

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

CRIMINAL SESSIONS CASE NO. 146 OF 2020

THE REPUBLIC

VERSUS

BEATUS ALOYCE MWISAKA

RULING

25th November, 2022

MDEMU, J.:

This is a ruling on whether or not the Accused person has a case to answer. Beatus Aloyce Mwisaka is charged of the murder of his father one Aloyce Mwisaka. The incident occurred on 26th of August, 2019 at Champumba Village in Chamwino District. The Accused pleaded not guilty to the charge.

In the course of establishing that the Accused terminated the life of his father with malice aforethought , the prosecution called three witness to wit: Jovita Beatus Mdegela, Sangoma Kapesa Mwisaka and G.8216 D/CPL Malale, PW1, PW2 and PW3 respectively. They also tendered in evidence postmortem examination report, exhibit P1.

Generally, the evidence of PW1 and PW2 indicates grudges between the Accused and the deceased as the Accused was not

trustworthy person in supervising the business of his father such that, his father (the deceased), decided to trust the Accused's sister. Equally, the two witnesses testified that, the Accused for his greedy behavior, sold the bicycle of the deceased at the tune of Tshs. 45,000/= without the deceased's consent. They testified further that, after the deceased was murdered at his work place (a security guard), the Accused was there and did not cooperate in the mourning activities thus got suspected to have participated in the murder of the deceased. PW1, on this suspicion, informed PW2 who then alerted the police, hence the Accused was arrested.

It was also the evidence of the prosecution through PW3 that, the Accused was arrested on information supplied by the Accused's mother (PW1). PW3 in his investigation work also tendered postmortem examination report (P1). He testified further to have interrogated the Accused person who confessed to have murdered his father. However, the caution statement was not admitted in evidence following upholding objection that, the statement to be tendered is not his.

With the evidence of PW1, PW2 and PW3 and the postmortem report (P1), the prosecution closed their case. In terms of section 293 the Criminal Procedure Act, Cap. 20, parties left the matter to Court to

determine whether the Accused person has a case to answer or not. This ruling intends to resolve the foregoing question.

In the instant case, on assessment of the three prosecution witnesses, it is not disputed that the deceased is dead and he succumbed unnatural death. It is equally not disputed that, the Accused was arrested in connection of the murder of his father. Importantly, it is also on record that, the Accused was arrested on suspicion hinges on his previous character and or relationship with his father the deceased. **First**, he unfaithfully and untrustworthy managed his father barbecue business in the auction. **Second**, he sold his father's bicycle without his father's (deceased) consent.

The two witnesses thus connected him because the Accused wasn't contented and happy with the deceased's move to trust the Accused's sister to operate the barbecue business in the auction. As it is, this is the only evidence tendered by the prosecution to connect the Accused with the murder of his father. Infact, what is obvious from the outset is that, the Accused is incarcerated on suspicion. Is this evidence?

In principle, the Court in a number of decisions held that, suspicion has never been evidence to base a conviction in criminal offences. In a case of **Adinardi Iddi Salimu and Another vs. The Republic**,

Criminal Appeal No. 298 of 2018 (unreported), in its decision dated 11th of February, 2022 at page 24 held that:

" It is settled Law that suspicion however strong is not enough to find the Accused guilty of an offence charged. Instead, suspicion entitled the Accused to an acquittal on a benefit of doubt"

For the charge of murder like this one booked to the Accused person, the Court in **Nathaniel Alphonse Mapunda and Benjamini Mapunda vs. Republic, [2006] T.L.R. 395** had this to say:

In a Criminal charge, suspicion alone, however grave may be is not enough to sustain a conviction, all the more so, in a serious charge of murder.

The charge of murder facing Beatus Aloyce Mwisaka is a serious one. What the prosecution told the Court is only suspicion. This being the basis of the prosecution case, I find that, in terms of section 293 (1) of the Criminal Procedure Act, Cap. 20, the Accused person has no case to answer. The Accused therefore is not guilty of the murder of his father one Aloyce Mwisaka and is accordingly acquitted.

I thus order his release from custody, unless lawful held, for some other reasons.

It is so ordered.



Gerson J. Mdemu
JUDGE
25/11/2022

DATED at KONDOA this 25th day of November, 2022.



Gerson J. Mdemu
JUDGE
25/11/2022