

TANZANIA / JUDGMENT

JUDGMENT The Republic v

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA SONGEA
SUB-REGISTRY AT SONGEA ORIGINAL JURISDICTION CRIMINAL SESSION NO. 19251 OF 2024
THE REPUBLIC VERSUS VERONICA EDMUND MAPUNDA
ACCUSED

JUDGMENT

Dated: 18th & 27th February, 2025 KAWISHE, J.: The accused person Veronica Edmund Mapunda, formerly was charged with the offence of murder contrary to section 196 and 197 of the Penal Code (Cap. 16, R. E. 2022). It was alleged by the prosecution that on the 15th day of July, 2023 at Lituhi B Village within Nyasa District and Ruvuma Region, the accused person unlawfully killed her mother, one Sofia Banda. 1 When the accused person was arraigned before this court for plea taking on the 19th day of August, 2024, it was discovered that, the accused person was unable to follow up the procedures due to her mental condition. Then the defence counsel, informed this court that, they will rely on the defence of insanity. He also prayed for this court to be pleased to order the accused person to be referred to Isanga Institution for examination of her mental state at the time she committed the offence. The prayer was made under the provisions of section 220 (1) of the Criminal Procedure Act (Cap. 20, R.E. 2022). The prosecution conceded to the prayers made by defence counsel. Following the uncontested prayers, this court referred the accused person to Isanga Institution and it was ordered further that, the report be submitted in court within forty-two days in terms of section 220 (2) of the Criminal Procedure Act (supra). After examination of the accused person, Isanga Instituion, Mirembe National Mental Health Hospital submitted a report on the mental status of the accused person at the time when she committed the offence. The report was prepared and signed by Doctor Enock E. Changarawe, who examined the accused person. 2 Upon receiving the report, the accused person was brought before this court for plea taking. At the outset the prosecution requested to substitute the information from the offence of murder she was previously charged with to the offence of manslaughter contrary to section 195 and 198 of the Penal Code (supra). This prayer was not opposed by the defence counsel. When the substituted information was read over and explained to the accused person in the language she understands, which is Kiswahili, she denied to have committed the offence. The court entered a plea of not guilty. Thereafter, the prosecution read the facts constituting the offence and when the accused person was asked to respond on it, she responded that, she does not remember anything concerning the killing of Sofia Banda. As a result of the accused person's

plea of not guilty and the response made to facts read to her, Mr. Lazaro Simba, learned defence counsel, reiterated the prayer that, the defence would rely on the defence of insanity as the report on the accused's mental status has been submitted to the court. The prosecution did not contest the same as they acknowledged that, they have been served with a copy of the report from Isanga Institution, Mirembe National Mental Health Hospital. 3 Having attained that consensus, the prosecution was given an opportunity to prove the allegation leveled against the accused person. The prosecution was represented by Mr. Frank Sarwat, Ms. Agness Simba & Ms. Suzan Sanganya, State Attorneys while the accused person was represented by Mr. Lazaro Simba, learned advocate. In an effort to discharge its duty, the prosecution paraded three witnesses, who are G. 2048 Detective Corporal Anderson (PW1), Doctor Emmanuel Modestus (PW2) and Dafrosa Bakari Ndimbo (PW3). Also, the prosecution tendered a total of five documentary exhibits and one physical exhibit namely; the certificate of seizure (exhibit P1), a machete (exhibit P2), sketch map of the scene of crime (exhibit P3), an order for post mortem examination (exhibit P4) and the post mortem examination report (exhibit P5). Ms. Dafrosa Bakari Ndimbo testifying as PW3, stated that, Sofia Banda was her neighbour but she is dead. PW3 testified further that, the deceased died after being cut by a machete by her daughter Veronica Edmund Mapunda (the accused). She added that on the fatefully date, while in the bathroom taking bath, Junio Haule, the son of the accused came to her home and informed her child, one Semeni who informed her 4 that, the accused was cutting her mother (the deceased) with a machete. Immediately, she went to the scene of crime and saw the body of the deceased on the floor which was bleeding excessively and the head was separated from the body. She was shocked and raised an alarm seeking for help from the neighbours. People gathered at the scene of crime. The accused person was at the scene of crime. She did not even run. She was just moving from the kitchen, in and out. Despite the gathering, the accused person never bothered and she continued with her routine and she was going to the bathroom to take bath. PW3 continued to testify that, when the local government leaders arrived, the accused person was arrested and later put in the custody of the police officers who came to the scene of crime. The Police Officers were accompanied by a Medical Doctor who examined the body of the deceased before it was given to the deceased's relatives for burial. PW3 told the court that the accused person was mentally ill before and at the time she committed the offence. She continued to testify that, in 2023 the accused used to go to people's homes by night without any reasonable grounds. That she once cut her son (Junio) in his private parts 5 using scissors. PW3 identified the accused person who was at the court dock by touching her. PW1 was G.048 Detective Corporal Anderson, a Police Officer from Mbambabay Police Station. He was the investigator of this case. He told this court that, on 15th July, 2023, while at his working station together with his colleagues, they were informed that at Lituhi Village there was a woman killed by her daughter. They went at Lituhi Police Post where they met with G. 4405 Detective Corporal Shanel who joined them to the scene of crime which was at Luhapa Hamlet. Upon arriving at the scene of crime, they found a crowd of people including the Village Executive Officer (VEO) of Lituhi Village, one Sharif Shaibu Dauda. He added that they were informed that the body of the deceased was inside the house which was surrounded by people. That the daughter of the deceased who killed her mother was still inside that house. They managed to arrest the suspect, one Veronica Edmund Mapunda who was very calm and she never

uttered any word apart from mentioning her name. Emmanuel Modestus John testified as PW2. He is a Medical Officer from St. Elizabeth Mission Hospital. At the scene of crime, the body of the deceased was identified to him by Mr. Haureus Ndimbo to be the body of 6 Sofia Banda. PW2 examined the deceased's body. That with other colleagues they inspected the surroundings at the scene of crime. They did not find anything outside the house but they found a machete full of blood in the kitchen. They seized it by filling the certificate of seizure which was also signed by the Village Executive Officer. PW1 identified the machete and the seizure certificate and prayed for the two to be admitted as an exhibit in this case to form part of the prosecution evidence. The certificate of seizure and the machete were admitted and marked as exhibit P1 and P2 respectively. PW1 testified further that, after seizing the machete, he drew the sketch map of the scene of crime. That he was guided by Sharif Shaib Dauda, the Village Executive who also signed the map. He identified the sketch map of the scene of crime and pray for its admission as an exhibit in this case. The same was admitted and marked as exhibit P3. He added that, as an investigator, he interrogated some witnesses at the scene of crime, including Junio Simon Haule, a grandson of the deceased who witnessed the dreadful act and Dafrosa Bakari Ndimbo (PW3). PW3 told him that on 15th July, 2023, she was at home and her child called Semeni informed her that Junio Simon Haule has told him that, his grandmother 7 was being attacked by a machete by his mother Veronica. She went to the scene of crime and saw the deceased's body laying down in a pool of blood on the floor. She raised alarm for help and neighbours gathered and the information was sent to the local government and to the police station. PW1 added that, PW3 informed him that, the accused person was suffering from mental illness. After all those procedures at the scene of crime, the accused person was put in custody and took her to Lituhi Police Post. PW1 further testified that, at the Police Station, the accused person was interrogated but she was all the time crying. That she did not know where her mother was. That, she did not manage to explain what happened at home. That, she was requesting to be sent at home. As a result, they discovered that, she was mentally ill, thus they sent her to the Regional Referral Hospital in Songea for medical examination. The report from the hospital showed that she was suffering from Schizophrenia and she received treatment. PW1 identified the accused person who was at the court dock, to be the one they arrested at Lituhi Village. Emmanuel Modestus, the Medical Doctor, testified as PW2. He testified in this court that, on 15th July, 2023, in the evening hours, he was instructed by the District Medical Officer of Nyasa District to go to a scene 8 of crime and undertake examination of the body of a deceased person. He went to the scene of crime and met with police officers together with village leaders and other villagers. He was given the order for post mortem and shown the body of the deceased person to be examined. He added that it was the body of Sofia Banda. The body was laying on the floor of the house corridor and it was surrounded by a pool of blood. In his examination, he found the body to be of a woman of the age between 45 to 48 years. That, her head was separated from the body and she was already dead. He told this court that, in his examination, he discovered the body had a big injury from the middle of the head towards the forehead. It was a deep cut and the skull was opened. He also found multiple cuts at the back of the neck caused by sharp object. The cause of death was due to over bleeding caused by the injuries on the neck and head. PW2 testified that, after examining the deceased's body, he prepared the report and submitted it to the relevant authority. Before this

court PW2 identified the order for post mortem and the post mortem report. He prayed for the two documents to be admitted as exhibits in this case. An order for post mortem and the post mortem examination report were admitted and marked as exhibits P4 and P5 respectively. PW2 also told this court that, at 9 the scene of crime, he saw a girl tied up by rope and he was told that, she was the one who killed Sofia Banda. He identified the accused person in the court dock to be the same lady he saw at the scene of crime. Thereafter the prosecution closed their case. Upon the closure of the prosecution's case, defence counsel took the floor. In defence, Mr. Lazaro Simba, learned defence counsel, informed this court that, the court's record show that on 19th August, 2024, they raised the defence of insanity. He prayed for the defence of insanity to be considered since the testimony of PW1 and PW3 is very clear that at before and after the commission of the offence, the accused was observed to be suffering from mental illness. That, upon arrest the accused was sent to the Regional Referral Hospital at Songea for more examination and the letter dated 18th day of August, 2023 from Ruvuma Regional Referral Hospital to the Head of Criminal Investigation Ruvuma Region with Ref No. AFY/P.19/VOL. vol/196, show that the accused had mental illness for a long time and she is suffering from Schizophrenia. That, following the prayer made by the defence on 19th August, 2024 the accused was sent to Isanga Institution, Mirembe National Mental Health Hospital for examination and the report issued on 20th November, 2024 among other 10 things shows that, the accused person was mentally ill while committing the offence. That she was diagnosed and found to be suffering from the mental disorder medically known as Schizophrenia. That the accused did not appreciate what she was doing at the time she committed the offence. Mr. Lazaro Simba prayed for a copy of the letter from Ruvuma Regional Referral Hospital to the Head of Criminal Investigation Ruvuma Regional and the Report from Isanga Institution, Mirembe National Mental Health Hospital to be admitted in court to form part of his defence. His major reason for tendering the documents was due to the fact that, the accused is not aware of the existence and contents of letter and the report and she cannot tender the same. The letter from Ruvuma Regional Referral Hospital to the Head of Criminal Investigation Ruvuma Region and the Report from Isanga Institution, Mirembe National Mental Health Hospital were admitted and marked as exhibits D1 and D2 respectively. Having heard the evidence from both parties, it is undisputed that, Sofia Banda is dead and her death was unnatural as per exhibit P5. That the cause of death was over bleeding caused by the injuries sustained on the neck and head. That the death resulted from the accused's act of inflicting multiple cuts in the deceased's body. 11 These matters are deemed to have been proved under section 192(4) of the Criminal Procedure Act (supra). In view of all the above, it is clear and I am persuaded that, the deceased, Sofia Banda is dead. She died unnatural death caused by over bleeding caused by the injuries on the neck and head. The prime question that arises in this case is whether the accused was insane at the time of the commission of the act within the perimeters set in section 13 of the Penal Code (supra). This matter was first brought to the attention of this court on the 19th day of August, 2024, during plea taking. As the defence of insanity was implored, the court under the provisions of section 220 (1) of the Criminal Procedure Act (supra) sought from the medical officer in charge of Isanga Institution, a medical report from the examination of the mental condition of the accused and an opinion whether at the time when the offence was committed, she was insane so as not to be responsible for her actions. The report

prepared by that institution was admitted as exhibit D2 on 18th February, 2025 when the hearing of this case was conducted. Its contents and conclusions are undoubted by the parties. As a result, it was exclusively relied upon by both sides and this court was urged to accept its findings and conclusions. 12 Unquestionably, this court received a medical report on the status of the accused dated 20th November, 2024, File No. 11896/2024 prepared by Dr. Enock E. Changarawe, Specialist Psychiatrist at Isanga Institution, Mirembe National Mental Health Hospital. It delivers an all embracing and detailed account of the medical examination conducted on the accused and offers opinions on the question posed by this court. The report is secured on key witnesses' statements in this case, clinical interviews and medical examination as well as past community life history of the accused. The medical condition of the accused was diagnosed and was found to be or had been in the following state:

1. The accused started being mentally unwell since 2022. She sometimes recovered but in July, 2023, she started again to show abnormal behaviors.
2. During interview at the Institution, the accused admitted to have committed the alleged offence but she was not aware of what she was doing.
3. She was calm and kempt in hospital attire.
4. Her speech was in low tone and rate but it was relevant.
5. Had poor eye contact.
6. Her mood was sad and her affect was reactive. Medical assessment states that the accused person, Veronica Edmund Mapunda, was not mentally stable at the time she committed the offence. 13 That she suffered from mental illness at the time of the commission of the alleged offence. That the clinical diagnosis shows that she was suffering from schizophrenia that is, she was insane. The medical reports which are, exhibits D1 and D2 together with the testimony of PW1, PW2 and PW3 confirm that the accused was insane at the time of the commission of the offence she stands charged with. PW2 stated that, the accused after the commission of the act remained at the scene of crime. She added that, the accused continued with her normal routine. She was found going to the bathroom to take shower and not wondering as to what she had done. That she had no idea why people gathered at the scene of crime. Also, when she was interrogated at the police station, she was not aware of the commission of the offence. These evidence shows clearly that, the accused depicted uncommon behavior expected from a mentally sound person. As I stated earlier, the procedure laid down under the provisions of section 216 of the Criminal Procedure Act (supra) was followed. The accused was referred to Isanga Institution and the report thereon was tendered as D2. Therefore, that being the case, this court is required to consider the position of the law where it is found that the accused was 14 insane when committing the offence charged with. The way forward is justifiably clear under the provisions of section 13 of the Penal Code (supra). The section states that: "(1) A person shall not be criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind—

- (a) incapable of understanding what he is doing;
 - (b) incapable of appreciating that he ought not to do the act or omission; or
 - (c) does not have control of the act or omission.” It is a settled law that, where an accused person or the defence counsel raises a defence of insanity, it will be the duty of the defence to prove, by clear and convincing evidence, that at the time of the commission of the act constituting the offence, the accused, as a result of a severe mental disease or defect, was unable to comprehend the nature and quality or the wrongfulness of her act. According to the evidence available, the behavior shown by the accused together with the report issued to this court raises questions as to the mental wellness of the accused person. In addition, it has been testified that, the accused prior to the commission of the offence used to show unbearable behavior such as going to people’s house at night 15 without any reasonable cause. All that information is considered in terms of the provisions of section 13 of the Penal Code (supra). The question of insanity is proved from the manifestation of unusual conduct of a person in various circumstances. Like in this case at hand, the accused prior to the slaughtering of her mother she did cut the secret parts of her son by a scissor. Such an act is not expected from a reasonable woman. Thus, each case is treated on its merits. According to the findings made hereinabove, the offence the accused was charged with involves physical violence which attracts punishment up to life imprisonment. The subsequent remedies to this finding are provided for under the provisions of section 219(3)(a) of the Criminal Procedure Act (supra). The section provides: “When a special finding pursuant to subsection (2) is made by the court it shall—
- (a) where the person against whom a special finding is made was charged with an offence under the Penal Code involving physical violence or damage to property for which, but for his insanity, at the time of doing the act or making the omission he would on conviction be liable to sentence of death or to suffer imprisonment for a term not less than seven years, order the person to be kept in a mental hospital, prison or other suitable place of custody as a mentally disordered offender; “ 16 From the provisions cited above, since the accused person was charged with the offence of manslaughter upon which on conviction she would have been subjected to life imprisonment, this court order that the accused person, Veronica Edmund Mapunda, be kept in a Mental Institution as a mentally disordered offender and be dealt with in accordance to the provision of section 219 (4) of the Criminal Procedure Act (supra). It is so ordered. DATED and DELIVERED at SONGEA this 27th day of February, 2025. E. L. KAWISHE JUDGE 27/02/2025 Court: Judgement delivered in the presence of Ms. Lusia Richard Bukuku learned State Attorney for the Republic and in the presence of Mr. Lazaro Simba, defence counsel and in the presence of the accused. Right of appeal is explained. E. L. KAWISHE JUDGE 27/02/2025 17

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