

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IRINGA DISTRICT REGISTRY  
AT NJOMBE**

**CRIMINAL SESSIONS CASE NO. 30 OF 2020**

**REPUBLIC**

**VERSUS**

- 1. BATON JIMSON KIMBAWALA**
- 2. TULAMWIDIKA JAILO MAYENGELA**
- 3. JENIPHER LUNYILIKO MBALAWE**

**JUDGMENT**

**Date of Last Order: 29.11.2022**

**Date of Judgment: 15.12.2022**

**A.E. Mwipopo, J.**

The body of the deceased namely Esmas Mbalawe was found inside his house situated at Welela Village within District and Region of Njombe on 23.04.2019 with several cut wounds and without a head. Baton Jimson Kimbawala, Tulamwidika Jailo Mayengela and Jenipher Lunyiliko Mbalawe were arrested and were charged before this Court for the offence of murder contrary to section 196 and 197 of the Penal Code, Cap. 16, R.E. 2019. It

was alleged in the information that on 21.04.2019 at Welela Village within District and Region of Njombe accused persons jointly and together they killed deceased person maliciously. When the information was read over to them, all accused persons pleaded not guilty to the offence. The prosecution called 8 witnesses and tendered 11 exhibits to prove the case. The defense side called 3 witnesses in their defense.

The evidence adduced by prosecution witnesses shows that the deceased body was found on 23.04.2019 by the 2<sup>nd</sup> accused namely Tulamwidika Jailo Mayengela inside his house already dead. She informed ten cell leader of the area who informed village leaders. Lusungu Shem Mfikwa – PW2 who was Village Chairman testified that on 23.04.2019 he was informed through phone by the tencell leader namely Erasto Ngota that in the house of Esmas Mbalawe there is dead person. He went to the house of the deceased accompanied with chairman of Azimio Hamlet namely Ayoub Mangula. They found 2<sup>nd</sup> accused and Ten Cell leader at the house of Esmas Mbalawe. He said that 2<sup>nd</sup> accused was the wife of Esmas Mbalawe (deceased) but they were not living together. All of them entered inside the house and they saw the deceased body at the leaving room. The deceased

body was without the head. PW2 said that he identified the body to be of Esmas Mbalawe because of the clothes he was wearing.

Police were informed about the incident and they came to the scene of crime accompanied with a doctor namely Levina Mbogoma – PW1. After they saw the body without head, the police asked villagers to assist in finding the head. 16 pieces of skull and 6 teeth were found approximately 74 meters from the deceased house. Police collected those remains. Police officer with No. H. 4735 D/C Amos – PW7 drafted sketch map – exhibit P6. The post mortem examination was conducted in the scene of crime by PW1 and the report – Exhibit P1 shows that the deceased cause of death is severe external haemorrhage due to chopped head and neck by blunt object. The report also shows that the deceased body had 5 deep cuts on the back, 2 cuts on the right and left shoulder and two more in the right hand. The police took the 2<sup>nd</sup> accused, Hezron Ng'umbi and PW2 to Makambako police station to assist them in investigation.

Police officer with number WP No. 10595 D/C Crisencia – PW8 said on the same date she recorded the cautioned statement of the 2<sup>nd</sup> accused – exhibit P7 at Makambako Police Station. PW8 testified that 2<sup>nd</sup> accused

admitted in cautioned statement to conspire with Baton Jimson Kimbawala and Jenipher Lunyiliko Mbalawe to kill the deceased on witchcraft allegation.

Following the information, on 28.04.2019 police went to arrest Baton Jimson @ Kimbawala (1<sup>st</sup> accused) and Jenipher Lunyiliko Mbalawe (3<sup>rd</sup> accused). The accused were arrested around 03:00 hours in the presence of PW7 and PW2. PW2 testified that 1<sup>st</sup> accused was asked at his house during arrested if he know the murder incident of Esmas Mbalawe and the first accused answered that he know the incident. That he was hired by 2<sup>nd</sup> accused for shillings 150,000/= to kill the deceased. Police asked why he cut the deceased head into 16 pieces and 1<sup>st</sup> accused answered that he cut the head into pieces so that the deceased may not resurrect. The police seized one bushknife – exhibit P10 and certificate of seizure – exhibit P8 was filled. They went to 3<sup>rd</sup> accused to arrest her in her house. PW2 and PW7 said that while on their way to police station, police picked 1<sup>st</sup> accused sister namely Witness Mbalawe following 1<sup>st</sup> accused request.

1<sup>st</sup> and 3<sup>rd</sup> accused were interviewed at Makambako Police Station on 28.04.2019 and their cautioned statements were recorded. The 3<sup>rd</sup> accused cautioned statement – exhibit P4 was recorded by police officer with No. WP

3652 D/Sgt Rhoda – PW6. PW6 testified that the 3<sup>rd</sup> accused person admitted to conspire with the 1<sup>st</sup> and 2<sup>nd</sup> accused to kill the deceased as the witchdoctor told her that deceased is bewitching her and she was afraid deceased will kill her by witchcraft.

PW7 recorded 1<sup>st</sup> accused cautioned statement – exhibit P5 and the 1<sup>st</sup> accused sister namely Witness Mbalawa was the witness. PW7 said that 1<sup>st</sup> accused admitted in the cautioned statement to kill the deceased after the deceased threatened him and 2<sup>nd</sup> accused promised to pay him shillings 150,000/= if he kill the deceased. He said he killed the deceased at deceased house on 21.04.2019 by using a bush knife. After killing the deceased, 1<sup>st</sup> accused did cut deceased head into small pieces, took solar panel and battery which belongs to the deceased. 1<sup>st</sup> accused told PW7 that he hide the solar panel and battery in the farm owned by Neema Mteleke and he was ready to take them there.

After recording 1<sup>st</sup> accused statement, the police took the 1<sup>st</sup> accused to Welela Village to show them the solar panel and battery which he took from the deceased house. The police picked Neema Mteleke – PW3 at Welela Village and village leaders on their way. The 1<sup>st</sup> accused led them to the farm

of PW3. They arrived at PW3's farm and the 1<sup>st</sup> accused did show the solar panel and battery which were hidden in the bush. PW3, PW2 and police officer with No. E. 8390 D/Sgt Hamis – PW4 witnessed when 1<sup>st</sup> accused was showing the solar panel and battery. The police seized the solar panel and battery – exhibit P11 and the certificate of seizure – exhibit P9 was filled. PW4 drafted the sketch map of the area scene of crime – exhibit P2 while led by 1<sup>st</sup> accused person.

On 29.04.2019 the 1<sup>st</sup> accused was taken to Makambako Primary Court to record extra judicial statement. Justice of peace namely Jackson Thomas Banubi – PW5 testified that he recorded extrajudicial statement of 1<sup>st</sup> accused person – exhibit P3 at Makambako Primary Court. He said that 1<sup>st</sup> accused voluntarily confessed to kill the deceased person in the extra judicial statement after he was hired by 2nd accused person. This is all prosecution evidence.

All accused persons testified on oath in their defense without calling any other witness. Baton Jimson Kimbawala (1<sup>st</sup> accused) who testified as DW1 denied to kill the deceased. He said he knew about the death of the deceased from his neighbour and he participated in deceased burial

ceremony. He said that the testimony of prosecution witnesses is not the truth. The police arrested him in his house around 03:00 hours and he did not record his statement at the police. What the police did is to force him to put his thumb in the sheet of paper as he do not know how to read and write. The Solar Panel and the battery alleged to be property of the deceased belongs to him and it was found in his house. He bought the solar panel and battery from Mr. Mwanzumile of Mawande Village. Mr. Mwanzumile is now dead. He said the bushknife – exhibit P10 belongs to him. Bush knife, solar panel and battery were seized at the time he was arrested by the police.

Regarding the extra judicial statement, DW1 said that he was not told by the police officer that he was taken to justice of peace to record his statement. He said that police did take him to Makambako Primary Court and after they arrive, the police officer gave a written statement and shillings 5,000/= to PW5. PW5 identified himself to 1<sup>st</sup> accused as justice of peace, but he don't know the meaning of justice of piece. PW5 started to record in the paper what was from the statement he was given by the police. He said the communication was in Swahili language.

DW1 said since he was arrested by the police he was tortured. When he went to justice of peace he knew that he will be tortured when they return to police. He had some injuries and police were not ready to take him to hospital. He never told anybody that he was tortured and he need to get treatment. He added that he never conspired with anybody to kill the deceased. The 2<sup>nd</sup> and 3<sup>rd</sup> accused live at Welela village and he know them. 2<sup>nd</sup> accused was deceased wife and he did not know if they are separated. He went to the house of the 2<sup>nd</sup> accused to drink Ulanzi but they did not talk about anything. He don't know if the deceased was a witch and has witchcraft accusations. Exhibit P2, P5 and P9 are among the documents which he put his thumb print.

The 2<sup>nd</sup> accused testified as DW2 and said that she know the 1<sup>st</sup> accused namely Baton Kimbawala as they both live at Welela village. She said that the deceased was her husband and he was killed on 21.04.2019. That she knew about his death after she went to his house and found that he is dead. She informed deceased ten cell leader who informed village leadership. After sometime the police came to the deceased house and found the deceased body at living room. DW2 said she was arrested by the police around 12:00 hours on 23.04.2019 and they take her to Makambako police



station lock up. Later on the police did take her to the justice of peace where she told the justice of piece that she do not know anything about the incident.

DW2 said that before the deceased died, they were separated. She had no conflict with the deceased. She did not kill her husband. The evidence adduced by one witness that she recorded a stated at police confessing to kill the deceased is not true.

The last defense witness was the 3<sup>rd</sup> accused namely Jenipher Lunyiliko Mbalawe who testified as DW3. She said that the deceased was her brother and before he died they were in good relationship. That she had no conflict with the deceased. She said she know the 1<sup>st</sup> and 2<sup>nd</sup> accused persons as they are residing in the same village. The 2<sup>nd</sup> accused is her neighbor as they are residing in the same hamlet and she was the wife of her late brother Esmas Mbalawe. She said she never conspired with anybody to kill the deceased. She was arrested police officers on 29.04.2019 around 02:00 hours at her house. Police did not tell her of her crimes. Police did take her to Makambako police station lockup. On the next morning around 03:00 hours the police officer asked her to give her statement. She told police that

she was living with harmony with the deceased without any conflict. The police took her back to the police lock up and she (police officer) said that she is continuing to write the statement. The cautioned statement – exhibit P4 tendered by PW6 is not her statement as she did not say anything which was recorded in the statement. This was the end of the defense case.

The evidence adduced by prosecution witnesses proved without doubt that the deceased namely Esmas Mbalawe is dead and his death was not natural. The deceased was brutally killed by separating his head from the body at the neck. PW1, PW2 and PW7 testified that they saw the deceased body lying inside deceased house without a head. Their testimony shows that 16 pieces of skull and 6 teeth of deceased was found 74 meters from his house. Report on post mortem examination – exhibit P1 corroborate the testimony of PW1, PW2 and PW7 that the deceased body has no head and the deceased had several deep cut injuries. The report shows that the cause of death is severe external haemorrhage caused by chopped head. It is obvious that somebody inflicted those deep cut injuries into deceased body and slaughtered him by separating the head from the body. This proves without doubt that the deceased is dead and his death was not natural.

The remaining issues for determination in this case is whether accused persons are responsible for deceased death. And if the answer is positive, whether they killed the deceased intentionally with common intention.

It is a trite law that in criminal case the onus is always on the prosecution to prove the case against the accused person beyond reasonable doubt. Section 3 (2) (a) of the Evidence Act Cap, 6 R.E 2019 provides that fact is said to have been proved in criminal matters, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists. In the case of **Furaha Michael vs. Republic**, Criminal Appeal No. 326 of 2010, (Unreported), the Court of Appeal held that:-

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

The onus of proving the criminal case never shifts away from the prosecution and no duty is cast on the accused person to establish his or her innocence as it was held in the case of **Said Hemed vs. Republic [1986] TLR 117.**

In the present case, the evidence available in record is circumstantial. There is no one who saw the person who killed the deceased. For the Court to convict the accused persons on circumstantial evidence the facts must be connected to lead to no other conclusion than the guilt of the accused persons. In **Hamida Mussa vs. Republic [1993] T.L.R. 123**, the Court held, I quote:

*"Circumstantial evidence justifies conviction where inculpatory fact or facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt"*

Similar position was stated by Court of Appeal in the case of **Samwel Marwa @ Ogonga vs. Republic**, Criminal Appeal No. 74 of 2013, Court of Appeal of Tanzania at Mwanza, (Unreported), where it was held that:-

*"To pin liability on the basis of circumstantial evidence, the evidence must lead to no other conclusion except that the accused is the person who committed the offence he is charged with. If the evidence is capable of more than one explanation it does not meet the standard of proof set in this principle."*

The facts which lead to conclusion that the accused person is guilty must be proved beyond reasonable doubts. In the case of **Ally Bakari vs. Republic [1992] TLR 10** the Court of Appeal held that: –

*"Where the evidence against the accused is wholly circumstantial the facts from which an inference adverse to the accused is sought to be drawn must be proved beyond reasonable doubt and must be connected with the facts which the inference is to be inferred."*

In the case of **Gabriel Simon Mnyele vs. Republic**, Criminal Appeal No. 437 of 2007, Court of Appeal Of Tanzania at Dar Es Salaam, (Unreported), the Court of Appeal provided a test when a case rest on circumstantial evidence. The Court held that:-

*"It is common ground that for circumstantial evidence to found a conviction, it must be such that it irresistibly points to the guilt of the accused. From the authorities we are settled in our minds that when a case rests on circumstantial evidence such evidence must satisfy three tests:- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused: (iii) 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 none else."*

The prosecution evidence in this case is reliant on confessions of accused persons and the doctrine of recent possession. Each accused persons confessed to police officer that they participate in a plan to kill the deceased and the 1<sup>st</sup> accused implemented the killing. The 1<sup>st</sup> accused also confessed before justice of peace that he killed the deceased. The police did take 2<sup>nd</sup> accused, PW2 and Hezron Ng'umbi to police station on 23.04.2019 to assist them in investigation. During interview with 2<sup>nd</sup> accused, she confessed to plan the killing of the deceased with the 1<sup>st</sup> and 3<sup>rd</sup> accused on allegation that he was bewitching all of them. The 2<sup>nd</sup> accused promised to pay shillings 150,000/= to the 1<sup>st</sup> accused if he will kill the deceased. On the night of 21.04.2019, the 1<sup>st</sup> accused went to the house of 2<sup>nd</sup> accused and informed her that he has already killed the deceased and asked the water to wash his hands which was covered in blood. The 2<sup>nd</sup> accused gave water to him. The said confession of the 2<sup>nd</sup> accused person was admitted without being objected by the 2<sup>nd</sup> accused.

Following the information, the police arrested the 1<sup>st</sup> and 3<sup>rd</sup> accused person on night of 28.04.2019 around 03:00 hours. PW2 said he was present

when 1<sup>st</sup> accused was arrested and the 1<sup>st</sup> accused admitted to participate in the incident of killing the deceased and he did hand to the police the bush knife he used to cut the deceased. The 1<sup>st</sup> accused and 3<sup>rd</sup> accused were taken to police station where they recorded their statement. Their cautioned statements and extra judicial statement of the 1<sup>st</sup> accused were admitted without any objection. In the caution statement, 3<sup>rd</sup> accused person admitted to conspire with 1<sup>st</sup> and 2<sup>nd</sup> accused to kill the deceased on witchcraft allegations. She said that on 22.04.2019 the 1<sup>st</sup> accused told her that he has already killed the deceased.

In his cautioned statement and extra judicial the 1<sup>st</sup> accused admitted to kill the deceased by using bushknife after the 2<sup>nd</sup> accused promised to pay him shillings 150,000/= if he kill the deceased. The reason for killing him is witchcraft accusation. The 1<sup>st</sup> accused person said after the incident he took solar panel and battery from deceased house and he went to hide it at the farm of PW3. He said after the incident he went to wash his hands in the house of the 2<sup>nd</sup> accused where he told him that he has already killed the deceased. The 1<sup>st</sup> accused led the police on the same date to the place where he hide the solar panel and battery he took from deceased house after the incident. PW2, PW3 and PW4 testified that it was the 1<sup>st</sup> accused person who

led the police to PW3 farm where the solar panel and battery was found. The said solar panel and battery together with certificate of seizure were tendered as prosecution exhibits.

A confession voluntarily made to a police officer by a person accused of an offence may be proved as against that person. This is provided by section 27(1) of the Evidence Act, Cap. 6 R.E. 2019. The court may convict the accused person relying on confession where it is satisfied that the confession is nothing but the truth even when he denies to make the confession at all or he made it involuntary. See **Tuwamoi vs. Uganda (1967) EA 84** and **Hamis Athuman and Two Others vs. Republic [1993] TLR 110**. In the case of **Hemed Abdallah vs. Republic [1994] TLR 72**, the court held that:-

*"Once the trial court warns itself on the dangers of basing a conviction on uncorroborated retracted confession and having regard to all the circumstances of the case, it is satisfied that the confession is true it may, convict on such evidence without any further ado."*

However, it is settled as a matter of prudence that a retracted confession requires corroboration. In **Ali Salehe Msutu vs. Republic [1980] TLR 1** it was held at page 4 that:-



*"It has long been an established rule of practice in East Africa, including this country, that a repudiated confession, though as a matter of law may support a conviction, generally requires as a matter of prudence corroboration as is normally the case where a confession is retracted."*

The evidence available in record show that all accused persons denied to participate in the killing of the deceased and they denied to make any confession. 1<sup>st</sup> accused said in his testimony that he was arrested after the vote was cast by villagers on the previous date as to who is responsible for the killing of the deceased. He said that he think he was arrested because of those votes show he is responsible. PW2 said the similar thing during cross examination. He said that on 27.04.2019 OC CID Makambako informed him that the vote casted at the village shows that 1<sup>st</sup> and 3<sup>rd</sup> accused are responsible for the incident. However, these evidence is not sufficient to raise doubt that the 1<sup>st</sup> accused was arrested and charged for deceased death based on the vote casted by villagers.

1<sup>st</sup> accused said he was tortured by police before his cautioned statement was recorded and he was forced to sign paper which has already been written by police. That, even extra judicial statement recorded to the justice of peace was recorded after the justice of peace was given money by

police and PW5 recorded his extra judicial statement from the paper he was given by police. Thus, the content therein was not provided by him and he was ordered to sign the extra judicial statement. 2<sup>nd</sup> accused said she was taken to justice of peace at police station, but she denied to be responsible for deceased death. The 3<sup>rd</sup> accused denied to give any statement at police station as she denied during interview. Unfortunately, the accused cautioned statements and extra judicial statement were admitted without objection. The act of each accused person to deny to make those confession is an afterthought.

In the case of **Vicent Ilomo vs. Republic**, Criminal Appeal No. 337 of 2017 (unreported), it was held that:-

*"It is trite law that if an accused person intends to object to the admissibility of a statement/confession he must do so before it is admitted and not during cross-examination or defense."*

Accused persons were supposed to object the admission of confessions on ground that it was not voluntarily made by them in order for the Court to order trial within a trial to determine if the confessions were made willingly. Also, the line of questions asked by defense side during cross examination

to witnesses who tendered confessions does not show at all that accused persons were retracting those confessions. The law is settled that failure to cross examine on a material point is taken to be admission of the fact in question as it was stated by the Court of Appeal sitting in Arusha in the case of **Nyerere Nyague vs. Republic**, Criminal Appeal No. 67 of 2010, (unreported). The said confessions of each accused person provides in detail the reason for killing the deceased, how each accused person participated in the planning and implementing the killing of the deceased. The said confessions provides similar stories about the incidents leading to the killing of the deceased which means it contain nothing but the truth. The cautioned statement of the 1<sup>st</sup> accused led to discovery of deceased solar panel and battery. This means that there is corroboration to the 1<sup>st</sup> accused statement and the same is nothing but the truth.

The 1<sup>st</sup> accused said the solar panel and battery was his property and it was seized by police at his house during search when he was arrested. However, the prosecution evidence is very strong and it proved that the said solar panel and battery was seized after the 1<sup>st</sup> accused led the police, PW2 and PW3 from where it was hidden. It would not have been easy to discover the solar panel and battery stolen at deceased house after killing the

deceased from where it was hidden if police were not told and led by the 1<sup>st</sup> accused. It is not normal for a person who own a property legally to hide it in the bush far from his house. This prove that the 1<sup>st</sup> accused did hide it in the bush at the farm of PW3 after his wife asked him where he got that solar panel and battery as he stated in the caution and extra judicial statement. The said exhibit was in his possession constructively as he has knowledge where he hide it and he led police to where he hide it in the farm of PW3. It was held in the case of **Mboje Mawe and 3 Others vs. Republic**, Criminal Case No. 86 of 2010, Court of Appeal of Tanzania at Tabora, (unreported) that;-

*"Once it is established by evidence that, a person, though not in actual possession of a property, has knowledge and control of where it is, he is taken to be in constructive possession of that property."*

The defense by the 1<sup>st</sup> accused person that he bought the said solar panel and battery from Mr. Mwanzumile failed to shake prosecution case.

Under section 31 of the Evidence Act, Cap 6 R.E. 2019, any fact deposed which lead to discovery in consequence of information received from a person accused of any offence in the custody of a police officer is relevant. In **John Peter Shayo and 2 others vs. Republic [1998] TLR**

**198** it was observed that confessions that are otherwise inadmissible are allowed to be given in evidence under section 31 of the Evidence Act 1967 if, and only if, they lead to the discovery of material objects connected with the crime, the rationale being that such discovery supplies a guarantee of the truth of that portion of the confession which led to it. A confession leading to discovery is reliable. Thus, the confession of the 1<sup>st</sup> accused person is reliable and has sufficient corroboration from the discovery. In general, I'm satisfied that all confessions contain the truth and they were voluntarily made by accused persons.

On the question whether accused persons had common intention, under section 23 of the Penal Code, Cap. 16 R.E. 2019, when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

The confessions reveals how 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused planned to kill the deceased on witchcraft accusations and the 1<sup>st</sup> accused implemented the

killing. The accused 2<sup>nd</sup> and 3<sup>rd</sup> accused planned to kill the deceased after they were informed by witchdoctor that the deceased was responsible for their sickness and miseries. 2<sup>nd</sup> accused told 3<sup>rd</sup> accused that he will find somebody to kill the deceased. The 2<sup>nd</sup> accused asked the 1<sup>st</sup> accused to kill the deceased and she informed him that even the 3<sup>rd</sup> accused support the killing. After the 1<sup>st</sup> accused has killed the deceased on 21.04.2019 he informed the 1<sup>st</sup> accused on the same night and the 3<sup>rd</sup> accused was informed by 1<sup>st</sup> accused on the next date. The planning and acts of 1<sup>st</sup> accused to inform 2<sup>nd</sup> and 3<sup>rd</sup> accused after killing the deceased proves that all accused persons had common intention in the killing of the deceased. In the case of **Kileo Bakari Kileo and 4 Others vs. Republic**, Consolidated Criminal Appeals No. 82 of 2013 and 330 of 2015, Court of Appeal of Tanzania at Tanga, (unreported), it was held at page 23 of the judgment that:-

*"The formation of a common intention doesn't require prior agreement. Common intention may be inferred from the presence of the offender, their actions and omissions of any of them to dissociate himself from the prosecution of the lawful purpose."*

Despite the facts on record showing that the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were not the one who actually killed the deceased, their participation

in the planning and the act of 1<sup>st</sup> accused to inform them about the incident of killing the deceased immediately after incident and their omissions to report about the incident prove they are responsible for the commission of the offence. 2<sup>nd</sup> accused even promised to pay shillings 150,000/= to 1<sup>st</sup> accuse if he kill the deceased. This proves that it was the accused persons who killed the deceased with common intention. It was nobody else. Thus, I find that it was accused persons who killed the deceased.

As the accused persons planned and killed the deceased on witchcraft accusation it is without doubt that they intended to kill him as their confessions say. Since they believed that deceased was a witch, the 1<sup>st</sup> accused has to separate the deceased head from the body by slaughtering him in the neck and he cut the head into small pieces to make sure he is not going to rise from the dead. I know the danger of convicting accused person relying on the confession which is not corroborated. In this case the confessions of the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were not corroborated, but I believe what was stated therein is nothing but the truth. The 2<sup>nd</sup> and 3<sup>rd</sup> accused persons' confessions provided in details the situation leading to the planning of the death of deceased. The killing of deceased was basically based on witchcraft belief.

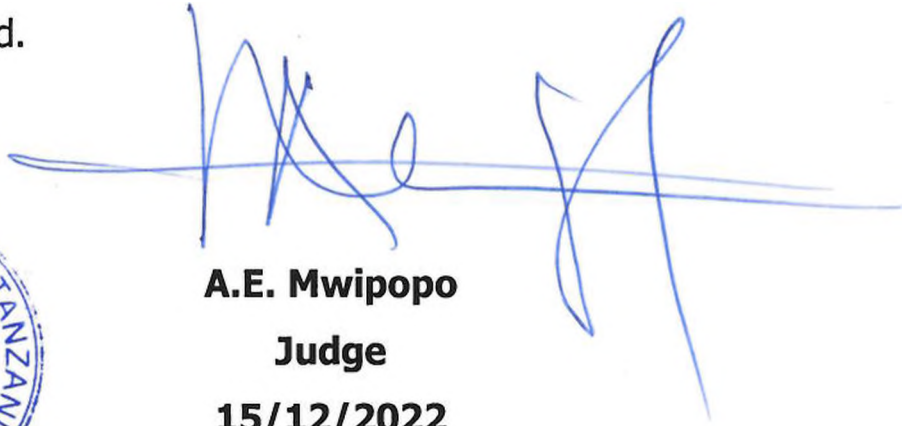
The prosecution witnesses who testified before this Court were consistent and the Court is satisfied that they are credible. There is nothing to make this Court to discredit their testimony. I'm convinced that the accused persons killed the deceased with malice aforethought and the intention to kill the deceased has been proved without doubt in accordance with section 200 of the Penal Code, Cap 16 R.E 2019. The prosecution has proved their case against all accused persons and I convict the accused person namely Baton Jimson Kimbawala, Tulamwidika Jailo Mayengela and Jenipher Lunyiliko Mbalawe for the offence of murder contrary to section 196 and 197 of the Penal Code, Cap 16 R.E. 2019.

### **SENTENCE**

The offence of murder under section 196 of the penal Code, Cap 16 R.E. 2019, upon conviction, attracts only one sentence which is death by hanging in our jurisdiction. That means the court has no option or discretion to impose a different sentence. For that reason and by virtue of section 26(1) and section 197 of the Penal Code, Cap. 16 R.E. 2022, and section 322 (2) of the Criminal Procedure Act, Cap. 20 R.E. 2022, I hereby sentence Baton



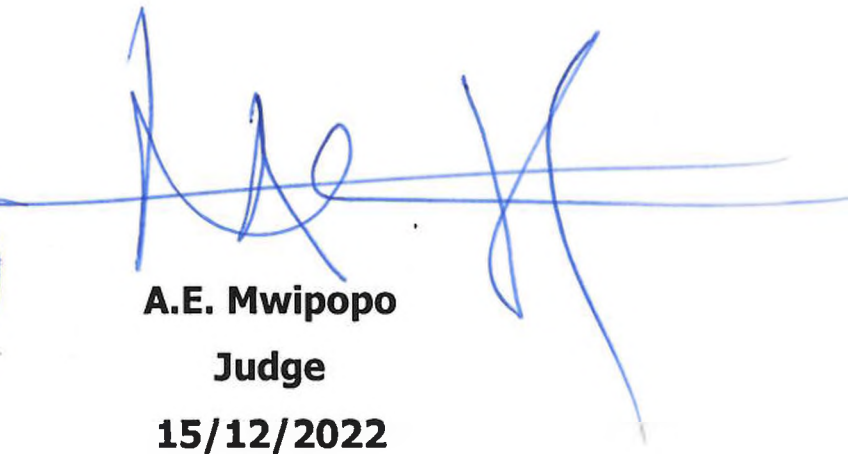
Jimson Kimbawala, Tulamwidika Jailo Mayengela and Jenipher Lunyiliko Mbalawe to suffer death by hanging. It is so ordered accordingly. Right of appeal fully explained.



**A.E. Mwipopo**  
**Judge**  
**15/12/2022**

### **ORDERS**

1. The solar panel and battery which were tendered as exhibit in this case to be handled to police who shall handle it to the children of the deceased Esmas Mbalawe.
2. The bush knife which was tendered as exhibit to be handled to the police.



**A.E. Mwipopo**  
**Judge**  
**15/12/2022**

The judgment was delivered in open Court this 15<sup>th</sup> December, 2022, in the presence of State Attorneys for republic, all accused persons, the defense counsels for each of accused person.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

**A.E. Mwipopo**  
**Judge**  
**15/12/2022**