

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOKA DISTRICT REGISTRY
AT NGARA
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE NO. 77 OF 2021

REPUBLIC
VERSUS
MSAFIRI KAZIRO @ JULIUS

JUDGMENT

Date of Last Order: 19.05.2022

Date of Ruling: 14.06.2022

A.E. Mwipopo, J.

The accused person namely Msafiri Kaziro @ Julius is charged for the offence of murder contrary to section 196 and 197 of the Penal Code, Cap. 16, R.E. 2019. It was alleged that on the 06th day of September, 2020 at Nyaruhanga – Katitiza Village within Ngara District in Kagera Region the accused person maliciously he killed one Melania Julius @ Kaziro. The accused person pleaded not guilty to the offence he was charged with. The Republic summoned 7 witnesses and produced 2 exhibits and made their case against the accused person. The accused person defended himself by testifying on oath without calling another witness to his defense.

Briefly, the evidence adduced by witnesses in this case were as follows; I will start with Jenetha Julius – PW6, who is accused second wife. PW6 choose to testify after she was informed under section 130 (1) of the Evidence Act, Cap. 6, R.E. 2019, that she is competent but not compelled to testify against her husband. She said in he testimony that she is the second wife of the accused person and the deceased is the first wife of the accused. That, on 06.09.2020, around 17:00 hours in the evening the accused and deceased left two of deceased children to her house and they told her that they are heading to the center of Kititiza Village to buy household goods. The accused and the deceased went to Kititiza Centre and they did not return to PW6's house to pick the children on that day. On the following day the accused visited PW6 at her house around 10:00 hours while drunk. PW6 asked him where the deceased is, but the accused did not answer the question and left heading toward the direction of his house he was living with the deceased. Later on the PW6 followed them at their house and found the house was closed. She became suspicious and informed Lucia Alex – PW1 on 08.09.2020 about the disappearance of accused and the deceased person. PW6 and PW1 decided to report the incident to the Village Executive Officer (VEO) who live at Kititiza Centre.

They went to the house of Village Executive Officer at Kititiza Center and they found Diana Alex – PW2 who is the wife of VEO as the VEO was absent.

They told PW2 about the disappearance of accused and the deceased. PW2 told them to report the incident on the following day if still the accused and deceased were not found yet. On the following day PW1 and PW6 went back to report to PW2 whom they found has already informed VEO. VEO called Nyaruhanga Hamlet Chairman namely Obed Fredrick Emmanuel – PW3 and asked him to go and open the accused house. On 09.09.2020 they went to the house the accused was living with the deceased, opened and entered inside, but they found nobody. They decided to start the searching for accused and deceased on the following day which is on 10.09.2020. On the 11.09.2020, the deceased body was found in the bushes at Kititiza Hamlet within Kititiza Village.

When cross examined by defense counsel, PW6 said that the accused person did not love his wives as he was beating them without reason. She said she never reported about the incident of being beaten by the accused person to anybody. Her relationship with the deceased was good relationship. PW6 said nobody forced her to come to testify in court. She said she do not know who killed the deceased as she was not present at the scene. She is not sure of the name of the area where the deceased body was found. The Doctor who examined deceased body said that the cause of death of the deceased is strangulation and that the deceased was injured on her private parts. There is possibility that the deceased was raped since her private parts was said to have

injuries. The distance from her house to the house of the deceased is approximately 15 minutes. PW6 added that currently she do not love the accused person and now she is residing at her parents' house. If the accused returns, she is not ready to live with him.

The testimony of Lucia Alex – PW1 is similar to that of PW6. She said that PW6 informed her on 08.09.2020 that the accused and deceased has vanished. That. the last time PW6 saw deceased was on 06.09.2020 and the last time she saw accused was on 07.09.2020. They went together to report the incident to VEO but he was absent and they reported to PW2 who VEO wife and the search for accused and deceased commenced. It was on 11.09.2020 when the deceased body was found.

When cross examined, PW1 stated that accused is her blood brother. On 06.09.2020 she saw accused and deceased heading toward the center of Kititiza Village. PW6 never told her who killed the deceased. The act of accused and deceased to walk together going to Kititza centre proves that they love each other. It is normal for husband and wife to quarrel but their love relationship continue as usual. PW6 and the deceased were friends and they love each other. Both accused and deceased used to drink alcohol. It is normal for a person who drink alcohol to get drunk. There is possibility for a drunk person to get lost.

Diana Alex – PW2 testimony was that she is VEO's wife residing at Kititiza

Centre. That, PW1 and PW6 visited her house for the purpose of reporting to the VEO that deceased is missing. Deceased is her cousin. As her husband was absent, PW2 told them to return on the next day to report if still they did not find them. She then called her husband namely Alex Mutengela (Village Executive Officer) and give him information about the incident. Village Executive Officer told Hamlet Chairman namely Obed Fredrick - PW3 about the incident. Then, the search for accused and deceased started on 10.09.2020. On 11.09.2020 the deceased body was found. There was no information about the accused. The Police were informed and they came to the scene of crime. Thereafter burial procedures proceeded.

PW2 said that the deceased was born at Nyamohanga Village within Bukirilo Ward in Ngara District and they don't have any relative who live at Muganza Village. The deceased was married to the accused person and they had 4 Children together. Deceased used to have some quarrels with the accused who was alleging she is having affairs with other men.

When cross examined PW2 said that the deceased and accused were able to settle the conflict by themselves whenever the conflict arises. They never took their conflict to be mediated by anybody. The act of accused and deceased to go together to the Centre of Kititiza prove that they love each other. Both of them were drinking alcohol. If a person drink a lot of alcohol, he/she will get drunk.

She said her father is Felician Kisabira and deceased father is known as Thomas Nzigo. She said she never recorded additional statement at the police. The conversation about having a relative who is residing at Muganza was done by police officer through phone call. She told the police that they have no relative at Muganza Village. She did not sign the addition statement recorded by the police as the conversation was through phone.

The third prosecution witness namely Obed Fredrick Emmanuel – PW3 testified that he is a Chairman of Nyaruhanga Hamlet in Kititiza Village. That, on 09/09/2020 around 19:30 hours he received a call from the Village Executive Officer namely Alex Nduhuhu Musa informing him that the accused might have killed his wife thus he has to search accused house to see if it is true or not. In the morning of the following day he went to search at accused house together with ten cell leaders. They found the house was closed. They opened the house after calling neighbors. They found nothing inside the house and they informed the Village Executive Officer. In the next morning, PW3 and other ten cell leaders started the search. It was around 09:30 hours when the deceased body was found in the bushes of uncultivated farm of Venus Nyawenda. The body has started to decompose. The police were informed about the incident and the police came together with Doctor who examined the deceased body.

PW3 said he know deceased as the wife of accused person and they were

living in Nyarunga Hamlet, the hamlet which PW3 is the chairman. Accused and the deceased used to fight on accusation that when the deceased is drunk she was having sexual affair with other men. He identified accused person as Msafiri Julius Kaziro.

He said in cross examination that he knew about the conflict between the accused and the deceased from neighbors and also one day the deceased told him that she sustained injuries from accused beatings. The accused and deceased loved each other and they were living together until the deceased died. Nobody reported to him about the conflict between the accused and the deceased.

The prosecution called Richard Makuba – PW4 as their fourth witness. PW4 testified that he is the resident of Mgowamazi Hamlet in Muganza Village. That he is ten cell leader (balози) of Nyakivomo branch/ area within Mgowamazi Hamlet. He said on 11.09.2020 around evening hours the Secretary of the branch came and told him that they have arrested somebody in the area and they suspected him to be a criminal. They brought him to his house so that the person could sleep there and in the next morning he has to interview him. That person slept in his house and in the morning he asked that person where he was going at the time he was arrested. The person told him that he was coming from Mukiyoba Village and was going to Burundi. The person said he was sad because

as he heard his wife might be dead. The person told PW4 that it was on Sunday when the person went together with his wife at Kititiza Centre. He saw somebody giving his wife beer and meat. Seeing the incident, that person decided to go to his house to sleep and left his wife at Kititiza Center. In the morning, one women told him that in the night they heard somebody crying and that person voice resemble that of his wife. That he has to look if her wife is fine. The person said he told that woman that he is afraid that they might arrest him and decided to leave.

PW4 asked that person why he did not inform the leadership about the incident so he could get same help, the person answered that he is afraid they will apprehend him. PW4 got feelings that the person might be responsible for murdering his wife as his explanation was not sufficient. PW4 took a rope and tied hands of that person and he informed the Secretary of the Hamlet and they agreed to take that person to Mkalinzi Police Post.

PW4 said that he know that person for almost three years as the person was living at Kititiza Village. He said he have seen him several times and he is a "Kwamuyanga". PW4 said that there is no relative of that person who was living at Muganza.

In cross examination, PW4 said that he know the accused person very well for almost three years as the accused person is married to PW4's elder brother.

He said that the person who slept at his home and he apprehended is the accused person. He said that he recorded his statement at the police. In the said statement, PW4 said he was told by accused person that he went with the deceased at Kititiza Centre on Sunday. While at the center, the deceased insulted the accused person as she was drinking beer with men who bought her beer and the accused person decided to leave and he went to sleep with his children. Accused also told PW4 that in the morning he was told by a woman who is their neighbor that she heard his wife screaming at night and he has to go and see if she is fine. After the interviewed, PW4 said he did not find anything accused has done in his area. From Kititiza Village to Muganza Village is approximately 45 minutes walking distance. PW4 said he did not had any information about what transpired at Kititiza Village. That all what he said, he was told by the accused.

The prosecution called Benedictor Binohela Igulu – PW5 as their fifth witness. PW5 testified that he is a Medical Doctor working at Mulusagamba Health Centre. That, on 11.09.2020 he received a phone call from Officer Commanding Station (OCS) of Mulusagamba Police Station that he had to conduct Post Mortem Examination at Kititiza Village. He went in the company of police officers to Kititiza Village and he examined the deceased body. The deceased body has already started to decompose and he approximated that the death occurred four days back. From his examination, the cause of death was

manual strangulation. He recorded his statement to the police and filled Report on Post Mortem Examination. The witness tendered the Report of Post Mortem Examination which was admitted by the Court as exhibit P2. PW5 read the content of Exhibit P2 to the accused person and the Court.

When cross examined, PW5 said that he was told that the deceased body was at Nyaruhanga Hamlet in Kititiza Village. The deceased pants and clothes were on top of the deceased body as the deceased body was naked. He examined the deceased body if it was raped, but it was not possible to get any results since the deceased body has already started to decompose. He said that the test if deceased was raped has to be done within 48 hours from the time the incident occurred in order to get the results.

The last prosecution witness is the police officer with No. G. 1080 D/CPL Philipo - PW7. He said in his testimony that he is a police officer working in the Criminal Investigation Department (CID) and he has 9 years' experience. On 11/09/2020 at 11:00hrs he was at Mulusagamba Police station and he received an order from OCS to go to Kititiza village to inspect the scene of crime where one person was killed. He went to Nyaruhanga Hamlet in Kititiza Village with the team of investigators which includes a Doctor. The deceased body was found in the bushes. The body was in decomposition state covered with maggots (wadudu). He learned that the name of the deceased was Melania.

The doctor examined the deceased body and said that the deceased was killed. He drafted the sketch map of the scene of the crime and recorded some of witness statements. The person suspected to committed the crime is the deceased husband who is the accused person. They looked for him but he was not present. One person secretly informed PW7 that the suspect has already escaped and he was heading to Burundi. Later on he was told that accused was at Mguwamazi Hamlet which is in another ward. On 12.09.2020 the accused person was arrested by the people from Mguwamazi Hamlet. The investigation shows that accused and deceased had quarrels. The accused person was alleging that the deceased was having sexual affairs with other men.

In cross examination, PW7 said that he was told the place where the body was found is at Nyaruhanga Hamlet within Kititiza village. From the place where people houses where located to the place where the body was found it is about 2 km. The accused person denied to commit the offence but the circumstances of the case shows that he was the one responsible for the death of the deceased. There is no direct evidence which shows that the accused killed the deceased. It is the evidence of the suspicion and circumstance of the case basing on the history that the deceased had a bad relationship with the accused as he was accusing her of having sexual affairs with other men. PW7 admitted that he was of the opinion that there is no sufficient evidence in this case against the accused

person.

In re-examination PW7 said that he don't know the number of hamlets of Kititiza village. The accused person denied to commit the offence but circumstances reveal that the accused person did not report anywhere about disappearance of the deceased person and decided to run away.

The Court did find the prosecution has made the case against the accused person and the accused was informed of his right to defense. Accused person choose to defend himself by testify on oath without calling any witness on his defense. The accused person who testified as DW1 said in his testimony that his name is Msafiri Kaziro @ Julius and he resides at Nyaruhanga Hamlet in Kititiza Village. On 06/09/2020 around evening hours he went to Kititiza Centre accompanied with his wife who is the deceased in this case. There at Kititiza Centre they talked to relatives and drink some alcohol before they left together with the deceased around 20:15 hours. Along the way, he took a cigarette from a kiosk and went to lit the cigarette to the house of Katebe Simon which was nearby while deceased was waiting for him at the road. After lighting the cigarette, he smoked it together with Simon. When the cigarate was finished, he went back to the road where he left the deceased, but she was not there. He thought she has decided to go home as they left their two children to his second wife - PW6. At that time it was around 20:30 hours. He went to the house of

PW6, and he found the children namely James Msafiri Julius and Vitus Msafiri Julius were still there. He asked PW6 if the deceased has arrived there but the answer was that deceased did not go there. DW1 decided to take the children and went to the house he was living with the deceased. He found the door was closed as the key was with the deceased he waited for the deceased to return home. After sometime he decided to go to sleep to PW6 house. It was normal for the deceased to return home late sometimes at 02:00 hours up to 05:00 hours.

Accused said he arrived at PW6's house with the children, knocked the door and PW6 opened. He went inside together with the children and he decided to sleep with the children in their room. In the morning of 07.09.2020, he woke up and came out of the house after he heard someone asking why his shop was not opened yet. The shop is in the house he was living with the deceased. He left together with PW6 and that person to the house he was living with the deceased. On the way, they passed at the house of his sister Lucia Alex – PW1 and she accompanied them. He said when they arrived at his house the door of the house was still closed. He tried to break the padlock and failed. He checked in the kitchen and found several key and he used those keys to open the padlock. PW1, PW6, Alex who is the husband of PW1 and Machumu Jacob were present when he opened the padlock. He went inside and deceased was not

there. He proceeded to open the shop and sold good to clients who were coming until around 21:00 hours when he closed the shop. But, the deceased did not return. He said that it was normal for the deceased not to come back even after two days. He went to PW6 where he eat the super and slept at PW6's house.

On 08/09/2020 accused went to the deceased house together with PW6 and found the house was still closed as it was on the previous day. He opened the house and shop and continued to serve clients who came. At around 12:00 hours he decided to go to Kititiza Primary School where his son James was studying to report as James did not attend to school for two days following absence of the deceased (James Mother). After he left James at Kititiza Primary School, accused said he went to Village Office to report about disappearance of the deceased. He found Village Executive Officer and Chairman of the village at the office and he told them that the deceased was missing since from Sunday. The Village leaders told him that the deceased is reasonable person and she will return home. He decided to returned back home.

Accused said he decided to inform his neighbors that the deceased is missing and that her behavior of disappearing for two days is not right. He remained at his house until on Wednesday which is on 09/09/2020 when he decided to go to Richard Makuba – PW4 who is his father in law and deceased uncle. PW4 lives at Muganza Village in Mguwamazi Hamlet. He went to see PW4

since PW6 told him that deceased told her next time if the quarrel arises she will go to her uncle so he will be given huge fine as penalty compared to the fine imposed by deceased father previously which was small. He went to Muganza Village to PW4 to look for the deceased. He arrived at Muganza and PW4 told him that the deceased was not there. Accused decided to wait there while PW4 was looking if she went to other relatives. He stayed at PW4's house until Friday on 11/09/2020. On 12/09/2020 he told PW4 that he want to go back home. PW4 told him to wait for breakfast and PW4 went outside.

When PW4 came back, he was in company of 4 other persons and he asked accused to tell them what brings him at Muganza Village. After he told them that he was looking for the deceased, they apprehended him and tied his hands with a rope. Accused said he asked them why they are tying his hands, they answered that they have heard he killed the deceased. He asked them to take him to the scene of crime and they told him that if they took him there he will be killed by people. Accused said he fainted and when he got back his conscious he found he was at Mukalinzi Police Post which is at Mulusagamba Ward. On 15/09/2020 accused was taken to Mulusagamba Police Station and they put him in lockup. He said that on 16/09/2020 he was interviewed by police officers as to how he killed the deceased and he told them he don't know how the deceased died and he don't know if the deceased died. He was tortured but

he told them he did not kill the deceased.

On the next day, another police officer recorded his statement. His condition deteriorated while in police lockup because of the injuries which he sustained during torture and the police decided to take him to Mulusagamba Health Centre. He was treated for almost four days and when he was in good condition they took him back to the police lockup. Then, OCS of Mulusagamba Police Station took accused out from Police lock up and accused heard him talking to other police officers that possibly accused was not the one who killed the deceased. Then, the police show him deceased photos and this is how he saw that she was dead. The photos were taken from the scene of crime where deceased body was found. They told him that the deceased foot were bare and her phone was not found. They returned him to the Police lockup. On the next day Police Officer known as Philipo – PW7 took him to Ngara Police Station. Then he was brought to District Court of Ngara where he was charged for the offence of murder. From there, he was taken to prison as remandee.

Accused said that after he was arrested, PW6 left his children to his mother namely Paskazia Kaziro and PW6 went to live with her parents at Bukililo Village in Rulenge. Accused believe that PW6 was persuaded by her relatives to give false testimony that he did not sleep at her house on 06.09.2020. He said that PW5 who is the Doctor told this court that the deceased was killed by

strangulation and accused believes that the person who took off her clothes is the one who killed her. As her husband, he could not take off her clothes as they lived together for 17 years. Accused prayed for the Court to find that he is not the one who killed the deceased and the Court to acquit him so that he may proceed to live with his wife Janetha and their seven children.

In cross examination, DW1 said that it was close distance where he left the deceased to the house of Kitebe where he went to lit the cigarette. It is approximately 8 paces. But, it was dark. The deceased was very drunk when they left from the Centre of Kititiza. He has no means of measuring her drunkenness and he don't know how many beer deceased did drink. When he arrived at PW6 house, he asked her why the children are still there and PW6 answered that their mother who is the deceased did not come to pick them up. He said that the act of the deceased to come home late and sometimes to return home after two or three days was not good. This behavior aggrieved him and he reported these incident to deceased parents so they could advise her. The deceased behaviour did not change and he decided to leave it to her. He was just watching her.

Accused person said Lucia – PW1 is her elder sister from the same parents. On 07.09.2020 he saw PW1 whom her house which is on the way to his house. PW1 accompanied them to his house he was living with the deceased.

PW1 said the last time she saw accused was on 06.09.2020. This is not the truth as the last time they saw each other with PW1 was on 07.09.2020. The court should choose whom to believe. PW1 testified the way she did because she want to be far away from this incident. Accused said that PW6 is not telling the truth as he returned to her house on 06.09.2020. He said he don't know as to when PW6 recorded her statement at the police. He said he has a feelings that PW6 could have been pressured by her relatives to give false testimony.

Accused said PW3 testified that he did not report to him as Hamlet Chairman about deceased disappearance, but he reported her disappearance to village authorities. He said that after PW7 recorded his statement, he did not sign. He signed the statement on the next day to another Police Officer without reading it.

This is all evidence from prosecution and defense sides.

In this case, there is no dispute that deceased person died unnatural death. The testimony of PW5 and content of Report on Post Mortem Examination – Exhibit P2 proves that the deceased was strangulated to death. The only issue for determination is whether or not the prosecution has proved its case beyond reasonable doubt that it is the accused person who intentionally killed the deceased person.

According to section 114(1) of the Evidence Act, Cap. 6 R.E. 2019, the burden of proof in criminal cases is always on the shoulder of the prosecution unless the law otherwise directs. The standard of proof in criminal case is beyond reasonable doubt. This position was stated by Court of Appeal in several cases including the case of **Said Hemed V. Republic [1987] T.L.R. 117** and **Hassan Mawazo V. Republic**, Criminal Appeal No. 11 of 2014, Court of Appeal of Tanzania, at Mtwara, (Unreported). The accused person has no duty to prove his innocence.

In the present case, the prosecution's case rested in circumstantial evidence as there is no eye witness who saw the person who killed the deceased. In order for the court to convict relying on circumstantial evidence the facts must be so connected to lead to no other conclusion than the guilt of the accused person. The position was stated by Court of Appeal sitting at Dar Es Salaam in **Zakaria Jackson Magayo vs. Republic**, Criminal Appeal No. 411 of 2018, (unreported). The said facts which lead to conclusion that the accused person is guilty must be proved beyond reasonable doubts. In the case of **Ally Bakari vs. Republic (1992) TLR 10** the Court of Appeal held that: –

"Where the evidence against the accused is wholly circumstantial the facts from which an inference adverse to the accused is sought to be drawn must be proved beyond reasonable doubt and must be connected with the facts which the inference is to be inferred."

For the court to ground a conviction on circumstantial evidence, the evidence must be incapable of more than one interpretation as it was stated by Court of Appeal in **Hassani Fadhili vs. Republic (1994) TLR 89**. The same position was stated in the case of **Samwel Marwa @ Ogonga vs. Republic**, Criminal Appeal No. 74 of 2013, Court of Appeal of Tanzania at Mwanza, (Unreported), where it was held that:-

"To pin liability on the basis of circumstantial evidence, the evidence must lead to no other conclusion except that the accused is the person who committed the offence he is charged with. If the evidence is capable of more than one explanation it does not meet the standard of proof set in this principle."

In **Gabriel Simon Mnyele vs. Republic**, Criminal Appeal No. 437 of 2007, Court of Appeal Of Tanzania at Dar Es Salaam, (Unreported), the Court of Appeal provided a test when a case rest on circumstantial evidence. The Court held that:-

"It is common ground that for circumstantial evidence to found a conviction, it must be such that it irresistibly points to the guilt of the accused. From the authorities we are settled in our minds that when a case rests on circumstantial evidence such evidence must satisfy three tests:- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused: (iii) the circumstances taken cumulatively should

form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else."

In the case at hand, the prosecution case rests on the doctrine that the accused was the last person seen with the deceased and the conduct of the deceased thereafter. The Court may convict relying on the doctrine where there is no explanation from the accused person parting him away from circumstances leading to the death of the deceased. See. **Mathayo Mwalimu & Another vs. Republic** [2009] TLR 271. However, the last seen doctrine must be applied with caution as it was held in **Japhet Kalanga vs. Republic**, Criminal Appeal No. 332 of 2016, Court of Appeal of Tanzania at Mbeya, (unreported), and in **Nathanael Alphonse Mapunda & Another v. Republic** [2006] TLR 395.

PW1 and PW6 who testified that the last time they saw accused with the deceased was on 06.09.2020 around 17:00 hours when they were heading to Kititiza Centre. The accused person countered this evidence in his testimony where he said that he went to Kititiza centre with the deceased around 17:00 hours on 06.09.2020 as it was stated by PW1 and PW6. That, he left the centre with the deceased around 20:15 hours and they parted their way when he went to smoke cigarette at the house of Kitebe. When accused went back to where he left the deceased she was not there. He decided to go to the house of PW6 who told him that deceased was not there.

As I said earlier herein, it is a settled law that in the absence of a plausible explanation to explain away the circumstances leading to the death, an accused person who was the last person to be seen with the deceased will be presumed to be the killer. This position was stated by the Court of Appeal in the case of **Mathayo Mwalimu & Another v. Republic**, (supra). The Court in the above cited case was satisfied that the accused persons are the one who killed the deceased as there was no explanation from them to exculpate themselves from the death of the deceased. In this case at hand, the accused person has provided explanation that they went with the deceased to the Centre of Kititiza Village and they left together, but they parted their way after he went to smoke cigarette. This explanation has exculpated accused person from the death of the deceased as he said from the time they parted their way he did not see the deceased again. This provides for other possibilities that probably somebody else is responsible for deceased death after they parted their way as it was stated in the case of **Samwel Marwa @ Ogonga vs. Republic**, Criminal Appeal No. 74 of 2013, Court of Appeal of Tanzania at Mwanza, (unreported).

The evidence from PW6, PW3 and PW4 shows that the conduct of the accused person were pointing to his guilty. PW6 in her testimony said that the accused person and the deceased left their two children to her house and they did not come back to pick them on 06.09.2020. It is on 07.09.2020 around 10:00

hours when the accused person came to PW6 house and she asked him where is the deceased. The accused person who was drunk did not answer the question and he left. This is the last time PW6 and PW1 saw the accused as he disappeared thereafter. But failure of the accused to answer such question, failure to return back to PW6's house to take children and his disappearance causes suspicion that the accused might be responsible for deceased death. However, these conduct may have several explanation including the fact that he was drunk according to PW6 testimony. PW1, PW2, PW6 said that accused disappeared and PW6 said specifically that the accused person disappeared from 07/09/2020. The accused person has countered this evidence in his defense that he was present at the village and that he left on 09/09/2020 to Mgowamazi Hamlet to PW4's house. I believe that PW1 had nothing against the accused person that I have to believe her testimony on disappearance of the accused person. As at that time there were no clues on the where about of deceased, it could not be concluded that accused did run away from the village. After all, there is no evidence to show where he went. The evidence available show that he was arrested on 12/09/2020 at Mgowamazi Hamlet in Muganza Village.

PW3 testified that the accused person did not report the disappearance of the deceased to him as Hamlet Chairman, but accused testified that he reported deceased disappearance to Village Chairman and Village Executive Officer after

two days and their answer was that as a grown and reasonable person deceased will return to her family.

Another conduct which was provided by prosecution witnesses which bring inference of guilty to the accused person is his arrest at Muganza Village. PW4 testified that on 11.09.2020 accused person was arrested at Mgowamazi Hamlet on suspicion of being a criminal. The people who arrested the accused person brought accused who was drunk to the house of PW4 for him to sleep so that in the next morning he may interview him. This raises doubts as to the reason of the people who arrested the accused person to take him to PW4's house who is ten cell leader (balози) and not to hamlet leaders or somewhere safe as he was suspected of being a criminal. The accused person countered this evidence by saying that he went to PW4 to look for the deceased after her disappearance. He said PW4 is his father in law as the deceased is the daughter of PW4's brother. During his testimony, PW4 was testifying as if the accused person was stranger to him despite sometimes saying that he know the accused. He was not consistent in his testimony on the issue of knowing the accused and he was not at easy with his testimony. It was during cross examination when PW4 revealed his relationship with the accused person and that he know him very well for 3 years. It is clear that PW4 was not telling the Court everything he know about the accused person.

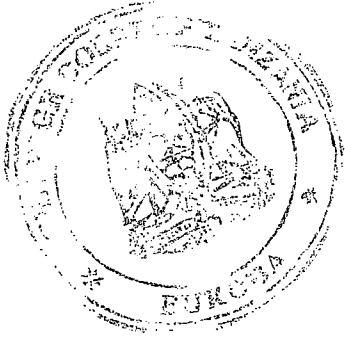
Further, PW4 credibility was shaken during cross examination where he admitted that in his statement he recorded before the police he did not say that accused told him he was sad since his wife might be dead as he said in his testimony before the Court. As the witness appears to forget some of the facts, he was importing facts which are not correct and he was not revealing relevant evidence such as his recognition of accused person as his inlaw before the incident, I find this witness is not reliable and his evidence need not to be relied by court. Thus, there is no sufficient evidence on how the accused was arrested and what he uttered when he was arrested.

What remains is testimony of Investigator - PW7 who testified that accused was arrested at Muganza Village on 12.09.2020 by the people and that the police went to take him into custody. The accused person in this testimony has provided the reason for his presence in Muganza Village where he was arrested. He said that he went to look if the deceased went to PW4. As the evidence in record shows that PW4 was deceased uncle, I find accused evidence raises doubts in prosecution evidence that the accused person was arrested at Muganza Village while he was escaping to Burundi. The accused presence in Muganza Village where he was arrested was reasonable and it raises doubt that he was not running away to Burundi after killing the deceased. PW7 who is investigator testified he was of the opinion that the evidence against accused

person is based on suspicion and was not sufficient to prove the offence against accused person though in re – examination he said that the conduct of the accused person infer that he was guilty.

In order for the Court to convict the accused person on circumstantial evidence, the chain of events needs not to break. In the case at hand, the chain has broken when the accused has exculpated himself that he was not the last person to be seen with the deceased before her body was recovered as they parted their way with the deceased after they left Kititiza Centre. Further, the time gap between the point of time when the accused and the deceased alleged were last seen alive and when the deceased was found dead is too big. There is possibility that any person other than the accused could be responsible for the death of the deceased. In absence of other independent evidence, the circumstantial evidence available is not capable of concluding that the crime was committed by the accused only and no one else.

Therefore, I find the evidence available has failed to prove without doubt the offence against the accused person and for that reason the accused person namely Msafiri Kazilo @ Julius is acquitted for the offence of murder contrary to section 196 and 197 of the Penal Code, Cap. 16, R.E. 2019, he was charged with. It is so ordered accordingly.



A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke.

A.E. Mwiripopo
Judge
14/06/2022

The Judgment was delivered today in the presence of the accused person, defense counsel and State Attorney for the Republic.



A handwritten signature in black ink, identical to the one above, consisting of stylized initials and a long horizontal stroke.

A.E. Mwiripopo
Judge
14/06/2022