

TANZANIA / JUDGMENT

CRIMINAL APPEAL NO

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IN THE COURT OF APPEAL OF TANZANIA AT SUMBAWANGA (CORAM: MWARI3A, J.A..
MASHAKA. 3.A. And FELESHI. 3.A.~> CRIMINAL APPEAL NO. 223 OF 2023 FRANK
SADALA.....APPELLANT VERSUS THE REPUBLIC.....

—.....RESPONDENT (Appeal from the Judgment of the High Court of
Tanzania at Sumbawanga) (Mrisha, J.) dated the 3rd day of April, 2023 in Criminal Session No. 12
of 2021 JUDGMENT OF THE COURT 12* & 20th March, 2025 FELESHI. 3.A.: Frank Sadala (the
appellant) instituted this appeal on six grounds of appeal challenging the conviction of murder
and death sentence meted on him by the High Court of Tanzania (trial court), sitting at
Sumbawanga for allegedly murdering one Rihana Sadala on the 1st day of February, 2020 at
Kapolonka/Mbwendi Village within Nkasi District in Rukwa Region. The trial court premised its
conviction and sentence on sections 196, 197 and 26 (1) of the Penal Code, Chapter 16 (the Penal
Code). Of his six grounds of appeal, the Court was invited to first i address the first ground in the
supplementary memorandum of appeal to wit, "That the proceedings in the trial court
contravened section 219 and 220 o f the Criminal Procedure Act, [Cap. 20 R.E. 2022], Quite aware
that insanity is an absolute defence under section 13

- (1) of the Penal Code which, when proved absolves a person charged with a criminal offence
from criminal responsibility, we will thus, for purposes of safeguarding the authenticity of
future court proceedings, endeavour to provide only the facts which are relevant to the
disposal of the above ground of appeal. The facts in a nutshell are that: on the unnatural
demise of the said Rihana Sadala on day of February, 2020 the appellant was first arraigned
to the committing court on 17th March, 2020 where the charge of murder Was read over and
explained to him but was not required to plead. On 30thJune, 2021 he was committed for
trial by the High Court which summoned him for Preliminary Hearing on 23rd August, 2021.
During that day's session, the Information of Murder was read over and properly explained
to him in Kiswahili and as shown at page 62 of the record of appeal where his answer was "It
is true, si anadai kwamba Liana Sadaia niimuua mwezi wa piii, Mimi si nimesema nikweii."
However, due to the nature and gravity of the offence and its prescribed sentence,, the trial
court recorded his plea as "Entered as a plea ofnotguilty/"That prompted Mr. Kipesha,
learned counsel who was assigned to represent him to implore the trial court to intimate to
the appellant's intention to rely on the defence of insanity as per sections 219 and 220 of the
Criminal Procedure Act, Chapter 20 (the CPA). In view of that, the High Court issued the

following order at page 63 of the record of appeal: "Following the prayer of Mr, Samwe! Kipasha the defence counsel that the mental status of the accused be inquired upon and following the response of the accused when he was required to plea when the charge was read to him, I find it prudent for interest of justice to order the person to be detained in a mental hospital for medical examination as per section 220 of the Criminal Procedure Act. I hereby order the accused person be detained to the mental hospital for medical examination of his mental status. This order is made under section 220 of the Criminal Procedure Act [Cap 20 R.E2019J." Further, pages 63 to 68 of the record of appeal bear out that, on 27th July, 2022 the trial court conducted a preliminary hearing where the appellant's plea to the Information of Murder at page 64 was that "It is true. I killed the child." He then asserted his undisputed matters to the facts read out to him at page 66 of the record of appeal being his names and particulars and that he killed the deceased. However, the High Court recorded them as "The accused disputes to have killed intentionally" After that, the case was adjourned for trial and resumed on 6th March, 2023 when, as shown at page 69 of the record of appeal, the appellant's plea was the same, that, "/V/ kweii niiua" which was recorded as "Entered as a plea of "Not Guilty" to the charge that plea is equivocal." It was after the above that, a full trial commenced on that same day and, as shown at pages 69 to 98 of the record of appeal, the prosecution called a total of six witnesses (PW1 to PW6), while the defence called only one witness, the appellant (DW1). In essence, the appellant's cautioned statement (Exhibit P2) and his defence evidence (DW1) were on his admission that he killed the deceased. At the end, as alluded to earlier, the trial court having evaluated the evidence of both sides, convicted and sentenced him accordingly. It was in view of the above that, the appellant being aggrieved, as aforesaid, preferred this appeal. For the reason we gave at the outset, we do not intend to reproduce the remaining five grounds of appeal as we will only consider the first ground. When the appeal was called on for hearing, Mr. Charles Gervas Kasuku, learned advocate represented the appellant who was also in Court, whereas on the other side were Mr. Calistus Kapinga, learned Senior State Attorney assisted by Mr. Joseph Mwakasege, learned State Attorney, who represented the respondent, Republic. Before Mr. Kasuku addressed us on the appeal, Mr. Kapinga conceded to the first ground in the supplementary grounds of appeal. Referring the Court to pages 62 and 63 of the record of appeal, Mr. Kapinga submitted that, it was improper for the trial court to conduct a full trial of the case and deliver the impugned judgment without complying with its order dated 23rd August, 2021 that committed the appellant to the mental hospital for mental health examination. Mr. Kapinga thus submitted that, sections 219 and 220 of the CPA were contravened. Referring us to our previous decision in the case of Miburo Mussa v. Republic (Criminal Appeal No. 222 of 2022) [2024] TZCA 374 (20 May 2024), TANZLII, he argued that, the appellant was prejudiced for being denied the right to be heard on his defence of insanity. He thus urged the Court to nullify the proceedings, quash the conviction and set aside the sentence, and order the file be remitted to the trial court for retrial from the order that subjected the appellant to the detention in the mental hospital under sections 219 and 220 of the CPA. Following the conceded ground of appeal, Mr. Kasuku had nothing to add as there was no need to venture into other grounds of appeal. On our part, we accede

to the consensus of the learned counsel for the parties. This is because, as alluded to above, the pending trial court's order dated 23rd August, 2021 is a determinant factor of the justice long awaited by both the prosecution and the appellant. To appreciate what brought into consensus submission of the parties' counsel, we wish to revisit the referred provisions, that is sections 219

- (1) and 220 (1) of the CPA. They provide thus: "219.-(1) Where any act or omission is charged against any person as an offence and it is intended at the trial of that person to raise the defence of insanity, that defence shall be raised at the time when the person is called upon to plead. 220-(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.' [Emphasis added] The provisions above underline the procedure the accused must adopt in raising a defence of insanity and the trial court's obligation to commit the accused to be detained in a mental hospital for medical examination. Also, for the court to adjourn the proceedings pending the submission of examination report by the medical officer in-charge of the mental hospital in which the accused has been ordered to be detained within forty-two days of the detention under section 220(2) of the CPA. These procedures have been fortified by the Court in a number of its decisions, including *Bosco Mgimwa v. Republic*, Criminal Appeal No. 303 of 2015 (unreported), *Merchades Burkadi v. Republic* (Criminal Appeal No. 439 of 2022) [2024] TZCA 1172 (2 December 2024), *TANZLII*, *Miburo Mussa v. Republic* (supra) MT. 81071 PTE *Yusuph Haji @ Hussein v. Republic*, Criminal Appeal No. 168 of 2015 (unreported). In the latter case, for example, we adopted and elaborated the procedures in the case of *Republic v. Madaha* [1973] E. A. 515 as follows: "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 does its case. Fourth, upon the closure of the prosecution case, the defence leads evidence as against the charge laid, including medical evidence to establish insanity at the commission of the 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 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." The above enumerated procedures under sections 219 (1) to (7) and 220 (1) to (4) of the CPA are mandatory. The omission to follow them have the effect of vitiating the proceedings and the subsequent decision of a trial court. See for example, *Bosco Mgimwa v. Republic*, (supra) where the appellant was committed to a mental hospital, but the medical report was not

admitted in court and no reference was made to it during the trial. Addressing the situation, we observed that it is the duty of the trial court to ensure that the accused person's mental status at the time he is alleged to have committed the offence is established, if that question becomes relevant. See also *Merchades Burkadi v. Republic* (supra). Again, in *Miburo Mussa v. Republic* (supra) an order to commit the accused to the mental hospital was issued. Then a report was written and availed to the trial court. Thereafter, the trial court made a special finding that the accused was sane at the time of committing the offence. The said finding was made prior to a full trial of the case. Having the case fully tried, the accused was convicted and sentenced. Appealing to the Court, the appellant assailed the said special finding arguing that it was made prematurely hence prejudiced the defence of insanity. Addressing the said complaint, we found the trial court to have skipped the fourth and fifth procedures set in MT. 81071 PTE *Yusuph Haji @ Hussein* (supra). As a result, we found the trial court proceedings fundamentally flawed. In the instant case, as demonstrated above, the trial court did not account what clogged its order that committed the appellant to the mental hospital under section 220 (1) of the CPA on 23rd August, 2022. We must express our disapproval to what happened in this case as, despite of all the uncertain "plea o f guilty" mounted by the appellant and the relentless court attempts to record them as "plea o f not guilty" yet, the appellant was subjected to a full trial without having first established whether he had capacity to stand a fair trial. That, we think, was to undermine the purpose of section 13 of the Penal Code and the above provisions of the CPA which are meant to observe parties' right to be heard through fair trial, Therefore, we find, the minimum standards to be complied with if the accused is to undergo a fair trial fortified in the case of *Mussa Mwaikunda v. Republic* [2006] TLR 387, are still valid to date, in that case we had the following in consideration: "Perhaps it is useful to digress a bit and state here that there must be minimum standards which have to be complied with if an accused person is to undergo a fair trial. As stated in *Regina v Henley* (2005) NSWCCA 126 (a case from New South Wales Court o f Criminal Appeal) quoting *Smith J. in R v Prosser* (1958) VR 45 at 48 the standards are:

1. to understand the nature o f a charge;
2. to plead to the charge and to exercise the right o f challenge;
3. to understand the nature of the proceedings, namely, that it is an inquiry as to whether the accused committed the offence charged;
4. to follow the course o f the proceedings;
5. to understand the substantiai effect of any evidence that may be given in support o f the prosecution; and
6. to make a defence or to answer the charge," As we hold a conclusive view that the trial court ought to have first complied with its pending order/to establish the mental status of the appellant, we find the proceedings that commenced on 27th July, 2022 and the resultant judgment were materially flawed. As a result, the same vitiated the impugned conviction

and sentence against the appellant. Therefore, we allow the appeal, and we nullify the trial court's proceedings from 27th July 2022 and the resultant judgment, quash the appellant's conviction and set aside his sentence and order for an expedited retrial before another Judge. In the meantime, the appellant shall remain in prison custody pending the resumption of the trial court's proceedings. DATED at SUMBAWANGA this 19th day of March, 2025. A. G. MWARIJA JUSTICE OF APPEAL L. L. MASHAKA JUSTICE OF APPEAL E. M. FELESHI JUSTICE OF APPEAL The Judgment delivered this 20th day of March, 2025 in the presence of Mr. Charles Gervas Kasuku, learned advocate for the appellant and Mr. Jackson Komba, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.

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