

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

CRIMINAL SESSIONS CASE NO. 20 OF 2023

REPUBLIC

VERSUS

ATHUMANI SHABANI HUSSEIN

RULING

19/12/2023 & 20/12/2023

NDESAMBURO, J.:

Athumani Shabani Hussein is charged with murder under sections 196 and 197 of the Penal Code, Cap 16 R.E 2022. Initially charged along with two others, their charges were withdrawn by the Director of Public Prosecution under section 91(1) of the Criminal Procedure Act, Cap 20 R.E 2022. He appeared before the District Court of Tanga, and on 14th August 2023, after receiving the information and notice, he was committed to trial before the High Court as per sections 246 and 247 of Cap 20.

Upon the accused being committed for trial to this court, the proceedings advanced to the plea-taking stage. On this date, the Republic was ably represented by Ms. Betty Soga, a learned State Attorney while the accused had the service of Ms. Maria Baliهما, a learned counsel.

The information was read over and explained to the accused who entered a plea of not guilty to the murder charge. Before presenting the facts, Ms. Baliهما raised concerns regarding the accused's age. She asserted that he was a child, having been born on the 12th of June 2006, contrary to the age stated in the charge sheet. She argued that the District Court of Tanga, which committed him, lacked jurisdiction. She urged this court to order social inquiry to ascertain the accused's age.

Ms. Soga did not object to the request for an inquiry into the accused's age.

The court ordered a social inquiry to determine the accused's age, conducted by Mr. Deogratias Kazimili, the Social Welfare Officer (SWO). Mr. Kazimili's investigation involved interviews with the

accused, his father, the Social Welfare Officer of Lushoto, and a review of information from Nyasa Primary School and the accused's birth certificate. His findings revealed that the accused began standard one in 2013 at Nyasa Primary School, with records indicating he was 8 years old and born on the 12th of June 2006. The birth certificate also confirmed this date, and according to the accused's father, he was born in 2006, though the exact month was not recalled. Consequently, Mr. Kazimili confirmed that the accused was born on the 12th of June 2006, and is currently 17 years old.

The parties were given a chance to submit on the filed report and way forward. Mr. Kulaya did not dispute the report and findings. Instead, he urged the court to nullify the committal proceedings, arguing that the Tanga District Court lacked jurisdiction to entertain the matter. Ms. Maria had the same view.

As elaborated above, this court ordered the SWO to conduct a social inquiry to determine the accused's age. The interviews included the accused, his father and a Social Welfare Officer of Lushoto. The SWO based his findings on the information gathered from interviews

and supplemented it with documentary evidence from school records and the birth certificate.

The Law of the Child Act, 2009 Cap R.E 2019 (LCA) defines a child as a person below the age of eighteen years in section 4(1). The report supporting the accused's age is from Mr. Deogratias Kazimili, SWO, and is backed by the accused's birth certificate. Section 113(1) of the LCA empowers the court authority to conduct an inquiry to determine the child's age. In the determination of the age, documents such as the birth certificate and information from the Primary School attended by the child are among the crucial documents that can provide proof of birth, both of which were relied upon by the SWO in his report.

Upon careful review of the social inquiry report, the attached birth certificate and the submission from both parties, it is unequivocally established that the accused is a 17-year-old and therefore a child as provided by section 4(1) LCA.

Having established that the accused before this court is a child, the question arises whether the committal proceedings conducted by

the Tanga District Court were null and void. While the parties argue in favour of nullification, this court holds a different perspective. The reasoning is as follows: First, the accused was charged alongside adults, therefore, the District Court had jurisdiction over the committal proceedings. Second, the charge sheet indicates the accused's age as 24 during arraignment before the subordinate court, which granted the committing court jurisdiction. Third, proceeding with the matter is deemed in the best interest of the child, necessitating acceleration of the hearing and determination.

In conclusion, this court unequivocally holds that the accused person is 17 years old and a child. Consequently, the proceedings against him will proceed in accordance with the laws governing children under the age of 18.

It is so ordered.

DATED at **TANGA** this 20th day of December 2023.




H. P. NDESAMBURO

JUDGE