

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**CRIMINAL SESSIONS CASE NO. 31 OF 2018**

**THE REPUBLIC  
VERSUS  
HAMIDU JUMA  
.....**

**JUDGMENT**

**16<sup>th</sup>&28<sup>th</sup>June,2022**

**MDEMU, J:.**

The Accused **Hamidu Juma** stand charged with the offence of murder contrary to the provisions of **sections 196** and **197** of **the Penal Code, Cap.16**. He killed his wife one Razia Mustapha Omary on 29<sup>th</sup> of April, 2016 at Mrijo Village within Chemba District. On the fateful day, the Accused person returned home at night and met his wife and Biswawali Hamidu Juma (PW1) about to retire for sleep. He then inquired to the deceased about dinner. Very unfortunately, there was none and also there was no charcoal and vegetables (mboga) for the deceased to cook for her husband (the Accused). The Accused then got hold of the deceased and strangled her to death. On completion of this mission, he wrapped her with bedsheet and reported to Abdi Issa Said (PW2) that the deceased is dead.

On 1<sup>st</sup> of March, 2019 the Accused person appeared before this court for plea taking and preliminary hearing in which, he denied to have murdered his wife on 29<sup>th</sup> day of April, 2016 as alleged in the information for murder filed to this court. Who then brutally terminated the life of Razia Mustapha Omary? The trial therefore had to be mounted in response thereof, whereof Ms. Judith John Mwakyusa and Mr. Leonard Challo, both Senior State Attorneys appeared for the Republic and Mr. Onesmo Isaya and Sostenes Mselingwa, both learned Advocates, represented the Accused person.

To prove the charge of murder, the prosecution called four witnesses namely: Biswawali Hamidu Juma, Abdi Issa Saidi, *Alhaji* Mustapher Omary and F.7066 D/Cpl. Francis David Manka; PW1, PW2, PW3 and PW4 respectively. They also tendered in evidence a postmortem report (P1) as documentary evidence. Contesting the prosecution case, the Accused person Hamidu Juma testified alone as DW1.

The prosecution opened their case through the evidence **Bishawali Hamidu Juma, PW1**, a child of ten (10) years old testified that, on the fateful day, the Accused and the deceased engaged in a quarrel as the deceased did not cook meal for the Accused. Though it was night, PW1 identified the Accused by the aid of torch light placed on top of the table and also as her father. The Accused then strangled the deceased, carried her body to the bed and then covered it using a bedsheet.

On his part, **Abdi Issa Saidi (PW2)** testified that, in the material night, the Accused went to his premises and informed him that his wife is dead. PW2 then went to the crime scene where he met the deceased dead. PW1 was also there. He added that, the Deceased and Accused were in bad terms and their matrimonial life was hostile all through. He thereafter informed **PW3** one **Alhaji Mustapha Omary**. As was to PW2, PW3 also stated that the Deceased and the Accused lived an unhappy matrimonial life. He testified to have found the deceased dead and when inquired to PW1, was told that, the deceased was strangled to death by the Accused.

Testifying as the last prosecution witness, **PW4 F. 7066 D/Cpl. Francis David Manka**, in his investigation, and given circumstances of the incident, took the Accused to hospital for medical examination, supervised the conduct of postmortem examination by Dr. Novatus Kasongo whose report was tendered as exhibit P1. According to the report (P1), the cause of death was intracerebral hemorrhage. This marked the end of the prosecution case.

Following closure of the prosecution case, parties left the matter to court to determine whether or not the Accused person has a case to answer. Having assessed the prosecution case in all four witnesses' testimonies and also documentary evidence (P1), in terms of the provisions of Section 293 (2) of the Criminal Procedure Act, Cap. 20, the

Accused person was found to have a case to answer. He was addressed in terms of that section and opted to defend alone upon affirmation.

He thus testified as **DW1 Hamidu Juma** that, on the fateful day, while about three meters pace to home, saw unidentified person running from his house. In that distance, a child was also heard crying. He thus proceeded straight home and found Bishawari Hamidu Juma (PW1) crying besides the deceased who was bleeding in the nose, and had already taken his last breath. He thus informed PW2 that his wife is dead. As said, with this version, the Accused person denied to have taken part in the murder of his wife. This was the end of the Accused case. There were no final submissions from the parties.

From the evidence on record, it is not disputed that the deceased is dead and died unnatural death. It is also not disputed that, the Accused herein was the first person to release information regarding the demise of his wife. Who now is behind this brutal killings? To begin with, this being a murder charge, the prosecution is duty bound to prove beyond reasonable doubt that the Accused herein is responsible for the murder of his wife. It was stated in **Mohamed Said Matula vs. Republic [1995]** **TLR 3** that:

*(ii) Upon a charge of murder being preferred, the onus is always on the prosecution to prove not only the death but also the link between the said death*

*and the accused; the onus never shifts away from the prosecution and no duty is cast on the appellant to establish his innocence.*

Was the prosecution case proved? In the instant case, there is only one eye witness, PW1. This witness is a child of tender age. In her evidence, she testified to have witnessed her father (the accused) strangling the deceased. By then, Bishawali was five years in 2016 when identified her father strangling her mother.

I observed her demeanor after she promised to tell the truth and not to tell lies and got satisfied to her credence. Of course, at her age, she used the word "kumkaba mama" which may not connote strangle (kumnyonga) in the normal meaning of the word. In this, a point to pick is this, that, there was commotion and physical body contact emulating using fore limbs of the Accused person to hit the deceased in various parts of the body without deploying any weapon. I am saying so because, according to the postmortem report (P1), the deceased body had no any bruises or any cut wound/injuries. In that report (P1), the cause of death is intracerebral hemorrhage which is ruptured vessels causing bleeding inside the brain. In my view, this is evident that, the accused did beat the deceased using his fore limbs in the head hence causing rupture of blood vessels.



Now, did the act of the accused person associated with malice afterthought? For this act of the accused to beat his wife using his fore limbs to constitute murder, it must be in the knowledge of the accused in terms of section 200 (a) (b) of the Penal Code, Cap.16 that, the act of kicking his wife using his fore limbs will cause death of grievous harm. In the circumstances of this, it may not because, **one**, there is no any weapon used. The accused, according to PW1, never deployed any weapon. He used his fore limbs. **Two**, in the evidence of PW1, though she was not specific, of course given her tender age, there was exchange of words between the deceased and the accused after the deceased had failed to cook for the accused. PW1 said, there was no meal, no charcoal and even vegetables (mboga) went missing. These facts, in my view, led to exchange of words and ultimately, the accused did beat his wife. Under the premises, one may not associate such circumstances culpable of malice afterthought.

**Three**, in the evidence of PW2 and PW3, matrimonial life between the deceased and the Accused person all through was hostile. This matrimonial hostility, in my opinion, includes what happened on the fateful day where the deceased found no meal at home. **Four**, I am aware of the evidence of the accused that, he noted unidentified man running from his house, and upon approaching his house, found the deceased dead while PW1 was crying aside. In his evidence, he did not pursue the

man but instead, went inside his room, and on seeing his wife dead, reported to PW2. This may not be trusted. In two fold. First, he did not inform PW2, whom he met at first, that he saw someone running from his premises. What he reported to PW2 is that his wife is dead. Second, it is not usual for an African man of the Accused caliber to see someone running from his premises, and just leave him and proceed to see what was inside as he testified. This notwithstanding, may not connote that the act of the Accused concealing on what happened, then he had a premeditated intention to kill his wife.

In all therefore, the accused act was not associated with a requisite malice aforethought. He is thus found not guilty of murder and is accordingly acquitted. As I pointed above, the act of the Accused constitutes itself within the meaning of Section 195 of the Penal Code, Cap. 16. I am aware that the Accused person was not charged of manslaughter. However, in terms of section 300 (1) (2) of the Criminal Procedure Act, Cap. 20 and the case of **Godfrey Mwasumbi & Rashid Shaban vs. Republic, Criminal Appeal No. 29 of 2015** (unreported), the Accused may be convicted of the offence, though not charged, if that offence is cognate or minor to the offence charged. It was stated in that case as hereunder:

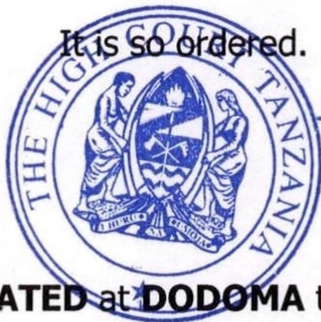
- 1. When a person is charged with an offence and the facts are proved which reduce it to a minor offence,*

*he may be convicted of the minor offence although he was not charged.*

2. *The above is the position of the law. However, case law has construed that provision and stated that, an accused person in order to be convicted of a lesser or minor offence, the offence should be on the face of it minor and cognate in character to the greater offence to which the accused person was initially charged with.*

On the foregoing, I have no iota of doubts that the offence of manslaughter is a minor or cognate offence to that of murder. On that stance, the accused person is hereby found guilty and is accordingly convicted of manslaughter Contrary to Section 195 of the Penal Code, Cap. 16.

It is so ordered.



**Gerson J. Mdemu**  
**JUDGE**  
**28/6/2022**

**DATED at DODOMA** this 28<sup>th</sup> day of June, 2022.



**Gerson J. Mdemu**  
**JUDGE**  
**28/06/2022**