

**IN THE HIGH COURT OF TANZANIA**  
**AT GEITA**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SESSIONS CASE NO. 133 OF 2016**  
**THE REPUBLIC**  
**VERSUS**  
**THOMAS S/O ELIAS.....ACCUSED**

**JUDGMENT**

**13 & 25/03/2021**

**RUMANYIKA, J.:**

According to the information filed on 26/5/2016, Thomas Elias (the accused) he stood charged for murder Contrary to Section 196 of the Penal Code Cap 16 RE. 2019 (the Code) that the accused did on 16/7/2014 at about 00:00 hours at Kiziba village, district and region of Geita murder Hoja Ngunghu (the deceased).

Messrs Masambu and P.M. Rwechungura learned state attorney and defence counsel appeared for the Republic and the accused respectively. I sat with Ms. Hawa Swedi and Messrs Lucas Mabula and Martine lady and gentlemen assessors.

Pw1 Magale Sebaganga (30) stated that as she was, together with the deceased husband in the material night in bed, three people just

stormed in armed with pangas with which they slashed the confrontational deceased to death the culprits also having had hit the deceased with a stone in the forehead but due to the darkness she could not have identified them but also they dragged her away into bushes where only one of them raped her until such time when the latter was done and set her free that now back home she narrated the ordeal to the people already gathered at the scene.

Pw2 Simon Wilson (49) he stated that he was a primary court magistrate therefore justice of the peace who, sometimes in 2014 in that capacity served at Nyamkumbu primary court in town, and with respect to the incident of murder accordingly he recorded the accused's extrajudicial statement on 25/7/2014 (Exhibit "P3").

Pw3 E. 8779 D/Cpl Edmund (48) of CID he stated that as he was on 20/7/2014 on duty and at work, following the incident of murder accordingly he interviewed and recorded a cautioned statement of the healthy and cooperative looking accused (copy - Exhibit "P4").

Pw4 Christopher Yohana Matola (adult) he stated that following the incident of murder an autopsy was carried out by fellow, according to it

(Exhibit "P2") cause of death was severe hemorrhage due to injuries caused by a blunt object. That is all.

Dw (the accused) (32) he stated that he was arrested on 19/7/2014 but arraigned in court on 1/8/2014 all this time having had been under police custody at station and away in Samina bushes where he was threatened and severely tortured by the policemen and he fainted until he came back to his senses only in the next morning and shown a statement which he refused to sign until one of them slapped him only one blow that still he (the accused) remembered the previous police tortures and injuries sustained. That they took him only to hospital for medication not to justice of the peace (pw2) as alleged. Then he was just like that charged and arraigned in court.

Only two assessors opined for the accused and unanimously stated that the latter was neither identified nor was the repudiated confessions real.

In fact the issue is whether sufficed the two repudiated extrajudicial and cautioned statements (Exhibits "P3" and "P4") to ground a conviction much as it is trite law that unless it was corroborated, alone, a repudiated confession cannot form basis of conviction (case of **Muhidini Mohamedi**



**Lila @ Emolo & 3 others v.R**, Criminal Appeal No. 443 of 2015 (CA) unreported. There wasn't in this case it being the sketch map (Exhibit "P1") or something to corroborate the accused's repudiated confessions. However, given such lengthy, logical and consistently detailed statements of the accused, and the latter was reasonably not expected to simply state that before pw2 and pw3 he just denied the charges because if, with all the costs the recording police officer only intended to extract and have the accused's confession why take all those troubles much as all the contents of the statements was more than mere the accused's personal particulars. There may have been no accused's information that led to discoveries and seizure of exhibits yes, but for the human nature of the accused and the investigations officer. I think where the investigations officers conservatively stick on the ancient mode of extracting evidence of the criminal suspects other than the invented Electronic Evidence Act No.13 of 2015. I think before convicting only on a repudiated confession the courts need to prudently observe six (6) criteria; **(i)** at times human psychology was 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 purposes of the legislation would be defeated because even some genuine and freely

confessed subjects would always take the advantage **(iii)** if, with all costs the police recording officer only intended to have confession of the suspect why all such detailed, lengthy and consistently logical stories? For whose interests! **(iv)** where, during trial within trial the need raised, justice of the peace shall on balance of probabilities proved unless the latter was proved an agent of the policemen, where the two co-existed, itself 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 most likely fell under the category of organized and crime rackets **(vi)** chances of the innocents being convicted or criminals getting out of the courts free. The categories are not closed. It is for these reasons that I would part a company with the two assessors.

In fine, now that the prosecution case has been proved beyond reasonable doubts, the accused is convicted for murder under Section 196 of the Code.


  
**S.M. RUMANYIKA**

**JUDGE**

**20/03/2021**


The accused is pursuant to Section 197 of the Code sentenced to death by hanging.

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 and Mr. Rwechungura defence counsel.



  
**S.M. RUMANYIKA**  
**JUDGE**  
**25/03/2021**