

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**ORIGINAL JURISDICTION**

**CRIMINAL SESSIONS CASE NO. 14 OF 2020**

**THE REPUBLIC**

**VERSUS**

**MANENO EMMANUEL NYOKA**

**JUDGMENT**

21.10.2021 & 05.11.2021

**U. E. Madeha, J.**

The accused person namely Maneno s/o Emmanuel Nyoka is charged with the offence of murder c/s 196 and 197 of the Penal Code [Cap.16 R.E.2019]. The incident happened on 18<sup>th</sup> June 2018 at Matimila village within Songea District in Ruvuma Region.

For easy reference, the facts of this case are briefly narrated as follows: It was alleged that on the material date, on June 18, 2018, at Matimila village

within Songea District in Ruvuma Region. The accused person did murder one Imani Venant Nyoka @ Punga. The accused denied the charge and, hence, In a bid to prove the charges against the accused person, the prosecution called seven witnesses, and produced five exhibits, namely, post-mortem examination reports, a sketch map of the scene of the crime, two hoes, a certificate of seizure and the chain of custody records. The evidence testified by prosecution witnesses can be briefly summarised as follows:

The first prosecution was **Mathayo Chanangula (PW1)** The doctor, who was a doctor, testified that the police officer called and told him to investigate the death of the deceased, which was the body of Imani Venant Nyoka. The doctor said that he saw on the head of the deceased a large wound which led to a skull fracture which caused excessive bleeding, thereby causing the death of the deceased.

**PW2 (Inspector Malya Bureki)** in his evidence, he testified that he drew a sketch map of the scene of the crime. While still at the scene of the crime, the mob appeared with the one person who was suspected of killing the deceased, who happened to be the accused person. PW2 tendered two hoes that had been seized at the scene, which were admitted into evidence and

marked as exhibit **P2**. The certificate of seizure was admitted in evidence as exhibit **P3.G.3650 PC Triphone PW3**, in his evidence, he testified that he was exhibit keeper on 18.6.2018 and that he received two hoes. He told the court that he registered the exhibits and wrote down the exhibit number in the exhibit register, then preserved them. He continued to store the exhibits in the store room until the date of giving evidence in court, which was on October 13, 2021, in the morning, when PW2 came up to collect the exhibits.

On the other hand, **PW4: Catheline Nyoka**, the woman, who is the sister of the deceased and the accused person, testified that while at Matimila village, she heard a voice in the forest. She said that, she followed the noise and went to where the sound was coming from. Then I saw the accused fleeing from the forest. He looked at PW4 with a keen eye and ran to the bush. After seeing the accused fleeing from the bush for no apparent reason, PW4 asked the accused, "What is the matter?" But the accused did not stop running; he continued to search for what was there. She walked around the forest and looked at the place where the accused had appeared. She saw the man lying down. It was five steps from the place where the accused had appeared. Jalia was seen passing near the scene. PW4, called Jalia, asked



him to go to the place where the body of the deceased lay. They went to look at the deceased body. PW5 found that the man lying on the ground was already dead and had a wound on his head. They also saw two hoes, one long and the other short. PW4 identified two hoes that were taken from the scene of the crime. Police then arrived at the scene. Thereafter, after a while, they saw the suspect had been arrested by the public.

The fifth prosecution witness (**PW5**) was **Jalia Mohamedi**, who was a resident of Matimila ward. In his evidence, PW5 testified that he saw the accused standing in a court dock. He recalled that on 18.6.2018 at noon, he was on his way to Matimila village from Songea town to take charcoal. He was called by PW4 and when they arrived at the scene, they saw the deceased lying face down. He found that the person was already dead. PW4 advised PW5 to report the matter to the village chairman, and that's what he did.

**PW6: Isaya Nchimbi** who is the Matimila Ward Executive Officer of Songea District, in his evidence, he testified that on the material date, he was at his home when he received a call from the village chairman. The chairman wanted him to go to the scene of the incident and see a man who had died. He prepared three motorcycles and went to the scene of the crime with other

villagers. They saw the deceased body lying on the ground and questioned the villagers, who told them that, the deceased had been killed by the accused person and called the police, who arrived at the scene of the crime. They found two hoes along with the charcoal oven. PW4 told them that the accused killed the deceased. The citizens continued to search for the accused and brought him to the scene. They draw a sketch map of the scene. Then police officer left with the accused, the two hoes and the deceased body. They returned to Songea District main police station. **PW7: Assistant inspector Meshaki Shedrack**, who was working at Songea main police station was among those who went to the scene of the event. Militiamen were directed to search for the accused. They saw the deceased body, which was lying on its face. There was a charcoal oven beside the deceased body. After drawing the sketch map of the scene of the crime, they prepared the certificate of seizure. While they were there, the accused was brought to the scene. Who was admitted to the hospital because in due process of arresting him, he was beaten by the citizens. The witness tendered the chain of custody record, which was received as part of the evidence and marked as exhibit P5. The owner of the oven charcoal was a deceased. PW7 told the court further that, the accused used to make a charcoal oven together with

the deceased. The two hoes have got blood stains. He tendered the sketch map of the scene of the crime, which was received in evidence as exhibit P4. PW7 also tendered the chain of custody records which were admitted and received in evidence as exhibit P5.

In their defence, the witness, namely **Maneno Emanuel Nyoka**, referred to as **DW1**, (the accused) said that he lives in prison as an accused person. The reason for living there is that he was accused and is charged with the murder of his younger brother, Imani Venant Nyoka. On August 8, 2018, he remembers that he was at the farm in Matimila village. He averred further that he was present at the scene when he saw the deceased burning charcoal. The accused greeted the deceased safely, and the deceased replied safely. The deceased did not want the accused to go to the area where the charcoal burns, but the accused was forced to go there. As a result, the deceased hit the accused on the forehead with a piece of board. The accused started bleeding. After seeing that he had been beaten by the deceased, he started running and then met PW4 a few steps away.

I have considered the evidence from both sides, the law and the opinions of three assessors. Having briefly narrated the facts, evidence, and submissions from both parties above, let me now at this juncture address and answer the



key issues hereunder. In my opinion, in the case at hand, this court should primarily focus on determining the following key issues:

1. Whether the accused person is responsible for the death of the deceased person and, if so, whether there was malice or not.
2. Whether the prosecution has proven the accused's case beyond a reasonable doubt.

Whether the accused person is responsible for the death of the deceased person and, if so, whether there was malice or not. The prosecution's side mainly relied on the testimony of one person, that is, PW4, who saw the accused approaching the scene. This witness heard a noise from the bush where the deceased was burning charcoal. She began to track where the noises were coming from, then she found the accused coming out very fast and running towards the other side. He asked the accused where he was and why he was running. The accused looked at him with a sharp eye, then continued to run. PW4 had to trace the place where the accused arrived. Just a few steps away, she found the body lying down. She went to look for help and then saw PW5 coming. She called PW5. When PW5 responded, she asked him to go to the scene to look at the body. They saw a body with wounds on the head that were caused by being hit by a sharp object. The

prosecution presented two hoes as exhibit P1 collectively, a sketch map of the scene of crime was received in evidence as exhibit P3, a certificate of seizure exhibit P4, and a chain of custody record exhibit P5. After the evidence on the prosecution's side, I began to think that the accused might be innocent because apart from other witnesses testified before this court only PW4 saw the accused fleeing himself from the scene. If the defence denied the prosecutor's claim, then this case will be difficult to prove beyond reasonable doubt. The court found that, the accused have the case to answer and gave him the rights to defend his case and admitted that, he was present at the scene, that he met PW4 as he was running away, he saw the deceased in his charcoal burning activities. The deceased did not want him to go to the area where the charcoal burns. The accused went to the place, then the deceased hit him with a piece of board in his forehead. When he met PW4, he was running towards the field. Later, PW4 asked him what is the matter. With the above evidence between the prosecution side and the defence side, it appears that the prosecution has proved in this case that the accused is the one who killed the deceased. Only one witness confirms that she saw the accused coming from the scene of the crime, fleeing. Both the deceased and the accused were burning charcoal together. That means the accused



person was the last person to be with the deceased shortly before he was found lying dead. Two hoes found at the scene showed that the deceased was beaten by the accused because they were together. It seems that the accused is well aware of how the deceased was killed because he was with him, and the accused said that he was not beaten by the villagers, but that the deceased hit him on the forehead. So, it appears that the accused and the deceased had a quarrel. In his defence, the accused stated clearly that he had been beaten by the deceased. This is proved by PW4, Catheline Nyoka, who saw the accused leave the scene running. This evidence is directly connected with the evidence of the accused, who openly admitted that he went to the scene and greeted the deceased. The deceased did not want the accused to remain in his field, so he beat the accused with a piece of board on his forehead. PW4 found the accused running and, a few steps away, saw the body of his late brother asleep. It is a cardinal rule that no number of witnesses is required to prove a prosecution case, considering the case of **Yohanis Msigwa Versus Republic** (1990) TLR, which provides that:

*"As provided under section 143 of the Evidence Act 1967,  
no particular number of witnesses is required for the proof*

*of any fact. What is important is the witness's opportunity to see what he/she claimed to have seen, and his or her credibility."*

Therefore, evidence of PW1 and DW1 is consistent because the accused was found with PW4 fleeing a few steps from where the deceased's body was lying. This is shocking because when the accused met his sister PW4, he never stopped; he was running away. The evidence by the prosecution side forms parties of the same transaction. Therefore, it is relevant facts and meets the requirements of section 8 up to 10 of the Evidence Act Cap 6 (R.E. 2019), which states *inter alia*:

*"8. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant whether they occurred at the same time and place or at different times and places.*

*9. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue or which or constitute the state of things under which they happened,*

*or which afforded an opportunity for their occurrence or transactions, are relevant.*

*10.-(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact."*

The accused himself admits in his defence that he met the deceased, and the deceased did not want him to go to his farm. When PW4 was monitoring the noise coming from the area, she found a man lying unconsciously, so this evidence is direct, and it leads to the conclusion that the accused was the one who killed the deceased, because even though he was wounded and hospitalised at Songea Reginal Hospital, there is corroboration of evidence between **PW4** and the evidence of **DWI**. To put more emphasis on this, let's look at the case of **Lusabanya Siyantemi Versus Republic** (1980) TRL. 175:

*"It is the rule of practise, not law, that corroboration is required of the evidence of a single witness made under unfavourable conditions: but the rule does not preclude a conviction of the evidence of a single witness if the court is fully satisfied that the witness is telling the truth."*



If the issue is affirmative regarding the accused, then whether the killing amounted to murder. It appears the death of the deceased occurred in the course of the fight because the accused claimed to have been beaten by the deceased using a piece of board on his forehead. Upon arrival at the police station, the accused was taken to the hospital, where he was admitted because he had been injured by the citizens. The accused himself openly admits that he was not beaten by the public but was beaten by the deceased using a flat board and causing bleeding on his forehead because the deceased did not want the accused to go to his farm. So, it shows that, they had a quarrel. On the other hand, the Republic, did not ask the accused any questions during the cross examination. Here I see a failure to cross-examine a witness as a matter of principle. Thereafter, there are many authorities in relation to a party who fails to cross-examine the witness on a certain matter is deemed to have accepted that matter and will be stopped from asking the trial court to disbelieve what the witness said. This issue has been raised in the cases of **Nyerere Nyague Versus Republic**, Criminal Appeal No. 67/2010 (Arusha, May 2012), **Cyprian A. Kabogoyo Versus Republic**, Criminal Appeal No. 88/1992, **Paulo Yusuph Nchia Versus National**

**Executive Secretary, CCM & Another**, Civil appeal No. 85 of 2005 (both unreported).

The other issue to be determined is whether the prosecution has proved the case against the accused beyond reasonable doubt to indicate that the accused person is responsible for the murder of the deceased. The general rule in criminal cases is that the burden of proof rests with the prosecution. Usually in the case of **Ali Ahmed Saleh Amgara Versus Republic** [1959] EA 654. The prosecution evidence shows that they have discharged their duty to prove the case beyond a reasonable doubt that the accused caused the deceased death without intention. The sequence of events, until the body of the deceased was discovered gives a clear picture that it was actually the accused person who caused the death of the deceased.

Now, having considered and analysed the assessors' opinion, I differ with them since the evidence is clear that the accused had no malice. As I observed earlier, my assessors had in mind that the accused had malice and was responsible for murder. I differ with all the assessors in their opinion that the accused had malice, as in my considered view, the accused caused the death of the deceased without malice. My main reason is based on the

analysis of the evidence and the circumstances that led to the deceased's death.

Unlike the assessors, I say the accused person did unintentionally cause the death of the deceased, hence committed an offence of manslaughter contrary to section 195 of the Penal Code Cap 16 [R.E.2002]. After indicating that the first ingredient of the offence, namely the overt act, has been established, I have already explained that the evidence has established that the accused persons had no intention whatsoever of killing the deceased.

A combination of all these events considered, I see no other conclusion other than that the accused person did not have the intention of committing the unlawful act of killing the deceased. I am of the considered view, and find that the second constituent of the offence of murder, namely, mens rea, has not been established since the ingredients of malice aforethought have not been established. See **Edwin S/O Mbunda Seusi Versus Republic**, Criminal Appeal No. 468 of 2007 at Iringa. I am mindful of the requirement provisions of Section 200 of the Penal Code, Cap. 16 [R.E 2019] on malice aforethought, which has not been established in our case at hand. Indeed, there is no evidence on record to establish malice aforethought. In light of the above, I am satisfied that the accused person is guilty of manslaughter.



Therefore, I hereby convict the accused person for the offence of manslaughter c/s 195 of the Penal Code Cap. 16 [R.E 2019].

**DATED** at **SONGEA** this 5<sup>th</sup> day of November, 2021



A handwritten signature in blue ink, appearing to read "Madeha", is written over a horizontal dotted line.

**U. E. MADEHA**  
**Judge**  
**05/11/2021**

DATE: 05/11/2021

Coram: Madeha. J

For the republic: Hamimu Nkoleye, SSA, Learned advocate.

Mr. Lazaro Simba

Accused: Present

Enterpreter: Monica Lingowe English into Swahili Vise Versa

Assessors:

BAHATI ALYY MBANO – 55 YRS

JOHARI KASONGORO – 54 YRS

GEORGE AUGUSTINO – 30 YRS

**Court:** Assessors recalled.

Mr. Hamimu Nkoleye the senior State Attorney learned advocate. We are ready for the judgement.

Mr. Lazaro Simba the accused learned advocate: We are ready for Judgment.

**COURT:** Judgement read over in the presence of accused person, Mr. Lazaro Simba the accused learned advocate and Mr. Hamimu Nkoleye learned Senior State Attorney.

### **AGGRAVATING FACTORS:**

Mr. Hamimu Nkoleye the Senior State Attorney. We have no previous records of the accused person, but we request that the accused be punished severely so that these acts do not recur in society. We count one person as having died. I pray that the accused will be severely punished for the act he committed.

### **MITIGATION**

MR. Lazaro Simba for the accused's learned advocate: for the following reasons. We ask the court to reduce the sentence. The first reason is the age of the accused. At the time the accused committed the offence, he was 20 years old and still very young. His manpower as a younger generation is still needed for the community around him, for family and government in various occupations. This offence was committed while the accused was defending himself. The accused is the first offender. Another reason the accused was not a troublemaker that he admitted to committing this offence in his testimony from the time he was at the police station until here in court. The accused was arrested on 18.6.2018 and has been remanded for a period of three and a half years. I request the court to look at the reasons stated above. The accused promised not to repeat the offence again. He has a family that depends on him. I ask the court to reduce the punishment.

### **SENTENCE:**

I have considered that the accused is the first offender and he has a family that depends on him. I have thought about the offence the accused committed, which is manslaughter, C/S 195 and 198 of the Penal Code Cap



16 (R.E. 2019). I have observed that the deceased also had the right to life, a right which was taken by the accused. In terms of section 198 of the Penal Code Cap. 16 [R.E 2019], the accused person is sentenced to ten years, which will be calculated by the prison officer upon his arrival on the day of his arrest at the police station on 18.6.2018. Order accordingly.



A handwritten signature in blue ink, appearing to read "Madeha", is written over a horizontal dotted line.

**U. E. MADEHA**  
Judge  
05/11/2021

**Order:** Right of appeal explained.



A handwritten signature in blue ink, appearing to read "Madeha", is written over a horizontal dotted line.

**U. E. MADEHA**  
Judge  
05/11/2021