

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF ARUSHA)**

**AT BABATI**

**CRIMINAL SESSIONS NO: 2 OF 2017**

***(Originating from Resident Magistrate's Court of Babati at  
Manyara PI. No. 3/2016)***

**THE REPUBLIC**

***VERSUS***

**1. MARTINE S/O SIGISI @ DAVIDO**

**2. SELEMANI S/O SIGISI @ GIRIGWAGWE**

**JUDGMENT**

Date of Last Order: 19/072018

Date of Judgment: 24/07/2018

**BEFORE: S. C. MOSHI**

Selemani s/o Sigisi @ Girigwagwe and Martine S/O Sigisi @ Davido were together charged with Manslaughter c/s 195 of the Penal Code, Cap.16 R.E. 2002. Martine S/O Sigisi @ Davido pleaded guilty to the offence; he was convicted accordingly. However, Selemani S/O Sigisi pleaded not guilty to the charge. Hence the trial proceeded against him. The particulars of the

offence are thus, Martine S/O Sigisi @Davido and Seleman S/O Sigisi @ Girigwagwe on the 29<sup>th</sup> day of February, 2016 at Mwada village within Babati District in Manyara Region, did unlawfully kill Teophil S/O Qamara. Hence the prosecution was called to prove its case against Selemani s/o Sigisi @ Girigwagwe.

During the hearing of this case the Republic was represented by Mr. Lameck Mugeta, State Attorney and Petro Ngassa, State Attorney whereas Mr. Stephano James, learned counsel represented the accused person. For the prosecution the evidence was as follows:

The prosecution called a total of six witnesses.

PW1: ELIAREMISA PALANGYO, stated among other things that, She works at Magugu Health Center. She is an Assistant Medical Officer. On 2/3/2016 at 5.00pm while on duty she received a police officer who was in company with some other persons. The police officer requested her to perform a post mortem examination of a body which was already in the mortuary. The body was covered with blood, there was a wound on the head, it had a swelling at the back, it had bruises on the right hand, and the bone at the rear part of the head was depressed. The accused died of head injury and severe bleeding. She filled the post mortem examination report (Exh.P.2).

PW2: AYOUBU LEVAVA KISIRI is a village Executive officer (V.E.O) of Mwada village. On 29/2/2016 at 5.40 p.m. while on duty he was called by Mwajuma Juma. She told him that a person had been killed at her home at Mwada Village, Mwakirinya hamlet. He looked for militia men and a car. They went to the crime scene. The militia men who accompanied him were

Haji Daudi, Ramadhan Mallya, Lucas Said and Barnaba Dominick. At the scene they saw a body of the deceased. The deceased was Theophili Qamara. The body was at Mwajuma's home. The body was outside the house; the deceased had a wound at the back of the head. They were told that the culprits went towards the west; to the Mbulu road. They followed them through that road. On the way they met Mzee Zacharia Akonaay Manda. Mzee Zacharia told them that the suspects had escaped to their home. Mzee Zacharia told them that he had been with the deceased when the culprits attacked the deceased. He told them that, he identified well the attackers. They asked him to go with them so he could show them the culprits. They went to the culprit's home. There they saw Martine Sigisi. Selemani Sigisi was inside. Selemani was inside. They asked their mother where Selemani was; she said that she hadn't seen him since morning. However when they entered in the house, they found Selemani inside the house. They forced him to come out. He had a bag that had blood stains.

They brought the suspects to Magugu Police Station. He reported the murder to the police. They took the police to the crime scene. The police took the body of the deceased and a stick that was covered with blood. He identified Selemani Sigisi to be the accused in the dock.

PW3: PAULINA ROBERT, stated among other things that, on 29/2/2016 at 5.00 p.m. she was at home doing some house chores. Outside the house there were customers who were drinking beer which is called banana (Banana). She heard voices. She went outside. She saw Theophil being attacked; he was attacked by Selemani and Martine. They

were hitting him with a club (rungu). She raised an alarm for help. People did not come and those who were with the deceased ran away.

She identified the accused in the dock to be one of those who attacked the deceased. She identified the accused in the dock to be Martine.

PW4: IDD AMSI, stated among other thing that, on 29/2/2016 5.00 p.m. while at home he heard shouts coming from Mama Juma's place. He went to the scene of crime. He saw people fighting. He saw Martine and Theophil fighting. He tried to separate them. He asked them to stop fighting.

Selemani snatched away his stick; Selemani attacked him and hit him on his left hand. Then accused attacked the deceased with the stick that he had snatched from him (Pw1). He decided to go back to his home.

PW5: ZACHARIA AKONAAAY; he stated that, he knows the deceased as they used to graze Cattle together. On 29/2/2016 at 2.00 p.m. he and Theophil went to their friend who is called Dawaa to drink banana beer. While there, Dawaa gave them T.shs.1000/-; he told them to use that money to have beer. They bought beer from Dawaa's wife, they finished drinking. They were supposed to go home but they decided to go to Mwajuma to have some beers. They went to Mwajuma. At Mwajuma's they saw two youths who were sitting outside. He did not know their names. He knew their names at the police station. The youth whom they found there are Martine and Girigwagwe. When they got there, Martine started to insult the deceased. Martine said "kuma la mama yako". Mwajuma agreed

to give them the beer. By then the time was around 5. p.m. Then Mwajuma left.

His phone rang, he went outside the fence to receive the call. While going out the two youths entered inside. When he came back, he saw Martine attacking the deceased; he was pushing him. Martine slapped the deceased. He was standing beside them; Theophil hit Martine with a stick. Martine and the deceased started to struggle for that stick. The deceased was over-powered, he fell down. Martine snatched away the stick from the deceased; he hit the deceased with the stick at the head.

He and Girigwagwe stood up. He wanted to separate them. Girigwagwe snatched a stick from Iddi; Iddi had heard the shouts and came to the scene. The two accused persons started to attack the deceased. Girigwagwe hit the deceased on the head and on the neck. Upon seeing that the deceased was in bad condition he left and phoned deceased's boss. By then Idd had already escaped. He phoned the deceased's boss to inform him that the condition of the deceased was bad. He left the deceased alone. When he was calling the deceased's boss, the suspects were following him; they were behind him. The culprits were going to their home.

Later the "askari Jamii" (militiamen) who were in a car met him. He was going back to the deceased. In that car there were militiamen and Paulina. He took the Militiamen to the suspects. He knew the accused's home; when they got at the suspect's home, they saw Girigawegwe outside their house. The police asked their mother, where is Martine. She

said that Martine was not at home. The Militiamen wanted to break the door. Their mother opened the door. They saw Martine's clothes had blood stains. Martine had a wound at the head. The suspects were taken to Magugu police station.

PW6: NO. F.1077 D/CPL EVAREST, said that he works with Police; he is stationed at Minjingu. He works with Crimes investigation department (C.I.D.)

On 29/2/2016, at 5.45 p.m. he was at Mwada village. They had visited a murder scene of Teophil Qamara (deceased). They were informed of the murder by Mwada Village Executive Officer, V.E.O. The murder was committed at Mwajuma Juma's home. At the crime scene; there is a house that is surrounded by a fence. They sell local brew and banana beer. When they got there, they saw the deceased's body; they took the body to Magugu Health Center. They were told that the deceased was hit with a stick by Martine Sigis @ Davido and Selemani Sigis @ Girigwagwe. When they got at the scene they saw many people. Zacharia Akonaay was holding the sticks that were used to harm the deceased. They were two sticks. One was long; and the other one was a club. They took the body to Magugu Health Center.

On 1/3/2016 at 9.00 a.m. he was at Magugu Police Station. The O.C.S handed him the file regarding the murder of Teophil Qamara so he could proceed with investigation. He went to crime scene. He drew a sketch map [Exh. P1] of the crime scene and he interviewed some witnesses. He went to the crime scene with Zacharia Akonaay.

On 2/3/2016 he was at Magugu Police Station. He interviewed Martina Sigisi Davido and Seleman Sigisi. They were brought at the police by the Mwada V.E.O. After interviewing them he returned them in the lock up.

He witnessed a post mortem examination of the deceased's body; at Magugu Health Center. The doctor said that the neural system of the deceased was damaged; due to head injury. According to the witnesses there is no doubt that both accused's killed the deceased. Martine Sigisi snatched a stick from the deceased and he used that stick to hit the deceased. Iddi Amsi came to help, Seleman Sigisi snatched a stick from Iddi Amsi, he attacked Iddi and then he also attacked the deceased.

That was the end of prosecution's case.

For defense the case was as follows, DW1 SELEMANI SIGISI stated thus:- On 29/2/2016 at 5.00 p.m. he was at home. He left home with his young brother. They went to Mwajuma's place. While, at Mwajuma' place they ordered some beers. After ordering the beer, he went outside. He sat under the tree that was near the fence. While there, he heard noises, Martine Sigisi and the deceased were insulting each other. After a while, he saw the deceased beating Martine at the head with a stick. There was an entrance to the fence that was open so you could see in the fence. He saw Iddi standing up, he had a stick. Iddi wanted to hit Martine with a stick. He stopped Iddi. He wanted to snatch the stick from Iddi. They struggled for the stick. The stick fell down. He managed to hold Iddi he draged Iddi to his home. He then returned to the scene. He followed Martin. Before

getting at the scene he called Martine and told him that they should go home; He was standing near the road. Martine was inside the fence. Martine got out and they both returned home.

When he was talking to Iddi, the deceased and accused were still fighting; the two were exchanging words.

On their way home they met Mzee Daniel. Daniel was going to a different direction; he was going to Mwajuma. When they got home, Martine entered inside while he remained outside. When he was calling Martine so that they could go, he didn't know about the death of the deceased. Even when he got home, he didn't know that Teophil was dead. Upon getting home he asked their mother for some water. He wanted to cut Martine's hair as he had a wound at the head.

At Mwajuma's home there was a lady, Teophil, Iddi and other elderly people.

He is charged with killing the Deceased. He didn't attack the deceased. He didn't know the source of the fight. He knows that it's Martine, who killed the deceased. He asked their mother to give him a blade. His mother came; after 2 minutes, a car, make Noah arrived at their home. Some people got out of the Noah. They entered inside, they saw Martine; they took him.

When they entered inside, those people saw Martine at the sitting room. They took Martine and put him in the car. Before leaving, they said let's take also this one, Seleman. He heard them telling Martine; "Hujui



kitendo ulichokifanya". They said; let us take Seleman; so he can assist the police.

They took them to Magugu Police Station. At the police they were put in lock – up. They were interviewed on the second day; he told the police that he knew nothing regarding the death of the deceased.

DW2: MARTINE SIGISI, he said among other things that, on 29/2/2016 at 5.00 p.m. he was at Mwajuma's home at Madevu area. He was with Seleman Sigisi. They went to Mwajuma to have some drinks. They started to drink. His brother sat on the bench outside while he sat inside. After a while Idd, Teophil and Zacharia entered inside, they sat on a bench near the place where he was sitting. Teophil started to insult him. He asked the deceased why he was insulting him. The deceased told him that, "what would you do". He decided to go away but the deceased stood up and hit him with a stick on the head. When he wanted to go out the deceased hit him again at the head. He fell down. While there Iddi wanted to hit him again with a stick. Teophil wanted to hit him; he snatched the stick from the deceased. He hit the deceased with the stick. The deceased fell down. At the time when Teophil fell, he did not know where his brother was. His brother called him out "twende nyumbani". They left and they went home. On the way home, they met Zakaria, Zacharia was making a phone call. His brother got home first. While at home he was washing his head so his brother could cut his hair, that is when he saw a car coming. They were put into that car. He does not know the offence that his brother has committed.

On 24/4/2017 he pleaded guilty. He was convicted and sentenced to two years term of imprisonment. His brother did not attack the deceased. That was the end of the defense case.

There is no dispute that Theiophil s/o Qamara died an unnatural death.

The issue is whether the accused person unlawfully killed the deceased, Teophil s/o Qamara. The duty of proving the case is upon the prosecution, see section 3 (2) (a) of **The Evidence Act**, Cap. 6 R.E. 2002 is relevant, and it reads thus

This position was also stated in the case of **JONAS NKIZE V REPUBLIC (1992) TLR** page 213-214 (HC) where it was held that, "*The general rule in Criminal Prosecution that the onus of proving the charge against the accused beyond reasonable doubt lies on the prosecution....*".

It is common ground that the offence was committed during day time at around 5.00 p.m. Hence the offence was committed during broad day light. There is no dispute that the deceased, the accused persons and other persons were drinking beer at Mwajuma's home. There is also undisputed evidence that the deceased had a quarrel with Martine s/o Sigisi. There is evidence that Martine and the deceased exchanged some insulting words whereby the deceased started to hit Martine with a stick. There is evidence to the effect that upon the attack, Martine snatched a stick from the deceased and he hit the deceased with that stick. The two fought for a while. PW4, a neighbor heard shouts coming from the scene he rushed to the scene. He decided to separate the two; on seeing that the accused, Selemani Sigisi @ Girigwagwe who was also at the scene snatched away

PW4's stick, he joined the fight, he hit PW4 with the stick and he also hit the deceased on the head and on the neck with that stick. The testimony to that effect was stated by the PW4 and PW5 who was also at the scene. PW5 had gone to Mwajuma with the deceased and they had been drinking beer together. Pw5 witnessed the whole incident. He witnessed when Martine and the deceased started to quarrel. PW5 tried to convince the deceased that they should leave the place but the deceased refused. He witnessed when Pw4 tried to stop the fight but the accused Selemani Sigisi snatched the stick that Pw4 was holding and hit PW4 and the deceased.

As I said earlier on that the offence was committed in the broad day light. It is my view that PW4 and PW5 saw what happened and they are credible witnesses. Although the fight started with Martine and the deceased, later on Selemani Sigisi also joined the fight and attacked the deceased as witnessed by PW4 and PW5. I have no reason to doubt the credibility of these witnesses.

Admittedly there were witnesses who confused the names of the accused persons, for example PW3 Paulina, but as she admitted in court she did not know the accused's names. However I see that it is a minor discrepancy that cannot affect the testimony of PW4 and PW5.

That said I find that the prosecution has established that the accused, Selemani Sigis @ Girigwagwe committed the offence. The issue is whether the accused's defense raises any doubt on the prosecution's evidence. The defence's duty is only to cast doubt on the prosecution's case. I have considered the defense by the accused. He admitted that he

was at the scene; he however said that he saw the deceased hitting his brother and PW4 was attacking his brother. So he dragged away PW4 to his home. I have taken into consideration his testimony but I find that it does not raise any reasonable doubt on the prosecution's case.

In this respect, I differ with the opinion of the lady assessors and gentleman assessor because the offence was committed during day time and there are witnesses who saw the accused joining the fight and hitting the deceased with a stick.

That said, I find that the prosecution has proved the case beyond reasonable doubt. I thus find the accused guilty of the offence and I convict him of Manslaughter c/s 195 of the Penal Code, Cap.16 R.E.2002.

Right of Appeal is Explained.



  
**S.C.MOSHI**  
**JUDGE**  
**24/07/2018.**