

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

ORIGINAL JURISDICTION

CRIMINAL SESSION CASE NO. 21 OF 2020

THE REPUBLIC

VS

MKOMBOZI BAKARI ABDALA @ NGOSO

JUDGEMENT

Date: 22ND JUNE 2022

BEFORE: HON. LATIFA MANSOOR, J

The Accused person, Mkombozi Bakari Abdala @ Ngoso, was prosecuted with the Offence of Murder contrary to Sections 196 and 197 of the Penal Code Act, Cap 16 Vol. 1 R: E 2002. It is alleged that the Accused person, on the 20th day of March 2019, at Hedi Street, Kwamagome Area within Handeni District, in Tanga Region, killed MWAJUMA MUHINA @KANAZINA. A person convicted of this Offence is liable to suffer death by hanging. The Accused person denied having



committed this Offence and as such, a plea of not guilty was entered.

The background of the case is that on the fateful day on 20th day of March 2019 at around 21.00 hours, the body of Mwajuma Muhina @Kanazina, "the deceased" was found outside her house, it was the deceased children who rushed to her after she cried for help. Her children also cried for help, the neighbors went to the scene, they took the victim to hospital, but she died immediately after arriving to the hospital.

The accused was married to the deceased's daughter, one Farida Halfani, they were married for about 3 years since 2016, and they have a child. The accused was living at Msaje Village in Handeni District with his wife Farida. Msaje Village is the neighbouring village from Hedi Kwamagome. The accused and his wife never had a peaceful marriage as the accused was always suspecting his wife to have had extramarital affairs. The accused was accusing his mother-in-law for entertaining the accused's wife infidelity. Their quarrels were

always being reconciled by the accused father-in-law one Khalfani Mohamed Khatibu.

About a week before the incident, Farida went to live with her mother at Hedi Kwamagome leaving her matrimonial home without the permission of her husband, the accused. The accused kept on visiting the home of his wife's parents, but he was violent, he was assaulting the family, raising his voice, and throwing stones on the roof of the house of his mother-in-law. Despite the violences, Farida, the wife of the accused refused to go back to her husband's home in Msaje.

On 20th March 2019, the accused telephoned his wife's mother, the deceased, the phone was received by Farida's young sister, one Mwajabu. The accused asked for his wife, and he was told by Mwajabu that his wife and the deceased went out to fetch water. The accused left a message to Mwajabu to pass it over to his wife Farida, saying "*je atavumilia kufanya matukio mawili kwa wakati mmoja, kusherehekea harusi yake na kuhudhuria mazishi ya mama yake*" meaning, can his wife manage to attend two events at

once, that is her wedding and the funeral of her mother. Then the accused sent an SMS to his mother which read "ama zako ama zangu". All the messages were threats for murder, and the late Mwajuma decided to report to the village leaders, the village leader gave her a letter on 19th March 2019 to report the incident to police. She went to report the incident at police on 20th March 2019, she was given the summons to find the accused, and at night of 20th March 2019, she was attacked by someone with the knife just few meters away from her house, she shouted for help while crying "*wanangu mkombozi anania*", meaning, "**my children, Mkombozi is killing me**". His children including the wife of the accused ran outside, they found their mother lying down bleeding. The children shouted for help, the villagers gathered and took the deceased to hospital, but she died immediately after arriving at the hospital. The Postmortem of the body of the deceased was carried out by Dr Hudi, it was revealed that she had a stabbed wound under the chest just below her left breast, the wound was 8 cms deep, and this was the cause of her death.

The accused fled the scene, he went hiding at Msaje Area near the dam, he asked his relatives to provide him with motorcycle to take him to Kilindi District, Msufini Area. His intentions were to flee the scene. His relatives and the village militiaman planned a trap, and he was apprehended by his own relatives and the militiaman. His relatives had pretended to agree to help him flee the scene to Msufini Kilindi but in fact they were planning for his arrest. He tried to kill himself when he was arrested, he used his own knife to stab himself on the stomach, but he was rescued before he died. He was taken to police, then to hospital, and after he was discharged he recorded his statement at the police where he denied committing the offence. He was arrested on 22nd March, 2019, 2 days after the commission of the offence.

The accused was charged with murder; he denied the charge and claimed for trial.

The Prosecution called a total of Ten (10) witnesses. Namely, Omary Rashid, Chairperson of Hedi Street, Handeni (PW1), Khalfani Mohamed Khatibu, father in law of the

accused (PW2), Farida Halfani, the wife of the accused (PW3), Mwajabu Khalfan, the sister in law of the accused (PW4), Doctor Hudi Shehdad (PW5), Rajabu Mohamed Magao, the cousin brother of the accused (PW6), Inspector Yusuph (PW7) G 7500 D/C Lusekelo, police officer (PW8) Yusuph Omary Kwingwa, the militiaman (PW9), and WP 4406 Sgt Patricia, the investigator of the case (PW10) . They also presented two exhibits, the Postmortem examination report of the deceased body (Exh P1), and the Sketch Plan of the Crime Scene (Exh P2). Thereafter, Prosecution closed its case.

PW1, Omary Rashid is the Street Leader of Hedi Street where the deceased was residing. He received a claim from the deceased on 19th March 2019, a day before she was murdered that the accused herein is threatening to kill her. This witness being the leader gave the deceased a letter to refer the claim to police. On 20th March 2019, in the morning the deceased reported the incident to police but at night around 21.00 hrs. of the same date, this witness at a place nearby the house of the deceased having coffee, and he heard

cries for help coming from the house of the deceased. He went to the house of the deceased and saw the deceased lying down in a pool of blood. He took the deceased to hospital but she died before she received any treatment.

PW2, Khalfani Mohamed Khatibu, the father-in-law of the accused, also the husband of the deceased. He said he had already separated with the deceased, and they were not living together but him and the deceased were blessed with eleven children, and the wife of the accused namely Farida was one of her six female children. He said, her daughter Farida and the accused never had a peaceful marriage, they always quarreled, and he used to reconcile them. The quarrels were over issues of infidelity, and the accused was jealous, and always accusing his wife Farida of infidelity. The accused was accusing the deceased to be the source of the problems between him and his wife Farida. He says, once, a few days before the incident, the accused had sent to the deceased a text message saying "*ama zako ama zangu*", and he had seen

the text, and he advised the deceased to report the threat to the street leaders.

PW3, Farida Halfan is the wife of the accused. She was told that she is not compelled to testify against her husband, but she willingly chose to testify against him. She said she married the accused since 2016, and had one child together, but since the accused used to spend days at his work in the forest as he deals in timber, she used to go home to her mother. The accused did not like her leaving their matrimonial home at Msaje, and they used to quarrel a lot. She says the accused was abusive and violent, he used to beat her, and he was very disrespectful towards his in-laws. She says; on 18th March, 2019, two days before the murder she was at Msaje, but she decided to go to her mother due to domestic violence, and thus, the accused called his mother-in-law, the deceased, but since her and the deceased went out to fetch water, the phone was received by her young sister namely Mwajabu. The accused left a message to Mwajabu to pass it over to Farida saying *"mwambie dada yako anaweza kuhudhuria mambo*

mawili kwa wakati mmoja, harusi yake na msiba wa mama yake." The deceased reported the threat to the street chairman, and on 20th March 2019, in the morning she reported to police.

She says at night of 20th March 2019, at around 21.00 hours she was at her mother's house with her mother and her siblings. They were having dinner and her mother, the deceased went out for a pee, as the toilet is outside their house. Suddenly she heard her mother shouting for help saying "wanangu Mkombozi anania", she rushed outside and saw the accused running away. He could recognize him since there was moonlight, and he knows him since he is her husband. She went to where the body of her mother was lying, she found her mother lying in a pool of blood, and her and the siblings shouted for help, people came and took the body to the hospital. PW4 Mwajabu Halfani corroborated what was testified by PW3. She confirmed that she received a call from the accused and left the threat and told her mother of the threat. She also confirmed that the accused was violent,

and he used to go to their house throwing stones on the roof, and verbally abusing and assaulting them.

Dr Hudi Shehdadi (PW5) was the Doctor who performed the Post mortem examination of the deceased body at Handeni District Hospital, he said the cause of death was the stabbed wound on the chest below the left breast. He tendered a Postmortem Examination Report, and this was received as Exh P1.

PW6 Rajabu Mohamed Magao, and PW9 Yusuph Omary Kwingwa had planned a trap to catch the accused. After the commission of the crime, the accused went hiding, and he was calling his relatives to find for him a bodaboda to take him to Msufini Area in Kilindi. PW6 is the cousin of the accused, and he pretended to have agreed to help the accused flee the scene but in fact he was only trapping him. He arranged with PW9 who is a militiaman to have him arrested, and they succeeded. At the time of arrest, he tried to escape but they managed to apprehend him, and since he was armed with a knife, he stabbed himself in the stomach.

He had the intentions of committing suicide, but they handcuffed him, and took him to hospital. They were given a PF3, and the accused was taken to Handeni District Hospital for treatment. He was discharged two days later and was handed over to the police.

PW7, Inspector Yusuph said he received the accused at Handeni Police Station on 22 March 2019, he was brought by PW9, the militiaman and others. The accused had a big wound on the stomach, his intestine was protruding out. He gave them the PF3, and the accused was taken to the hospital for treatment. This witness said the accused was trying to commit suicide and he stabbed himself with the knife. The knife was handed over to him and he kept it as evidence in the case of an attempt to commit suicide facing the accused. He recorded the accused statement on 25th March 2019 in which the accused denied having committed the murder of his mother-in-law but told the police that he was stabbed by the militiaman. The statement of the accused was not brought to court.

PW8 is the Police officer, Detective Copio Lusekelo, he went to the scene of crime and drew a sketch plan of the crime scene, this was admitted as Exhibit P2. The crime was committed about 5 footsteps away from the house of the deceased, and this is what is shown in the sketch plan.

PW10 was Sergeant Patricia, the investigative police officer of the crime. She said she went to inspect the crime scene, she collected the exhibits which is the postmortem examination report and the sketch plan, and she recorded the witness's statement. She said she did not interrogate the accused but from the file it was clear from the evidence of the witnesses that it was the accused who committed the murder of his mother-in-law.

All the 10 witnesses for the prosecution made a dock identification of the accused.

The prosecution closed their case, and the Court found that there was a prima facie case made out against the

accused, Mkombozi Bakari Abdala @ Ngoso, and he was put to his defense.

Mkombozi Bakari Abdala @ Ngoso chose to give his own defense under Oath. He did not deny committing the offence but pleaded self-defense. He said on the day of the incident, he received a call from his mother-in-law, the deceased, asking him to go see her. She went to the deceased house as asked, and was there at around 21.00 hrs. Then, the deceased asked him to have a talk outside the house as there were guests in the house. The deceased was asking him to leave or to divorce Farida, his wife as Farida has another man who is rich. The deceased told him that he is not a fit man for Farida as he is poor. The accused told the deceased that he cannot leave his wife as he loves her, and they have a small child to take care of. Then the deceased asked him to wait outside while she goes in the house to get the dowry, as she wanted to pay back the dowry. She came out with a jug of water and a knife and had stabbed the accused on the upper lip and on the stomach, the accused grabbed the knife from

the deceased and stabbed her back on the chest under the left breast. The deceased fell, he went to her and removed the knife and fled the scene. He said he ran as he was scared; he would be attacked by the deceased relatives and children. He denied having ever threatened the deceased before the incident. He said he used to send money to the deceased for his child support.

The first ingredient for murder has not only been proved by the prosecution but also by the admission of the accused. The accused pleaded the right of self-defense and the question is can he be entitled to self-defense under the circumstances. The case of the prosecution has been proved beyond reasonable doubt, they have proved by the evidence of Farida, Mwajabu, the father-in-law Khalfan and the Street Leader that the accused had premediated the murder of his mother-in-law. It can at best be held that the accused caused an injury to the deceased intentionally and not in exercise of his right of private defense as laid down in section 18B of the Penal Code. The accused was not able to discharge the burden by proving

the existence of circumstances bringing his case within the defense of the right of self-defense. There was the evidence of the police Officer inspector Yusuph who told the Court that when interrogating the accused, the accused told him that he was injured by the militiaman during his arrest. Again, as opined by the wise assessors who sat with me, it is not possible for a person who has been stabbed in the stomach to walk 8 kms away, and to keep hiding for two days with such a serious wound. This proves that his defense was all fabricated and could not be believed.

As per the case of prosecution, intention to kill can be attributed to the accused. Prior to the incident, the accused and the deceased had quarrels as the accused was blaming the deceased to be the cause of problems in the marriage, he even sent threats in the deceased phone, he sent a text message as deponed by the Street Chairperson (PW1), and the deceased husband (PW2), he also made a phone call which was received by Mwajabu (PW4) again leaving threats, and it was confirmed by the Police (PW10), that the threats

were reported and registered in the police. And thus, there was proof of the existence of premeditation. The prosecution has proved beyond reasonable doubt that the accused not only committed murder of his mother-in-law but also removed the knife from the body and went away with it showing his intentions of destroying the evidence.

The accused cannot benefit from the right of self-defence as there was no proof that he was in imminent and reasonable danger of losing his life to inflict any harm even extending to death of the deceased. There was no proof of either assault or attempted direct threat from the deceased.

Burden of establishing the plea of private defense is on the accused who can only prove the same by preponderance of probabilities in favor of the plea on the basis of the material on record. He failed to prove that the deceased was armed, and had threatened to kill him during the occurrence, and there was proof from the prosecution that the wound was

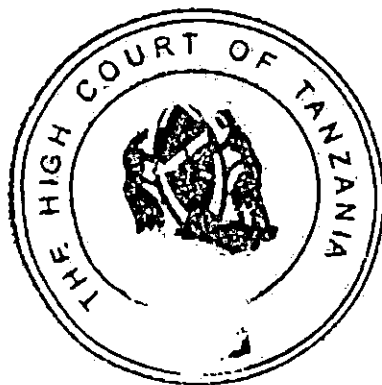
self-inflicted at the time of his arrest two days after he murdered his mother-in-law.

Motive to commit the crime stands proved as explained above and, the threats, the animosity and in as much as the doctor and the post-mortem report revealed that the deceased was attacked at the vulnerable parts of her body i.e. On the chest, under her left breast and these circumstances relates to the motive for the crime. Again, the actions and conduct of the accused proves that he had an intention to kill his mother-in-law. If the killing was accidental or as a result of a fight, or self-defense as pleaded, the accused would have reported the incident to the street leaders or police and would have uncovered from where he was hiding without being searched. He would not have tried to escape. His conduct of continuing to hide even after his cousin brother (PW6) and the militiaman were searching for him support evil intent. His actions after the commission of the murder shows that the accused had committed the murder of his mother-in-law with malice aforethought. The accused knew what he was doing, he had

used excessive degree of violence against the deceased implying that he had motive to kill his mother-in-law. I therefore find that the accused had killed his mother-in-law with malice aforethought. I find like the unanimous opinion of the assessors that the killing was unlawful and therefore the accused is guilty of murder. I find the accused guilty and accordingly convict him.

I order accordingly.

SIGNED.....



**HON. LATIFA MANSOOR
JUDGE**

22ND JUNE, 2022