

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(SUMBAWANGA DISTRICT REGISTRY)**

**AT MPANDA**

**CRIMINAL SESSIONS CASE NO. 13 OF 2018**

(PI No. 5 of 2015 Mpanda District Court)

**THE REPUBLIC**

**VERSUS**

**MASANJA S/O KARUME @ MOHAMED ..... 1<sup>st</sup> ACCUSED PERSON**

**SWILA S/O MANYAMA @ SHIJA ..... 2<sup>nd</sup> ACCUSED PERSON**

30 & 30/09/2021

**RULING**

**Nkwabi, J.:**

In this case, the remaining accused person Swila s/o Manyama @ Shija was arraigned before the subordinate court for committal proceeding on 20/02/2015. The matter commenced on 06/02/2015 with one accused person who was however withdrawn during this trial.

After a protracted investigation, the information was filed in the High Court on 14/03/2018, that is three years after his arraignment in court. The accused person was thereafter committed for trial to the High Court on 17/04/2018. The plea taking and preliminary hearing were commendably

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taken after two months after the committal order, on 22/06/2018 which enabled the trial to commence on 21/09/2019.

After hearing three witnesses, the court adjourned the matter on 21/10/2019 for further hearing on 28/10/2019. However, on the next hearing day, the court was informed that the prosecution had failed to get their remaining witnesses and prayed for adjournment till next session which was granted.

Five witnesses were heard who are PC Fadhili (PW1) who went to the scene of offence on 23/01/2015 where he found Richard Madirisha had indeed been killed and some of his body parts being boiled in a cooking pot. He drew the sketch map of scene of offence. On 15/02/2015 they found the accused person at the police station Kaliua in Tabora and brought him to Mpanda. PW2 SP Deogratius the then OC-CID Kaliua District testified that they arrested the accused person when he was in his paddy farm.

PW3 DC Neema recorded the caution statement of the accused person. The same was admitted as Exhibit P3 amid objection from Mr. Mwakyusa on the ground that the accused person did not record it as he did not know Kiswahili.

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PW4 James the medical doctor conducted the post mortem examination report (exhibit P1) which was admitted during preliminary hearing. He said the deceased died as a result of excessive bleeding.

PW5 Robert, a police officer tendered a statement of Meclina Moses which was admitted as exhibit P4 in which she said she did not identify the culprit and had no suspicion to anyone. But in the additional statement she said the accused person had a grudge with the deceased on allegation that the deceased snatched her from him and that the accused was arrested in Kaliua. That is the gist of the evidence on the prosecution side.

In this criminal session, the case was fixed for further hearing on 17/09/2021. The evidence available on the prosecution is such that it cannot ground conviction. The caution statement of the accused person was retracted, to ground conviction, it has to be corroborated as a matter of practice and prudence. Apart from that the police and prosecution did not heed to the advice of the Court of Appeal in **Bushiri Mashaka and 3 others v. R. Criminal Appeal no. 45 of 1991** (Unreported) at DSM:

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*Those charged with the duty of investigating criminal cases are reminded once again that upon an accused person intimating to make a confession, the safest course to adopt is to have them repeat his statement before a Justice of Peace.*

The record of this case shows that the accused person was sent to the justice of peace to have his extra-judicial statement recorded but the justice of peace was not called to testify and the extra-judicial statement was not tendered in evidence.

As to the statement of the witness who could not be found, the same is unreliable as nowhere this witness alleges to have seen the culprit commit the offence. As to the purported grudges, they merely cast grave suspicion on the accused person but suspicion however grave is not sufficient to enter a conviction as per **G. Ntinda v. Republic Criminal Appeal No. 17 of 1991** (Unreported) (CAT) (MBEYA):

*"There was, we agree, a lot of suspicion against the appellant as the person who killed the deceased, but, as the trial judge will no doubt agree with us on reflection, suspicion no matter how grave cannot be the basis of a conviction in a criminal charge."*

Since there is no enough evidence to ground conviction if the accused person chooses to keep quiet in his defence, there is guidance in **Republic v Makuzi Zaid and Another [1969] HCD no 249**

Georges CJ Quoting Bamaulal P. Bhat v. Republic [1957] EA 332

*"The case to be prima facie case must be such that a reasonable tribunal properly directing its mind to the law and the evidence can convict if no explanation is offered by the defence."*

I rule that the prosecution has failed to establish a prima facie case against the accused person and is accordingly acquitted under section 293(1) of the Criminal Procedure Act, Cap 20 R.E. 2019.

It is so ordered



A handwritten signature in blue ink, appearing to read 'J. F. Nkwabi'.

**J. F. Nkwabi**  
**Judge**  
**30/09/2021**