**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**THE CORRUPTION AND ECONOMIC CRIMES DIVISION**

**AT SONGEA – SUB REGISTRY**

**ECONOMIC CASE NO. 05 OF 2022**

**REPUBLIC**

**VERSUS**

**MOHAMED MOHAMED ADAM @ MBUKO @ MASUMBUKO**

# JUDGEMENT

**Date of last Order**: *24/10/2022*
**Date of Judgement**: *20/12/2022 at 14hrs*

**MLYAMBINA, J.**

Human being is a natural being endowed with natural vital forces. He is physically and mentally powerful than all creatures with the ability to do anything no matter how dangerous it is especially when it is associated with beliefs or faith, which if not controlled, the World can be a messy field. In order to maintain peace and harmony for the nation and the international community, laws, rules, regulation, treaties, conventions and various declarations are promulgated at national and international level respectively purposively to control the freedom of a human being for his benefit, society and the whole World. *Article 18 of the Universal Declaration of Human Rights, 1948 (jus cogens) and Article 18 (1) and (3) of the International Covenant on Civil and Political Rights, 1966* of which Tanzania is a State Party guarantees freedom of

religion among Member States. Such right is incorporated into Tanzania law by *Article 19 of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. Article 19 (1), (2) and (3) of the Constitution (supra)* provides as follows:

> 19.-(1) Every person has the right to the freedom of conscience, faith and choice in matters of religion, including the freedom to change his religion or faith.
>
> (2) Protection of *rights* referred to in this Article *shall be in accordance with the provisions prescribed by the laws which are of importance to a democratic society for security and peace in the society, integrity of the society and the national coercion.*
>
> (3) In this article reference to the term religion shall be construed as including reference to religion denominations, and cognate expression shall be construed accordingly. [Emphasis added]

*Sub article (2) of Article 19 of the Constitution (supra)* carries with it duties and responsibilities. It is, therefore, subject to restrictions, conditions and penalties prescribed by the law necessary in a democratic society in the interests of national security, territorial integrity, prevention of disorder or crime, protection of health or morals, protection of reputation or rights of others and peace in the

society. It requires no one to exercise his right of religion for the detriments of others, endanger the life, peace and security of the people, society and nation as a whole or pose a threat to public order.

Before this court, one Mohamed Mohamed Adam @ Mbuko @ Masumbuko was made to believe through his religion that; if he kills many people at once through improvised local bombs, his sins will be forgiven at once and enjoy eternal life. He was also trained on how to make explosives for the purpose of attacking public gathering including Government offices and the Roman Catholic Church within Songea District, Ruvuma Region in the United Republic of Tanzania. On 11th May, 2020 in the process of fulfilling what he was taught, the accused person detonated explosives through a locally improvised bomb at Ruvuma Juu playground, fortunately the bomb exploded and hurt himself. As a result, he was charged with two offences before this court, namely:

*First*, being found in possession of property for commission of Terrorist acts contrary to *sections 4 (1), (3) (i), and 15 (b) of the Prevention of Terrorist Act, Act No. 21 of 2002* read together with *paragraph 24 of the first schedule to, and sections 57 (1) and 60 (2)*

*of the Economic and Organised Crime Control Act [Cap 200 Revised Edition 2019*. It was alleged that, between 11th and 12th May, 2020, at various places within Songea District in Ruvuma Region the accused person was found in possession of cylinder-shaped metals, a knife, one rolled cotton fibre, pieces of electric wire and a bicycle pump, knowing that the said properties will be used directly, in whole or part for the purpose of facilitating the commission of a terrorist acts to wit; assembling a locally made bomb intended to be used in blowing up public gathering including Churches and Government institutions within Ruvuma Region, an act which involve prejudice to public safety and by its nature and context may reasonably be regarded as being intended for purpose of intimidating a section of the public within the United Republic of Tanzania.

*Second*, the offence of participating in commission of a terrorist acts contrary to *sections 4 (1), (3) (i) and 15 (b) of the Prevention of Terrorist Act, Act No. 21 of 2002 read together with paragraph 24 of the first schedule to, and sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap 200 Revised Edition 2019].*

The factual substratum of the offence are as follows; on 11th may, 2020 at Ruvuma Juu playground, within Songea District in

Ruvuma Region, the accused person did participate in commission of a terrorist acts to wit, detonating an improvised explosive device in potential public gathering at Ruvuma Juu playground near the Roman Catholic Church in Songea District, Ruvuma Region, an act which prejudiced to public safety and by its nature and context may reasonably be regarded as being intended for the purpose of intimidating a section of the public within the United Republic of Tanzania.

As it was during the preliminary hearing, the accused herein maintained his position of repudiating to have participated into commission of the charged offences. Therefore, the matter went into full trial in camera through virtual Court. The same procedure was adopted by this Court in another case on terrorism between **Director of Public Prosecutions and Seif Abdallah Chombo @ Baba Fatina and 5 Others**, Misc. Economic Application No. 02 of 2022, High Court of Tanzania, Songea District Registry (unreported), where the court allowed the prayer of protecting witnesses by precluding their identity and allowing the case involving the same parties *(Economic Case No. 04 of 2022)* to be heard in camera.

Mr. Hebel Kihaka learned Senior State Attorney, Tulimanywa Majigo and Edgar Bantulaki learned State Attorneys appeared for the Republic, while the accused was represented by Mr. Makame Sengo learned Advocate. To prove their case against the accused person, the Prosecution summoned nine (9) witnesses who are P11, P2, P3, P8, P10, P13, P, P12, and P7 and tendered 9 exhibits.

Before considering the evidences from both sides, it should be noted from the outset that this is the second case involving terrorism to be tried conclusively. Therefore, the court will apart from relying its decision from the case of **the Republic v. Seif Abdallah Chombo @ Baba Fatina and 5 Others**, Economic Case No. 04 of 2020, High Court of Tanzania Economic and Corruption Division, Songea Sub Registry (unreported), it will rely heavily on Commonwealth authorities before reaching its verdict.

At this stage, it is pertinent to recite the provision of the law in which the prosecution relied upon to prosecute the accused person in this case. *Sections 4 (1), (3) (i) and 15 (b) of the Prevention of Terrorist Act* provides that:

> 4.-(1) No person in the United Republic of Tanzania and no citizen of Tanzania outside the United Republic

shall commit terrorist act and a person who does an act constituting terrorism, commit an offence.

(2) N/A

(3) An act shall also constitute terrorism within the scope of this Act if it is an act of threat of action which-

(i) Involves prejudice to national security or public safety, and is intended, or by its nature and context, may reasonably be regarded as being intended to-

(i) Intimidate the public or a section of the public.

In the light of *section 4 (1) and (3) of the Prevention of Terrorism Act (supra)*, in order to qualify the criteria of terrorist act, it should be: *First*, an act of threat of action. *Second*, such act of threat should involve prejudice to national security or public safety. *Third*, such act of threat should be done with intention. *Four*, the act of threat by its nature and context, may reasonably be regarded as being intended to intimidate the public or a section of the public.

The provisions of *section 4 (1) and (3)* if read together with the provisions of *sections 5, 6, 7, 8, 9 and 10 of the Prevention of Terrorism Act (hereinafter referred as the Act)*, will require fulfilment of the hereinafter elements to constitute terrorist acts: *One*, it must be a terrorist action. *Two*, threat of action. *Three*, the action or threat must be done with terrorist intention. *Four*, such act or

omission may seriously damage a country or an international organization. *Five*, the act or threat is intended or can reasonably be regarded as having the following *inter alia* object; seriously intimidate a population; and seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of country or an international organization. In order to establish the intention of the accused person on participation of a terrorist act, whether a particular act is an act of terrorism or not, this court gave a guidance in the case of **the Republic v. Seif Abdallah Chombo @ Baba Fatina and 5 Others** *(supra)* as follows;

> the court may analyse *inter alia* on the surrounding circumstances depicting the commission of offence, the motivation, object, and the design or purpose behind the said act and the premeditated plan to commit such terrorist act.

*Section 15 (b) of the Prevention of Terrorism Act* requires three ingredients to be met: *One*, the accused must be found in possession of property to be used. *Two*, with intention that such property be used or knowing that it will be used, directly or indirectly in whole or part. *Three*, for the purpose of committing or facilitating the commission of terrorist acts; If such person is convicted on this

section, he will be liable to imprisonment for term of not less than fifteen years and not more than twenty years.

While *paragraph 24 of the 1st schedule to, and section 57 (1) and 60 (2) of the Economic and Organise Crimes Control Act (supra)* apart from recognising the offences in first schedule to be economic offences, requires whoever convicted on economic offences to be penalised up to thirty years or both imprisonment and other penal measure provided under this act.

In order to win the conviction against the accused person, the prosecution has a duty to prove all the ingredients of the offence mentioned. This was the position in the case of **Anthony Kinanila and Another v. The Republic,** Criminal Appeal No. 83 of 2021, Court of Appeal of Tanzania at Kigoma, where the court had this to say:

> It is a trite that the Prosecution required to prove all ingredients ... in order to win a conviction...

In the light of the foregoing evidences and exhibits, it must be recalled that offences relating to terrorism are felony cases. Regardless of being serious cases, it is like any other criminal cases in which the prosecution has a duty to prove beyond reasonable doubt as required under the provision of *section 3 (2) (a) of the Law*

*of Evidence Act.* For easy reference *section 3 (2) (a)* provides *inter alia* that:

> A fact is said to be proved when-
>
> (a) In criminal matter, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the facts exists.

The court in its plethora of decisions reiterated what was provided in the afore mentioned provision of the law. To mention the few the cases of **Godfrey Paulo and Others v. The Republic** [2018] TLR 486; **Director of Public Prosecutions v. Ngusa Kaleja@ Mtangi and Another,** Criminal Appeal No. 276 of 2017, Court of Appeal of Tanzania at Mbeya (unreported), and the case of **Antony Kinanila and Another v. The Republic**, Criminal Appeal No. 83 of 2021 Court of Appeal of Tanzania at Kigoma (unreported). In the latter case, the court stated *inter alia* that:

> In any criminal trial, *the Prosecution bears the burden to prove beyond reasonable doubt not only that the offence was committed but also it was committed by the Accused person or that he participated in the commission of the offence* to the extend or decree as prescribed by the law. [Emphasis mine]

The question to ask is; *whether the evidence adduced by the Prosecution side were enough to prove beyond reasonable doubt on*

*the following: First, the accused person was found in possession of the properties for commission of terrorist acts. Second, the accused person participated in commission of a terrorist act.* In order to unravel these issues, lets travel together to analyse the following evidences.

The nub of the prosecution through its key witness P was that; on 11th May, 2020 upon being informed by a civilian on the local bomb explosion, he led a detective team including P3 to Songea Referral Hospital, where the accused person was admitted. On the way to the Hospital, he informed the Regional Crimes Officer (RCO) through a phone call about the incident. Upon arriving at the Hospital, they were informed that there was a person who was injured with the bomb and he was still at theatre for surgery, so they had to wait.

Thereafter, the accused person was taken to the Ward, where they introduced to each other. The accused introduced himself as Mohamed Mohamed @ Mbuko @ Masumbuko, hehe by tribe, aged 24, a resident of Ruvuma Juu and a Muslim by religion. He was living with his grandmother. They wanted him to explain about the incidence. The accused told them that; he was trying to detonate a locally made bomb. The accused person told them that; he was

indoctrinated through his religion that if a person kills many people at once he will go to heaven. His teacher taught him how to manufacture an improvised local bomb. He made his bomb aiming to detonate at the public. He further revealed that; he made those bombs into his room at his grandmother's house. The accused grandmother was present when the accused revealed his atrocity.

The evidence of prosecution witness P goes on revealing that the investigation team went to the accused' s grandmother's house. Before entering, they summoned an independent witness. During search, they recovered a note book in which there was a drawing of a bomb, bicycle pipe, yellow pipe, Quran Holy Book, various wire, a knife, fibre and oil. According to the accused explanation, those items are the materials he used to manufacture a bomb. Also, he explained to them on how the materials works. Prosecution witness P seized the items and filled an emergency certificate of seizure which was signed by the accused person, independent witness, accused grandmother and witness P. It was admitted by the court as exhibit P6.

Then, the accused person led the investigating team to the place where he detonated a bomb. It was at Ruvuma Juu playground

pitch night hours. So, witness P ordered the Police officers to put cordon tape at the area and to guard the area to avoid tempering of the exhibit. He returned to the Station, registered a terrorist case and handled the exhibits to Witness P3. On 11th May, 2020 witness P ordered witness P3 to go to the Hospital to record the accused person's cautioned statement but the process failed as the accused claimed to suffer headache. On 12th May 2020, they went again to the scene of crime where the accused detonated a bomb. They saw some particles such as pipe, spanner, cylinder, five pieces of iron, match box and knife. They found blood stain and the glass were burnt. He seized the particles and filled a certificate of seizure which was signed by the accused person, independent witness and himself too, (Exhibit P7). On 18th October, 2020 he ordered witness P3 to take the exhibits to barristic expert for examination.

During cross examination, Prosecution witness P explained that; he went without search warrant because it was an emergency. He did not write a size of the spanner and sign a chain of custody when handling the exhibit to P3. He also insisted that witness P3 is not exhibit keeper.

Prosecution witness P3 corroborated the evidence of prosecution witness P, that he was among the investigation team led by prosecution witness P. He was the one instructed to record the accused person statement though it failed due to the accused head pain. He also received the exhibit from prosecution witness P and handled to the exhibit keeper before been instructed to take the exhibit to Barristic analyst for examination. Prosecution witness P3 added that; the accused explained three points on how he: *One,* made a locally improvised bomb. *Two,* was initiated into such terror act. *Three,* detonated the bomb in the presence of witness P3. The accused made the bomb at his home where he lives with his grandmother. Upon manufacturing the locally improvised bomb, he took it and went to the football pitch at Ruvuma Juu near Catholic Church to detonate it. Upon its explotion, it caused cut wound to himself. His aim was to detonate at public places gathered with many people.

It was the testimony of Prosecution witness P3 that; the accused person was not his first time to manufacture local improvised bomb. He was indoctrinated that; if he kills many people at gathering, at Church or Government offices, he will get a reward "thawabu". He will be forgiven his sins and enjoy eternal life. During

the search, P3 witnessed some of the materials used for manufacturing of the local bomb as depicted at exhibit P1 collectively. At the scene of crime, the investigation team collected other items as per Exhibit P6 and P7. Witness P3 was instructed to draw a sketch map of the scene of crime. He was led by the independent witness. He signed along with the independent witness. It was admitted to court as exhibit P3. Also, witness P3 identified exhibit P1 collectively.

Furthermore, witness P3 revealed that; he was the one who recorded the statement of one Sikudhani. It is the latter who witnessed the search and the items which were found in the accused person room as per Exhibit P4. During trial, the Court was convincingly informed that Sikudhani is dead.

Upon cross examination by Mr. Makame Sengo, advocate, prosecution witness P3 explained that; he stayed with the exhibit up to 12th May, 2020. The handling over procedure between him and OC CID were done without signing anywhere. The accused person is not a signatory in a sketch map.

Prosecution witness P8 told this court that; on 12th May, 2020 he was at Street Office. He was approached by one person who told

him that he came from Police Force and asked him to go together to the playground at Ruvuma Juu Street near Catholic Church. He was informed that there was bomb explosion. He saw the place which was cordoned with a Police tape. Police officers were searching the area and they recovered some items. Among other items, were a knife, piece of iron sheet, spanner, "kitako cha baiskeli". Also, he assisted the Police officer who was drawing a sketch map and signed. At the scene, he also saw one Mohamed Adam @ Mbuko.

Prosecution witness P10, testified to be the one who was assigned to take the exhibit to Barristic expert at Dar es Salaam. The exhibit had IR No. SO/IR/1841/2020 and exhibit No. 184 of 2020. He arrived at Dar es Salaam on the same date, that was on 18th October, 2020 and dispatched the same on 19th October, 2020. On 23rd October, 2020 witness P10 was called to collect the exhibits. He discovered that there was additional number fixed on the exhibit which is Lab No. 114 of 2020. He arrived at Songea on 23rd October, 2020 night hours. On 24th October, 2020, he handled the exhibit to the exhibit keeper. The said exhibits were pieces of iron sheets, fibre, oil container and metal pipes. He identified exhibit P1 collectively.

Prosecution witness P10's evidence was corroborated with the evidence of P11, the exhibit and found properties keeper, that on 18th October, 2020 he was the one who handled the exhibits to witness P10 in order to take to Barristic expert at Da es Salaam for examination. Witness P10 returned the said exhibit to him on 24th October, 2020. It had an additional number on it as FB/BALL/LAB/114/2020. It was the same exhibit which he received on 12th May, 2020 from the detective officer of the case no. SO/IR/1841/2020 in connection with the terrorist acts. It was a blue bag containing nine envelop which have different items; pieces of wood, three-cylinder shaped metal and oil container. He assigned as Exhibit No. 184 of 2020. He kept the exhibits up to when he came to tender to court as an exhibit P1 collectively.

During cross examination, P11 explained that: He had more than three years' experience as an exhibit keeper. He also knows the procedure of receiving and giving out exhibit. That, it is not mandatory to sign the chain of custody when receiving exhibit but exhibit register.

Prosecution witness P2 was a surgeon at Songea Referral Hospital with experience of not less than 33 years. He testified that;

on 11th May, 2020 around 8:30pm while at his working place Surgical Department, he received a patient who had cut wounds of different size on his left forearm. At his stomach, he had one cut on the left and two cuts on his left leg. The patient was stable, escorted by other people who brought him for examination. Upon examining him, the escorts revealed that he got wound due to explosion. He did surgical toilet and stitched him. He was taken to the surgical Ward for antibiotic dose, analgesics, vitamin supplements and intravenous infusion. The wound was superficial caused by high velocity missile or blanket sharp nail.

Witness P2 further submitted that; the patient stayed from 11th May, 2020 to 13th May, 2020. His name was Mohamed Mohamed. Witness P2 discharged the accused and asked him to return on 22nd May, 2020. The patient was escorted by Police Officers. He also filled a Police Form No. 3 (PF3). He managed to identify the PF3 brought before this court prior been admitted as exhibit P2.

Upon cross examination, P2 explained that the patient was Mohamed Mohamed. He was brought to the hospital by Police officer while conscious and able to speak.

Prosecution witness P13 a Police Officer, remembered that; on 11th May, 2020 he was ordered by OC CID to prepare the people to guard the scene of crime. They arrived at the scene of crime around 9:00pm and 9:30pm. The place was cordoned with a Police tape. They guarded the area till next day when the other Police officers arrived. On 16th May, 2020. He was instructed to record a witness statement of one Riziki Isack Njako who passed away thereafter. The statement of the deceased Riziki was admitted to this court as exhibit P5. In the said statement, Riziki stated that; while with his friends they heard explosion sound on 11th May, 2020 around 19:00 hours at Ruvuma Juu playground. Thereafter, they saw the accused approaching them. He was injured and bleeding. He asked their help to the hospital. They informed their fellow bodaboda rider and the accused grandmother before been sent to the Hospital.

Prosecution witness P7 averred that; she was the one who recorded the cautioned statement of the accused person. She remembered to record the statement on 13th May, 2020 at Songea Referral Hospital. She was given time and confidential place by the hospital administration where she was not interrupted while recording the statement. The accused was in a good health. She informed him his right to call any witness of his wish to witness

recording of his statement. He asked his grandmother (a retired Police officer) to witness the process. The accused gave his statement voluntarily. After recording, she handled the statement to the accused who read and signed it. The accused person confessed to have committed a terrorist acts and manufactured improvised local bomb. The cautioned statement was admitted as Exhibit P9 after the objection raised by the accused person's counsel being overruled by the court for lack of scintilla of merits.

During cross examination, prosecution witness P7 added that; the accused told her, his target was to bomb the Public and churches but after noting that he will not be forgiven his sin, he decided to bomb himself. No one was injured by the bomb. In re-examination, P7 insisted that, when the accused detonated the bomb, she was at her home. Therefore, all the statement was coming to the accused.

Prosecution witness P12 was a Police officer who works with Forensic Bureau at Barristic Laboratory. On 19th October, 2020 he was at his working place, Barristic Laboratory at Forensic Bureau Office. He received a letter from RCO Songea who asked him to examine the exhibit which were brought by P10. He registered the exhibit with registration No. FB/BALL/LAB/114/2020. The exhibit

were three pipes. He also received two knifes (one with hand handle and one without handle), small piece of tin, cotton roll thread, piece of wood, two match boxes, one SM cigarette, pieces of wire with white, red and green colour which were registered as Q1 to Q16. He conducted physical examination and discovered that the materials were used to manufacture improvised explosive devices.

According to prosecution witness P12, the improvised bomb can function as designed. It can explode immediately or late or immaturely going to approximately 50 meters radius. Further examination revealed that, the materials were used to manufacture shaper bomb which can cause big threat such as injuries to living thing, destroy properties and death to public and the detonator. He further prepared a Barristic Expert Report which was admitted as exhibit P8. Also, he identified exhibit P1 collectively.

This court after going through the evidence of the prosecution witnesses and the exhibits tendered and admitted, became satisfied that the prosecution established that the accused person had a case to answer. Upon being called to make a defence, the accused person Mohamed Mohamed Adam @ Mbuko @ Masumbuko narrated a different story contrary to the allegation laid against him.

The accused person conceded that: *One*, he is a resident of Ruvuma Juu area. *Two*, he was living with his grandmother who happened to be a retired Police officer. *Three*, he was a motorcycle rider. *Four*, he was admitted to Songea Regional Referral Hospital. The accused person asserted that the injuries he sustained were caused by a motorcycle accident of which he was involved. The accident happened at Ruvuma Road near Roman Catholic Church. He lost memory and upon regaining his conscious, he found himself aside the road. He crawled up to the areas where there were motorcyclists. He was weak and he asked for help to be taken to the hospital. It was dark. He was taken to Songea Regional Referral Hospital by people whom he could not remember. The accused person affirmed that; he was injured at his left hand, leg and at the stomach side at embryo cord.

He further stated that; he was under Police restraint since 11th May, 2020 after getting treatment. He was not informed of any offence. On 15th May, 2020, he was discharged and taken to the Police Station where he stayed for not less than a month. He was released but re arrested, taken to Songea Police Station and charged on terrorism offences. The accused person denied the following facts: *One*, knowing Abdul Amidu, Juma or Shabani. *Two*, being an

expert on manufacturing local improvised bomb and to be associated with the terrorist acts. *Three*, undergoing any surgery in which the iron fragments were removed from his body. *Four*, for being recorded his statement by any Police Officer. The accused person ultimately prayed that this court find the Prosecution case have no merit.

Upon cross examination, the accused person conceded to be injured and been a motorcycle rider a year before the accident. The accused person maintained that; he reported the accident to the Police and given a document for treatment at the Hospital. All of his given documents were taken by Police Officers.

The court has dutifully considered both sides evidences and exhibits at length. The crux of the issue on the first count is; *whether the evidence adduced by the prosecution side were enough to prove beyond reasonable doubt that* first, *the accused person was found in possession of the properties which could be used directly or indirectly in a whole or part for commission of Terrorist acts.* It is in record that prosecution witness P with the investigation team went to the house where the accused was living with his grandmother. They were led by the accused himself. They conducted a search as a result they

found different materials such as; a note book in which there was a drawing of a bomb, bicycle pipe, yellow pipe, Quran book, various wire, a knife, fibre and oil as depicted in Exhibit P1. This assertion was corroborated with the evidence of P3 who was among the investigation team, also exhibit P6 which revealed the seized items and the person who witnessed the search including the owner of the house where accused person lives (accused grandmother), accused himself and the independent witness who is a crucial person to be present as per *section 38 of the Criminal Procedure Act [Cap 20 Revised Edition 2022]* and the case of **David Athanas @ Makasi and Another v. The Republic**, Criminal Appeal No. 168 of 2017, where the Court of Appeal of Tanzania sitting at Dodoma (unreported), held that:

> With due respect as per section 38 (3) of the Criminal Procedure Act...*the certificate of seizure ought to have been signed at the place where the search was conducted and in the presence of an independent witness. Since the certificate of seizure was not signed* at Chinangali, the place where the search was conducted and considering that *there was no independent witness present as required by law, the said certificate cannot be accorded weight.* [Emphasis added]

Furthermore, the materials which were recovered from the possession of the accused person were examined and discovered to be used on manufacturing an improvised local bomb. The expert from Ballistic department (prosecution witness P12) confirmed the same and added that the bomb manufactured by using the materials handled to him can cause big threat such as injuries to living things, can destroy the properties such as buildings and death to public including the detonator.

In total, the 9 witnesses who testified and 9 exhibits tendered, in a nutshell, are to the extent that; the accused person confessed and was found with exhibits/properties/articles which were used to manufacture an improvised explosive device and detonated in a public place in a potentially populated area that is in a playing ground adjacent to in Ruvuma Juu Roman Catholic Church, approximately 29 meters from where the detonation happen. In the process of execution of his plans, the explosive detonated and injured him. According to P12, the said improvised explosive manufactured bomb once detonated, it could blast and affect to approximately 50 meters radius from where the detonation occurred depending on the designs and intended purpose of the maker. Witness P12 and P2 joined hands on the lethalness of the object and

terming the same as shrapnel, due to the added nails, nuts and irony materials in the improvised explosive device.

It is the firm findings of this court that; as it was portrayed through exhibit P8, this is the case among the cases which need an expert opinion and knowledge to reach into decision. In the case of **Makame Junedi Mwinyi v. Serikali ya Mapinduzi Zanzibar** (SMZ) [2000] TLR 455, the court held *inter alia* that:

> The position of the law is that expert evidence is admissible in cases where specialised knowledge is required.

Also, all prosecution witness identified exbibit P1 to be the same they encountered and recovered from the accused person possession during the search conducted in his room where he was living with his grandmother as illustrated through Exhibit P6 in record. Even the accused person in his cautioned statement confessed not only to have been found in possession of the materials but also to detonate the improvised local bomb he made, as evidenced through exhibit P9.

According to testimonies of witnesses P, P3, P7 and P12, exh. P1, P6, P7, P8 and P9, the accused person was found in possession of properties (exhibit P1 collectively) which he confessed to have

used them in making an improvised explosive device intended to be used directly facilitating the commission of terrorist acts. The accused person indeed detonated the said explosive in a potentially public gathering place at Ruvuma Juu playground approximately 29 meter (according to exhibit P3) from Roman Catholic Church an act which involves prejudice to public safety and its nature and context may reasonably be regarded as being intended for the purpose of intimidating a section of the public within the United Republic of Tanzania. The testimony of witness P8, exhibit P4 and P5 show the terror and horror the explosion caused in the surrounding community, hence lived in state of fear of their safety.

It is the findings of the court that the circumstances from which inferences are to be drawn are cogently and firmly capable to establish the guilty of the accused person if taken cumulatively. In the case of **Hugo George Jimson v. Director of Public Prosecutions,** Criminal Appeal No. 144 of 2018, Court of Appeal of Tanzania at Mbeya (unreported), the court held:

> *...That the circumstances from which an inference of guilty is sought to be drawn must be cogently and firmly established, and that those circumstances should be of a definite tendency unerringly pointing towards the guilty*

*of the accused, and that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non-else.*

Further, it is the findings of this Court that in terrorism offences it is impossible to prove every fact. This marks as an exception to the general rule stated in **the case of Antony Kinanila** *(supra).* In terrorism cases, it is enough if it is established beyond reasonable doubt that a reasonable suspicion that the accused's possession of the materials was for the purpose of committing a terrorist act. In the case of **R v. G and R v. J**, House of Lords, Session 2008, 09 [2009] UKHL 13. (Para 55) it was held that:

> ...It is not necessary for the Crown to go further and to prove what the accused's unlawful object was – which might well be impossible to establish. The defendant is then given defiance if he can show that, despite appearances, he actually had the substance in his possession or under his control for a lawful object. Similarly, under *section 57(1) of the 2000 Act,* the Crown does not need to prove what the accused's purpose connected with the commission, preparation or

instigation of an act of terrorism actually was – something which might well be impossible to prove. *It is enough if the Crown satisfies the court or jury, beyond reasonable doubt, that the circumstances give rise to a reasonable suspicion that the defendant's possession was for the relevant purpose...* [Emphasis added]

Needless, the fundamental issue in this case is; whether the acts of the accused person follow within the terrorism offences. In the case of **Republic v. Halfan Bwire Hassani and Three Others**, Economic Session Case No 16 of 2021 (High Court of Tanzania at Dar es Salaam (unreported), this court held:

for counts charged under *section 4 (1) and 3(1) (i)* the charge sheet must plead or show that the acts charged also made for the purpose of advancing or supporting acts which constitutes or supporting terrorism.... made for the purpose.....these are words that demarcates between terrorism offences and other offences...

The evidence reveals the acts in 1st and 2nd counts falls in the domain of terrorism offences. This is proved by the evidence of witness P3, P and P7, to whom the accused person manifested his

purpose, intent or motivation. Also, it is backed by the confession statement of the accused person admitted as exhibit P9.

The motivation and purpose of committing terrorist acts by detonating the improvised explosive device in public gathering was for the purpose of intimidating the public and population of the United Republic of Tanzania by inflicting fear to the population which prejudice public safety and it is nature and context may reasonably be regarded as being intended for the purpose of intimidating a section of the public within the United Republic of Tanzania. The New South Wales supreme Court in **Regina v. Lodhi [2006]** NSWSC 691 underscored on the need to convict terrorist accused person based on the intention.

In **Lodhi case** *(supra),* the accused was *inter alia* charged of intentionally preparing for a terrorist act, namely he sought information concerning the availability of materials capable of being used for the manufacture of explosives or incendiary devices; and for possession of a document containing information concerning the ingredients for and the method of manufacture of poisons, explosives, detonators and incendiary devices connected with the

preparation for terrorist act, knowing the said connection. It was the findings of the Court among others that;

> *the purpose of the accused of collecting the maps was that only bombing of the electrical system by the detonation of a homemade explosive of incendiary device would be done to advance the cause of violent jihad and be carried out so as to intimidate the Government of Australia and the Australian Public. [Emphasis added]*

Consistent to the instant case, the accused person at trial denied to be in possession of the terrorist materials. However, prosecution witnesses established that the said materials (exhibit P1 collectively) were found in his possession. The accused person, can therefore not distance himself from such materials. The same position was maintained by the trial Judge in **Lodhi case** *(supra)* who had these to hold:

> *I do not accept these explanations. Nor do I accept the offender's attempts to distance himself from the materials so obviously found in his possession. Rather, I think the truth is that all of this material makes it clear that the offender is a person who has in recent years, been essentially informed by the concept of violent JIHAD and the glorification of Muslim heroes who have fought and died for jihad, either in a local broader context. The material is eloquent as to the ideas and*

*emotions that must have been foremost in the offender's mind throughout October, 2003 and later, at least until the time of his arrest. [Emphasis added]*

In the case of **Piratheepan Nadarajah v. Attorney General of Canada on behalf of the United States of America and the Minister of Justice and the Attorney General of Ontario,** File Number 34013, the Supreme Court of Ontario maintained the Court of Appeal of Ontario decision that:

*It is constitutionally permissible to criminalize conduct that is preliminary to some other criminal conduct. [Emphasis added].*

In terms of the decision of the House of Lords in the case of **Pwr v. Director of Public Prosecution** [2022] UKSC 2, it could be a defence for the accused person to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism. However, a cursory assessment of the prosecution evidences would yield conviction that the items possessed by the accused were nothing than intended to commit a terrorist act in public gathering in order to create fear among members of the public.

Even if the accused person did not teste the bomb, possession of exhibits P1 collectively by him were a starting point for a terrorist related enterprise potentially of some considerable degree. Prosecution witness P3 and P was categorically clear that; the accused used explosive which are very dangerous to personal life and property. The accused prepared the local improvised explosives device in residential and public place, an act which was very risky. Also, the public around the place was terrorised by the explosion. These facts are corroborated by exhibit P3 and the accused person during cross examination admitted that Ruvuma Juu is residential area.

Borrowing the experience from other jurisdiction of the World, the full bench of seven judges of Supreme Court of Pakistan, in the case of **Ghulam Hussain and 4 Others v. The State,** Criminal Appeals No. 95 and 96 of 2019, Civil No. 10 of 2017 and Criminal Appeal no 63 of 2013, Supreme Court of Pakistan, at p. 56 held:

> *...it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether*

*any fear and insecurity was actually created or not... [Emphasis added].*

Further, the court was keen to assess the credibility of prosecution witness. Despite of the trial being conducted in camera, the court had an opportunity to see the witness and assess the demeanor and credibility of each witness. Prosecution witness P, the core witness was so credible among other witnesses and there is no cogent reason for not believing them.

Notwithstanding, there are issues raised in course of trial including failure to tender some exhibit. The Defense contended some documents were not tendered in court including note book. It is the findings of this court that such documents have no relevancy as it is not a legal requirement that documentary evidence should supplement oral testimony given by a witness on a particular fact. This was discussed in the case of **Charo Said Kimilu and Another v. Republic,** Criminal Appeal No. 111 of 2015, Court of Appeal of Tanzania at Tanga (unreported) and **Abbas Kondo Gede v. Republic,** Criminal Appeal No. 472 of 2017, Court of Appeal of Tanzania at Dar es Salaam at p. 21 (unreported).

The other point worth of consideration by this court is on credence of defense case. During defense hearing, DW1 came up

with a total denial and evasive defense that on 11th May, 2020 the accused person sustained injury due to motorcycle accident at Ruvuma Juu area. However his testimony left a lot to be desired for example, he did not tell how the accident was reported at the police station and handled, he knew nothing about PF3 if at all was issued to him and he had a difficult moment explain how the accident happened and even the whereabouts of rider of the said motor cycle who in accordance with his testimony should have sustained more injuries.

The explanations of the nature of wounds sustained by the accused are consistence with what was explained by prosecution witness P2 and exhibit P2, which were caused by moving sharp object (projectile). To that end, the defense given by the accused person was a lie told to court under oath.

From the disposition above, it is readily apparent that the testimony adduced by DW1 makes his testimony, improbable, implausible and unworthy of belief. In the case of **Felix Kasinyila v. Republic**, Criminal Appeal No. 120 of 2002 Court of Appeal of Tanzania at Dar es Salaam (unreported), the court stated in certain circumstance lies of the accused persons may be taken to further the

story of the prosecution. Also, in the case of **Mboje Mawe and 3 Others** *(supra)* pp. 22 to 24, the court stated:

> *...although lies and evasions on the part of an accused do not in themselves prove the facts alleged against him, they may, if on material issues, be taken into account along with other matters and the evidence as a whole when considering his guilt... [Emphasis added].*

It is the findings of this court that; from the above extraction, the said lies and evasive testimony told by the accused person under oath corroborate the story told by the coherent consistence testimony of the prosecution witnesses. Therefore, as stated in the case of **Pascal Kitigwa v Republic** [1994] T.L.R. 65; corroboration can be from the words, conducts of the accused person before and during the commission of the crime and as well during trial in court.

The court maintains that; the accused person conduct, demeanour and words during trial corroborate the prosecution's case. The same was reiterated in the case of **Athumani Rashid v. Republic,** Criminal Appeal No. 264 of 2016, Court of Appeal of Tanzania at Tanga (unreported) at page 11.

Further, failure to cross examine witnesses on material facts is another important point to be considered. The Accused person failed

to cross examine P, P3, P2, P7, P8 and P12 on the issue of seizure of exhibit P1 during the emergency search in his room and at the crime scene, the confessions, the accidents and treatment received from P2. Thus, the crucial part of these witnesses' testimonies against him was left unchallenged. To buttress this finding; one may refer the case of **Goodluck Kyando v. Republic** [2006] T.L.R 363 at p. 366, the court stated:

> *...Peter Murphy, the learned editor of Blackstone's Criminal Practice (1992) in the treatise at page 1870 stated that the object of cross examination is:*
>
> *a. To elicit from the witness evidence supporting the cross-examining party's version of the facts in issue;*
>
> *b. To weaken or cast doubt upon the accuracy of the evidence given by the witness in chief;*
>
> *c. In appropriate circumstances, to impeach the witness credibility. [Emphasis added].*

Also, in the case of **Jaspini Daniel @ Sikazwe v. The Director of Public Prosecutions,** Criminal Appeal No. 519 of 2019 Court of Appeal of Tanzania at Mbeya (unreported); the court stated at p. 15 as follows:

> *...the Appellant did not contradict Pw2 in relation to age during cross examination. it is settled law that*

> *failure to cross-examine a witness on an important matter implies acceptance of the truth of the witnesses' evidence in that respect. See for instance* **Bakari Abdallah Masudi v. Republic,** Criminal Appeal No. 126 of 2017 and **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010 (both unreported). *Since the appellant did not cross examine Pw2 regarding the age, a very crucial aspect in the case for that matter, her evidence remained unchallenged. It cannot be assailed at this stage...* [Emphasis mine]

Therefore, it is the findings of the court that failure by the accused to challenge the said pieces of evidence which are the corner stones of the charges facing him in court tantamount to acceptance of the truthfulness of the evidence.

In the final analysis of the first count, the court hasten to state that the prosecution has discharged the burden under *section 111 of the Evidence Act [Cap 6 Revised Edition 2022].*

The second issue is; *whether the evidence adduced by the Prosecution side were enough to prove beyond reasonable doubt that the accused participated in commission of a terrorist act contrary to section 4 (1) and (3)(1)(i) of the Prevention of Terrorism*

*Act.* As noted earlier on, the element to prove on the second count are three:

(i) The accused person committed a terrorist act;

(ii) The terrorist act committed was prejudicial to the national security;

(iii) The act committed intimidate the population.

All nine (9) prosecution witnesses who testified and the nine (9) tendered exhibits were in a nutshell to the extent that; the accused confessed and was found with exhibits/properties/articles which were used to manufacture an improvised explosive device and detonated in a public place in a potentially populated area that is in a playing ground adjacent to Ruvuma Juu Roman Catholic Church, approximately 29 meters from where the detonation happened. In the process of execution of his plans the explosive detonated and injured him.

There is oral confession made by the accused to P and P3 at the hospital on 11th May 2020 which lead to the search of the room of the accused person and the Police to the place where he detonated the explosive. The oral confessions lead to discovery and the retrieval of Exhibit P1 from the room of the accused and the scene of the crime which was secured by P13 on the said night. The said retrieved

exhibits P1 were examined and analysed by P12 and formed the opinion that the said exhibit P1 retrieved from the scene of crime and room of the accused are components used to manufacture lethal improvised explosive devices that blast and fragment to cause injury or death to living things and non-living things.

From the evidence of P3 and P, the court is of the findings that it is the accused confession which lead to discovery of not only exhibit P1, as well his plans to detonate the same at potentially crowded places preferably in Churches, Government offices. In the case of **Mboje Mawe and 3 Others v. Republic,** Criminal Appeal No. 86 of 2010, Court of Appeal of Tanzania, at Tabora, pp. 16 to 18, it was stated:

> *...this oral confession is significant in the sense that it was made before the first appellant made the cautioned statement, and also before he volunteered to make extra judicial statement. It is also significant in that at that early opportunity this appellant named the other appellants. It is also important to point out that in giving that confession this appellant was not operating under a state of fear or threat. Finally, the significance of this confession lies in the fact that he stated where the body parts were buried and eventually on arrival at his house, he dug them out himself. In essence therefore, this was "a confession leading to discovery...*

Further, the Court stated *inter alia*:

> *...confession leading to discovery in this case is sufficient corroborative evidence of the oral confession before PW1 and PW7. Indeed, if we add here, the oral confession in the context in which it was made before PW7 leading to discovery of the body parts is relevant and fell within the ambit of the provisions of Section 31 of the Evidence Act, [Cap. 6 Revised Edition 2002] now 2022..." Emphasis added.*

It is the court's findings that the circumstances of the instant case on confession are *in pari materia* to the circumstances of the cited case of **Mboje Mawe and 3 Others**.

Similarly, the accused person subsequently, made a written confession (cautioned statement of the accused) before P7 which after overruling the objection of the defence on violation of the provision of *section 50 (1) (a) of Criminal Procedure Act, Cap. 20,* the same was admitted as Exhibit P9.

Generally, the accused person confessed to have planned to detonate the improvised explosive device in Ruvuma Juu Roman Catholic Church but in the process of execution of his plan the explosive detonated and injured him. According to his beliefs, if he detonates the explosive in potentially crowded area, will be forgiven in heaven. Similarly, the accused person confessed to have been

trained to make bombs/explosives, and that; on the 11th May, 2020 it was not the first to have made the improvised local bomb and detonated. The accused person stated that in the training, he was with other persons who also travelled to Somalia to receive military tactics. The accused person did not go due to lack of funds.

The said exhibit P9 contain nothing but the truth, given the detailed content of the confession of the trainings, preparations, plans, arrangement to execute the overt action which can only come from the person who is part to the commission of the offence, the court finds it plausible to reproduce the relevant parts of exhibit P9:

> *...SWALI: Wewe una elimu gani? JIBU: Mimi niliishia form three nilikuwa nasoma Ruvuma Sekondari sikuweza kumaliza Kidato cha nne kwa kuwa naumwa tumbo. SWALI: Wewe ulianza lini kujihusisha na vitendo vya ugaidi? JIBU: Mwishoni mwa mwaka 2014 nilikuwa na vijana Watatu ABDUL S/O AMIDU, JUMA S/O?, ABDALA S/O? ambao nilikutana nao Msikiti wa Wilaya Songea nilienda kununua barakashea, sikuwahi kuwaona siku nyingine hiyo ilikuwa mara yangu ya kwanza kuonana nao nikiwa naongea na muuza duka ABDUL AMIDU ambaye ndiye kiongozi wao alinifuata akaniambia kuwa ana maongezi na mimi lakini sio leo. Akaniuliza naishi wapi na anawezaje kunipata? Nilimueleza kuwa mimi ni dereva wa bodaboda naishi Ruvuma juu kijiwe changu ni*

*kwa ABDALA SEIF kwa urahisi wa kunipata naitwa "MBUKO zamani nilikuwa naitwa Masumbuko hivyo wengine wananiita MOHAMED wengine wananiita MASUMBUKO. Baada ya siku mbili au tatu niliienda tena maeneo ya Msikitini kununua kitambaa nikakutana nao tena. ABDUL AMIDU akaniita akasema twende sehemu tukaongee tukaenda Majengo tulikaa kwenye benchi karibu na fundi pikipiki akawa ananisisitiza niungane nao twende wote Somalia tukapiganie dini niandae Sh.300,000/= kwa ajili ya usafiri na matumizi, mimi nilimjibu kuwa sina hela. Alinifuatilia mara kadhaa lakini nilimjibu kuwa sina hela naishi kwa kumtegemea bibi. Alikuwa ananipa maneno ya imani mara kwa mara na kuniambia kuwa Imani yetu tunapaswa kuithibitisha kwa matendo sio kwa maneno tu...*

The above extract, showeth the process in which the accused was recruited for acting violently on JIHAD and the adoration of Muslim religion. It also reveals the plans to travel to Somalia to fight for religious beliefs.

The accused went further to confess on how he has been manufacturing locally improvised bombs, the location, his teacher and from which particular point of time:

*...SWALI: Ulishawahi kutengeneza bomu? Ndiyo nimewahi kutengeneza mlipuko mara tatu. SWALI:*

*Utaalamu wa kutengeneza mlipuko uliupata wapi? JIBU: Nilielekezwa na JUMA S/O? sio yule wa kwanza ni mwingine ambaye alikuwa anafundisha Madrasa Ruvuma Juu karibu na shule ya Sekondari ya Ruvuma, uelekeo wa shule ya Sekondari ya Zimanimoto kwenye nyumba ya mama FURAHA sikujua kama alipanga au la ila niilikuwa namuona anafundishia hapo. SWALI: Ilikuwaje hadi akakufundisha na alikuwa anakufundishia wapi? JIBU: Mimi nilikuwa naenda kujifunza katika hiyo madrasa yeye alinizidi na yeye alikuwa na itikadi kama ya kundi lile lililoondoka akawa ananilingania lakini yeye sikubahatika kumuona na watu wengine baada ya muda aliniambia yeye ana uwezo wa kutengeneza mlipuko kwa kutumia baruti. Alinieleza kuwa...Siku ya kwanza alinionyesha hivyo vitu vyote na kutengeneza kwa vitendo hadi akalipua mimi nilikuwa jirani na yeye. SWALI: Baada ya mwalimu kukuelekeza ulishawahi kutengeneza mwenyewe? JIBU: Ndiyo nilishawahi kutengeneza na kulipua mara tatu. SWALI: Ni mwaka gani ulielekezwa kutengeneza mlipuko? JIBU: Mwaka 2015 mwishoni. SWALI: Mlipuko wa mara ya pili uliutengeneza lini? JIBU: Mwaka 2017 nilifanikiwa kulipua hakukuwa na madhara. Nilikuwa nalipua eneo la uwanja wa mpira Ruvuma Juu. SWALI: Mara ya tatu ulitengeneza lini? JIBU: Mara ya tatu nilitengeneza mlipuko mwezi wa nne 2020 tarehe siikumbuki. SWALI: Mlipuko ulioutengeneza mwezi wa nne mwishoni ulikuwa una malengo gani? Mlipuko huo niliutengenezea nyumbani kwa lengo la kujilipua kwenye*

*mkusanyiko wa watu Kanisani au Serikalini. Niliwaza hivyo baada ya kusikiliza mawaidha ya Shehe mmoja kwenye simu. Huyo Shehe ni wa Kenya alieleza kuwa ukijilipua katika mikusanyiko ya aina hiyo unasamehewa dhambi zako na unakwenda peponi. Simu niliyokuwa nasikilizia ni ya Juma ambaye alifariki mwaka jana...*

Thereafter, the accused was recruited together with other persons and indoctrinated, but the other left supposedly to Somalia. The accused person met with another person named Juma who taught the accused person to manufacture explosives improvised bombs and how to detonate it. The accused was further taught that the detonation should be in churches or government offices, an act which will entitle him to be forgiven his sins and live eternal. That was the best evidence from the accused person himself. In the case of **Ally Mohamed Mkupa v. the Republic,** Criminal Appeal No. 2 of 2008 Court of Appeal of Tanzania at Mtwara (unreported) at p. 13, stated that;

*the very best evidence is of a person who confesses freely and voluntary to have committed the offence in any criminal trial that is an accused person who confesses his guilty.*

Also, in the case of **Patrick Sanga v. The Republic,** Criminal Appeal No. 213 of 2008, Court of Appeal of Tanzania at Iringa (unreported), p. 7 stated the relevancy of oral confession:

> *Under section of 3 (1) (a), (b), (c) and (d), of the Evidence Act, Cap 6, a confession to a crime may be oral, written, by conduct, and/or a combination of all of these or some of these. In short, a confession need not be in writing and can be made to anybody provided it is voluntarily made...*

It is the further findings of the court that conviction may be based on truthfulness of the confession. In the case of **Michael Mgowole and Another v. the Republic,** Criminal Appeal No. 205 of 2017, Court of Appeal of Tanzania at Iringa (unreported) p. 30; the Court quoted with approval her decision in the case of **Ibrahim Yusuph Calist @ Bonge and Three Others v. The Republic,** Criminal Appeal No. 204 of 2011 (unreported).

In the instant case, the court have *inter alia* three observation: *First*, the confession of the accused leads to the discovery of some other incriminating evidence. The accused person confessed and lead police officer to his home and at the scene of crime at Ruvuma Juu area where he was found in possession of devices used to manufacture the improvised explosives device. The same can be

gathered through the testimonies of prosecution witness P, P3, P13 and P8, Exh.P1, P3, P4, P5, P6, P8 and P9.

It is the firm findings of this court that in circumstances where the accused person confesses without any coercion and leads the prosecution into the discovery of important materials or exhibits or facts, such evidence becomes cleared by the accused himself to the extent of not requiring any extra evidence to prove such facts. In the case of **Republic v. Ahmad Abolfathi Mohammed and sayed Mansour Mousavi**, Petition No. 39 of 2018, the Supreme Court of Kenya sustained the decision of the Court of Appeal of Kenya on the *inter alia* point that the information given by a suspect leading to discovery of material evidence in a case is admissible.

The Supreme Court of Kenya went further to distinguish a confession from an admission as made in the case of **Ram v. State**, AIR 1959 All 518, to the effect that; where conviction can be based on the statement alone, it is a confession and where some supplementary evidence is needed to authorize a conviction, then it is an admission. The supreme Court of Kenya therefore summed up that; a confession is a direct acknowledgement of guilt on the part of the accused while an admission is a statement by the accused, direct or implied, of facts pertinent to the issue which, in connection with

other facts, tends to prove his guilt, but which, of itself, is insufficient to found a conviction.

*Second*, the confession contains a detailed, elaborate relevant and thorough account of the crime in question, that no other person could have known such details but the person who participated in the commission of the crime. The testimony of P, P3 and P7 elaborate how the accused confessed to make an improvised explosives device at his home and injured himself in the process of detonating the explosive to effect his plans and purpose. This is corroborated by the statement of prosecution witness P2, P12 and Exh.P2, P8 respectively.

*Third*, the confession is coherent, consistent and plausible with the testimony of other prosecution witnesses, and evidence generally especially with regard to the central story (and not in every detail) and the chronology of events. The story of the accused person to prosecution witness P, P3 and P7 match with the recovered evidence and events.

There is another important point on repudiated/retracted confession. Be that as it may, the accused person did not dispute to have made the confession admitted as exhibit P9, rather his dispute was that his confession was recorded outside of the four hours

prescribed time under the law. Therefore, in terms of Section 31 of Evidence Act such evidence was admissible. *Section 31 (supra) provides;*

> *When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is relevant.*

As analysed in the **Mboje Mawe and 4 Others Case** *(supra),* even if the objection by the accused person were to be upheld, still under the provision of *Section 31 of Evidence Act,* the said information is admissible whether it is a confession or not.

The accused did not challenge the evidence of the prosecution witness P2. That means, the accused agree with the evidence testified by P2 and the content explained in exhibit P2. This was the position in the case of **Emmanuel Saguda @ Sulukuka, Sahili Wambura v. The Republic**, Criminal Appeal No. 422 "B" of 2013 Court of Appeal of Tanzania at Tabora (unreported), where court had this to say:

> ...that a decision not to cross examine a witness at all or on a particular point is tantamount to an

acceptance of the unchallenged evidence as accurate, unless the evidence of the witness is incredible...

It is in record that prosecution witness P testified that; after being informed with the investigation team, they went to see the accused person who was admitted at Songea Regional Referral Hospital. Upon interrogation, the accused person confessed to them that; he was injured in a process of detonating an improvised local bomb manufactured by himself. Prosecution witness P's evidence was corroborated by prosecution witness P2 a surgeon Doctor who operated the accused in order to remove the sharp nails in the accused left hand as it was illustrated in Exhibit P2.

Also, the accused person conceded to have been injured at the same place mentioned by prosecution witnesses, which is at Ruvuma Juu near Catholic Church. He was taken to the same hospital and being treated by the same Doctor mentioned by the prosecution witnesses, what a coincidence!

There is sufficient corroborative evidence which the prosecution managed to adduce into evidence which corroborates the substance of Exh.P9 and oral confession, which is information received from the accused person leading to discoveries of exhibit P1, the evasive and

lies told by the accused person during his defence, which will be discussed later hereinbelow.

However, the conviction can be grounded without corroborative evidence as long as the court is satisfied that the confessions are nothing but true and warns itself on the dangers of convicting the accused person solely on their confessions. In the case of **Flano Alphonce Masalu @ Singu and 4 Others v. Republic**, Criminal Appeal No. 366 of 2018, Court of Appeal of Tanzania at Dar es Salaam (unreported) p. 32 the Court held as follows;

> *...the law is that where the accused retracts his confession the court can convict him on uncorroborated confession provided that it warns itself on the dangers of acting solely on such confession and if it is fully satisfied that confession cannot be but true...*

Therefore, the confession connects the accused person with the commission of offences in the first and second counts as charged.

On the other important issue; *whether the accused person had an intention to commit or facilitate the commission of the offence.* It is evident from the accused statement and the injuries he sustained

that the accused person had an intention to commit the charged offence. The act of accused person to detonate an improvised local bomb on 11th May, 2020 shows the accused intention and willingness to commit the terrorist acts.

During cross examination of prosecution witnesses, the defence counsel questioned on the issue of the chain of custody. It is a trite law that; for the issue which change hand and easy to be tempered with, the documentation is a reliable way to be used to eliminate any possibility of any temperament but there is circumstance where the oral chain of custody may suffice. This was the decision in the case of **Paulo Maduka and 4 Others v. The Republic,** Criminal Appeal No. 110 of 2007, Court of Appeal of Tanzania at Dodoma (unreported).

Therefore, the evidence adduced and tendered be oral, documentary and physical evidence before this court were enough to show not only the accused was found in a possession of the property/materials for commission of terrorist acts but also, he participated in commission of the terrorist acts. On those bases, the accused person is found guilty on both counts.

Consequently, the court hereby convict the accused person one Mohamed Mohamed Adam @ Mbuko @ Masumbuko: First, for the

offence of being found in possession of properties for commission of Terrorist acts contrary to *section 4 (1), (3) (1) (i) and 15 (b) of the Prevention of Terrorist Act, Act No. 21 of 2002* read together with *paragraph 24 of the first schedule to, and section 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap 200 Revised Edition 2019; and* for the offence of participating in commission of a terrorist acts contrary to *section 4 (1), (3) (1) (i) and 15 (b) of the Prevention of Terrorist Act, Act No. 21 of 2002* read together with *paragraph 24 of the first schedule to, and section 57 (1) and 60 (2) of the Economic and Organised Crime Control Act [Cap 200 Revised Edition 2019].*

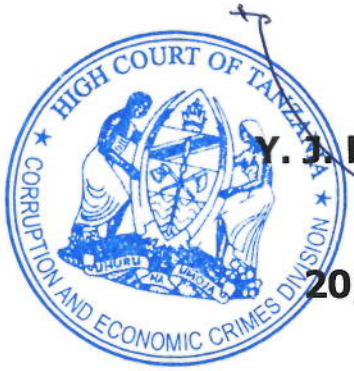

**Y. J. MLYAMBINA**

**JUDGE**

**20/12/2022**

Judgement pronounced and dated 20th December, 2022 in the presence of learned Senior State Attorney Hebel Kihaka for the Republic, the accused person and his Counsel Makame Sengo.

Right of appeal fully explained.




**Y. J. MLYAMBINA**

**JUDGE**

**20/12/2022**

**PREVIOUS RECORDS**

**HEBEL KIHAKA, SENIOR STATE ATTORNEY:**

On the part of the Republic, we have no previous criminal records of the accused person. However, we beseech this Court while issuing sentence to consider the following:

*First,* terrorism offences are transnational, they are dangerous offense as stated in Economic Case No. 4 of 2022 between the **Republic v. Seifu Abdallah Chombo @ Baba Fatina and 5 Others** High Court of Tanzania, the Corruption and Economic Crime Division at Songea Sub Registry. Terrorism cases are serious offences

which affect social economic and political system. Terrorism retards the economy of the nation, even of the international community.

*Second,* terrorism offences cause big terror to the society and public at large which leads to retardation of development activities.

*Third,* terrorism offences cause insecurity to the Country. It causes horror to the citizens and non-citizens.

*Fourth,* terrorism affects the peaceful image of the Country which has been built for long time. It also affects the diplomatic relations.

*Fifth,* terrorism offences affect investment and terrorism sector. It reduces number of tours. If not condemned, terrorism can lower the income of the nation earned through tourism. In Tanzania, the tourism sector contributes to the nation more than TZs 236 billion, that is up to April, 2022 as evidenced in the Ministry of Natural Resources and Tourism Budget of this year.

Based on the above reasons, terrorism offences require severe punishment as stated under *section 60(2) of the Economic and Organised Crime Control Act, Cap 200 [Revised Edition 2019].* We pray for a highest sentence to discourage commission of the offences.

The Court should consider that the accused has tested not less than three times to commit the same offence. The accused if left, he will continue to pose threat to the society and to foreigners visiting Tanzania. To maintain the good image of Tanzania both within and abroad, we pray the accused be given highest sentence as a lesson to him and to anyone intending to commit the same offence. That is all.


**Y. J. MLYAMBINA**
**JUDGE**
**20/12/2022**

**MITIGATION**

**MAKAME SENGO, ADVOCATE:**

On the part of the Defence, we pray the accused person be given a lesser sentence based on the following reasons:

*First*, as stated by the Republic, they have no criminal records. The accused is the first offender. The age (24) years and his education (form three) was easy for him to be badly indoctrinated "kulinganiwa". Let him not be given the highest sentence unless he re-commits the same offence.

*Second,* let the Court consider that the accused had been in remand custody for not less than two years. That is all.


**Y. J. MLYAMBINA**
**JUDGE**
**20/12/2022**

**SENTENCE**

The role of the Judiciary in criminal cases including terrorism cases is to analyse the evidences and exhibits before it on just basis. In furtherance, the Court has the overarching mandatory duty to apply the law by interpreting it scrupulously so that the accused person's rights are observed on equal basis with that of the Republic so that the national and international community security is not imperiled. Upon trial, if the Court finds that the evidence of the Republic is water tight, the Court is mandated to sentence the accused fairly in accordance to the law, the previous records and the mitigation factors brought forward by the defence side.

In the instant case, one of the mitigating factors advanced on behalf of the accused by learned Counsel Makame Sengo, of which the Court finds favour, was that the accused person has stayed in remand custody for not less than two years.

The other factors of which the Court gives it weight is that the accused person is the first offender.

However, it would be necessarily not futile for this Court to consider the mitigating factor that the age of the accused and his education was a factor of been indoctrinated easily. Three reasons suffice to dismiss such mitigation:

*First*, the accused person was not a child (below 18) years by the time he committed the offence. Even if a child, it was not a defence for him worth of been a good mitigation factor or exonerate him from criminal liability.

*Second,* it would be out of place to lessen the sentence of the accused based on his education. It must be noted that; an education, whatever high or low, as it applies to ignorance of the law, it can neither be an excuse on any offence nor be a good mitigation factor.

*Third*, human history has demonstrated above tells that the use of extreme violence in the form of terrorism to advance any cause including JIHAD by an individual of any age or group of people is devastating, destructive and undermines the very end sought to be achieved.

As stated by the Republic learned Senior State Attorney Hebel Kihaka, terrorism is a dangerous offence not only to the national security but also transnational relations and peace of the planet.

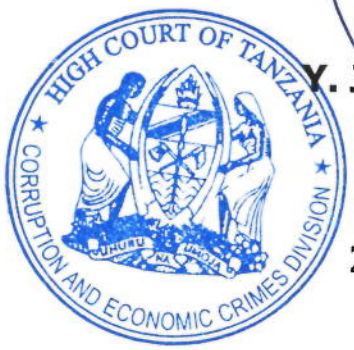
The acts of the accused person prejudiced to the public safety and intimidated the citizens and non-citizens within the United Republic of Tanzania. His acts were much dangerous as could bring religious hatred among members of the community and the nation at large. If such acts are not condemned at all forces of law, the peace and security of this nation is likely to be jeopardized and cause loss of life to millions of innocent people.

The Court further joins hands with learned Senior State Attorney Hebel Kihaka that the acts of the accused person are not only dangerous to the political stability of the nation but also the social and economic well-being including tourism and investment.

In the circumstances of the above, terrorism offences need for sentence of some length to reflect seriousness of offences. The Court therefore, hereby sentence the accused person Mohamed Mohamed Adam @ Mbuko @ Masumbuko for imprisonment in jail for the period not less than 18 years for the first count and for the period of not less than 30 years for the second count. The sentence in respect of

the 1st count and 2nd count are to be served concurrently from this 20th day of December, 2022.

Right of appeal explained.




**Y. J. MLYAMBINA**

**JUDGE**

**20/12/2022**

Sentence pronounced and dated 20th December, 2022 in the presence of learned Senior State Attorney Hebel Kihaka for the Republic, the accused person and his Counsel Makame Sengo.

Right of appeal fully explained.


**Y. J. MLYAMBINA**

**JUDGE**

**20/12/2022**