

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ORIGINAL JURISDICTION  
IN THE SUB-REGISTRY OF MWANZA**

**AT CHATO**

**CRIMINAL SESSION CASE NO. 22 OF 2020**

**THE REPUBLIC**

**VERSUS**

**MASELE S/O MASASILA.....ACCUSED**

**JUDGMENT**

*23<sup>rd</sup> November, & 6<sup>th</sup> December, 2022*

**ITEMBA, J**

In the evening hours of 16<sup>th</sup> August, 2017 an old lady of 99 years was killed at her home after being brutally attacked with a machete. The incidence shocked the family and neighbours and triggered a report to the police followed by an investigation. Masele Masasila the deceased's grandson, was arrested in connection with the offence.

On 23.11.2022 the accused person Masele Masasila was charged with the offence of murder contrary to section 196 and 197 of the Penal Code Cap. 16 of the Laws. [R.E 2002]. He pleaded not guilty to the charge. A full trial was conducted whereas the prosecution paraded three (3) witnesses and the accused defended himself.

At the hearing, the prosecution was represented by Ms. Monica Matwe learned State Attorney while the accused person had the services of Mr. Gaston Thomas, learned advocate.

The information disclosed that on 16<sup>th</sup> day of August, 2017 at Buyagu Village within Geita District, Masele Masasila did murder Nyanjige Maduka.

The tale of what transpired is established by three (3) prosecution witnesses. **Dr. Anneth Musa Kalokola (PW1), Malira Maharage (PW2)** and **Masumbuko Lubatula (PW3)** and one exhibit.

It was established that, the deceased, a 99 year old lady was living with her daughter Malira Maharage, (PW2) and other family members at Buyagu Village. PW2 told the court that the accused person is her own son. She had 11 children, 4 had died, 7 are still alive including the accused person. That, the accused was living at his own place but he used to go and eat at the house of PW2. PW2 stated further that previously, the accused was living with his wife Roza Mokandeme and his 3 children. Upon the accused separating from his wife, she (PW2) took the children and lived with them and that she is still living with them.

That on the incidence day, PW2 was working at her farm which is about 200 meters from her home. When returning home at around 17:00 hours, could hear noises from her house. Upon arrival, she found her son Masele Masasila, the accused attacking her mother, the deceased.

That, the deceased was attacked on her neck and shoulder. PW2 testified that she tried to intervene and stop the accused but the accused turned to her cut and injured her fingers with the machete. She explained that she was treated for five days at Geita Hospital where she had to be stitched and that she could not even bury the deceased, her mother. PW2 showed the court her right hand middle finger which had slight deformation.

She further testified that the deceased died on the spot, the children raised an alarm famously known as 'mwano' which attracted the villagers especially the neighbours famously known as 'nzengo'. The accused had already flown away from the scene but PW2 informed them who the assailant was and the 'nzengo' started tracing him

Masumbuko Lubala (PW3), a villager and a neighbour to PW2, told the court that he responded to an alarm and went to the scene, that he knew the accused person since when he was young. PW3 stated that he found the deceased at the scene lying down and had already breathed her last. PW3 also found PW2 at the scene with her fingers bleeding. Upon PW2 stating that the assailant was Masele Masasila, PW3 started the search with other villagers who had arrived at the scene. PW3 stated that when they reached at Genge Tano area within Geita District they

found the accused still holding the machete which had dry blood. That upon seeing the 'nzengo,' the accused threw away the machete and started running but they managed to arrest him, took him back to the scene and handled him and the machete to the village leader. He added that both PW2 and PW3 had good relationship with the accused.

The deceased body was examined by **Dr. Aneth Mussa Kalokola (PW1)** who testified that she went to the scene with Police Officers including one DC Frank who asked her to perform an examination. She told the court that caused of death was due to excessive bleeding caused by cut wounds. PW1 produced her report on post mortem examination which was admitted as **exhibit P1**.

This marked the end of prosecution case.

The accused person opted to defend himself under oath. He explained that before his arrest he was a resident of Buyagu Village working as a farmer and he was in harmony with other villagers. He does not dispute to be arrested at Gengetano. He states that on the incidence day he was at Gengetano because he was sick. That he was suffering from convulsion and epilepsy and he was treated by a certain woman there. That, he was treated together with his wife who later died. The accused added that on his arrest he went to a traditional healer named

Charles and he heard that he was called to go home. No one told him the reason to go home but he agreed. He states that upon reaching home he found a crowd, the deceased body on the ground; and the machete. He recognized the deceased to be his maternal grandmother. He told the crowd that since morning he has never been at the scene. That later the police officer arrived and interrogated him. He denied to have been involved and the said officers told him "utasema tu" meaning you will eventually say it. He explains to have been beaten at the scene and even at the police station. That, he was taken at remand prison for 3 days before going to court. He ended his defence by stating that he had no dispute with either his mother (PW2) or his grandmother the deceased.

This was the end of the accused's defence.

- (i) The main issue to be determined is whether the accused person caused death of the deceased.
- (ii) If he did, whether he intended to kill the deceased.

Section 196 and 197 of the Penal Code states that:

***"196. Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder. Punishment for murder 197. A person convicted of murder shall be sentenced to death."***

It is undisputed that the death of Nyanjige Maduka was unnatural. This is due to the evidence of PW2 the eye witness who experienced the accused attacking the deceased, and the evidence of PW1, the medical Doctor who stated that the deceased body had multiple cut wounds which led to severe bleeding.

Without cooling my heels, as to who killed the deceased, it is evidence from PW2, who is an eye witness that she saw the accused attacking the deceased with a machete and injured her neck and shoulder. That she tried to intervene the attack and ended up being injured by the accused to the extent to being stitched at Geita hospital.

In analysing the evidence of PW2 who is an eye witness, she visually identified the accused at the scene. In testing PW2's evidence of visual identification against the principles set in a landmark case of **Waziri Aman V Republic** (1980) TLR 250, the time of the incidence was 17.00 hours and there is no evidence suggesting that it was dark. The accused was well known to PW2 being her biological son, there was close proximity between PW2 and the accused as the accused could even physically attack and injure PW2.

Based on this evidence I find that PW2 passed the visual identification test and herself being a credible witness, I have no doubt that she properly identified the accused.

I am alive with the decision of **Jaribu Abdalla v Republic**, (2003) TLR 271 where the most Appellate Court held among others, thus: -

*"in matters of identification, it is not enough merely to look at factors favouring accurate identification. Equally important is the credibility of witnesses. The conditions of identification might appear ideal but that is no guarantee against untruthful evidence."*

It was important to assess the credibility of PW2 to ensure that she was giving true evidence. I took note that, PW2 being the key witness was put in difficult position having to testify against her own son for the murder of her own mother. There is no reason whatsoever for PW2 to fabricate any evidence against the accused. I find no reason to discredit PW2 as a witness.

PW3 has well corroborated the evidence of PW2 on the deceased being at the scene and PW2 being injured. He also explains the chain of events from witnessing the deceased at the scene, tracing the accused, his arrest at Gengetano area and back to the scene where the accused and the machete was handed to the village leader. The accused himself

does not dispute to have been arrested by PW3 among others at Gengetano. He also admits to have been taken back to the scene and later to police station.

I have considered the accused's line of defence that he went to Gengetano area for being treated with a traditional healer. However, I do not find any relation with the offence he was charged with. Whether he went at Gengetano for treatment or not, there is still strong evidence against him that he was seen at the scene assaulting and killing the deceased with a machete and that he was arrested few hours later at Gengetano, holding a machete which had dry blood.

In **Felician Joseph v Republic** Criminal Appeal No. 152 Of 2011 (CAT) Mwanza, (unreported) when evaluating the evidence which is solely based on eye witness the Court of Appeal had this to say: -

*"... we have found it convenient to begin by re-stating the law on the issue of eyewitness identification evidence. It is a mundane truth that "the criminal justice system relies heavily on eyewitnesses to determine the facts surrounding criminal events. Eyewitnesses may identify culprits, recall conversations, or remember other details. **An eyewitness who has no motive to lie is a powerful form of evidence for jurors,***



*especially if the eyewitness appears to be highly confident about his or her recollection. **In the absence of definitive proof to the contrary, the eyewitness's account is generally accepted by the police, prosecutors, judges, and juries.**" (See: "Eyewitness Evidence: Improving Its Probative Value", by Gary L. Wells (Iowa State University), Amina Memon (University Aberdeen) and John Jay (College of Criminal Justice), found in the journal entitled Psychological Science in The Public Interest, Vol. 7, NO.2 of 2006 at pp.45.)"*

Based on the testimony of PW2 and PW3, without hesitation, I am of the finding that it was the accused person Masele Masasila who killed the deceased; thus the 1<sup>st</sup> issue is answered in affirmative.

The second issue is whether the accused person intended to kill the deceased.

The law under section 200 of the Penal Code provides that:-

*'Malice aforethought shall be deemed to be established by evidence proving any one nor more of the following circumstances-*

*(a) **an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;***

*(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;*

*(c) n/a*

*(d) n/a*

In this, I will be guided by decision in the momentous case of **Enock Kipela v Republic**, Criminal Appeal No. 150 of 1994 which has outlined the criteria to determine if the accused had killed with *malice aforethought*. In this case it was held *inter alia* that; malice aforethought is established by various factors including the type and size of weapon, the amount of force applied, the number of blows, although one blow may be sufficient and the kind of injuries inflicted.

As analysed above, the evidence is clear that the accused has used a machete which is a sharp and risky weapon and he attacked the delicate parts of the body which are the neck and shoulder. Also, according to the report on post mortem examination, Exhibit P1, the cut was inflicted on the left shoulder, neck and left hip joint meaning that the attack was

multiple. Based on these facts, obviously, the accused intended nothing but to end the life of the deceased. Therefore, the second issue is also answered in the affirmative.

Consequently, I am content that the prosecution has proved its case to the required standard as provided for under section Section 3 (2) (a) of the Evidence Act, Cap. 6 RE 2019, that is beyond reasonable doubt, against the accused person. I therefore, find the accused person **Masele Masasila** guilty of unlawful killing **Nyanjige Maduka** and accordingly, I hereby convict him for the offence of Murder contrary to section 196 and 197 of the Penal Code Cap. 16 [R.E 2002], as charged.

**DATED** this 6<sup>th</sup> day of December 2022.

A handwritten signature in blue ink, appearing to read 'L. J. Itemba', is centered on the page.

**L. J ITEMBA  
JUDGE**

### **SENTENCE**

There is only one sentence for the offence of murder, that is death by hanging and my hands are tied to such. Consequently, in compliance with section 197 of the Penal Code, the convict **Masele s/o Masasila** is hereby sentenced to suffer death by hanging.

It is so ordered.

Right of appeal explained.



Judgment delivered in the presence of the accused person, Ms. Monica Matwe State Attorney for Republic and Ms. Gaston Thomas advocate, for the accused and Ms. Evodia Kakwezi, RMA.

A handwritten signature in blue ink, appearing to be 'L. J. Itemba', is shown within a light blue rectangular box.

**L. J ITEMBA**  
**JUDGE**  
**6.12.2022**