingly.

DATED at SHINYANGA this 15th day of August 2022.



E.Y. Mkwizu
E.Y. Mkwizu
JUDGE

15/9/2022