

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

SITTING AT MPANDA

CRIMINAL SESSION NO. 28 OF 2021

REPUBLIC

VERSUS

SHIGELA S/O KACHELEKELE @ NJIMELI

08/02/2023 & 08/02/2023

RULING

MWENEMPAZI, J.

In the case, Shigela Kachelekele @ Njimeli has been 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 on the 28th day of November, 2020 at Kamalampaka Village within Mlele District in Katavi Region, Murdered on SHIJA D/O LUGATA.

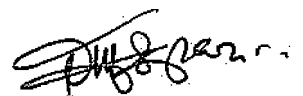
As the second prosecution witness was testifying, one ANUAR S/O HAJI MKETO, he testified that he is the medical doctor who conducted Post Mortem Examination of the deceased body. In general, he concluded in his



testimony that the deceased SHIJA D/O LUGATA died a violent death whereby she was attacked by a sharp object which cut all major arteries to the head and on the neck. He brought to demonstrate the testimony by tendering in Court a Post Mortem Examination Report (PMER) he filled after he had finished examining the dead body, identified to be that of SHIJA D/O LUGATA.

The defence Counsel, Gadiel Sindamenya objection to the admission of the Post Mortem Examination Report (PMER) on the reasons that the name which appears to have certified the examination of the deceased body is not the name of the doctor who conducted Post Mortem Examination Report (PMER). The Counsel urged this Court not to admit the document.

On the part of the prosecution Mr. Dickson Makolo Learned State Attorney opposed the objection and sought this Court to dismiss the objection and admit the Post Mortem Examination Report (PMER). He relied on item (e) of the report where the Doctor commencing the filling the form he argued that the apparent error on the record does not vitiate the validity of the report.

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In rejoinder, the defence Counsel argued that to confirm the death there must be a form filled by the doctor/medical officer who has conducted the examination. He reiterated the objection and prayed that the document should not be admitted.

I have examined the report on Post Mortem Examination form. It is made Under Section 11 of the Inquest Act, Cap 24 R.E 2019. The section reads:

*"(1) The medical practitioner, shall, upon receipt of an order under **Section 10** for a Post Mortem Examination, immediately make an examination of the body, with a view to determine from it the cause of death and to ascertain the circumstances connected with it, unless he procures the services of some other medical practitioner.*

(2) The examination referred to in subsection (1) shall extend, when the medical practitioner considers it necessary but not otherwise, to such dissection of the body as he may think requisite.

(3) The medical practitioner shall make a report to be in form c prescribed in the schedule, stating the cause of death and shall be signed by him, and, on being read at the inquest shall be prima



facie evidence of the facts stated in it, but the coroner may call the medical practitioner if he considers it necessary”.

According to Section 11(1) of the Inquest Act, Cap 24 R.E 2019 a medical practitioner conducts an examination at the order of the coroner made under Section 10(1) of the Inquest Act, Cap 24 R.E 2019. Section 10(1) of the Act reads as follows:

“(1) Where for the purposes of the investigation of the circumstances of the death of any person, the coroner considers it necessary to obtain a medical report on the appearance of the body of that person and as to the conclusions to be drawn from that appearance; he may subject to subsection (2), by an order in the form B prescribed in the schedule to this Act; require any Government medical practitioner within or without his jurisdiction, or in the absence of such officer, any other medical practitioner within his jurisdiction to make and examination of the body and to report on it.

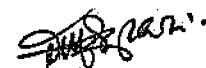
(Let from B and form C be reproduced)”.

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Thus according to the cited law, form B is filled by a coroner and directed to the Dr. hence words "To Dr....." and form C is filled by the Doctor and directed (addressed) to the coroner. Hence the words "To the Coroner". The way form B is made the name of the Doctor has to be filled as an addressee and signature of the coroner issuing an order is appended at the bottom. While form C the name of coroner is filled but the form is signed by the doctor who has conducted the examination of the body. Section 11(3) of Inquest Act, Cap 24 R.E 2019 reads:

The medical practitioner shall make a report to be in the form C prescribed in the scheduled, **stating the cause of death and shall be signed by him;** on being read at the inquest shall be prima facie evidence of the facts stated in it, but the coroner may call the medical practitioner if he considers it necessary".

The law as seen emphasized the cause of death and the authority certifying by signature. These facts are present in the form. However, the way it is it does not invalidate the form as the cause of death is there and the Medical practitioner has signed the same.

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In our case, that becomes the position because the medical doctor is present in Court and has testified and since he has done so, the form is valid and it was properly filled by the relevant officer.

Under the circumstances, the objection is overruled and the document Post Mortem Examination Report (PMER) is admitted as an exhibit P1.

Further to that it should be noted that the investigation must have form B filled by the coroner to empower the practicing medical doctor to conduct an examination of the dead body and Form C is filled as a response and compliance to the order as per Section 11(3) of Inquest Act, Cap 24 R.E 2019. It is ordered accordingly.




T.M. Mwenempazi
Judge
08/02/2023