IN THE HIGH COURT OF THE UNITED REPUBLC OF TANZANIA

BUKOBA DISTRICT REGISTRY

SITTING AT BUKOBA

ORIGINAL JURISDICTION

CRIMINAL SESSION CASE NO. 34 OF 2021

THE REPUBLIC

VERSUS

DENIS GERAZ

JUDGMENT

01/12/2022 & 14/12/2022
E. L. NGIGWANA, J.

The accused Denis Geraz was arraigned before this court for the offence of Murder contrary to section 196 and 197 of the Penal Code [Cap 16 R:E 2019], Now R:E 2022. The particulars on the information alleged that, on 1st day of July, 2020 at Milanda Village within Muleba District in Kagera Region, the accused did murder one Magreth w/o Bahati.

When the information of murder was read over and properly explained to the accused person in Kiswahili language, he pleaded not guilty. To establish and prove criminality against the accused person, prosecution featured six (6) witnesses and tendered four (4) exhibits. The witnesses were; Warioba Kitangato **(PW1),** Manyusi s/o Joseph **(PW2),** Johaness s/o Swetbath (**PW3),** Dauson s/o Bahati, **(PW4),** Geneviva Asimwe Byemelwa **(PW5),** and A/Insp. Experius Audax Barugahare **(PW6).** The Exhibits tendered were; Report on Postmortem examination (**Exh. P1**), Extra-judicial

statement of the accused person (**Exh. P2**), Sketch Map of the crime scene **(Exh.P3**), and Cautioned statement of the accused person (**Exh. P4).**

On his part, the accused person defended himself under oath and tendered no exhibits. At the hearing of this case, the Republic was represented by Mr.Erick Shija, learned Senior State Attorney assisted by Mr. Noah Mwakisisile, learned State Attorney while the accused person enjoyed the legal services Mr. Scarius Bukagile, learned advocate. My Legal Assistant was Hon. E. M. Kamaleki.

The evidence adduced by the prosecution can be summarized as follows. PW1 testified that on 1/7/2020 during night hours, he was at his local brew and soft drinks shop situated at Milanda Centre, whereby the accused arrived and purchased a bottle of local brew commonly known as "gongo" and went on drinking. He added that few minutes later, Magreth w/o Bahati, now deceased arrived and purchased one bottle of soft drink to wit; soda and burns.

He added that, having finished their drinks, the Magreth w/o Bahati asked the accused to escort her back home since it was night hours, hence, the accused and the deceased departed together from his business area. He added that the duo were not strangers to him since they all live in the same Hamlet and Village.

PW1 added that on 02/07/2020 during morning hours, he knew that Magreth w/o Bahati was found dead beside the public road, and he went at the scene of crime and witnessed the deceased's body lying on the ground. According to him, the accused person was the last person who was seen with Magreth before her death.

PW2 who is the Village Chairman, Milanda Village told this court that on 02/07/2020 during morning hours, he received a telephone call from the Hamlet leader namely; Luvano Isaya informing him that Magreth was found dead and her body was lying beside the road. He added that upon such information, he went at the scene of crime and witnessed the dead body lying on the ground with bruises around the neck. He said, he informed the Ward Executive Officer (W.E.O) who then informed the police, and few hours later, the W.E.O arrived while accompanied by police and the Medical Doctor. He further said the Medical doctor conducted postmortem examination while the police drew the sketch map of the crime scene.

The evidence of PW3 who is the Medical Assistant Officer is to the effect that on 2/07/2020 he accompanied the police to Millanda Village and conducted postmortem examination of the deceased's body. He said that, the deceased had bruises on her legs, vagina and around the neck. He added that, he formed the opinion the cause of death was neck strangulation. Postmortem report was admitted without objection and marked Exh. P1.

PW4 who is the deceased's son confirmed that on 1/7/2020 his mother went to a ceremony which was held at the home of one William but she never came back until 2/07/2020 when she was found dead beside the road. PW4 added that, upon arrival of the police and the Medical Officer, the postmortem examination being performed, the deceased's body was handed over to the family members for burial.

PW6 confirmed to have arrived at the scene of crime while accompanied with other policemen including a one Police woman and PW3 whereby he saw the dead body lying beside the road and drew the sketch map (Exh.

P3). PW6 while there, he was informed by the Hamlet leader that the accused was arrested by the Militia men allegedly to have murdered the deceased, hence headed to where the accused was and re-arrest him around 14:00hours and took him using a police motor-vehicle to Muleba Police Station for interrogation whereby they arrived there at 16:00hours, and upon arrival, he was assigned to record the cautioned statement of the accused person according to law. PW6 further testified that he took the accused from police lock-up to the interrogation room, and the introduced himself to the accused and informed him the allegations of murder facing him.PW6 further testified that, he well informed the accused that he is not forced to make his statement and that whatever he will say may be used in court as evidence, and he is free to have a relative, advocate or neighbor to witness his statement.

According to PW6, the accused person understood his right and opted to make his statement voluntarily in Kiswahili in absence of an advocate or relative. PW6 added that, having recorded what the accused narrated to him, he read it to him loudly and the accused consented to the truth and correctness of the statement, hence he signed.PW6 told the court that in his cautioned statement, the accused person admitted to have raped and finally murdered one Magreth w/o Bahati by strangling his neck using her own cloth (Kitenge). The accused's cautioned statement was admitted without objection from the defence side, and it was marked **Exh. P4.** When cross examined by the defence counsel, PW6 said the accused person had minor scratches on his face.

PW6 went on testifying that on 3/07/2020 at 11:00hours while in the exercise of inspecting police lock-up, he met the accused therein whereby

the accused requested to be sent to the justice of peace. PW6 said the accused person used these words" **Afande nina nelo la kusema, ninaomba nipelekwe kwa msimamizi wa amani nikaandike maelezo ya ungamo"** .PW6 further testified that he informed the OC-CID about the accused's request, the OC-CID assigned him to send the accused to the justice of peace at Muleba Urban Primary Court and he did so, and upon arrival at the Primary court, the justice of peace told him to handover the accused to the court clerk and leave the place, and he did so.

PW5 who is a justice of peace (Resident Magistrate Court) confirmed that the accused was sent to her and she recorded the extra judicial statement of the accused according to law. PW5 said, she asked the accused whether he was forced to go there to make his extra judicial statement and the accused responded that no force was inflicted over him, and that he voluntarily opted to make his statement before a justice of peace. PW5 said she recorded what the accused narrated to her, and having done so, she read it and the accused and the accused consented to its truth and correctness hence signed. It is the evidence of PW5 that in his extra-judicial statement, the accused had confessed to have raped and finally killed Magreth w/o Bahati. The extra- judicial statement was admitted without objection from the defence side and marked Exh. P3. This marked the end of the summary of the prosecution evidence.

DW1 in his defence admitted that on 01/07/2020 during night hours, he saw the deceased at the local pombe shop of PW1 but denied to have departed with her from the pombe shop of PW1. He added that on 2/07/2020, vide Village drums beat, he knew that Magreth w/o Bahati was no more, and he went to the crime scene and witnessed her body lying on

the ground beside the road. He said that, he was arrested together with other five persons including PW1 and matched to Muleba police station whereby at last, he remained alone in this case. He added that he was severely tortured a police and forced to sign six documents which were brought to him by PW6, and was treated at the Hospital after being issued with PF3. He denied to have murdered the deceased, and that he has been brought to court after he had failed to give PW6 a sum of Tshs. 5,000,000/= which he demanded from him in order to end the case.

When cross –examined by Mr. Erick Shija, learned State Attorney, DW1 admitted that his cautioned statement was admitted without objection and that PW6 was not cross-examined on the issue of torture. He also admitted that the extra judicial statement was admitted without objection. He admitted to have signed the extra judicial statement. He also said, he do not remember the name of Hospital at which he was treated, and had no medical proof that he was treated after being tortured. He also said all six documents which were brought to him by PW6 at police for signature were not tendered in this case as exhibits. He as well admitted that he has not called the medical doctor who attended him to prove that he was treated after being tortured by the police at Muleba.

Upon the closure of the defence case, both the prosecution and the defence side opted neither to make final oral submissions nor written submissions.

Now, it is pertinent at this stage to determine whether or not the offence of murder has been proved as against the accused person beyond reasonable doubt because the standard of proof in criminal cases is that of beyond reasonable doubt. Section 3 (2) (a) of the Evidence Act, [Cap 6 R.E 2022] provides that;

"A fact is said to have been proved in criminal matters, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists."

This standard was insisted in the case of **JONAS NKIZE V. R [1992] TLR 213** where this court through Katiti, J. (as he then was) stated that;

"The general rule in criminal prosecution that the onus of proving the charge against the accused beyond reasonable doubt lies on the prosecution, is part of our law, and forgetting or Ignoring it is unforgivable, and is a peril not worth taking".

Emphasizing the same standard, the court of Appeal of Tanzania **in Furaha Michael versus The Republic, Criminal Appeal No. 326 of 2010** (Unreported) had this to say;

"The cardinal principle in criminal cases places on the shoulders of the prosecution the burden of proving the guilt of the accused beyond all reasonable doubt".

It is trite that in order to sustain conviction in murder case like the present one, the prosecution must prove beyond reasonable doubt; **firstly,** death of the deceased, **secondly**, that the death was unnatural, **thirdly**, that death was caused by unlawful act or omission of the accused, and **fourthly,** that the killing was actuated by malice afore thought. However, it should be noted that where the charge/information involves more than one accused the court must see whether there was common intention. In this matter, the accused is only one therefore; the issues in the instant case are four (4) as follows;

1. *Whether deceased namely; Magreth w/o Bahati really died.*

2. *Whether her death was not natural.*

3. *Whether the death was caused by unlawful act or omission of the accused person.*

4. *Whether the killing was actuated by malice aforethought.*

1st issue:

The postmortem report on examination of the body of the deceased was duly produced and since it was not objected by the defence side, it was admitted as **Exh. P1**. PW3 who conducted an autopsy indicated in Exh.p1 that the deceased was tied on the neck using a piece of cloth "Kitenge" and he formed opinion that the cause of death was asphyxiation due to strangulation.

PW1, PW2 and PW4 and PW6 confirmed in their evidence that the postmortem examination was conducted by PW3 in their presence. PW4 and PW2 confirmed that the deceased's body was buried.DW1 also admitted that Magreth w/o Thobias really died. To the extent, the first ingredient of the offence has been proved. In other words, the first issue has been answered in the affirmative.

2nd issue:

In the instant case, the deceased was strangled to death. PW3 said the piece of cloth was tied in the deceased's neck. PW1, PW2, and PW6 testified that the deceased's body had bruises and marks around the neck therefore, it can safely be concluded that the death of the deceased was unnatural. To that extent, the 2nd ingredient has been proved.

3rd issue:

As to the unlawful nature of the death, it is trite that the law presumes every homicide to be unlawful unless it occurs as a result of an accident or is authorized by the law. In the matter at hand, the death of the deceased was unlawful as it was not authorized by law and it was not occurred as a result of an accident. **In the case of Guzambizi Wesonga versus Republic (1948) 15 EACA, it was held that;**

"Every homicide is presumed to be unlawful except where the circumstances make it excusable or where it has been authorized by the law. For homicide to be excusable, it must have been caused under justifiable circumstances, for example in self defence or in defence of property."

It is also trite law that in order to sustain conviction in a murder case, the prosecution evidence must be cogent enough leaving no doubt to the criminal liability of the accused person linking him/her with the offence. In other words, an accused person should not be put on his or her trial if there is no link between him or her and the offence. The prosecution therefore, must produce credible and reliable witnesses whose evidences irresistibly point to none save only to the accused person. **In the case of Mohamed Matula versus Republic [1995] TLR 3 it was held that;**

"Upon the charge of murder being preferred, the onus is always on the prosecution to prove not only the death but also the link between the said death and the accused, the onus never shift away from the prosecution and no duty is cast on the appellant to establish his innocence."

It is also a well settled principle that, in a criminal trial, such as the instant one, the guilty of the accused can be proved either by direct evidence,

circumstantial or through confessional statements of the accused. Direct evidence is what a witness says he/she saw or heard or did while circumstantial evidence is the evidence of surrounding circumstances which by un-designed coincidence is capable of proving a proposition with accuracy.

In the instant case, the prosecution depends entirely on **confessional statements** (Cautioned statement and extra judicial statement) of the accused person and the doctrine of the **"the last person to be seen with the deceased."**

I find it apposite to start addressing the applicability of the doctrine of **"Last see"** in the matter at hand. To boost the case against accused, the prosecution, apart from confessional statements, invoked the criminal law doctrine of **"last seen"** that as the accused was the last person to be seen with the deceased and the deceased was later found dead then he must have had a hand in her death. PW1's evidence is that the last person who was seen with the deceased on 01/07/2020 during night hours was the accused. In his extra judicial statement, the accused admitted to have been mentioned by PW1 as the last person who was seen with the deceased.

It is common knowledge that the doctrine of **"Last person to be seen with the deceased"** connotes that the law presumes that the last person seen with the deceased alive bears full responsibility for his or her death. It follows therefore; that where an accused person was the last person to be seen in the company of the deceased alive and circumstantial evidence is overwhelming and leads to no other conclusions; there is no room for acquittal. For that matter, it is the duty of the accused to give plausible

explanation relating to how the deceased met his or her death in such circumstance, and in absence of plausible explanation, a trial court will be justified in drawing the inference that the accused person killed the deceased. In the case of **Ijumaa Issa@Athuman versus The Republic**, Criminal Appeal No 53 of 2021 CAT (Unreported) the Court stressed that;

"It is pertinent to note that application of the doctrine of the last known person to be seen with the deceased alive is only based on a "presumption" that where no plausible explanation is given by an accused person as to the circumstances leading to the death of the deceased , the, the accused is presumed to be the killer."

In the case hand, the accused person did not give explanation that he was not the one who killed the deceased, instead, through his cautioned statement and extra-judicial statement, he explained that he was with the deceased on the material night and he ended up killing her.

I now turn to confessional evidences. The cautioned statement of the accused was recorded by PW6 (a police officer) according to law, and it was admitted in court as Exh. P4 without objection from the defence side. Part of the cautioned statement reads;

"Nakumbuka tarehe 01/07/2020 majira ya saa 19:00hours niliienda kuangalia mpira kwa Murashan Matungwa, niliangalia mpira mpaka saa 21hours , baada ya hapo nilienda kwa Warioba Kitangato kunywa pombe aina ya gongo na nilipofika nilinunua Fanta moja ya gongo na kuanza kunywa. Nikiwa naendelea kunywa, alifika mama mmoja iitwaye Magreth w/o Bahati akaomba nimnunulie, mimi nikasema sina pesa....Baada ya kumwambia sina pesa aliomba nimsindikize kwenda nyumbani kwake kwa

kupitia njia ya kufika Katanda. Kweli niliondoka naye na njiani tukiwa wawili yaani mimi na marehemu, nilimwomba kumtomba, yeye akakataa, nikamwambia kuwa naomba nimpe Tshs. 5000/= akakataa hiyo pesa. Baada ya kukataa nikatumia nguvu kwa kumkamata na kumwangusha chini na hapo nilimvua nguo zake ....Baada ya kumvua, nilimwekea mboo kwenye kuma yake nikamtomba na nilikojoa mara moja. Wakati namfanyia hivyo vitendo alikua anapiga kelele kwa kusema kesho atanitangaza na watanifunga na hapo akawa amenikwaruza na kucha zake sehemu za usoni na nilisikia muwasho na damu kidogo ilitoka ... Hayo maneno yake ya kusema kuwa atanintangaza na pia alishaniweka alama ya vidonda nilijua kuwa kweli wananifunga kwa sababu kuna ushahidi wa hizo alama. Baada ya hapo nilichukua maamuzi ya kumuua ili asije nisema na katika kumuua nilitumia kitenge chake kwa kumfunga shingoni kwa kuvuta pande mbili za kitenge naye akakosa hewa akawa amefariki na niliona akikata roho mbele yangu.....Mimi nakiri kwa akili zangu zote kuwa mimi ndiye nilyemuua yule mama Magreth Bahati baada ya kumbaka.....Hili tukio la kumbaka na kumuua Magreth w/o Bahati ni shetani tu alinilingilia, sikua na nia ya kufanya mauaji hayo.

Part of his extra-judicial statement **(Exh. P3)** which was recorded by the Justice of peace who is Resident Magistrate (PW5) in compliance of the Chief Justice guidelines and admitted in court without objection from the defence side, reads;

" *Hivyo nilimsindikiza kwenda nyumbani baada ya kumaliza kunywa pombe na tukiwa njiani nilitaka nikae naye yaani nimtombe lakini alikataa nalimwambia nimpe shiling elfu tano lakini alikataa na nilimkamata kwa nguvu na kumwangusha chini na nilimpandisha nguo na kutoa chupi na*

Kisha nilifanikiwa kumtomba naye alinikwangua usoni na kusema kesho naenda kukushitaki wakufunge na baada ya kusikia maneno hayo nilichukua kitenge chake na kumfunga shingoni ambapo nilimnyonga hadi kufa na baada ya hapo nilikimbia hadi nyumbani kwangu na kumwacha hapo pembeni mwa barabara na nilipofika nyumbani nilingiia ndani na kulala na tulipoamka asubuhi nilisikia ngoma na nilienda hadi kwenye eneo la tukio na niltajwa na mwenye bar kuwa aliniona nikiwa naye lakini najuta kumuua kwa kuwa ni shetani ndiyo alinituma."

I am alive of the land mark case of **Tuwamoi v. Uganda [1967] E.A 84** which provided the warning and how the court may invoke the accused person's confession for conviction. The court stated that;

"A trial court should accept with caution a confession which has been retracted or repudiated or both retracted and repudiated and ***must be fully satisfied that in all the circumstances of the case that the confession is true.*** *The same standard of proof is required in all cases and usually,* ***a court will act on the confession if corroborated in some material particular by independent evidence accepted by the court.*** *But corroboration is not necessary for law and the court may act on a confession alone* ***if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true." (Emphasis added)***

In the same line, the Court of Appeal of Tanzania in the case of **Hemed Abdallah versus Republic [1995]** TLR 172 had this to say;

"It is dangerous to act upon a repudiated or retracted confession unless it is corroborated in material particulars or unless the court, after full

consideration of the circumstances of the case is satisfied that the confession must be true".

It is trite that a confession is a criminal suspect's acknowledgment of guilty; it is usually in writing and often including the details of the offence. A free and voluntary confession deserves a highest credit, because it is presumed to flow from the strongest sense of guilt and therefore it is admitted as proof of the crime to which it refers. In law, the evidence of an accused person who confess is the best evidence if it is made voluntarily and a conviction can be based on it. See **Republic Versus Mugisha Katulebe and 5 others**, Criminal Sessions Case No126 of 2016 HC –Bukoba (Unreported)

The Supreme Court of Ghana in the case of **Ofori versus the State** (1963) 2 GLR 452 had this to say; when addressing the issue whether confession without any other place of evidence, is sufficient to found a criminal conviction.

"A free and voluntary confession of guilty by an accused person, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence"

In the instant case, the confessions as reproduced herein above are so elaborative on the execution of the killing, the responsible person, how the deceased was killed and the motive behind the killing. Both Exhibits P2 and P4 were not objected during admission. In other words, they were neither retracted nor repudiated. PW5 has testified how she recorded the accused's extra judicial statement according to law, and PW6 on his side testified that he recorded the accused's cautioned statement according to law. Going through the evidence of PW5 and PW6 as well as Exh. P2 and P4, and the

fact that they were not objected during admission, and that both PW5 and PW6 were not cross-examined on the voluntariness of the statements, it is the finding of this court that the statements were freely and voluntarily made, thus, deserves a highest credit. It was held in the case of **Mohamed Haruna Mtupeni and Another versus Republic,** Criminal Appeal No. 259 of 2007 CAT (Unreported) that;

"The very best of the witness in any criminal trial is an accused who freely confesses his guilty."

In the instant matter, what is contained in Exh.p2 and P4 is the best evidence in this case.

As seen in the summary of the defence evidence, the accused alleged that his cautioned statement was obtained by PW6 through torture but during the tendering of both cautioned and extra-judicial statements, the defence was afforded an opportunity to see and examine the statements and raise objection on admission if any but no objection was raised. Furthermore, as stated earlier, neither PW5 nor PW6 was cross- examined by the defence counsel on the voluntariness of Exhibits P4 or P2. In the case of **Damian Rubehe versus Republic,** Criminal Appeal No.501 of 2007, the Court of Appeal had this to say;

"It is trite law that failure to cross-examine a witness on an important matter ordinarily implies the acceptance of the truth of the witness evidence."

In the same parity of reasoning the Court of Appeal in the case of **Nyerere Nyague versus Republic,** Criminal Appeal No.67 of 2010 CAT (Unreported) the Court of Appeal held that;

"As a matter of practice a party who fails to cross-examine a witness on certain matter is deemed to have accepted that matter and will be estopped from asking the trial court to disbelieve what the witness has said."

The court went on saying that;

"A confession or statement will be presumed to have been voluntarily made until objection to it is made by the defence on the ground either it was involuntarily made or not made at all."

The next question is whether objection to the admissibility of a statement or confession can be raised even in the defence stage. The answer has already been provided for by the Court of Appeal in the case of **Emmanuel Lohay and Udagene Yatosha versus Republic,** Criminal Appeal No. 278 of 2010 (Unreported) where the Court held that;

"It is trite law that if an accused person intends to object the admissibility of a statement / confession, he must do so before it is admitted and not during cross examination or during defence-Shihoze semi and Another v. Republic *(1992) TLR 330. In this case, the appellants "missed the boat" by trying to disown the statements at the defence stage. That was already too late* ***.Objections, if any, ought to have been taken before they were admitted in evidence."*** *(Emphasis supplied)*

Being guided by the above Court of Appeal authority, it is my considered view that even in the matter at hand, the accused has missed the boat because as the defence side did not object admissibility of the statements before they were admitted in evidence. Since the admissibility of Exhibit P2

and P4 was not objected before they were admitted as evidence, challenging them at the defence stage is nothing but an afterthought.

The evidence of DW1 that he did not commit the offence and he was brought to court after failing to pay Tshs. **5,000,000/=** is just an attempt to escape the legal consequences of his deeds. The accused has not raised any reasonable doubt on the prosecution case.

In both exhibits (Exh. P2 and P4), the accused person stated that, he strangled Magreth w/o Bahati to death after she uttered the words that she would report him the next day to the relevant authorities that he had raped her so that the law can take its course. Looking on those words, it cannot be said that the accused was provoked by the deceased because the words were not at all provocative.

Furthermore, the accused stated that, he killed the deceased under the influence of the devil, but as a matter of law, that does not amount to defence available to the accused person. In the case of **Ally Shabani @ Swalehe versus Republic,** Criminal Appeal No. 351 of 2020 CAT (Unreported), it was held that;

"The law does recognize influence of the devil as one of the defences available to an accused person."

Basing on the evaluation and analysis of the evidence done in relation to the 3rd issue, I am satisfied that the prosecution has managed to prove beyond reasonable doubt that the death of Magreth w/o Bahati was caused by unlawful acts of the accused person.

4th issue:

Undoubtedly, murder is said to be committed when an accused person kills another with malice aforethought. According to section 200 (a) of the Penal Code Cap 16 R.E 2022, the basic element in proving malice aforethought is the existence of an intention to cause death. Therefore, there must be a pre-meditated or planned intention to cause death. It should be noted that **malice afore thought** can be inferred from the nature of the weapon if used or/and the geographical location of the body on which the attack was made, and the conduct of the accused. In the case of **Enock Kipela versus Republic, Criminal Appeal No. 150 of 1994 CAT** (Unreported) at page 6 the Court observed that;

"Usually, an attacker will not declare to cause death or grievous bodily harm, whether or not he had that intention must be ascertained from various factors, including the following: the type and size of the weapon, if any, used in the attack, the amount of force applied in the assault, the part or parts of the body the blows were directed at or inflicted on, the number of blows, although one blow may, depending upon the facts of the particular case, be sufficient for this purpose, the kind of injuries inflicted, the attacker's utterances, if any, made before, during or after the killing, and the conduct of the attacker before and after the killing."

In the instant case, the accused having raped the deceased, strangled her to death using her cloth "Kitenge". The act of strangling the deceased reveals that the accused had intention to kill her and he really executed his intention. In exhibits P2 and P4, the accused person had disclosed the reason or motive behind for killing the deceased, thus it was an intentional act executed with malice aforethought.

I am alive that motive is not an ingredient of the offence of murder but it tends to strengthen the prosecution case, just as its absence tends to weaken it. In other words, lack of motive negates malice. See **R v. Stephano Alois** [1972] HDC No.199 and **Republic versus Asumin d/o Bakari,** Criminal Sessions Case No. 9 of 2016.

In the upshot, it is apparent that all ingredients of murder have been proved beyond reasonable doubt and having considered the totality of the evidence placed before me, I find the accused person guilty of the offence of murder. Consequently, I hereby convict the accused person of the offence of Murder under section 196 and 197 of the Penal Code Cap. 16 R:E 2022.

It is so ordered.

Sgd: E. L. NGIGWANA

JUDGE

14/12/2022

Dated at Bukoba this 14th day of December, 2022.

ANTECEDENTS.

Mr. Erick Shija, SSA:

My Lord, we have no previous criminal records of the convict and since the punishment for murder is death sentence, we pray for the punishment according to law.

That is all.

MITIGATION.

Defence Counsel, Mr. Scarius Bukagile:

Since the offence of murder has only one sentence which cannot be reduced by mitigation, we have nothing to say.

That is all.

Convict: I have nothing to say.

Sgd: E.L.NGIGWANA

JUDGE

14/12/2022

SENTENCE

In our jurisdiction, the offence of murder under section 196 of the penal Code [Cap. 16 R:E 2019] now R:E 2022, upon conviction attracts only one sentence which is death by hanging.

By virtue of section 197 of the Penal Code, I hereby sentence the convict DENIS S/O GERAZ to death; and in terms of section 26 (1) of the Penal Code [Cap. 16 R.E 2022] and section 322 (2) of the Criminal Procedure Act, [Cap 20 R:E 2022], I hereby direct that the convict shall suffer death by hanging.

It is so ordered.

E. L. NGIGWANA

JUDGE

14/12/2022

Court: Right to appeal by lodging a notice of appeal within 30 days from today fully explained.

E. L. NGIGWANA

JUDGE

14/12/2022

Court: Judgment delivered this 14th day December 2022 in the presence of Mr. Erick Shija and Mr. Noah Mwakisisile, both learned State Attorneys for the Republic, the convict, Mr. Scarius Bukagile, defence counsel, Hon. E. M. Kamaleki, Judges' Law Assistant and Lonsia Kyaruzi, B/C.

E. L. NGIGWANA

JUDGE

14/12 /2022