

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

(ORIGINAL JURISDICTION)

CRIMINAL SESSION CASE NO. 15 OF 2022

REPUBLIC

VERSUS

SHUKURU VICTOR NGONYANI

JUDGEMENT

Date of last Order: 07/09/2022

Date of Judgement: 29/09/2022

MLYAMBINA, J.

The Accused person, Shukuru Victor Ngonyani was arraigned before this Court for the offence of murder contrary to *section 196 and 197 of the Penal Code [Cap 16 Revised Edition 2019]*. It was stated in the particulars of the offence that; on 26th August, 2020 at Ligera Village within Namtumbo District in Ruvuma Region, the Accused person did kill one Limbu Supi Kilamba. Upon been arraigned before this Court, the Accused pleaded not guilty to the offence.

During hearing of the case both parties were represented respectively. Mr. Lugano Mwasubira and Ms. Tumpare Lawrence learned State Attorneys appeared for the Republic while the Accused person was represented by Mr. Vicent Kassale assisted by Ms. Naomi John learned

Advocates. To prove the charge laid against the Accused, the prosecution called nine (9) witnesses while the Accused defended himself.

PW2, Stawa Silaju Ndauka testified to the effect that, on 26th August, 2020 while at the well fetching water, one person known as Limbu arrived. Being a man, they allowed him to fetch water without queuing. On his way back carrying two buckets of water on his hand, 20 metres from the well, she saw Accused person carrying a piece of wood. He walked quickly and hit Limbu on his occipital skull. He fell down and become unconscious. He searched the back pocket of the deceased trouser, took the wallet and a handset phone before he ran away towards the valley.

Further, PW2 testified that; she decided to assist Limbu Supi while raising the alarm. After a while, Limbu Supi became conscious and told them that it was Shuku who hit him and stole his wallet and a handset phone. After being hit by the Accused, the deceased got laceration on his face and his occipital skull got fractured. By the assistance of one Zainabu Rashidi Mangasha, they took Limbu Supi to Ligera Dispensary. Then, she went to the Village Executive Officer (VEO) of Ligera one Rose Mkiri. She informed her about the incident and asked her to facilitate the

deceased treatment. They headed to the Dispensary. Limbu Supi was transferred to Songea Referral Hospital. On 27th August, 2020 they got information that the said Limbu Supi Kilamba died. The Accused was arrested too. Upon cross examination, PW2 added that the Accused is living at his grandmother's house which is next to her house. The name Shuku mentioned by the deceased is a well-known name used by most of the villager including the children to refer Shukurani Kayombo, the Accused.

This evidence of PW2 was corroborated by PW3 one Zainabu Mohamed Mangasala. PW3 affirmed that; she heard a scream about 20 paces from where she met Limbu. Upon returning back, she saw the Accused holding a piece of wood. The deceased told PW3 that it was the Accused who hit him. Then she saw the Accused running towards Muungano Village. They took the deceased to the Dispensary. He was bleeding from his head. He was referred to Songea Regional Hospital. Unfortunately, he died the next day.

During cross examination, PW3 added that; she saw the deceased lying down while the Accused was standing holding a piece of wood. Then he started running while carrying a red sulphate.

Also, PW4 testified that; on 26th August, 2020 around 700 hours, while sleeping someone pushed his door and entered into his house. Upon interrogation, he replied that he was chased. He was the Accused person holding a red sulphate bag. After a while, some people arrived. They searched the Accused and found an iron bar, a hammer, "teso" a hoe like commonly used by the carpenters and a wallet with TZs 166,100/=, NMB and Voter Cards. He was taken by the Ward Councillor known as Hon. Petro Muhongo.

PW5 supported the evidence of PW4 that he was the one who took the Accused from PW4 house to the office of the Village Executive Officer (VEO). They handled the Accused with all things which he was found with. Before starting chasing the Accused, he heard women alarm saying "mwizi" meaning a thief. He went to the scene and saw Limbu Supi lying on the ground. The women told him that he was hit by the Accused. He saw the Accused at a distance running towards the neighbour Village of Muungano. The Village Executive Officer called the Police Officers. After arriving, they recorded their statement including the Accused. The Accused and the properties found in his possession were handled to the Police Officers. Limbu Supi was taken to the hospital but he died on the next day.

Upon cross examination, PW5 conceded not to witness the act of the Accused hitting Limbu Supi. As regards the money, PW5 testified that they did not record the number of the note but the quantity.

PW7 Rose Charles Nkiri, a Village Executive Officer testified that; she was informed about the incidence by PW2. She went to the Dispensary and saw Limbu Supi. He was injured at his occipital skull and fore part of his face. Thereafter, the citizens brought the Accused to her office. The Accused confessed to commit the atrocity. She searched the Accused sulphate in front of the citizens and found a hammer, a piece of iron bar, teso and a wallet containing the deceased's NMB Bank card, Voter Card and TZs 166,100/= and a small phone make Tecno.

During cross examination, PW8 added that; she searched the Accused person prior to the arrival of the Police Officers. She identified the exhibit admitted to Court to be the same to the things she handled to the Police Officer on 27th August, 2020. It was the testimony of PW8 that; she did not manage to speak with the deceased before his demise because he was seriously ill.

PW7 G 7201 CPL Gwandu was a Police Officer working at Namtumbo Police Station. Before, he was stationed at Mkongo Police Station. On 26th August, 2020 he received a call from Ms Rose Nkiri PW6

the Village Executive Officer of Ligera, she informed him about the incidence. The one who was hit was taken to the hospital and the Accused was under arrest. He went to Ligera with a company of CPL Samola. They saw the deceased but he was in a bad condition admitted in the hospital. At the VEO's Office, they re-arrested the Accused and took a red sulphate bag containing a piece of iron, a hammer, teso and wallet with TZs 166,100/=, NMB Bank card and Voter card which bear the names of the deceased and the small phone make TECNO. They took the Accused and the things he was found with to Namtumbo Police station.

He further submitted that; he handled the exhibit to HS 007 PC George, exhibit keeper. On 27th August, 2020, PW7 was informed about the death of Limbu Supi. Upon cross examination, he clarified that; it is mandatorily to make search before filling the certificate of seizure. In re-examination, PW7 insisted that they did not search the Accused because he was out of the house at the time when he was arrested.

PW8 PF 24591 George Elias Nkingwa told this Court that he is Exhibit Keeper at Namtumbo Police Station. On 26th August, 2020 around 1415 hours, he received a phone make TECNO, black in colour with Airtel line and a wallet with TZs 166,100/=. Also, there was a red

sulphate bag which contained a piece iron bar, a hammer and a teso. He registered the exhibit into exhibit register and labelled as case No. NBG/IR/177/2020. He kept the money into the safe. On 27th August, 2020 he was informed that the case changed into murder case.

PW9 was G. 4181 D/CPL Meck, a Detective Officer at Namtumbo Police Station. On 26th August, 2020, he recorded the Accused person cautioned statement who was accused for grievous harm. On 27th around 1300 hours, he was instructed to record the Accused statement once again but on a different offence which was murder case. The accused was healthier with no any injury. He informed him his offence, his rights and the use of the statement before the Court against him. Therefore, he gave his statement voluntarily and signed. He also, drew a sketch map of the scene of crime under the assistance of Rose Nkiri, the Village Executive Officer (VEO). On cross examination, PW9 added that; the incident occurred on 26th August, 2020 and Limbu Supi died on 27th of the same Month.

On defence side, the Accused Shukuru Victor Ngonyani testified as DW1. He told this Court that; on 26th August, 2020, he was on his way to Muungano Village to his grandfather Mzee Antony Maboga. He went to return the accessories namely teso and piece of iron bar which he

borrowed from him. He heard some noise behind him but went on until he passed the valley. He then discovered that the people behind were after him. They were holding some dangerous weapons. He decided to enter into nearby house which belongs to one Jose for rescue. But they arrested him and started to assault him before surrendering him to the Village Executive Officer accusing him to be a thief. He conceded to be a thief for almost two years but denied to hit the deceased. The Accused insisted that; he did not give a statement at Police Station. He later told the Court that he was forced to sign the Caution statement.

During cross examination, the Accused confessed to be familiar to all witnesses. They Accused him to store their paddy and maize. He also told the Court that; he knew the deceased as Msukuma.

After considering the evidence adduced from both sides, this Court became satisfied that; it is evident the deceased died unnatural death as shown in Exhibit P1. The issue to be determined are; *whether the Accused person is guilty of killing the deceased*. If the answer is in affirmative, *whether the Accused killed the deceased maliciously*.

Murder case is one among the serious criminal cases which bear highest punishment. When the Accused person is found guilty, his punishment is not other than death by hanging. That means, the life of

the Accused person is at stake. For that reason, the prosecution is the one who are responsible to prove their charge against the Accused that not only the deceased has died but also it is the Accused person who illegally killed the deceased. The prosecution is solely duty bound to prove beyond reasonable doubt that there is no any other person than the Accused person who committed the atrocity. This was the position in the case of **Director of Public Prosecution v. Ngusa Keleja @ Mtangi and Another**, Court of Appeal of Tanzania at Mbeya (unreported) in which the Court held that:

...the burden of proof in Criminal Cases lies on the Prosecution shoulders, the standard of which is beyond reasonable doubt.

The Court went further and explain that:

An Accused has no duty of proving his innocence, and making defence, an Accused is merely required to raise a reasonable doubt.

It is grasped from the evidence that when the Accused person hit the deceased there were more than two people nearby who saw him directly. That the Accused hit the deceased by using a piece of wood, after he fell down the Accused searched him and took the deceased

wallet in which there was TZs 166,100, NMB Bank and Voter Card which bear the names of deceased. After the Accused accomplished his evil act, he ran away towards Muungano Village. When the deceased became conscious, he mentioned the Accused to be the one who hit him at his occipital skull and robbed his properties.

PW5 saw the Accused running from the scene of crime. After they arrested the Accused, they took him to the Village Executive Officer (PW6). Upon asking the Accused if he did hit the deceased, the Accused confessed. All the witnesses knew the Accused before the incident. The incident occurred during the morning where there was enough light to enable the witnesses to identify the Accused clearly, the distance between the crime scene and where the witness stood was too short. The principle on visual identification enunciated in the case of **Waziri Amani v. The Republic** [1980] TLR 250 was met. In **Waziri's case** (*supra*), the Court observed that:

... the time the witness had with the Accused under observation; the distance at which he observe hi, the condition in which such observation occurred, for instance, whether it was day or night time, whether there was good or poor lighting at the scene; and

further whether the witnesses knew or had seen the Accused before or not...

Apart from the evidence adduced by the witnesses, the Accused person upon been interrogated, he confessed to hit the deceased. The Accused claimed that his aim was not to kill him but to robe the deceased money. This was supported by his statement that he was a thief who used to steal the properties of the villagers including the nuns who are living in their Village.

Moreso, the Accused confessed to hit the deceased leading to his death the next day. It is a cardinal law that the retracted or repudiated cautioned statement has to be corroborated. The Accused denied to give any statement but rather he claimed to be forced to sign. No any evidence to cast doubt the evidence of the prosecution side was brought by the Accused. His cautioned statement was corroborated by the evidence of PW2 and PW3 who claimed to have witnessed when the Accused hit the deceased. Such evidence was in line with the principles stated in the case of **Buswelo Busalu v. The Republic**, Criminal Appeal No. 297 of 2009, Court of Appeal of Tanzania at Mwanza, in which the Court held *inter alia* that:

A retracted confession as a matter of practice, ought to be corroborated in some material particulars by some other independent but cogent independent evidence before a conviction for any offence could be grounded on it.

Needless, I have gone through the whole evidence and found that the cautioned statement is well corroborated by other independent evidence. Therefore, the prosecution side managed to prove that it was the Accused who hit the deceased leading to his death.

As regards the issue; whether the Accused killed the deceased with malice aforethought, *Section 200 of the Penal Code [Cap 16 R. E 2022]* provides the interpretation of the word malice aforethought. There is a plethora of Court decisions in which the Court provides for the situation where the malice aforethought can be deduced. To mention the few, the case of **Enock Kipela v. The Republic**, Criminal Appeal No. 150 of 1994, Court of Appeal of Tanzania at Mbeya, the case of **Bakari Rajabu Bakiri v. The Public**, Criminal Appeal No. 292 of 2021, Court of Appeal of Tanzania at Mtwara and the case of **Ajili @ Ismail v. The Republic** [2019] TLR 30, where the Court held that:

Usually, an attacker will not declare his intention to cause death or grievous bodily harm, whether or not he had the intention must be ascertained from various factors, including the following; *The amount of force which was used by the attacker in assaulting the deceased, the part or parts of the body of the deceased where the blow of the attacker were directed at or inflicted and the kind of injuries inflicted on the deceased's body. [Emphasis applied]*

From the above refereed decisions, the evidence levelled by the prosecution establishes that the Accused hit the deceased by using a piece of wood. He hit him at his occipital skull leading the skull fracture. That means, the Accused used large amount of force to hit him. After the incidence, he ran away leaving the deceased in a bad condition instead of helping him. It follows therefore that the Accused knew exactly what would happen after the incident. He killed the deceased maliciously.

In the up shot, this Court is of the finding that, the prosecution not only proved that the deceased died unnatural death but also the person who killed him is the Accused person. I therefore find the Accused

person guilty of the offence as charged. At this juncture, I hereby convict the Accused person one Shukuru Victor Ngonyani for the offence of murder contrary to *section 196 of the Penal Code [Cap 16 Revised edition 2019]*.



Y. J. MLYAMBINA

JUDGE

29/09/2022

Judgement pronounced and dated 29th day of September, 2022 in the presence of State Attorney Hellen Chuma for the Republic, the Accused Person and his Counsel Vincent Kassale. Right of Appeal fully explained.



Y. J. MLYAMBINA

JUDGE

29/09/2022

PREVIOUS RECORDS

HELLEN CHUMA, STATE ATTORNEY:

The Republic has no previous records of the Accused. However, we pray the Court to issue sentence in accordance to the *Penal Code [Cap. 16 R.E. 2022]*.

MITIGATION

VICENT KASSALE, ADVOCATE:

Since the offence of murder does not leave discretion to the Court on sentence punishment, I leave it to the Court to decide.

SENTENCE

Upon considering the submissions on previous records by learned State Attorney Hellen Chuma and the mitigation by learned Advocate Vicent Kassale for the Accused Person, I agree that the offence of Murder does not have alternative sentence. I therefore sentence the Accused Shukuru Victor Ngonyani to suffer Death by Hanging. Order accordingly. Right of Appeal fully explained.



W. J. MLYAMBINA
JUDGE

29/09/2022