

**IN THE COURT OF APPEAL OF TANZANIA**

**AT SONGEA**

**(CORAM: NDIKA, J.A., KEREFU, J.A., And RUMANYIKA, J.A.)**

**CRIMINAL APPEAL NO. 565 OF 2019**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... APPELLANT**

**VERSUS**

**FADHILI CHENGULA ..... RESPONDENT**

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

**(Moshi, J.)**

**dated the 18<sup>th</sup> day of November, 2019**

**in**

**Criminal Sessions Case No. 23 of 2018**

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**JUDGMENT OF THE COURT**

21<sup>st</sup> & 24<sup>th</sup> August, 2023

**NDIKA, J.A.:**

Fadhili Chengula ("the respondent") was charged with the murder of Ziada Abdallah ("the deceased"), which allegedly occurred on 8<sup>th</sup> June, 2013, at Mahenge 'B' within Songea Municipality in Ruvuma Region. On 18<sup>th</sup> November, 2019, the High Court of Tanzania at Songea (Moshi, J.) acquitted him of the charge. Dissatisfied, the Director of Public Prosecutions ("the appellant") now assails the acquittal on five grounds.

The prosecution case was built on the evidence adduced by eight witnesses augmented by four documentary exhibits. Briefly, the prosecution case tended to show that on 8<sup>th</sup> June, 2013, Tatu Ajaba Mfaume (PW5) visited the deceased, who was her aunt, at the home of

the deceased's mother at Bombambili in Songea. After some conversation, the deceased accompanied PW5 to a nearby bus stop to board a commuter bus on her way back to Mkuzo Msamala, also in Songea. On the way, before they parted the deceased picked a call on her cellphone. PW5 heard the deceased telling the person on the other end of the line, *"I am coming now to see you at Mahenge junction."* A few moments later she parted with the deceased who rode away on a motorcycle taxi, not knowing that she would not see her again alive.

On the following day, PW5 learnt from her grandmother (the deceased's mother) that the deceased did not return home the previous night and that her cellphone was unreachable. Meanwhile, Msafiri Abdallah Omary (PW8), the deceased's bother, reported the matter to the central police station at Songea.

After seven days, PW5 called the deceased's cellphone once again. This time the call went through; it was received by a man who, apart from initially claiming to be the deceased's brother-in-law, he said, he was in Mwanza along with the deceased. Later that day, PW5 called the deceased's number once again, this time she was with her grandmother. The same man picked the call but refused to let PW5 speak with the deceased. After a few further calls with PW5 that day, the same man on

the other end of the line disclosed that it was not true that the deceased was in Mwanza but that he had abducted and taken her to Mkongo farms in Songea because she had swindled him out of TZS. 35,000.00. Upon the man's demand, PW5 sent six Vodacom recharge vouchers worth TZS. 30,000.00 to the man via the deceased's cellphone as ransom money. Yet, PW5 and her grandmother did not have any sight of the deceased.

Meanwhile, on 19<sup>th</sup> June, 2013, the police authorities received a report over a discovery of a dead female body at a bushy spot near Songea Girls' Secondary School in Songea. It was later established that the body belonged to a female cook called Romana from Chabruma military camp who failed to turn up for work that day. The police investigations on the same day, based on a transcript of communication with the said Romana made available to the police by Vodacom mobile phone operator, established that Romana's cellphone had been communicating with one Christina Chengula as the last person. According to Police Officers No. D.7246 Detective Sergeant Henjewe (PW6) and No. E.8161 Detective Corporal Mussa (PW7), acting on that lead they called Christina Chengula on that day and later met her near the National Microfinance Bank branch in Songea. Upon being probed, Christina Chengula revealed that the calls she received on her cellphone from Romana's number came from the respondent, her brother, who was also in Songea at that time. She was

promptly asked to call him to come over, which she did. A few moments later, the respondent showed up whereupon PW6 and his team of police officers arrested and took him to police custody as a suspect over the death of Romana.

PW6 and PW7 testified that while interrogating the respondent on 20<sup>th</sup> June, 2013 on Romana's death, he (the respondent) blew the lid off by undertaking to take the police investigators to place where he had killed and later dumped the body of the deceased (Ziada Abdallah). At that time the police had a report of the deceased's disappearance. PW6 assembled a team of police officers (including PW7) to drive to the scene. He also enlisted two local leaders, namely PW3 Elias Masota (Chairman of Mashujaa Street) and Magreth Kayuni (PW4) (Street Executive Officer, Mwengemshindo Street) on the way. In totality, PW3, PW4, PW6 and PW7 testified that the respondent led the search party to a bushy place near Mahenge Mtoni adjoining Songea Prison's Garden where they found decomposed human body remains on the ground. These included the waist attached with the lower limbs as well as some detached bones. While at the scene, PW3 asked the respondent why he murdered the deceased. All the four witnesses adduced that, the respondent, in his reply, confessed to the murder saying that he did so after luring her to that place as she was her lover and then strangled and hit her with a stone to death because

she repeatedly cheated on him. The remains were collected and taken later that day to the mortuary at Songea Regional Referral Hospital.

According to PW3, a further search for the rest of the body parts was mounted on the following day (21<sup>st</sup> June, 2013) around the areas adjoining the scene of the incident. The search culminated in the recovery of a human skull, which, was at the time, being feasted on by stray dogs. PW6 and PW7, who came to the scene after being alerted, collected the skull and took it to the mortuary.

Dr. Restituta Mwageni (PW2), an Assistant Medical Officer at Songea Regional Referral Officer, examined the recovered human body remains on 21<sup>st</sup> June, 2013 at the mortuary. She extracted a bone from the remains as a specimen and later collected four blood and buccal swab samples from the deceased's mother (Rakia Mfaume) and daughter (Angel Samwel) for DNA testing. Later that day, she examined a human skull brought earlier that day to the mortuary from which she extracted two teeth for DNA profiling test. She handed over the sealed samples to PW6 who in turn took and delivered them to the Government Chemist Laboratory Authority ("GCLA") in Dar es Salaam on 1<sup>st</sup> July, 2013 for analysis. In the autopsy report (Exhibit P2), PW2 did not assign any cause

of the death because the remains had decayed beyond measure. Quite pertinently, she opined in her report thus:

*"I have seen and identified a female decayed body with a lot of maggots and also seen lower extremities and some part of the intestines, uterus, vertebral bone, skull bone, upper extremities bone; brain tissue was not seen because [it was] already decayed."*

Fidelis Segumba (PW1), a Chemist Grade I from the GCLA, told the trial court that on 1<sup>st</sup> July, 2013 he received from PW6 five sealed samples, which he verified and analysed. Briefly, his findings were that the bone and teeth came from the same human body and that they related to the blood and buccal swab samples collected from the deceased's mother and daughter. The said results were unveiled in his forensic DNA profiling test report dated 6<sup>th</sup> November, 2014 admitted in evidence as Exhibit P1.

On the other hand, the respondent, in his defence denied the accusation pointblank. Although he admitted having been arrested on 19<sup>th</sup> June, 2013, he claimed that the arrest was due to an allegation of loitering and that he was later taken to police custody. On the following day he came face to face with PW6 who told him, *"You are finished, do you remember me?"* He also averred that on the same day, while handcuffed he was driven in a police sedan to a junction, about ten minutes away,

where he was forced to alight. There he met PW3 and PW4 who joined PW6 and PW7. After a short while, he was driven back to the police station. He stayed in the police cell for over five days. In essence, he denied having taken the police to where the human remains were recovered. His defence was, therefore, a general denial of liability peppered with the claim that the case against him was fabricated.

The two of the three assessors who sat with the learned trial judge returned the verdict of guilty against the respondent, reasoning that apart from his oral confession, the circumstantial evidence on record sufficiently proved the offence beyond peradventure. The other assessor was convinced that the respondent was not guilty mainly on the ground that the prosecution failed to produce at the trial the cautioned statement attributed to the respondent. She took the view that the evidence that the respondent verbally confessed to the murder was implausible.

In her judgment, the learned trial judge initially found it proven that the human body remains found at the scene of the crime were the deceased's and that she was dead. That finding was impeccably based on the evidence adduced by PW1, PW2, PW3, PW4, PW6 and PW7 and supported by the autopsy report and the forensic DNA profiling test report

(Exhibits P1 and P2). However, she found it settled, rightly so in our view, that the cause of the death was unknown.

In acquitting the respondent, the learned trial judge held as follows: first, that the alleged oral confession by the respondent to PW3 and PW4, two independent witnesses, that he hit the deceased with a stone on the back of her head conflicted with both the medic's testimony and her autopsy report, which did not reveal any trauma to the head. Secondly, that the alleged oral confession as testified by PW3, PW4, PW6 and PW7 differed so materially that it was unreliable. To illustrate the point, we extract the relevant part of the judgment at page 209 of the record of appeal thus:

*"There is no dispute that the written confession was not brought [into the] evidence. Therefore, we remain with [the] oral confession. According to the prosecution's evidence, the oral confession was made to PW6, PW3 and PW4. According to PW3, the accused confessed to him that he murdered the deceased by hitting him with a stone on the back of her head. PW4 said that she overheard the accused telling PW3 that he hit the deceased on the back of her head with an object whereas PW6 said that the accused told him that he had sex with the deceased, strangled her [and then] hit her with*



*an object.... While PW7 said that he heard the accused telling Masota that he strangled her and hit her with a stone at the back of the head."*

In view of the contradictions as explicated above, the learned trial judge observed that the prosecution should have introduced into the evidence the cautioned statement allegedly made by the respondent.

Thirdly, the learned trial judge discounted the prosecution's claim that the respondent's confession led to the discovery of the deceased's remains. She distinguished the Court's decision in **Mabala Masasi Mongwe v. Republic**, Criminal Appeal No. 161 of 2010 (unreported) on the ground that the *"oral confession in the instant case was contradictory and unreliable."* The learned judge also held, as shown at page 213 of the record of appeal, that the alleged confession was worthless in view of *"the circumstances [indicating] that the accused had been under police custody for several days; he was handcuffed, and indeed he was not a free subject."*

We hinted earlier that the appeal is predicated on five grounds of grievance as follows:

- 1. That, the trial court erred in law and in fact in holding that the oral confessions by the respondent are not supported by other pieces of evidence.*

- 2. That, the trial court erred in law and in fact in holding that the respondent's oral confessions as adduced by the prosecution witnesses are doubtful because they differ greatly from one witness to another.*
- 3. That, the trial court erred in law and in fact in disbelieving the clear and strong prosecution's evidence that it was the respondent's oral confession which led to the discovery of the body of the deceased Ziada Abdallah.*
- 4. That, the trial court erred in law and in fact in disregarding the clear and strong prosecution's evidence that it was the respondent who led the police and other witnesses to where he killed the deceased Ziada Abdallah and showed them her body.*
- 5. That, in totality, the trial court erred in law and in fact in holding that the prosecution has failed to prove its case beyond reasonable doubt.*

At the hearing of the appeal before us, Mr. Edgar Luoga, learned Principal State Attorney, assisted by Ms. Sabina Silayo, learned Senior State Attorney, canvassed the grounds of complaint on behalf of the appellant. Mr. Gaudence Ndomba, learned counsel, was on dock brief for the respondent, who was also present.

Submitting on the appeal, Mr. Luoga addressed us on different aspects of the issues raised by the first four grounds collectively. First and foremost, he argued that the learned trial judge wrongly held that the oral confession attributed to the respondent by PW3, PW4, PW6 and PW7 was

materially contradictory. Having reviewed the testimonies of the said witnesses, he posited that the disparities in the evidence were trivial and urged us to ignore them. He justified his submission on the standpoint that contradictions usually arise due to fallibility of human recollection after a lapse of time. In the instant case, he said, while the fateful incident occurred in June, 2013, the witnesses took the stand in October, 2019, which was more than nine years after the occurrence. He fortified his submission by relying on **Muganyizi Peter Michael & 3 Others v. Republic**, Criminal Appeal No. 144 of 2020 [2022] TZCA 499 [9 August, 2022; TanzLII].

Secondly, Mr. Luoga submitted that the evidence adduced by the four witnesses that the respondent led the search party to the scene of the crime leading to the discovery of the deceased's body was credible and reliable in terms of section 31 of the Evidence Act, Cap. 6 ("the Evidence Act") as discussed by the Court in **Mathias Bundala v. Republic**, Criminal Appeal No. 62 of 2004 [2007] TZCA 16 [16 March, 2007; TanzLII]. While insisting that the respondent volunteered the information about the deceased's death and freely led the search party to the scene, he underlined that the recovered human body remains were confirmed by the forensic evidence tendered by PW1 and unveiled by Exhibit P1 to be the deceased's body. The learned State Counsel recalled

that the High Court held that much and posited, on the authority of **Mathias Bundala** (*supra*), which he said was foursquare with the instant case, that so long as the respondent gave information that led to the discovery of the decayed body of the deceased, he must be held to be her killer.

Ms. Silayo weighed in canvassing the fifth ground of grievance. At the forefront, she acknowledged, rightly so, that the prosecution case hinged on circumstantial evidence, which can only anchor a conviction if the inculpatory facts are incompatible with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of guilty. She submitted that apart from the respondent confessing to the killing to PW3, PW4, PW6 and PW7 while at the scene, he had already admitted to the killing at the police station by giving such information to PW6 and PW7 whom he led to the scene where the deceased's remains were subsequently discovered. On that basis, she contended that the acquittal was unmerited.

As regards the High Court's finding on the absence of the cautioned statement, Ms. Silayo downplayed its significance on the reason that it was recorded beyond the prescribed basic period of four hours for interviewing suspects and recording their statements contrary to sections 50 and 51 of

the Criminal Procedure Act, Cap. 20 ("the CPA"). It is apparent on the record, she added, that since the statement was recorded by PW6 on 21<sup>st</sup> June, 2013, two days after the respondent's arrest, it could not be introduced to advance the prosecution case.

On the other hand, Mr. Ndomba stoutly supported the High Court's judgment. He revisited the testimonies of PW3, PW4, PW6 and PW7, contending that the evidence was too discrepant to be relied upon. Illustrating, he asserted that it is not clear from the evidence how the witnesses assembled, travelled to the scene and what the respondent told the witnesses at the scene. He contended further that all the time the respondent was not a free agent and, therefore, he cannot be said to have voluntarily led the search party to the scene of the crime.

While conceding that the deceased's death was sufficiently established as found by the trial court, Mr. Ndomba submitted that the prosecution failed to establish any link between the said death and the respondent. He repeated that apart from the alleged oral confession being contradictory and unreliable, the prosecution unjustifiably withheld the cautioned statement attributed to the respondent. He urged us to draw an adverse inference for that deliberate act by the prosecution. He added that the case of **Mathias Bundala** (*supra*) was distinguishable from the

instant case because the respondent, in the instant, case was under restraint throughout the material period.

In view of the contending submissions of the learned counsel, the appeal turns on the question whether the charge of murder was established beyond reasonable doubt upon the circumstantial evidence on record.

At the beginning, we think we should, albeit briefly, state the position of the law on oral confessions generally as well as oral confessions or information received leading to discovery in terms of section 31 of the Evidence Act. Starting with "oral confession", section 3 (a) of the Evidence Act defines the term "confession" to include "oral confession" as follows:

*"(a) words or conduct, or a combination of both words and conduct, from which, whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person who said the words or did the act or acts constituting the conduct has committed an offence."*[Emphasis added]

In **Patrick Sanga v. Republic**, Criminal Appeal No. 213 of 2008 (unreported), the Court observed that:

*"Under section 3 (1) (a), (b), (c) and (d) of the Evidence Act, Cap. 6 a confession to a crime may be oral, written, by conduct, and/or a combination of all of these or some of these. **In short, a confession need not be in writing and can be made to anybody provided it is voluntarily made.**"* [Emphasis added]

Certainly, an oral confession made by a suspect, before or in the presence of reliable witnesses, may be sufficient by itself to found conviction against the suspect – see for example the **Director of Public Prosecutions v. Nuru Mohamed Gulamrasul** [1988] T.L.R. 82. In **Martin Manguku v. Republic**, Criminal Appeal No. 194 of 2004 (unreported), the Court stressed that for an oral confession to be valid and form a basis for conviction it must have been made when the suspect to whom the words are imputed was a free agent – see also **Posolo Wilson @ Mwalyego v. Republic**, Criminal Appeal No. 613 of 2015 (unreported); and **Alex Ndendya v. Republic**, Criminal Appeal No. 207 of 2018 [2020] TZCA 202 [6 May, 2020; TanzLII].

Furthermore, section 31 of the Evidence Act provides for admissibility of any information received from an accused person under police restraint, be it a confession or not, if it leads to discovery of a fact:

*"31. When any fact is discovered as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is relevant."*

We interpose to observe that while for an oral confession to be valid it must have been made by the accused person when he was a free agent, a confession made by an accused person under police restraint leading to discovery of a fact relevant to a case is admissible under section 31 of the Evidence Act. For confessions leading to discovery see **Mathias Bundala** (*supra*); **Peter Mfalamagoha v. Republic**, Criminal Appeal No. 11 of 1979 [1979] TZCA 13 [7 November, 1979; TanzLII]; and **Mboje Mawe & Others v. Republic**, Criminal Appeal No. 86 of 2010 [2011] TZCA 136 [29 June, 2011; TanzLII].

In view of the above position of the law, it defies argument that the oral confession allegedly made by the respondent at the scene of the crime within the earshot of PW4, PW6 and PW7 upon being prompted by PW3 did not amount to a valid confession because the respondent was all along not a free agent. Since it is on record that the words attributed to him on how he killed the deceased were made after the deceased's decayed body



had been unearthed, it cannot be claimed that the said words led to the discovery of the body. In this sense, the appellant's complaint that the learned trial judge erred in discounting that evidence on the ground that it was contradictory and unreliable is inconsequential.

We now turn to the cogency and reliability of the prosecution case on how the deceased's remains were discovered. At first, it should be recalled that both PW6 and PW7 testified that while questioning the respondent on 20<sup>th</sup> June, 2013 on Romana's death, the respondent unexpectedly confessed to the killing of the deceased (Ziada Abdaiiah) and volunteered to take the police investigators to the scene of the crime. Quite significantly, at that time the police had a report of the deceased's disappearance, but they were not aware that she had been killed. PW6 assembled a team of police officers (including PW7) and drove to the scene. On the way, they enlisted two local leaders, PW3 and PW4. We have reviewed this strand of evidence and noted that overall, the witnesses (PW3, PW4, PW6 and PW7) testified that the respondent led them to a bushy place near Mahenge Mtoni adjoining Songea Prison's Garden where they found decayed human remains on the ground.

Whether it is true, in the first place, that the respondent confessed at the police station to have killed the deceased and volunteered to take

PW6, PW7 and other police officers to the scene of the crime and whether he led them to the scene in the presence of PW3 and PW4 resulting in the alleged discovery are questions of credibility. That is so because, although the respondent admitted having visited the scene under police restraint at the material time in the presence of the two local leaders, he said nothing was retrieved. Certainly, the learned trial judge was in the best position to assess the credibility of the witnesses as she had the advantage of assessing their demeanour as they testified. It is on record that the reason she gave for not accepting or relying on this evidence is that it was contradictory. It seems to us that the learned trial judge was also of the view that since the respondent was under police restraint all along, he could not have volunteered to take the search party to the scene of the crime.

We are cognizant that this appeal being a first appeal, it is settled jurisprudence that the Court is enjoined to re-appraise and analyse the evidence as a whole and draw its own inferences of fact. Having reviewed the record of appeal and subjected the testimonies of the four witnesses to a dispassionate analysis, we think that this strand of evidence was materially coherent and that there was no basis for disbelieving the witnesses.

It all began with the respondent stating to PW6 and PW7, during his interrogation at the police station over the discovery of Romana's body, that he had murdered the deceased (Ziada Abdallah) and volunteered to take them to the spot where he dumped the deceased's body. The police contingent drove with him to Mahenge where they stopped and alighted. Around that time, PW3 and PW4 were enlisted as independent witnesses. Both PW3 and PW4 stated that they were briefed on the objective of the mission of the search party upon joining it and that they saw the respondent leading the way to the scene. To illustrate the point, we extract from pages 30 and 31 of the record of appeal indicating PW3 to have testified that:

*"When we got at Mahenge 'B' we saw two small cars .... One police officer who had a weapon went to one of the cars [and] opened a door. One youth [alighted from the car] and started to lead towards Bombambili river. We followed him. The youth diverged to the left side of the path towards the Prison's Garden. He pointed at a certain bush and said this is the place where murder was committed. We saw some organs of human body."*

PW4's tale, as shown at page 37 of the record of appeal, mirrors the above testimony:

*"There was one young man who was leading the police [officers]. The police officers told us that the youth was going to show us the crime scene. Among them, I identified Street Chairman Masota. The police informed us that the youth who was leading the police officers was called Fadhili Chengula .... He was leading to the valley, bushy area. There was grass, undeveloped area and beyond the valley there was a river. He showed us remains of a female body. The body was decomposed...."*

We also recall that the learned trial judge was unimpressed by the evidence linking the respondent with the discovery of the deceased's body on the ground that he was all along not a free agent. With respect, this reasoning is manifestly faulty. We have already explained that a confession by an accused person under police restraint leading to a discovery of a relevant fact is admissible under the law. The learned trial judge misapprehended that aspect of the law. Going by what the two independent witnesses said, it cannot be gainsaid that it was the respondent who led the way to the scene. We, therefore, do not doubt the claim that he volunteered while at the police station to take the investigators to the scene of the incident.

As stated earlier that the learned trial judge took the view that the absence of the cautioned statement attributed to the appellant dented the prosecution case. Having reviewed the record on that aspect, we uphold Ms. Silayo's argument that the statement was inadmissible because it was recorded contrary to sections 50 and 51 of the CPA. Since it could not be introduced to advance the prosecution case, the prosecution cannot be blamed for withholding it.

At this point, it should be remembered that apart from denying the accusation against him, the respondent interposed the defence of frame-up, pointing an accusing finger at PW6, one of the key investigators of the case. In our view, the defence of set-up or entrapment always requires solid and convincing evidence because the law enforcement agencies must be presumed, in the first place, to have acted regularly in the performance of their mandate and official duties. This presumption is rebuttable, however, if it is shown by cogent evidence that the law enforcement agent concerned was not properly performing his or her duty or that he or she was serving a personal interest or was actuated by an improper motive.

In the instant case, the respondent's accusation against PW6 is plainly unsubstantiated. It could not rebut such presumption. Furthermore, the bare denial by the respondent cannot prevail over the

positive evidence of the four prosecution witnesses that the respondent led the search party to the scene of the crime culminating in the recovery of the deceased's decayed body.

At this juncture, we wish to restate that it is common ground that, and as found by the learned trial judge based on the evidence of PW1, PW2, PW3, PW4, PW6 and PW7 and supported by the autopsy report and the forensic DNA profiling test report (Exhibits P1 and P2), the human body remains found at the scene of the crime were the deceased's and that she was dead. It is undisputed that, based on the medical evidence on record, the cause of the death was unknown. Nonetheless, in **Mathias Bundala** (*supra*), the Court, citing **Leonard Mpoma v. Republic** [1978] T.L.R. n.58, **Zuberi Juma v. Republic** [1984] T.L.R. 249, and **Republic v. Mgumbo s/o Bwanyigeta** [1973] LRT n.90, stated that it is settled law that a homicide can be proved satisfactorily without establishing the cause of death.

As rightly submitted by Ms. Silayo, the charge against the respondent stands or falls on circumstantial evidence as there is no direct evidence of the killing. In **Nathanael Alphonse Mapunda & Another v. Republic** [2006] T.L.R. 395 at page 402, the Court stated that it is a principle of law that for circumstantial evidence to ground a conviction, the facts from

which an inference of guilt is drawn must be proven beyond reasonable doubt. That circumstantial evidence in homicide cases can be acted upon if it leads to the inevitable conclusion that the death was the act or contrivance of the accused person – see, for example, **Samson Daniel v. R.** (1934) EACA 134 and **Ally Bakari & Pili Bakari v. Republic** [1992] T.L.R. 10.

Going back to the evidence as we reviewed and accepted it earlier, the respondent, during interrogation at the police station over Romana's death, out of the blue confessed to have murdered the deceased (Ziada Abdallah) and volunteered to take the police investigators to the scene of the crime. Quite pointedly, at that time the police were not aware of the killing; they only had a report that the deceased was a missing person. The respondent willingly led the search party all the way to the scene of the incident where the deceased's remains were found. Although some stray dogs were found at the scene feasting on the deceased's skull it is highly improbable that she was mauled to death by the dogs. Looking at all the facts that he confessed to the police to have murdered the deceased and dumped her body at the bushy spot; and given that he volunteered and led the way to the discovery of the deceased's remains, it is inferable that the deceased died an unnatural death and that it is the respondent

who murdered her. These facts, we think, are incompatible with any hypothesis than a guilty verdict.

For the reasons we have given, we entertain no doubt that, on the evidence on record, the charge of murder was proven beyond reasonable doubt. Accordingly, we allow the appeal and proceed to quash the trial court's judgment, convict the respondent, Fadhili Chengula, of murder, and sentence him to suffer death by hanging.

**DATED** at **SONGEA** this 24<sup>th</sup> day of August, 2023.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

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

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

This Judgment delivered this 24<sup>th</sup> day of August, 2023 in the presence of Mr. Kauli Masasi, learned Senior State Attorney for the Appellant and the respondent appear in person, is hereby certified as a true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**