

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF MTWARA  
AT MTWARA**

**CRIMINAL REVISION NO. 1 OF 2022**

*(Originating from the Court of Resident Magistrate of Mtwara, at Mtwara  
in Criminal Case No. 21 of 2022)*

**THE REPUBLIC .....APPLICANT**

VERSUS

**COSMAS S/O LYIMO PHILIPO .....RESPONDENT**

**RULING**

*Date of last Order: 20.03.2023*

*Date of Ruling: 03.05.2023*

**Ebrahim, J.**

In this criminal revision the Applicant is moving this Court to revise the proceedings and satisfy itself as to the correctness, regularity, legality and propriety of the order of the Resident Magistrate's Court of Mtwara in Criminal Case No. 21 of 2022. The application has been preferred under **Section 373(2) of the Criminal Procedure Act, Cap. 20 R.E. 2022** and it is supported by an affidavit sworn by Wilbroad Ndunguru, the applicant.

In essence the Republic was discontented with the order of the trial court dated 17.05.2022 whereby the trial court ordered the accused to surrender himself to a Mental Hospital at Isanga Institution under the escort of Henry F. Temu, his surety within 15 days from the date of the ruling.

In order to capture the basis of the application, it is necessary to give a short account of the matter which goes as follows: before the trial court, the respondent is charged with the offence of assaults causing actual bodily harm contrary to **Section 241 of the Penal Code, Cap. 16 R.E 2022**. It was alleged that on the 31<sup>st</sup> day of January, 2022 at Shangani area, within the Municipality and Region of Mtwara, the accused did assault one Dorine d/o Cosmas by cutting her with a machete on various parts of her body the act that caused the said Dorine d/o Cosmas to sustain actual bodily harm.

When the accused was arraigned to the trial court and the charge was read over to him, he pleaded not guilty. Before the trial began, the learned Counsel for the accused informed the court that they intend to use the defence of insanity as per **Section 219 (1) of the Criminal**

**Procedure Act, Cap 20 R.E 2022.** He proceeded to tell the court that because the law requires the accused person to be detained in a Mental Hospital for medical examination; and since the accused is on bail, he should be sent for detention at the Mental Institution in the custody of his surety.

Mr. Magesa, learned State Attorney had no objection to the prayer but he insisted that the accused person should be detained in compliance with **Section 220 of the Criminal Procedure Act, Cap 20 R.E 2022** which gives power to the court to inquire into the mental health of the accused person by ordering his detention in the mental hospital for examination.

Dissatisfied with the order, the applicant lodged the instant application for revision.

When the application was called for hearing, the Republic appeared through Ms. Mangu learned State Attorney while the Accused/Respondent was represented by Mr. Lekey learned Counsel.

Submitting before the court, Ms. Mangu submitted that they are not satisfied with the order of the trial Resident Magistrate that the accused person be under the custody of his surety when presented for detention

at Isanga Institution. She therefore prayed for this court to revise the proceedings and order.

In response, counsel for the Respondent told this court that the bone of the argument was how the accused shall be escorted to confinement following the examination. He cited the provisions of **Section 219 of the Criminal Procedure Act, Cap 20 R.E 2022** that once the defence of insanity is raised the court has powers to adjourn the proceedings and order the accused to be examined in a Mental Hospital as per **Section 220 of the Criminal Procedure Act, Cap 20 R.E 2022**.

He referred this court to the case of **Mathias Tangawizi @ Mchingwe vs Republic, Criminal Appeal No. 213/2014, CAT page 8**, where the Court in citing **Section 220 of the Criminal Procedure Act, Cap 20 R.E 2022** emphasized on the phrase "*order the accused person to be detained in...*".

He explained that the court can order the person to be detained in that particular Mental hospital, the issue being how he shall arrive at the respective facility. He wound up by praying to the court that since the

accused is on bail, it is practical that he is escorted to the Mental Hospital by his surety.

I have considered the submissions by the rival parties. Out-rightly, I join hands with the trial Resident Magistrate that; due to the fact that the accused person is on bail under the supervision of Mr. Henry F. Temu; he shall be escorted to be detained by him since the law does not prohibit the accused to be escorted by his surety.

On the parity of reasoning and inspired by the genesis of the provision of **Section 216 (3) of the Criminal Procedure Act, Cap 20 R.E 2022** where after a case has been made against the accused and the court seeks to inquire into his/her mental health; and in a case where bail is granted to the accused person, the court may admit the accused to bail on sufficient security and order that he submits himself to medical examination.

From the above spirit of the law and in considering the circumstances of the instant case, I see no law that prohibits the surety to submit the accused at Isanga Mental Institution. If at all, where the court calls for its

own observation, it allows the accused person who is on bail to submit himself.

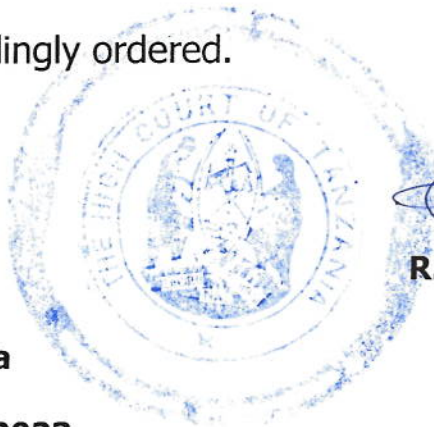
That being said, I uphold the order of the trial court dated 17.05.2022 and order that the accused be submitted to Isanga Institute for confinement by his surety one Mr. Henry F. Temu or his advocate within 15 days from the date of this ruling. Thereafter, Isanga Institution should bring to the court the accused's Mental Health investigation report within 42 days following the examination and investigation. After the report has been submitted to the trial court, the accused person shall continue to be on bail under bail conditions as set by the trial court.

Before I pen off and give my final order, this being the court of record, I find it pertinent that I make corrections on some irregularity appearing on the record of the trial court. This court has made an observation that the learned trial Resident Magistrate, the learned State Attorney and the learned Counsel for the Respondent has referred and cited the repealed law which is the Mental Disease Act, Cap. 98. Indeed, this law was repealed and replaced by the **Mental Health Act, No. 21 of 2008** as provided under **Section 41 of the Mental Health Act, No. 21 of**

**2008.** Basing on the above observation and by virtue of **Section 373 of the Criminal Procedure Act, Cap 20 R.E 2022,** I correct what appears in the trial court records on the law referred and cited to read **Mental Health Act, No. 21 of 2008.**

At the end result, I dismiss the application and remit the file to the trial court with directive that the proceedings should proceed from where it ended on 17.05.2022 in observance of my order on the submission and confinement of the accused person.

Accordingly ordered.



  
**R.A Ebrahim**  
**JUDGE**

**Mtwara**

**03.05.2023**