

**IN THE HIGH COURT OF TANZANIA**  
**AT GEITA**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SESSIONS CASE NO. 14 OF 2016**  
**THE REPUBLIC**  
**VERSUS**  
**WILSON S/O BUSDUNGU / DEMAYI MANDELA**

**RULING**

15<sup>th</sup> & 16<sup>th</sup> March, 2021

**RUMANYIKA, J.:**

Having had heard them (four Pws) namely, Pw1 F 887 D/sgt Nyamwanja, Pw2 Dr Luzeje Mbogo, Pw3 Assistant Inspector Juston and Pw4 Assistant Inspector Kaliro Samson, whose respectively, a summary of the evidence would read, **one;** that having had the incident of murder been reported to them, together with fellows, Pw1 rushed to the scene and found the deceased really having been brutally murdered then he drew a sketch map plan of the scene. **(2)** that following the incident, accordingly the medical doctor (cum pathologist) conducted autopsy and found severe haemorrhage cause of the death **(3)** That as were on operation "Kata Mapanga" away at Katoro, but having been tipped by informers, on that basis the accused was arrested. That as he was at work place Masumbwe

police station, Mbogwe district on 29/9/2014 he (Pw4) had the confessing accused produced to him by Pw3, he interviewed and accordingly recorded the accused as such. Then the prosecution closed their case.

Before I invited the accused to present his case, pursuant to provisions of Section 230 of the Criminal Procedure Act Cap 20 RE. 2019 I invited the learned attorneys to address me on whether the prosecution had established **a prima facie** case.

Mr. P. Rwechungura learned counsel for Wilson Busdungu / Demayi Mandela (the accused) submitted that the accused may have had confessed before the two police officers yes, but the an unexplained non production in court if any, of the accused's confession statement the accused was denied of the opportunity, by way of evidence to test it along with credibility of the witnesses vis avis the accused's voluntariness. We pray that the charge of murder be dismissed and the accused be acquitted. The learned counsel further contended citing provisions of Section 62 (1) (b) of the Evidence Act Cap 6 RE. 2019.

Ms. J. Kisibo learned state attorney submitted that infact **a prima facie** case had been established. Sufficed therefore the accused's voluntary



oral confession provided that Pw3 and Pw4 before whom the confession was made they were reliable people notwithstanding they were policemen or civilians. To support her submissions, the learned state attorney cited the cases of **Boniface Mathew Malyago & Another V .R**, Criminal Appeal No 358 of 2018 (CA) unreported, **Posolo Wilson @ Mwalyego V.R**, Criminal Appeal No. 613/ 2015 (CA) unreported and **Bujigwa John @ Juma Kijiko V.R**, Criminal Appeal No. 427 of 2018 (CA) unreported. That is all.

In his rejoinder, Mr. Rwechungura advocate submitted that unlike in the present case, in the cases cited by the state attorney copies of confession statements were produced therefore the cases cited are distinguishable.

The central issue is where recorded, whether, in lieu of accused's written confession, in this case cautioned statement the same could be substituted by a mere plain statement of the recording police officer. The answer is no, because in the case of **Boniface Mathew Malyago and another (supra)** oral confession of the accused made before a policeman it was material only because the information obtained it led to discovery and seizure of the material exhibits leave alone the 1<sup>st</sup> appellant's cautioned statement (Exhibit "P9") and the oral confession in Bujigwa case (supra) it led to discovery of the dead body buried in a room but in the present case there was no

discoveries whatsoever. I will increasingly hold that like it is the case here, were there was only accused's oral confession, courts have discretion with great caution solely basing on it to ground a conviction (see the case of **Daudi Ikeru V.R**, Criminal Appeal No. 158 of 2009 (CA) unreported.

Moreover, unlike in the present case, the accused is, if at all said to have confessed before the police investigations officers Pw3 & Pw4, in the case of **Posolo Wilson Mwalyego (Supra)** the accused had confessed before the civilian people and none of them claimed to have interviewed or reduced in writing the accused's confession statement leave alone capacity to do. The two cases therefore are distinguishable.

Without prejudice to the foregoing, even when we considered the evidence of Pw4, that as the present accused was at large, and the said co-culprit one Daudi Shidonge had been separately arrested, charged, prosecuted and finally way back 2013 convicted. It could not therefore even have been assumed that copy of the accused's cautioned statement was in the former case records. I think once it is said to have been recorded by a police officer, nonproduction of the accused's statement other than oral statement it may adversely be said that the accused was neither interviewed/recorded nor he had confessed the guilty.




It is for the above stated reasons that I would agree with the learned defence counsel that the prosecution did not establish **a prima facie** case to reasonably warrant the accused being invited and state a defence case. (Case of **RVs. Elizabeth Nduta Karanja & Another** (2006) KLR Criminal case No. 52 of 2005.

*"... the basic principle in criminal trial is that, any doubts in the prosecution case, at the end of the trial, **will lead to the acquittal of the accused.** The corollary is that the prosecution case, before the accused is accorded chance to respond, must be so definitely cogent as to bear compelling need for answer. **Without such prima facie justification, there is no legal basis for putting the accused through the trouble of having to defend himself ...**"*(the emphasis is mine).


The charges of murder are dismissed and the accused is acquitted. Unless he was held for some other and further lawful causes, the accused be released immediately. It is accordingly.

Right of appeal explained.

  
**S.M. RUMANYIKA**  
**JUDGE**  
**16/03/2021**

The ruling is delivered under my hand and seal of the court in court this 16/3/2021 in the presence of Mr. C. Kato and Mr. Beatus (for Mr. M.P. Rwechungura) learned state and defence counsel respectively.



  
**S.M. RUMANYIKA**  
**JUDGE**  
**16/03/2021**