

IN THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBOZI  
CRIMINAL SESSIONS CASE NO. 15 OF 2017  
THE REPUBLIC  
VERSUS  
BARAKA MSONGOLE  
JUDGEMENT

Date of Hearing : 11/05/2021  
Date of Judgment: 12/05/2021

**MONGELLA, J.**

The accused herein, **Baraka son of Msongole** stands charged with the offence of murder contrary to section 196 and 197 of the Penal Code, Cap 16 R.E. 2002. He is alleged to have been involved in the killing of his own biological father named **Andarason Msongole**. The offence was committed on 24<sup>th</sup> November 2016, on a Thursday, at Chizumbi village within Mbozi District in Songwe Region.

During the hearing of the case it was alleged by all the prosecution witnesses that the deceased was in fact killed by one **Sikujua Kibona**, a son of a witch doctor named **Naswila**. It appeared that Baraka, a 19



years boy, when the offence was committed, was having difficulties to sleep whereby he used to feel strangled. He was also not finding a woman to marry as all the women refused his advances. He thus went to Naswila, the witchdoctor with his mother named **Lainess Mwampashe** to see who the culprit behind the misfortunes was. Through the witch doctor's mirror his biological father, the deceased, appeared as the culprit.

As testified by **PW6**, one **Edgar Edom Mwaiswaga**, the justice of peace who administered Baraka's extra judicial statement, Baraka confronted his father who told him that there is nothing he can do to him and cannot kill him unless he cuts his body parts. Baraka then hired the said Sikujua Kibona on payment of T.shs. 100,000/- to kill his father. He paid him an advance of T.shs. 70,000/-. On the fateful date at night, Baraka and Sikujua went to his father's house. Baraka did not enter the house, but went to his own house which was just nearby and waited. Sikujua Kibona entered the deceased's house and cut him with a machete on his head and chopped off his private parts. Thereafter, he went to Baraka's house and notified him that he had finished the job he had sent him to do. Baraka then escorted Sikujua to the bus stand and on the way they threw the deceased's chopped private parts in a trench.

Two days passed until on 26<sup>th</sup> November 2016 when Baraka's biological mother went to the deceased's second wife (**PW1**) named **Salina Namgonji**. She asked him if she had seen their husband, PW2 replied that she had not seen him. Baraka's mother then told PW2 that "we can keep quiet and somebody rots in the house and we fail to explain to the

government." The two women lived in separate nearby houses whereby the deceased used to rotate. He was killed at the first wife's house, but by that time the first wife had left him some time ago and went to live with one of her sons. She thus told PW1 that they should go check their husband. But before that she went to see one **Huzuni Msongole (PW2)**, who is another son of the deceased to his second wife. She met Huzuni in his farm working and asked him if he had seen his father since Wednesday. Huzuni replied that he has not seen him. She then told him that *"you should not be surprised that you continue farming, while your father is already dead."*

The three of them, that is, Huzuni and the deceased's two wives headed to the deceased's house. On arrival they entered inside the house and found the deceased dead and injured on the head and his private parts chopped off. They thus informed the village leadership. In fact Huzuni and Baraka (the accused person) went to get the village chairman named **Fadwel Amos Haonga (PW3)**. PW3 called other leaders being; the hamlet chairperson named Frank Mwashitete and one member of the village authority named Yosefa Mwashihuya. These leaders interrogated all family members present including Baraka.

On being interrogated, Baraka confessed to have hired Sikujua Kibona to kill his father because he was bewitching him not to find a woman to marry. He told them that he and his mother went to see a witch doctor that showed them that his father was bewitching him. They were also informed that a week before the killing of the deceased the witch doctor was brought to that house and she removed some traditional medicines

stored in horns inside the house. Thereafter they arrested Baraka and his mother and informed the police who came and took them to the police station at Vwawa.

At the police station he was interrogated by **PW4, one G1817 DC Makubi** and his caution statement recorded. He was then taken to PW6 for recording his extra judicial statement. The caution statement and extra judicial statements were admitted in evidence as exhibit PE3 and PE4, respectively. In the caution statement as well as in the extra judicial statements taken before PW4 and PW6, respectively, Baraka confessed to have hired the said Sikujua to kill his own father for bewitching him.

In his defence during the hearing of this case, Baraka testified that after knowing that his father was bewitching him, he sent the said Sikujua to beat his father with sticks. He denied to have instructed him on payment of money to go kill his father. He admitted to have gone with Sikujua to his father's house and when Sikujua entered the house he went to his own house which was nearby to wait for him. He said that Sikujua went to his house and told him that he had already beaten his father, but did not tell him that he had killed him. He testified that he realised that his father was killed when his step brother, Huzuni, went and gave him the said information. When asked as to why he did not report the incident after being informed, he replied that he was afraid as he was still a small child by then and was afraid of the police. He prayed for mercy of the court.

In essence I can say that the accused confessed to have engaged the said Sikujua Kibona to harm his father. Whether it was to beat him as he

claims or kill him he had the intention of harming the deceased. All three assessors were of the opinion that the accused is guilty of the offence because he confessed before a number of people and in this court during the hearing.

In his defence, like I pointed out earlier, the accused said that he did not send Sikujua to kill the deceased but to only beat him up. His testimony is however contradicted by the caution statement he gave before PW4 and the extra-judicial statement he gave before PW6. As pointed out earlier, in both statements he confessed to have hired the said Sikujua to kill his father because he was bewitching him.

When the caution statement was tendered, Mr. Faraja Msuya, learned counsel for the accused objected its admission on the ground that its genuineness is in question for containing altered dates. PW4 testified that when he started recording it he thought the date was 25<sup>th</sup> and thus recorded it as such. However, later while he was still recording the statement he remembered that the date was 26<sup>th</sup> and thus made changes to it. His testimony regarding the dates was corroborated by **PW5**, one **Barton Ndekile Jengele**, who testified to have told him that the date was 26<sup>th</sup> and witnessed him making the correction accordingly. PW5 was an interpreter from Kinyiha language to Kiswahili language and vice versa because by then Baraka did not speak or understand Kiswahili language.

The court admitted the caution statement with caution so that it considers it during composition of judgment. I have considered the concerns raised

by Mr. Msuya and I find that the defence has in fact not disputed that the caution statement was recorded on 26<sup>th</sup> November 2016, the date appearing on the document. I therefore find the caution statement worthy of consideration by this court.

Apart from the caution statement, the accused also confessed through extra-judicial statement, which was admitted without any objection from the defence side. He as well confessed before the village leaders including PW3 that he hired the said Sikujua Kibona to kill his father because he bewitched him. The accused's confession is thus oral and written which are both recognised under the law. See: **Saganda Saganda Kasanzu v. The Republic**, Criminal Appeal No. 53 of 2019 (18<sup>th</sup> June 2020-CAT at Dodoma, unreported) and **Patrick Sanga v. Republic**, Criminal Appeal No. 213 of 2008 (CAT, unreported) in which the Court of Appeal expounded on the applicability of section 3 (1) of the Evidence Act, Cap 6. R.E. 2019 on oral and written confession.

In consideration of the confession made by the accused to the village leaders, in his caution statement and extra-judicial statement, I am of the finding that the accused hired the said Sikujua Kibona to kill his father. The law is settled to the effect that the best witness in a crime is the accused who freely confesses his guilt. See: **Jacob Asegelile Kakune v. DPP**, Criminal Appeal No. 178 of 2017 (page 14); **Ibrahimu Ibrahimu Dawa v. Republic**, Criminal Appeal No. 260 of 2016 (unreported) and **Mohamed Haruna Mtupeni and Another v. Republic**, Criminal Appeal No. 259 of 2007 (unreported). Having hired a person to kill he is also under the law a principal offender and liable in the same degree as the one who

committed the actual act of killing. I find his defence that he had not instructed the said Sikujua to kill his father, but only to beat him with sticks an afterthought.

However, on the other hand, apart from the observation I have made above, I have also considered the circumstances under which the offence was committed and the state in which the accused was in. It should be recalled that the accused committed the offence while he was 19 years old. He was therefore still a teenager though had attained the age of majority set under the laws in this country. I see that the accused must have gone through a lot of anguish knowing that he could not marry as he would wish or sleep well because his father was bewitching him. He testified in court that he used to feel strangled at night and could not sleep and his father admitted to him that he was the one behind those acts. This must have put the accused in a state whereby he could not think rationally on the consequences of his actions. In the premises I find it just to convict the accused on a lesser offence of manslaughter of his biological father Andarason Msongole.

Dated at Mbozi on this 12<sup>th</sup> day of May 2021.

  
**L. M. MONGELLA**  
**JUDGE**

### CONVICTION

Given the above findings and considerations, this court convicts the accused person **BARAKA MSONGOLE** for the offence of **Manslaughter contrary to section 195 of the Penal Code, Cap 16 R.E. 2002** read together with **sections 235 (1) and 300 (2) of the Criminal Procedure Act, Cap 20 R.E. 2019** for having killed **ANDARASON MSONGOLE** on 24<sup>th</sup> November 2016 at Chizumbwi Village, Mbozi district.

  
**L. M. MONGELLA**

**JUDGE**

**12/05/2012**

### SENTENCE

I have considered the aggravating and mitigating factors from the prosecution and the defence sides. The prosecution presented that there is no previous record on conviction on the accused. They though urged the court to issue severe punishment as such killings have become rampant in the society. On the other hand, the defence side has urged the court to consider the age of the accused while committing the offence whereby he had attained 19 years and uneducated at all, thus incapable of making rational decisions. They also urged the court to consider the time of 6 years the accused had spent in custody and is already remorseful of his actions.

Apart from the mitigating factors, the court has also considered the manner in which the offence was committed whereby the accused hired someone to kill his own father on witchcraft allegations. As argued by the

learned state attorney, Mr. Njau, such killings have become rampant in the society and severe punishment ought to be given to deter such actions.

In consideration of all these factors, this court sentences the accused person **BARAKA MSONGOLE to fifteen (15) years imprisonment.**

  
**L. M. MONGELLA**

**JUDGE**

**12/05/2021**

**Court:** Right of appeal to the Court of Appeal against the decision has been duly explained to the accused person.

  
**L. M. MONGELLA**

**JUDGE**

**12/05/2021**

**Court:** Judgement delivered at Mbozi in open court on this 12<sup>th</sup> day of May 2021 in the presence of the accused person, Mr. Faraja Msuya, learned advocate for the accused person and Mr. Innocent Njau, learned State Attorney for the Republic.

  
**L. M. MONGELLA**

**JUDGE**

