

**IN THE HIGH COURT OF TANZANIA**  
**AT GEITA**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SESSIONS CASE NO. 234 OF 2016**  
**THE REPUBLIC**  
**VERSUS**  
**REVOCATUS S/O STEPHANO..... ACCUSED**

**JUDGMENT**

**10 & 25/03/2021**

**RUMANYIKA, J.:**

Revocatus Stephano (the accused) stood charged for an offence of murder C/s 196 of the Penal Code Cap 16 RE. 2019 (the code). That on 18/8/2014 at about 21:00 hours at Lwanaba village Chato district and region of Geita the accused murdered Shukuru Innocent @ Kaluguru (the deceased).

Messrs Palangyo and Otieno learned state attorney and counsel appeared for the Republic and accused respectively.

I enjoyed assistance of Messrs Rahel Simon and Rebeca Kishindye and Shija Malale ladies and gentleman assessors.

Pw1 Dr. Rigobert Kalisa (41) a medical doctor, for the time being in charge of Mbogwe district hospital he stated that following the incident

of murder and he was duly ordered by police, from his former work station Chato district he conducted a post mortem examination on 19/08/2014 away at Buziku the male neck almost chopped off by a sharp pointed object therefore cause of the death it was severe bleeding due to the big cut wound (copy of the Post mortem report on examination – Exhibit "P1").

Pw2 D.7494 Ssgt. Sylvanus (54) exhibit keeper of Chato police station he stated that in ordinary course of business, but following the incident, DC William having had handed over to him a Motorbike with Reg. No. T.439 CXN Make SUNLG as exhibit on 22/01/2015, accordingly he registered it as No. 10/2015 (copy of the respective portion of the register and the motorbike – Exhibit "P2").

Pw3 Sebastian Kubilima (adult), from the time in memorial a resident of Lwantaga village Buziku ward, in 2014 the chair thereof also he stated that having had the incident been reported to him on 19/08/2014 in the morning times by Bugege cluster chair one Clement Busiga and the former confirmed the story, accordingly he reported it to police. That is it.

Pw4 Emmanuel John (21) a bodaboda rider he stated that by way of contract, but in ordinary course of business, say three days previously

having had the motorbike assigned to him by the accused for shs. 40,000/= weekly, but on 07/10/2014 it turned out to be one robbed in the reported incident of murder, he was, on that basis arrested by police and he led them to arrest of the accused but the latter just cleared him (Pw4) - the motorbike identified that he, in front of the policemen handed over the motorbike to the accused.

Pw5 Wp 6626 DC Mwahija (32) of Buziku police post she stated that having had been on duty CRO on 19/08/2014, and the incident was reported to her by the local Bugege cluster chair one Sebastian Kubilima and Ilanga her boss assigned her the matter, together with a fellow one Taifa and the doctor they rushed to the scene of crime and found that indeed the dead body was, with head almost chopped off and the doctor conducted autopsy, the said Taifa drew a sketch map plan of the scene. That on 25/08/2014 she visited the deceased's home and met Bahati the widow and, at pw5's request also she interviewed the true owner of the motorbike one having had handed to her the material registration card and cash sale receipt. That on arrival of Pc Taifa from Sengerema where the motorbike and accused were picked, the said Pc Taifa handed over to her



station he was detained say for five (5) days and interviewed only for some undersize fish nets (timba) that he was found in possession of and for that reason the policemen demanded bribe of shs. 300,000/= in vain finally they beat him up and just forcefully caused him thumb print the purported cautioned statement ( copy of the respective PF3 – Exhibit "D1") him having had left Buziku village for Sengerema in 2010 and he never ever went back since. That is it.

The ladies and gentleman assessors unanimously opined against the accused. I thanked and discharged them.

At least there was the accused's repudiated cautioned statement and the deceased's material motorbike that the accused was immediately found in possession of. Now that as it stood, and it is trite law (the case of **Abbakari Issa Mnyambo v.R**, Criminal Appeal No. 34 of 2010 (CA) unreported, the issue is whether there was evidence to corroborate the repudiated cautioned statement (Exhibit "P6"). The answer is yes it is with regard to the doctrine of recent possession, constructively though, according to the certificate of seizure (Exhibit "P4") without sufficient explanation immediately after the deceased was robbed and murdered the accused found in possession of the material motorbike much as it is

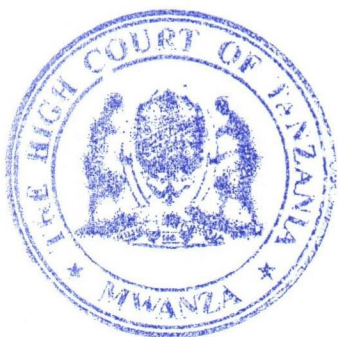
Right of appeal explained.

  
**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 and Mr. Otieno defence counsel.



  
**S.M. RUMANYIKA**

**JUDGE**

**25/03/2021**