

TANZANIA / JUDGMENT

MAYALA EDWARD NKWAMBI insane

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30 May 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE SUB-REGISTRY OF SHINYANGA) AT SHINYANGA CRIMINAL SESSION NO. 38712 OF 2023 REPUBLIC VERSUS MAYALA S/O EDWARD NKWAMBI

JUDGMENT

19th & 22nd November 2024 MASSAM, J.: Mayala Edward Nkwabi, the accused herein, stand charged with the offence of Murder c/s 196 and 197 of the Penal Code. It is alleged that on 30th day of May, 2023 at Ishiki A area, within Kahama Municipality in Kahama District in Shinyanga Region he murdered one KWABI s/o MABULA. When the matter came for plea taking on 10.05.2024, after the information had been read over to the accused person, counsel for the defense one Audax Constantine advocate informed the court that the accused will rely on the defense of insanity. Thereafter, the court adjourned the proceedings and ordered the accused person to be detained in a mental hospital for medical examination. Subsequently, the 1 accused was taken to Isanga Institution on 14.06.2024 and was examined by Dr. Enock E. Changarawe (a specialist psychiatrist). The accused person being examined and observed on 16/10/2024 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 he said that that accused person was not be able to instruct his lawyer, so he concluded that he was insane during the time of commission of the crime. In a report addressed to the High Court (Shinyanga), Dr. Changarawe is of the opinion that: “Mr. Nkwabi is currently not mentally stable, and he would not be able to instruct his lawyer. Mr. Nkwabi did endorse symptoms of mental illness at the time of the alleged offence and even now” The said report was received in court following a prayer by the defense counsel one Mr. Phales Malengo, the prosecution did not object to the same being introduced in the court records. In light of section 220(3) of the Criminal Procedure Act the trial proceeded in the ordinary way and the prosecution brought one witness to testify on its behalf to establish the charge laid against the accused person. 2 The prosecution witnesses one PW 1 G.7356 D/CPL MACHELA testified that he is a police man and his work station is Kahama and his duty is investigation, arrest, search, interrogation, and arraign suspects to the court. He said that on 30/5/2023 he was given a file for investigation of murder case, and a suspect was Mayala Edward. PW1 said that he started investigation and interrogated witnesses who said that Mayala was the one who committed that offence, during interrogation the accused person’s mother said that on the said date at morning hours, Mayala entered to the house which his father was slept, after

three minutes she heard a voice from the said house praying for help that, Mayala is killing me. Thereafter, she went to that house, and saw accused person carrying panga with blood and accused run away to the bush and they find out that, deceased was killed by Mayala by cut him on his head by using that panga. Additionally, PW1 said that during interrogation accused's mother and his young sister admitted that, accused person is insane and its insanity was caused by using of bhang before. Accused person used to leave the house for some days without information, and before the incident day, accused person was out of their home for long time, when he arrived home he went straight to the house which his father was living and cut him and cause his death and run away to the bush. 3 Moreover, PW1 said that the accused was arrested on 1/6/2023 and taken to the police station on 2/6/2023 his condition was not okay, as he was dirty and his clothes also were dirty, and witnesses said that, there was no problem between accused person and his father. Lastly, on 30/5/2023, PW1 examined the body of deceased and tendered post mortem examination report which was admitted as exhibit P1. Following the closure of the prosecution's case, I accorded the defence opportunity to advance evidence in support of their defence. The defence side had no witness and Mr. Phales Malengo the defence counsel relied on the medical report from Isanga Institution which informed us that this accused person was insane before and after the commission of the offence and the said report was admitted as Exhibit D1. Finally, Mr. Phales Malengo prayed this court to finds that defense of insanity was proved and make special finding in terms of Section 219

- (2) and 220 (4) of CPA, and give the orders as per requirement of the law. Having considered the evidence on record, the medical report as to the accused's state of mind at the time of the commission of the offence, as well as the prosecution witness and defence counsel 4 submission, it seems that the accused, Mayala Edward Nkwabi, did murder Nkwabi Mabula. However, I make a finding that when committing the offence, the accused was insane and by reason of his insanity he is not guilty of the offence of murder that he stands charged with as per section 219 (2) and 220 (4) of CPA. See the case of MT 81071 PTE Yusuph Haji @ Hussein vs The Republic, Criminal Appeal No. 168 of 2015 CAT Tabora. This court is ordering this accused person to be kept in a mental hospital at Isanga Mental Institution as a mental disorder offender, and order that the superintendent of Isanga Institution shall make a report in writing to the Minister of the condition, history and circumstances if any of such lunatic. This order is given under section 219 (3) (a) and (4) of the Criminal Procedure Act. It is so ordered. DATED at SHINYANGA this 22nd day of November, 2024 R.B Massam JUDGE 5

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