

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT LINDI

[ORIGINAL JURISDICTION]

CRIMINAL SESSION CASE NO 21 OF 2021

(PI Case No. 4 of 2020, Ruangwa District Court)

THE REPUBLIC..... PROSECUTOR

VERSUS

NG'ALIKA SELEMANI SAID @KISAMU.....1ST ACCUSED


RASHID ABDALLAH SEIF NKAHANE @MAPUA.....2ND ACCUSED

JUDGEMENT

28/11/2022 & 30/11/2022

LALTAIKA, J.

The accused persons herein **NG'ALIKA SELEMANI SAID @KISAMU** and **RASHID ABDALLAH SEIF NKAHANE @MAPUA** (herein after referred to, interchangeably, as accused persons and the first and second accused respectively) are charged with the offence of Murder contrary to section 196 read together with section 197 of the Penal Code [Cap 16] R.E 2019 (now R.E. 2022). The particulars of the offence are that on the 18th



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day of July 2020 at Kilimahewa Area, Ruangwa District, Lindi Region the duo did murder one **Daniel Yohana Sarakai** (the deceased).

The accused persons took plea on the 15th of March 2022. They denied committing the offence hence this trial. At the hearing, the Republic appeared through Mr. **Yahaya Gumbo** and by **Mr. Godfrey Mramba**, learned **State Attorneys**. This being a capital offence, the state fulfilled its pledge of providing legal assistance to the accused person through **Ms. Happyness Sabatho, learned Advocate**. I take this opportunity to register my sincere appreciation to the learned counsel for both parties for their dedication, commitment, and above all legal insights that have contributed greatly to giving this judgement its current form and content.

Before unpacking the issues, law, and the art and craft exhibited by the counsel on the application of such laws in favour of their respective parties, I find it imperative to expound, in a simple and straightforward manner, the real story behind the matter at hand. The facts I am going to narrate are a blend of records in the court file and witness testimonies. Special care has been taken to maintain originality despite unavoidable pitfalls common in translations (in this case from Kiswahili to English).

It was around 23:00 on the 8th day of July 2020 at a place called Kwawanyumbani close to the corner leading to the National Housing Street, Ruangwa Town, a bodaboda rider called Imani Andrea Umbe suspected as unusual, a person lying next to the road. Almost like the **parable of the Good Samaritan in Luke 10:25-37**, Mr. Umbe approached the person. Upon coming closer, he could tell from the clothes that he was a Maasai


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man. The bodaboda rider tried to call out loud "Masai, Masai" the Maasai man turned around to show his wound "jeraha" on the head and another on the back. Mr. Umbe discovered that the person he was trying to help **was Daniel Yohana Sarakai, a watchman with one of the shops nearby.** The ailing Mr. Sarakai, though in agony, managed to give his mobile phone to Mr. Umbe and mentioned three persons he wanted to be notified of his plight. Mr. Umbe gave a try but none of them were reachable.

As it was approaching midnight and none of the relatives picked up the call, Mr. Sarakai pleaded with Mr. Umbe to take him to his home place for rest. However, Mr. Umbe sought it unwise as he saw the worsening condition of Mr. Sarakai. He decided to take him to hospital instead. Mr. Umbe passed through Ruangwa police station where he was given a PF3 and proceeded to Ruangwa District Hospital. Upon completion of the necessary procedures required for Mr. Sarakai to be admitted in the hospital, Mr. Umbe tried once again to call the three numbers he was given. This time, one of the numbers went through. In a few minutes, Mr. Sarakai's employer arrived. Mr. Umbe excused himself and left.

On the next day, that is the 19th of July 2020 Mr. Daniel Yohana Sarakai was pronounced dead. An autopsy conducted by Dr. Bakari Saidi Nampeha, Medical Doctor in Charge of Ruangwa District Hospital revealed that the cause of death was twofold: 1st severe traumatic brain injury and 2nd severe hemorrhage (loss of blood) due to the back injury. The deceased was buried before it was established who was responsible for fatally attacking him. The


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Tanzania Police Force on its part, however, remained watchful to any signs to resolve the puzzle on who the perpetrators could be.

To unravel the mystery, police detectives in Ruangwa district walked through the valleys and mountain tops. A tip on possible perpetrators reached them falling squarely on the first and second accused herein. The two were arrested at different time and in different parts of Ruangwa Town. Upon completion of investigation, the duo was arraigned in court.

It goes without saying that the onus is on the prosecution to prove to this court, beyond reasonable doubts, the allegation levelled upon the accused persons. In discharging this duty, the prosecution paraded five witnesses and tendered five exhibits. The next paragraphs are a summary of the prosecution case through the five witnesses as carefully recorded by this court.

PW1 was Imani Andrea Umbe a-29-year-old bodaboda rider resident of Mchangani Street, Kilimahewa Area, Nachingwea Ward, Ruangwa District. PW1 appeared confident and articulate. He testified that on 18/7/2020 when he was in his normal duties as a bodaboda rider, at around 23:00 night hours he reached a place called Kwawanyumbani a corner to National Housing. Upon taking the corner, PW1 recalled, he saw a person lying down but since he did not know the person and also the reason he was lying down, PW1 proceeded with his trip as instructed by the passenger he had just picked from Town.

Passing through the same area on his return trip, PW1 stated, he could still see the person lying down. As the lights of his bodaboda were pointed

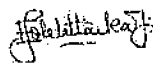

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towards the person lying, PW1 said thoughtfully, he could see the person clearly and it became obvious to him that the person he saw was in trouble and needed help. PW1 testified further that as he went closer, he tried to call out "Masai! Masai!" as he could tell from the clothes, he was on that he could be a Maasai. He (the Maasai) turned to PW1 and started to show his wound "jeraha".

With the assistance of the Counsel for the Republic, PW1 described the person as a male person from the Maasai community. The Maasai man allegedly struggled to show PW1 yet another wound on the back. When asked what next, he advised that PW1 calls his relatives. He gave him his mobile phone and he mentioned three persons he wanted him to call and convey the information. Nevertheless, PW1 could not remember their names but he recalled that none of them received the call at that time. PW1 later knew that the person was Daniel Yohana Sarakai who is now deceased.

PW1 testified further that although Mr. Sarakai pleaded with him to take him to his home place for rest, he thought it unwise to do so since his condition was obviously deteriorating. PW1 decided to take him to hospital instead. This necessitated going through Ruangwa Police Station where he was given a PF3 with which he proceeded to Ruangwa District Hospital.


Upon completion of the necessary steps for admission of Mr. Sarakai, PW1 recalled, his boss whose number he had tried to call before leaving with Mr. Sarakai arrived. He told him what happened and excused himself leaving Mr. Sarakai under the care of his boss.


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PW1 testified further that while he was in a place called Nanungo later that morning, he received a call from a person who introduced himself as a police officer requesting him to joined them at Ruangwa Hospital because the person he took to hospital had passed away and that necessitated they got some explanation. At the hospital, PW1 recalled, he was asked a few questions and requested to accompany the police officers to the scene of crime.

Upon arrival at the scene of crime, PW1 recalled, the police officers asked him to describe how he found the deceased person. PW1 went on to provide details to the police including that the deceased had only pointed the place where he was attacked by show of a hand "*alinionyesha kwamba ni pale.*" Thereafter, PW1 recalled, they made some drawings (presumably the sketch map earlier on described.) There being no questions on cross-examination, in re-examination PW1 emphasized that the deceased had not mentioned anyone as the perpetrator.


PW2 was Dr. Bakari Saidi Nampeha, resident of Kilimahewa Street, Ruangwa Town and the current Medical Officer in Charge of Ruangwa District Hospital. Having impressively described his professional journey, credentials, and some elementary science on autopsy PW2 testified that on 19/7/2020 he conducted postmortem examination of the deceased Daniel Yohana Sarakai who had died while receiving treatment in his hospital. PW2 testified further that the autopsy was witnessed by a relative of the deceased called Jacobo Mathayo.


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Describing the exercise with some considerable details, PW2 testified that the deceased had wounds on the head and also on the left side of the back. The head injury was caused by a blunt object while the back one, was caused by a sharp pointed object. It was PW2's evidence that the cause of death of the deceased was twofold: 1st severe traumatic brain injury 2nd severe hemorrhage (loss of blood) due to the back injury. PW2 prayed to tender the Postmortem Report Made Under section 10(1) of the Inquest Act Cap 24 RE 2019 dated 19th July 2020 prepared by Bakari Nampeha, MD and there being no objection from the defence counsel, the same was admitted and marked as **Exhibit P1**.

PW3 was D8576 DC/SGT Hightower Charles Katabalo a Police Officer working with the Criminal Investigation Department of Ruangwa Police Station. It was PW3's testimony that on 19/7/2020 the then acting OC-CID of Ruangwa Ass/Insp. Bocho informed him that he had received information of a person that had been killed and that the body of the deceased was laid at the Ruangwa Hospital Mortuary. The OC-CID instructed PW3 to supervise postmortem examination of the deceased body and conduct other investigative functions.

PW3 testified further that after the autopsy, he proceeded to the scene of crime as he was tasked to draw a sketch map of the area. It was PW3's evidence that he drew the sketch map assisted by a person called IMANI UMBE a good Samaritan who had assisted the deceased person to reach hospital. PW3 prayed to tender the sketch map and since there was no objection from the rival party, the **Sketch map dated 18/7/2020 was**


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admitted and marked Exhibit P2. On cross examination, PW3 clarified that the distance from where the deceased was attacked to where he was found was 72 meters.

PW4 was MG 438945 Seifu Selemani Chikawe, a 31-years old, Security Officer with JAS Security Company Ltd, a private company based in Ruangwa town, Lindi. PW4 clarified that he was a supervisor for a security company and his official title was Assistant Manager. He clarified further that the designation **MG is a short form for MGAMBO** adding that he undertook the peoples' militia training (Mafunzo ya Mgambo) a four to six months training, in 2008.

PW4 went on with the curtain raiser conversation that upon completion of his *Mgambo* training he was appointed by the Police at Ruangwa as an Assistant Police Officer whereupon he carried his duties alongside peasantry till 2010 when he was appointed by the District Militia Department to attend a leadership course at Kunduchi Dar es Salaam. After completion of the leadership course, PW4 explained, he was promoted to the rank of a Corporal of the Peoples' Militia, and he joined JAS security in 2014 as Assistant Manager.

It was PW4's testimony that on 18/7/2020 around 23:00 when he was at his home place, he received a call from one of his security guards who was at the office that day that there were people who needed him. Upon asking who they were, PW4 recalled, he was told that they were his security guards for the SOKO JIPYA area in Kilimahewa accompanied by Nalika (the witness' pronunciation of the name differed with the rest of the


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people including the accused). PW4 instructed the watchman in the office to give the phone to the security guard who was with Ng'alika to explain what the matter was. The name of the security guard, recalled PW4, was Mzee Habibu Mkangumbe.

PW4 testified further that even though Ng'alika was his client at Sokojiptya, he informed him and Mzee Habibu that what they did was not good because leaving the place without anyone guarding it was dangerous. PW4 then agreed to meet them at Sokojiptya. He left his home and arrived earlier than Ng'alika and Mzee Ayubu.

Upon arrival at the Sokojiptya area, PW4 recounted, he met a person called Mapua (the second accused). He asked him why he was there and what he was doing in that place, and he responded that he was there because something had happened at the Kiosk of Kisamu. Asked who was Kisamu he responded that he was also known as Ng'alika. PW4 then explained that Ng'alika had just called him, and they agreed to meet in the market, so Mapua had better waited.

When he met Mapua, PW4 recalled, he was just standing up three blocks away from Ng'alika's shop. Shortly thereafter the people he was waiting arrived bringing the four of them together namely PW4, First accused (Ng'alika), Second accused (Mapua), and the watchman called Habibu Mzee. PW4 invited them to explain to him what had happened. The four walked a few blocks away to Ng'alika shop. Observing the padlock, PW4 recalled, it was intact. No part of the shop was touched. In other words, there was not any sign of theft.


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PW4 testified further that he then told Ng'alika and his colleague (Mapua) that as the leader of the security guards, he confirmed that nothing had happened to Ng'alika's this shop. However, PW4 added, in case of doubt they could report to the police right away. Ng'alika allegedly refused to go to police but made a caveat that in case PW4 heard anything unusual he should be so notified because he (Ng'alika) had seen two people unknown to him.

PW4 went on to testify that Ng'alika told him if he thought he was not telling the truth PW4 should check the whereabouts of the Mlinzi of the next shop. PW4 responded that he was not responsible for the shop he was mentioning, and the pair left.

PW4 testified further that on 19/7/2020 in the morning, he was at Sokojipya area discussing what had happened previous night namely theft at Ng'alika's shop. In the presence of Ng'alika, PW4 told the leadership of the market what had transpired and his advice to Ng'alika to report the theft to the police and his refusal. Shortly after that, PW4 recalled, one Mr. Mohamed a trader and tenant at Sokojipya using PW4's security services joined the meeting. Mr. Mohamed told the meeting that even his shop had been broken into and fish worth 100,000 TZS were stolen.

On hearing the breaking news from Mr. Mohamed, PW4 asked him when he realized that his shop had been broken into to which Mr. Mohamed responded that he got the information from Ng'alika who went to inform him in the previous night. PW4 then turned to Ng'alika and asked him how he

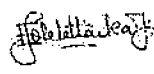

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knew that Mr. Mohamed's shop had been broken into while he did not work as a watch man and Mr. Ng'alika was tightlipped. He had nothing to say.

The chairman of the market said he was suspecting involvement of Ng'alika of another incident that had happened. He advised that both Mohamed and Ng'alika report to the police station on their own. Mr. Mohamed agreed and proceeded to report. Mr. Ng'alika, on the other hand, refused such advise outright. The meeting was disbarred.

Looking deeply reflective, PW4 testified on what appears to be his interpretation of the involvement of the accused persons in the incident. On the same day, recalled PW4, he received a phone call from one *Afande Davis* (a police officer) who told him that there was a report on death of a watchman. Afande Davis went on to explain that the watchman was attacked by unknown people and has since passed away at the Ruangwa District Hospital. The police officer wanted to interrogate PW4's security guard on duty that day who happened to be none other than Habibu Mzee. What Mr. Mzee told the police, PW4 testified, led to their quest to get hold of Ng'alika. PW4 assisted the police in looking for Ng'alika but he could not be found that day.

PW4 explained that usually there were two security guards in the area one on his side and the other on the other zone of the market that was not under his company's security obligation. Upon arrival that in the previous night following Ng'alika's complaint, PW4 recalled, he expected to meet a security guard but there was none one Mapua (second accused) who, PW4


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alleged, had nothing to do in that area as he was neither a tenant nor a security guard.

As the leader of the security scheme, PW4 asserted, he got suspicious of Ng'alika and Mapua. He thought there must be something they were hiding as, in his judgement, it was not proper to meet someone who was not authorized to be there during those hours. Ng'alika's refusal to report the matter to the police, recalled PW4, made him even more suspicious. On 20/7/2020 he received a call from another Police Officer Afande LUSEKU that Ng'alika had been arrested and they (the police) were in search of one more person called Mapua.

PW4 testified that he knew the first accused very well as he was at some time in the past, married to his sister named Halima Issa Nyamiri. He added that they lived in the same village of Makanjiro for 11 years where they played together and shared life as villagers. Regarding the second accused, PW4 hesitantly stated that he always saw him with the first accused, and he believed that they were friends. PW4 successfully identified the accused persons in court.

On cross-examination, PW4 was tasked to explain whether he knew of any previous criminal record of the first accused to which he responded to the affirmative that he (Ng'alika) was once accused of theft. Asked whether he had any evidence to prove the allegation, PW4 responded to the negative.

On further cross-examination, PW4 explained that the distance from Sokojiyya (where his company was responsible for security) to where the deceased was attacked was about 8 meters, and that it was legitimate to


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expect that his security guard on duty that day, Mzee Habibu was aware of what happened since he is neither deaf nor blind. As a member of the People's Militia (Mgambo), PW4 conceded, he was responsible for security of the people in general not just his area and that he had the duty to report the incident to the police as a gesture of peace keeping role of a Mgambo. So far, up to the moment he was testifying, conceded PW4 further, he had not mentioned that he reported the matter to the police.

As cross examination got heated up, PW4 brushed off any allegation that he might have been involved in the killing of the deceased. He also denied having engineered the plot to connect the first accused with the murder. He only got suspicious of him for his refusal to report the theft in his shop to the police. Asked whether he harbored grudges with the first accused following his disagreement with his former wife who was the sister of the first accused, PW4 distanced himself from such speculation arguing that it had been long since he divorced Halima and since then Ng'alika and him have continued to live as brothers in law and helping each other.

On further cross-examination, the zealous Defence Counsel Ms. Sabatho probed PW4 to explain whether it was wrong for the accused persons to be in the shopping area which was not fenced anytime they wished to. He conceded that principally, anyone could pass through that area and proceed to wherever they wanted to go. PW4 expounded on proximity of Mzee Habibu to the scene of crime thus he was closer to the deceased but still, no body had told the court why Mzee Habibu's statement was not tendered. PW4 conceded that none of his security guards went for


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interrogation with the police pointing out specifically that nobody suspected Habibu of being involved in the killing. On re-examination, PW4 cemented his suspicion thus when he inspected Ng'alika's shop and found that it was not broken into, he became suspicious. He thought there was possibility that the first accused was involved in the killing.

PW5 was F6794 DC/CPL Kulwa Mohamed Ally, a Police Detective based at Merereni Police Station in Simanjiro District, Manyara Region Northern Tanzania. PW5's testimony took the most part of the trial in this case as he was, for all practical purposes, the deciding vote on the innocence or otherwise of the accused persons.

It was PW5's evidence that on 19/7/2020 the OC-CID for Ruangwa tasked him to work on a case file RU/IR/736/2020 as an investigator. The file initially was on Occasioning Grievous Harm (assault), recalled PW5, against a person called Daniel Yohana Sarakai who was injured while guarding a shop in the Sokojipya area in Ruangwa town. PW5 went on to testify that at around 11:00AM information came about that the victim of the assault had passed away necessitating change of the offence in the case file from assault to murder. He joined the team that went with the doctor to conduct postmortem examination and he also visited the scene of crime.

On investigation, PW5 testified that he was informed that on the previous night, 18/7/2020 there was a happenstance involving a person called Ng'alika or Kisamu. He alleged that his vegetables and fruits shop had been broken into. In that incident, recalled the investigator, Ng'alika forced the watchman who was there to call his supervisor who was also the head


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of that security company. Mr. Ng'alika, allegedly, wanted the supervisor to be called for discussion on how he would be compensated for the loss he had occasioned. He successfully forced the security guard to leave his workplace and walk with him more than one kilometer away to CCM building for the purpose of getting hold of the supervisor of the security company named Chikawe. Nevertheless, upon reaching the CCM building where the office of the Security Company was located, they could not find Mr. Chikawe. They went back to the market. Upon investigation of the allegation that the shop of Mr. Ng'alika had been broken into, there was no such thing. That ended Ng'alika's claim to be compensated. As a result, Mr. Chikawe advised Ng'alika to report the matter to the police station.

PW5 testified further that they (police officers) were highly suspicious of the person called Ng'alika because Chikawe had told them that when he saw Ng'alika he was restless (*alikuwa kama ana wenge*.) As police detectives, they thought Ng'alika might have been involved in the killing. It was PW5's testimony further that according to Chikawe, Ng'alika was seen with another person called Rashidi Nkane @Mapua. Based on the suspicion they had, recalled PW5, they immediately started searching for Ng'alika. Another thing that added into their suspicion, PW5 stated, is that Ng'alika's shop also doubled as his cobbler where he repaired shoes. He would usually open the shop throughout the day but on the 19/7/2022 his shop remained closed the whole day.


On 20/7/2020 around 16:15 hours, PW4 recalled, Ng'alika was arrested in Ruangwa, and OC-CID ordered him to record the accused person's


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cautioned statement. PW5 then went into painstaking details if not a whole lecture for a full semester course on how to record a cautioned statement. I must say that the detective displayed commendable skills in the art and craft of recording statements, only that, as will be clear soon, such narrative prompted a backlash from the first accused person necessitating holding of a trial within trial.

In the cautioned Statement he recorded, PW5 recalled, the first accused told him that on 18/7/2020 around 20:35 night hours, while in his *kibanda* he received a call from his friend Rashidi Mapua. His friend wanted them to meet and share a drink at local bar a *Kilabu* called Akulu Mombo selling local brews and modern alcohol downtown Ruangwa. Thereafter, PW5 went on to testify, the first accused expounded that the two of them formed an intention to go and steal at Sele Gopu's place, shops that were being night watched by the deceased. Ng'alika went on to explain that they indeed left *Kilabu* to the Sele Gopu shops to fulfil their intention. Upon arrival, they knew that there was a Maasai Watchman. They timed him to see how he was seated. They agreed between themselves to attack the watchman using a big stone.

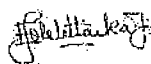
PW5 went on to testify that according to Ng'alika, his friend Rashidi Mapua was the one who took up the stone and threw it to the Maasai Watchman. The Maasai Watchman run away while crying out "Nakufa, Nakufa, Wezi Wezi". The accused persons thought things did not go as planned so they scattered each running his own way. PW5 prayed to tender the cautioned statement as a part of the evidence but the same was strongly


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resisted by the first accused through his counsel. This necessitated conducting a trial within trial as earlier on alluded to. After protracted legal exchanged, on 23/11/2022, the cautioned statement was **admitted and marked as Exhibit P3.**

Having been recalled after finalization of the trial within trial, PW5 testified further that on 9/9/2020 while at the Ruangwa Criminal Investigation Office, around 9:15 AM the OC-CID ordered him to proceed to Ruangwa District Court to **meet a remandee called Musa Taya** who had an important information about the deceased Sarakai and record his statement. Upon arrival, in court, PW5 recalled, he prayed to use the prosecutors' office to make sure there was privacy then asked to be allowed to meet Mussa Taya. PW5 testified further that in brief @Taya told him how he talked to both accused persons at different times, and both of them had told him that indeed they attacked the deceased leading to his death. The accused persons he mentioned are Ng'alika and on a different date Rashidi Mapua. PW5 prayed to tender the Witness Statement as prosecution evidence. There being no objection, the witness Statement of one Mussa Selemani Mussa @Taya recorded by D/CPL Kulwa dated 9th September 2022 was **admitted and marked as Exhibit P5.**

On cross examination PW5 admitted that by the time he recorded the statement @Taya was a remandee charged with breaking into a church and being found with illegal tools. He denied any knowledge of the status of @Taya as a **"chawa" [a diehard fun who would do anything, even at**



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his detriment, to please and maintain friendship with those he is loyal to] of police detectives in Ruangwa.

On further cross-examination, PW5 admitted that God was to be feared by all and @Taya who was suspected of having broken into a church (house of God) was not supposed to be trusted to the extent of recording his statement. On re-examination PW5 emphasized that he told Musa Selemani @Taya that the information he was about to share should be voluntary. Moreover, P5 recalled, he cautioned @Taya and required that he testifies that he could be prosecuted if the statement he gave was false to which he responded positively. PW5 testified further that @Taya told him that he had no enmity with the accused persons. That marked the closure of the prosecution case as prayed for by the learned Senior State Attorney Mr. Gumbo.

On the 24/11/2022 this court delivered a ruling in which it stated categorically that the accused **persons had a case to answer**, and the defense case commenced.

DW1 in this case was Rashidi Abdallah Seif Nkane @Mapua (the second accused person), a 42-year-old, self-taught building technician (fundi) resident of Lugalo Street, Kilimahewa, Ruangwa District in Lindi. It was DW1's testimony that on 18/7/2020 he left his job as usual at around 5PM to his home place. At 19:30, DW1 recalled, he went to a local bar *Kilabu* called Akulu Mombo. At 20:00 he called one Ng'alika Selemani whom he described as his close buddy "Mtu wangu wa karibu".


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DW1 wanted his friend to join him because he had just received his weekly wage as a labourer *kibarua* in a story building "ghorofa" that was being built downtown Ruangwa and wanted to share the merry with his close buddy. The first accused responded that he was at also at Akulu Mombo's place specifically at a mobile money transfer hut sending money to his boss. He promised to be there soon, and he did. Upon exchanging greetings DW1 recalled, he offered his friend a drink, but Mr. Ng'alika responded that he was not going to use any alcohol that day because he was on medication. There being nothing more in common Mr. Ng'alika left the bar and DW1 continued drinking.

DW1 testified further that at around 22:00 hours, Ng'alika called him informing that he was at the CCM Building in Mchangani Area and he (Ng'alika) needed DW1 there as he had a problem. DW1 took a motorbike to the place. Upon arrival at CCM Building in Mchangani, DW1 narrated, he met his friend Ng'alika and two others; the first person introduced himself as the watchman at the CCM building and the other was a security guard of Sokojiptya in Kilimahewa.

DW1 asked his friend Ng'alika what the problem was to which he responded that his shop had been broken into and he came to the CCM building to meet the head of the security company in order to discuss the way forward. However, DW1 recalled, Mr. Ng'alika did not meet the boss, so he requested for the phone number from the watchman and called the boss "Mkuu wa Lindo". DW1 overheard the boss telling his friend and the security guard from Sokojiptya that he (the boss) would meet them at Sokojiptya area.


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It was obvious there was nothing else he could do to help, recalled DW1 so he advised his friend that they went together to the Sokojipya area and the three of them started walking back to Sokojipya.

Upon arrival at Sokojipya, DW1 stated, he found one Seif Selemani Chikawe the leader of the security company who was in a phone call with his friend Ng'alika a while back. Mr. Chikawe greeted them and then ordered his watchman to go on with his job leaving the three of them; Ng'alika, Chikawe and DW1. The three walked a few blocks to inspect Ng'alika's shop. It was DW1's evidence that they found the padlock had been twisted and the door was not in the normal position. Mr. Chikawe requested them to get in so he could verify the theft. As they got into the shop, DW1 recalled, he personally could not tell whether something had been stolen but the place looked rough. Items were scattered.

Based on that observation, the witness recalled, Mr. Chikawe asked Ng'alika to list down the items stolen and he did mention 4 cell phones, shoes and one bucket of sardine fish "dagaa". Thereafter, Mr. Chikawe asked them to leave promising Mr. Ng'alika that since it was already late at night, it was better that the issue of theft be discussed on the next morning. DW1 emphasized that Mr. Chikawe took his phone number and his name and indicated that he would call him if need arose but never called him after that.

It was DW1's testimony further that on 28/7/2020, a Tuesday to be precise, around 9:00AM, he just left his workplace "Kibaruani" in Chigo Street, Ruangwa to a nearby hut for some shopping, he came across two men in a motorcycle make SUNLG. The two men stopped him, they


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exchanged greetings and one of them asked him (DW1) if he was working in that nearby *ghorofa* to which he responded affirmatively. The other man told DW1 that they needed a person called Rashidi Mapua to which he responded that he was the one. The men thereafter introduced themselves as police officers from Ruangwa Police Station. They put DW1 under arrest and informed him that he was needed at the Police Station. It was in the morning at 9:30, recalled DW1 so he asked the police officers what the matter was to which they responded that he would know it upon arrival, and they left while he was handcuffed.

Upon arrival at the police reception, DW1 recalled, he was ordered to take off his belt and shoes before he was locked up till 1:30 PM. Having spent the first few hours in the cell, he was taken to one room where he met one person that he later came to know it was PW5 DC/CPL Kulwa. In that room DC Kuliwa ordered him to seat down. He was holding a pen and paper. He started interrogated him on what he did after his secondary school education, what he was doing then and other details.

Thereafter, DW1 recounted, PW5 asked him what he knew about the killing of a Maasai watchman that took place 18.7.2020 to which he responded that he knew nothing. PW5 asked the same question several times but DW1 repeatedly denied having any knowledge on the same. PW5 then stood up, recalled DW1, walked out and came back shortly with a handcuff. He tied it up on DW1 while saying he (DW1) "would know everything" that day. DW1 was taken to yet another room where he met three more police officers and DC Kulwa who had interrogated him earlier.



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The handcuffs were taken off, recalled DW1 and he was forced to undress. He was handcuffed again bringing all his limbs together and a huge bar about for meters long, was put between his legs lifting him up and he was hanging between two tables. While in pain he was asked what he knew about the death of the Maasai watchman, and he said he knew nothing about it. One of the police officers picked up a wire, DW1 testified further, and started whipping him up with the wire. Another policeman took a club and started beating him up in the legs. They kept asking him about the incident and he insisted that he knew nothing about. Meanwhile PW5 DC Kulwa was there holding a pen. Whenever DW1 said no, PW5 would order his colleagues to beat him up even more.

As it was becoming unbearable, DW1 stated, he decided to accept. He answered yes to what had already been written down. It was then that they let him go but he could no longer walk on his own to the cell. The police officers asked inmates to come and carry DW1 back to the cell. DW1 testified further that he asked the people in the reception for help for he needed treatment. The response he got was that he had better die than waste their time.

On the second day early in the morning, DW1 recalled, two more police officers came to get him out of the cell. Meeting them at the reception, they gave him three pieces of paper to sign. DW1 requested to be allowed to read them first but his request was turned down. The two police officers pressed him down and forced his thumbprint into those papers before he was taken back to the lockup and later to Ruangwa District court on the same day.


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DW1 testified further that before reaching the court, there was a hospital on the way. One policeman proposed they took him to the hospital because he looked sick. They did. It was at Ruangwa District Hospital. He met a doctor. The Doctor proposed an Xray test but PW5 refused in the pretext that DW1 was a murderer, so he just needed pain killers. The doctor had no other option, so he prescribed some tablets Panadol and Diclofenac and they left to the court. At Ruangwa District Court, DW1 recalled, he was not supposed to say anything because the court had no jurisdiction to try the offence he was charged with.

Asked whether he knew @Taya whose statement was earlier on admitted as documentary evidence, DW1 responded to the affirmative. He added that @Taya was a local of Ruangwa like him known by many people for his notorious habit not only as a thief but also owner of a gang group of robbers. DW1 insisted that he never had any relationship with @Taya-neither in custody nor at home in Ruangwa.

It was on 27/8/2021 DW1 recalled thoughtfully looking rather reflective, when he went for Committal Proceedings at Ruangwa District Court that names of proposed prosecution witnesses were read out, and to his surprise, he saw the name of @Taya. He emphasized that by that time @Taya was with them in jail. He was already a prisoner sentenced to two years in prison. DW1 testified further that upon returning to prison, he (and Ng'alika) reported the issue of @Taya to the prison warden who in turn, summoned @Taya and warned him. Thereafter @Taya begged for


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forgiveness saying he was tricked by the police to tell lies so his cases would be discontinued but that did not happen. He was still jailed.

On cross examination, DW1 conceded that if Taya's status was that of a mere remandee and not a prisoner, he had the right to be a witness and say what he knew. On further cross examination, DW1 agreed that he went to Akulu Mambo's place for entertainment but emphasized, sounding rather philosophical, that not everyone who goes to the bar is happy. Some people go there to reduce their grief.

On re-examination DW1 emphasized that he reported to the warden (Bwana Jela) that he saw @Taya's name among the Prosecution Witnesses in his case, but they never had a closer relationship.

DW2 in this case was Ng'alika Selemani Saidi @Kisamu a 37 - years resident of Makanjiro, Kilimahewa area in the town of Ruangwa. DW2 (who is the first accused in the instant matter) introduced himself professionally as a Standard 7 leaver, entrepreneur who had received People Militia's Training (*Mafunzo ya Mgambo*) for six months in 2008 and passed out with number MG1236. DW2 explained that he sold vegetables but also worked as a shoe shiner while charging phones for pay.

DW2 testified that on 18/7/2020 at around 18:30 he received money for his boss Judith Jonas Mwakalinga from a person called Adam. His boss instructed him to send the money to her by way of a mobile money transfer. While sending her the money, DW2 recalled, he received a call from his friend Mapua inviting him to join him for a drink at a nearby pub called Akulo Mombo which he did. His friend (DW1) announced that he had an offer for


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him and allowed him to order any drink he wanted. DW2 turned down the offer because he was on malaria medication.

It was DW2's testimony further that when he was at home it came to his mind that there were phones that belonged to his clients that he left charging in his shop. He decided to go back for them. Upon arrival in his *Kibanda*, DW2 recalled, he noticed that the door was ajar. He was surprised. He did not know whether he forgot to lock it or not. He therefore decided to call the watchman called Bakari Ungama whom he personally knew but the watchman told him that he had since been transferred. He wanted to know who else was there and the name Amiri was mentioned but he was told he did not have a mobile phone.

DW2 testified further that he went out, called the watchman "We Mlinzi" but he kept quiet. It was until he called him by his name "We Amiri" that he responded. DW2 then asked the watchman to go closer to the door to his kibanda. They both realized that the door was broken. The watchman asked him what he came for in that nighttime to which he replied that the other watchman who was there before knew him and would always charge his phone in DW2's place. However, DW2 stated, he left his shop earlier that day because he was on medication but came back to collect handsets he had forgotten. Upon checking the shop, DW2 testified, he realized that the mobile phones, a bucket of *dagaa* and shoes were stolen. These handsets were three NOKIAS and one TEKNO.

DW2 testified further that he told the watchman he was going to the police station, but the watchman suggested it was not proper because their



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procedure required that the matter is reported to the office whether his boss was there or not.

On that note, DW2 recalled, both him and the watchman agreed to go to the Company's office located at the CCM Building in Mchangani Street. Upon arrival, DW2 testified, they found a watchman who was on duty that time. Mr. Amiri asked him if the manager (Mr. Chikawe) was around, and the response was in the negative. They decided to call him. They did and narrated what had happened. Mr. Chikawe advised them to go back to Sokojiya and would join them there to see what had happened at DW2's kibanda.

It was DW's testimony albeit in a bit of a twisted order that he had called his friend Rashidi (DW1) and informed him of what had happened. Upon arrival at Sokojiya, DW2 recalled, they found Mr. Seif Chikawe waiting for them. Mr. Chikawe asked him three questions: whether he (DW2) had any kibanda there to which he responded Yes. Whether he could identify his commodities and whether he has paid his monthly contribution for security services to which he responded affirmatively to both questions.

DW2 testified further that Mr. Chikawe then ordered his security guard to remain in his workplace while he left with DW1 and DW2 to inspect DW2's shop as he did not want to make quick decisions. After inspection, DW2 asserted, he could not find the mobile phones, shoes and even the *dagaa*. Mr. Chikawe said he was sorry and promised that they would resolve the issue in the next morning.


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DW2 went on to testify that on 19/7/2020 around 8:00, the Sokojipya leadership and Mr. Chikawe came to his kibanda while they were discussing how to resolve the issue amicably, one tenant called Mohamed arrived. He also announced that his kibanda had been broken into and property worth 100,000 had been stolen. Mr. Chikawe immediately asked him how he got the information, to which he (Mr. Mohamed) replied that Kisamu (referring to DW2) was the person who informed him. Mr. Chikawe told Mr. Mohamed that the person who had informed him of the theft was his robber ***"huyo huyo ndiye mwizi wako"***

DW2 testified further that Mzee Mohamed was then forced by Mr. Chikawe to report him (DW2) to the police that he had broken into his shop. DW2 emphasized that Mr. Chikawe himself took Mr. Mohamed (using the name interchangeably with Mzee Mudy) in his motorcycle to the police station. The Chairman of the Market was very surprised that Chikawe had left before an agreement was reached, recalled DW2.

As they returned from the police station, Mzee Mudy asked DW2 if he was in any disagreement with Mr. Chikawe because at the police station, Mr. Chikawe had told the police a totally different story compared to what had happened and that he would be wanted in the police to explain how the Maasai watchman was killed. DW2 went on to testify that on 20/7/2020 at 14:30 hours while he was working as a shoe shiner in his Kibanda, two people in plain clothes came. They asked him if that was Judith's shop and whether they found one Kisamu to which DW2 replied that he was the one and he was immediately put under arrest. He was handcuffed and taken to


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Ruangwa Police Station where he was locked up from the 20th to 28th July 2020.

It was DW2's testimony that since the day he was arrested he would, every single day, be taken to a place called "garage" for torture. On the 28th day of July he was told that it was his last day. They would torture him the most. He was taken to a room where he met a police officer whom he later knew as PW5 DC/CPL Kulwa who told him that he (PW5) was a really bad person. He was asked what he knew about the killing of the Maasai watchman. DW2 retold the testimony he made during the trial within trial almost verbatim. **He emphasized that he was mercilessly tortured until he decided to agree with what PW5 wanted and he was then arraigned in court.**

Asked whether he knew a guy called @Taya, DW2 responded to the affirmative adding that the @Taya guy was known by everyone in Ruangwa because he was a habitual thief. DW2 emphasized that when he went for committal on 27/8/2021, that is when the statement of @Taya was given to him and that he reported his dissatisfaction with what @Taya had done to the warden.

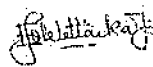
On cross-examination, DW clarified that he was a local of the Sokojiipya Area as a trader. In a strange mood, however, DW2 responded that even though he had been there since 2017, he only knew his kibanda and he had no friends around. DW2 emphasized that he had been in the phone charging business for a long time but conceded that he never left the phones of his clients in the *Kibanda* unattended. He also conceded that he


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had not mentioned in court that any of his customers had an emergency and needed his/her phones immediately prompting him to leave his home place at night while on medication. On further cross-examination, DW2 conceded that throughout his testimony, he never mentioned any customer whose phone he was charging.

DW2 stated that he did not call his boss Judith to notify her of what had happened even though he had earlier on communicated with him for sending money albeit to another handset. As cross-examination got heated up with counsel for the Republic punching heavily to poke holes in the defense evidence, DW2 got off mood and reminded the court of his earlier prayer to warn the learned Senior State Attorney to be lenient to him because he was a stammering person.

In further cross-examination, DW2 agreed that it was usual for a human being to be surprised when something unexpected happens and that some people even search through their pockets when they lose something as big as a car. DW2 confirmed that he was a *Mgambo* who worked as a watchman before and knew the tactics of watchmen and those of confronting a thief. He also confirmed that he was aware of the various types of weapons as well as parts of the body of a human being that when hit could lead to a fatal injury. DW2 confirmed that he had heard that a Maasai watchman had passed away but denied have ever known him personally before. He confirmed that he indeed knew Mzee Mohamed (or Mudy) as he was his next-door neighbour and that was true, he was the one who


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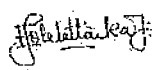
informed Mzee Mohamed that his kibanda had been broken into. It was at night.

On re-examination, DW2 testified that he usually opened his shop as 6:00HRS and closed at 22:00 HRS but on the fateful day he closed it earlier at 20:00 as he was in the malaria dose and needed to go and send money to his boss. He testified further that he went back to the *Kibanda* to collect the handsets he had forgotten namely 3 Nokias and 1 Tecno. He concluded by asserting that he could not talk further about the items because he was there for a murder case and not burglary.

Closure of the defense case was immediately followed by final submissions by both learned counsel. Mr. Gumbo learned State Attorney for the Republic took the podium first. He reiterated that the prosecution had discharged its duty of proving the case beyond reasonable doubt. It brought a total of 5 witnesses and 5 exhibits.

It was Mr. Gumbo's submission that through the witnesses and the exhibits the Republic proved the ingredients of the offence of murder which are four: 1. Whether there is a death of a human being 2. Whether the death was unlawfully caused 3. Whether the killing was done with malice aforethought 4. Whether the accused persons were responsible for the death of the accused.

The learned State Attorney opined that in general, the totality of the evidence in the matter at hand is circumstantial evidence and not direct or eyewitness evidence. No one witnessed the killing of the late Daniel Yohana Sarakai, reasoned Mr. Gumbo, but in the case of **Mathias Bundala v.**



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Republic Crim Appeal No 62 of 2004 the Court of Appeal of Tanzania at page 15 of the decision stated: *"If every killing had to be eye witnessed then many homicides would remain unresolved."*

To that end, the learned Senior State Attorney argued, even though the evidence adduced is circumstantial, it was his prayer that this court finds the accused persons guilty of the offence of murder, convict and sentence them accordingly.

On her part, Counsel for the Accused Ms. Sabatho argued that the cautioned statements that the prosecution wanted to rely upon were recorded out of time and watered down the evidence therein. Ms. Sabatho cited the case of **Christopher Chengula v. R.** Crim App 215 of 2010 CAT, Iringa. Referring this court to yet another case of **Republic vs Kipkering Arap Koiskey Another** [1949] EA 135 Ms. Sabatho asserted that the evidence adduced in this case raised too many doubts on how the accused persons are connected with the offence. She prayed that this court finds the accused not guilty of the offence and set them free.

Having carefully scrutinized witness testimonies, considered rival submissions and carefully examined the court records including exhibits tendered, one issue lies ahead for my determination namely whether the prosecution has proved the case at the required standard; **beyond reasonable doubt.** To address the issue sufficiently, I will divide my discussion and analysis into five parts namely the Offence, Witnesses, Evidence, Principle, and Opinion.


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On the offence, it is a truism that the offence of murder is well known in our jurisdiction. The Court of Appeal of Tanzania has had many opportune moments to discuss the same in various dimensions including its essential ingredients (See among other authorities **Francis Alex v. R.** Cr. App. No. 185 of 2017 (unreported), **Lusagula Machia & another v. R.** Cr. Appeal No 426 of 2013 (unreported) and its relation to other offences such as robbery (See **Juma Zuberi v. R.** [1984] TLR 249).

It is in agreement among scholars that murder is a legal as much as it is a sociological concept. Homicide becomes murder when essential legal elements are met. The definition of murder attributed to **Chief Justice Robert Coke in 1797** which definition is still widely accepted both in academic and practice provides as follows:

"When a person of sound memory, and of the age of discretion, unlawfully killeth within any county of the realm any reasonable creature in rerum natura under the king's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt, etc. die of the wound or hurt, etc. within a year and a day after the same"

In its current formulation (as provided by Penal Statutes such as Tanzania's Penal Code Cap 16 RE 2022) for a court of law to be satisfied that the offence of murder has been committed it must answer yes to four questions *to wit* whether death of a human being has occurred, whether the death was unnatural, whether the death was caused by the accused and finally, whether the accused persons had acted with malice aforethought in causing such death. Our law presupposes every homicide to be unlawful. In



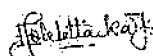
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the case of **Gusambi Wesonga v. Republic [1948] 15 EACA 45**, the erstwhile Court of Appeal for Eastern Africa articulated this point thus:

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

In the instant matter, there is no doubt that a human being by the name of **Daniel Yohana Sarakai** died in Ruangwa on 8/7/2020. The same was satisfactorily presented by among other people PW1 and PW2. PW2 Dr. Nampeha had testified that the deceased sustained fatal wounds that led to his death. However, the narrative fails to pinpoint the culprit let alone the intention to do so. Like other criminal cases, the onus is on the side of the prosecution to prove beyond reasonable doubt not only the evidentiary but also factual aspects of the allegations levelled against an accused. (See **SAIDI ALLY MATOLA @TUMILA v. R** Crim App 129 of 2005 (unreported) and the often-cited English case of **Woodmington v. DPP [1977] AC 462**.) Apparently, the prosecution tried to shift the onus of proof to the side of the accused persons, and this caused so much pain, to say the very least. So much pressure was exerted, unfairly I would say, on the accused persons to fill in the factual and evidentiary gaps left unfilled by the prosecution. This takes me to the next part of my discussion on witnesses.

On witnesses, it is often stated that witnesses are the center of success or failure of a criminal trial. The common law legal system to which our jurisdiction belongs is said to be highly witness-centric. Edward K. Cheng

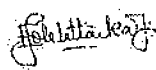

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and G. Alexander Nunn 'Beyond the Witness: Bringing a Process Perspective to Modern Evidence Law' (2019) 97 Tex L Rev 1077 provide:

"For centuries, the foundation of the Anglo-American trial has been the witness. Witnesses report on their personal observations, provide opinions of character, offer scientific explanations and in the case of parties, narrate their own story. Indeed even for documentary and other physical evidence, witnesses often provide the conduit through which such evidence reaches the factfinder. Documentary or physical evidence rarely stands on its own. The law of evidence has thus unsurprisingly focused on-or perhaps obsessed over-witnesses."
(References/footnotes omitted)

In our jurisdiction every witness "is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness." (See **Goodluck Kyando v. Republic** [2006] TLR 363.) It is also trite law that no particular number of witnesses is required for the proof of any fact (See **Yohanis Msigwa v. Republic** [1990] TLR 148). Nevertheless, and probably more importantly for this discussion, this court is entitled to forming an opinion not to believe a particular witness. The Court of Appeal of Tanzania in **Mathias Bundala v. Republic**, Criminal Appeal No. 62 of 2004, (unreported) spelled out (non-exhaustive) reasons for not believing a witness.

In the matter at hand, a number of gaps on the prosecution witnesses are too conspicuous to escape the attention of this court. The prosecution had summoned five witnesses. These are the "Good Samaritan" who found


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the deceased groaning in pain and took him to hospital (PW1), Dr. Bakari Saidi Nampeha, MD who conducted autopsy (PW2), D8576 DC/SGT Hightower Charles Katabalo a police detective who drew the sketch map of the scene of crime (PW3), MG 438945 Seifu Selemani Chikawe, Security Officer with JAS Security Company Ltd a private security company (PW4) and F6794 DC/CPL Kulwa Mohamed Ally the main investigator of the matter at hand (PW5).

It does not take much thought to realize that crucial witnesses were left out. For example, the prosecution had alleged that the deceased was employed as a watchman. For reasons known to the prosecution, the purported employer (or his/her representative) was not summoned as a witness. He would have given this court some clue on the type of a person the deceased was and whether or not he had "enemies" plotting for his life.

It is equally surprising that not a single relative of the deceased Daniel Yohana Sarakai appeared in court as a witness. Assuming he was living alone in Ruangwa, it is also difficult to believe that in the place where the killing took place no one else (among the neighbouring traders) had heard the alarm and could be summoned as a witness. In the case of **Azizi Abdallah v. Republic** [1991] TLR 71 (at p.72) the Court of Appeal of Tanzania had the following to say on negative inference to the prosecution case for failure to summon an important witness.

*"The general and well-known rule is that the prosecutor is under a prima facie duty to call those witnesses who from their connection with transaction in question are able to testify material facts. **If such witnesses are within reach but are not called***

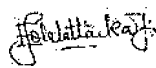

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without sufficient reason being shown the court may draw an inference adverse to the prosecution." (Emphasis added)

In addition to the negative inference hinted above, this court is in agreement with counsel for the defence that PW4 MG 438945 Seifu Selemani Chikawe should not be trusted. His private security company, alleged the learned advocate, is in direct competition with what the deceased was engaged in as a means to earn his daily bread. His involvement in the arrest of the accused (especially the first accused person who had worked in his security company before) raises eyebrows.

In my opinion, the prosecution had failed to direct their mind to the somewhat unhealthy relationship that had developed between PW4 and police detectives at Ruangwa. Observing his demeanor, he would tip the police about a suspect, assist in arresting him/her and appear in court to testify. He also had worked with the police before and even attended leadership training with the People's Militia. As the saying of the wise goes, power corrupts, absolute power corrupts absolutely. All in all, the prosecution witnesses' lineup falls far bellow what is expected of a murder trial.

On Evidence, I will skip preambular comments and go straight to a not-so-usual attempt by the prosecution to employ criminal intelligence tactics against the accused persons. It is often said that Rome was not built in a day. Likewise, the Intelligence Unit within the Tanzania Police Force (TPF) will, hopefully, grow organically in due course to meet the expectation of stakeholders. His Lordship Eliezer Mbuki Feleshi, JK (as he then was) in


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Feleshi E.M *The Contribution of Criminal Intelligence in the War Against Crime in Tanzania* (Mkuki na Nyota: 2019) p. 213 provides:

*In view of the fact that the role of the criminal intelligence service in crime prevention and control is indispensable in the country's endeavor to combat various forms of crime, the establishment of a robust criminal intelligence section in the TPF is therefore one of its obligatory tasks. However, this can only be achieved by a number of viable measures being taken to address the present setbacks and to enable the section to achieve its mission. The aspects to be addressed [include]... **ethics and good governance**, two, an administrative and legal framework and policy; three, capacity building and resource mobilization; four, cooperation and networking; five, cross-cutting issues. (Emphasis added)*

To cut the long story short, having realized that the prosecution witnesses' lineup was too weak, the investigators reached out to a remandee, (hopefully when he was attending court while in remand custody in jail), and asked him to spy against the accused persons hoping he would appear in court to testify. The remandee (name withheld) agreed to record a statement that he had indeed spied against the 1st and 2nd accused in prison and that they confessed to have killed the deceased. As expected, however, he was nowhere to be seen when time for appearing in court came. I think the prosecution went too far in their attempt to secure conviction in the matter at hand. This is violative of fairness in criminal justice. Criminal intelligence machinery should not be used at the expense of fundamental


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freedoms. As an informer, the remandee's details should have been kept secret for his own safety. The cautioned statement which led to trial within trial also leaves a lot to be desired. I choose not to go there because too much repetition is harmful.

On Principles, save for strict liability offences, our law requires that both *actus reus* and *mens rea* which are essential elements of crimes to be proved. In homicide, absence of malice aforethought which is the *mens rea* of murder can lead to conviction for manslaughter which is the lesser offence to murder. In principle, I am fortified to make a finding that the prosecution has failed to prove the allegations levelled against the accused at the required standard. As per tenets of fair trial, any slight doubt is resolved in favour of the accused. The doubts here are not slight, they are massive. At both factual and evidentiary levels, there is not any slight connection between the death of the deceased and the accused persons.

Premised on the above, I hereby order that **NG'ALIKA SELEMANI SAID @KISAMU & RASHID ABDALLAH SEIF NKAHANE @MAPUA** be released from prison forthwith unless they are being held for any other lawful cause.

It is so ordered.



E.I. LALTAIKA

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JUDGE

30/11/2022

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E.I. LALTAIKA
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Court:

Judgement delivered by my own hands in the open court in the presence of Mr. Godfrey Mramba, State Attorney, Ms. Happy Sabatho, Advocate, counsel for the convicts and the convicts.



E.I. LALTAIKA

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**JUDGE
30/11/2022**

Court

The right to appeal to the Court of Appeal of Tanzania fully explained.



E.I. LALTAIKA

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**JUDGE
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A small handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**E.I. LALTAIKA
JUDGE**