

**IN THE HIGH COURT OF TANZANIA**  
**AT GEITA**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SESSIONS CASE NO. 239 OF 2016**  
**THE REPUBLIC**  
**VERSUS**  
**SHIGELA MASAI @ MHOJA LUKUBANIJA**

**JUDGMENT**

**16 & 25/03/2021**

**RUMANYIKA, J.:**

Shigela Masai @ Mhoja Lukubanija (the accused) he stood charged for an offence of murder C/s 196 of the Penal Code Cap 16 RE. 2019 (the code) that on 3/4/2014 around 20:00 hours at Makurugusi village, district and region of Geita he murdered Juma Maliganya (the deceased).

Messrs C. Kato and Beatus learned state attorney and defence counsel appeared for the Republic and accused respectively.

I enjoyed assistance of Messrs Dauson Gogo, Jumanne Nkane and Mussa Samson gentlemen assessors.

Pw1 Assistant inspector Juston (42) he stated that as on or by the time he worked at Nyamboge police post on duty, following the incident, and was duly assigned the matter, he accordingly under Section 58 of the

Criminal Procedure Act Cap 20 RE. 2019 he interviewed and recorded the confessing illiterate accused on 25/6/2014 the latter having had chosen one James a civilian and the later witnessed (Exhibit "P3").

Pw2 Hamad Hussen (49) he stated that he was the local Kalangalala Ward Executive Officer therefore Justice of Peace whom, following the incident, but in that capacity accordingly having had recorded the accused's extrajudicial statement (Exhibit "P4"). That is all.

Dw (the accused) himself the sole defence witness he stated that he was Nyamalele primary school class VII leaver since his child hood in the name of Shukurani Nkala. That now trading on fish between 3/4 - 10/4/2014 he had been away at Bugombe – Maisome Highland Geita district only on arrival on 26/06/2014 with two baskets of fish to be apprehended by fisheries officer for the unlicensed business and, shortly thereafter the policemen of Nyambogo post took up the matter only on that one produced him to Justice of peace one Bwire a Primary court magistrate - Nyambogo, but he denied the charges (copy not produced here) that discontented, from there the policeman appended him the present name forcefully after they had, for that one tortured him severely and was not produced to any other Justice of the peace inclusive of pw2

nor did the accused spend the 25/6/2014 night at Geita police station as alleged. That is all.

Only the first two assessors opined for the accused.

At least the prosecution case solely hinges on the accused's repudiated cautioned and extrajudicial statements (exhibits "P3" and "P4") the law requires that without corroboration such evidence cannot found a conviction ( see the case of **Muhidini Mohamedi Lila @ Emolo and 3 others v.R**, Criminal Appeal No. 443 of 2015 (CA) Unreported unless, looking at it all the confession was but true (case of **Tuwamoi v. Uganda** (1967) EA 84.

In fact that one would or it would not have been the accused's name yes, but now that as alleged the policemen had just forced him the name, it was incumbent upon the accused, through parents, guardian or the like to prove the police wrong. It could be by way of a birth certificate, school leaving or baptismal certificates, etc actually now that according to records, accused had not raised the point before, it is but after thought. I think a person who deliberately avoids his name not only it demonstrates a high degree of an ill motive, but also in this case by doing so the accused only tried to run away from the outcomes of his own wrongs. What a degree



of lies much as it is also trite law and this I think it should not be mistaken for court shifting the burden of proof to the accused, the lies of an accused person has corroborated the prosecution's case (see the case of **Felix Lucas Kisinyila v. R**, Criminal Appeal No. 129 of 2009 (CA) Unreported.

With regard to the said confessions, the herein above stated reasons would take me to the equally long established principle of law that the best witness is the accused who confesses the guilty (case of **Paul Maduka & 4 Others v. R**, Criminal Appeal No. 110 of 2007 (CA))-unreported.

Even when for the sake of assumption with respect to the repudiate confession there was no such corroborative evidence which is not the case here, very seldom than not did the police recording officers confess even slightly having had tortured suspects nor did the former accept the cautioned statements and at times extrajudicial statements. Due to the complex nature of human psychology, I think once judges are caught up in such situation it is safe for them to establish the accused's voluntariness only on the balance of probabilities provided in my considered opinion in its absolute discretion the court shall, among others observe six (6) principles:- **(a)** at times human psychology is complex than human himself. **(b)** if the provisions of Section 27 (3) of the Evidence Act Cap 6

RE. 2019 were taken wholesale, then the legislative intention would have been defeated much as even genuine and freely confessed subjects shall take the advantage always **(c)** if the police's thirst was only quenched by the suspect's confession why all such detailed, lengthy, and consistently logical stories? For whose interests! **(d)** Unless during trial within trial the Justice of the peace was proven irresponsible or agent of police, where the two co-existed, the accused's extrajudicial statement shall substantiate contents of the cautioned statement **(e)** given its nature, scope and effects, chances of the offence charged also falling under category of criminal rackets **(f)** chances of innocents being convicted or criminals getting out of courts free the pigeon holes still capacious.

It is for these reasons that I part company with the first two court assessors.

In the upshot the prosecution case has been proved beyond reasonable doubts. The accused is convicted for the offence of murder C/s 196 of the Code.

  
**S.M. RUMANYIKA**

**JUDGE**

**20/03/2021**

The accused is 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 and Mr Beatus advocate.



  
**S.M. RUMANYIKA**

**JUDGE**

**25/03/2021**