

TANZANIA / JUDGMENT

# emmanuel mwita ruling

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB-REGISTRY AT TARIME) ORIGINAL JURISDICTION CRIMINAL SESSION CASE No. 152 OF 2022 (Referenced:20220627000430389) THE REPUBLIC v. EMMANUEL S/O MWITA @ MARWA RULING IN TERMS OF SECTION 219 (3) (a) OF THE CRIMINAL PROCEDURE ACT [CAP. 20 R.E 2022] 19.12.2024 & 19.12.2024 Mtulya, J.: Mr. Emmanuel Mwita @ Marwa (the accused) was brought in this court today morning to reply an allegation of murder of Mr. Magige Merama @ Magige (the deceased) contrary to sections 1961 and 197 of the Penal Code [Cap. 16 R.E 2022]. The incident is alleged to have occurred on 12th April 2022 at Tamkeri Village within Serengeti District in Mara Region. In order to establish its case against the accused, the Republic had summoned a total of four (4) witnesses and registered two (2) exhibits namely: Wansato Mwita (PW1), Gimaiso Melama @ Magige (PW2), Celestine Gettono Simango (PW3) and Police officer H. 2331, D/CpL Massana (PW4) and exhibits Post-mortem Examination Report of the decease (exhibit P.1) and sketch map of the crime scene (exhibit P.2). The materials brought in the case by witness medical doctor PW3 show that the deceased had expired from an attack of a blunt i object directed at the deceased's head to cause head injury to death. In order to substantiate his testimony, PW3 had tendered exhibit P.1 which shows that: the cause of death was internal bleeding which enhanced loss of oxygen in the brain. Investigating police officer PW4, who had scrutinised the case had testified to have visited the crime scene, prepared exhibit P.2, witnessed post-mortem examination of the deceased, interrogated the accused and witnesses PW1 and PW2, and noted that ail the collected materials show that: the accused had attacked the deceased when he was insane without malice aforethought. PW1, who is the mother of the accused, had testified that the accused was mentally disturbed at the age of ten (10) years and when in fault, he inclines on throwing stones to persons at his vicinity. According to PW1, on 12th April 2022, he witnessed him attacking the deceased by use of a stone directed at the head. The evidence of PW1 was supported by materials brought in the case by witness, PW2 who is a brother to the deceased. The totality of materials registered by the Republic in witnesses and exhibits had moved this court to find the accused to have a case to reply. However, the accused could not properly reply the materials brought against him by the Republic. Similarly, he could not suitably respond to questions put to him by his learned Defence 2 Attorney Mr. Tumaini Kigombe in order to raise sensible doubts in the prosecution case. Noting of the accused's condition, Nir. Kigombe had prayed for this court to conduct an inquiry to scrutinize and ascertain the capability and reliability of the accused to follow the proceedings, a move which had received the support of

Ms. Agma Haule, learned State Attorney, who had appeared for the Republic. Invoking the provisions of section 127 (1) of the Evidence Act [Cap. 6 R.E. 2022] and section 219 (1) of the Criminal Procedure Act [Cap. 20 R.E 2022], this court had moved into the inquiry on the competence and capability of the accused to appreciate questions put to him and his answers. After the inquiry, the court was persuaded to believe that the accused could not understand questions put to him as he was producing irrational replies. This court then concluded that the accused could not follow and appreciate proceedings in the case. The court then had moved further to peruse the contents of materials in evidences brought in the case via witnesses PW1, PW2, PW4 and a report on mental status of the accused prepared by Dr. Enock Eteregho Changarawe, a psychiatrist of Isanga Mental Institution of 13th February 2023 referenced 11444/2022. The report was admitted in the case during preliminary hearing proceedings of 15\* August 2024 as Attachment 'A' and formed part of the record of the day. The Attachment in brief shows: the accused has features pointing to 3 certain mental disorder called schizophrenia. The report corroborates the evidences produced by PW1, PW2 and PW4 during the hearing of the case. Similarly, the record shows that the conduct of the accused during Plea Taking and Preliminary Hearing proceedings on 18th August 2022 and on 15th August 2024, displays the accused is suffering from mental health. Having said so, I find the accused was insane at the time of the commission of the alleged offence and I hold him irresponsible for the crime of murder against the deceased. In the end, I moved to invoke the provisions of sections 219(1), (2) & (3) and 220 (4) of the Criminal Procedure Act [Cap. 20 R.E 2022] and invite the practice of this court in the precedent of Republic v. Anthony Arbogast Assenga, Criminal Sessions case No. 27 of 2021 and Court of Appeal in the case of MT. 81071PTE Yusuph Haji @ Hussein v. Republic Criminal Appeal No. 168 of 2015, and order the accused, Mr. Emmanuel Mwita @ Marwa, be transferred and kept in a mental hospital, prison or any other suitable place of custody as a mental disorder offender, and that should be done in accordance to the law. 4 Court: This Ruling was issued in open court in the presence of the accused, Mr. Emmanuel Mwita @ Marwa and his learned Defence Attorney, Mr. Tumaini Kigombe and in the presence of Ms. Agma Haule, learned State Attorney for the Republic. F. H. hjtulyay Judge 19.12.2024 5

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