

TANZANIA / JUDGMENT

AGRIKOLA SPECIAL FINDINGS

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB-REGISTRY AT BUKOBA CRIMINAL SESSIONS CASE NO. 09 OF 2023 REPUBLIC VERSUS AGRIKOLA KARORI..... ACCUSED RULING ON SPECIAL FINDING OF THE COURT 08/10/2024 & 09/10/2024. E L. NGIGWANA, J The accused person appeared before me charged with the offence of murder contrary to sections 196 and 197 of the Penal Code, [Cap. 16 R. E 2022], The prosecution alleged that on 5th of July, 2022 at about 17:00hours at Nyakantuntu Village within Biharamulo District in Kagera Region, the accused person did murder Cecilia d/o Adrian. On 30/03/2023, when the matter came for plea-taking and preliminary hearing, the accused person through his defence counsel Mr. Jofrey Rugaimukamu raised the defence of insanity and moved the court under section 219 (1) of the Criminal Procedure Act, [Cap. 20 R.E 2022] to order the accused to be sent to Mirembe National Mental Health Hospital (Isanga Mental Institution) for mental examination. At this juncture, it is prudent to remind ourselves of the procedure to be followed where the accused intends to plead insanity as a defence at the time of the commission of the offence. The procedure was explicitly stated in Republic vs Madaha [1973] EA 515, adopted and elaborated in MT. 81071 PTE Yusuph and Another vs Republic, Criminal Appeal No. 168 of 2015 (unreported) thus: "First, where it is desired to raise the defence of insanity at the trial, such defence should best be raised when the accused is called upon to plead. Second, upon being raised the trial court is enjoined to adjourn the proceedings and order the detention of the accused in a mental hospital for medical examination. Third, after receipt of the medical report, the case proceeds the normal way with the prosecution leading evidence to establish the charge laid and then doses its case. Fourth, upon the closure of the prosecution case, the defence leads evidence against the charge laid, including medical evidence to establish insanity at the commission of the 2 alleged act. And, finally, fifth, the court then decides on the evidence, whether or not the defence of insanity had proved on a balance of probabilities. If such inquiry be determined in the affirmative, the court will then make a special finding in accordance with section 219 (2) and 220 (4) of the Act and proceed in accordance with enumerated consequential orders." See also Miburo Mussa vs Republic (Criminal Appeal No. 222 of 2022)

[2024] TZCA 374 (20 May 2024) Tanzlii, and Thomas Pius vs Republic (Criminal Appeal 145 of 2019) [2022] TZCA 487 (2 August 2022)Tanzlii. Under section 220 (1) of the Criminal Procedure Act, [Cap. 20 R.E 2022], the court referred the accused person to Isanga Mental

Institute to determine his saneness when committing the charged offence. The accused person being examined, the Institute transmitted to this court a written report on the mental status of the accused person during and at the time of the commission of the offence charged with. The report was duly signed by Dr. Enock Eteregho Chagarawe who made it. Upon the receipt of the medical report referenced 11522/2023 dated 19/05/2023, copies were supplied to the prosecution, and defence side to 3 make them aware of its substance. As per the procedure laid down by the herein above authority, after receipt of the same, the case has to proceed in the normal way. Therefore, the instant matter proceeded in the normal way whereas the accused pleaded not guilty to the charge. The prosecution was availed of the opportunity to establish the charge laid against the accused person. In proving the charge against the accused, the prosecution featured six (6) witnesses and tendered five (5) exhibits to wit; report of postmen examination (Exhibit P1), one piece of dry wood (Exhibit P2), chain of custody form (Exhibit P3), Certificate of Seizure (Exhibit P4) and the sketch map of the crime scene (Exhibit P5). On the other hand, the accused was the only witness on the defence side and he tendered no exhibits. To sustain a conviction in murder cases, the prosecution must prove beyond reasonable doubt all these fundamental ingredients; firstly, the death of the deceased, secondly, that the death was unnatural, thirdly, that death was caused by an unlawful act or omission of the accused, and fourthly, that the killing was actuated by malice aforethought. However, it should be noted that where the charge/information involves more than one accused common 4 intention must be proved. As far as the matter at hand is concerned, the major issues for determination are as follows;

1. Whether deceased namely; Cecilia Adrian died.
2. Whether her death was unnatural.
3. Whether the death was caused by unlawful act or omission of the accused person.
4. Whether the killing was actuated by malice aforethought. 1st ISSUE. The postmortem report on the examination of the body of the deceased was tendered by Gresmus Sebuyoya (PW1), a Medical Practitioner who conducted an autopsy and since it was not objected to by the defence side, it was admitted as exhibit P1. PW1 confirmed that the cause of death was traumatic brain injury after being hit by a blunt object. H.3118 CPL Salehe (PW3) who arrived at the crime scene and witnessed the body laying on the ground, Edina Mohamed (PW4) who is the eye witness of the attack, and Lameck Elisenius (PW5) who is the biological son of the deceased, all confirmed in their evidence that Cecilia Adrian died after being 5 attacked. PW5 further confirmed in his evidence that after the body had been examined, they were allowed to bury the body and they did so. In his defence, the accused did not dispute the fact that Cecelia Adrian died. To this extent, the first ingredient of the offence has been proved. In other words, the first issue has been answered in the affirmative. 2nd ISSUE. PW1 testified that the cause of the deceased's death was traumatic brain injury. PW4 who is the eyewitness of the incident had testified that the deceased was attacked on the head using a big dry piece of wood. PW3 and PW5 confirmed to have seen a wound on the

deceased's head which led to excessive bleeding. The dry piece of wood used to attack the deceased was tendered in evidence by G. 7873 CPL Elimboto (PW2) and it was admitted as Exhibit P2. Given the nature of the injuries suffered by the deceased that resulted in her death as indicated in the postmortem examination report (Exh.pl) and as per the evidence of PW4 who witnessed the deceased being attacked by the assailant and the evidence of PW3, and PW5 who witnessed the dead body a wound laying on the ground, it can safely be concluded that the death of the deceased was an unnatural death. To that extent, the 2nd 6 ingredient has been proved. Meaning, therefore, the second issue has been answered in the affirmative. 3rd ISSUE. It is trite law that to sustain conviction in a murder case, the prosecution evidence must be cogent enough leaving no doubt to the criminal liability of the accused person linking him/her with the offence. The prosecution, therefore, must produce credible and reliable witnesses whose evidences irresistibly point to none save only to the accused person. In the case of *Mohamed Matula v. Republic* [1995] TLR 3 it was held that; "Upon the charge of murder being preferred, the onus is always on the prosecution to prove not only the death but also the link between the said death and the accused, the onus never shifts away from the prosecution and no duty is cast on the appellant to establish his innocence" The guilt of the accused can be proved either by direct evidence, circumstantial, or through confessional statements of the accused. Direct evidence is what a witness says he/she saw or heard or did while circumstantial evidence is the evidence of surrounding circumstances which by un-designed coincidence is capable of proving a proposition with 7 accuracy. The absence of direct evidence is indeed the very essence of resort to circumstantial evidence. In the matter at hand, PW4 was the eyewitness of the crime. Her evidence is to the effect that on 05/07/2022 around 16:00 hours, she saw in her own eyes the accused person attacking the deceased to death using a piece of dry wood. She identified Exhibit P2 as the piece of wood used by the accused to attack the deceased. PW4 further testified that she asked the accused as to why he attacked the deceased, but the accused was furious and made no response. She went on elaborating that before attacking the deceased, the accused slapped a two (2) years old with no reason. According to PW4, the accused was behaving like a person of unsound mind. The evidence of PW4 is further to the effect that the accused was arrested at the crime scene and the piece of wood was seized from him through a certificate of seizure. (Exhibit P3). Her evidence was supported by the evidence of PW3 and PW5 to the effect that after committing the offense, the accused was arrested and handcuffed by villagers at the crime scene, whereas he was then matched to the police station. 8 On his side, the accused person did not deny that his unlawful acts led to the death of the deceased, but he relied on the abnormality of the mind/ insanity. To that extent, it is the finding of this court that the death of the deceased was caused by unlawful acts of the accused person. 4th ISSUE. Undoubtedly, murder is said to be committed when an accused person kills another with malice aforethought. See Section 200 (1) of the Penal Code Cap 16 R: E 2022]. Since the defence of insanity was raised in the case, and four (4) procedural steps have been complied with as pointed out earlier. In their closing submissions, both the prosecution and the defence side urged the court to make a special finding as per the law. The law presumes every man to be sane and to possess a sufficient degree of reason to be

responsible for his crimes until the contrary is proved. To establish a defense on the ground of insanity, it must be proved that, at the time of the commission of the offence, the accused was laboring under the defect of reason due to mental illness, that is to say; he did not know the nature and quality of the act he was doing, or, if he knew it he did not know that what he was doing was wrong. 9 In our jurisdiction, an accused cannot be held liable for his offense if such an accused, at the time of the commission of an offense, was incapable of understanding the nature of the act and/or the concept of right and wrong. However, not every person who has a mental disorder would, ipso facto, be absolved of criminal liability. For easy reference I would reproduce sections 12 and 13 of the Penal Code, [Cap. 16 R.E 202] which provide as follows; "12. - Every person is presumed to be of sound mind and to have been of sound mind at any time which comes in question until the contrary is proved" 13.-(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.
- (2) A person may be criminally responsible for an act or omission although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects referred to in subsection (1) to that act or omission." It follows therefore that the defence side must prove his legal insanity by the standard of evidence of the preponderance of probabilities. In *Republic vs Madaha* (supra) it was observed that; "Insanity being a matter of defence, the onus of establishing it lies on the accused. The normal procedure is that the defence after the close of the prosecution case, leads evidence, including medical evidence, to establish the fact according to the standard of proof required of an accused person. "(Emphasis supplied). In the matter at hand, when called upon to make his defence, the accused (DW1) testified that he had been experiencing mental disorders since his childhood, and sometimes, he becomes so violent unknowingly or loses consciousness and finds himself at the police station or the Hospital. He added that on 5/08/2022 around 11:00 hours he suffered a serious mental disorder in such a way that he knew not what he was doing, but finally found himself at the police on the allegations that he killed a certain old woman. He went on to testify that when he was sent to Isanga Mental Health Institution and put under medication, the abnormality of his mind was reduced. The term "abnormality of the mind" was defined in the case of *R. Byrne*, 44 Criminal Appeal R.246 quoted with approval by the Court of Appeal of Zambia in *Peter Banda versus The People*, Criminal Appeal No. 126 of 2020, as follows; "A state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form rational judgments, whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment. The expression "mental responsibility for his acts" points to consideration

of the extent to which the accused's mind is answerable for his physical acts, which must include consideration of the extent of his ability to exercise willpower to control his physical acts." As pointed out earlier PW4 who is the eyewitness of the incident testified clearly that the accused was violent, and before he attacked the deceased, he slapped a child of two years for no apparent reason. PW4 added that the accused was typically behaving like a person of unsound mind. 12 Furthermore, the Psychiatrist (Dr. Enock E. Changarawe) opined in his report that the accused Agrikola Kalori had features pointing to a mental disorder, Schizophrenia, and therefore, was insane at the time of the commission of the offence. Schizophrenia is defined as a serious mental health condition that affects how people think, feel, and behave. It may result in a mix of hallucinations, delusions, and disorganized thinking and behavior. Hallucinations involve seeing things or hearing voices that aren't observed by others. Delusions involve firm beliefs about things that are not true. People with schizophrenia can seem to lose touch with reality, which can make daily living very hard. See <https://www.webmd.com/schizophrenia/mental-health-schizophrenia> and <https://www.nimh.nih.gov/health/topics/schizophrenia>. In his closing submissions, the defence counsel relied on the medical report, the evidence and of PW4 in persuading the court to find that at the time of the commission of the offence, the accused was insane. Taking into account the evidence adduced before me and the medical report from Isanga Institute of Mental Health, I am inclined to agree with the evidence of the defence which was supported by the prosecution side through PW4 regarding the insanity of the accused person Agrikola Karoli 13 that at the time of the commission of the offence of murder with which he stands charged before the court. In other words, the defence has proved that at the time commission of the offence of murder, the accused was laboring under the defect of reason from the disease of the mind, hence knew not the nature and quality of the act he was doing. Having found so, I make a special finding to the effect that the accused person murdered Cecilia Adrian but when committing the charged offence, he was insane. I further make a special finding that although the accused murdered the said Cecilia Adrian, for the reason of his insanity, is not guilty of an offence of murder. Therefore, under the provisions of section 219 (3)

- (a) of the CPA, I order that the accused person Agrikola Karori be kept in a Mental Hospital at Isanga Mental Institution as a mentally disordered offender. I further order under the provision of section 219 (4) of the CPA, that the Superintendent of Isanga Institution shall make a report in writing to the Minister responsible for Constitutional and Legal Affairs of the condition, history, and circumstances of any such mentally disordered offender at the expiration of a period of three years from the period of the court's order and thereafter at the expiration of a period of two years from the date of the last 14 report, for the Minister to exercise his discretionary powers as per section 219

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- (5) of the CPA. It is so ordered. Dated at Bukoba on this 9th day of October 2024 ETL. NGIGWIA JUDGE 09/10/2024 Delivered this 9th day of October 2024 in the presence of the accused person and his advocate Mr. Nathan Alex, State Attorneys; Ms. Agness Awino and Ms. Alice Mutungi for the Republic, Hon. A.A. Madulu-JLA and Ms. Queen Koba, B/C. E. L. NGIGWIA 09/10/2024 15
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