

IN THE HIGH COURT OF TANZANIA
AT GEITA
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE NO. 233 OF 2016
THE REPUBLIC
VERSUS

SANDA S/O KISHOSHA @ KARUTO 1ST ACCUSED
PENDO S/O LUMWECHA @ MHOJA 2ND ACCUSED
MASUMBUKO S/O DAUD @ FUMAKULE 3RD ACCUSED
BULABO S/O MALEJIWA @ KUGULU4TH ACCUSED

JUDGMENT

04 & 25/03/2021

RUMANYIKA, J.:

Sanda Kishosha @ Karuto, Pendo Lumwecha @ Mhoja, Masumbuko Daud @ Fumakule and Bulabo Malejiwa @ Kugulu (the 1st, 2nd, 3rd and 4th) respectively they stood charged for murder C/s 196 of the Penal Code Cap 16 RE. 2019 (the Code) that on 13/3/2014 at about 19:30 hours at Rumasa village in the district of Chato, Geita region jointly and together the accused murdered Tabu Misungwi (the deceased).

Messrs Masambu and Monica learned state attorneys appeared for the republic. Messrs Rwabuhanga, Siwale, Frola and Makene learned counsel appeared for the 1st, 2nd, 3rd and 4th accused respectively.

I sat with Rebeca Kasidy and Anna Mussa and Jumanne Nkana ladies and gentleman assessors.

Pw1 D/cpl. Nimludi (45) of Buseresere police station CID he stated that having had the incident been reported to them, with the doctor they rushed onto the scene and the latter carried out autopsy whereby a fellow policeman drew a sketch map plan of the scene as in June, 2014 they carried out "Operation Kata Mapanga" and it transpired to them that the accused were responsible for the death of the deceased much as they were arrested, Pw1 interviewed and accordingly he recorded cautioned statement of the 4th accused a passer by one Augustino Malulu having had translated it from Kisukuma vernacular – Kiswahili and vice versa much as the 4th accused was reported cleansing criminals before and after the incidents that in the beginning the latter refused them service because the fellows had no cash until when they had accomplished the plot (copy of the 4th accused's cautioned statement – Exhibit "P1").

Pw2 E.4119 D/Sgt Steven (53) of Chato police station (formerly worked at Bwanga police post) he stated that following the incident, and having had been duly assigned the matter, together with 3 doctors,

Innocent being one of them and Dr. Pius was the in charge he (pw2) drew a sketch map plan of the scene of crime (Exhibit "P2").

Pw3 D.6944 Major Emmanuel (55) of CID and anti-robbery unit of the RCO's office Geita he stated that with regard to the incident, now having been duly assigned he interviewed and, in that regard accordingly recorded a cautioned statement of the illiterate but confessed 2nd accused who, in the course implicated the 1st, 3rd accused and one Rasi (copy admitted as Exhibit "P3") that in the beginning, as per Pw3's statement, the 2nd accused denied the charges.

Pw4 7284 D/cpl. Juma (49) of police CID, Rco Geita offices he stated that as he was on 14/06/2014 at work Buseresere police post, during special operations but following the incident of murder he interviewed and accordingly recorded a cautioned statement of the confessed but illiterate 3rd accused who had just chosen nobody else to witness it (Exhibit "P4").

Pw5 E.8779 D/Cpl. Edmund Adrian Mkiladu (48) a police officer of CID Rwamugasa out post of police-anti robbery unit he stated that as he was on 14/06/2014 on duty at Buseresere police post, but following the incident now duly assigned, accordingly he interviewed and recorded the

1st accused's cautioned statement in which case also the 1st accused implicated the fellows (Exhibit "P5").

The 1st accused (Dw1) (37) denied the charges and he stated that initially he was arrested for offence of found in possession of locally distilled liquor "gongo" on 14/06/2014 but later on it turned out to be charges of murder that having been locked up for a number of days but all the time he denied it all both before police and justice of the peace, if anything, the police men only took his personal particulars but as they hit him with a crab and they slapped him in the back reluctantly though he just signed the purported statement.

The 2nd accused (Dw2) denied the charges and he stated that as he was on his way back home, some policemen arrested and they drove him to Buseresere out post of police, to the Justice of the peace of Buseresere primary court, then back to police station but all the time he denied the charges the policemen only having taken his personal particulars forcefully therefore he signed the statement whose contents he did not know nor was it read to him before. Then they drove him to Chato police station and later on arraigned him in court.

Equally having denied the charges, the 3rd accused (Dw3) is on record having stated that he was arrested on 13/06/2014 at Katoro and driven to Buseresere police post whereby in the police investigations room having been interviewed but only his personal particulars taken, he denied the liability irrespective of the threats by the policemen but eventually he thumb printed the statement and he was just like that arraigned in court.

The 4th accused (Dw4) he denied the charges and stated that having been arrested on 15/06/2014, now at Buseresere police post he was interviewed but he denied the charges that illiterate as he was, even before reading it to him he was forced to, and he thumb printed the statement that equally so he denied the charges before justice of the peace. That is all.

The ladies and gentleman assessors unanimously opined in favour of the accused. Not identified and they were only arrested some months later

At least the prosecution case was built only on the repudiated cautioned statements of accused no doubts the latter implicated each other. In fact each of the confessions needed to be corroborated (case of **Abbakari Issa Kanyambo v. R**, Criminal Appeal No. 34/2010 (CA)) unreported. No one's confession could corroborate the other much as a

confession that needed corroboration it cannot corroborate (see the case of **Mkubwa Said Omary V. SMZ** (1992) TLR 365 (CA)).

In this case there was, with respect to nature, the mode of execution and circumstances of the repudiated confession no corroborative evidence. I think where its pace, nature, scope and mode of criminology and victimology, therefore like it is the case here, where new categories of criminal rackets even ran faster than the socio economic circumstances especially where the invented Electronic Evidence Act No 15 of 2015 in their absolute discretion the courts needed also to more seriously engage human psychology of the police recording officers and suspects provided where a conviction is likely to lie on a repudiated confession the following principles shall be observed:- **(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 have been defeated because most likely even some genuine and freely confessed subjects would have always take the advantage. **(iii)** if, with all costs the police recording officer only intended to have the suspect's confession why all such detailed, lengthy and consistently logical stories? For whose interests! **(iv)** where, during trial with in trial the need

raised, justice of the peace shall, on balance of probabilities proved unless the latter was proven an agent of the policemen, and where the two co-existed, the accused's extrajudicial statement shall substantiate contents of the impugned cautioned statement **(v)** given its nature, the scope and effects, chances of the offence charged most likely falling under the category of organized and crime rackets **(vi)** chances of the innocents being convicted or criminals get out of the courts free. The categories not closed.

Moreover, with regard to him, in the beginning the 4th accused may have had black mailed co-accused that upon committing the offence he would have magically cleansed them therefore keep them safe yes, however strong and magic that the traditional science it might be, that one in my considered opinion it constituted, worth the name no accessory before or after the fact frankly, but for the 4th accused's failure to report co - accused with respect to the offence of murder application of the doctrine of common intention. It is for these reasons that I would part a company with the ladies and gentleman assessors.

All said and done, the accused are, for avoidance of doubts convicted as charged for an offence of murder C/s 196 of the Code.


S. M. RUMANYIKA

JUDGE

21/03/2021

Each accused is sentenced to death by hanging (Section 197 of the Code).

Right of appeal explained.


S. M. RUMANYIKA

JUDGE

21/03/2021

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. Siwale, Ms. Frola, Mr. Ernest and Mr. Liberatus Rwabuhanga defence counsel.




S. M. RUMANYIKA

JUDGE

25/03/2021