

TANZANIA / JUDGMENT

REPUBLIC vs

COURT
TANZLIIDECIDED
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI SUB REGISTRY AT
MOSHI CRIMINAL SESSION CASE NO. 08 OF 2023 REPUBLIC VERSUS STEPHANO AROBOGAST
KAWISHE

JUDGMENT

12/11/2024 & 15/11/2024 SIMFUKWE, J. The accused person, namely Stephano Arobogast Kawishe, stand charged on Information for Murder contrary to sections 196 and 197 of the Penal Code [Cap 16, R.E 2022]. The prosecution alleged that on the 26th day of November 2022, at the Ngoyoni area within Rombo District in Kilimanjaro region, the accused murdered one Kotifrida w/o Arobogast Kawishe. Page 1 of 7 On 14/05/2024, when the matter was scheduled for hearing, the defence counsel raised a defence of insanity. Upon raising such a defence, the Court ordered that the accused be referred to Isanga Mental Institution for medical examination to determine the mental status of the accused person at the time of commission of the offence. The psychiatric report from the Mental Institution was subsequently filed in this court. Therefore, under section 220(3) of the Criminal Procedure Act [Cap 20, R.E. 2022], the court required the prosecution and the accused person to adduce evidence relevant to the issue of insanity as they may consider fit. The prosecution summoned two witnesses and tendered one exhibit. PW1, Dr. Jackson Kimario, testified inter alia that on 30/11/2024 he conducted an autopsy of the body of the deceased Kotifrida Arobogast Kawishe at Huruma Hospital within Rombo district in Kilimanjaro region. He said that he identified multiple cut wounds on the head, left hand and left leg of the deceased. He discovered that the said wounds were caused by a sharp object. Further examination of the wounds revealed that there were two big wounds of 4cm on the head, one on the left side and one at the rear side of the head. On the hand the wound was 20cm, while on the Page 2 of 7 leg the wound was 2x1cm. Also, the bone on the leg was fractured. After identifying the wounds and its sizes, PW1 further discovered that the cause of death was severe haemorrhage and big cut wound on the head. PW1 tendered a post-mortem examination report which he had filled after conducting an autopsy. It was admitted as Exhibit P1. PW2, Mr. Paschal Anthony Asenga, the neighbour of the accused person testified inter alia that he knew the accused since his birth. That, on the material date he heard an alarm from Arobogast Kawishe's place. He responded to the alarm and went to the homestead of Arobogast. While trying to call the name of the deceased without response, the accused appeared and attempted to attack PW2 with a sword. PW2 escaped to his homestead. While he was running towards his homestead, PW2 heard people telling him to

run away as the accused had already killed. However, PW2 explained how he knew the accused person from childhood and his mental status. That, the accused was epileptic and had stammer. PW2 formed an opinion that it was the accused who had killed his mother Kotifrida Arobogast Kawishe. When cross examined, PW2 insisted that the accused's mental status was ambiguous and that he was not mentally fit. Page 3 of 7 In his defence the accused, Stephano Arobogast Aloyce Kawishe, informed this court that Kotifrida Arobogast Kawishe was his biological mother. He said that he was told at the police station that his mother passed away. That, he was told that he had killed his mother by cutting her with a sword. He claimed that his actions were caused by epilepsy and memory loss. He said, he was not aware of what he was doing at that time. The learned counsel for the accused, Mr. Fred Kimaro, prayed that the psychiatric report from Mirembe National Mental Health Hospital be adopted to form part of the proceedings of this case. Acting on this prayer, the court adopted the report dated 04/11/2024 to form part of the proceedings of this case. Based on the psychiatric report, the learned counsel implored the court to find that the accused was not mentally fit during the commission of the offence. That, he did not intend to commit the offence. I have carefully considered evidence of both sides and the exhibits tendered. It is undisputed fact that the deceased died unnatural death, as established by the evidence of PW1 and Exhibit P1, the post-mortem examination report. Page 4 of 7 Furthermore, based on the testimony of PW2 and the defence of the accused person, it is also undisputed fact that the accused caused the death of the deceased. It is a considered opinion of this court that evidence tendered by the prosecution and the accused, corroborates the psychiatric report from Mirembe National Mental Health Hospital, dated 04/11/2024. The report reveals that the accused was not mentally fit at the time of commission of the offence. It diagnosed the accused with epilepsy and intellectual disability. Section 219 (2) of the Criminal Procedure Act, provides that: "219 (2) Where on the evidence on record, it appears to the court that the accused did the act or made the Commission charged but was insane so as not to be responsible for his action at the time when the act was done or the omission was made, the court shall make a special finding to the effect that the accused did the act or made the omission charged but by reason of his insanity, is not guilty of the offence." Emphasis added Page 5 of 7 Section 220 (4) of the Criminal Procedure Act provides that: "220 (4) (4) Where on the evidence on record, it appears to the court that the accused 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." Emphasis added Accordingly, relying on the adduced evidence and guided by sections 219(2) and 220(4) of the Criminal Procedure Act (supra), I hereby make a special finding that the accused Stephano Arobogast Kawishe committed the offence of Murder by killing his mother Kotifrida w/o Arobogast Kawishe while insane and by reason of his insanity, I find him not guilty of the offence charged. Furthermore, under section 219 (3) of the CPA, I hereby order that the accused be kept in a mental institution as a criminal lunatic at the pleasure of the responsible Minister. The Superintendent of the Mental Hospital is further ordered to prepare a report in writing after the expiration of three (3) years from the date of this order, and submit it Page 6 of 7 together with the proceedings of this Court, or a certified copy in respect thereof, to the Minister responsible

for Legal Affairs or take other actions as provided under section 219 of the Criminal Procedure Act (supra). It is so ordered. Dated and delivered at Moshi this 15th day of November 2024. X S. H. SIMFUKWE JUDGE Signed by: S. H. SIMFUKWE 15/11/2024 Page 7 of 7

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