

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

**AT KIGOMA**

**ORIGINAL JURISDICTION**

**CRIMINAL SESSION CASE NO. 99 OF 2015**

**REPUBLIC**

**VERSUS**

**FULGENCE S/O BUGOHE @ MKOBA**

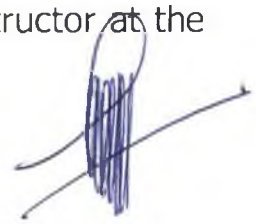
**JUDGMENT**

23<sup>rd</sup> February & 16<sup>th</sup> March, 2022

**L.M. MLACHA, J.**

The accused Furgence Bugohe @ Mkoba is charged of Murder contrary to section 196 of the Penal Code, Cap. 16 R.E 2002 (now R.E.2019). It was alleged that he murdered Zubeda Mikanda on 8<sup>th</sup> June 2015 during night hours at Ngoma area within Uvinza district, Kigoma region. He denied the charges. Charged with the duty to discharge their burden of proof, the prosecution called 4 witnesses and had 2 exhibits to tender. The accused was the only defence witness.

PW1 PF 19956 Inspector Dotto Simon Daudi (44) told the court that in 2015 he was a detective corporal of Police (F2361 D/CPL Dotto) working at Nguruka Police station, Uvinza District. He is currently an Instructor at the



Police college Moshi. He told the court that while at Nguruka on 8/6/2015 during night hours, he received a call from Mr. Seifu Masabile who told him that a woman called Zubeda Mikanda had been murdered. Mr. seifu added that the suspect was already under arrest. He advised them to observe peace till the other day. He conveyed the information to the OC-CID SP Mukas. On the other day, 9/6/2015 he moved with the OC –CID and the doctor to the scene of crime. Other police men were also in the trip. They arrived at the Ngoma. They found the body of the deceased inside the house at the sitting room. It had 3 big cut wounds; two on both sides of the neck and one on the head, somewhere above the ear. She was laid on her stomach. One hand was inside the local cooking area (mafiga) and was burnt. The doctor (PW4 Dr. Stanford Harold Chamgeni) conducted the postmortem examination. The examination was done before him, the village chairman and WP Kisango. He thereafter moved to draw the sketch map, exhibit P1. They picked the accused and moved to the police station.

PW2 Rahima Maulid (15) is a daughter of the deceased. The accused was her staple farther. She told the court that in 2015 she was living with her brother, Mashaka Maulid at Mlybabibi village. Her mother lived at Ngoma. She was living with the accused. She moved to visit her mother on

6/6/2015 during the morning. She arrived on the same day and met her with the accused. She stayed with them up to 8/6/2015 which is the date of the crime.

Now on 8/6/2015 during the evening the accused left leaving her at home with her mother. While away, one Kasunzu came. He met her with her mother. He was talking to her mother who asked him to cut timber for her. They were seated at the sitting room close to the fire while talking. While there, her father, the accused came. Her mother shone a torch. He greeted Kasunzu. PW2 also greeted him. Kasunzu said bye and left. Her mother gave food to her father. He threw it away using legs. It fell off. Her mother said that she did not want conflicts. Her father beat her with legs twice.

He then cut her with a panga on the head near the left side of the ear. He cut her again on the neck. She fell down leaving her hand to the fire. By this time PW2 who was seated at the fire place tried to remove the hand from the fire. Her father run away. He came back again. She asked him to give her permission to call neighbours to attend her mother. He allowed her but cut her with a panga on her right shoulder at the back as she was moving out (she showed the court a deep cut scar on the right shoulder running down wards). She run away towards a neighbour called Mama



Zawadi. She fell down outside the house. Mama Zawadi came outside and asked what had happened. She said that the accused had cut her with a panga. She added that she cut her mother who fell down. They rose alarms which caused people to come. People arrested the accused whom they beat. She lost consciousness at this stage. She recovered later while at Maweni Hospital Kigoma.

She added that the accused was dressed in jeans trouser and a red T-shirt. The room was small and the torch had a bright light. There was a distance of only one meter between him and the accused allowing her to identify him properly. She could identify him at the dock by touching his right shoulder.

PW3 Mayala Cornel (42) is one of those who came soon thereafter. He came to the area after being told that Zubeda had been killed. He knew her as mama Kalekwa. He moved to the house and saw the body of the deceased at the sitting room. He moved to mama Zawadi to see PW2. He saw her with a cut on her right shoulder. They questioned her on what had happened. She said that her father had killed her mother. He also cut her. They decided to take her to hospital. He remained behind.

While there, the accused appeared with an iron bar on a bicycle. People refused to run away. He took courage and approached him. He ordered him to drop from the bicycle which he obeyed. He assured him of his security. He put him under arrest. People attacked him a bit but he requested them to stop which they obeyed. It was now around 10.00 AM. The village chairman came who notified the police. They observed the security till the arrival of the police on the other day. He added that the accused confessed before him that he is the one who killed the deceased. He stressed during cross examination that he knew the accused and the deceased very well. They lived together at Ngoma mashambani. He could also describe his clothes; jeans trouser and a red Tshirt (jezi) as pointed out by PW2.

PW4 Stanford Harold Changeni (59) is a doctor. He is the one who did the postmortem examination. Like others, he said that the body of the deceased was at the sitting room laid on her stomach. He saw a lot of blood on the ground. He saw two big cut wounds; on the near side near the ear and on the neck. He pointed at the places; *near the left ear moving down wards and across the rear neck*. He described them as *two big cut wounds*. He entered his fingers on the cut wounds which could reach the



bones. He discovered that major blood vessels which take blood to the head had been cut. He formed the opinion that they were caused by a sharp instrument. He said that death was caused by excessive bleeding due to the cut of blood vessels which send blood to the brain. He tendered his report, exhibit P2.

The accused had this to say in his defence. That, he lived with the deceased in 2015 as his wife. They also lived with PW2. On 4/6/2015 during the night, while he was asleep with his family, he heard people knocking his house with a stick. He moved out and saw that the house was under fire. He managed the situation but the child Rahma could not sleep at home any more. She used to move to sleep with her junior mother.

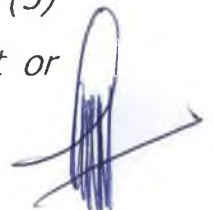
On 8/6/2015 he left in the evening and went to a pub. It is a place where beer is sold. He went there to meet some people and exchange views. They played cards while drinking wanzuki. Kasunzu and his brother were also present. They left. He remained with Mr. Anthony. As it was dark, he asked for a piece of iron bar from Mr. Anthony. He picked his bicycle and the iron bar and left. He arrived home only to be arrested and beaten on allegation that he had killed his wife something which is not true. He denied the charges.

The honorable assessors who sat with me had the opinion that the accused is the one who killed the deceased and that he killed her intentionally. They had the view that the prosecution has proved their case beyond reasonable doubts. I agree with them. I will try to explain.

To discharge their burden of proof, the prosecution has to establish the following; One, that the accused is the one who killed the deceased and that he killed her intentionally. Two, that the accused was properly identified at the scene of crime. Three, that there is evidence proving the offence beyond all reasonable doubts. The accused has no duty to prove his innocence but is not expected to speak lies. I will discuss the three areas together.

In **Enock kipela v.Republic**, CAT Criminal Appeal No.150 of 1994 (unreported) quoted in **Saidi Ali Matola @ Chumila v. Republic**, CAT Criminal Appeal No.129 of 2005 it was said thus:

*"..usually an attacker will not declare his intention to cause death or grivous bodily harm. Whether or not he had that intention must be ascertained from various factors, including the following: (1) the type and size of the weapon, if any, used in the attack (2) the amount of force applied in the assault; (3) the part or parts of the body the blow were directed at or*



*inflicted on; (4) the number of blows though one blow may, depending on the facts of a particular case, be sufficient for this purpose; (5) the kind of injuries inflicted; (6) the attackers utterances, if any, made before, during or after the killing; and (7) the conduct of the attacker before or after the killing."*

In **WANKURU MWITA V. Republic**, CAT, Criminal Appeal No. 03/2004, the Court of Appeal had this to say at Pages 5-6 on visual identification:

*"The law is also well settled that **visual identification evidence is one of the weakest kind** and in order to sustain a conviction it must be cogently established to the court's satisfaction that the conditions are favourable for an accurate and water – tight identification of the accused and that it is free from all possibilities of mistaken identification (see **Waziri Amani V. R** [1980] TLR 250; **R.V. Eria Sebwato** [1960] EA 174; **Igola Iguna and Noni @ Dindai Mabina V.R**, Criminal Appeal No. 34 of 2001; and **Anthony Kigali V.R** Criminal Appeal No. 94 of 2005; (All CAT unreported).*

So we look at the circumstance of the killing to know if there was malice or not. It is malice which constitute the offence of murder so it must be established first.



In addition to that there must be evidence showing that the accused was properly identified at the scene of crime. Evidence showing a good identification. All possibilities of mistaken identification must be eliminated.

I had time to examine all the witnesses carefully. All prosecution witnesses appeared credible, witnesses of truth. Their evidence was also linked together without any contradiction. PW2 was the star prosecution witness. She knew the accused before the date of crime. He was his staple father and she lived with him for two days prior to the date of crime. The accused also agree that she lived with them. She was familiar with his voice and speech. She said that the accused entered inside and met them at the fire place with a visitor. The accused and the visitor could greet each other. She also greeted him. The visitor left. Her mother had a torch which added light to the room. The room was small. They were three in the room. She saw her mother setting aside food for the accused who brushed it aside. She heard her mother exchanging words with the accused. She could hear and see them clearly. She could even say that the accused was dressed in a jeans trouser and a red T-shirt. She then saw him cutting her mother twice on the head (at the ear) and neck. She saw her felling down helplessly leaving her hand to the burning fire. She asked permission to call



people to assist her. She got the permission but was soon cut as she was getting out.

The circumstances show a good identification. See also **Buriani Hassan v. R**, CAT criminal Appeal No.580 of 2017 and **Potian Joseph v R**, CAT Criminal Appeal No. 200 of 2015.

In Potian Joseph (supra) it was said that it is not enough merely to look at factors favouring accurate identification. Equally important is the credibility of witnesses. My look at PW2 could not raise any doubts to her credibility. Her credibility is shown further by her ability to name the suspect at an early stage. She could tell mama Zawadi soon thereafter that the accused had cut her mother. Mama Zawadi rose an alarm and people came. PW3 is one of the people who responded to the alarm. He had a chance to talk to PW2 before she collapsed. She named the accused as being the suspect. This add credibility to his evidence. See **Chaha Jeremiah Mrimi and 3 others**, Criminal Appeal No.551 of 2015 and **Marwa Wangiti Mwita and another v R** (2002) TLR 39.

PW2 was cut on the right shoulder and could show the scar. All this add weight to what she said.

In murder cases there must be proof of the intension to kill. The issue now is whether the accused intended to kill the deceased or not. As pointed above usually the killer will not say that he is killing intentionally. We look at the circumstances of the killing to establish this fact. In our case, the accused used a panga (matched) to cut the deceased on the head below the ear and on the neck. The deceased sustained deep cut wounds showing that the amount of force which was applied was big. The deceased fell down and discharged a lot of blood. The accused walked out of the house leaving the deceased on a pool of blood with her hand on the fire. She died shortly later.

Looking at the type of weapon used, the places where it was applied and the amount of force involved, it is clear that the accused intended to kill the deceased. The head and neck are delicate places. Applying a panga on the head and neck cannot have a different explanation other than that of intending to killing. The fact that it was applied twice add weight to the matter. I see no accident in the matter but an intention to kill.

Finally, on the lies of accused. Much as the prosecution have a burden to prove their case beyond reasonable doubt and the accused is not expected to prove his innocence but he is not expected to speak lies. The defence of



the accused contain open lies. He spoken an open lie when he said that he did not know what had happened to his wife. He tried to associate the murder of the deceased to people who had attempted to burn the house earlier, people whom he could not even mention. A crime which was not reported anywhere. That he was merely coming from the pub where he had gone to pass time with his friends only to find people arresting him. These were open lies of the accused which corroborate the prosecution evidence. They add weight to the prosecution case.

All said, it is my finding that, the prosecution has proved its case beyond reasonable doubts. I find the accused guilty of murder contrary to section 196 of the Penal Code, Cap.16 R.E 2019 as charged and convict him accordingly.



A handwritten signature in blue ink, consisting of a series of vertical strokes and a horizontal line extending to the right.

**L.M. Mlacha**

**Judge**

**16/3/2022**

## SENTENCE

There is only one sentence for murder which is Death by Hanging. I personally do not like this sentence but my hands are tied.

I hereby sentence you the said, FULGENCE BUGOHE @ MKOBA to suffer death by Hanging.



A handwritten signature in blue ink, appearing to read "L.M. Mlacha", is written over a horizontal line.

**L.M. Mlacha**

**Judge**

**16/3/2022**