

**IN THE COURT OF APPEAL OF TANZANIA**

**AT BUKOBA**

**(CORAM: MWAMBEGELE, J.A., KEREFU, J.A., And KENTE, J.A.)**

**CRIMINAL APPEAL NO. 480 OF 2019**

**MUHANGWA SIMONI ..... APPELLANT**

**VERSUS**

**THE REPUBLIC..... RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania at Bukoba)**

**(Mugeta, J.)**

**Dated the 25<sup>th</sup> day of September, 2019**

**in**

**Criminal Sessions Case No. 6 of 2017**

**.....**

**JUDGMENT OF THE COURT**

17<sup>th</sup> & 26<sup>th</sup> August, 2021

**KENTE, J.A.:**

The High Court (Mugeta, J.) sitting at Bukoba, convicted the appellant Muhangwa Simon of the offence of murder contrary to section 196 of the Penal Code Chapter 16 Revised Edition 2002. He was subsequently sentenced to the mandatory sentence of death by hanging. He is appealing to this Court to challenge the said conviction and sentence.

Briefly stated, during the trial, it was the prosecution case that, the deceased Shoma Masiligiti lived at Chakitalagu area, Chankende Village within Biharamulo District in Kagera Region. On the fateful day, that is on 7<sup>th</sup> May 2015 at about 8.00 pm, the deceased along with some other members of her family were outside their house after having dinner. Suddenly, they were invaded by some unknown persons who slashed her on different parts of the body thereby causing her death. Other members of the deceased family were able to escape unhurt. The postmortem examination report (Exh. P2) showed that, the body of the deceased was found to have been cut with a sharp object on different parts such as the neck and the ear. Doctor Joel Niku Maduhu, (PW4), who examined the said body, concluded that the cause of death was the said multiple cut wounds which led to severe haemorrhage.

The evidence on the record shows that, nobody was immediately suspected nor arrested in connection with the deceased's murder as soon thereafter, the assailants escaped, in a flash. The appellant was arrested sometimes in January, 2016. According to No. E 9533 Corporal Masele who testified as PW3, the appellant who was living at Nemba Village within Biharamulo District had escaped after the murder incident. PW3 told the

trial court that, when he went to the crime scene on 7/5/2015, some informers told him that the suspects of the murder were one Muhoja Zacharia, Dotto Luchemba and the appellant.

Upon arrest, the appellant is said to have been taken to the Justice of the Peace one Edward Samara (PW2) where he allegedly made an extra-judicial statement (Exh. P1) in which he confessed to have been involved in the deceased's murder. In the said statement, the appellant is recorded to have told PW2 that he worked in collaboration with one Muhoja Zacharia who had hired him to assist him to kill the deceased, upon consideration of Tshs. 200,000/=. Consequently, the appellant was charged along with the said Muhoja Zacharia who however, died before the conclusion of the committal proceedings. As stated before, upon a full trial, the appellant was convicted and sentenced to the mandatory death.

Before this Court, the appellant was represented by Mr. Projestus Mulokozi, learned counsel while, on the other hand, Messrs Grey Uhagile and Nehemia Kilimuhana both learned State Attorneys, appeared for the respondent Republic. The appellant had initially filed a memorandum of appeal containing five grounds of complaint. However, on being assigned this dock brief, Mr. Mulokozi filed a supplementary memorandum of appeal

in which three grounds were raised. At the commencement of the hearing, Mr. Mulokozi informed the Court that, he would abandon the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> grounds and argue the first ground of appeal contained in the memorandum filed by the appellant and thereafter, he would canvass the three grounds in the supplementary memorandum of appeal. Nevertheless, for the purposes of this judgment, we will not reproduce the appellant's grievances listed on the two memoranda of appeal. Suffice it to say that, they are mainly directed to the extra-judicial statement which formed the basis of the appellant's conviction.

To start with, Mr. Mulokozi sought to fault the learned trial Judge for convicting the appellant of the offence of murder basing on what he called insufficient evidence. The learned counsel had started by seeking to discredit the extra-judicial statement of the appellant to PW2 contending that, the proper procedure was not followed in recording that statement. However, upon reflection, he abandoned that complaint. Elaborating further, he submitted that, while the extra-judicial statement shows that the murder incident occurred on 8/5/2015, the information laid at the appellant's door showed that the said incident occurred on 7/5/2015. The learned counsel went on to say in his submissions, that, the appellant

having repudiated the said extra-judicial statement, the same ought to have been corroborated by some other independent evidence so as to ground a conviction. With regard to the post mortem examination report, Mr. Mulokozi maintained that the findings therein by PW4 could not corroborate what the appellant is recorded to have told PW2 in the extra-judicial statement. All in all, the learned counsel was of the view that a confessional statement cannot be corroborated by a postmortem examination report so as to form the basis of a conviction. He finally challenged the learned trial Judge for allegedly influencing the assessors who sat with him when he remarked, in the course of his summing up notes to them that, the extra-judicial statement made by the appellant was truthful.

Countering the submissions made by Mr. Mulokozi, Mr. Kilimuhana submitted that, the extra-judicial statement was recorded in accordance with the law and that it was subsequently properly admitted in evidence. With regard to the contention by Mr. Mulokozi that the extra-judicial statement could not be corroborated by the report on postmortem examination, the learned State Attorney was diametrically opposed to the position maintained by Mr. Mulokozi. He referred us to our decision in

**Umalo Mussa v. Republic**, Criminal Appeal No. 150 of 2005 (unreported) in support of the argument that if necessary, a confessional statement can be corroborated by a postmortem examination report. But of much importance, we held in that case that, as a matter of law, such a confessional statement, if it was voluntarily made, does not require any further corroboration.

Therefore, in the present case, the most important question is, as it was before the trial court, that is whether or not, the appellant made the impugned extra-judicial statement to PW2 and if he made it, was it voluntary? Those are the questions which we intend to resolve now. We will also consider the question as to whether the said statement could support a conviction without corroboration.

Notably, when PW2 sought to tender the extra-judicial statement and after Mr. Mgisha learned advocate who represented the appellant during the trial told the trial court that the appellant had informed him that, in reality, he was not taken to PW2 and that he did not sign any document, the learned trial Judge conducted a trial within trial to establish if the appellant had really made the said statement. At the conclusion of the trial within trial, the learned trial Judge was left with no doubt, not only that

indeed the appellant had made the disputed statement to PW2 but also that, he made it voluntarily. The learned trial Judge therefore went ahead and overruled the objection raised by the defence side. He found the said statement to be admissible in evidence.

For our part, having examined the evidence on the record, we think, with respect, we have no plausible reason to fault the learned trial Judge of the High Court regarding that finding of fact. For, there is nothing on the record suggesting, albeit remotely, that PW2 could have invented any inculpatory evidence showing that the appellant was involved in the deceased's murder. We wish also to point out that, we see no reason as to why would PW2, a Primary Court Magistrate and Justice of the Peace, appear before a court of law, and perjure himself that he had recorded the appellant's statement if the appellant was not taken to him. Like the trial Judge, we hold that the appellant was taken and he made his statement to PW2 in which he subsequently confessed to have been involved in the murder of the deceased. We also take note that the appellant's extra-judicial statement to PW2 was made voluntarily as no allegations of torture, threats or any inducement were raised by the defence side during

the trial and therefore, nobody can be heard to contend, at this belated stage that, the appellant's statement was procured involuntarily.

The next question that falls for consideration is whether or not the appellant's confessional statement to PW2 required any corroboration before it could form the basis of a conviction. The above-posed question appears to have escaped the attention of the learned trial Judge as he seems to have concentrated on another important question regarding the truth or otherwise of the statement itself.

In the case of **Umalo Mussa** (supra) to which we were ably referred by Mr. Kilimuhana, we held that, as a matter of law, such a confessional statement does not require any further corroboration if the court is satisfied that the confession is true. It must be noted that in that case, we were not inventing any new idea. We followed our decision in the case of **Richard Lubilo and Another v. Republic**, Criminal Appeal No. 10 of 1995 (unreported) in which, having discussed the famous case of **Tuwamoi v. Uganda** [1967] EA 84 at 91, we stated that:

*"What this passage says is that in order for any confession to be admitted in evidence, it must first and foremost be adjudged voluntary. If it is*



*involuntary that is the end of the matter, and it cannot be admitted. If it is adjudged voluntary and admitted but it is retracted or repudiated by the accused, the court will then as a matter of practice look for corroboration. But if corroboration cannot be found, that is, if the confession is the only evidence against the accused, the court may found a conviction thereon, if it is fully satisfied that the confession is true."*

Eight years later in the case of **Mashimba Dotto @ Lukubanija v. Republic**, Criminal Appeal No.317 of 20213 (unreported), we observed that:

*"As correctly opined by both learned counsel, the Judge was certainly correct in saying that under normal circumstances a conviction could safely lie so long as the court warns itself on the danger of acting on the statement without corroboration. It is trite law that as a matter of practice, a conviction would not necessarily be illegal but it is a matter of practice in such cases for a trial court to warn itself and if the trial is with the aid of assessors to direct them on the danger of convicting without corroboration"*

Despite his premature remark to the assessors on the truth-fullness of the appellant's confessional statement, the learned trial Judge in the present case, was satisfied and he came to the conclusion that, indeed the appellant had made his statement to PW2 voluntarily and that the same contained nothing but the truth. For our part, having closely examined the impugned extra-judicial statement in which the appellant admitted graphically to have been hired by one Muhoja Zacharia to assist him in the murder of the deceased, we have no reason whatsoever to interfere with that finding of fact by the trial court. However, being mindful of the danger of founding a conviction on uncorroborated evidence, we think the report (Exh. P2) by the doctor who examined the body of the deceased and came to the conclusion that the death of the deceased was due to haemorrhage caused by severe cuts on the head and the neck, was sufficient to support the version of the appellant who had told PW2, among other things, thus:

*". . . tulipofika hapo kwa Masiligiti tulimkuta huyo mwanamke akiwa amekaa na watu nje na ndipo hatukuwasalimia na ghafla tulijifanya kama vile tumewavamia kwani tulikuwa na matochi na ndipo hao watu wakaanza kukimbia na ndipo Muhoja*

*akamuwahi huyo Shoma na kuanza kumkata na panga kichwani na ya pili alimkata shingoni na baada ya kuridhika kuwa ameshakufa ndipo tuliondoka . . .”*

That is to say:

*"When we arrived at the home of Msiligiti, there was that woman who was seated outside with some other people. We did not greet them, rather we pretended to have invaded them because we had flashlights, that's when they started running and Muhoja pursued the said Shoma and slashed her with a panga on the head and the second on the neck and after making sure that she was dead, we left..."*

As can be gleaned from the above reproduced excerpt of the appellant's confessional statement to PW2, the parts of the body on which the deceased was slashed according to the appellant, were the same parts which were found to have severe cut wounds by PW4 according to the postmortem examination report. This, we think, was sufficient evidence to corroborate the appellant's extra-judicial statement to PW2 and connect the appellant with the murder of the deceased, in cold blood.

Taken in wholeness, we are of the settled conclusion that, the prosecution side had led sufficient evidence to support the conviction against the appellant. We find the present appeal to have no merit and we accordingly dismiss it in its entirety.

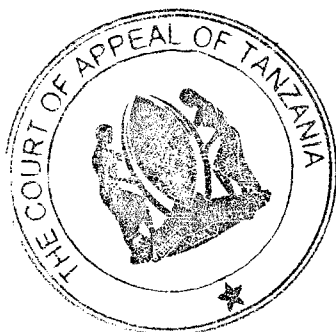
**DATED** at **BUKOB**A this 24<sup>th</sup> day of August, 2021.

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

The Judgment delivered this 26<sup>th</sup> day of August, 2021 in the presence of the Appellant in person, Mr. Peter Matete who is holding brief for Mr. Projestus Mulokozi, learned Counsel for the Appellant and Mr. Amani Kilua, learned State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



*F. A. MTARANIA*  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**