

**IN THE HIGH COURT OF TANZANIA**

**AT MAFINGA**

**ORIGINAL JURISDICTION**

**(IRINGA REGISTRY)**

**CRIMINAL SESSION CASE NO. 54 OF 2016**

**THE REPUBLIC**

**VERSUS**

**CHESCO MVEKA**

*08/7/2020 & 30/7/2020*

**JUDGMENT**

**MATOGOLO, J.**

Chesco Mveka accused person in this case stands charged with murder contrary to Section 196 of the Penal Code. It was alleged that on 04/04/2013 at Ugenza village within Mufindi District Iringa Region, the accused murdered one Serijo Mdundwige. The accused denied the charges when read to him.

In order to prove their case, the prosecution brought four witnesses and tendered in court four documentary exhibits.

The prosecution case is based on the evidence of PW1 Joseph Mdana the village chairman of Ugenza village, Natalion Mdundwige PW2, D/CPL Gregory (PW3) who recorded accused cautioned statement and Zacharia Solomon Mushi (PW4), the justice of the peace who recorded accused extra-judicial statement.

The prosecution case is also based on the report on postmortem examination of the deceased body, exhibit P1, accused cautioned statement exhibit P3 and accused extra-judicial statement exhibit P4. But the prosecution also tendered in court the sketch map of the crime scene, exhibit P2.

At the hearing Ms. Edna Mwangulumba assisted by Ms. Jackline Nungu both learned State Attorneys appeared for the Republic. The accused was represented by Mr. Rwezaura Kaijage learned advocate.

From the evidence adduced and received by this court, there is no dispute that Serijo Mdundwige is dead who died an unnatural death. According to the Report on postmortem examination exhibit P1 the cause of death is severe haemorrhage caused by injury of the neck, face, head and hands.

The medical doctor who examined the deceased body in his report which was admitted during preliminary hearing without any objection observed cut wounds on the head left temporal of 7 cm length and 1 ½ cm depth. Deep cut wound on the left neck 5cm deep and 8cm length. Deep cut wound on right neck of 5cm depth, and 10 cm length. Deep cut

wounds on left upper arm 4cm depth and 5cm length. Multiple small cut wounds on face and right hand.

PW1 told this court that he was the village chairman of Ugenza village from 1993 to 2014. On 03/04/2013, one Natalion Chaula complained to him that Franco Chaula has destroyed his maize crops and bamboo trees. PW1 was together with the village secretary one Moses Mbedule who wrote a letter to Franco Chaula requesting him to go to the village office. He went there and was locked up under the guard of Serijo Mdundwige. The following morning while going to the office PW1 met with Laurent Chaula, the brother of Franco Chaula who told him that his young brother Franco Chaula was beaten. PW1 went there and found Franco beaten and was basking outside drinking porridge while being guarded by Serijo Mdundwige.

They looked for a stretcher and carried the said Franco to the dispensary where he was received and treated.

They remained outside, but shortly thereafter the doctor called his brother, when he get inside he found Franco died. PW1 was told by the militia that during the night time, some people's militia went at the village office and took Franco out from the lock up and assaulted him. So PW1 left to make follow up. But before arriving at the village office he met with the "*sungusungu*" who attacked him telling him to leave with them to the hospital. Others left but Tino took him direct to the village office. They locked up him in the lock up, later Serijo Mdundwige was also sent there and locked up. The accused went there and wanted Serijo Mdundwige

outside. He opened the lock up, took him out and pulled him down. He sat over him and had a knife. He told PW1 to leave, while leaving from the lock up, PW1 said he saw Chesco Mveka, accused slaughtering Serijo. He said outside there were children who were just admiring. PW1 could not remember as to where the people who sent him there because he was also assaulted.

Natalion Mdundwige (PW2) on his part told this court that formerly he was the Village Executive Officer of Ugenza village before he was transferred to Ukelemi village. On 04/04/2013 while coming from Ukelemi village at his work station going back home to Ugenza village after being informed that his child was sick he was told that the situation is not safe at the village office as there were killings happened. On the way before reaching the village office he met with a group of people from Chaula clan saying; *"lazima sisi turudishe kisasi kwa walioua ndugu yetu"*. He said it was at 2:00pm. PW2 went to the ward office and found some children outside admiring, looking at the lock up. He saw Chesco standing at the veranda of the village office. Also he saw one person lying on the ground in blood. He heard Chesco saying *"bado mzima"*. He lifted that person. PW2 identified him to be Serijo Mdundwige. He was at a distance of about ten (10) paces to where were Chesco and Serijo. PW2 said on the way he had heard that the militia who was guarding the lockup and caused some people to kill a person they will deal with him. PW2 said he knew Serijo before as the son of his brother. PW2 stated further that after Chesco has asked Serijo whether is still alive, he lifted him and put him on his legs, took a knife and slaughtered him on the neck and was socking the knife on

the cut throat. He then banged him on the ground. He get up, removed the knife and rubbed it using his hand and rubbed his hands on the wall. He said it rained on that day he washed the knife using rainy water then disappeared. PW2 said he know Chesco is the son of his relative, he is living at Ugenza village. Before PW2 leave from the scene he went to see and found Serijo dead. He went to the village office for purpose of informing people but did not meet any person there.

PW3 E. 3937 D/CPL Gregory informed this court that on 05/04/2013 he was on duty at Mafinga police station, he was told by the OCCID that there was murder happened at Ugenza village of one Serijo Mdundwige. He assigned him to proceed with investigation of that murder. Some of the suspects were arrested he mentioned them to be Tino Chaula, Willy Chaula and Matokeo Chaula. He interrogated them but they denied participation in the said murder. They told him that they have heard Chesco Mveka and Asheri Chaula to be the ones who killed the deceased. He recorded statements of witnesses who told him that the suspects who were arrested also participated including Chesco Mveka. They therefore charged the suspects in court who were already arrested. PW3 said on 10/02/2015 he received information from the OCCID that Chesco Mveka was arrested and was in the police lock up. He got such information at 7:00 – 7:15 am. At the same time he received information that Asheri Chaula was seen at Ugenza village. So he suspended to interview the accused and they left to Ugenza village. They returned to Mafinga at 04:00 pm when he interviewed the accused. PW3 recorded the accused cautioned statement which he tendered in court, the same was admitted as exhibit P3.

In his cautioned statement accused admitted to have taken the deceased Serijo from the lock up being assisted by Asheri Chaula. The accused confessed to be the one who slaughtered the deceased on his neck (throat) using a knife. He said the reason for doing so is because he angered him for killing his brother-in-law Franco Chaula and for having love affairs with his wife to the extent of getting a child with her called Eva. The accused cautioned statement was read in court by PW3.

After PW3 has recorded the accused cautioned statement he sent him to the justice of the peace and was sent to PW4 Zacharia Solomon Mushi who recorded his extra-judicial statement in which he also confessed to kill the deceased, Serijo. PW4 told the court when the accused was sent to him and what he told him. PW4 tendered in court the accused extra judicial statement which was admitted as exhibit P4. PW4 also read the contents of exhibit P4 aloud in court which is to the effect that on 04/04/2013 accused slaughtered the deceased Serijo Mdundwige using a knife. And after slaughter him he fled from the village and went to Morogoro. He returned at Ugenza village on 26/10/2014 and on 10/02/2015 he was arrested by the police. PW4 told this court that accused voluntary confessed to him.

In his defence the accused stated that he was born at Ugenza village. He know Franco Chaula who is now dead, he died in April, 2013. He was told by some people that he was killed by Serijo Mdundwige. But he is before this court charged with murder of Serijo Mdundwige. So he is charged for killing Serijo Mdundwige. He said on 04/04/2013 he heard about the death of Franco Chaula and who killed him is Serijo Mdundwige.

After such information the clan members of Chaula were looking for the one who killed Franco Chaula and were mentioning Serijo Mdundwige. The mob went to the village office. Serijo was in the lock up. They pushed open the door of the lock up and took out Serijo and started to assault him. He said the one who pushed open the lock up is Natalion Chaula. Accused said he was not in that group of people as he had stepped aside. Accused said he saw Serijo dead. He then left Ugenza village to Mbingu Morogoro where he had been doing temporary work and that he left to Mbingu in 2014. From 04/04/2013 to the date he left to Mbingu Morogoro he was at Ugenza village. He returned from Mbingu in 2015. He was arrested by the police on 10/02/2015 during the night time at about 03:00 am and sent him to Mafinga police station. He said his cautioned statement was recorded on 10/02/2015. He remained in the police lock up for two months even after his cautioned statement was recorded.

The accused stated further that although on the date of incident there was a big crowd, and he was among them but he was charged alone. But the knife said he used to slaughter the deceased was not tendered in court even the big spanner said to be possessed by Asheri Chaula was not tendered in court. Accused said he did not sign in the extra-judicial statement. But only PW4 signed the statement and put there in his signature. But he said he does not know where PW4 get the information that the accused had a knife which he used it to slaughter Serijo.

He said he does not know to read, PW4 did not give him the statement to read and there was nobody who read the statement to him, accused stated further that he know deceased by the name of Serijo and

not Senjo and that at the scene he did not see children, there were adults only.

He said in his statement recorded by PW3 he stated "*tulivunja mlango na kumtoa nje na kuanza kumchinja*" indicating that they were two persons but Asheri Chaula who was mentioned that he was together with him he was not called as the witnesses for the prosecution. Accused denied to have participated in killing the deceased.

As pointed out above, the accused is charged with murder. This is the serious offence because of the severity of sentence it carries where the charge is proved against him, which is death penalty. Murder cases like any other criminal case, the accused person can only be convicted basing on the strength of the prosecution evidence. In no way he can be convicted basing on the weakness of his defence. Therefore the burden of proof lies on the prosecution throughout, and the standard of proof is beyond reasonable doubt. If there are doubts, such doubts may be resolved in the accused's benefit. For that case the duty of the accused is just to raise some doubts to the prosecution case. Even if the accused lied in his defence, but this alone is not the reason for him to be convicted although lies of the accused strengthen the prosecution case.

In order to prove the offence of murder, the prosecution has to prove its ingredients, that the act of killing (*actus reus*) and malice aforethought (*mens rea*).

There is no doubt that according to the evidence of PW1, PW2 and Report on postmortem examination (exhibit P1) Serijo Mdundwige was



killed. The only remaining questions are two, who killed him, and whether in killing him was actuated with malice.

In this case there is evidence by PW.2 that he saw the accused slaughtering the deceased on his throat using the knife. Then he banged him on the ground. But before slaughtering him, he asked him if he was still alive. There is also evidence by PW.1 that after the "sungusungu", Tino in particular sent the village chairman PW.1 to the lock up at the ward office. Later deceased was sent in the said lock up. But later accused went to the lock up and took out from the lock up the deceased, he pulled him down and told PW.1 to leave. While getting out of the lock up PW.1 saw accused slaughtering the deceased. But the accused himself in his cautioned statement, exhibit P.3 which was admitted in court without objection confessed to have slaughtered the deceased on his throat using the knife. He stated that he did so because deceased angered him for killing his brother-in-law Franco Chaula and for having love affairs with his wife to whom he got a child called Eva. Accused confessed to the justice of the Peace (PW.4) and after kill him he fled to Mbingu Morogoro and returned to Ugenza village on 26/10/2014 and was arrested on 10/02/2015.

With this evidence, there is no doubt that the accused is the one who killed the deceased. The remaining question is whether he killed with malice aforethought. Usually it is not easy for an accused to admit that he killed with malice aforethought but malice aforethought can be revealed through different ways as it was held by the Court of Appeal of Tanzania in the case of ***Enock Kapela V. The Republic***, Criminal Appeal No 150 of 1994 at

Mbeya (unreported). These include, the conduct of the accused before, during and after the incident. The type of weapon used and the amount of force applied. The number of blows inflicted to the deceased and part of the body where such blows were directed. But some time utterances if made before during or after the incident. The prosecution therefore has to prove any of the circumstances provided under section 200 of the penal code, that is:-

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied with indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit an offence punishable with a penalty which is graver than imprisonment for three years;
- (d) an intention by the act or omission to facilitate the fight or escape from custody of any person who has committed or attempted to commit an offence.

.. There is evidence by PW.2 that after met with a group of men from the clan of Chaula the accused being among them, he heard them

saying;- "*lazima sisi turudishe kisasi kwa walioua ndugu yetu*". Which mean that they intended to revenge for the death of their relative Franco Chaula. In his cautioned statement he also admitted to have slaughtered the deceased because he was angered after deceased has killed his brother in law. The utterances to revenge made by the group of Chaula clan members the accused being among them and his confession that he killed the deceased because he had killed Franco his brother in law imports malice aforethought on part of the accused. But the accused cut the deceased on his throat using a knife. The report on postmortem examination shows that the deceased body has cut wounds on the head left temporal of 7cm length and 1 1/2cm deep, deep cut wound on the left neck 5cm deep and 8cm length. Deep cut wound on the right neck of 5cm deep and 10 cm length. Deep cut wound on the left upper arm 4cm deep and 5cm length and multiple small cut wounds on face and right hand. By slaughtering the deceased and causing such several deep cut wounds he had intended to kill him, not only that, but he also banged the deceased on the ground after he has slaughtered him. That was inhuman act In the case of ***Moses Michael@ Tall V. R. [1994] TLR 195***, it was held:-

*"(i) Malice aforethought may be inferred from the amount of force which the offender employed in inflicting fatal injury,*

*(ii) The conduct of the accused may be indicative of malice aforethought as it was in this case where the appellant was persistent in beating the deceased for a long time and prevented intervention by persons who wanted to help the deceased".*

Like in the case at hand accused used a knife which is a lethal weapon, he applied it on the neck (throat) a very vulnerable part of human body. After that he fled to Mbingu Morogoro. He did not tell anybody that he was going there for employment. He therefore went there for purpose of hiding himself. In his cautioned statement as well as in his defence, the accused has asserted that he killed the deceased because he angered him for killing his brother-in-law and for committing adultery with his wife. This appears to be an afterthought as has that happened he needed not to take the law in his hand. He would have reported him to the proper authority. The accused was just a brother-in-law to Franco Chaula, they had no blood relationship. And for committing adultery with his wife, that if at all happened is an old event as he had said the begotten child had even started school, if so why weighting for such a long time, such a defence is an afterthought which cannot be accorded any weight by this court. Equally while the accused giving defence in re-examination by the defence counsel an issue of presence of children at the scene of crime and failure by the prosecution to call them as prosecution witnesses arose. But for this the prosecution upon whom the burden of proof lies are at liberty to choose which witnesses to call which they considered relevant for proving the case against the accused. That was not the duty of the accused to choose which witnesses the prosecution to call. His duty was just to listen the prosecution evidence and prepare his defence for purpose of casting doubt to the prosecution case as it was held in Criminal Appeal No. 217 of 2012 ***Tumaini Mtayomba V. The Republic***, CAT at Mwanza (unreported). Above all, there is no specific number of witnesses the

prosecution is required to bring in court for purpose of proving a case, even a single witness suffices, what matters is strength and cogency of evidence adduced and not number of witnesses as it was held in the case of ***Yohanis Msigwa V. R. [1990]TLR 148.***

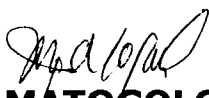
By looking at the evidence given, accused defence and utterances he made there is no doubt that the motive behind the accused committing the offence was to revenge as he has himself confessed in his cautioned statement and in his extra-judicial statement to the justice of the peace.

In the case of ***Mohamed Haruna Mtupeni and Another Versus Republic***, Criminal Appeal No.259 of 2007 CAT (unreported) it was held:-

*"The very best witness in any criminal trial is an accused person who freely confesses his guilty" .*

Apart from the evidence the prosecution witnesses adduced against the accused person, the evidence which is credible, the accused himself has confessed to have slaughtered the deceased to his death, but as I have demonstrated above the accused killed with malice aforethought.

The court Assessors who participated in the trial of this case unanimously gave opinion that the accused is guilty of murder, I entirely agree with them. Therefore I find the accused guilty of murder and convict him forthwith.

  
**F.N. MATOGOLO**  
**JUDGE**

**30/7/2020.**

## **PREVIOUS RECORDS**

### **Ms. Edna Mwangulumba – State Attorney:**

My Lord we have no record of the accused previous conviction. We pray for your honourable court to sentence the accused according to law to be a lesson to him. That is all.

## **MITIGATIONS**

### **Mr. Jackson Chaula - Advocate:**

My Lord we have received the conviction against the accused. This being a murder case we have nothing to mitigate.

That is all.

### **ALLOCUTUS – Accused:**

Honourable Judge I am convicted of murder I pray for mercy.


My children have no one to take care for them.

That is all.

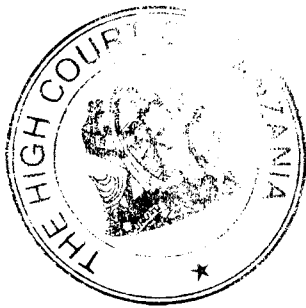
## **SENTENCE**


The accused is convicted of Murder contrary to Section 196 of the Penal Code Cap. 16 R.E. 2002. It is a serious offence and its punishment according to Section 197 of the Penal Code is death penalty. This court

cannot impose lesser punishment that prescribed by the law. I therefore sentence the accused to death and I prescribe that he shall be hanged to death.

  
**F. N. MATOGOLO**  
**JUDGE**  
**30/07/2020.**

Right of Appeal is fully explained.



  
**F. N. MATOGOLO**  
**JUDGE**  
**30/07/2020.**