

IN THE HIGH COURT OF TANZANIA
AT GEITA
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE NO. 17 OF 2016

THE REPUBLIC

VERSUS

RUBEN S/O KAKINDA 1ST ACCUSED
METHOD S/O CHEREHANI 2ND ACCUSED
SADICK S/O KABALE 3RD ACCUSED

JUDGMENT

11 & 25/03/2021

RUMANYIKA, J.:

Reuben Kakinda, Method Cherehani and Sadiki Kabale (the 1st, 2nd & 3rd accused) respectively they stand charged for an offence of murder C/s 196 of the Penal Code Cap 16 RE. 2019 (the Code) that jointly and together, on 22/4/2014 at about 19:00 hours at Itale village, Geita district and region the accused murdered Kulwa Kapalata (the deceased).

Mr. H. Mwasimba and Monica learned state attorneys appeared for the Republic. Messrs T. Gaston, Eziron and Ng'wanzalima learned defence counsel appeared for the 1st, 2nd and 3rd accused respectively.

Anna Mussa, Jumanne and Dauson Gogo lady and gentlemen assessors sat with me.

Pw1 E.1454 D/Sgt. Shaban (50), OCS Mugusu police post Geita district, in this case the investigator, he stated that as previously he worked at Nyamboge police post Geita district and was duly assigned, he interviewed and accordingly recorded cautioned statement of the 2nd accused who also implicated the 1st and 3rd accused (copy of the statement Exhibit - "P1").

Pw2 Ex D.8307 Ssgt. Zakayo Samwel (57) stated that as he was on duty and at work Geita police station on 20/05/2014, following the incident, but having been duly assigned, one having had implicated the 1st accused, he recorded a statement of a witness namely Makoye Elias (copy of the statement – "P2") then similarly but under Section 57 of the Criminal Procedure Act Cap 20 R.E. 2019 he recorded cautioned statement of the confessing 1st accused (copy - Exhibit "P3").

Pw3 Christopher Yohana Matola (51) of Geita (R) Referral Hospital, a graduate of Bugando University (Advanced Diploma in Clinical medicine) he stated that now working under police request, with respect to the deceased he conducted a post mortem examination on 23/04/2014 at about 11.00am

at the scene of crime where he found the dead body in a pool of blood with big fresh cut wounds in the head, ear, right hand etc. The cause of death therefore it was severe haemorrhage. Relatives, including one Emmanuel Mashauri having had identified the dead body (Copy of the Post Mortem Report – Exhibit "P4").

Pw4 Ahamad Hussein Abdallah (49) the local Kalangalala ward Executive Officer, Geita town therefore Justice of the peace he stated that following the incident, and, in ordinary course of business but in such capacity, with respect to the incident and case of murder accordingly he recorded extra judicial statement of the readily confessing 1st accused (Copy - Exhibit "P5"). That is all.

The 1st accused (Dw1) (50) stated that as he was in bed on 22/04/2014 at night, some policemen stormed in and he was arrested that say 2 days later at Geita police station from him some policemen only wanted to know whether he knew William Kwiligwa, Mateso William, Madaraka and Kulwa Kapalata actually he never knew them but the police men beat him up. That having been forced to, he just thumb printed onto the statement whose contents he did not know as no one had read it to him. That as he had, in the process sustained some body injuries, just in

the next morning they took him to hospital for, and he received medication. Then he was just like that arraigned in court.

The 2nd accused (Dw2) (47) stated that as he was on 19/05/2014 from the factory on his way back home with a container of some locally distilled liquor "gongo", only on that basis a policeman and militiaman put him under arrest and demanded bribe of shs. 600,000/= that as he could not have afforded it because he had a balance of shs. 50,000/=: on arrival at Geita police station but in a room of junk TVs, hoes, crabs, ropes etc, he felt frightened/scared more so after they threatened to hit with a crab labelled "mama mkanye mwanao", only his personal particulars now taken and forced to, he signed the statement. Then he was arraigned in court on 27/05/2014 and met the co accused.

The 3rd accused (Dw3) Sadiki Kabale (39) he stated that before he was arraigned in court he owned a garment and cooking oil shops at Nkome centre, Geita married and blessed with six (6) issues and were all alive that having been arrested and detained at Geita police station but all the time he denied the charges, yet still together with co-accused whom he didn't know before they were just arraigned in court. That is all.

Only two assessors unanimously opined in favour of all the accused. The other assessor opined only against two accused.

The pivotal issue is whether the two pieces of evidence namely the 1st and 2nd accused's repudiated cautioned statements on one hand, and the 1st accused's extrajudicial statement (Exhibits "P3", "P1" and "P5") respectively, according to Exhibit "P2" the 1st accused having had been heard around boosting the responsible murderer.


At least it is common knowledge, especially in the Lake zone similar brutal killings by executors known as **Wakata mapanga**, like in any other criminal rackets, at times where direct evidence was next to impossible given its nature. More so the complex nature of human psychology much as it trite law that unless it was corroborated, a repudiated confession, it cannot solely ground a conviction (case of **Abbakari Issa Mnyambo v. R**, Criminal Appeal No. 34 of 2010 (CA) unreported).

Although it was not clearly stated that those ones according to Exhibit P2, with whom were together drinking some local beer at the pombe shop were so reliable that the 1st accused's boosting utterances could have founded a conviction (case of **Enock Kapera v.R** Criminal Appeal No. 150 of 1994), (CA) unreported either the same may corroborate

the prosecution case under the circumstances or without corroboration the 1st and 2nd accused's confessions be but true. I think where a conviction is likely to only base on the accused's repudiated confession, in my considered view it is dictates both of common sense and logic at least in its absolute discretion the court to observe six (6) criteria; **(i)** that at times human psychology is complex than human himself **(ii)** if the provisions of Section 27 (3) of the Evidence act Cap 6 RE. 2019 were taken whole sale, the legislative purposes would have been defeated such that possibilities of the genuine and freely confessing subject always taking the advantage would not be eliminated **(iii)** if the police's thirst was only quenched by the suspects' confession why all such detailed, lengthy and consistently logical stories? For whose interest! **(iv)** unless where need be during trial within trial the justice of the peace was proven irresponsible or, on that one playing the role of police agent, where the two co- existed, the accused's extrajudicial statement shall substantiate the contents of the impugned cautioned statement **(v)** given its nature, scope and effects, chances of the offence charged falling in the category of organized crimes and rackets and **(vi)** chances of the innocents being convicted or criminals getting out of the courts free were ruled out. The pigeon holes are still capacious much

as if courts would not do everything that had never been said by the law, the law won't develop much as the socio-economic circumstances shall always forge the way through. It is for the above stated reasons that I would part a company with the other two assessors.


In the upshot the 1st and 2nd accused are convicted with the charges of murder C/s 196 of the code. The 3rd accused, according to the evidence only named by the co- accused he is acquitted.



S.M. RUMANYIKA
JUDGE
20/03/2021

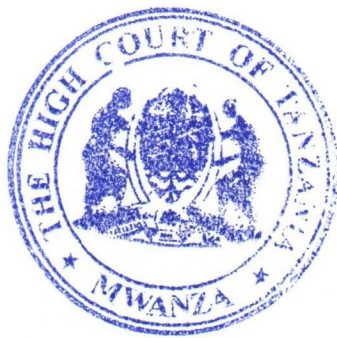
Now having been convicted, the 1st and 2nd accused are, for avoidance of doubts sentenced to death by hanging (Section 197 of the Code).

Right of appeal explained.



S.M. RUMANYIKA
JUDGE
20/03/2021

The judgment is delivered under my hand and seal of the court in court this 25/3/2021 in the presence of Mr. Kato state attorney, Mr. Gaston, Ms. Yuritha and Mr. Ng'wanzalima for accused.



S.M. RUMANYIKA

JUDGE

25/03/2021