

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT TARIME
CRIMINAL SESSIONS CASE NO 32 OF 2019
REPUBLIC
VERSUS

- 1. SAMWEL JACKSON SABAI MNG'AWI_____1ST ACCUSED**
- 2. MKAPA MWITA WAMBURA_____2ND ACCUSED**
- 3. MARWA MNIKO MUNGE_____3RD ACCUSED**
- 4. MAHINDI MWIKWABE KORONGO_____4TH ACCUSED**

JUDGEMENT

Date of last order; 06.03.2020
Date of Judgment; 09.03.2020

GALEBA, J.

The accused persons in this case are charged with the offence of attempting to murder **Mr. Mosi Mnaka Mniko** (the victim) contrary to section **211(a)** of the **Penal Code [Cap 16 RE 2002]**.

The facts constituting the background to this case are that at around 08.30 in the morning of 12.07.2018 at Kyoruba Village in Tarime District within Mara Region, while weeding in his maize field, **Mr. Mniko** was attacked by a group of about 6 people armed with machetes, bows and arrows. With a machete, one of the attackers cut him twice in the head and another inflicted two injuries one on his right arm and another on the shoulder. The victim was left helpless

in his maize field where **PW2, Zabron Mnanka** found him and with assistance of three other people he obtained assistance including taking him to Sirari Police Station and Sirari Health Center for emergency medical attention. Following that attack the police investigated the case, apprehended all the accused persons and passed them on to the National Prosecution Service for appropriate prosecution.

Following the information, the accused persons denied the charge, all relying on the defence of *alibi* in respect of which notice had been given during preliminary hearing in this Court.

The prosecution had to call witnesses to justify the information leveled against the accused persons. The witnesses called were **PW1, Mosi Mnaka Mniko**, the victim who saw all the 3 accused persons at the scene of crime two of whom attacking him physically, **PW2, Zabron Nyamonge Mnanka** who assisted **PW1** from the scene of crime to the health center and **PW3 Ms. Leticia Modest**, a Clinical Officer who attended to the victim at Sirari Health Center. From the defence, witnesses were, **DW1 Samwel Jackson Sabai Mng'awi** who testified that at the alleged time of the attack he was at Sirari to where he had been hired by **DW2 Buhuru Getoka**, to go for the latter to buy bicycle spares. On his part, **DW3 Marwa Mniko Munge** stated that from 11.07.2018 to 15.07.2018 he was in Mwanza. **DW4 Mahindi Mwikwabe Korongo**, to support his *alibi*, he stated that from 11th to

13th July 2018, he was attending to his child who was admitted at Magoto Hospital far away from Kyoruba village. For reasons that will become apparent, the 2nd accused person **Mkapa Mwita Wambura** was acquitted upon closure of the prosecution case, so he did not have to defend the case.

Before getting to the analysis of the evidence in relation to each accused, to grasp a better understanding of the case it appears to me that it could be of use to briefly detail something that kept coming up from the witnesses throughout the trial, and that is the geographical and cultural landscapes of Kyoruba and Kebweye villages in the context of their relationship. **Mosi Mnaka Mniko**, the victim is a resident of Kyoruba village, which is occupied by the Kiira clan and all the accused persons hail from Kebweye, a village occupied by exclusively a different clan, the Nyabasi clan. The two clans, though hostile, both are part of the 17 clans composing a larger Kuria Tribe occupying mostly eastern and northern parts of Mara region. The villages are separated by a valley through which there flows Nyamabi River, which, according to Kyoruba village administration, the river is the boundary between the villages although that does not seem to be the position of Kebweye villagers, whose position is that their land extends to Kyoruba side of the river. Because of that misunderstanding and other reasons there have been traditional clashes between these clans, whereby battles have been fought, crops slashed, houses set ablaze and human lives have been

lost in the past. It therefore transpired that Kyoruba village administration believing that all the land on their side of the river fall within their territorial administration, they set it aside for village development programs and the rest was allocated to its villagers including the victim. The victim tilled 2 acres of the land and planted maize. It is in this maize field where on 12th July 2018 that he was attacked to the life threatening extent. That is the background on the relationship between Kyoruba and Kebweye villages where the victim and the accused persons come from, respectively.

With the above understanding, the issue is whether the evidence tendered did demonstrate beyond reasonable doubt that the accused persons attempted to murder **Mr. Mniko**. To resolve that issue, this Court will analyze the evidence relevant to it in respect of each accused person.

The 1st accused was, **Samwel Jackson Sabai** also called **Mng'awi**. This accused was implicated by the evidence of **PW1 Mosi Mnaka Mniko** who stated that after he had been cut twice on the head by **DW4** and had fallen down, the 1st accused approached him targeting to strike on the head like **DW4**, but PW1 shielded his head using his right arm which was then hit with the machete. He stated that the repeating blow of the machete struck him on the right shoulder, hence the two injuries, one on the arm and the other on the shoulder. **PW1** stated further that he knew well the 1st accused as

a boda boda rider like 6 years before that day. The other evidence implicating the 1st accused in corroborating that of **PW1**, is that of **PW2; Zabron Mnanka**, who upon getting to the scene of crime **PW1** told him that the people who had cut him were **Mahindi Mwikwabe** and **Mng'awi**. That was the prosecution evidence implicating the 1st accused.

In defence, **DW1 Samwel Jackson Sabai**, following his defence of **alibi**, stated that on 12.07.2018 at around 7.00am he went to Sirari as he was hired by **Buhuru Getoka, DW2** to go there to buy bicycle spares and that they came back to Kebweye village well after 11am that day, meaning that if the offence was committed at 8.30am as alleged by the prosecution then at that time he was not at Kyoruba but at Sirari.

I will now start to examine the above evidence in light of the submissions made by counsel. Mr. Onyango Otieno learned counsel for the 1st accused raised 5 points in order to show that the prosecution did not make up a strong case sufficient to incriminate his client; **first** that the prosecution did not produce a sketch map of the scene of crime, **secondly** the prosecution did not establish that before the attack there was a quarrel between **PW1** and the accused persons, **thirdly**, there was a fight between **PW1** and some individuals from Nyabasi clan who are not the accused persons, **fourthly**, if **PW1** fell down as he alleged after the first two blows of the machete on the head, he would not have been able to identify 1st

accused who cut him while he was already on the ground and **lastly** **PW1** and **PW2** are relatives so their evidence is not believable. The submission of **Mr. Yese Temba** for the prosecution in respect of the 1st accused was that; **first** the 1st accused was properly identified by **PW1** as he was well known to him and he mentioned his name to **PW2** as soon as the latter arrived at the scene of crime, **secondly** the 1st accused's defence of **alibi** had material inconsistencies and therefore it was not a competent defence.

In this case, **PW1** stated that the 1st accused cut him on the arm because he (**PW1**) was defending the blow of the machete which was targeting the head. This means that **PW1** saw the 1st accused in the act of cutting him on the arm and on the shoulder, otherwise **PW1** would not have shielded his head. This settled down the issue of identification of the 1st accused by **PW1**, in that he identified him very well. The issues that there was a fight or quarrels before the attack or that **PW1** and **PW2** are relatives are not supported by any evidence on record. The relevance of the sketch map as a defence in favor of the 1st accused person is not easily clear to me in the face of the clear evidence of **PW1**. The defence of **alibi** of the 1st accused was constituted of facts as narrated by **DW1** and **DW2**. The defence was too weak to shake the prosecution case mounted against the 1st accused. This is so because **DW1** stated that when they arrived at Sirari they parked the motorbike around 150 meters from the spares shop but **DW2** stated that they parked the motorcycle just at the

doorstep of the shop. **DW1** stated further that **DW2** bought carriers of bicycles but **DW2**, who was the actual buyer, stated that he bought no carriers. **DW1** stated that the items bought were carried in two green bags and each of them **DW1** and **DW2** carried one bag, but **DW2** said that the items he bought were carried in one **sulphate** bag and he was not assisted by anybody to carry the bag. Based on the above contradictions, this Court refuses to take the defence of **alibi** as truthful, credible or dependable. That defence has not shaken the strong prosecution case against the 1st accused.

In respect of the 2nd accused person, **PW1** stated that he does not know him and he was not at the scene of crime. Similarly according to **PW2**, the 2nd accused was not amongst the people that he met running towards the river in the aftermath of the attack. That being the case this Court made a finding of fact that the evidence of the prosecution did not disclose a **prima facie** case against the 2nd accused person sufficient to call him to defend the charge. Following that finding under **section 293(1) of the Criminal Procedure Act [Cap 20 RE 2002] (the CPA)**, on 3rd March 2020, this Court acquitted the 2nd accused person, **Mr. Mkapa Mwita Wambura** and discharged his sureties.

Next was the 3rd accused person, **Mr. Marwa Mniko Munge, DW3**. In respect of this accused person, **PW1** stated that when the attackers surrounded him in his maize field as their leader, **DW3**, told them that at their village meeting they had agreed that no person from

Kyoruba should work on their land; what were they waiting to attack the victim. It was after that order of the 3rd accused, that **PW1** was attacked, by the 1st and 4th accused persons. He testified also that the participation of the 3rd accused was to order others to attack as he personally did not attack him although he was armed with a sword. In addition to that evidence, **PW2** stated that he also saw the chairman and he knew him by face.

On his part **DW3**, denied to have been at the scene of crime on that day following his defence of *alibi*. He stated that on 11/7/2018 he travelled to Mwanza and stayed there until 15/07/2018 when he came back to Kebweye. He had gone there to meet Hon. the Deputy Minister for Land, Housing and Human Settlements Development in respect of a land dispute between Kebweye and Kyoruba villages. He tendered two bus tickets which were admitted as **EXHIBIT D1**. One of the tickets was dated 11th July and another 15th July in order to show that on 12th July 2018 he was not in Tarime and he could not have committed the offence while he was in Mwanza.

In supporting her client's case Ms. **Rebecca Magige** learned advocate, submitted that her client ought to be acquitted because; **first**, the evidence tendered does not show that **DW3** attacked **PW1**, **secondly**, the evidence of **PW1** and **PW2** was contradictory because **PW1** said that he saw **DW3** with a sword but **PW2** said **DW3** was carrying a bow, arrows and a spear, **third PW1** was not consistent as to who took him to hospital because in his statement at the Police he

stated that he was taken to hospital by people from Kebweye village including **DW3** but the story was different in Court, and **lastly PW2** at the Police did not mention **DW3** but in Court he mentioned him.

Submitting on that defence Mr. Temba for the prosecution raised 3 points; **first** that DW3 did not call any independent witness to corroborate his evidence that in fact he was in Mwanza on 12th July 2018, **second EXHIBIT D1** the tickets, did not reveal in which year they were issued, and **third** there was no evidence which shows that **DW3** stayed in Mwanza and did go back to Tarime on 11.07.2018.

I must state that the 3rd accused person can only be found guilty by invoking the doctrine of common intention as contained at **section 22(1)(d) of the Penal Code [Cap 16 RE 2002] (the Penal Code)**. That section criminalizes persons who might not have physically participated in the actual execution of the acts constituting the offence but they counseled or procured commission of the offence. The section provides;

"22(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it;

(d) any person who counsels or procures any other person to commit the offence, in which case he may be charged either of committing the offence or with counseling or procuring its commission. "

Subsection (1)(d) of section 22 quoted above and also subsections (b) and (c) of the same section of the Penal Code are the laws enacting the doctrine of Common Intention under our criminal law. The question we need to answer finally is whether the 3rd accused comes within the four corners of the quoted law. I will respond to this before winding up the discussion in respect of this accused.

According to **PW1**, when he was surrounded by the attackers, it was **DW3** who told them to attack him because they had resolved at the meeting of their village that no person from Kyoruba was permitted to work on that land. **PW2** stated that he saw **DW3** whom he identified as the chairman of Kebweye village fleeing from the scene of crime before he went to rescue PW1.

The three points advance by Ms. Magige, are not meritorious. The point that **DW3** was not shown that he injured **PW1**, is true but the same argument is defeated by the doctrine of common intention as provided at **section 22(1)(d) of the Penal Code**. The point that the evidence of **PW1** and **PW2** was contradictory because **PW1** said that he saw **DW3** with a sword but **PW2** said that **DW3** was carrying a bow, arrows and a spear, is not a strong point to disturb the strong evidence of the two witnesses. The point is they both saw **DW3** one at the scene of crime and another saw him leaving the scene. There could be minor details of what weapons he was armed with, but in the context of this case, the difference in those details was a minor

matter. The issue of who took **PW1** to hospital was abundantly clear and it was not disputed. **PW1** was taken to hospital by **PW2, Lameck Jackson Machango, Mwita Chacha Waitara and Stephen Charwi** and not **DW3** nor any one from Kebweye village.

As for the defence of **alibi**, this Court is in agreement with Mr. Temba because the defence is materially deficient and here are the reasons; the bus ticket allegedly issued by **Kisire Luxury Coach** shows the day and the month when it was issued but the year is not indicated. That cannot show certainly that the day on that ticket is in the year 2018. That ticket shows the bus number to be just T335. It is a fact that private buses have a letter 'T' followed by three Arabic numbers and three capital letters. That ticket cannot be used in Court to evidence any travel. The other ticket was allegedly issued by **Batco Safaris**. This ticket, like the other one, was dated 15/7 but did not indicate the year in which it was issued. This ticket does not show the journey was from which point of origin to which point of destination. That ticket also indicates that the passenger was just "**MARWA**" with no second name. These defects render the tickets unauthentic hence unreliable.

The defence of **alibi** of **DW3** also fails further because he was supposed reasonably to call a witness at least from either Mwanza or from his village to show that on 12th July 2018 he was in Mwanza or at least that he was nowhere in the vicinity of the scene of crime. That is

the position of the law as per the case of **SIJALI JUMA KOCHO VS REPUBLIC [1994] TLR 206.**

We already stated that **DW3** was properly identified by **PW1** and **PW2** as discussed above. His defence of *alibi* has been defeated by his omission to call a witness to support it and the defective bus tickets. Finally, although **DW3** did not launch any attack on the physical body of **PW1**, but he is brought in the criminality in this case by the provisions of section 22(1)(d) of the Penal Code.

Last was the 4th accused person also referred to as **DW4, Mr. Mahindi Mwikwabe Korongo**. The evidence having relevance on him is that of **PW1** and **PW2**. **PW1** stated that at around 9:00 am on the fateful day a group of like 6 people including **DW4 Mahindi Korongo** with machetes, bows and arrows surrounded him and after **DW3** ordered them to attack him, **DW4** cut him twice on the head which blows sent him to the ground.

PW2 testified that when at maendeleo area he saw like 6 people including DW4 running from **Mosi Mniko's** maize field towards River Nyamabi. He testified also that at the scene of crime, **PW1** told him that the people who cut him were **DW1** and **DW4**.

As already indicated above **DW4** stated that from 11th to 13th July 2018, he was attending to his child who was admitted at Magoto Hospital in Tarime district. **Mary Samson** learned advocate for the 4th accused submitted that her client needs to be acquitted because,

first the maize plants at the scene of crime were tall to the full height of **PW1** therefore he would not reliably identify **DW4**, **secondly** as **PW1** was weeding the farm while bending, it was impossible for him to identify his assailants satisfactorily, **thirdly** that because according to **PW1** the attacks took less than one minute then it was not easy for him to have identified the attackers, **fourthly**, recognition of the voice of **DW4** had problems because **PW1** stated that he recognize the voice of **DW4** because he was the first to attack him and **finally** she submitted that as **PW2** was like 25 paces away from the actual scene of crime, then it was impossible for **PW2** to have heard **PW1** calling him for help.

Mr. Temba submitted that the evidence of **PW1** disclosed that it was **DW4** who cut him on the head and it was him who said, we already finished him let us go. In response to **DW4**'s defence of **alibi** he stated that in terms of the case of **SIJALI JUMA KOCHO VS REPUBLIC**, **DW4** was supposed to bring a witness to corroborate his allegations. He submitted also that **DW4** did not bring to court any document upon which his child was attended at Magoto hospital.

As for the points raised by counsel for **DW4**, I wish to make it clear that the issue of identification in the day cannot present difficulties that counsel submitted upon at length. Maize plants are not an oblique object like a wall, they are plants; **PW1** explained that he identified **PW4**, and they knew each other pretty well before that

day. Therefore matters of mistaken identity raised in favor of **DW4** are all refused, because time of the attack was daytime. The defence of **alibi** too, was without any evidence of corroborative value as per the requirement in the case of **SIJALI JUMA KOCHO**.

Having disposed of a discussion which sheds light on what is likely to be the general finding of fact in respect of each accused person, there are two aspects in criminal law that we need to cover. One is **actus reus** and another is **mens rea**.

In this case, the act of the offence or **actus reus** was abundantly proved by **PW1** and **PW2** and its extent clinically was elaborated by **PW3** the Clinical Officer at Sirari Health Center who tendered **EXHIBIT P1**. That is to say **actus reus** and who committed it was proved to hilt.

The **mens rea** in attempted murder is an intention to kill a human being. In the case of **REX VERSUS GWEMPAZI MUKONZHO (1943) 10 EACA 101** it was held that to establish intention in attempted murder it must be shown that the accused had a positive intention to kill or to cause death of the victim. Although section 200 of the Penal Code elaborates four ingredients to establish malice aforethought which is the intention to kill, but the Court of Appeal has narrowed down and provided aspects for courts to take into consideration when assessing before deciding whether indeed the end result of an act or a series of acts of the aggressor were aiming at an ultimate

result to eliminating the life of the victim. In **CRIMINAL APPEAL NO 150 OF 1994 ENOCK KIBELA VERSUS REPUBLIC** the Court of Appeal stated that for courts to establish malice within the context of the Penal Code, they need to assess the following 7 aspects;

"(1) the type and the size of the weapon, if any, used in the attack (2), the amount of force applied in the attack, (3) the part or parts the blow or blows were directed or inflicted on, (4) the number of blows although, one blow may, depending on the facts of a particular case, be sufficient for this purpose, (5) the kind of injuries inflicted, (6) the attacker's utterances, if any, made before, during or after the killing and, (7) the conduct of the attacker before and after the killing."

Although in this case a person did not die, but what I intend to demonstrate is whether there existed the intention to kill which is necessary to establish attempted murder, the offence charged in this case. I will then turn to each of the ingredients. In this case, it was abundantly shown by **PW1** that the weapons used were machetes. This evidence was corroborated by **PW3, Leticia Modest** who testified that the injuries were grave and the same were inflicted by a sharp object. A machete is, by any means, a deadly weapon if misused and in this case it cannot be argued that cutting **PW1** had any other intention falling anywhere below the line of elimination.

The next aspect is the amount of force. The evidence tendered suggests that the force was excessive. The first two blows on **PW1** for instance had him on his knees and finally to the ground. So the test of excessive force is passed. Next is the sensitivity of the part of the

body attacked; in this case, the attacks were directed at the head and the head is one of the most sensitive and venerable parts of a human body, it is the head in the human body which has all the 5 senses and the skull under its skin protects the brain, the engine that controls man, his conscious and subconscious activities.

The number of blows according to **PW1** and **PW3** were 4, two on the head and others one on the forearm and another on the shoulder. By any imagination, these are many injuries considering their size. These blows were not all inflicted by mistake or with any other lesser intention. In any event the attackers had an intention to eliminate the victim. The kind of injuries, according to **PW3**, were not small injuries, they were serious wounds, several centimeters in length and the same were considerably deep from the surface of the skin into the flesh. The words which accompanied the attack as testified by **PW1**, **DW3** ordered the attack and his directive was implemented immediately and after the attack, **DW4** stated that they already finished him so they could just leave. This, to this Court, means an expression of satisfaction or a successful completion of a premeditated mission to end human life.

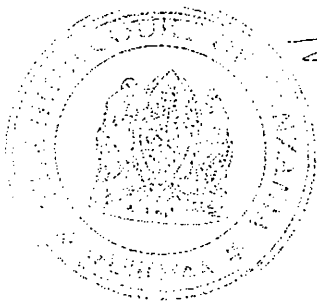
It is the holding of this Court that the prosecution proved both **actus reus** and the **mens rea** in respect of all the 3 accused persons in relation to the offence of attempted murder that was committed against the victim.

After the evidence was tendered and final submissions made by counsel, Ms. Ester Nyigega, Mr. Gabriel Gweso and Mr. Lawrent Ochieko, the gentlemen and lady assessors, gave their opinion following a summing up of the whole case to them. Their unanimous opinion was that all the three accused persons were guilty of the offence of attempted murder as charged in the information presented.

In addition, Mr. Gabriel Gweso, one of the assessors opined to the Court that, as **PW1** testified that from the attack he entertained disability then this Court ought to grant compensation to him as a form of redress in that respect. I have considered that opinion with passion but I must state that his Court is unable to grant such compensation in these proceedings following an opinion of an assessor for reasons that, **first** the prayer was not one of the claims of the prosecution in this case. Had it been so the accused persons and their counsel would have been put to notice of the claim and prepare to defend themselves on such a claim. In other words if this Court was to order compensation it would be condemning the accused persons unheard on that aspect of compensation which this Court cannot consciously do. **Secondly**, the compensation, even if this Court was to award it, there needed to be some kind of presentation of the quantum of that compensation sought which was not the case and **thirdly**, the victim still has a right if he so wishes to seek any civil remedies he deems appropriate from civil courts

where he can claim reliefs in the nature of compensation in making good his disability.

In the final analysis, the issue earlier framed of whether the accused persons attempted to murder PW1 is answered in the affirmative and with concurrence of the gentlemen and lady assessors, this Court makes a finding of fact that all the three accused persons are guilty of the offence of attempted murder and accordingly the accused persons, **Samwel Jackson Sabai** also called **Mng'awi**, **Marwa Mniko Munge** and **Mahindi Mwikwabe Korongo** are hereby convicted of the offence of attempted murder under the provisions of section 211(a) of the Penal Code [Cap 16 RE 2002] and Section 235(1) of the Criminal Procedure Act [Cap 20 RE 2002].



Z. N. Galeba

JUDGE

09.03.2020

Mr. Temba with previous Criminal Record;

PREVIOUS CRIMINAL RECORD

We do not have previous criminal records against any of the accused persons, however I pray that the accused persons be given stern punishment so that it becomes a lesson to them and the

society at large and also the punishment for this offence is life imprisonment. The accused persons injured the victim on the head which is a very sensitive part and because also the injuries have caused serious disabilities to the victim as per the evidence of PW3. To date the victim is losing memory and has headache most of the times. PW3 being a leader we pray that he be severely punished because he is a leader. The words "we have finished him" show that the accused persons did not have any mercy and the Court should not be merciful to them. That is all.

Sgd: - Z. N. Galeba

JUDGE

09/02/2020

MITIGATION

Mr. Onyango Otieno Advocate; My Lord for 1st accused, the said accused is first offender the attitude and conduct of the 1st accused since he was granted bail, he has been honest, he has been coming to Court voluntarily. The clans of the victim and that of DW1 are warring clans, it is not that someone woke up from his home and went to attack same one it was rather a communal issue. Life sentence is not an appropriate remedy as prayed by the prosecution side. The Court has mandate to reduce the punishment. The 1st accused is 35 years and has 4 children and a wife who are depending on him at Kebweye. So we pray that the Court consider these points. That is all.

Mr. Samweli Jackson Sabai; I have nothing to add.

Ms. Rebecca Magige Advocate for 3rd accused person; We pray that this Court Considers the following facts.

- 1) The 3rd accused is father and a husband of 2 wives and 11 children and the last born is two weeks old and the two families are dependent on him, for food, school fees and all other requirements. He has also a mother who is paralyzed who is depending on him on everything.
- 2) The accused being 53 years prison is not an appropriate place to take him as old age diseases like back pains have already started, and he also is first offender. That is all.

Sgd: - Z. N. Galeba
JUDGE
09/02/2020

Mr. Marwa Mniko Mugne; Although I have been convicted but I did not inflict any injury on the accused person. There was no video which show that my voice was recorded or that I made the orders. If I was there and I had a machete how would I have failed to cut the accused? I have 3 children in Secondary School and even my parent is dependent on me. That is all.

Sgd: - Z. N. Galeba
JUDGE
09/02/2020

Ms. Mary Samson Advocate for the 4th; My Lord, this offender is the first of offender the accused has a wife and 3 Children and his wife is a housewife with no work and she is also a disable, her arm is disabled following a fight between Kyoruba and Kebweye. His last born is 3 years and is sick she has a swollen stomach and he has other dependents including her mother of 70 years who is living at his home and it is the accused who is responsible for everything. The accused also is sick he is not healthy. He has a problem with his blood, he always takes local herbs. We therefore pray that the 4th accused be punished leniently.

Mr. Mahindi Mwikwabe Korongo; I have nothing to add.

SENTENCE

In this case according to the evidence, the victim was attacked and seriously injured by the 1st and 4th accused persons. The 3rd accused persons although present at the scene, but he did not inflict any injury on the body of the victim, Mr. Mniko. The kind of attack was enough and it was indeed a terrible attack by a group of people against one man whom they would have arrested and taken to government agencies

like the Police if at all he was at fault. It is unthinkable that there are still people with courage like that of the accused persons especially that of the 1st and the 4th, of attacking a human being by lethal weapons like machetes. In this case, it is only by luck that Zabron Mnanka was in the vicinity to hurry the victim to Sirari health center. The issue of communal conflicts as submitted by Mr. Otieno cannot be a mitigating factor. All accused persons have families to serve, but also the victim stated that he has children whom he cannot serve following the infirmities or disabilities suffered following the attack, it is therefore a matter of balancing interests. The 3rd accused person during mitigation told the Court that he did not inflict any injury on the victim.

Mr. Temba submitted that the 3rd accused person as a leader needs to be punished more than others because he was a leader, but also as he was at the scene he restrained himself from physically inflicting the injury to the victim.

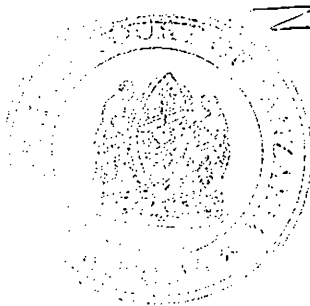
All aggravating and mitigation factors taken, I think it meets justice of this case to punish the offenders at varying degrees. The statutory sentence for the offence of attempted murder is life imprisonment but in this case this Court imposes the following sentences in term of the factors submitted by counsel for the parties and the third accused person.

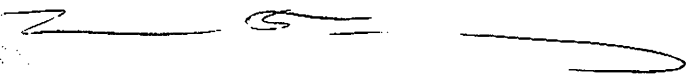
The 1st and the 4th accused persons are sentenced to ten (10) years imprisonment each and because the 3rd accused at least he restrained himself from injuring the victim he is sentenced to five (5) years imprisonment. The sentences shall run from today 9th March, 2020 and the accused persons are reminded of their right of appeal to the Court of Appeal in case they will be dissatisfied by this Court's Judgment. It is so ordered.

Sgd: - Z. N. Galeba
JUDGE
09/02/2020

DATED at TARIME this 9th March 2020

This judgment has been delivered this 9th March 2020 in the presence of Mr. Yese Temba assisted by Mr. Peter Ilole learned state attorneys for the prosecution on one hand and learned advocates Mr. Onyango Otieno for the 1st accused, Ms. Rebeca Magige for the 3rd accused, Ms. Mary Samson for the 4th accused person.




Z. N. Galeba
JUDGE
09.03.2020