

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CRIMINAL SESSIONS CASE NO. 115 OF 2021

THE REPUBLIC

VERSUS

IZOBE S/O WISAKA

RULING

29th & 29th November, 2022

M.L. KOMBA, J;

The accused **Izobe s/o Wisaka** stands charged with offence of murder contrary to section 196 and 197 of the Penal Code [CAP 16 R.E 2019]. It was alleged that on 16th July, 2020 at Nyasirori village within Butiama District in Mara Region, the accused murdered one **Lucia d/o Juma**. The accused pleaded not guilty to the information read before this court as such the matter went to full trial.

In proving the allegation against the accused, the prosecution paraded a total of five witnesses and tendered one exhibit to wit Post-mortem Examination Report of the deceased (**Lucia d/o Juma**).

It was the evidence of PW1, **Juma Lucas** that on material date he was grazing cattle in the bush where he found the deceased body laying down.

He identified the deceased body to be of one **Lucia d/o Juma**. PW1 testified further that he raised an alarm and the crowd responded.

PW2, **Ngazi Kabara** who was employed by the accused person to look after his cattle, his evidence was to the effect that on 15th day of July, 2020 there was a fight between the accused and his second wife. And that in the next day the accused's wife was found dead in the bush. When he was asked, he stated that he knows the accused but he cannot see him anywhere in the court room.

It was the evidence of PW3, **Godfrey Benedict** who was the Ward Executive Officer at Nyasirori by then, that he was informed about the death of the deceased and after he reached at the scene of crime, he conveyed the information to the police from Butiama Police Station.

The deceased's body was examined by PW4, **Lesl Absalam Masudi** a clinical officer. He testified that he discovered the cause of the deceased's death to be severe brain injury.

The last prosecution witness was the deceased's mother one **Christina Odera** (PW5) who told the court that on 12th July, 2020 the deceased went to her home complaining about domestic violence at her home. The deceased told PW5 that he has been harassed by her husband (the accused) but PW5 counsel her to overcome the situation as it was the

marriage challenges and dispatched her to her home on 14th July, 2020. PW5 testified further that on 15th July, 2020 she received the call from the deceased complaining to be beaten by the accused. On 16th July, 2020 PW5 received information that **Lucia d/o Juma** was found dead. She went to the scene area and found the information was correct.

After the evidence of PW5, the prosecution prayed to close its case. Mr. Baraka Makowe, the learned advocate for the accused and Ms. Monica Hokororo and Mr. Nico Malekela, the learned State Attorneys left it to the Court to decide on whether the accused has a case to answer.

Thus, in this ruling, this court is called upon to determine whether the evidence adduced by the prosecution is sufficient to call the accused to enter his defence. This issue is based on section 293 (1) of the Criminal Procedure Act [CAP. 20 R.E. 2022]. The law is settled that the court is enjoined to dismiss the charge and acquit the accused if the prosecution has not discharged its duty of proving the elements of the offence. This stance was taken by the Court of Appeal in **DPP vs Peter Kibatala**, Criminal Appeal No. 4 of 2015, CAT at Dar es Salaam (unreported).

From the above position, the issue under consideration can be determined by addressing the question whether the prosecution has proved the

elements of the offence of murder in order to put the accused on the defence.

In terms of section 196 of the Penal Code, the prosecution was duty bound to prove the following three elements of the offence of murder: **One**, that there is a person who died unnatural death and that the killing was unlawful; **two**, that the accused person arraigned before the Court is the one who killed the deceased; **three**, that the accused had malice aforethought. All elements must be proved cumulatively.

Starting with the first element, that whether there is a person who died unnatural death, the answer is affirmative. There is no dispute that **Lucia d/o Juma** died and that her death was unnatural one. Without much efforts, this can be resolved by looking at the memorandum of agreed facts by the accused during the preliminary hearing. He did not dispute the deceased's death.


The next and key question is whether the deceased was killed by the accused, **Izobe Wisaka**. This court has the duty to look how the prosecution evidence implicate the accused against the charged offence for him to enter his defence. In criminal cases, the prosecution not only has the duty to prove the commission of the offence, but to prove that it is the accused whom committed the offence.

Having gone through the evidence adduced by the prosecution in this case, I find no piece of evidence which implicates the accused person in the case at hand. Their evidence did not establish the accused killed the deceased. Among all five witnesses there is no one who connects the accused and the death of the deceased per se. It must be remembered that it is upon the prosecution to summon material witnesses who can prove the case beyond reasonable doubt.

Therefore, it is my opinion the prosecution failed to prove their case on the required standard to compel this court to require the accused to enter his defence. Consequently, pursuant to section 293 (1) of the Criminal Procedural Act, I find and hold that the accused person has no case to answer and therefore he is not guilty of the offence of murder as charged. I acquit the accused **Izobe s/o Wisaka** of the offence of murder and order for his immediate release from custody unless held for other lawful cause.

It is so ordered.




M.L. KOMBA
JUDGE

29th November, 2022