

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

SITTING AT BARIADI

CRIMINAL SESSION NO 99 OF 2016

REPUBLIC

VERSUS

DOTO MASHAURI.....ACCUSED

JUDGMENT

Date of the last Order: 27th November 2020

Date of the judgement: 5th February, 2021

MKWIZU, J.:

The accused person, **DOTO MASHAURI** is charged with murder contrary to section 196 and 197 of the Penal Code Cap. 16 R. E. 2002, now R. E. 2019 (the Penal Code). The facts constituting the background to this case are that on 7th April 2015 the deceased, Mayeji Buluma and her two children were asleep in their home situated at Lwangwe village within Busega District in Simiyu region. At around 1.00 hours, their house was invaded by a person who upon entering the house attacked the deceased by beating her on different parties of her body before he stifled the deceased to death.

PW2 and his young brothers could not raise an alarm as they were young (of tender age) and their residence was far from other villagers. The incident was reported by PW 4 and her sisters who visited the deceased home the following morning to find the deceased lying outside the house dead. PW4 and her fellow raised an alarm which attracted villagers at the scene. The accused was arrested by villagers after being mentioned by PW2 – the deceased son. The matter was reported to the police who with the doctor visited the scene of crime, drew a sketch map of the scene of Crime and the Doctor conducted an autopsy examination. Accused person was accordingly charged. He however denied the charge.

During trial, the Republic was represented by the Ms. Violeth Mushumbuzi State Attorney assisted by Ms. Chema Maswi also learned State Attorney . The accused person enjoyed the legal services of the Samwel Lugundiga learned advocate.

In a bid to prove its case, the prosecution procured attendance of five witnesses and tendered two exhibits namely, the sketch map which was admitted as exhibit P1 without objection during preliminary hearing and the

Postmortem Examination Report (Exhibit P2) which was admitted during trial again without objection from the defence. According to the Postmortem examination report, the cause of death was ascribed to be suffocation due to lack of air breathing. The substance of the prosecution's witnesses can be summarized as hereunder:

MACHIMU ELIAS is a child of tender age, he testified as PW2 after he had promised that he will speak the truth and not lies. PW2 testified that he is a resident of Lwangwe village where he is staying with his father Elias Mchina and that before that, he was staying with his mother Mayeji Buluma – the deceased with his siblings Magang'anga and Mwamba in their house he described to have been made of mud, a grass roof with a door made of iron sheet. In a further note, PW2 said, their house had one bedroom of approximately 3 to 5 footsteps and a sitting room.

On the usage of their house, PW2 said, they were sleeping in a one bedroom with their mother. The deceased was sleeping on the bed while PW2 and his young brother were sleeping on the mattress laid on the floor. PW2 testified to have known accused person long before the incident as the person

employed by their father as a cowherd and that accused was sometimes, coming to sleep with his mother when their father was not around. On being probed on when last he saw the accused in their house before the incident, PW2 said it was a day before the incident.

Speaking of the fateful date, PW2 said, on 7/4/2015 their mother, (the deceased) went for a funeral and came back at around 19.00hour. As usual, they slept in one room where the deceased and PW2's young brother named Mwamba were on the bed while PW2 and Magang'anga were on the mattress laid on the floor. While sleeping, said, PW2, he heard a person beating his mother using a club. Aided by a solar torch he identified that person as Dotto Mashauri, their cowherd. PW2 said, after accused had killed her mother, he tied her with a rope around her neck and dragged her out of the house. PW2 and his sibling followed behind and identified the accused through the moon light. The accused then left with the rope he had tied the deceased with. PW2 testified further that, his young brother went to awaken their mother with no response. They were crying but no one came for their rescue as other houses are far away so they remained seated on the door until morning

when their aunties (mama wadogo) PW4, Mayeji James and Kulwa arrived at the scene.

Explaining the source of the light and its intensity PW2 said, in the room there was a torch which gave enough light for one to see. PW2 said, all along, his mother was just crying and the accused was quiet. After the killing, accused hit the torch into pieces with the stick. On the duration of the incident, PW2 said, the incident took like three minutes. The following morning, PW2 mentioned Dotto Mashauri as the perpetrator to PW4, PW1 and PW5.

PW1 is one **IDD SULEIMAN**, Ward Executive Officer (WEO) for Shigala Ward within Busega District in Simiyu Region. His testimony was that on 7/4/2015 while at his office, he received a phone call from the Village Executive Officer (VEO) for Lwangwe Village that there is a murder incident within his area. The suspects were mentioned to be Dotto Mashauri and Elias Mchina. He reported the matter to the police and visited the scene of crime with the police and a Doctor. At the scene of crime, explained PW1, they found the villagers already gathered and they witnessed the deceased body

lying outside her house, three meters away dead. The deceased body had bruises on her left hand and on her face. He was informed by PW2 that Dotto Mashauri was responsible.

PW1 also testified that, on an interview with the accused Dotto Mashauri, he confessed to have killed the deceased in execution of the Elias's wishes. Dotto Mashauri and Elias Mchina (deceased's husband) were all arrested. PW1 witnessed the Doctor examining the deceased body before the relatives were allowed to bury the body

AYUBU ISMAIL MUYANGU, a Medical Doctor at Nassal Health center was marshalled as PW3. He visited the scene of crime on 7/4/2015 after he was requested to go for post mortem examination. He said, with police officers, went to Lwangwe village where he found the deceased body outside the house like three meters from the house, with bruises on her hand, face and neck. Describing the deceased person, PW3 said, the body was of an African female person of approximately 24 – 25 years of age known as Meyeji Bulima. PW3 conducted an autopsy examination and explained the cause of

death as suffocation caused by lack of breathing air. After the examination he prepared a post mortem examination report. He also tendered the post mortem examination report as exhibit P2.

PW4 is **KWAI JAMES**, resident of Lwangwe village and a sister to the deceased person. Her testimony was that on 7/4/2015 at around 8:00 am she visited the deceased home with her two sister Mayeji James and Kulwa Buluma. At the deceased home they found the deceased outside lying on the ground dead with bruises on the elbow, face and around the neck. They raised an alarm and villagers gathered. PW4 said, at the deceased house they met Machimu Elias, Maganga Elias and Mwamba Eliasi, deceased's children. On asking them about who killed their mother PW2 mentioned Dotto Mashauri. She also confirmed that both accused person and Elias Mchina (deceased's husband) were arrested by villagers.

PW4 confirmed that, deceased house, had one bed room of approximately 4 to 5 footsteps and a sitting room. Regarding familiarity with the accused person, PW4 said, accused was known to her as Dotto Mashauri who was staying at Elias Mchina's house, employed as a cowboy.

PW5 is **PF 19807 INSPECTOR KASIMU**. His testimony was that on 7/4/2015 morning hours he was given case File No. Nassa IR/276/2015 for investigation. The deceased was Mayeji Buluma and suspects were Elias Mayala and Dotto Mashauri. He arranged a team of police officers plus the Doctor for post mortem examination and visited the scene of crime. Explaining the circumstances at the scene, PW5 said, they found villagers gathered at the scene with two suspects already arrested. The incident happened at the residency of the deceased Mayeji Buluma. The local leader informed them that deceased was murdered by Dotto Mashauri.

PW5 went further narrating that, at the scene, the deceased body was outside the house covered and that there were drag marks from the room where the deceased was to outside where the body lied indicating that deceased was killed inside and dragged to where she was lying outside her house. Deceased had bruises on her face, hand and around the neck showing that she was strangled.

He also confirmed that PW2 -Machimu Elias had identified the accused as the person responsible. He in such, recorded PW2's statement and drew a sketch map of the scene which was admitted as exhibit P1 during the preliminary hearing. He also re arrested the suspects, Dotto Mashauri (accused) and Elias Mayala (deceased's husband) who he said, were seriously injured by the villagers. At the police station, PW5 issued PF3 to the accused persons and took them to the for treatment.

It was also in PW5's evidence that, the villagers at the scene informed him that Dotto Mashauri confessed to have murdered the deceased on instruction from his boss Elias Mayala. But at the police, on an official interrogation Dotto Mashauri denied the allegation.

In his defence, DOTTO MASHAURI denied to have committed the offence. He said, he was arrested on 5/4/2015 at Baduhu center where he was selling sugar cane. Speaking of his arrest, accused person said, while at Baduhu, center there came two people asking for a person called Dotto. Because they were two persons by that name, his neighbour could not direct them to any because they were not clear as to whom between the two they wanted. The

said people followed the accused asking his name and upon being informed that he is named Dotto, they told him that he is needed at Lwangwe village. He requested them to seek permission from the village authorities but they refused, they insisted on their request and that he will be back. On the way, he was informed that he is suspected to have killed a person. On arrived at the scene, he met many people gathered. He was interviewed by the PW1 on where he was on the night of 6/4/2015. He informed him that he had slept at their home. DW1 testified further on arrival at the scene, Elias Mayala was attacked by villagers accused of killing the deceased. The deceased father informed the villagers that deceased was killed by his son in -law (Nkwilima) Elias Mayala.

After the closure of evidence by both parties, counsels made their closing submissions. Mr. Samwel Lugundiga for the accused had submitted that there was insufficient evidence of the cause of death and that the evidence do not point irresistibly to the appellant as the one who killed the deceased person. On their part, prosecution insisted that the case was proved beyond reasonable doubt. Ms. Chema Maswi, learned State Attorney submitted that prosecution managed to prove that Mayeji Buluma is dead, the death was

unnatural and that the accused is the one who murdered her with malice aforethought.

All the three assessors who assisted the court during trial were of the opinion that prosecution managed to prove the case beyond reasonable doubts and therefore accused person, Dotto Mashauri is guilty of the offence charged.

As it is the law, the burden of proof in criminal proceedings especially in a murder case like the one at hand lies with the Prosecution. That burden does not shift to the accused at any stage of the proceedings. See Section 3 (2) (a) of the Evidence Act, Cap. 6 RE 2019 and the case of **Hemed v. Republic** [1987] TLR 117. By this principal, the prosecution is required to prove all the ingredients of the alleged offence, as well as the accused's participation therein beyond reasonable doubt. This was said in the case of **Woolmington vs. DPP (1993) AC 462** and **Okale vs. Republic (1965) EA 55**. Having summarized the evidence by parties, this court is under a duty to evaluate the evidence on record and find whether or not the offence with which the accused person is indicted has been proved to the

required standard. The crucial issues for determination in this matter therefore are:

- i. Whether Mayeji Buluma is dead and whether her death was unnatural
- ii. Whether the accused is responsible, if yes
- iii. Whether the killing was actuated by "malice aforethought".

I will determine the first and the third issue together. Going by the evidence on record, there is no dispute that Mayeji Buluma is dead and that he died on 7th April 2015 in a violent manner after she was beaten and strangled to death. In his closing submissions, defence counsel challenged the prosecution's evidence on the cause of death. Three issues were raised, one that the Post Mortem examination Report tendered before the court was made under Form D of section 11 (3) of the Inquest Act, CAP 24 R.E 2019 instead of form C under the schedule in the same section. Secondly that, defence were not served with a notice informing them that the post mortem report would be tended in court as exhibit under section 291 (1) of the CPA, Cape 20 R E 2019. He cited the case of **Gabriel Simon Mnyele V. Republic**, Criminal Appeal No. 437/2007 (unreported) and **thirdly** that, the

evidence of PW3 and exhibit P2- Post mortem examination report are at variance hence should be ignored.

To start with the challenge on the omission by the prosecution to issue a notice under section 291 (1) of the CPA. The section reads:

*291.-(1) In any trial before the High Court, **any document purporting to be a report signed by a medical witness upon a purely medical or surgical matter**, shall be receivable in evidence **save that this subsection shall not apply unless reasonable notice of the intention to produce the document at the trial, together with a copy of the document**, has been given to the accused or his advocate.*

(2) The court may presume that the signature to any such document is genuine and that the person signing it holds the office or had the qualifications which he professed to hold or to have when he signed it.

It should be noted here that, during preliminary hearing, the Post mortem examination report (exhibit P2) was listed among the exhibits to be tendered in evidence by the prosecution. The report was also supplied to the defence during committal proceedings on 25th January, 2017. Again, the said document was received in evidence without any objection from the defence during trial. The complaint by the defence counsel is without merit. The prosecution complied with the above provision to the letter. The Notice that was issued under section 288 was for additional of a witness, the doctor (PW3) who was not initially listed as a witness during Preliminary hearing.

The issue of the format of the Post mortem examination report should not delay the court. As stated above, the Post Mortem examination report was received in evidence without objection from the defence. The raised complaint is therefore an after sought worth disregarding.

This takes me to the learned defence counsel's third point that while the prosecution evidence reveals that the deceased was beaten by a club, found with bruises on her hands, face and around the neck and that she was strangled, exhibit P2 indicates that the cause of death is lack of breathing

air. He questioned how a person found with bruises on her face and hand, is said to have died due to lack of breathing air/suffocation. In short, the learned defence counsel argued that PW3's evidence and the Post Mortem Examination is at variance. Indeed, the postmortem examination (exhibit P2) shows that the deceased's death was due to suffocation caused by lack of breathing air. On cross examination, PW3 mentioned pupil dilates and nasal bleeding as signs of suffocation, he said, nasal bleeding is caused by an external pressure when a person fights for a breathing air leading to the rupture of the blood vessels and during re-examination, he explained that this happens when a person is strangled. My perusal of the entire Exhibit P2 have failed to find the explanation given by PW3 in his evidence. Nevertheless, this court is alive of the position of the law that cause of death may be proved by evidence other than post mortem examination report. In this case, the court is satisfied that, even without exhibit P2 still the prosecution evidence led by PW1, PW2, PW4 and PW5 prove that the death of Mayeji Buluma was unnatural.

The prosecution's evidence show that the deceased had bruises around the neck, hands (elbow) and a wound on her face and that there were dragging

marks from inside the room where the deceased had slept to where her body was .PW2 explained that after the beatings, accused tied her mother's neck with a rope which he used to drag her outside the house. In his defence, DW1, though denied to have seen the deceased body, he said, at the scene, he found many people and he heard the deceased father claiming her daughter to have been killed by her son-inlaw (Nkwilima) Elias Mayala The above evidence coupled with the injuries observed on the deceased body as explained by the prosecution's witnesses leaves no doubt that Mayeji Buluma is dead and that she met a merciless unnatural death. It is therefore without doubt that prosecution has proved beyond reasonable doubt that death did occur and the death was unnatural and that whoever did so, committed the offence with Malice aforethought.

Next for consideration is whether the accused participated in the commission of the offence as alleged by the prosecution. On this, prosecution brought four witnesses one being an eye witness who brought to the court evidence of visual identification. This, as settled, is a weakest kind of evidence. To ground conviction of the accused, such evidence must be absolutely

watertight. This is a position in the celebrated case of **Waziri Amani V. R** (1980) TLR 250 where the court held:

*"The evidence of visual identification is **easily susceptible to error**. The evidence of visual identification **is of the weakest kind and unreliable**. It follows therefore, that no Court should act on evidence of visual identification unless all the possibilities of mistaken identity are eliminated and the court is fully satisfied that the evidence before it is absolutely water tight. The following factors have to be taken into consideration, the time the witness had the accused under observation, the distance at which he observed him, the condition in which such observation occurred, for instance whether it was day or night (whether it was dark, if so was there moonlight or hurricane lamp etc) whether the witness knew or has seen the accused before or not."* (emphasis added)

It is clear from the decision above that when relying on the evidence of visual identification the following factors must be positively determined so as to

make such evidence reliable (i) The time the witness had the accused under observation, (ii) The distance at which he observed him. (ii) The conditions in which such observation occurred; for instance, whether it was day or night-time, whether there was good or poor lighting at the scene. (iv) Whether the witness knew or had seen the accused person before or not and (v) description of the perpetrator (s). See also the case of **Maduhu Ng'habi and Another V. Republic**, Criminal appeal No 556 of 2016 Court of Appeal (unreported)

Reverting back to this case, prosecution had only one eye witness PW2. He witnessed the unsparing death of his own mother at his tender age. Testifying in court and after he had promised to speak the truth and not lies in compliance to the provisions of section 127 (2) of the Evidence Act Cap 6 R.E 2019, PW2 said, in the mid night of 7/4/2015 he was awakened by a person beating his mother using a club. Aided by a solar torch he identified that person as Dotto Mashauri (accused person). PW2 said, "*alimpiga mama king mpaka akamuua*" after that he tied his mother with a rope on her neck and dragged her out of the house. PW2 and his young brother followed behind. Outside the house, said PW2, there was a bright moon light. The

accused then left with the rope he had tied the deceased leaving behind the deceased body lying helplessly outside her house. PW2 testified further that, his young brother went to awaken their mother with no response. As their house was far away from other people, they remained seated outside until morning when their aunts (mama wadogo) PW4, Mayeji James and Kulwa came to whom he mentioned the accused person as responsible.

PW2 testified to have known the accused person long before the incident as the person employed by their father as their cowherd and that accused was sometimes sleeping with his mother when their father was not around. On being probed on when last he saw the accused in their house before the incident, PW2 said it was a day before the incident.

Explaining the source and intensity of the light PW2 said, the torch was a big solar torch which he equated like his hand. Although PW2 did not mentioned the position where solar torch was in the room, his testimony was that it gave enough light for one to see. After the killing, PW2 said, accused hit the torch into pieces with the stick. He also said, the incident took three minutes to its completion.

Further, speaking of the distance from which he identified the accused person, PW2 said he was on the mattress on the floor while the accused was standing one and a half meter away beating her mother in a room of 3 to 5 meters dimension. Further to that, PW2 named the accused person to PW4, PW1 and PW5 immediately on their arrival at scene. In **Marwa Wangiti and Another v. Republic** [2002] TLR 40 it was stated:-

" . . . The ability of a witness to name a suspect at the earliest opportunity is an all-important assurance of his reliability, in the same way as unexplained delay or complete failure to do so should put a prudent Court to inquiry . . . "

Again, in **Jaribu Abdala vs R** (2003) TLR 201 it was held that credibility of the witness is important factor in identifying the offender and that ability to name the suspect at the earliest possible time is a vital factor.

I have observed PW2's demeanor in court, though a child of tender age, his evidence was straightforward and consistent, he answered questions without fear and hesitation. He named the accused to PW4, PW1 and PW5 in the year 2015 after the said murder and maintained the same story before the court. In **Hassan Juma Kanenyera and Others V Republic**, (1992) TLR, 100, the Court of appeal said:

*"It is a rule of practice, not of law, that corroboration is required of the evidence of a single witness of identification of the accused made under unfavorable conditions; **but the rule does not preclude a conviction of the evidence of a single witness if the court is fully satisfied that the witness is telling the truth.**"*

If not for some short falls in PW2's evidence creating doubts on the identity of the accused person at the scene, I would have termed the PW2's evidence credible and proceed to convict the accused person as per the decision cited above. However, in **Chacha Jeremiah Murimi and 3 Others v Republic**, Cr. Appeal. No. 551/2015 (unreported) Court of Appeal stated that-

*"The ability of the witness to name the offender at the earliest possible moment is in our view reassuring **though not a decisive factor**".*
(Emphasis provided)

And in **Kamau vs. Republic** [1975] EA 139, it was stated that:

"The most honest of witnesses can be mistaken when it comes to identification."

As hinted above, prosecution case hinges on identification evidence of a single witness. The position of the law is that where the evidence of identification is that of a single witness, there is a need to test such evidence with the greatest care; what is needed is other evidence, direct or circumstantial, pointing to the accused's guilt from which a court can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error. See for instance the decision in **Yassin Maulid Kipanta and Two Others V. Republic**, (1987) TLR 183.

In the case of **Philimon Jumanne Agala @ J4 V. Republic**, Criminal Appeal No 187 of 2015 (Unreported) court of Appeal had time to discuss at

length challenges to identification evidence. The decision in **Shamir s/o John v.R.**, Criminal Appeal No. 166 of 2004 (also unreported) was cited that:

*"Admittedly, identification in cases of this nature, where it is categorically disputed, is a very tricky issue. There is no gainsaying that evidence in identification cases can bring about miscarriage of justice. In our judgment, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, **the courts should warn themselves of the special need for caution before convicting the accused in reliance on the correctness. This is because it often happens that there is always a possibility that a mistaken witness can be a convincing one. Even a number of such witnesses can all be mistaken.***

It is now trite law that the courts should closely examine the circumstances in which the identification by each witness was

made. The Court has already prescribed in sufficient details the most salient factors to be considered. These may be summarized as follows: How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witnesses when first seen by them and his actual appearance?

*... Finally, recognition may be more reliable than identification of a stranger, **but even when the witness is purporting to recognize someone whom he knows, the court should always be aware that mistakes in recognition of close relatives and friends are sometimes made***” (Emphasis added)

culprit's body build, complexion, size and attire. My reasoning is fortified by the decision of the Court in the case of **DPP v. Mohammed Said and Another**, Criminal appeal no 432 of 2018 (unreported) where it was held:

*"The tests for a reliable evidence of visual identification have been revisited and refined by the Court in a number of cases including; **Mussa Mbwaga v. R** (supra) cited by both Counsel. Our decision in **Omari Iddi Mbezi & 3 Others v. R**; Criminal Appeal No. 227 of 2009 (unreported) made an explicit summary of the tests that is to say; the witness must make full disclosure of the source of light and its intensity, explanation of the proximity to the culprit and the witness and the time he spent on the encounter, description of the culprits in terms of body build, complexion ,size, attire."*

Considering the above, this court is of the view that the explained gaps have impaired the quality of the PW2's visual identification evidence and therefore exposing the accused to a danger of a mistaken identification regardless of the proximity the murderer was under observation. The circumstances of the identification of the accused were therefore not favourable.

Two, the prosecution evidence failed to explain the intensity of the solar torch and locate its position in the room where both the accused and PW2 were. Apart from a general statement that there was a solar torch in the room that gave enough light for one to see and a bright moonlight outside the house, PW2, did not explain the intensity and brightness of the light in the house at the time of the incident. In other words, the intensity of the light was not explained. I have also revisited the whole prosecution evidence to see where exactly the solar torch was so as to rightly decide on whether it illuminated the whole room or otherwise. In their evidence , PW1, PW4 and PW5 who visited the scene immediately after the incident did not explain the condition they found inside the room where PW2 alleges that was used by himself and the deceased on the material date and time and in which the accused is alleged to have committed this offence.

Exhibit P1 (Sketch Map Plan of the scene) could not assist the court as well. It displayed features outside the house in question and not inside the house where the crime was committed. Essentially, the important features like the solar torch, mattress and the bed on which the deceased and PW2 used were not indicated in the sketch map.

Three, PW2 explained that, having killed his mother, accused hit the torch into pieces. In his further testimony PW2 said, the accused tied her mother with a rope and dragged her outside the house. After the strangulation, the accused left with the rope. In other words, the court is made to believe that other items used in the incidents were left at the scene. Neither the stick used to hit the solar torch into pieces, the club used by the accused person to beat the deceased nor the broken solar torch were brought in evidence before the court.

Another important evidence in this case is that of confession. It is the prosecution evidence that accused person confessed before the villagers who had gathered at the scene in response to the alarm that he killed the deceased after being so instructed by Elias Mayala (deceased's husband). In his defence however, accused person said he so confessed in fear of death by the villagers who were beating him. This version of accused's testimony was supported by PW5 (Investigator) who testified to the effect that he found the accused already arrested by villagers at the scene, beaten and therefore he had to issue PF3 to the suspects at the police and took them to

the hospital where they were admitted. Though in principle, confession to a reliable witness is acceptable in law, the circumstances of the confession in this case is doubtful. The confession under threat of death like the one made by the accused in this case, lacks evidential value.

As stated earlier on, accused person denied any involvement in the offence. On how he came to be arrested, DW1, said he was taken from Baduhu center where he was selling sugar cane by two people who went there looking for a person called Dotto. And that they informed him about the allegation on murder case while on the way to the scene. Prosecution gave no evidence on how they came into contact with the accused person after the murder incident. The accused story remains the only information on the record on how he was arrested. Further to that, he refuted to have known the deceased, Elias Mayala (deceased's husband) or his family and stated that he visited the scene for the first time on the material date when he was taken there in connection with this offence.

Given the circumstances of the case at hand and the prosecution evidence, I find difficulties to join hands with the honourable court assessors whose

opinions were that prosecution proved their case beyond reasonable doubt. I so differ due to the reasons explained above. In short, the evidence of visual identification by PW2 has failed to meet the conditions favoring unmistakable identification and the court has as well failed to find any other evidence to ground accused's conviction.

As a result, accused person, **DOTTO MASHAURI** is hereby found not guilty of the offence charged. He is hereby acquitted of the offence of murder under the provisions of **sections 235 (1) of the Criminal Procedure Act [Cap 20 RE 2019]** with further directions that he be released immediately from prison unless otherwise lawfully held.

DATED at **BARIADI** this 5th day of February, 2021.



E.Y. MKWIZU
JUDGE
5/02/2021

COURT: Right of appeal explained.



E.Y. MKWIZU
JUDGE
5/02/2021

COURT: This judgment was delivered **virtually** through **video** conference today, 5th February, 2021 where Ms. Rehema Sakafu learned State Attorneys for the prosecution, Mr. Samweli Lugundiga learned advocate for the accused person and the accused person were connected electronically.



E. Y. MKWIZU
JUDGE
5/2/2021