

**IN THE COURT OF APPEAL OF TANZANIA  
AT MBEYA**

**(CORAM: JUMA, C.J., MKUYE, J.A. And GALEBA, J.A.)**

**CRIMINAL APPEAL NO 24 OF 2019**

<b>1. JACOB MWASHITETE 2. ANGUMBWIKE KABUKA 3. TITO MWAIPUNGU 4. EZEKIA RUNGWE 5. MUSSA LAITON NGONYA</b>	}	..... <b>APPELLANTS</b>
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**VERSUS**

**D.P.P. ....RESPONDENT**

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

**(Levira, J.)**

**dated the 4<sup>th</sup> day of January, 2019**

**in**

**Criminal Session No. 28 of 2015**

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**JUDGMENT OF THE COURT**

21<sup>st</sup> & 25<sup>th</sup> February, 2022

**JUMA, C.J.:**

The appellants, JACOB MWASHITETE, ANGUMBWIKE KABUKA, TITO MWAIPUNGU, EZEKIA RUNGWE, and MUSSA LAITON NGONYA, were in the High Court of Tanzania at Mbeya charged with the offence of murder contrary to sections 196 and 197 of the Penal Code Cap. 16 R.E. 2002 [now R.E. 2019]. The particulars of the charge alleged that on 4<sup>th</sup> November, 2012 at Mbebe village in Ileje District of Mbeya Region (now

Songwe Region), they murdered Salum Gambi, who we shall refer to as the deceased.

At the trial, D6645 Detective Sergeant Julius (PW4) from Itumba Police Station and the deceased's three wives, Anna Masebo (PW1), Cathy Elia Mwanje (PW2), and Ruth Masebo (PW3), testified for the prosecution. The appellants testified in their respective defences as DW1, DW3, DW5, DW6, and DW7. The appellants also relied on the evidence of the Ward Executive Officer of Mbebe Ward (DW8) and that of the Village Chairman of Mbebe (DW9).

Anna Masebo (PW1) testified on the circumstances that led to her deceased husband's arrest by members of the peoples' militia and death. She and her husband had left the village of Mpemba for another village of Chizumbi. Along the way at Nandanga village, four members of the peoples' militia, who included the second appellant (now deceased), stopped and arrested her husband. There was suspicion over a cow inside a store where her husband kept his crops. Hilda Abraham Songa (DW8), the Ward Executive Officer, sent the militia to take her husband back to Ipanga village.

PW1 and her husband walked together with the members of the peoples' militia back to the crops store, where the Ward Executive Officer

and Village Chairman were waiting. PW1 testified how the Ward Executive Officer while interrogating her husband, explained that a cow stolen from another Ipyana Msomba was inside the store. Her husband replied that the store belonged to his children. Her husband called out his two other wives, Cathy Elia Mwanje (PW2) and Ruth Masebo (PW3), to bring the keys to the store. After failing to find the keys, PW1 stated, her husband asked the Ward Executive Officer (DW8) to break down the door.

When the fifth appellant, Vibaya Ngonya, broke down the door to the store, a cow came out, at which point DW8 ordered a rope to restrain the cow. The militia tied up her husband with the help of a string.

PW1 explained how Tito Mwaipungu (the third appellant) resisted when the executive officer asked the militia members to remain behind and the villagers to disperse. She testified that as they were walking with her husband to the offices of the Ward Executive Officer at Mbebe village, the third appellant hit the deceased with a club at the back of his head, drawing blood. According to PW1, shortly after that, Jacob Mwashitete (the first appellant) drew out a sword and slashed her husband on his back. The fourth appellant, Ezekia Rungwe, joined in and used a club to hit the deceased on his chin. One Vibaya Ngonya not only used a machete to slash her husband on the head, but he also slashed his three fingers from his left

hand. She testified also that he cut off her husband's private parts and gave them to the first appellant.

PW2 and PW3 confirmed PW1's account of what transpired when her husband met his death. PW2 was at home that fateful day when a child, Anna Gambo, rushed over to inform her that a crowd of people had surrounded their farmhouse. Among the many people gathered at the farmhouse was the village executive officer (DW9) who told PW2 that a stolen cow was inside the shed, and asked her to unlock the door. PW2 went to look for shed keys but failed to locate the key at its usual place. They all had to wait for their husband to arrive. PW2 was at the farmhouse when the deceased and PW1 arrived under the militias' escort, among whom she identified Angumbwike Kabuka.

Around 16:00 hours on the day the deceased died, D6645 Detective Sergeant Julius (PW4) was at Itumba Police Station when his CID Commanding Officer asked him to assemble police officers to rush to Mbebe village to prevent a commission of a crime. It was after 19:45 hours when PW4 and three police officers arrived at a spot where the burned body of the deceased lay adjacent to the road. PW4 took the body to Itumba Hospital mortuary to wait for a post-mortem examination.

In his sworn defence, while admitting that he was at the farmhouse where the villagers saw a cow coming out, Jacob Mwashitete (the first appellant) denied the charge of murder against him. He explained that, like every other villager, he was resting at home when around 14:00 hours, he heard a school bell ringing to alert the villagers over an emergency. He walked for 1 kilometre to where he met Hilda Songa (the Ward Executive Officer) and Hassan Rungwe, the village chairman. He testified that the distance separating where he was standing to the farmhouse prevented him from witnessing who was attacking the deceased. He complied when DW8 issued the order to disperse, and returned home.

Angumbwike Kabuka (was the second appellant before he passed away), denied the charge of murder. He testified how, like other villagers, he arrived at the locked farmhouse and heard when the Ward Executive Officer directed the members of the peoples' militia to seek out for the deceased and bring him to the farmhouse. He was at the scene when the members of the peoples' militia arrived with the deceased. He witnessed when a cow walked out from the farmhouse. He left the scene, and he played no role in the deceased's death.

Tito Mwaipungu, the third appellant, denied the charge of murder. He stated that the cow found inside the farmhouse belonged to his uncle, who

had earlier that morning asked him to help in the search. He was at Mpemba village with his uncle searching the cow when a youth told them it was inside a farmhouse belonging to the deceased. They rode a motorcycle to the scene, arriving around 15:00 hours. Many villagers had gathered by the time the members of the people's militia brought the deceased. He insisted that he left the scene when the Ward Executive Officer directed the villagers to disperse.

Like the other appellants, the fourth appellant, Ezekia Rungwe, denied the charge of murder. He is a member of the Moravian Church Choir known as "Jerusalem." He testified that on the day and time the deceased died, he was in the church inaugurating the CD of Vwawa Church. The inauguration started at around noon and ended around 18:00 hours. He stoutly denied that he used a club to hit the deceased.

On his part, the fifth appellant, Mussa Laiton Ngonya, also denied the charge. He was busy with his farming activities and did nothing untoward the day the deceased died (4/11/2012). Three years later, his hamlet chairman, Juma Msanganzila, summoned him to his office. He found the Village Executive Officer, who accused him of cutting trees without a permit to make charcoal. He was allowed to return home after paying a

penalty of Tshs. 50,000/-. He had never been to Mbebe village, he stated. He neither knew the deceased nor his wives who accused him of murder.

Hilda Abraham Songa (DW8) was the Ward Executive Officer of Mbebe Ward in the Ileje District. On 4/11/2012, she received a phone call from Hassan Rungwe (DW9), the village chairman of Mbebe Village, informing her that Mr. Msomba's cow is in a farmhouse of Salum Gambi.

DW8 testified that she knew the deceased as a habitual cow thief who she had reported to police three times. But the police always released him for lack of evidence. On the day the deceased died, DW8 received information about a cow in a farmhouse. DW8 rushed to the farmhouse where many villagers had already gathered. Through a window, DW8 saw a cow. DW8 sent members of the peoples' militia, including Angumbwike Kabuka, to bring the deceased back to his farmhouse.

DW8 explained that after dispersing the villagers, she asked the second appellant to escort her and the deceased to the police station. They were along the road near Ipanga Primary School when three motorcyclists (Bodaboda) and a lorry full of people from the Mlangali auction market stopped their advance. They shouted and taunting her why she was escorting a habitual cattle thief to the police station. According to DW8, she got scared and ran to the bush and phoned the Officer Commanding

the Police Station for assistance. The deceased and all others ran and scattered in different directions. The deceased was already dead when the police from Vwawa arrived. DW8 claimed that because she scampered away into the bush, she did not know who killed the deceased.

Hassan Langson Rungwe (DW9), was the village Chairman of Mbebe village at the time of the incident. He testified for the defence, explaining that he was inside a church around noon when a youth walked in to tell him about the discovery of a cow locked inside a farmhouse of Salum Gambi. DW9 immediately informed Angumbwike Kabuka, who was also in the church. Angumbwike Kabuka was the head of the village peoples' militia. Many villagers were already at the farmhouse when DW9 and the second appellant arrived. DW9 testified that after arresting and tying up the deceased with a rope, the Ward Executive Officer (DW8) and some members of the peoples' militia, walked the deceased and the cow to the village office. Moments later, DW9 received a call informing him that people from an auction market had ambushed their troupe and killed the deceased.

The trial judge was not in doubt that the prosecution built its case around eye-witness evidence of the deceased's three wives, PW1, PW2 and



PW3. The trial judge regarded these three eye-witnesses to be reliable because they witnessed what happened on the day the deceased died.

Although the trial judge determined that the deceased died from mob justice, she concluded that the three identifying witnesses were able to recognize the appellants and the role which each played in the death of the deceased because they lived in the same village. Taking into account the nature of the weapons used and the part or parts of the body where they inflicted harm, the trial judge concluded that the appellants intended to kill the deceased. The trial judge convicted the appellants and sentenced them to death by hanging.

At this appeal hearing on 21/02/2022, learned State Attorney, Ms. Prosista Paul, appeared for the respondent Republic. Two learned Advocates, Mr. Faraja Msuya and Mr. Chapa Alfred, appeared for the appellants. Ms. Paul notified the Court that the second appellant, ANGUMBWIKE KABUKA is dead, and the prison authorities filed his death certificate in Court. Ms. Paul urged that in respect of this appellant, his appeal has abated in terms of Rule 78(1) of the Court of Appeal Rules, 2009 (the Rules). On his part, Mr. Msuya confirmed that he and Mr. Chapa Alfred had also seen a copy of the second appellant's death certificate, and agreed that his appeal should abate.

We have seen a copy of the Certificate of Death No. 1004-431-273, showing that the second appellant (ANGUMBWIKE KABUKA) died on 23/04/2020 at Mbeya Zonal Referral Hospital. Under the circumstances, we agree with Ms. Paul and Mr. Msuya that the second appellant's appeal has abated in terms of Rule 78(1) of the Rules.

On behalf of the remaining first, third, fourth, and fifth appellants, Mr. Msuya prayed to abandon three sets of memoranda of appeal, which the appellants filed on 8/4/2019. Instead, he proposed to argue the seven grounds of appeal in the memorandum of appeal which Ms. Joyce Kasebwa filed on 12/4/2019.

On the **first ground**, the appellants faulted the trial judge for convicting them on evidence marred with glaring contradictions, which is insufficient to prove the prosecution case beyond a reasonable doubt. The **second ground** blames the trial judge for failing to analyse the evidence, totally ignoring the defence evidence. This mistake led to a wrong decision.

In the **third ground** of appeal, the appellants fault the trial judge for downplaying the significance of the failure of the three main prosecution witnesses to name the appellants at the earliest opportunity. In their **fourth ground** of appeal, the appellants fault the evidence of PW1, PW2 and PW3 as unreliable to convict them. The **fifth ground** of appeal raised

the issue of bias. The appellants complain that the trial judge favoured the prosecution and imported extraneous matters that neither the prosecution nor the defence presented in evidence during the trial.

In the **sixth ground** of appeal, the appellants complain that the charge sheet was not read over when the trial commenced; this offended the mandatory provisions of the law. In the **seventh ground** of appeal, the appellants fault the trial judge for concluding that they attacked the deceased to death and cut off his private parts.

Apart from his oral submissions on the seven grounds of appeal, Mr. Msuya prayed to adopt and rely on the appellants' written submissions, which learned advocates for the appellants filed on 7/6/2019.

According to the written submissions, the main complaint cutting across the first, the third and the fourth grounds of appeal blames the trial judge for convicting the appellants based on the evidence of unreliable prosecution witnesses. That is, the evidence of PW1, PW2 and PW3 did not prove the case beyond a reasonable doubt. Expounding on the unreliability of the eye-witness evidence of PW1, learned counsel for the appellants wondered, after testifying that the appellants hit the deceased with clubs, slashed him with machetes and sticks, why, according to PW1, the deceased did not fall.

Mr. Msuya blamed the judge for failing to conclusively resolve the conflicting evidence versions regarding what caused the deceased's death. That evidence of PW1, PW2 and PW3 claimed that the appellants beat and burned the deceased. The eye-witnesses did not say who started the fire and burned the deceased as far as the learned counsel is concerned. To support his submission that the cause of death was burning, Mr. Msuya referred to the evidence of Detective Sargent Julius (PW4), who led a team of police officers at the scene of the crime. While under cross-examination, PW4 stated that he saw the post-mortem report, which indicates that the deceased died from suffocation and not the fire which burned him. He submitted that apart from uncertainty over the cause of death, there is no evidence to prove that the appellants burned the deceased.

The learned counsel for the appellant next urged us to discredit the evidence of the three eye-witnesses, PW1, PW2 and PW3, because they failed to name the appellants at the earliest opportunity that was available. He submitted that although PW4 visited their village almost five times, they still failed to name the appellants. In so far as Mr. Msuya is concerned, the delay to mention the appellants meant that the appellants are not responsible for the death of the deceased.

Mr. Msuya finally urged us to allow the appeal, quash the conviction, and set the appellants at liberty.

Submitting in reply, learned State Attorney for the respondent, Ms. Paul opposed the appeal and insisted that the prosecution proved its case beyond reasonable doubt against the appellants. She brushed off the attempt by the learned counsel for the appellants to discredit the eye-witness evidence of PW1, PW2 and PW3. She submitted that the whole incident took place in broad daylight, and PW1, PW2 and PW3 saw how each appellant took turns to assault their deceased husband. These eye-witnesses and the appellants were familiar because they lived in the same village.

The learned State Attorney also pointed out that the trial judge was entitled to believe the eye-witness accounts from the way the evidence of PW1, PW2 and PW3, flowed consistently and similarly, making them believable. So much so, the trial judge concluded that the weight of the evidence of the three witnesses not only carried more weight than the defence evidence but placed the appellants at the scene of the crime and proved the role each appellant played in the death of their husband.

Ms. Paul referred us to the principle of law in the case of **GOODLUCK KYANDO V. R.** (2006) TLR 363, where the Court stated that every witness

is entitled to credence, belief, and testimony to be accepted unless there are good and cogent reasons for not believing a witness. She urged that in the instant appeal since the trial judge concluded that PW1, PW2 and PW3 are credible witnesses, that finding is binding on us unless we find circumstances that call for our reassessment of their credibility. (See: **BAKIRI SAIDI MAHURU V. R**, CRIMINAL APPEAL NO. 107 OF 2012 (unreported) and **OMARY AHMED V. R** (1983) TLR 32).

The learned State Attorney asked us to disregard the suggestion by the learned counsel for the appellants that the prosecution did not prove the cause of the deceased's death. She submitted that the evidence of PW1, PW2 PW3, and DW8 proved that the deceased was beaten to death and burned his body. She submitted further that although the prosecution did not tender the evidence of the post-mortem examination report, there are several decisions of the Court maintaining that even in the absence of a post-mortem report, other evidence can prove the cause of death. The evidence on record, she added, proved that the appellants killed the deceased and burned his body.

Ms. Paul next addressed the ground of appeal, seeking to discredit the evidence of PW1, PW2 and PW3 for failing to name the appellants at the earliest opportunity to the police officer who investigated the crime (PW4).

She submitted that the evidence on record does not show if PW4 specifically asked the three eye-witnesses who killed and burned the deceased's body. PW1, PW2 and PW3 answered what PW4 asked them. The learned State Attorney urged us to agree with the trial judge, who stated that delays by the eye-witnesses to report what they had witnessed were due to the delay in the investigations. According to Ms. Paul, threats to the three eye-witnesses also contributed to the delay. The police transferred investigations from the police in Ileje District to the Regional Crime Officer Mbeya, contributing to delays.

The learned State Attorney also referred us to the evidence of PW2 on page 34 of the record of appeal expressing the fear which prevented the three eye-witnesses from naming the appellants. After their husband's death, they saw appellants walking freely during the day, and at night they saw intimidating torchlights near their homesteads.

The learned State Attorney went to great lengths to demonstrate that the appeal record does not support the complaint claiming the trial court did not consider the defence evidence. She submitted that the trial Judge considered defence evidence, weighed it, and found it inadequate to shake the prosecution's case. At any rate, she added, this first appellate Court will consider and re-evaluate the defence evidence on its own.

In his brief rejoinder, the learned counsel for the appellants maintained his position that failure of PW1, PW2 and PW3 to name the appellants to the police officer investigating the crime (PW4) casts doubt on the weight of their evidence and prosecution's case as a whole.

The learned counsel also made a rejoinder that in the circumstances where it is not clear whether assaults or burning caused the deceased's death, it is unsafe to convict the appellants of murder.

Mr. Msuya also blamed the trial judge, in our view rightly so, for insisting that witness statements (exhibit D1, D2 and D3) recorded by the police during investigation cannot be considered substantive evidence during trial under oath. Yet, the trial judge relied on exhibit D1 to support the evidence of PW1, PW2 and PW3.

The learned counsel for the appellants ended his rejoinder by urging us to allow the appellants' appeal, quash their conviction and set aside their sentences.

We have considered the grounds of appeal, submissions of the learned counsel, and the record of this appeal.

We noted that neither Mr. Faraja Msuya for the appellant nor Ms. Proposita Paul for the respondent submitted on sixth ground of appeal faulting the trial court for commencing the trial on 05/03/2018 without



rereading the charge sheet. Record of the trial court shows that Information for the offence of murder was read over to the appellants on 02/03/2018, and the appellants pleaded not guilty. Then the trial judge selected the assessors then adjourned the hearing to 05/03/2018 when the prosecution opened its case with its first witness, PW1. Just as it did not attract submissions of the two learned counsel, the complaint should not detain us. This Court faced a similar complaint in **THABIT DOTTO V. R.,** CRIMINAL APPEAL NO 32 OF 2017 (TANZLII). We stated that the appellant was not prejudiced because he defended himself. Likewise in the instant appeal the appellants were not prejudiced. They had the benefits of learned counsel and they defended themselves.

The main issue calling for our determination is whether the prosecution proved its case against the appellants beyond a reasonable doubt.

In this first appeal, we have reassessed the record of evidence in light of submissions the learned counsel made on the grounds of appeal. It is not in dispute that the deceased died a violent death, and his assailants burnt his body.

The trial judge weighed two versions of competing evidence. The first version, which the appellants preferred, asserted that after discovering the

stolen cow from the deceased's barn, the villagers who had assembled dispersed off as their village leaders directed them. That, DW8, the Ward Executive Officer of Mbebe, asked Angumbwike Kabuka (a member of the peoples' militia) to escort the deceased to the village office. A short distance on, a group of people coming from the Mlangali cattle auction market stopped them. The group attacked the deceased with stones as DW8 and Angumbwike Kabuka escaped separately.

The second version of evidence, which the trial judge believed and accepted, was that of the three wives of the deceased, PW1, PW2 and PW3. The three witnesses gave a similar account of how the appellants used sticks, clubs, bush knives and arrows to attack the deceased. That after the attack, the appellants burned down the deceased's body. The three prosecution witnesses singled out the fifth appellant, who they saw cutting off the deceased's fingers and private parts.

The trial judge gave reasons why she believed the three prosecution witnesses, PW1, PW2 and PW3, whose evidence she determined outweighed the appellants' defence evidence.

Mr. Msuya, learned counsel for the appellant, urged us to reassess or otherwise interfere with the trial court's finding on the credibility of PW1, PW2 and PW3 describing their evidence as unreliable.

Our reading of the record of evidence found no circumstances that may call for our interfering with the trial judge's finding on the credibility of the three prosecution witnesses. PW1, PW2 and PW3 were present at the crime scene. Therefore, they had ample opportunities to see, hear and interact with the crowd gathered at the scene. They gave detailed account of what happened that day. PW1 recalled the moment when the members of the peoples' militia accosted her and the deceased at Nandanga and returned both back to Ipanga village where a crowd of villagers had already assembled to witness the opening of the storage barn where a stolen cow eventually emerged. Among the so many villagers, these witnesses identified the appellants and village and Ward leaders like DW8 and DW9.

As far as we are concerned, these three witnesses gave a coherent, plausible and consistent narration of how their husband met his violent death.

It is appropriate to point out that it is not in dispute that the incident leading up to the deceased's death took place in the daytime, between 15:00 and 17:00 hours. The three prosecution witnesses, PW1, PW2 and PW3, who witnessed how the appellants attacked their husband, knew the attackers as fellow villagers. Their evidence was that of recognition of

people they knew beforehand. PW1, PW2 and PW3 recognized the appellants by their names.

In so far as we are concerned, there are no new circumstances for us to question the credibility of PW1, PW2 and PW3 belatedly. These eye-witnesses gave a plausible explanation for why it took several days before they named the appellants. We agree with the way the trial judge considered the alleged delay and concluded that it was not so excessive as to cast doubt on the credibility of the three eye-witnesses. The transfer of investigation from the police at Ileje to the Regional Crime Officer in Mbeya explains the delay. PW2 testified about unknown people hovering around their homes at night with torchlights. The police officer in charge of the investigation (PW4) testified how the widows complained to the deceased's sibling, Isaack Gambi, about fear from those involved in the deceased's death. According to PW4, Isaack refused to record a police statement, and instead, he reported to the Regional Crime Officer at Mbeya Police Station.

Regarding what caused the deceased's death, Mr. Msuya, for the appellants, faulted the trial judge for failing to resolve what the learned counsel described as conflicting versions of the evidence whether attacks caused the deceased's death or he died from burning. Mr. Msuya referred to the evidence of Detective Sargent Julius (PW4). The latter testified how

he saw the post-mortem report, which suggests the deceased's died from suffocation and the fire which burned him.

From our re-evaluation of evidence, we think Mr. Msuya is splitting hairs when he asks which, between assault of the deceased and the burning of his body, caused the death. The learned counsel relies on the evidence of PW4, who, while under cross-examination, stated that he saw the post-mortem report, which indicates that the deceased died from suffocation.

We disagree with Mr. Msuya that there is any uncertainty on the cause of Salum Gambi's death. Section 203 (a) of the Penal Code, Cap 16 R.E. 2019, is clear about the causation of death. When the militiamen brought Salum Gambi back to witness the discovery of the stolen cow, PW1, PW2 and PW3 were present, and they related how each appellant struck the deceased.

Each appellant inflicted bodily injury on Salum Gambi. He could not undergo medical treatment because he succumbed to death from his injuries. Even the Mbebe Ward Executive Officer (DW8), who interrogated Salum Gambi about the stolen cow, said that when the police arrived, Salum Gambi was already dead and his body burnt. DW8 added that whoever killed the deceased also burnt his body. We do not see how

splitting of acts of the appellants that led to bodily injuries from their actions of burning the deceased's body will spare the appellants from blame for causing the death of Salum Gambi.

The prosecution did not tender medical post-mortem report in this appeal before us. We do not think this failure will cloud and cast doubt on what caused the death of Salum Gambi. The position of this Court has always been an autopsy report or a post-mortem examination report is not the only proof of death or cause of death. In **YUSUPH SAYI, MALISHA SAYI & MACHILU SAYI V. R.**, CRIMINAL APPEAL NO. 589 OF 2017 (TANZLII) we said:

*"It is settled that the cause and incident of death can be proved by direct evidence from eye-witnesses who saw or handled the deceased's body or even circumstantial evidence...in the instance case the testimonies of PW1, PW2 and PW4 sufficiently proved the cause and incidents of death. While PW1 and PW2 adduced evidence on how the deceased was hacked to death on the spot, PW3, who went to the scene in response to the alarm, confirmed to have found the mutilated lifeless body of his mother lying on the ground."*

In our re-evaluation of evidence, failure to tender an autopsy report did not shake the credibility and the evidence of the three eye-witnesses, PW1,

PW2 and PW3. They were present and saw how the appellants unlawfully clubbed, slashing the deceased with machetes before setting his body on fire. Their evidence is weightier than the testimony of PW4, who testified on what he read earlier from an autopsy.

The evidence of PW1, PW2 and PW3 not only proves that the appellants physically caused their husband's death but also proved the appellant's intention to kill (malice aforethought). PW1 testified how Tito Mwaipugu (the third appellant) used a club to hit her husband at the back of his head; he started bleeding. She also recalled how the first appellant used a sword and slashed her husband on his back. The fourth appellant had a club, which he used to hit the deceased on the chin. PW1 saw how Vibaya Ngonya (the fifth appellant) used a machete to cut her husband on the head. The fifth appellant cut three fingers off PW1's left hand. PW1 witnessed the humiliation of her husband when the fifth appellant cut off his private parts; he wrapped them under leaves and handed them over to the first appellant. PW1 testified that the appellants beat her husband until he passed away. They collected dry grass and maize stalks (*mabua*) and burned the deceased.

PW2 recalled what happened after finding the stolen cow, and the Ward Executive Officer (DW8) ordered the villagers to disperse. PW2 heard

the third appellant (Tito Mwaipungu) complaining about how they could disperse off before completing the intended task. PW2 soon learned what the "intended task" was. Tito Mwaipungu used a club to hit the deceased at the back of the head. PW2 saw Jacob Mwashitete beat the deceased using a club on the shoulder. Musa Laitoni Ngonya had a machete which he used to cut the private parts of the deceased and three fingers, and he gave those body parts to Jacob Mwashitete. Ezekia Rungwe (the fourth appellant) used his club to beat the deceased on the side of his ribs.

Intention to kill is inferable from the above unlawful acts of the appellants. All the appellants used lethal weapons (machetes, swords, clubs, and sticks) against the deceased. They directed their blows and assaults at vulnerable parts of the deceased's body (head, ribs, and even slashed off his fingers and private parts). The appellants' conduct to burn the remains of Salum Gambi after killing him manifested their ultimate intention to kill.

We do not believe the version of evidence which the Mbebe Ward Executive Officer (DW8), and the Mbebe Village Chairman (DW9) fronted. DW8 and DW9, had more than four hundred militia under their charge. But they failed in their duty to protect the deceased's life after arresting and



tying him up with a rope. As a Justice of the Peace, DW8 had an obligation to save the life of Salum Gambi who was under her custody.

For the above reasons, we do not find merit in this appeal by JACOB MWASHITETE, TITO MWAIPUNGU, EZEKIA RUNGWE, and MUSSA LAITON NGONYA. We dismiss it in its entirety.

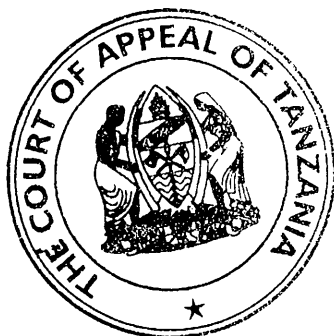
**DATED at MBEYA** this 25<sup>th</sup> day of February, 2022.

I. H. JUMA  
**CHIEF JUSTICE**

R. K. MKUYE  
**JUSTICE OF APPEAL**

Z. N. GALEBA  
**JUSTICE OF APPEAL**

The Judgment delivered this 25<sup>th</sup> day of February, 2022 in the presence of the Appellants represented by Ms. Febby Cheyo, learned advocate holding brief for Mr. Faraja Msuya and Mr. Chapa Alfred, both learned advocate for the Appellants and Ms. Sara Anesius, learned State Attorney for the Respondent/Republic, is hereby certified as a true copy of the original.



  
K. D. MHINA  
**REGISTRAR**  
**COURT OF APPEAL**