

TANZANIA / JUDGMENT

RULING ELPIDIUS

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA JUDICIARY BUKOBA SUB
REGISTRY AT BUKOBA ORIGINAL JURISDICTION CRIMINAL SESSION CASE NO. 25513 OF 2024
THE REPUBLIC VERSUS

1. ELIPIDIUS AFRED RWEGOSHORA
2. NOVAT VENANT
3. NURDIN AMADA MASOUD
4. RAMADHANI SELESTINE JADIUS
5. RWENYAGIRA BURUKADI ALPHONCE ----- ACCUSED
6. DASTAN BURCHAD
7. FASWIU ATHUMAN
8. GOZIBERT ARIKAD
9. DESDERY EVERIGIST RULING OF THE COURT Date of last Order and Ruling: 17/02/2025
BEFORE: G. P. MALATA, J On 25/10/2024, when this matter came for preliminary hearing Mr. Projestus Mulokozi, Mathias Rweyemamu and Mr. Pontian Mujuni learned counsel for the accused asked the Court to refer the 1st accused to Isanga Mental Hospital for Mental Health examination. 1 In terms of section 220(1) of the Criminal Procedure Act, Cap.20 R.E.2022, the court granted the prayer referred the 1st accused to Isanga Institute for mental health examination to ascertain his mental soundness. As result, preliminary hearing was accordingly adjourned pending submission of report from Isanga Institute. On 16/12/2024, this court received mental report from Mirembe National Mental Health Hospital of Isanga Institute. The report is titled Psychiatric report on observation on case of Elipidius Alfred Rwegoshora, File reference No. 11927/2024 in respect of Criminal Sessions Case No. 25513/2024 dated 16/12/2024. On 17/02/2025, Criminal Sessions Case No. 25513/2024 came for mention and all parties to the case with their Advocates appeared in court. The Republic appeared through Ms. Ajuaye Bilishanga learned Principal State Attorney assisted by Ms. Agnes Awino and Ms. Matilda Assey learned State Attorneys. Mr. Projestus Mulokozi, Mr. Mathias Rweyemamu and Mr. Pontian Mujuni learned counsels appeared for the 1st accused. Besides, Mr. Projestus Mulokozi learned counsel appeared as well for the 2nd to 9th

accused persons. This court informed the parties that, it is in receipt of a medical report from Mirembe National Mental Health Hospital of Isanga Institute. The Medical report 2 was read over and explained by the trial judge to all accused and counsels. The report explicitly and confirms that, the 1st accused is “SANE”. On the strength of the said report, Ms. Ajuaye Bilishanga Zegeli learned Principal State Attorney moved the court to invoke section 220 (2) and (3) of the Criminal Procedure Act, Cap. 20 R.E.2022 and prayed that the findings and medical report be admitted as an exhibit confirming the mental status of the 1st accused before we proceed for preliminary hearing. Mr. Mathias Rweyemamu learned counsel stood and submitted that, they have objection on the prayer by the Republic. He submitted that, medical report should not be admitted as an exhibit at this stage but during trial. However, he assigned no reason. He was neither refuting the contents of the report but just asked the court to be guided by Section 216 (5) of the Criminal Procedure Act, Cap. 20 R.E 2022. Mr. Projestus Mulokozi learned raised no concern on the report on behalf of 2nd to 9th accused but just submitted that, the court need to be guided by section 220 (2) and (3) of the Criminal Procedure Act, Cap. 20 R.E 2022. By way rejoinder Ms. Ajuaye Bilishanga Zegeli learned Principal State Attorney Stated that, the report is a outcome of the request made by defence counsel to this Court that the 1st accused be admitted in mental health hospital for examination to ascertain his mental status. Here is the report of which the court 3 need to admit it for purposes of clearing and ending issue of insanity. The report is not in dispute in any way by either. She finally submitted that, what the court should do is to admit and record it as evidence confirming status which in question. Having heard the submission from both counsels, it is evident that; one, the request for an order for Mental inquiry of the 1st accused was made by the 1st accused through Mr. Projestus Mulokozi, Mr. Mathias Rweyemamu and Mr. Pontian Mujuni learned counsels for the 1st accused, two, the purpose of the report was to inform the Court and parties on the mental status of the 1st accused, three, confirmed insanity is a defence in murder case of which the 1st accused could have been dealt in other way round, four, Isanga Institute has tabled medical examination report of the 1st accused, five, the medical report reveals that, the 1st accused is of sound mind “SANE”. Six, neither the Republic nor defence are question what is written in the medical report. What the Court assembled from the defence counsel for the 1 st accused is that, they just want the report to be tendered during trial. No reasons have been assigned for such position and no disclosure if the same has legal foundation or personal feelings. 4 Legally, when the issue of insanity come up, it has to be dealt by among others, provision of section 220 of the Criminal Procedure Act, Cap. 20 R.E. 2022. The section provides for the procedure to be adopted. It stated that;

- (1) Where any act or omission is charged against any person as an offence and it appears to the court during the trial of such person for that offence that such person may have been insane so as not to be responsible for his action at the time when the act was done or omission made, a court may, notwithstanding that no evidence has been adduced or given of such insanity, adjourn the proceedings and order the accused person to be detained in a mental hospital for medical examination.

- (2) A medical officer in charge of the mental hospital in which an accused person has been ordered to be detained pursuant to subsection (1) shall, within forty two days of the detention prepare and transmit to the court ordering the detention, a written report on the mental condition of the accused person setting out whether, in his opinion, at the time when the offence was committed the accused was insane so as not to be responsible for his action and such written report purporting to be signed by the medical officer 5 who prepared it may be admitted as evidence unless it is proved that the medical purporting to sign it did not in fact sign it.
- (3) Where the court admits a medical report signed by the medical officer in charge of the mental hospital where the accused was detained, the accused and the prosecution shall be entitled to adduce such evidence relevant to the issue of insanity as they may consider fit.
- (4) Where, on the evidence on record, it appears to the court that the accused person did the act or made the omission charged but was insane so as not to be responsible for his action at the time when the act was done or omission made, the court shall make a special finding in accordance with the provisions of subsection (2) of section 219 and all the provisions of section 219 shall apply to every such case. The above position is confirmed by the decision in the case of Merchades Burkadi Vs Republic, Criminal Appeal No. 439 of 2022, where the court of appeal propounded that; “Apparently, throughout the trial court's proceedings none of the parties addressed the trial Judge on compliance of the requirements of section 220
- (2) and (3) of the CPA. It is evident from the record, that, after the report 6 of the medical officer in charge of the mental hospital was transmitted to the trial court, the trial Judge did not draw attention of the parties on its existence. Therefore, the report was not admitted in evidence and parties were not afforded an opportunity to lead evidence relevant to the issue of insanity as required under section 220 (2) and (3) of the CPA”. On the strength of the above, upon receipt of the medical inquiry report, the procedure to be adopted are; one, the court conveys information on dully signed insanity report to the parties to case , Republic and defence side, two, reading over and explaining the medical mental status report to the parties, three, Republic adducing such evidence in court and moving the court to admit the mental report under section 220 (3) of the Criminal Procedure Act, four, admitting mental report by the court as evidence on the mental status of the accused, five, the court has make a ruling or order that on the mental status of the accused on insane or sane, six, if the report confirms that, the accused is insane and the court is satisfied on the same, it has to make ruling or order under section 220 (4) of the Criminal Procedure Act, seven, if the mental report declare the accused to be SANE, the court shall make ruling or order declaring the accused SANE and that he is fit to stand for the charges laid against him and eight, the court proceeds with next stage be it preliminary hearing or trial. 7 In the present case, having received medical report on mental status of the 1st accused, this court is placed adopt the above stated procedure. Besides, the finding of the medical report cannot be made part of this court’s record unless the report which is the foundation of the finding is admitted and made part of evidence. To the contrary, the finding that, the accused is SANE will have no

foundation in the absence of such report being made part of evidence at this stage. The report is outcome of the defence counsels' request to inquire on the mental status, thus it is beneficial to the parties and court as well. If the defence side raised the same with view of using it as defence if it was found to be insane, thus invoking section 220 (4) of the Criminal Procedure Act, then that line of defence has been confirmed negatively. In the event I find no factual or legal foundation from Mr. Mathias Rweyemamu's submission as he vehemently failed to table it before the court. As such, it is overruled. On that strength, I am inclined to agree with the lucid submission rooted from law as presented by the republic by Ms. Ajuaye Bilishanga Zegeli learned Principal State Attorney and Mr. Projestus Mulokozi learned counsel. 8 Therefore, in terms of Section 220 (2) and (3) of the Criminal Procedure Act, Cap. 20 R.E 2022, this Court hereby admit the medical inquiry report from Mirembe National Mental Health Hospital of Isanga Institute as evidence. The report is admitted as Exhibit P1. Based on the evidence in Exhibit P1, this court hereby order and declare that, the accused, ELIPIDIUS AFRED RWEGOSHORA is SANE, thus fit to stand for charges laid against him in Criminal Sessions Case No. 25513/2024. IT IS SO ORDERED. DATED at BUKOBA this 17th February, 2025. G.P. MALATA JUDGE 17/02/2025 RULING delivered at BUKOBA this 17th February, 2025 in the presence of all parties. G.P. MALATA JUDGE 17/02/2025 9

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