

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

**CRIMINAL SESSIONS CASE NO. 27 OF 2018**

**THE REPUBLIC**

**VERSUS**

**ALIFA MOHAMED @ IFEJU**

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**JUDGMENT**

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

**MDEMU, J.:**

Alifa Mohamed Ifeju stand charged of the offence of murder contrary to the provisions of sections 196 and 197 of the Penal Code, Cap.16. According to the information for murder, the Accused murdered one Abdi Ramadhani @Madakwi on 13<sup>th</sup> of December, 2014 at Itolwa Village within Chemba District. On the fateful day, Mkapa Abdi Ramadhani and Hamisi Ngula were cultivating a farm using a tractor. The accused brother one Hamza Mohamed Ifeju asked them to stop. The deceased was informed through telephone on this. Before he arrived, the Accused and his brother left the farming area to follow the deceased. Later, the said Mkapa Abdi Ramadhani called his father (the deceased) who told him that he is with the Accused. From that point, the deceased was found dead.

On 6<sup>th</sup> of February, 2019, the Accused person appeared before this court for plea and plea taking. It was not disputed that, the deceased Abdi Ramadhan Madakwi is dead. The trial therefore had to be mounted to determine who unlawful terminated the life of the deceased and if the act was associated with the requisite malice aforethought. At the trial, Ms. Foibe Magili and Ms. Benadetha Sinyawo, learned State Attorneys appeared for the Republic whereas Mr. Francis Stephen learned Advocate, represented the Accused person.

To establish their case, the prosecution called three witnesses namely: D.7511 D/Sgt. Jeremiah, Faraji Samson Mpombo and Hamisi Ngula; PW1, PW2 and PW3 respectively. They also tendered in evidence the statement of D.7511 D/Sgt. Jeremiah, postmortem report and the statement of Mkapu Abdi Ramadhani under section 34B of the Evidence Act, Cap.6 as exhibits P1, P2 and P3 respectively. The Accused's case comprised of the testimony of Alifa Mohamed Ifeju and Mtalo Saidi Tamimu; DW1 and DW2 respectively.

The prosecution case commenced through the evidence of D. 7511 D/Sgt. Jeremiah (PW1) an investigator whose duty was to draw a sketch plan, recorded the statement of witnesses including the statement of Mkapu Abdi Ramadhan (P3). He also supervised the conduct of postmortem examination whose report was tendered by PW1 as exhibit P2. There was

also the evidence of Faraji Samson Mpombo (PW2) a medical practitioner who conducted postmortem examination on 14<sup>th</sup> of December 2014. According to the report which was tendered as exhibit P2, the deceased died of severe bleeding following multiple cut wounds.

The last prosecution witness was PW3 one Hamisi Ng'ula Kusa who testified that on 13<sup>th</sup> of December, 2014 was hired by Abdi Ramadhani (the Deceased) to cultivate his shamba at the costs of Tshs. 25,000/=per acre. In half an hour time of cultivation, Hamza Ifeju asked him to stop. Alifa Ifeju, the Accused was also there. Shortly, their tractor got stuck in the mud. They however managed to remove and proceeded to cultivate another farm. The Accused then left. He later added to have heard Mkapa communicating through mobile phone with the Deceased. At about 16:00 hours the same day, Mkapa told him that Abdi Ramadhani has been assaulted.

With these evidence, the Accused person was found to have a case to answer. After being informed in terms of the provisions of section 293(2) of the Criminal Procedure Act, Cap.20, the Accused opted to testify on affirmation and also called one witness. Testifying as DW1, **Alfa Mohamed Ifeju** on 13<sup>th</sup> of December, 2014 was at his farm and was called to the deceased farm where he was informed that Hamza Ifeju asked them to stop cultivating. He found a tractor stuck in the mud. After they removed, they

went in the farm of Hamis to continue cultivating. He then left and met one Mtaro Said at almost 1 and ½ hour walk distance and later proceeded to the campaign for Local Government Election where the chairman announced that, Abdi Madakwa has been killed. He concluded by saying to be at home all through from 2014 when the offence was committed to 2017 when he was arrested. He then prayed to be released as there is no offence he committed.

DW2 Mtalo Said Tamimu, his was straight forward that, on 13<sup>th</sup> of December, 2014 met the accused on the way to Idala and agreed to meet later at the campaign ground. While at the said campaign, in which the Accused also attended, he heard nothing about announcement on the death of the deceased. He heard the announcement in the mosque regarding the demise of Abdi Ramadhani, the Deceased person.

This marked the end of both the prosecution and the defence case. Counsels didn't have their final submissions. From the outset, there is no direct evidence connecting the accused person with the incident. In other words, no one eye witnessed the Accused committing the murder. The evidence relied on is circumstantial one. Essentially, it is not disputed that the deceased is dead and died unnatural death. It is equally on record that, the Accused went to the farm where Mkapa Abdi Ramadhani and another

were cultivating the shamba using a tractor. It is further not disputed that after they started cultivating another Shamba, the Accused left. Now, as said, the case rests on circumstantial evidence. The circumstances are mostly in the statement of Mkapa Abdi Ramadhani (P3) which partly speaks of itself as hereunder:

*.....muda wa nusu saa Baba yangu Abdi Ramadhani alipigia simu kunijulisha juu ya mgogoro wa shamba alisema anakuja na Hamza Ifeju wako na mtoto wake Hamza Ifeju aitwae Mohamed Hamza wako njiani wanatumia pikipiki wote kwa pamoja kila mtu na pikipiki yake. Baada ya muda wa dakika 10 nilimpigia Baba simu kwa nini wanachelewa alinjibu kuwa pikipiki yangu imezima, **baada ya kusikia pikipiki imezima, Alfa Ifeju aliamua kutuaga** kuwa ana trekta huko njiani na aliondoka. Nilikaa kama dakika 5 hivi niliamua kupiga simu kujua kama pikipiki imepona, **alijibu kuwa tunajaribu kusukuma pikipiki ili iwake pia hata Alifa Ifeju amefika yupo hapa na ndugu zake.** Nilikaa kama dakika kumi hivi nikapiga simu inaita lakini haipokelewi kwani umbali ulikuwa kama Km.1 hivi muda huu ni saa 11.00 hrs niliamuru dereva wa trekta kuendelea kulima kwani muda unakuwa mrefu na wenye trekta ni*



*biashara. Tulimaliza kulima saa 13.00 hrs. mpaka tunamaliza, si Baba wala Hamza Ifeju na ndugu zake walikuwa hawajafika, tuliambia kuwasubiri mpaka saa 16.00 hrs. Nilipigiwa simu na Hussein Kaboji kuwa Baba yako Abdi Ramadhani ameuawa sehemu njiani karibu na korongo mahali aliposema Baba pikipiki imezimika. Nilikwenda nilimkuta baba amefariki dunia na pikipiki ipo pembeni. Ninawatilia mashaka waliomuua Baba ni Hamza Ifeju, Alfa Ifeju na Mohamed Hamza.....*

From the above statement (exhibit P3) tendered by PW1 and also in the evidence of PW3 one Hamisi Ng'ula Kusa, the following are the circumstantial evidence which the prosecution banks to establish the charge of murder: **one**, that the Accused was present at the shamba with PW3 and Mkapa Abid Ramadhani (P3). **Two**, following order of the Accused's brother one Hamza Ifeju (still at large) asking PW3 to stop cultivating, the deceased was called by Mkapa to come to the disputed shamba. **Three**, the Accused left the disputed shamba before the deceased arrived. **Four**, Mkapa Abdi Ramadhan called the deceased through mobile phone who stated to be with the Accused and there was a motorcycle having mechanical breakdown. **Five**, Mkapa Abdi Ramadhani(P3) was informed by Hussein Kabhoji that his

father has been killed. **Six**, Mkapa Abdi Ramadhani went to the crime scene and found his father dead and besides, there was a motorcycle.

The question now is whether the foregoing circumstantial evidence draws an inference that non killed the deceased other than the Accused person. At page 153 through 154 in **Awadhi Gaitani@Mboma vs Republic [2020] TLR 140**, the Court of Appeal restated the following principles on circumstantial evidence:

*On our part, we agree with the Appellant that, the case against him expounded by the prosecution is grounded on circumstantial evidence. This Court has a number of times restated basic principles that courts should consider when relying on circumstantial evidence. These principles were stated and adopted in **Mark Kasimiri v. Republic, Criminal Appeal No. 39 of 2017** (unreported), and the key are:*

- i. That, the circumstances from which an inference of guilty is sought to be drawn must be cogently firmly established, and that those circumstances should be of a definite unerringly pointing towards the guilty of the accused, and that 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 non-else (See **Justine Julius and others v. Republic, Criminal Appeal No. 155 of 2005.** (unreported).*

- ii. *That, the inculpatory facts are inconsistent with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of guilty; and that before drawing inference of guilt from circumstantial evidence, it is necessary to be sure that there are no existing circumstances which would weaken or destroy the inference [See, **Simon Msoke v. Republic (1958) EA 715A** and **John Maguia Ndongo v. Republic, Criminal Appeal No. 18 of 2004 (unreported)**]. That, the accused person is alleged to have been the last person to be seen with the deceased in absence of a plausible explanation to explain away the circumstances leading to death, he or she will be presumed to be the killer. (See **Mathayo Mwalimu and Masai Rengwa v. Republic (supra)**.*
- iii. *That, each link in the chain must be carefully tested and, if in the end it does not lead to irresistible conclusion of the accused's guilt, the whole chain must be rejected. (See **Samson Daniel v. Republic (1934) A.C.A. 154**).*



- iv. *That, the evidence must irresistibly point to the guilt of the accused to the exclusion of any other person (See **Shabani Mpunzu @ Elisha Mpunzu v. Republic, Criminal Appeal No. 12 of 2002** (unreported)).*
- v. *That, the facts from which an adverse inference to accused is sought must be proved beyond reasonable doubt and must be connected with the facts which inference is to be inferred. (See **Ally Bakari v. Republic (1992) TLR 10** and **Aneth Kapazya v. Republic, Criminal Appeal No. 69 of 2012** (unreported)).*

Applying the foregoing principles in the instant trial, in P3, the statement of Mkapu Abdi Ramadhani, there are the following deficiencies: **one**, the evidence on telephone conversation is wanting for want of a mobile phone used, the printout, or even sound/voice regarding conversation between the deceased and the said Ramadhan, particularly to establish that the deceased was with the Accused at the place where the deceased was found dead. **Two**, it was also not proved by way of evidence presence of the motorcycle and if is the motorcycle the deceased told the author of P3 to have mechanical defect when the deceased was with the Accused. **Three**, the said motorcycle did not have a place in evidence.

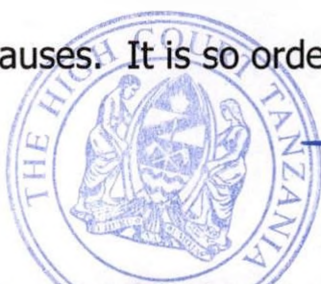
**Four**, again, in the evidence of PW3, and also in the statement (P3), there is evidence that the Accused left the cultivation area and never returned back. It cannot therefore be conclusively determined that as he did not return back, then he went to murder the deceased. This is so as there is explanation that the Accused and his witness one Mtalo Said Tamimu (DW2) were at the campaign for local Government Election soon after the Accused left the cultivation yard. Actually, this is what in **Ally Bakari v. Republic (1992) TLR 10** was emphasized that, each fact must be clearly proved and should not, in my view, lead to multiple interpretation or different hypothesis.

I have also considered the evidence which was relevant but the prosecution never troubled to locate. As said, the motorcycle wasn't assembled in evidence so do Hussein Kabhoji who was the first person to report to the author of P3 that the deceased has been brutally killed. Absence of this evidence makes the chain of events broken and therefore, as a principle in circumstantial evidence, such evidence is not watertight to ground conviction. See **John Donald Nkondola v Republic (2017) TLR 214**

What we are now left with is that, the Accused left from the site and never came back. In my opinion, and also given the fact that there was land

dispute between the Accused and the deceased family, that leaves suspicion that the Accused took part. This also is in the statement of Mkapa (P3) which he stated ...*Ninawatilia mashaka waliomuua Baba ni Hamza Ifeju, Alfa Ifeju na Mohamed Hamza.....* It is trite law that suspicion, however grave, may not be a substitute of proof beyond reasonable doubt (see **Raphael Kinashi v R, Criminal Appeal No.67 of 2002** (unreported)).

In the totality, this being a murder case, to secure conviction, the prosecution must prove, which is not the case here, beyond reasonable doubt that, the deceased was killed by the Accused with malice aforethought. See **Misoji Ndebile@ Soji v Republic, 2015 TLR 517**. In the end, this court finds the Accused Alfa Mohamed Ifeju not guilty of the murder of Abdi Ramadhani @Madakwi he stands charged. He is accordingly acquitted and his release is hereby ordered unless, lawful held for some other causes. 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**  
**28/6/2022**