

TANZANIA / JUDGMENT

Criminal Sessions Case No

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (TANGA SUB-REGISTRY) AT TANGA CRIMINAL SESSIONS CASE NO. 24531 OF 2024 (Originating from PI No. 8066 of 2024, in the District Court of Handeni, at Handeni) (ORIGINAL JURISDICTION) THE REPUBLIC VS. SAIDI SELEMANI WAZIRI & THREE OTHERS

RULING

18th Febr, 2025 M. J. Chaba, J. The genesis of this ruling arises from the proceedings in which the case had progressed to the stage of reading the facts of the case after the Republic, through Ms. Lulu Kimwendo, learned State Attorney, accepted the accused persons' offer to plead to the lesser offence of manslaughter, to which they subsequently entered guilty pleas. However, the 3rd Accused is now disputing his recorded age of 22 years, claiming instead that, he is 17 years old. Notably, throughout the court proceedings, from committal, plea-taking, and preliminary hearing, neither the 3rd Accused nor his learned advocate ever challenged his age. In my considered view, this sudden claim appears to be an afterthought, and entertaining it at this stage would risk reopening settled matters, thereby creating a procedural loophole. However, I am mindful that, under our jurisdiction, when a child (a person under 18 years old) is charged alongside an adult or adults in serious offences such as murder or manslaughter, the law does not prohibit their trials in this Court. Yet, special safeguards must be applied to protect the child's rights and ensure Page 1 of 4 compliance with child justice principles. Nonetheless, under section 192 (4) of the CPA the law says, any fact or document admitted or agreed, whether such fact or document is mentioned in the summary of evidence or not, in a memorandum filed under this section shall be deemed to have been duly proved; save that if, during the course of the trial, the court is of the opinion that, the interests of justice so demand, the court may direct that, any fact or document admitted or agreed in a memorandum filed under this section be formally proved. Under Section 113(1) - (5) of the Law of the Child Act, [CAP. 13 R.E. 2019], the law provides for age determination when a person appearing before the court is suspected to be a child. The court is required to inquire into the person's age and may rely on various forms of evidence, including medical reports, DNA tests, or other proof of birth. A medical certificate signed by a registered medical practitioner serves as sufficient evidence of age unless the court orders otherwise. Additionally, a social welfare officer must be present during medical examinations or DNA sample collection for age verification. Notably, a court order or judgment remains valid even if the person's true age is later found to be different from what was initially

recorded. See also Rule 12(1) to (8) of The Law of the Child (Juvenile Court Procedure) Rules, 2016. Moreover, the law mandates that, the trial procedure must incorporate special protections to ensure a child-friendly approach. This includes maintaining privacy, providing legal representation, and offering psychological support. The child's parents or guardians must be notified and, where possible, should be present during the proceedings. Additionally, pre-trial detention should be used only as a last resort, and if necessary, the child must be held separately from adult offenders to safeguard his or her well-being and rights. From the foregoing, while this court's mandate is to ensure that, justice is served while upholding the best interests of the child, it is worth noting that, the 3rd Accused has never previously claimed to be under the age of 18. Furthermore, he has been in remand prison since 09/03/2023 without raising any objection regarding his age until this stage of the proceedings. In the interest of justice, I therefore order and direct that: - Page 2 of 4

1. Proceedings against the 3rd Accused person shall be stayed pending the determination of his age.
2. The Social Welfare Officer, (SWO), Martha Lucas Luhunga, is hereby directed to conduct an inquiry to ascertain the age of the 3rd Accused person, Yasin s/o Hassan @ Chanongo, at the time of the commission of the offence. In carrying out this inquiry, strict compliance with Section 113(1) to
- (5) of the Law of the Child Act, [CAP. 13 R.E. 2019], and Rule 12(1) to (8) of The Law of the Child (Juvenile Court Procedure) Rules, 2016, is required.
3. The child's parents or guardians must be duly notified and fully engaged in providing evidence to substantiate the 3rd Accused's claim regarding his age.
4. The child's parents or guardians must be present during all proceedings henceforth.
5. The Social Welfare Officer's report must be submitted on or before 26/02/2024, with copies (both hard and soft) provided to the Republic and the Defence.
6. The matter is scheduled for a hearing on 27/02/2025 at 09:00 hours.
7. Summons shall be issued to all relevant parties accordingly.
8. Other previous orders against the 1st and 2nd accused persons to remain in force. Page 3 of 4 Court: Ruling delivered this 18th day of February, 2022 in the presence of Mr. Wilfred Mbilinyi, learned State Attorney for the Republic and Mr. Omar Mambosasa assisted by Mr. Eric Ndwela, both learned Advocates for the accused persons. The 3rd accused person is also present under custody. Page 4 of 4

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