

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF SHINYANGA)
AT SHINYANGA**

CRIMINAL SESSION CASE NO. 35 OF 2020

REPUBLIC

VERSUS

SULEIMAN MASALU @ MWITA

JUDGMENT

Last order on 21st November, 2022

Judgment date on 14th December, 2022

MASSAM, J

The accused person, one Suleiman Masalu @ Mwita stands charged with the offence of Murder contrary to Section 196 and 197 of the Penal Code, Cap 16 (Revised Edition 2002).

It is alleged by the prosecution that, on 24 December 2017 at kabale village, within Kahama District, in Shinyanga Region, the accused person murdered one Laurent Joseph.

The facts presented by the prosecution which gave rise to this trial are that at on the material date, the victim's neighbour heard some voice like someone was in trouble, early in the morning he went to the house of his neighbour[victim] where he saw the door locked from outside using padlock which was covered with blood, so he reported the matter to the village leaders who informed the police officers who later arrived at the scene of crime, and broke the door inside the room they found deceased died and his body was covered with blood, the body was conducted postmortem and result shows that the cause of death was due to hypovolemic shock due to severe bleeding due to cut wounds.

In the cause of investigation accused person was arrested while being treated for hand injury at kina Mapula dispensary at Kokola, he was brought to the police station and interrogated on the death of the deceased, later on the search was conducted in his room at Rose guest house where by the policemen recovered various belongings of the deceased including keys, jewelry weight scale, the said keys later on used to unlocked the padlock at the scene of the crime, the said padlock and specimen of accused was taken to the Government Chemist where the same examined and the report come with the positive results.

When the information of murder was read over to the accused person during Plea taking and Preliminary hearing, he pleaded not guilty to the information.

Further, on 17th November, 2022 when the case came up for trial, the charge of murder was reminded to the accused, again he pleaded not guilty thereto. In discharging the duty of proving the charge against the accused, the prosecution summoned eight witnesses and tendered four exhibits. The evidence of the prosecution and defense side can be summarized as follows;

Yona Mafie [PWI] testified that he is Deputy Regional criminal officer of Rufiji since May 2022 but before that he was OC CID at Kahama Msalala, his daily duty was investigation and other police duties ,on 24/12/2017in the morning when he was in the office he received a call from village executive officer of kakola that in the house of the victim one Laurent Joseph the door was closed but there was a lot of blood coming from inside to outside of the said house, so he took his fellows and a doctor to go to the scene, in the scene he found many people gathered so they decided to broke the door of the said house in order to enter inside the house, they decided to broke it through its frame, inside the house they

found deceased body having a lot of wounds in all his body, so doctor investigated the body and the result show that he was already died. Again, he took some sample of the blood of deceased for further investigation, later on sketch map was drawn.

He added that later on, the VEO got a call from Kwasadi hospital informing him that he had a patient who had a big wound on his hand who told him that he was attacked by robbers but he don't have a PF3, so he directed D/CPL Alfred to go to the said hospital and took that patient to the police station for further interrogation, in the scene they wrote witnesses statement and later on they handed over the body to the relatives for burial.

On 25/12/2017 D/CPL Alfred went to the house of accused person to search where he found some keys which he took it to the house of deceased and open the said padlock, in the house of accused also he seized one trouser and the said padlock, the said certificate of seizure was admitted by this court as exhibit P "1" when cross examined by the counsel for defense Mr. Jacob Somi told this court that he was not the one who filled that certificate of seizure but D/Sgt Simon did that.

D/Sgt Simon [PW2] told this court that he is a retired police officer since 2020 but before that he was Bugarama Police Station, his duties was to arrest, investigation and taking accused persons to the court, he added that on 24/12/2017 he was at work and he received the information of murder of one Laurent so he went with PW1 to the scene and PW1 was his leader.

Dominic Mipawa [PW3] told this court that he is a Human doctor who working at Lunguye Health Centre, among his duties was to conduct postmortem report as he did on 24/12/2017 that day he was told to go to investigate the body of deceased at the scene, he found a lot of blood surrounded that body which having a lot of wounds, the said deceased was a male and his result show that cause of death was loss of blood, the said cut wound was caused by the sharp object.

He added that he took the sample of blood for further investigation, later on he prepared the report. when he was asked if he saw that report how can he identify it he said he will identify it by his handwriting, signature and his office seal, and he pray the said report to be admitted as exhibit and it was admitted as exhibit P"2", in cross examination he said that he suspects the said death to be happened at 4.00 am.

Kaijunga Brass [Pw4] told the court that he is a Government Chemist among his duties was to collect and investigate samples which brought to their office as he did on 8/1/2018 he received 11 exhibits which attached with the letter from OC CID Msalala Bugalama, the exhibit which he received was as follows exhibit A was a blood which was taken from the wound of the deceased and his jeans trouser ,exhibit X was a blood which taken from the wound of accused person namely Suleiman Masalu and exhibit X1 was a blood from accused person namely Bunjukano Masa and exhibit B was a blood which taken to the sitting room of the deceased and B1 was a just a blood and B2 was a stove and B3 was a padlock ,B4 was Sandoz which was taken to the house of Suleiman Masalu, B5 was blood which was taken to foot print of accused person and B6 was a blood which taken inside the deceased door,B7 was a blood taken outside the deceased's door.

He added that in his investigation he labed the said exhibits with reference no lab 50/2018 later on he came with result that the exhibit X[blood from accused person related with exhibit B3and B4 and exhibit A was not related with exhibitB3 and B4, on 10/8/2018 he prepared a report on it. He added that if he saw that report he will identify it because of the

Lab no, his signature, the names of his fellows who signed and the office seal and he pray the said report to be admitted as exhibit and it was admitted as exhibit P3, he also said that his report simply resulted that exhibit X, B3 and B4 are related, he said in order report to be complete must be verified and approved thus why in his report there are other two names, the one who verified and the one who approved it, when he was asked about the result of the stove which found in the scene he said that it gives no results, according to result of Sandoz and padlock he said it connect Suleiman Masalu to be the one who own/touch it.

Alfred Kanyam a[PW5] testified to this court that he is a retired police officer from 1/7/2022 but before he was a policeman at Bugarama police Station, on 24/12/2017 he was told by PW1 to go to Kakola village to the hospital namely kinamapula Wazazi [SAAD] as there was one police militia need police assistance, he went there and found the said militia with one patient who was getting treatment in that hospital but the doctor suspected him as he had a big wound on his hand and he had no PF3, he tried to interrogate him who told him that he was attacked, he suspect him as the place which he told him he was attacked was too far from the Dispensary which he was, and on the way there was a lot of dispensary,

and his condition was not good ,his clothes was covered with the blood, so he decided to take him to the police station for more interrogation, on 25/12/2017 he was told to go and search to the room of accused person at rose A guest house on his search he found weighing machine, and five padlock keys, two pieces of clothes covered with blood and, one scissor, after that he filled the certificate of seizure which signed by the accused persons and two witnesses, later on he took him to the police station with seized properties, in the said room he found also Sandoz with blood ,that certificate of seizure had the list of properties which he seized it and he pray to tender it collectively as exhibit and was admitted as exhibit P '4.'

Kurwa Joseph [PW6] testified that deceased was his little brother that on 24/12/2017 he got the information that in his house was seen a lot of blood inside the door coming outside, he went to the scene and found a lot of people gathered there, as per doctor report his brother was already died, he found him with wounds in his neck ,stomach, head and on his hand, on 25/12/2017 they were in the deceased house for burial arrangement when policemen came with weighing machine, and keys which they tried to open that padlock on deceased door and open it .He

added that ,the said jewelry weigh scale was black in color which binded with super glue which belonged to deceased [his brother] .

Dickson Isaka [PW7] testified that he lived at Bushingwe Kahama since 2011 he knows Suleiman Mwita as builder he builds them a toilet to the place which they are living, on 23/12/2017 he was in the bodaboda parking accused person came and ask him to hire his bodaboda as he has a project to visit, he told him he will come back after 30 minutes but he did not return until at 4.40am when he brought his motor cycle, accused body was covered with blood and he has a big wound on his hand ,he asked him what happened he inform him that he was attacked by robbers who intends to take the motor cycle, he advised to take him to the police station then to the hospital, beforegoing to the hospital accused took off his jacket and a piece of cloth which having a lot of blood ,he saw him with a small plastic bag which he did not know what was inside, on their way accused person did not support the idea of going to the police station he insisted to be taken to the hospital as he was not feeling well, at the hospital the doctor who treated him suspected him as he had a big wound and he had noPF3, so he called village Executive Officer who later called

policemen, after that he was discharged and left accused person with policemen.

He added that he knew accused person for almost six months and he gave him that motorcycle in the morning hours and return it the next day at 4.00 am, he asks him if he knows the robbers who attacked him, he said he don't know them.

Mariam Masanja[PW8] who was the guest attendant to the Rose A guest house which accused person was living, she told this court that on 24/12/2017 accused person came from that guest house. she saw a big wound on his hand and his clothes were covered with blood, he told her that he was attacked by robbers ,she assisted him to enter to his room and because he was with his fellow she left him and continue with her duties but later on accused was taken to the hospital, on 25/12/2017 accused person came with policemen handcuffed together with street chairman, she was told to open the said room which accused person rented, after they searched the said room they took some of his clothes ,keys and jewelry weigh scale, she was written her statement and sign the same, she confirmed that all seized properties were found in the room of the accused person.

On these eight witnesses as I said earlier, the prosecution case got closed. In terms of the provisions of section 293(2) of the Criminal Procedure Act, Cap. 20, the accused person was found to have a case to answer. After being addressed in terms of section 293(3) of the CPA, Cap 20 the accused person opted to testify alone on oath with no exhibit.

Suleiman Masalu @ Mwita [DW1] testified to this court that he knows nothing about the charge against him of murder. On 23/12/2017 he was with Kurwa Joseph putting floor to his house, he stayed there until at 9.00pm on his way home Kurwa told him to escort his relatives to their home with his motor cycle and , on their way suddenly he was bitten with strong object on his head and he fall down and left the said motor cycle, later on they cut him on his hand, because of that wound he found himself unconscious until at 4.00am,when he called the owner of the motor cycle to inform the scenario and he returned his motorcycle, the owner of the said motor cycle advised him to go to police station then to the hospital, but he opted not to go to police station but he went to the hospital, next day he was searched in his room at Rose A guest house were one small bag, scissor ,jewelry weighing scale ,clothes, keys and money were found He added that on 26/12/2017 he was written his statement which he

denied to know the charge against him, he agreed the clothes and other things which found there to belong to him, He objected to know the weighing machine and the keys but he agreed to be found in his room, also he said that on 29/12/2017 he was taken to court, in his cross examination he said that the said day he was using Dickson motorcycle, and he knows the deceased as he used to see him at kulwa's house and he knew the business which deceased was doing of jewelry but he don't know his place, He said that the one who attacked him took only his wallet and left him with motorcycle, its keys and his mobile phone, he said that he had no dispute with the people who robbed him and he admitted to be searched in the presence of PW8, He also said that Kulwa came to testify to the court as PW6 but he asks him nothing concerning the people who attacked him as they were his relatives, also he admitted that he fails to ask Simon [Pw2] anything to counter what he testified to the court. Also, he said that from the house of kulwa and the place which he was attacked was almost 30 minutes by motorcycle but he did not pass there to inform him.

That marked the end of both parties' evidence. In view of the above evidence, the following issues call for determination: -

- 1. Whether the victim was met with unnatural death (if yes)**
- 2. Whether the accused person is responsible for that death of the victim**
- 3. Whether the accused person had intention/malice aforethought to kill the victim.**

In answering the issue number one this court is in view that there is no doubt that the said Laurent Joseph is dead, this supported with the evidence of prosecution side together with exhibit P 2 which is postmortem report shows that the cause of death was caused by loss of blood. The report shows that the deceased body had some wounds almost in the all body which cut by sharp object, this make the proof that the bones were fractured. Such cut wounds on the vulnerable parts of the human body prove that, the victim was met with unnatural death. As there is no evidence disapproving this fact. This is positively answered that, the deceased Laurent Joseph met with unnatural death.

Concerning the second issue as to **whether the accused person is responsible for the killing of the victim Laurent Joseph** the prosecution side relies on the evidence of PW3 a doctor who investigated the body of deceased and declare him died and he was the

one who found some wounds in his body which was cut by sharp object and he was the one who took sample of blood which found in the wound of accused, deceased and the one which found in the scene for more investigation, also prosecution side relied to the evidence of Pw4 the Government Chemist who was given that samples for the investigation and result was that the blood which was taken to the wound of accused person relates to the padlock which was in the house of deceased and Sandoz of accused person which was found in the room of the accused, so according to that result make the conclusion that the accused person was the owner of the sendoz, padlock which used to close up deceased house. Again the evidence of Pw5 one Alfred is collaborated with the evidence of Pw3,Pw4, and PW1 as he was the one who was directed by PW1 to go to the house of accused person to search and found sendoz, jewelry weigh scale and keys which was used to open the padlock which was found in the door of deceased which used to close him up, and the accused person said nothing about ownership of the said properties, and how comes to his possession while prosecution side proved that the said properties belonged to deceased, and some of it was identified by deceased relative one Kulwa Joseph [Pw6] also he failed to cross examine PW4 who conducted search

in his room about that properties, and pw6 concerning identification of the said properties to belong the deceased. DW1 said that he knew the deceased as he used to see him at Kulwa's house and he knew his business as jewelry dealer. So this court finds that the said jewelry weigh scale belonged to the deceased as he was the one who deals with that business of jewelry, and not the DW1 who inform this court to be a builder, it is obvious that failure of cross examine that witness from accused side deemed to be accepted that, the said properties which belonged to deceased was found to his room, which connect him direct to the death of deceased, the said principle was elaborated in the case of **Nyerere Nyague vrs Republic** Criminal Appeal No 67/2020 which held that; *as a matter of principle a part who fails to cross examine witness on a certain matter is deemed to have accepted that matter and will be stopped from asking the trial court to disbelieve what the witness said.* Also in the Cyprian **Kabogoyo vs. Republic** Criminal Appeal no 88/1992, See **Juma Kasea vs. Republic** Criminal Appeal No 550 of 2020. Again the evidence of PW 7 who was the owner of the motorcycle said that he gave accused the said motorcycle in morning on 24/12/2017 and promise to return it after 30 minutes but he stayed with it for long time until at 4.40 am, in his

return he saw him with big wound on his hand who told him that he was attacked by robbers who had intention to take that motorcycle, he said that in the room of accused person he saw a piece of cloth having blood and one plastic bag, DW1 in his defense he agreed that he did not report the said scenario to the police in order to be given PF3, also he said that the said robbers took only his wallet and left him with motor cycle, its key, and his mobile phone, this court is wondering if DW1 is saying the truth how could the robbers left him with motorcycle and its key while their intention was to take it? Again, in his defense DW1 said that from the place which he was attacked to the house of kurwa is almost 30 minutes by motor cycle but accused person did not pass there to inform him about the said attack from his relative.

In the issue of being searched and found with a small plastic bag, scissor, keys, jewelry weighing scale and a piece of cloth with blood, DW1 in testimony agreed the same., Again PW6 a brother of deceased said that after his brother declared died by the doctor on 24/12/2017 and given his body for burial. The next day on 25/12 /2017 when they were in the deceased house for burial arrangement policemen came with the keys which opened the padlock which was in the door of deceased and the said

keys was the one which was found in the room of accused person, and accused person agreed to be found with it.

Again, DW1 in his evidence said that the one who attacked him was relative of Kulwa Joseph but he agreed that he did not inform him, and he did not report the matter to the police station, again he agreed that the said Kulwa Joseph testified to this court as Pw6 but he ask him nothing concerning with the said issue and the evidence testified.

According to above reasons and evidence this court has discuss above this court find that, the available evidence proves nothing else than the accused person is responsible for killing the deceased. This issue is also answered in a positive way that, the accused person is responsible for killing of the deceased herein.

Concerning the last issue, **whether the accused person killed the deceased with malice aforethought.** This issue tends to prove whether the accused is guilty of murder or manslaughter.

In the case of **Enock Kipala Vs Republic**, Criminal Appeal No. 150 of 1994 (unreported), the Court had an occasion to consider a situation like the one at hand, where the appellant also pleaded not to have caused death to the deceased intentionally, when it stated that:

"Usually, an attacker will not declare his intention to cause death or grievous harm. Whether or not had that intention must be ascertained from various factors, including the following:

- (i) The type and size of the weapon, if any used in the attack;***
- (ii) The amount of force applied in the assault;***
- (iii) The part or parts of body the blows were directed at or inflicted on;***
- (iv) The number of blows, although one blow may, depending upon the facts of a particular case, be sufficient for this purpose;***
- (v) The kind of injuries inflicted;***
- (vi) The attacker's utterances, if any, made before, during or after the killing; and***
- (vii) The conduct of the attacker before or after the killing.***

In answering the said issue this court went to the report of postmortem which prepared by PW3 which showed that the body of accused person was found with many wounds in almost all of his body which caused by sharp object and the cause of death was caused by the

loss of blood, so this make this court to believe that the type of the weapon used was sharp and the amount of force used was high thus why deceased was found with a lot of wounds cutting different parts of the body and this shows well his intention to kill as because if his intention was just to cause grievous harm he could not use that force and that sharp object.

The evidence of PW5 and PW7 showed the conduct of accused person after killing,PW5 said that he was directed by PW1 to go to the hospital where accused person was taking his treatment, he found him with big wound on his hand when he tried to interrogate him what happened his answers was not satisfactory as the place which he told him to be attacked had dispensary, so it was not possible to travel all the way to kakola with that condition to get treatment in the said dispensary so that acts arises some doubts.

Another issue is failure of accused person to report the matter to police Station as he alleges to be attacked and bitten, in order to be given the PF3,for the evidence of PW7 he told the court that he saw accused when he brought his motor cycle with big wound cut in his hand, he ask him what happened he told him that he was attacked he advise him to go

to police station to get PF3 and then to go to hospital but accused choose to go to hospital without having the PF3 his conduct is suspicious why he did not choose to go to the police station first while he was alleging to be attacked by the relatives of among prosecution witness [PW6].

Lastly the conduct of accused was shown in the evidence of PW1, Yona Mafie who told this court that when he went to the scene, he found the body of deceased with no clothes than boxer [men under ware] that act was in human as the deceased had right of privacy.

On account of the abovementioned reasons this issue too is answered in affirmatively that, the accused person killed the victim with malice aforethought.


All said and done, with this evidence, the accused admission of some important facts and failure of accused person to cross examine some witnesses in important facts, and for want of evidence from defense to create reasonable doubt, I am settled that, the prosecution case has been proved beyond reasonable doubt as required by law.

In view thereof, Suleiman Masalu @ Mwita is hereby found guilty of the offence of murder contrary to the provisions of sections 196 and 197 of the Penal Code, Cap.16 and he is accordingly convicted.

It is so ordered.

DATED at **SHINYANGA** this 14th day of December, 2022.




R.B. Massam
JUDGE
14/12/2022