

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB-REGISTRY OF DAR ES SALAAM)**

AT DAR ES SALAAM

CRIMINAL SESSIONS CASE NO. 18 OF 2022

REPUBLIC

VERSUS

BENJAMIN PAUL NICODEM

JUDGMENT

Date of last order: 29/02/2024

Date of judgment: 01/03/2024

A. A. MBAGWA J.

The accused Benjamin Paul Nicodem stands charged with murder contrary to sections 196 and 197 of the Penal Code. It is alleged that on the 16th day of May, 2019 at Kijitonyama 'A' area within Kinondoni District in Dar es Salaam region murdered Edith Onesmo Lyimo.

On the 5th day of July, 2022 when the accused was arraigned before this Court (Hon. Kisanya J), he denied the allegations. As such, the Court proceeded to conduct a preliminary hearing under section 192 of the Criminal Procedure Act and thereafter adjourned the hearing to the following session as it would be scheduled by the Deputy Registrar.



When the matter was called on for hearing on the 29th day of May, 2023 before Hon. Nkwabi J, Mr. Deogratius Kibasa, learned advocate moved this Court under section 219 of the Criminal Procedure Act to refer the accused to a mental health hospital for examination on the ground that it was likely that the accused was insane at the time of the commission of this offence. The Court granted the prayer and ordered the accused to be detained in a mental hospital for medical examination. It also required the responsible medical officer to investigate whether the accused was insane at the time of the commission of the offence as per section 220(2) of the Criminal Procedure Act.

Later on, this Court received a report from Mirembe National Mental Health Hospital with Ref No.11627/2023 dated 25/08/2023 confirming that the accused Benjamin Paul Nicodem was, at the time of the commission of the offence, insane. Dr. Enock Eteregho Changarawe, the Psychiatrist at Isanga Institution summarized his findings thus;

'From the above information, Benjamin Paul Nicodem was suffering from a mental disorder, known as Schizophrenia comorbid with Cannabis use. He was therefore INSANE during the time he probably committed the alleged crime'.



Upon receipt of the medical report from Mirembe Mental Hospital, this case was scheduled for trial. Thus, in light of the guidance provided in the decision of the Court of Appeal in **MT. 81071 PTE Yusuph Haji @ Hussein vs the Republic, Criminal Appeal No. 168 OF 2015, CAT at Tabora**, when the case came for hearing, this Court proceeded with a full trial.

At the hearing, the Republic was represented by Magdalena Kisoka, learned Senior State Attorney assisted by Glory Kilawe, learned State Attorney whereas the accused had the services of Gerald Noah assisted by Ulimboka Mwasomola, both learned advocates.

In discharging its onus, the prosecution therefore paraded two witnesses namely, PW1 Elikao Onesmo and PW2 D8323 D/SGT Mussa Daudi Kidegesho who is the investigator of this case. In addition, the Republic produced three (3) documentary exhibits to wit, the caution statement of Benjamin Paul Nicodem recorded by D8323 D/SGT MUSSA on 17/05/2019 (exhibit P1), the report on the post-mortem examination of Edith Lyimo dated 18th May, 2019 (exhibit P2), the report issued by Mirembe Mental Health Hospital in respect of Benjamin Paul Nocodem dated 25/08/2023 (exhibit P3).

According to the prosecution evidence, the deceased was the mother of the accused. The duo were staying together in the deceased's house at



Kijitonyama 'A' Mpakani area. The two had frequent misunderstandings as the accused was allegedly using drugs. It was stated that before the fateful date, the accused was referred to various mental hospitals and rehabilitation centres but in vain.

On the material day, i.e. 16th day of May, 2019, the deceased returned home at around 23:00hrs. She found the accused burning a mosquito killer coil. Discontented with it, the deceased threw it outside. The accused reacted by pushing the deceased down. The deceased fell down and broke the shoe rack. The accused then took a piece of wood from the broken shoe rack and strangled the deceased. Having killed the deceased, he dragged the deceased outside the house, covered her with bedsheets, and went to sleep. On the following morning at around 05:00hrs, the accused took the deceased's phone and called his aunt PW1 Elikao Onesmo informing her of the deceased's death. However, when PW1 probed him on how the death occurred, the accused did not respond, instead he hung up the phone. Thereafter the accused went to report the incident to Kijitonyama Police Station. Thereat, he was arrested and put under restraint.

In his caution statement (exhibit P1) recorded by D8323 D/SGT MUSSA (PW2), the accused confessed to having killed his mother (the deceased).



Furthermore, PW2 produced a report on post-mortem examination which indicates that the deceased's death was caused by asphyxia secondary to manual strangulation.

In defence, the accused stood as the sole witness. He denied killing the deceased. However, he admitted that he was staying with his mother and that as of now she is dead. He also testified that he does not recall what exactly happened on the 16th day of May, 2019.

I have dispassionately considered the evidence of both parties. The most important issues are whether the accused killed the deceased and whether at that time he was insane. There is evidence of PW1 Elikao Onesmo Lyimo to the effect that the accused called her in the morning of the 17th day of May, 2019 over the deceased's phone and informed her that her mother Edith Onesmo Lyimo was no more. PW1 further testified that when she asked him what led to her sister's death, the accused hung up the phone. It is also the evidence of PW2 D8323 D/SGT MUSSA that the accused went to Kijitonyama Police Station to report the demise of the deceased. Besides, I have scanned the caution statement (P1) in which the accused sufficiently expounded how he killed the deceased to wit, he strangled her by using a

piece of wood. The accused confession is in consonance with the medical findings contained in the report on post-mortem examination (exhibit P2).

Furthermore, the evidence on the mental status of the accused particularly the medical report (P3) is overwhelming that the accused was insane at the time of commission of the offence.

All the above considered, it is my special findings that the accused Benjamin Paul Nicodem committed the offence he stands charged to wit, he killed the deceased Edith Onesmo Lyimo. Nonetheless, by reason of his insanity, he is not guilty of the offence in terms of section 219(2) of the Criminal Procedure Act. Consequently, in terms of the provisions of section 219(3)(a) of the Criminal Procedure Act, I order the accused person Benjamin Paul Nicodem to be kept in a mental hospital as a mentally disordered offender.

It is so ordered.

The right of appeal is explained.



A.A. Mbagwa

JUDGE

01/03/2024

