THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL SESSION NO.237 OF 2019

ARISING FROM CITY HALL CRIMINAL CASE NO.23 OF 2018

UGANDA----------PROSECUTION

VERSUS

1. **NAKALEMA HARRIET**
2. **MWAGALE ANNET ALIAS NAMIRIMO----------ACCUSSED**

BEFORE HON: JUSTICE ISAAC MUWATA

RULING

The accused person Mwagale Annet alias Namirimo is charged with murder contrary to section 188 &189 of the Penal Code Act. When the matter came up for plea taking, counsel for the accused made an oral application on behalf of the accused for an order that an assessment of the accused persons mental health be done for purposes of determining her fitness to stand trial.

Pursuant to my order on mental health assessment of 7th April, 2022.An assessment was carried out by a one Dr. Apio Irene Wengi a psychiatrist attached to Butabika Hospital. The medical report indicates the A2 was under observation for a period of 5 weeks and was diagnosed with Mild Intellectual Disability.

It was further noted in that report that because of this handicap, A2 fails to gauge the seriousness of situations and laughs mostly to express herself. That she's unable to live independently or make her own decisions. Furthermore, that she always needs another adult to be responsible for her and decide for her.

Before proceeding to make my ruling, I invited both learned counsel for the accused person and the learned state attorney to make written submissions to the court, if any, based on the psychiatric report made and produced by the psychiatric expert herein. Both indicated that they had taken note of the contents of the report, and that they did not have anything else to say save to invite the Court to make its decision as to fitness of the accused person to stand trial, and/or provide any necessary directions.

Section 45 (1) of the Trial on Indictments Act provides that,

"When in the course of a trial the High Court has reason to believe that the accused is of unsound mind and consequently incapable of making his or her defence, it shall inquire into the fact of such unsoundness."

And as already noted above the inquiry envisaged was indeed carried out and the medical expert presented her findings in a report already on record. It was found that the second accused suffers from mild intellectual disability. The report went further to show that A2 fails to gauge the seriousness of situations and laughs mostly to express herself. That she's unable to live independently or make her own decisions. Furthermore, that she always needs another adult to be responsible for her and decide for her.

I am also mindful of Section 10 of the Penal Code Act which provides that,

"Every <u>person</u> 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."

The point therefore is that every person is presumed to have capacity and to be fit and competent to be tried unless proven otherwise. Court must have good reason to conclude that a person, whom medical experts opine to be unfit for trial, should in fact be found to be fit for trial.

In this case, I have found no reason to depart from the findings of Dr. Apio Irene Wengi a psychiatrist attached to Butabika Hospital or conclude otherwise. It also follows the court would ordinarily adopt the provisions of section 45(5) of the Trial on the indictment Act but the position has since been declared unconstitutional by the Constitutional Court. ***See Cehurd & Anor V Attorney General. Constitutional Petition No.64 of 2011.***

Furthermore, the constitutional court has noted that it is absolutely essential that before subjecting any person to a criminal trial, the trial court must ascertain and establish that an accused person will follow and understand the proceedings. This is the position of the law already noted in ***Cehurd V AG (supra).***

It would therefore amount an abuse of court process to insist on the second accused standing trial in total disregard of psychiatric medical report. It would not only be inhumane but would go against the principle of criminal justice that an accused person must be fit to stand trial so that the criminal procedure is dignified, the results are reliable and the punishment is morally justified. It would be undesirable to continue subjecting the accused person in need of care to a trial well aware that she does not understand the proceedings.

Similarly, the due process which this court would have ordinarily followed after inquiry was declared unconstitutional as already noted above. I am left with no option but to adopt a procedure justifiable by the circumstances of the case.

Section 39 (2) of the Judicature Act allows this court to adopt a procedure justifiable by the circumstances of the case. It provides,

Where in any case no procedure is laid down for the High Court by any written law or by practice, the court may, in its discretion, adopt a procedure justifiable by the circumstances of the case.

I will in the circumstances of this case exercise the inherent powers of the High Court to prevent abuse of the process of court, which includes the power to limit

and discontinue delayed prosecution, and to ensure that substantive justice is administered without due regard to technicalities. See: ***Section 17(2) (a) of the Judicature Act*** and ***Kasozi Stephen Vs Uganda HCSC No.0829 of 2019,*** where the court held that it would be unjust to continue trying an accused where there is no hope of the accused ever understanding the proceedings of court

In view of the foregoing, the proceedings are accordingly terminated and the accused is discharged forthwith

I so order.

JUDGE

1/9/2022