

**THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
[DISTRICT REGISTRY OF DAR ES SALAAM]
AT MOROGORO**

CRIMINAL SESSIONS CASE NO. 5 OF 2021

(Original PI Case No.8 of 2019, In the District Court of Ulanga)

REPUBLIC

VERSUS

LEONARD BUNDALA MALULANYA@ RENA NGASA

JUDGEMENT

Hearing date 21/02/2022

Judgement date on 18/3/2022

NGWEMBE: J.

The accused Leonard Bundala Malulanya @ Rena Ngasa, stand charged for murder contrary to section 196 and 197 of the Penal Code Cap. 16 R.E. 2019. The genesis of this case traces back to 23rd June 2019, at Mwanzi area in Lukande Village within Ulanga District in Morogoro Region, the accused is alleged to have murdered **JEREMIA DANIEL**. Upon killing the deceased, his body was put in a plastic bag known as "fertilizer bag" or "salfeti" transported by motorcycle about 800 meters away from his house into a thick forest and thrown therein. However, sometimes on 6th July 2019, when **MAIGE MATHIAS** was grazing his animals (cows) along the area where the deceased body was dumped, those cows misbehaved and turned wild while crying. He went close to the place and found huge plastic bag stinking with terrible smell. He

reported the matter to the village leaders who took responsibilities to inform police and other villagers.

Upon reporting to Police, the next day (7/7/2019), police and a Medical Doctor arrived to the crime scene. When that bag was opened, alas, there was a human body of Jeremiah Daniel. The medical doctor examined that body and at last police allowed the body be buried by his relatives and other villagers.

Police longed vigorous investigations on the culprit who killed the deceased. According to the evidence adduced during trial, on 7th October 2019, they arrested the accused person while was at Mwampangabure area in Shinyanga Region. Later was brought to Mahenge Police Station at Ulanga District, where the cause of action arose. Eventually, the accused person was arraigned before this Court, charged accordingly.

When the information was read over to the accused person, he pleaded not guilty, notably in-law, even if he would plead guilty, yet this court would proceed to record not guilty due to seriousness of the offence and the associate sentence, which is only one, that is death by hanging. Therefore, the Republic came up armed with six (6) prosecution witnesses and six (6) exhibits, while the defence case was defended by one witness, who is, the accused alone.

On trial of this case, both parties were represented by learned counsels. While the Republic were represented by learned Principal State Attorney Flora Masawe assisted by Caristus Kapinga, the defence case was advocated by learned counsel Saul Sikalumba.

For clarity, the witnesses in this case are:- **Silveri Daniel Kakenyeri; Venance David Mloka; Prisca Ngole; F. 8620 D/CPL Mkama; Costantino Materine Likeperu; and Ezeckiel Tuntufya Mwamakusa.** The exhibits admitted in court during trial are:- **Report on Post Mortem Examination (p1); Sketch map of the crime scene (p2); Mobile phone (p3); Cover of mobile phone and four lines therein marked exhibits p4; Caution statement of the accused (p5) and additional caution statement (p6).**

Briefly, the first prosecution witness was Silveri Daniel Kakenyeri (PW1) who testified that, he lives at Simiyu Region in Kisesa – Meatu, engaged in peasantry. That Jeremia Daniel (deceased) was his younger brother whereby on 28/06/2019, while at home in Kisesa, was informed by Deus Daniel Kakenyeri, that his brother Jeremiah Daniel was missing. Further disclosed that the deceased was living for gain at Lukande village in Ulanga District (Mahenge).

On 01/07/2019, he travelled from Kisesa to Lukande (Mahenge) Morogoro, with a view to make close follow up on the where about his younger brother (Jeremiah Daniel). He arrived at Lukande village on 03/07/2019. He found the door of the deceased house closed and some chickens were outside. Thus, reported the incidence to the Village Executive Officer (VEO). Together, they reported the incidence to Police post at Mwaya. Upon reporting it, Police issued RB to him. On 06/07/2019, he was informed that there was a plastic bag (salfet) full of human flesh.



Further testified that when police came to the scene of crime with a Medical Doctor on 7/7/2019, he was present and when the Medical Doctor opened that plastic bag, he witnessed a body of his young brother Jeremiah Daniel by his face which was yet to be decomposed and by his clothes. The Medical Doctor after examining the body, verified that the deceased was cut by a sharp instrument in his neck which separated the head and the rest of the body, but all were put in one plastic bag. Thereafter, police allowed him to proceed with burial ceremony of the deceased body. After the process has completed, he returned to Kisesa - Meatu to continue mourning for his brother together with other relatives.

On cross examination, he testified that, the deceased at Lukande village was engaged in agriculture cultivating Sesame (Ufuta) and had a sewing machine. Added that the distance from where the body was found to his house was about 800 meters.

The second prosecution witness was Venance David Mloka (PW2) who lives for gain at Mahenge township in Ulanga District, working as a Medical Doctor at Ulanga District Hospital. Testified that on 07/07/2019 when was at Mwaya Health Center, was informed by Police to accompany them to Lukande Village where a dead body was found, suspected to have killed. He went thereto, with Police and found a male dead body put in a plastic bag, decomposed a bit. Observed that his neck was cut by sharp instrument. Further observed that, the murderer used sharp instrument to separate head and the rest of the body. Thus, the source of death was separation of the head and the body, which led into loss of blood. That he prepared Post Mortem report which was



tendered in court during Plea Taking and Preliminary Hearing, marked exhibit P1.

Prisca Ngole was another important witness to the prosecution who testified as PW3. That she lives for gain at Mwaya Village in Ulanga District. She is both a peasant and she works as guest house attendant owned by William Claud Nguji. That she knew the accused by the famous name of Rena Ngasa, who was her client in the said guest house. That the accused used to sleep therein several times.

Further disclosed that on 28/06/2019 at around 09:00 at night, the accused went to that guest house while riding a motorcycle. However, on that date he looked unhappy and shivering as if he was sick. He requested to charge his mobile phones and slept therein without recording his name in the guest house register book. In the following morning he took one of his mobile phones, while leaving behind two others, that is, small handset make Techno and smart phone.

Further testified that, he requested the smart phone be flashed for the reason that he forgot its patters. So, she went to one teacher called Jack who flashed it for the cost of TZS. 15,000/=. Soon thereafter, Rena Ngasa came to collect that smart phone to her office, leaving behind small phone with two lines, one cover and two lines.

Added that in the evening at around 4:00pm one Police Officer came to where she was working, that she told him on the cover and lines of Rena Ngasa. That police took one of the two lines and put in his mobile phone, immediately there was a called, she replied to the call, she was informed that that line is from a deceased person mobile phone (Wewe



unatumia simu ya Marehemu?) that is Jeremiah Daniel. The following day she took that mobile phone, cover and lines to Mwaya Police post. Also, was advised to go and report the incidence to Mahenge Police Station, where she met with a Police called Mkama.

Testified that, before going to Mahenge, she called Rena Ngasa who confessed to have killed the deceased due to influence of evil spirit (Shetani tu) and requested her to pray for him. She continued communicating with accused by using a new line of mobile phone number 0789532385. Even after reporting to police at Mahenge in the presence of police, she called Rena Ngasa and the two talked. Thus, recorded her statement at Mahenge Police station.

Continued to identify the handset, cover and four lines, same were admitted as exhibits marked P3 and P4 respectively.

On cross examination, she testified that, she was born at Uyole Mbeya and came to Mwaya in year 2018. Rested by adding that the accused confessed to her to have killed the deceased.

The fourth prosecution witness (PW4) was F. 8620 D/CPL Mkama, that he is a Police Officer Stationed at Mahenge in Ulanga District, working in the department of Criminal investigation.

On 07/07/2019 he was at his working station; he was assigned to investigate a murder case of Jeremiah Daniel. His first step of investigation, he went to the crime scene at Lukande Village in Mwaya Ward. The scene of crime was in a thick forest, he saw a grave of the deceased. Then he went to the house of the deceased, where he saw some chicken and sawing Machine. Due to his investigation, the accused



Rena Ngasa went to the deceased house with a tractor and carried bags of Sesame (ufuta) in the absence of the owner. Thus, he suspected him as the murderer. Later he met with Prisca Ngole who told him everything in respect to the accused.

Since the accused was using a new line of mobile phone number 0789 533285, he used that number to track him. Accordingly, it was indicated that he was at Shinyanga. He communicated with police at Shinyanga who arrested the accused and brought him to Mahenge. While under police, he managed to flee once, but was rearrested and charged accordingly.

Further testified that, during interrogation, the accused disclosed five names, that is, Rena Ngasa, but his proper name is Leonard Bundala Malulanya. Rena Ngasa is a name of his brother who is at Shinyanga, but his proper name is Leonard Bundala Malulanya. On 6/01/2020 he recorded the accused caution statement, which was admitted in court marked exhibit P5. Also, he recorded additional statement of the accused, which was also admitted in court marked exhibit P6. Finally, adduced that due to his investigation, he discovered that, the accused was the one who killed the deceased Jeremiah Daniel.

Costantino Materine Likeperu (PW5) was sworn and testified briefly that he was born, schooled and living at Lukande village to date. His duty is agriculture and during harvest season, he engages into curious services of carrying crops including sesame. The accused is known to him as Rena Ngasa who was living in their village. On 26/6/2019 he went with a tractor to Mwaya village to meet Rena Ngasa (accused). Together they went to transport 31 bags of Sesame.

After two days of carrying Rena's Sesame, he was called by police at Mwaya police post. He recorded what he did under instructions of Rena Ngasa. Thus, rested by admitting to have performed the duties assigned by Rena Ngasa to carry 31 bags of sesame in the tractor.

The last prosecution witness was Mr. Ezeckiel Tuntufya Mwamakusa (PW6). That he is a retired police officer bearing Force No. E 1716 D/CPL Ezekiel. He retired in year 2020 from Police Force Services. That on 10/07/2019 he was working at Mwaya police post. That, he was informed on the incidence of Murder at Lukande village and the accused on the eventful date, slept in one of the guest houses at Mwaya. That he went to that guest house and met PW3, who confessed that Rena Ngasa slept in that guest house, but left early in the morning leaving behind his small hand set with two lines and other two lines with one cover. Those lines were from airtel 3 lines and one tigo line.

On 10/07/2019, PW3 went to police with those exhibits. He took one line and put in his hand set, immediate there was a phone call from unidentified person who said "that line belong to a deceased person" Thus, proved that those lines and hand set were properties of the deceased. In the following morning he took them to Mahenge Police Station to the Incharge of criminal investigation (OC CID).

Upon closure of the prosecution case, this court under section 293 of Criminal Procedure Act Cap 20 R.E. 2019, ruled that the accused person had a case to answer. Thus, proceeded to tell him all his statutory rights prior to his defence.



In turn the defence case was blessed by the accused person alone. Briefly, testified that, he is 24 years old lived at once in Lukande Village, which is part of Ulanga District. That on 27/06/2019 he was at that village, but at around 4:00pm he called a driver of a lorry from Mwaya village to go to Lukande village to carry his sesame. The lorry driver arrived to his brother Khamis Shimba where they took only 20 bags of sesame and travelled with those bags to Dar es Salaam. Added, he cultivated that sesame himself and some of them he bought from other peasants, forming a total of 20 bags.

They travelled from Lukande to Mwaya village where there were other bags of sesame. Then they left Mwaya at around 08:00pm and arrived to Dar es Salaam on 28/6/2019 around 09:00pm. The said bags were sold on 29/6/2019 for the total price of TZS. 10 million. Thereafter he left Dar es Salaam to Shinyanga (31/6/2019). When he was at Shinyanga, he engaged in a business of purchasing and selling animals (cows). However, he was arrested on 7/10/2019. While at Shinyanga Police Station, he recorded his statement related to death of Jeremiah Daniel of Lukande village at Mahenge in Morogoro region.

He denied to have slept in any guest house on 28/6/2019, rather he slept in a lorry at Mwaya village. Also denied to have left any mobile phone and lines at Mwaya guest house.

Admitted to have known Jeremiah Daniel as his customer/client in a bar where he was selling beer. Also admitted to know Prisca Ngole who was an attendant to a guest house he used to sleep, but qualified his statement by saying that, whenever sleeps in that guest house, he record his name in a guest register book.



On his confession, he admitted to have confessed before Police to have killed the deceased due to torture. However, he denied to have committed the offence charged for.

On cross examination, he admitted to have decided to use the names of his brother Rena Ngasa who was residing at Shinyanga, instead of his true names of Leonard Bundala Malulanya. Therefore, Rena Ngasa and Leonard Bundala Malulanya refers to himself depending on the place he is. When he is at Lukande and Mwaya, he is known as Rena Ngasa, but when he is at Shinyanga is known as Leonard Bundala Malulanya because Rena Ngasa is a name of his brother who is alive and lives at Shinyanga.

Admitted to know Prisca Ngole as guest house attendant at Mwaya village. That he used to sleep in that guest house. That he used to go to that guest house, while riding a motorcycle. Admitted to have recorded his statement when he was at Shinyanga Police Station and at Mahenge Police Station.

Again, he denied to have gone to the deceased house and took 31 bags of sesame. Also denied to use PW5 to ferry sesame from the deceased house to the tractor. Insisted that he sold only 20 bags of sesame for a total price of TZS. 10 million. Confessed before police to have killed the deceased due to torture in both places, that is, at Shinyanga Police Station and at Mahenge Police Station. Rested by denying generally that he never killed the deceased.

After both parties have closed their cases, I proceeded to order the learned counsels to file their final arguments, which they complied with.

Among others the prosecution argued quite rightly, that in this case there was no eye witness, thus the whole event is centered on circumstantial evidences. However, the evidences of all prosecution witnesses point all fingers to the accused person. To buttress his argument, he referred this court to the case of **Leonard Joseph @ Nyanda Vs. R, Criminal Appeal No. 186 of 2017 (CAT) at Dar es Salaam (Unreported)** at page 9 – 10, where the court discussed at length on credibility of witnesses.

Added that, it is undisputed fact that, the accused person was in possession of the properties belonging to the deceased at the time the deceased went missing. The cellphones and telephone lines/chip were properties of the deceased during his life time. However, there is no satisfactory explanation on how those properties came to the possession of the accused. Above all the accused person went to collect 31 bags of sesame from the deceased's house on a day light and in the absence of the owner.

The learned State Attorney argued that, the accused person advanced a total denial to the allegations. It is obvious that a total denial is aversive and self-serving. Such kind of defence should be accorded less weight as per the case of **Leonard Joseph @ Nyanda Vs. R, (Supra)** at page 16.

Moreover, argued that, the confession of the accused person, which was recorded immediately after being admitted at Mahenge Police station, expressed clearly the environment and mode of execution of such murder, instrument used therein, and the mode of transport used to transport the deceased body to where it was found. Such confession

was corroborated by the testimonies of PW2, PW3 and PW5. Referred this court to the case of **Patrick Sanga Vs. R, Criminal Appeal No. 213 of 2008, (CAT – Iringa)** at page 7. Insisted that the prosecution proved the case beyond reasonable doubt and the accused is responsible for that murder.

In turn, the learned defence counsel, rightly pointed out some basic legal principles, which I fully, subscribe that, in criminal trial, an accused person bears no burden to satisfy the court on his innocence, rather the burden of proof always lies on the shoulders of the prosecution and the standard is beyond reasonable doubt. Added that such principle has not been complied with by the prosecution.

Further, pointed out that there is no single evidence on record, which implicated the accused person save only PW4 who alleged to have recorded the accused confession statement. Buttressed his argument by referring this court to the case of **Habib Vs. R, (1971) HCD 370** where the court held *"It is established law that a conviction should be based on the strength and affirmative prosecution case"*. Rested by arguing that there is no single evidence, which pointed the accused person as responsible to that murder. Rested by praying that the accused is not responsible for death of the deceased.

Having summarized the evidences from both sides and the arguments advanced by learned counsels, at this juncture I would point out relevant provisions governing cases of this nature. Murder is defined by section 196 of the Penal Code, to mean:-



"Any person who with malice aforethought causes the death of another person by unlawful act or omission is guilty of murder".

Therefore, in order for the offence of murder to stand, *actus reus* and *mens rea* must be established. *Actus reus* is the act of killing or causing death to another person and *mens rea* is the intention or state of mind intending to kill or cause death of the deceased. In other words, *mens rea* is termed as "Malice Aforethought" as rightly defined in section 200 of the Penal Code. Therefore, the evidence leading to the conviction on murder must leave no doubt that the accused is the only one who committed that offence.

In considering this trial, this court is guided by the following basic legal principles; It is a trite law, which should not be forgotten, that always the burden of proof in Criminal Cases lies on the shoulders of the prosecution and it never shifts, not in my life time such principle shall remain, and the degree of proof is beyond reasonable doubt; that the accused person shall not be convicted on the basis of the weaknesses of his evidence/defense; rather, the conviction (if any) shall be based on the strength of the prosecution case. The weak defense may only enhance the prosecution case.

Section **3 (2) (a)** of the Evidence Act Cap 6. R.E. 2019 insist that the court must be satisfied by the prosecution case beyond reasonable doubt that the fact exists. The term "beyond reasonable doubt" means no other logical explanation can be derived from the facts except that the accused person committed that crime.



In analyzing this case, there are key issues to ask; whether the deceased was killed or died natural death? whether the accused person was responsible for the act of killing? whether the accused person had malice-aforethought at the time of killing, if it will be proved that he killed the deceased? In answering these questions, demand critical review of the whole evidences adduced during trial.

Rightly, the learned State Attorney submitted that the killing of the deceased was not witnessed by an eye witness, rather is based on circumstantial. Undoubtedly, considering critically on the evidences of the medical doctor PW2 together with PW1, the deceased was killed and the murderer proceeded to put his body in a plastic bag, transported it to a deep forest about 800 meters from his house and dumped therein. This is a fact which is undisputed. The fundamental question is who did that inhuman act to the deceased?

Moreover, there is no dispute that the deceased and the accused knew each other and the accused knew the house of the deceased. Also, it is a fact that the deceased was engaged in agriculture cultivating sesame (Ufuta) and had sewing machine to repair clothes. This fact is proved by PW6 which corroborated the confession recorded in police at Mahenge police station (exhibit P5 and P6). The contents of exhibits P5 & P6 supports the testimony of PW5 and PW6. PW5 testified that in fact he knew the accused and on 26/6/2019 called him and together went with a tractor to Mwaya and Lukande village where they took 31 bags of sesame in a house he did not know.

However, in the absence of an eye witness the evidences are purely circumstantial. In law circumstantial evidence is capable of leading into



conviction of the accused, so long basic legal principles are complied with. In our jurisdiction, the principles governing circumstantial evidence are well developed. Among them were discussed in the case of **R.Vs. Kerstin Cameron [2003] T.L.R. 84**, in this case the Court set the following applicable principles for grounding a conviction on circumstantial evidence, namely; (i) the evidence must be incapable of more than one interpretation; (ii) The fact from which an inference of guilt or adverse to the accused is sought to be drawn, must be proved beyond reasonable doubt and must clearly be connected with the facts from which the inference is to be drawn or inferred; (iii) In murder cases, evidence should be cogent and compelling as to convince a jury or judge that upon no rational hypothesis other than murder can the facts be accounted for. These principles were also discussed at length in the cases of **Nathaniel Alphonse Mapunda and Another 11 Vs. R, [2006] TLR 395; Ilanda Kisongo Vs. R, [1960] EA 780; Ali Bakari and Pili Bakari Vs. R, (1992) TLR 10**).

Another case decided by the Supreme Court of India that is, **Inspector of Police, Tamil Nadu Vs. John David [2011], NSC 418** where the conviction was wholly based on circumstantial evidence. The Court held:-

"The law is well-settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible. . . The Court must satisfy itself that



various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubt".

Such position of law in India was adopted in our jurisdiction in many precedents, including in year 1958 in the case of **Simon Musoke Vs. R, (1958) EA 718** the court held:-

"In a case depending conclusively upon circumstantial evidence, the Court must, before deciding upon a conviction, find that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

In the above-mentioned case, the Eastern Africa Court of Appeal referred to the decision in the case of **Teper Vs. R, (2) [1952] A.C. 480** where the Privy Council at page 489 stated that:-

"It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference"

In similar vein, in the case of **Hassani Fadhili Vs. R, (1994) TLR 89**, the court held that in order to ground a conviction on circumstantial evidence, it must be incapable of more than one interpretation. The



same was repeated in the case of **Ally Bakari and Pili Bakari Vs. R, (1992) TLR 10 and Rex Vs. Bakari Abdulla (1949) 16 EACA84.**

It is therefore, clear in law, that a charge of murder, like this one, can be fully proved by circumstantial evidence. In determining a case centered on circumstantial evidence, the proper approach by a trial court and an appellate court is to critically consider and weigh all circumstances established by the evidence in their totality, and not to dissect and consider it piecemeal or in cubicles of evidence or circumstances.

Having cited all those precedents, the question remains, whether the principles enunciated therein apply in this case and that the circumstantial evidences established in this case constitute conviction to the accused person? To answer this question, I have to revisit critically the evidences adduced during trial and its annexures admitted therein.

The evidence on death of the deceased Jeremiah Daniel is unqualified. It is certain as per the evidence of PW1 and PW2 that he was killed by cutting his neck, separating it with the rest of his body. His body was put in a plastic bag and thrown away in a forest about 800 meters from his house.

Another important evidence is related to the style used to kill the deceased. It is evident that the deceased was cut in his neck. This fact was proved by a medical doctor (PW2) which corroborated the caution statement of the accused he recorded on 6/1/2020 before Mahenge Police Station (exhibit P5). This exhibit at page 5 disclosed the method used to kill the deceased as quoted hereunder:-



"Nilimpiga Jeremiah Daniel na chuma sehemu ya kichwani na palepale alidondoka chinialikatwa na sime shingoni na palepale alipoteza maisha. Baada ya kumuua tulichua mfuko wa safeti uliokuwa pale nje ya nyumba yake tukauweka kwenye mfuko wa safeti na kuufunga kwenye pikipiki na mimi niliendesha pikipiki hadi vichakani kwenye pori nikautupa"

Such confession when read together with the testimony of PW2, corroborate each other that the death of the deceased was unnatural. It means *actus reus* is proved beyond any reasonable doubt.

More so, the place where the deceased body was found is clear that was found in the forest (Vichakani), and the means of transporting that body is clear that the accused used motorcycle to transport the deceased body to 800 meters at the forest and dumped therein. This fact also was adduced by PW1 that he witnessed a plastic bag full of human body which body was identified to be of his brother.

Another important evidence on this case is of PW3 who knew the accused and as guest house attendant, the accused used to sleep therein. On the eventful date, the accused went to that guest house in the evening while riding a motorcycle. That he had two mobile phones, one was small and smart phone. Despite the fact that he slept in that guest house without recording his name in the guest house register, the reason was disclosed by PW3 that he was familiar to that guest and on that date he was shivering and looked confused or sick. The smart phone was flashed on the following day and he took it while leaving behind the small hand set with its two lines. Such testimony corroborated his confession (exhibit P5) as partly quoted:-

"Baada ya kumuua Jeremiah Daniel mimi nilichukua simu mbili za marehemu zote aina ya Techno ambapo moja ni ndogo ya kawaida na nyingine ni kubwa aina ya Smart. Zote zilikuwa na laini za mtandao wa airtel. Nilibeba simu zote kwa lengo la kwenda kusafisha kwani ilikuwa imefungwa".

Such piece of evidence was corroborated by the testimony of PW3. The contents of the confession and the evidence of PW3 are substantially identical in relation to the events followed the death of the deceased.

Equally important is the purpose of killing the deceased. According to the testimony of Costantino Materine Likeperu (PW5) who worked as a curious testified that on 26/6/2019 he went with a tractor to Mwaya village to meet Rena Ngasa (accused) who directed him to a house where he did not know the owner of that house and transported 31 bags of Sesame in the tractor. Likewise, such piece of evidence is similar to the confession of the accused as quoted hereunder:-

"Mimi ndiye niliyepakia yale magunia ya Ufuta na yalikuwa 31 na nilitumia usafiri trekta na nilipakia tarehe 26/6/2019"

Such piece of confession was corroborated by the testimonies of PW5. Undoubtedly, the killing of the deceased was actuated by his agricultural products of 31 bags of sesame.

Considering on how the accused was arrested, obvious the evidence of PW3 is material. That accused testified in his defence that he travelled to Dar es Salaam to sale Sesame. Thereafter, he went to Shinyanga. Likewise, the testimony of PW3 is clear like a brightest day light, that the accused changed his mobile number and continued to communicate with PW3 through that new mobile number 0789532385. According to

PW4, police managed to arrest the accused by using cyber technology to track the accused where he was. That in coordination with other police officers at Shinyanga region, they managed to track and arrest the accused and that he confessed while at Shinyanga and when he arrived at Mahenge in Morogoro region. Therefore, it is evident that such new mobile number helped police to arrest him

Critical review of the defence case indicate that it is a general denial. In respect to the confession, the accused categorically, raised the issue of torture. That he confessed to have killed the deceased with a view to rescue himself from police torture, otherwise, he could be killed. Such defense did not shack the strong evidences of the prosecution. The evidences of PW4 defeated the allegations of torture. Above all, reading the contents of his confession is so detailed, revealing specific places, where the deceased body was thrown, that he took two mobile phones of the deceased, and that one was flashed out and later he changed his mobile number as per PW3. The number of bags of sesame, that were 31 as per PW5 and that PW3 facilitated to flash his smart phone, all when considered together leaves no doubt that a nonpartisan cannot make such confession. As such, the allegations of torture did not arise, rather he confessed on exactly what happened and in accordance to his knowledge.

I am fully aware that to pin liability on the basis of circumstantial evidence, the evidence must lead to no other conclusion except that the accused is the one who committed the offence he is charged with. In this trial, despite the fact that there was no eye witness on the killing of the accused, but the circumstances expressed by the prosecution



witnesses, lead to an irresistible conclusion that, the accused committed the crime.

In this case the evidence therein is incapable of more than one interpretation. as was rightly decided in the case of **Protas John Kitogole & Another Vs. R (1992) TLR 51**, also in the case of **Hassan Fadhili Vs. R (1994) TLR 89**.

Time immemorial, courts have been convicting accused persons based on circumstantial evidences, but always the court must be satisfied that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilty. This position was clearly stated in the case of **Simon Msoke Vs. R, (1958) EA715 at 718**, it was held:-

"In a case depending conclusively upon circumstantial evidence, the court must before deciding upon conviction, find that the exculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilty..."

In this trial, much as I am warned by several precedents on the danger of convicting the accused based on pure circumstantial evidence, yet I find justice won't be done and seen to be done not only to the accused but also to the society, if a person covered with all the circumstances so stated may escape liability simply by being obsessed with trivial and unfounded allegations of torture or general denial. I fully subscribe to the wise assessor's unanimous opinion that the accused is the brain behind murder and in fact he murdered the deceased Jeremiah Daniel



and proceeded to steal his agricultural product, that is, Sesame (Ufuta). Having so said and done I proceed to convict the accused for the offence of murder under sections 196 and 197 of the Penal Code.

It is ordered



P.J. Ngwembe

Judge

18/3/2022

SENTENCE

Upon conscious consideration of the mitigating factors advanced by the learned defense counsel when compared with the applicable laws, the two are not balanced. Since the law is very strict in respect to the offence of murder. Section 197 of the Penal Code Cap 16 R.E. 2019 provide only one sentence. The court has no discretion on it. This is a court law and is entrusted to apply the law as it is. Since there is no alternative punishment, the court cannot refuse to apply that law even if it won't like to punish a person with that statutory sentence of death by hanging. With heartedly, I proceed to pronounce sentence of death by hanging to the accused Leonard Bundala Malulanya @ Rena Ngasa as provided for under sections 197 and 26 of the Penal Code Cap 16 R.E. 2019.

It is so ordered.



P.J. Ngwembe

Judge

18/3/2022

Court; this judgement is delivered today this 18th day of March, 2022 in open court in the presence of Caristus Kapinga, learned State Attorney for the Republic, and Saul Silalumba learned advocate for the accused.

Right to appeal explained



P.J. Ngwembe

Judge

18/3/2022

ASSESSORS

1. Peter Magwira
2. Ashura Mfaume
3. Adelina Lubiki

Order: Exhibits which are two telephone lines (Tigo and Airtel), Tecno handset and one phonecover as exhibits in this case shall be destroyed immediately under supervision of the Court.



P.J. Ngwembe

Judge

18/3/2022