

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

SITTING AT MPANDA

CRIMINAL SESSION NO. 22 OF 2021

REPUBLIC

VERSUS

ELTON S/O MOSES @ ULAYA

17/02/2023 & 17/02/2023

JUDGMENT

MWENEMPAZI, J.

The accused in this case has been arraigned in Court and charged with the offence of Murder contrary to section 196 and 197 of the Penal Code, Cap 16 R.E 2019. It is alleged that the accused person, ELTON S/O MOSES @ ULAYA on the 8th day of September, 2018 at Lunguya Village within Mlele District in Katavi Region did murder one Ngeme Malale @ Ester.

When the case was called for plea taking on the 3rd October, 2022 the charge was read over and explained to the accused person, and upon calling him to plea thereto; the accused person pleaded that "it is not true" and the

Court entered a plea of not guilty to the charge. However, when the facts prepared under Section 192 of the Criminal Procedure Act, Cap 20 R.E 2019 were read over and explained to him and him being required to state whether they are true and correct, he responded to the question with unfocused answers showing confusion in his understanding of the proceedings. That alerted the Court (presiding judge) and the prosecution. The Learned State Attorney leading the prosecution prayed the Court to invoke section 220(1) of the Criminal Procedure Act, Cap 20 R.E 2019. There was no objection from the defence and an order for detainment of the accused to the Mental Health Hospital for examination was made. A report was prepared on examination conducted to the accused person.

When the case was scheduled for hearing today the 17th day of February 2023, the prosecution was being led by Ms. Hongera Malifimbo, Learned State Attorney and Mr. Elias Kifunda Learned Advocate was defending the accused person.

The prosecution called two witnesses, one Damas s/o Halakandi Ziguluka and Amos Julius Joga.

Damas s/o Halakandi Ziguluka testified as PW1. He is a brother to the accused person. They are related from the maternal side. Their mothers are

blood sisters. He testified that the accused came at Lungaya Village from Kigoma so that Damas could teach him how to cultivate rice. He testified that he stayed with the accused at his homestead for some time and then the accused told him that he wants to leave and work at another place where he will be paid more salary. Damas s/o Halakandi agreed; but after two months the accused was brought back to him by the new employer known as Bigi Rushu. However, this time around the accused's behavior had changed and he could not be understood as to whether he was charming or had a mental problem. On the 8th September, 2018 he left the witnesses' home heading for the homestead of Bigi Rushu. People followed Damas and informed him that the accused is leaving and has a big stick on his hand.

The report prompted Damas to follow him. He ran after the accused and advised the accused to go back home. The said Damas has a shop. Due to sudden report he had left hurriedly without leaving proper supervision at his shop. Thus, when he advised the accused to go back home, they were moving together towards his homestead but he left the accused on the way home, went fast to take care of his shop. However, the accused did not turn up at the shop, he decided to make follow up that is when he saw the accused at a distance far from where he was, striking something in a rice

farm. When he went there he found him beating the victim and he continued doing so though the victim showed all the signs that she had already passed away.

The witness was however, surprised to see the accused not disturbed with what had just happened and he was seen continuing with other playful activities. He seemed not to be of sound mind. He formed the opinion that the abnormal behavior shows that the accused has become insane.

Amos s/o Julius Joga testified as PW2. He was a village Executive Officer of Lungaya Village. He knew Elton s/o Moses @ Ulaya on 8/9/2018. That is the day the accused killed Ngeme Malale @ Ester. At the scene where he had been called, he found the victim had been hit by a heavy object. He also saw Elton s/o Moses @ Ulaya not to be afraid of anything. The body of the dead woman was lying in the rice farm in the field close to Eliza centre. When he interviewed the suspect he told him that he has beaten the woman because she is a witch. However, he was not clear in his statement, thus he informed the police at Majimoto Police Station. The actions of the suspect seemed to be abnormal.

The prosecution had only these two witnesses and it was clear that the victim, Ngeme d/o Malale @ Ester died a violent death and the perpetrator

is the accused person. In the prosecution case it was clear that the accused was of unsound mind when he was acting until he caused death to the victim. I therefore was hesitant to call upon the defendant to defend himself because even in the proceedings today, he seemed not to follow the proceedings properly. He would rise and interfere with the witnesses as they were testifying in Court. However, I called upon the defence counsel to submit on the status of the accused.

According to the submission by the defence counsel, the history of the accused has manifested he has a mental disorder from the time he killed the victim, to the proceedings in Court. At preliminary hearing it was ordered that he be detained at the mental institute for examination of his health and a report be made thereto as per section 220(1) of the Criminal Procedure Act, Cap 20 R.E. 2019. A report has been made and brought to this Court confirming that during examination the accused Elton s/o Moses @ Ulaya had shown features suggestive of a mental disorder known as **Schizophreniform disorder** which impaired his reasoning. He was insane during the time of committing crime. A report was admitted in Court as exhibit D1.

On the adduced facts, and according to the requirement of law, the accused committed the offence but was insane at the time so as not to be responsible for his actions.

Accordingly, I so find, in terms of section 219(2) of Criminal Procedure Act, the accused did the act, but by reason of insanity is not guilty of the offence. Having so found I proceed to make a 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.



A handwritten signature in black ink, appearing to read 'T.M. Mwenempazi'.

T.M. MWENEMPAZI

JUDGE

17/02/2023