

# Chapter 7

## Psychological Abuse



## Chapter 7

# Psychological Abuse

---

**Psychological abuse:** “Calling, threats of physical assault, intimidation, humiliation, forced isolation (i.e. by preventing a person from contacting their family or friends). For the purposes of the incident recorder, this category includes all sexual harassment defined as: unwanted attention, remarks, gestures or written words of a sexual and menacing nature (no physical contact).”

### Tanzania

Agnes Doris Liundi v Republic [1980] CA

#### Principle or Rule Established by the Court’s Decision

- Where the accused raises the defence of insanity, it must be shown on all the evidence that insanity is more likely than sanity, even to a minor degree. The burden of proving insanity is on the accused on a balance of probabilities.
- In assessing insanity, a court is not bound to accept medical evidence if there is good reason for rejecting it.

Judges: Mustafa, Mwakasendo and Kisanga | JJA

Decision	Court/jurisdiction	Date & case reference (citation)	VAWG incident type
<b>Appeal dismissed</b>	Court of Appeal/ Appellate (Tanzania)	(1980) TLR 46; delivered on 10 March 1980	Psychological abuse

#### Case Summary

The accused was charged with three counts of murder. Following grave matrimonial disharmony and threats by the accused’s husband to eject her from the matrimonial home, the accused administered poison, together with some ground pieces of glass, to herself and to her four children. Three of the children died. Doctors saved the accused and one of her children. Before the accused administered the poison, she wrote four letters explaining why she had made the decision, and that her husband was innocent and should not be punished. At trial, the accused raised the defence of insanity. She contended that she was so mentally distressed at the time of the incident that, although

she knew what she was doing, she did not know that what she was doing was wrong. The trial court found the accused guilty. The accused appealed against her conviction.

At the Court of Appeal, the main grounds for appeal was that the trial judge did not give adequate consideration to the contention raised by the defence that the appellant did not know what she was doing was wrong, although she knew what she was doing.

The Court therefore had to adjudicate on whether the defence of insanity could stand, bearing in mind the circumstances of the case, where mental stress was found to be a fact.

The conviction was upheld in spite of the medical evidence that the complainant's judgement was impaired at the time of the incident. Although the appellant was clearly mentally stressed, it was insufficient to reach the threshold of insanity. The Court of Appeal considered the evidence of the psychiatrist who had treated the appellant, Dr Haule. His evidence was that, in modern psychiatry, the distinction between insanity and diminished responsibility is controversial because it is imprecise. The Court stated that Parliament, in its wisdom, may wish to amend this particular branch of the law and bring it into line with modern medical knowledge on the subject as in other jurisdictions, including one in East Africa. However, in light of the law as it stood at the time of the trial, the trial court's decisions were proper.

#### Points to Note

- This is a well-known case related to matters of psychological abuse and defence of insanity.
- It dealt with a case where a mother had killed three of her children and almost killed another child and herself, owing to a high level of mental stress emanating from misunderstandings with her husband.
- The decision addressed the persuasive nature of expert opinion and the fact that the court is not bound to follow the opinion and that the balance of proving the defence of insanity is considered and determined on the balance of probability and not beyond reasonable doubt.
- It is important that, to date, there has been no change in the law of insanity as suggested or recommended by the Court.

## Principle or Rule Established by the Court's Decision

Any defence (even diminished responsibility) must be raised during trial and not during appeal. A new defence may not be raised at the appeal stage.

Judges: Munuo, Nsekela and Mandia | JJA

Decision	Court/jurisdiction	Date & case reference (citation)	VAWG incident type
<b>Appeal dismissed</b>	Court of Appeal/ Appellate, Mwanza (Tanzania)	Criminal Appeal No. 179 of 2009; delivered on 16 November 2011	Psychological abuse

## Case Summary

The appellant was convicted of murdering her husband's second wife, contrary to Section 196 of Penal Code, and sentenced to death by hanging. The appellant had a stormy relationship with her husband. She left the matrimonial home for a year, during which time she lived with her parents. In her absence, her husband got married to the deceased. On hearing this, the appellant returned to the matrimonial home. The husband built two separate houses for each of his wives and spent nights with each of them in turn. There were arguments and threats between the wives. On 28 September 2001, the husband left home to deal with other responsibilities and in the night the deceased's house was set alight. The deceased managed to escape from the house alive but burnt. Her property was destroyed by fire. The deceased kept repeating that it was the appellant who had set her house on fire. On the way to the hospital, she died, leading to the arrest of the appellant the next morning.

The appellant admitted to having set fire to the deceased's house but relied on the defence of provocation. The appellant averred that the acts of the husband in depriving her of matrimonial support in the form of the necessities of life put the appellant under extreme pressure, which incited and provoked the appellant. The trial court dismissed this defence, saying it fell short of the legal definition of provocation in view of the acts of the appellant prior to setting the deceased house on fire.

At the Court of Appeal, the issue of diminished responsibility was raised for the first time. Diminished responsibility is not found on the statute books. The Court of Appeal declined to entertain the defence not because it was impossible to argue the defence but because it had not been raised in the lower courts.

### Points to Note

- This is a case where the Court considered diminished responsibility raised by the defence and whether it is a defence recognised by law. The gist of the decision is to highlight the appropriate time to raise any defence, even if such a defence is not well captured in the law. This position cemented an earlier decision that held that diminished responsibility is a defence that the courts may raise and determine despite it not being clearly outlined in the statute books.
- This is a forward-looking decision in not excluding the defence, highlighting judicial pro-activeness in considering matters within a holistic context and learning from other jurisdictions on matters not yet outlined in domestic law.
- Most available defences for accused persons who may commit offences owing to continuous abuse, be it physical or psychological or both, are not well captured by the defences available in statute. For example, the elements that govern the application of the defence of provocation preclude consideration of long-term abuse.
- Courts have been proactive in expanding and arguably introducing defences such as the “last straw doctrine” or diminished responsibility, and thus have invariably acknowledged the fact that the defence of provocation can be given a wider perspective by considering other circumstances that may limit or diminish a person’s reasoning capacity and cause them to go on to commit an offence without malice aforethought.

Other cases/decisions referred to

Country/case

**UK** | *R vs. Ahluwalia* [1992] 4 AER 889