

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

CRIMINAL SESSIONS CASE No. 106 OF 2021

THE REPUBLIC

Versus

1. JUMANNE NYAMBITA

2. MAJURA JUMANNE @ NYAMBITA

JUDGMENT

19.07.2022 & 20.07.2022

Mtulya, J.:

On the 2nd day of June 2021, the fishing community of lake shore of Bwai Kamusoma Village within Musoma District in Mara Region witnessed the expiry of one of the fishermen in their team, Mr. Maira Abel @ Manyama (the deceased person) caused by knife attacks on his chest and back-spine.

On the next day, 3rd June 2021, two persons were arrested at Chirorwe Village within Suguti Ward of Rural Musoma in Mara Region. The two named persons were: Jumanne Nyambita and Majura Jumanne @ Nyambita (the accused person), and were connected to the death of the deceased person and arraigned in this court to reply the charge of manslaughter contrary to section 195 and 198 of the **Penal Code** [Cap. 16 R.E. 2019] (the Code).

In this court, when the dual were summoned for plea taking and preliminary hearing on 14th of March 2022, Mr. Jumanne Nyambita admitted the charge of manslaughter and was sentenced to two (2) years imprisonment with possibility of community services. However, the accused person pleaded innocence from the arrest to the hearing of the present case.

According to his learned counsel, Mr. Ostack Mligo, the accused person was arrested only because is a relative to Jumanne Nyambita and were found lingering together at Chirorwe Village within Suguti Ward of Rural Musoma in Mara Region. In his opinion, Mr. Mligo contended that the prosecution side had brought the accused person in this court without materials to establish its case beyond reasonable doubt as per requirement of the law in sections 3 (2) (a) and 110 (1) & (2) of the **Evidence Act** [Cap. 6 R.E. 2019] (the Evidence Act).

In bolstering his argument, Mr. Mligo contended that the prosecution had brought in court, during the hearing of the case, one (1) witness named Zablon Mtani (PW1) to prove the case against the accused person, but registered materials contrary to what he stated at police station during recording of his statement admitted in exhibit D.1. In justifying the discrepancies and

contradictions produced in this court during the hearing the case, Mr. Mligo cited: first, the source of the fight being cell-phone, which is not reflected in the police statement; second, PW1 witnessing the accused person stabbing the deceased person on the chest which is not shown in the statement; and both accused person and Jumanne Nyambita escaped to the mountainous areas after the attacks which is not displayed in the statement.

Mr. Mligo also cited the words: *nilipoangalia nilimuona mtumishi wangu aitwae Maira Abiri ambaye ni marehemu, amejuruiwa mgongoni na mkononi*, which are silent on who had attacked the deceased person and the text: *nilipofika kambini nilikuta kuna vurugu na wanaofanya fujo hiyo ni Nyambita Jumanne na Masanga Jumanne*, which does not display who was stabbing who. Finally, Mr. Mligo stated that the contradictions and discrepancies are discouraged by this court in the precedent of **Republic v. Joseph Mseti @ Super Dingi & Three Others**, Criminal Sessions Case No. 162 of 2016 hence PW1 cannot be reliable or credible witness to trust in order to convict the accused person.

With regard to the defence Mr. Mligo submitted that DW1 was present at the scene of the crime but did not participate in the killing and his testimony was corroborated by Nyabweke William

Mangita (DW2) who testified to have seen DW1 in the vicinity of the fight, but did not participate in the fight and killing. The materials stated by Mr. Mligo were protested by Ms. Agma Agrey Haule, learned State Attorney for the Republic, who contended that the accused person assisted Jumanne Nyambita in killing the deceased person and his participation is prosecuted under section 22, 23 and 24 of the Code. With contradictions and discrepancies of the testimony of PW1, Ms. Haule contended that PW1 just gave elaborations and clarifications of what transpired and the practice is allowed by the Court of Appeal in **Abdallah Rajabu Waziri v. Republic**, Criminal Appeal No. 116 of 2004. According to Ms. Haule, a witness is not expected to give every smallest details of what transpired in cases as it was stated in the precedent of **Huang-Qin & Another v. Republic**, Criminal Appeal No. 173 of 2016.

On the precedent of this court in **Republic v. Joseph Mseti @ Super Dingi & Three Others** (supra), Ms. Haule submitted that the precedent is distinguishable as in the precedent a witness had denied his previous statement whereas in the present case PW1 did not protest his statement to be admitted as an exhibit. With the defence case, Ms. Haule submitted that the evidence did not shake

the prosecution case and in any case, DW1 just escaped his responsibility and DW2 remembers only three (3) persons in the events of attacks to the deceased person.

I have scanned the record of the present case and found that PW1 testified that in the morning hours of 2nd June 2021 when he was at his fish camp at Bwai area, with the deceased person, Nyambita Jumanne showed up and asked cell-phone from the deceased without any success. However, according to PW1, the accused person appeared a bit later and asked the same cell-phone. PW1 testified further that he had left the camp for food and later heard noises of *Yowe* type and rushed back to the camp and found both Jumanne Nyambita and the accused person attacking the deceased person. Finally, PW1 stated that the accused person attacked the deceased person on the chest and both escaped the scene of the crime for mountainous areas.

However, during cross examination, PW1 stated that he did not record in the statement words like: claim on cell-phone by the accused person; second, attack on the chest of the deceased person by the accused person; attack of the deceased person at the back-spine by Nyambita Jumanne. Giving reasons for such discrepancies, PW1 stated that he was then shocked and confused

to state what exactly transpired, but in this court he was a free agent to state all the details of the case.

The accused on his part testified that in morning hours of 2nd June 2021, he was at his home residence Busikwa and around 11:00 hours he left for the Bwai lake shore where he heard noises of *Yowe* type and followed the same, like any other persons, and found the deceased had already been attacked. According to the accused person, he did not attack the deceased person on the chest or escaped the scene of the crime for the mountainous areas. However, the accused person conceded his arrest at Chirorwe Village within Suguti Ward of Rural Musoma in Mara Region. DW2 on her part corroborated the testimony of DW1 by stating that she witnessed a fight between Jumanne Nyambita and the deceased person in absence of the accused person on 2nd June 2021 at Bwai Kumusoma area in Musoma.

I also had an opportunity to consult the cited decisions in **Republic v. Joseph Mseti @ Super Dingi & Three Others** (supra); **Abdallah Rajabu Waziri v. Republic** (supra); and **Huang-Qin & Another v. Republic** (supra). The precedent in **Republic v. Joseph Mseti @ Super Dingi & Three Others** (supra), at page 6 and 7 of the decision stated that:

In criminal jurisprudence, it is a legal requirement that a witness must give evidence in accordance with a statement made at the police station, the statement which is based on investigation documents. The credence of testimony is based on the statement made at the police station. Otherwise, he has no basis to give testimony...in the circumstances where witnesses stated inconsistency statements on oath, their credibility is completely destroyed.

However, this precedent was protested by Ms. Haule contending that in the precedent prosecution witness had declined his statement at the police station, whereas in our case PW1 agreed his statement to be part of the proceedings in exhibit D.1. In persuading this court to decide in his favour, Ms. Haule cited the decision of the Court in **Abdallah Rajabu Waziri v. Republic** (supra). I have perused page 9 of the precedent and found the following text:

We have noted the alleged contradiction between PW4's statement to the police and his testimony in this court. Indeed in his statement Exhibit D.1, PW4 did not say he locked in the appellant when he went to look for

*assistance. But he did not also say that he did not lock him in when he went to look for assistance. It could be he was not asked about it, unlike in his testimony in court where the defence counsel asked him so during cross-examination. It was at this stage when he said he closed the door when he left to look for assistance. **In our view, this is not contradiction. Even if it were one, we are satisfied that it would not vitiate the credibility of PW4 and the merit of the cases.***

(Emphasis supplied).

However, this decision was qualified by the precedent of the same Court in **Onesmo Kashonele & Others v. Republic**, Criminal Appeal No. 225 of 2012. The related text from the precedent is found at page 13 and 14 of the typed judgment:

...the contents of PW1's statement (Defence Exh. P.1) which he made to the police immediately after the robbery, sharply contradicts material oral evidence adduced by PW1 and PW2 in the course of trial...both courts below did not address this vital evidence contained in Defence Exh. P.1 which was admitted in evidence without any objection. Similarly, serious contradictions

between the oral evidence and the evidence in Defence Exh. P.1 were not addressed and resolved...we consider the oral evidence given by PW1 and PW2 five months thereafter as having been exaggerated and an afterthought...we can safely deduce that the appellants were implicated in the robbery incident on the basis of grave suspicion.

(Emphasis supplied).

The practice of this court and the Court shows that the recent decisions override the previous ones. I am aware that the precedent in **Onesmo Kashonele & Others v. Republic**, (supra) is a recent one decided on 15th May 2014 and therefore overrides the precedent in **Abdallah Rajabu Waziri v. Republic** (supra) decided on 5th July 2006 (see: **Harcopar (O.M.) S.A v. Harbert Marwa and Family & Three Others**, Civil Application No. 94 of 2013; **Elikana Kafero v. Republic**, Criminal Appeal No. 56 of 2017 and **Republic v. Samson Lameck**, Criminal Session Case No. 51 of 2016; and **Republic v. Baraka Mkali**, Criminal Sessions Case No. 133 of 2016).

Having said so, and noting the recent precedent of the Court in **Onesmo Kashonele & Others v. Republic**, (supra), I consider

the evidence adduced by PW1 in this court two (2) years after the incidents of attacks to the deceased person has been exaggerated and sharply contradicts with the statement he recorded at the police station.

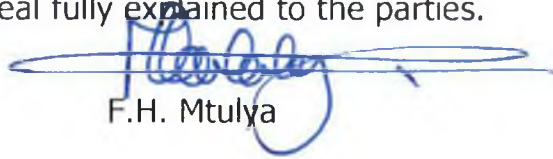
I think, in my considered opinion, the interpolations of PW1 in this court are afterthought and the accused person was implicated in the incident on basis of grave suspicion, hence I hold that the prosecution has failed to establish its case beyond doubt as per requirement of the law in section 3(2) (a), 110 & 111 of the Evidence Act and precedents in **Onesmo Kashonele & Others v. Republic**, (supra); **John Makorobela & Kulwa Makorobel v. Republic** [2002] TLR 296 and **Jonas Nkize v. Republic** [1992] TLR 213; **Said Hemed v. Republic** [1987] TLR 117; **Mohamed Matula v. Republic** [1995] TLR 3; and **Horombo Elikaria v. Republic**, Criminal Appeal No. 50 of 2005).

In the end, the cited discrepancies and contradictions are resolved in favour of the accused person (see: **Mohamed Said Matula v. Republic** [1995] TLR 3). I am quietly aware of the precedent in **Huang-Qin & Another v. Republic** (supra), but the decision cannot detain this court as the cited discrepancies in the precedent case go to the root of the matter and decides the

dispute. I am therefore moved to acquit the accused person, as I hereby do, and order his immediate release from prison custody unless otherwise lawfully held.

It is so ordered.

Right of appeal fully explained to the parties.



F.H. Mtulya

Judge

20.07.2022



This judgment was pronounced in open court under the seal of this court in the presence of the accused person, Mr. Majura Jumanne@ Nyambita and learned counsel Mr. Amos Wilson holding brief of Mr. Ostack Mligo, learned counsel for the accused person and in the presence of learned State Attorney, Mr. Rosebert Nimrod Byamungu for the Republic.



F.H. Mtulya

Judge

20.07.2022