

TANZANIA / JUDGMENT

JUDGMENT The Republic v

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THE UNITED REPUBLIC OF TANZANIA IN THE HIGH COURT OF TANZANIA SONGEA SUB-
REGISTRY AT SONGEA ORIGINAL JURISDICTION CRIMINAL SESSIONS CASE NO. 18199 OF 2024
THE REPUBLIC PROSECUTION VERSUS MADAHA
MASUBI MAJENGA ACCUSED

JUDGMENT

Dated: 14th & 18th February, 2025 KAWISHE, J.: In this case, the accused person, Madaha Masubi Majenga, 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 18th day of December, 2023 around 21:00, at Luhimbalilo Village within Namtumbo District and Ruvuma Region, the accused person unlawfully killed his brother, one Zengo Masubi @ Majenga. 1 When the accused person was arraigned before this court on the 21st day of August, 2024, for plea taking it was discovered that, the accused person was unable to follow up the procedures due to his mental condition. Then Mr. Lazaro Simba, defence counsel, informed this court that, the defence side will rely on the defence of insanity. He also prayed for this court to be pleased to order the accused person to be referred at Isanga Institution for examination of his mental state at the time he committed the offence. His prayer was made under the provisions of section 220 (1) of the Criminal Procedure Act (Cap. 20, R.E. 2022). The prosecution side conceded to prayers made by defence counsel. Following the uncontested prayers, this court referred the accused person to Isanga Institution, Mirembe National Mental Health Hospital and it was ordered further that, the report be submitted in court within forty- two (42) days in terms of section 220 (1) of the Criminal Procedure Act (supra). After examination of the accused person, Isanga Institution, Mirembe National Mental Health Hospital submitted a report on the mental status of the accused person at the time he 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 and the prosecution side requested this court to file a substituted information for 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 he understands, which is Kiswahili, he was not certain and not aware if he caused death. He told this court that, he has been informed of that event. The court entered a plea of not guilty. Thereafter, the prosecution read the facts constituting the offence. When the accused person was asked to respond on them,

he responded on extraneous irrelevant matters as compared to what was required to answer. Following the accused person's inability to understand and follow the proceedings, Mr. Lazaro Simba, learned defence counsel, reiterated his prayer that, the defence side would rely on the defence of insanity as the report on the accused's mental status has been submitted to the court. This was not contested by the prosecution as they acknowledged that, they have been served with a copy of the report from 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. To discharge their duty, the prosecution paraded two (02) witnesses, who are Doctor Hassan Mgeta Tambuko (PW1) from Namtumbo Heath Centre and F.641 Detective Sergeant Faizi, (PW2) of Namtumbo Police Station. Also, three exhibits were tendered which are an order for post mortem examination (exhibit P1), post mortem examination report (exhibit P2) and the sketch map of the scene of crime (exhibit P3). F.641 Detective Sergeant Faizi testified as PW2. He told this court that, on 18th December, 2023 at around 21 hours, he was informed that there was a murder incident at Luhimbalilo Village. That, in the next morning a coroner form was filed in and managed to get an order for post mortem examination and a medical doctor for conducting post mortem examination thus, went to the crime of scene. They arrived at the scene of crime at 13 hours and they were accompanied with Doctor Tambuko. After arriving at the scene of crime, they found a crowd of people beside the house of Judith Mwinuka. Also, they saw a person who was arrested by people and there was a body of a deceased person near the house of Judith Mwinuka. They managed to interrogate some witnesses concerning 4 the incident. One of the interrogated persons was Judith Mwinuka. She told them that in the night of 18th December, 2023 while in bed, she heard an uproar of people fighting outside her house. She got out of her house with a bright flashlight and saw two people fighting while naked. She was frightened and she went to her neighbours to seek for assistance. While on their way to the scene of crime they met one of the people who were fighting at her house. She informed her neighbours and they arrested and tied him up. She added that, it seemed that the person was mentally ill. He was naked and he could not speak well. That upon getting at the scene of crime they found the deceased's body besides the house of Judith Mwinuka. They informed the village chairman who in turn informed the Police Officers for further legal steps. PW2 added that, upon arriving at the scene of crime, the body was identified by the deceased's relatives. That, the doctor (PW1) examined the body and issued a report. That the accused person was naked and unaware of what was going on. That, he was arrested and sent to Namtumbo Police Station. The witness informed the court that on the way to Namtumbo Police Station the accused tried to forcefully disembark from the police vehicle but he was clogged. That, at Namtumbo Police Station, 5 the accused's statement could not be recorded as he did not speak any meaningful word. The accused was remanded at Namtumbo Police Station but he broke the remand door. That he was re-arrested and tied up and sent to Songea Central Police Station and arraigned before the court. PW2 managed to identify the accused person who was at the court dock and he pointed him with a finger. He testified further that, in his investigation, the one who murdered the deceased, Zengo Masubi @ Majenga was the accused person, one Madaha Masubi Majenga who seemed to be mentally ill from the time he saw him at the scene of crime. He added that, even when he interrogated the relatives and neighbours of the deceased, they informed him that

both the accused and the deceased were suffering from mental illness. He added that, he was told that, on the fateful date, the two were once arrested and locked up in the village's office but they broke out and ran away. That, it was on the same date the awful act occurred. He tendered the sketch map of the scene of crime which was admitted as exhibit P3. Doctor Mgeta Tambuko (PW1), a Medical Doctor at Namtumbo Health Center told this court that, on 19th December, 2023, he was instructed to conduct a post mortem examination of a deceased person at 6 Luhimbililo Village. He testified that accompanied by a police officer, D/SGT Faizi they arrived at the scene of crime at 13 hours and found a crowd of people. One person was tied up with a rope and he was under guard. Also, a dead body of a person was laying on the ground. The body of the deceased person was identified by the deceased's relative, one Magina Rukeresha Majenga to be the body of Zengo Masubi @ Majenga. That, he examined the body and discovered that, the deceased bled through the nose, mouth and ears. He saw no other injury on the deceased's body apart from an injury found on the left-hand side. After examining the body of the deceased, his finding was that, the deceased suffered from traumatic brain injury which led to his death. He concluded that, having examined the deceased's body, the Police Officers handled it to the relatives for further steps. PW1 also tendered an order to conduct post mortem examination and the post mortem examination which were admitted as exhibits P1 and P2 respectively. In defence, Mr. Lazaro Simba, learned counsel, informed the court that during plea taking and the preliminary hearing the defence raised the defence of insanity. As a result, the accused person was referred to Isanga Mental Institution for examination of his mental status at the time he 7 committed the offence. He added that, the medical report has been submitted and it is in the records of this court and both parties were supplied with the copy of it. He further submitted that, the report from Mirembe National Mental Health Hospital prepared by Doctor Enock E. Changarawe reveals that, at the time of commission of the offence, the accused person was suffering from mental disorder that is, he was insane. He averred that, the accused person is still unable to give his defence due to his mental condition whence, he prayed that the medical report be received and marked as an exhibit in this case. The prosecution side had no objection and the report was admitted as exhibit D1. Having heard the evidence from both parties, it is undisputed that, Zengo Masubi Majenga is dead, that he died of unnatural death as per exhibit P2 and that the cause of death was traumatic brain injury. That the death resulted from fighting between the accused and the deceased. 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 convinced that, the deceased, Zengo Masubi Majenga is dead. He died unnatural death caused by traumatic brain injury inflicted on the skull. 8 The primary question that arises in this case is whether the accused was insane at the time of the commission of the act within the terms set in section 13 of the Penal Code (supra). This matter was first raised on the 21st day of August, 2024, during plea taking. As the defence of insanity was raised, 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 he was insane so as not to be responsible for his actions. The report prepared by that institution was admitted as exhibit D1 on 14th February, 2025. Its contents and conclusions are undisputed by the parties. As a result, it was

wholly relied upon by both sides. This court was urged to accept its findings and conclusions. Definitely, this court received a medical report on the status of the accused dated 19th November, 2024, File No. 11894/2024 prepared by Dr. Enock E. Changarawe, Specialist Psychiatrist at Isanga Institution. It provides an encompassing and comprehensive account of the medical examination conducted on the accused and offers opinions on the question posed by this court. 9 The report is anchored on key witnesses' statements in this case, clinical interviews and medical examination as well as past public life history. The medical condition of the accused was diagnosed and was found to be or had been in the following state:

1. Five days before the incident the accused behaved abnormally, chasing and beating people without apparent reasons.
2. Accused found running naked after commission of incident.
3. Calm and unkempt in hospital attire.
4. His speech was irrelevant.
5. Had poor eye contact.
6. Had poor judgment. Medical assessment states that the accused person, Mr. Madaha Masubi Majenga is currently not mentally stable. That he did endorse symptoms of mental illness at the time of the commission of the alleged offence. That clinical diagnosis shows that he is suffering from schizophrenia that is, he is insane. The medical report, exhibit D1 together with the evidence adduced by PW1 and PW2 confirms that the accused was insane at the time of the commission of the offence he stands charged with. PW2 stated that, the 10 accused after the commission of the act, on their way to Namtumbo Police Station he tried to evade. Also, when remanded at police custody he broke the door and was re-arrested. He added that, when they arrived at the scene of crime they found the accused tied up with a rope while naked. That, upon interrogation, they were informed by Judith Mwinuka who witnessed the fracas prior to death of the victim, that both the accused and the deceased were naked while fighting near her house. This shows clearly that, both the accused and the deceased depicted unusual behavior expected from a reasonable 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 D1. Therefore, that being the case, this court is required to consider the position of the law where it is found that the accused was insane when committing the offence charged with. The way forward is crystal clear under the provisions of section 13 of the Penal Code (supra). The section states that: 11 "(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.” In line with the quoted provisions hereinabove, 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 offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his act. According to the evidence available, during the commission of the offence, the accused and the deceased were naked. Fighting while naked is an act which raises questions as to the mental wellness of the persons. In addition, it has been testified that, the accused prior to the commission of the offence chased and attacked people without apparent reasons. This information is weighed against the terms of section 13 of the Penal Code 12 (supra). The question of insanity is proved from the manifestation of a certain conduct in various circumstances. Each case is treated on its merits. From the findings aforestated, the offence the accused was charged with involves physical violence which would have qualified the accused to be imprisoned for life. The subsequent remedies to this finding are set out 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; “ In accordance with the provision cited above, since the accused person was charged with the offence of manslaughter upon which on conviction he would have been subjected to life imprisonment sentence, this court orders that the accused person Madaha Masubi Majenga, be kept in a Mental Institution as a mentally disordered offender and be dealt with in 13 accordance to the provision of section 219 (4) of the Criminal Procedure Act (supra). The record of the proceeding and orders to be transmitted to the concerned authorities by the Deputy Registrar. It is so ordered. DATED and DELIVERED at SONGEA this 18th day of February, 2025. E. L. KAWISHE JUDGE 18/02/2025 COURT: Judgement delivered in the presence of Mr. Frank Sarwat, Ms. Agness Simba and Ms. Suzy Sanganya State Attorneys for the Republic and in the presence of Mr. Lazaro Simba, defence counsel and in the presence of the accused. Right of appeal explained. E. L. KAWISHE JUDGE 18/02/2025 14

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