

TANZANIA / JUDGMENT

republic vs bekerebe so elias 2022

tzhc 15716 30 november 2022

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TZHCDECIDED
30 November 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA IN THE DISTRICT REGISTRY OF SHINYANGA AT SHINYANGA CRIMINAL SESSION CASE NO. 27 OF 2019 THE REPUBLIC VERSUS BUKEREBE SIO ELIAS

JUDGEMENT

gh & 3[Jh November; 2022 D.B. Ndunguru. J: The accused person one Bukerebe slo Elias stand charged with the offence of murder contrary to section 196 and 197 of the Penal Code (Cap 16 RE 2002). It is alleged by the prosecution that on 30th day November, 2018 at Bulima village, within Busega District Simiyu Region the accused did murder one Leah d/o Yohana. During plea taking and preliminary hearing. (conducted on 19/02/2020), Mr. Martine Sabini who appeared as a defence counsel raised the defence of insanity to be relied by the defence side. In her reply to that, Mr. Tawabu Issa Yahaya, the learned State Attorney prayed the court to involve the provisions of section 220 (1) of the Criminal Procedure Act herein referred as the Act to commit the accused person to Isanga Institute of Mental Health so that the accused mental state be inquired. 1 Following the prayer, on 19/02/2020 the court referred the accused person to Isanga so as to determine his sanity at the time of committing the charged offence in terms of section 220 (1) of the Act. The court further ordered the report be submitted to this court within forty-two (42) days in terms of section 220 (1) of the Act. The accused person being examined and observed for the required period of 42 days, on 03/12/2020 the Institute transmitted to this court a written report on the mental status of the accused person during and at the time of the of the commission of the offence charged with. The report was duly signed by Dr. Enock Chagarawe who made it. Upon the receipt of the medical report prosecution was availed with the opportunity to testify in order to establish the charge laid against the accused person. In proving the charge against the accused, the prosecution paraded only one witness. E 7147 Sgt Christopher testified as PW1. His testimony was that he is a police officer stationed at Meatu District. He said in 2018 he was working at Busega District, Simiyu Region. He has a long experience (over 20 years) in investigation. The witness went on telling the court that on 30/11/2018 at noon he with Detective Coplo Enock were sent to Bulima 2 village to visit the scene following the information that one person has been seriously wounded and the culprit is under arrest. He said at the scene he found the victim one Leah d/o Yohana (who is the deceased now) lying down. She had a big cut

wound on heard and was severely bleeding. PW1 went on testifying that he met the accused under arrested .while roped. The witness told the court that due to the seriousness of the wound he requested ambulance from NassaHealth Centre for ferrying the victim to the Health Centre for treatment. The victim having been taken to the Health Centre PW1 remained at the scene interrogating witnesses and the accused. PW1 went on telling the court that he took the accused to the police station. While at the police station he issued PF3to the victim to be sent to the hospital on the same date. PW1 told the court that while at the scene when interrogated the accused, he said Leah d/o Yohana was his elder mother. That he also admitted to have cut her with hoe on head. PW1 told the court that the accused shown him where he had hidden the hoe. It was hidden in his sleeping room under the bed. PW1 testified further to the effect that, when he sent PF3to Health Centre he met the victim already dead. He then found the deceased relatives for the purpose of identifying the deceased body and witness post mortem examination. 3 Report on post mortem examination revealed that the cause of death was due to the severe brain bleeding due to the cut wound. Medically known as severe Traumatic brain injury led to severe brain haemorrhage. PW1 told the court that according to the investigation done by him it is the accused one Bukerebe s/o Elias who killed Leah d/o Yohana. When cross examined PW1 told the court that what he has testified is what he had witnessed at the scene. That he interrogated the accused who admitted to have committed the offence. When the defence side was given an opportunity to defend the case, Mr. Fank Samwel, the defence counsel brought to the attention of the court the fact that during plea taking and preliminary hearing, the defence side, upon taking into account the mental state of the accused person, raised the defence of insanity that during the commission of an offence the was insane. It was his submission that the defence of insanity having been raised the court referred the accused person to Isanga Institute of Mental Health for inquiry of the mental status of the accused person during or at the time he committed the charged offence. He told the court that the medical report dated 3rd day of December, 2020 dully signed by the specialist one Dr Enock Changarawe which was submitted to this court 4 provides that the accused was insane during or at the time he committed the offence. Mr. Frank Samwel was of the further contention that yet the accused is not able to defend himself due to the mental disorder he has up to now. He urged the court to base on the medical report transmitted to take insanity as the defence of the accused person and make special finding as the law dictates. Before I land to the findings which I wish to arrive at herein below, I find it pertinent to state at this juncture that insanity is a statutory defence. Section 219 (1) and 220 of the Criminal Procedure Act (Cap 20 RE 2022) provide for and govern the defence of "insanity". For easy of reference to feel indebted to reproduce the provisions as hereunder: S. 219(1) "Where any act or omission is charged against any person an offence and it is intended at the trial of that person to raise defence of iossrutu; that defence shall be raised at the time when the person is called upon to plead S. 220(1) Where any act 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 5 of such insanity, adjourn the proceedings and order the accused person to be detained in a mental hospital for medical examination. S. 220(2) A medical officer in charge of the mental hospital in

which an accused person has been ordered to be detained pursuant to section (1) sha/~ within forth two days of the detention prepare and transmit to the court ordering the detention a written report on the mental condition of the accused setting out whether. in position 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 who prepared it may be admitted as evidence unless it is proved that the medical officer purporting to sign it did not in fact sign it S. 220(3) Where the court admit 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 S. 220(4) It 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 provisions of section 219 shall apply to every such case. // 6 The procedure to be followed where the accused intends to rely on insanity as a defence at the time of the commission of the offence was elaborated in the case of MT. 81071 PTE Yusuph and Another Vs. Republic, Criminal Appeal No. 168 of 2015 CAT (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. Thirtt after receipt of the medical report the case proceeds the normal way with the prosecution leading. evidence to establish the charge laid and then closes its case. Fourth/ upon the closure of prosecution case/ the defence leads evidence as against laid, including medical evidence to establish insanity at the commission of the alleged act. And fifth the court then decides on the evidence/ whether or not the defence of insanity had proved on a balance of probabilities. If such enquiry 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 Mwale Mwansanu V. Director of Public Prosecutions, Criminal Appeal No. 105 of 2018 CAT (unreported). 7 I Having scrutinized the relevant provisions and gone through case law, I am of the firm view that the first, second, third and fourth procedure as reproduced herein above have been adhered to. Meaning that the defence of insanity was raised when the accused was called upon to plead. Secondly, upon being raised the court adjourned the proceedings and ordered the detention of the accused in a mental hospital for medical examination. Further, after receipt of the medical report, prosecution gave evidence to establish the charge laid and then closed its case. Upon closure of the prosecution case, the defence side was availed with opportunity to give evidence against charge laid to establish insanity at the commission of the alleged murder. At this point, the ball is rolling to the court to determine on whether or not the defence of insanity has been proved on a balance of probabilities. It is a practise that before the case of this kind is called upon before the court, it must be for plea taking and preliminary hearing the assigned defence counsel has the duty to consult the accused. The reason is only that the accused has the right to know his counsel and further that the two may share important and relevant information related to the case which will enable the counsel to make and full representation. 8 On 19/02/2020, when case was called up for

plea taking and preliminary hearing, the defence counsel submitted to the court that, as he had consulted and talked with the accused on that morning, he appeared insane and mostly was insane at the time of committing the offence. Thus, by so doing the. defence, side raised the defence of insanity. Further PW1 when cross examined told the court that having arrested the accused person, while at the police station send the accused to the hospital, through did not give detail for what reason. Further, when called upon to give defence, the accused could not manage due to the mental state he had. From the court's observation, the posture of the accused while in court, any reasonable person could come into opinion that the accused person was not aware as to whether he was in court or not, and know what was transpiring therein. The defence counsel further prayed the court to rely on the medical report. On the basis of the evidence laid down before this court, and as stated earlier, there was indication from the defence side as suggested that the accused was insane during or at the time he killed the deceased; and relying on the report on medical examination which was transmitted to this court and made part of the court record; it is my firm view that the defence of insanity has been proved of the balance of probability. 9 The report on medical examination is that the accused person one Bukerebe sk: Elias was suffering from mental disorder, knows as Schizophrenia comorbid with cannabis use. He was therefore INSANE, during the time he committed the alleged offence. SPECIAL FINDINGS Taking into account the evidence availed to me and medical report Isanga Institute of Mental Health, I am of the special finding that the accused person killed one Leah d/o Yohana. In other words, he murdered one Leah d/o Yohana. But when committing the charged offence, he was insane so as not to be responsible for his action. I further make finding that the accused did kill the deceased, the offence which he is so charged. But for the reason of his insanity is not guilty of an offence. ~~~ D.B. Ndunguru Judge 30/11/2022 10

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Prepared on 12 October 2026 · Esheria