

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

ORIGINAL JURISDICTON

CRIMINAL SESSION CASE NO. 32 OF 2022

REPUBLIC

VERSUS

ALIMU AMANI.....ACCUSED

JUDGMENT

13/7/2023 & 18/7/2023

Mlacha,J.

At the Criminal Sessions held at Kasulu in Criminal Session case No. 32 of 2022, the accused Alimu Amani was charged of Murder c/s 196 and 197 of the Penal Code, cap 16 R.E. 2019. It was alleged that he murdered Edgar Godian @ Kulwa on 1/5/2021 at Heru Juu village, Kasulu district, Kigoma region. When the information was read over and fully explained to him in Kiswahili and replied saying 'sio kweli', meaning not true. A plea of not guilty was entered and the Republic was called to prove its case. The Republic led by Edna Makala state attorney, called 7 witnesses who tendered two exhibits (the postmortem examination report and the map of the scene of crime). The accused elected to make a sworn testimony and had 2 witnesses to call. He had the services of Mechtilda Mpeta, learned advocate.



The summary of the evidence on record is as follows. PW1 Peresi Fanuel @ Godian is the wife of PW4 Fanuel Godian Sigaza. The two had two twin kids, Edgar and Edson. Edgar is now dead. Edson escaped death in an attack which took the life of Edgar. PW1 and PW4 have other children who include PW2 Esau Godian Sigaza (21) and PW3 Shela Godian Sigaza (13). The accused Alimu Amani is a brother of PW1, a brother in law of PW4 and an uncle of PW2, PW3 and the deceased. He lived with them at the family. It was the evidence of PW3 that while at home with her mother, Esau, Edgar and Edson on 1/5/2021 she was called by the accused. The accused was in his room and called her from the window. She was on the rear side of the house. The accused directed her to call Edgar and Edson to get honey. They were at the farm with their mother at that time. She called them. They entered inside the room. She moved to the farm to pick vegetables. It is just near the house, about 15 footsteps. She soon heard a cry from Esau who was calling his mother saying the accused was cutting the kids. They rushed and met the accused moving out holding a machete and a black bag. He chased his mother who moved to neighbours. He turned to her. She run to a neighbour called Emanuel Adamu. She told him that the accused had cut kids. They went back. They entered inside the room and saw blood on the floor, mat and on the bed. Edgar had a cut on the rear side of the head. Edson was cut on the head, back, left chick and finger. Neighbours came to give assistance to take them to hospital. She remained at home. She assisted the police to draw the map of the scene of crime on the next day. She was with Esau. She could identify the accused at the dock.



It was the evidence of PW2 that he was at home that day picking water for washing clothes. He heard the accused calling PW3. He directed her to bring Kurwa and Dotto to get honey. PW3 went to call the kids who moved into the room. He then heard the children crying in a big voice. He moved to the room and found the door locked. Children were crying in a big voice. He went up the wall to see what was inside. The house was open upwards without ceiling boards. He looked down and saw blood on the floor. Edgar was sleeping down near the window. Edson was standing. He saw the accused who was preparing to run away. He had a bag and a machete full of blood. He threatened him with the machete. He returned his head back. He dropped in the room after the accused had run away. He saw Edgar with a cut on the rear side of the head. He was in a bad condition. Edson had a cut on the left side of the face, head and finger. His back was also cut. He was also in a bad condition. He rose an alarm. His mother and neighbours came. They assisted in taking them to hospital. He led the police on the next day to draw the map of the scene of crime. He identified the accused at the dock saying he was living with them as an uncle. In cross examination he said that while up at the wall, he saw the accused cutting Edson on the head. He dropped in after the accused had run away.

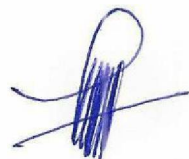
PW1 Peresi Fanuel corroborated the evidence of PW2 and PW3. She said that she heard PW2 Esau calling her saying the accused was cutting the kids with a machete. That, he was finishing them. She was just nearby in a distance of about 15 footsteps. She knew the voice of her kids. She decided to go to rescue her kids. The accused came out with a machete full of blood. He had a bag on his back and was holding the machete up. He



chased her. She cried running towards the neighbours. She moved towards Bibi Kizela @ Kimbwi. The accused returned and chased PW3.

PW1 went on to say that she came back with neighbours and entered inside the room. The accused had run away at this moment. She found her kids cut by machete. There was blood on the floor at the 'Msengeli' (mat). There was blood on the wall also. Edgar was sleeping near the window. He had a cut on the rear side of the head. He was breathing slowly. Edson had a cut on the left side of the mouth and his finger (right hand). He had a cut on the rear side of the head and the rear side of the body. He was crying remotely. Neighbours assisted them to take them to hospital after picking documents at the police station. The kids were sent to the operation room. She was informed later that Edgar had passed away. Her husband was not present at home when all this happened. She added that the crime was committed at 5:00PM.

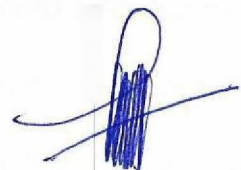
It was the evidence of PW4, Fanuel Godian Sigaza he moved to the bush to cut fire woods that day at 4:00 PM. He left his wife and the kids at home. The accused was in his room. He returned at 7:00 PM and met a lot of people. He was told that the accused had cut the kids and run away. They told him that he had already been arrested and sent to the village office. He moved to the village office and found him at the office. He moved to the hospital to see his children. He was told that Edgar had died. He entered and found the dead body. He also saw Edson who had cuts and was on drips. He was called on 2/5/2021 to identify the body before postmortem examination. He did so. He identified the accused at the dock. In cross examination he said that the accused had no mental problems.



PW5 Federic Solo is a member of the village government and a people's militia (Mgambo). He got the reports that day at around 5:15PM. They were told that the accused had run away. They came at the area. The village chairman directed people to go for him. They received a report later that he had been arrested. He was brought at the village office. The detained him at the village office. A call was made to the police who came to pick him.

Postmortem was done by PW6 Dr. Kagaza Mgomela Daga (58), an assistant medical officer of Kasulu hospital. He said that the deceased had a big cut wound at the rear side of the head. It was 3 centimeters long, 1 centimeter deep and a width of a $\frac{1}{4}$ of a centimeter. It was caused by a sharp object. He had the opinion that death was caused by excessive bleeding from the cut wound. The postmortem examination report was received as exhibit P1. The sketch map was tendered by PW7 D/SGT Abdul (53) and received marked P2.

It was the defence of the accused (DW1) that he lived with PW1 for a long time. She is his sister. He said that he had a problem of collapsing and felling down. He could be tied with ropes. He could later be told that he had chased people. He went on to say that one day while on the farm with his brother Malaki Anthony, he felt dizziness. He found himself with ropes later. He used to be treated by his mother (now deceased). He was given water mixed with ashes. He could take a cup in the morning and in the evening. He recovered. Athumani Shera, Festo Mvireme, Mama Siku and his sister Peres are aware of this fact.



He went on to say that he lived with his mother until when she died. His sister Peres and brother in Law Godian invited him to live with them. He agreed because he could get assistance in case of problems. He got an attack one day and was given tablets. He lost consciousness. When he regained consciousness he found himself at the police station. Speaking of the deceased, he said that he lived with him nicely for 3 years. He was later told that he had killed him. He does not know what happened because he was asleep that day.

In cross examination he agreed that he was sent to Mirembe hospital Dodoma. He said that he got out of the hospital without seeing the doctor. He stayed there for about a month. He said that he lived with the family happily. He brought DW2 Athumani Intigwama Shema (30) and DW3 Festus Ndahabonye Mwirembe (69) who are his brother and uncle respectively to support the defence of insanity.

PW2 said that the accused had mental problems. He used to shake and fell. He becomes very strong in the course. He could pick anything around and beat somebody. They could tie him with ropes. He said that he is not sure if the accused attacked the kids intentionally. PW3 said that he saw the accused one day asleep and shaking. His sister (accused's mother) who was a local medicine woman told him that she had given him medicine. He has no details of his decease because he never lived with him.

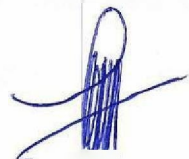
That marks the end of summary of the evidence from both parties. Looking through, one can see that there is no dispute that the deceased was cut a sharp instrument on the rear head and sustained a big wound. It is not the big wound led to excessive bleeding and death. And looking at the size and appearance, there is no doubt that the sharp

instrument was applied with a huge force. The application of a machete with huge force to the head of a 3 years old child is an indication of malice or true intent to murder.

The accused does not deny to cut the deceased. He did not say so. His defence is that he does not know what happened. He is saying that he might have done so out of the decess of mind. He is saying that he was insane so as not to know what had happened. He has brought the defence of insanity.

In **Majuto Samson v. Republic**, Criminal Appeal No. 61 OF 2002 (CAT) it was said thus: -

*"The legal position regarding **insanity** is also provided under section 12 of the Penal Code. That is that, a person is presumed to be of Sound mind at any time which comes in question, until the contrary is proved...In regard to insanity, it is settled Law **that the burden of proving insanity is on the accused on a balance of Probabilities and not merely to raise a reasonable doubt as to the sanity of the accused.** (Nyige s/o Siwatu V.R [1959] EA 974 and Mbelukie V.R [1971] EA 479 followed) ... the intention to cause death may not be manifested in words or utterances to that effect, it can be inferred from the action of the accused ... That the appellant was in his normal senses and not insane at the time of commission is apparent from the evidence of Hadija Mutwe (PW2). In her evidence, she had stated that after hacking the deceased to death **the appellant chased her, she run away** carrying a newly born baby on her back, she fell down. **The appellant came near to her saying "Siwezi Kuua Malaika"**. This,*



to us is indicative of the fact that the appellant was aware of what he was doing at that time ... we think such conduct on the part of the appellant, was indicative of a sane person at the time of the offence. In the circumstances, we are of the settled view that the appellant was capable of forming the intention to kill or cause grievous bodily harm to the deceased. He killed with malice aforethought." (Emphasis added)

This decision is relevant on two things. One, if the accused raise insanity as a defence, the burden of proof lies on him, to prove on the balance of probability that he was insane at the time of committing the crime. It is not merely to raising a reasonable doubt as to the sanity of the accused, he must prove it. Two, the intention to cause death is measured from the conduct of the accused before, during the commission of the crime and afterwards. The court will look at his conduct and make an interpretation. There are acts which are not expected from an insane person. For example, in the case the accused picked a baby and when he was approached he replied saying 'Siwezi Kuua Malaika' meaning I cannot kill an innocent kid. That is not the type of response expected from a mad man. He was held responsible. His defence of insanity was rejected.

See also the case of **Republic v. D. H. Retief** [1941] 8 EACA 71.

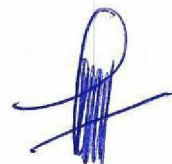
There is the evidence of PW3 who was sent to call the kids to get honey. The accused use the word 'honey' something which could attract the kids quickly. They came and entered the room to eat honey. The accused closed the door. He cut them cut seriously. PW3 says that when she came following the cry and alarms, she was chased by the accused. The accused had a bag on his bag. We have evidence of PW2 who hear the kids

crying with a high voice. He rushed and pushed the door which was closed. He rose up the wall and saw the accused in the room making preparation to run away. He had a bag on his back and a machete on his hand. He threatened to cut him. He saw him cutting the other child. At this time the deceased was already on the ground with his cut wound. He was breathing slowly. There was blood all over in the room. He then opened the door and left with a bag on his back and a machete on the hand. PW2 said that it had blood.

There is the evidence of PW1 who was with the kids at the farm close to the house. She heard them being called to get honey. She soon heard PW2 crying saying the accused was finishing the kids. She moved in to rescue them. He saw the accused with a bag on the back and a machete which had blood. He chased her. She ran away. She came with neighbours and saw the cut kids and blood in the room. There is the evidence of PW5 who said that the accused was arrested by villagers. He did not come himself at the village office. He was arrested. His plan to escape could not be successful hence the arrest. We have the map of the scene of crime showing the house, the room, the surroundings and distances.

On the other hand, we have the evidence of the accused and his witnesses which show that the accused had a mental problem. He was treated locally by his late mother who was a local medicine woman. The accused says that he was asleep in his room that day but did not know what happened. He just found himself at the police station. PW4 denied the existence of mental problems.

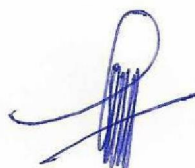
Counsel for the accused raised insanity of the accused at an early stage, during the preliminary hearing. The court (Magoiga J.) made an order on 3/11/2022 sending the



accused to Dodoma to examine his mental condition and say if he was sane at the time of commission of the crime. The report from Mirembe National Mental Health Hospital dated on 13/1/2023 was received marked 'B'. The report from Mirembe signed by Dr. Enock Eteregho Changarawe cleared the accused of any mental problems. It said that the accused (Alimu Amani) had no features pointing to a certain mental disorder which led him to commit the crime. He was therefore sane during the time he committed the crime. Based on this report, the court proceeded with trial up to the end without a problem. The accused gave his defence without any problem. His witnesses gave evidence and he was listening without any problem.

The issue now is whether the accused has managed to prove on the balance of probability that he was insane at the time of commission of the crime. The prosecution have brought evidence showing that he made preparation to get the children close to him. He used the word honey and they came quickly to eat honey. Honey sweet and can attract kids quickly. He closed the door and cut them with machete. He had a machete in the room indicting preparation to cut. He then parked his belongings, opened the door and run away threatening PW1 and PW3 in the course. PW2 was also threatened. He run away. The existence of preparations and the way the operation was conducted from the beginning to the end does not show that he was insane. That is not the way insane people behave. See **Miraji Idd Waziri @ Simwana and another v. Republic**, (CAT) Criminal Appeal No. 14 of 2018.

DW2 and DW3 spoke of history. Insanity is not supposed to be based on history. That can be the starting point but it is not conclusive. We are guided by what happened that



day and not earlier. But even in earlier events, PW1 and PW4 who were living with him did not know anything about it. Further, my examination of DW2 and DW3 showed the existence of some family problems. It appears that they had come in a move to bail the accused out of the crime. It follows that the accused has failed to prove that he was insane at the time of commission of the crime. His defence is dismissed.

Taking into account the evidence of PW2 (the evidence of an eye witness), the evidence of PW1 and PW3 (which is both direct and circumstantial), the type of instrument used and the place where it was applied, the medical report from Mirembe Hospital Dodoma and looking at the conduct of the accused, I have the view that the prosecution have proved the case beyond reasonable doubt. I find you the said, Alimu Amani guilty of murder and convict accordingly.



L.M. Mlacha

Judge

18/7/2023

SENTENCE

There is only one sentence for murder which is death by hanging. Personally, I don't want this sentence but my hands are tied by the law and the judicial oath. I sentence you the said ALIMU AMANI to suffer death by hanging.



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L.M. Mlacha

Judge

18/7/2023

Court: Judgement delivered. Right of Appeal Explained.



A blue ink signature, appearing to be "L.M. Mlacha", is written over a horizontal line.

L.M. Mlacha

Judge

18/7/2023

ORIGINAL