

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO. 16 OF 2021

REPUBLIC

VERSUS

NGELENGEJA s/o MANYANZA MACHIYA

JUDGMENT

MWENEMPAZI, J.

The accused person herein named has been arraigned in this court for the offence of murder contrary to section 196 of the Penal Code, Cap 16 R.E. 2019. It is alleged by the prosecution that the accused on the 8th day of March, 2021 at Korongwe village within Nkasi District and Rukwa Region did murder one Gambo s/o Manyanza.

When the matter was called for plea taking, on the 4th March, 2022 the defence counsel, then defending the accused person informed the Court that they intend to raise a defence of insanity in respect of the accused person and called this Court to invoke section 220 (1) of the Criminal Procedure Act,

Cap 20 R.E 2019, so that the accused is sent to the mental institute. On the date the record shows that the doctor's report had already been brought to this court pursuant to an order of the court dated 20th August, 2021. At the end of the session the matter was adjourned to pave the way for Deputy Registrar to schedule a date for hearing.

When the matter came for hearing today, the prosecution led three witnesses, namely Bumbe d/o Maduka, Manyanza s/o Haki and Dr. Keneth s/o Tamalisa who testified as PW1, PW2 and PW3. PW1 and PW2 are wife and husband respectively and PW3 is the doctor who conducted Post Mortem Examination Report which was tendered as exhibits P1.

It was the evidence of PW1 that she is married to PW2 and in 2021 they had three children including Gambo s/o Manyanza, the deceased, who on the said 8th March, 2021 was seven (7) month old. On the material date, the accused went and grabbed the deceased who was with his mother. Gambo s/o Manyanza a male child. The accused held the deceased by the legs and hit his head against the stone which was nearby the house. The accused did so until the child was unresponsive to voice and pain.

While the alleged acts continued the elder wife of PW2 together with the mother of the deceased (PW1) tried to take back the child from the

accused, which efforts which proved futile. Also, PW2 heard the scream made by (PW1) his junior wife, and mother of the child (deceased). PW2 was in the nearby farm. He ran to the scene of crime to rescue the situation. He was late, he found Gambo s/o Manyanza, the victim child already dead.

People who responded to the screams by PW1 including the young brother of PW2, went and arrested the accused and took him to the village office where he was kept in remand. A report was sent to the police station, on the next day, 9/3/2021 Police Officers came with the Doctor, PW3. He conducted a post mortem examination report. His findings were that, the body of the deceased was an African child, aged between 5 -7 month old, male, unresponsive to voice and pain was lying on the ground covered, with piece of cloth. He examined eyes were cloudy and pupils were unresponsive to light. Further examination showed the body had broken skull, broken right hand humorous bone, right ribs were also broken. He opined that the victim died 18 hours before examination was conducted. The witness PW3 testified that the cause of death was Traumatic Brain Injury. A post mortem examination report was admitted as exhibit P1.

The prosecution closed their case and this Court had to rule as to whether a prima facie case had been made against the accused and the accused should defend himself or not.

In the analysis of evidence, it is very clear that all three witnesses have testified that the accused did kill the child; though for the first time that he showed such an aggressive behavior, the accused had no sound mind only details were missing. PW3 in his testimony, stated that when he went to the scene of crime on the 9/3/2021, he had a chance to interview the accused person. In his view, the accused seemed not to be of sound mind and he opined that the accused had 'manic disorder'.

It has been observed above that the accused was sent to the mental institute by order of this Court made on 20th August, 2021. He was sent under Section 220 (1) of the Criminal Procedure Act, Cap 20 R.E. 2019. Section 220 (2) of the Criminal Procedure Act provides as follows:

"(2) A medical officer in charge of the mental hospital in which an accused person has been ordered to be detained pursuant to section (1) shall, within forty-two days of the detention prepare and transmit to the Court ordering the detention of the accused setting out whether, in his opinion, at the time when the offence was committed

the accused was insane so as not to be responsible for his action and such written report purporting to be signed by the medical officer who prepared it may be admitted as evidence unless it is proved that the medical officer purporting to sign it did not in fact sign it".

"(3) Where the Court admits an medical report signed by the medical officer in charge of the mental hospital where the accused was detained the accused and the prosecution shall be untitled to adduce such evidence relevant to the issue of insanity as they may consider it".

In the case at hand the medical report was sent to this Court and when the case was being heard for the prosecution, there is no any doubt that even the prosecution witnesses are of the view, that the accused was insane at the time he committed the offence. Under the circumstances the defence did not call the witness instead he submitted relying on the doctor's report from the mental institute that the accused was not of sound mind when he committed the offence, the fact which renders him not to be criminally responsible.

In the case **MT. 81071 PTE YUSUPH HAJI @ HUSSEIN VS THE REPUBLIC, CRIMINAL APPEAL NO. 168 OF 2015, COURT OF APPEAL**

OF TANZANIA TA TABORA the Court of Appeal of Tanzania laid down the five stages in dealing with cases like this; the same are at page 12 – 13 as follows:

"First, where it is desired to raise the defence of insanity at the trial, such defence should best be raised when the accused is called upon to plead. Second, upon being raised the trial Court is enjoined to adjourn the proceedings and order the detention of the accused in a mental hospital for medical examination. Third, after receipt of the medical report the case proceeds the normal way with the prosecution leading evidence to establish the charge laid and then closes its case. Fourth, upon the closure of the prosecution case, the defence leads evidence as against the charge laid, including medical evidence to establish insanity at the commission of the alleged act. And finally, fifth, the Court then decides on the evidence, whether or not the defence of insanity had been proved on a balance of probabilities. If such enquiry be determined in the affirmative, the Court will then make a special finding in accordance with section 219(2) and 220(4) of the Act and proceed in accordance with the enumerated consequential orders".

In our case, the accused is the one who killed Gambo s/o Manyanza. He however did it allegedly while not in good mental health. The medical examination conducted at Isanga Institute confirms as shown in the exhibit D1 which was not objected to by the prosecution.

Under the circumstances and according to the requirement of law I am now called upon to make special findings, which I proceed to do as follows, that on the adduced facts, the accused committed the offence charged with, but was insane at the time so as not to be responsible for his action. Accordingly, I so find, in terms of section 219(2) of the Criminal Procedure Act that the accused did the Act charged, but by reason of insanity, is not guilty of the offence. Having so found I proceed to make an order of detention of the accused person at a mental institution as a Criminal Lunatic at the pleasure of the Minister.

It is ordered accordingly.




T.M. MWENEMPAZI
JUDGE
27/09/2022