

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

CRIMINAL SESSIONS CASE NO. 13 OF 2021

REPUBLIC

Versus

- 1. KHALID ALMAS MWINYI @ BANYATA**
- 2. RAHMA ALMAS MWINYI @ BABY @ RAHMA ALMAS
IDDI**
- 3. NDUIMANA OGISTE @ JONAS ZEBEDAYO @
MCHUNGAJI @ NDAYISHEMEZE ZEBEDE @
NDAISHIME ZEBEDAYO @ OMARI HASSAN**
- 4. GODFREY PETER SALAMBA**
- 5. CHAMBIE JUMA ALLY**
- 6. ALLAN ELIKANA MAFUE**
- 7. ISMAIL ISSAH MOHAMED @ MACHIPS**
- 8. LEONARD PHILIPO MAKOI**
- 9. AYOUB SELEMAN KIHOLI**
- 10. JOSEPH ALEXANDER LUKOA**
- 11. GAUDENCE JAMES MATEMU**
- 12. ABUU OMARY MKINGIE**
- 13. HABONIMANA AUGUSTIN NYANDWI @ OGISTEE**
- 14. MICHAEL DAUD KWAVAVA**

15. EMMANUEL THOMAS SONDE

16. KELVIN ATHANAS SOKO

17. SAMIA SALEH HUJAT

18. ALMAS SWEDI @ MALCOM

JUDGMENT

Date of last Order: 25/11/2022

Date of Judgment: 02/12/2022

MGONYA, J.

On 16th of August 2017, Mr. Wayne Derek Lotter the Wildlife Conservationist in the company of his co-director who were both working with Protected Area Management System (PAMS) Foundation, a Non-Governmental Organization for more than 10 years, travelled from Arusha to Dar es Salaam via Kilimanjaro International Airport (herein to be referred as KIA). At the Julius Nyerere International Airport (herein to be referred as JNIA) in Dar es Salaam the Commercial City of Tanzania they were received by their routine taxi driver Michael Daudi Kwavava. On their way to Baobab Village where it was their destination, unfortunately, on their way when they reached Kaole and Haile Selassie junction at Masaki suburb few kilometers from the Dar es Salaam City center, they were blocked by another motor vehicle, and shockingly, out of the said motor vehicle two bandits approached their taxi one of

them taking away their laptops and some documents they were working with while the other man who was armed, shot Mr. Wayne Lotter who upon reaching at the hospital, was shortly pronounced dead.

Immediately thereafter, the Tanzanian Police Force started thorough investigations as to know who were responsible for the death of Mr. Wayne Derek Lotter a 51 years Preservationist and active Environmentalist who was known worldwide. Out of the said investigations, thereafter the accused persons namely **KHALID ALMAS MWINYI @ BANYATA, RAHMA ALMAS MWINYI @ BABY @RAHMA ALMAS IDDI, NDUIMANA OGISTE @JONAS ZEBEDAYO @ MCHUNGAJI @ NDAYISHEMIZE ZEBEDE @ NDAISHIME ZEBEDAYO @ OMARI HASSAN, GODFREY PETER SALAMBA, CHAMBIE JUMA ALLY, ALLAN ELIKANA MAFUE, ISMAIL ISSAH MOHAMED @ MACHIPS, LEONARD PHILIPO MAKOI, AYOUB SELEMAN KIHOLI, JOSEPH ALEXANDER LUKOA, GAUDENCE JAMES MATEMU, ABUU OMARY MKINGIE, HABONIMANA AUGUSTIN NYANDWI @ OGISTEE, MICHAEL DAUD KWAVAVA, EMMANUEL THOMAS SONDE, KELVIN ATHANAS SOKO, SAMIA SALEHE HUJAT and ALMAS SWED @ MALCOM** were arraigned before the court and charged with three offences namely:

1st CONSPIRACY TO MURDER contrary to **Section 215 of the Penal Code, Cap. 16 [R. E. 2002]** for all accused persons;

2nd MURDER contrary to **Sections 196 and 197 of the Penal Code Cap. 16 [R. E. 2002]** for all accused persons and,

3rd, ACCESSORY AFTER THE FACT TO MURDER contrary to **Section 213 of the Penal Code, Cap. 16 [R. E. 2002]** for the **15th, 16th, 17th and 18th** accused persons.

The charge alleged that on divers dates between 1st July, 2017 and 16th August, 2017 while at various places within the United Republic of Tanzania particularly in the City and Region of Dar es Salaam and within the City and Region of Arusha, jointly and together the above accused persons conspired to commit Murder. Their intention was to eliminate **WAYNE DEREK LOTTER** a South African National who had NGO in Tanzania known as **PAMS FOUNDATION** dealing with the Protection of Wildlife and assisting the Government of Tanzania in the fight against poaching and poachers.

After all the preliminary proceedings have been finalized, this special session commenced on **11th March 2022**. I as preceding Judge, I sat with two Gentlemen Assessors **Mr. Selemani Sijaona** and **Mr. Salehe Chautundu**; together with a Lady Assessor, **Ms. Sophia Isike** respectively as required by law. However,

unfortunately in the midst of the prosecution case, one of the Assessors, Mr. Selemani Sijaona had to drop from the proceedings due to illness. So up to the closure of the Prosecution case I remained with only two Assessors.

The Prosecution team was led by Mr. Yamico Mlekano PSA assisted by Mr. Hemedi Halidi SSA, Mr. Fadhili Mwandoloma SSA, Ms. Lilian Rwetabura SSA, Mr. Haruna Shomari SA, Ms. Imelda Mushi SA, Ms. Ellen Masululi SA, Mr. Philbert Mashurano SA, and Mr. Joseph Mwakasege SA. While Defence was led by Advocate Majura Magafu for 10th, 11th, 12th, and 14th accused persons. Others are Advocate Mluge Karoli Fabian, for 1st, 2nd, 5th, 15th, 16th, 17th, and 18th accused persons, Advocate Roman Selasini Lamwai for 3rd and 13th accused persons, Advocate Abdulai Abdulaziz for 4th accused, Advocate Augustino Shio for 6th accused, Advocate Herman Gervas for 7th accused, and Advocate Modesta Medard for the 8th and 9th accused persons.

At this juncture, I wish to express my sincere appreciation and gratitude to all the Assessors who were involved in this matter for their generous attention, devotion and respective attendance throughout the proceedings. The same applies to Mr. Ally Ndakeye the Interpreter whom we have involved him in these proceedings from the very beginning of the trial to this end. His professional services have assisted the court to see that the 3rd and 13th accused

persons have their right to follow this court's proceedings accordingly, hence to avail them with a fair trial.

In a special way, I sincerely thank the learned counsel from both Prosecution and Defense sides for their respective attendance and prompt participation up to this stage. Further, for their respective examinations in chief and their respective cross examinations from both sides of which to my considered view went well, harmoniously and professionally. Both the Prosecution and Defense teams have demonstrated great expertise in pursuing this matter and I value their professionalism. This also applies to the Gentleman and Lady Assessors for their valuable questions to the witnesses for the purpose of getting elaborative information from their respective testimonies. I thank them all for the cooperation and assistance they gave me throughout this prolonged trial.

This case has been conducted in accordance with this court's Ruling dated 8th December 2020 by Hon. Mlacha J., following an *ex-parte* application by the Director of Public Prosecution under the provisions of **sections 188 (1) (a), (b), (c), (d) and 188(2) of the Criminal Procedure Act Cap. 20 [R. E. 2019]**, where the matter was ordered to be held in camera and adhere to the protection of Prosecution witnesses as prayed.

Prosecution managed to call a total of **32 witnesses** namely AA (PW1), AB (PW2), AC (PW3), AD (PW4), AE (PW5), AF (PW6), AG (PW7), AH (PW8) AI (PW9), AJ (PW10), AK (PW11), AL (PW12), AM (PW13), AN (PW14), AO (PW15), AP (PW16), AQ (PW17), AR (PW18), AS (PW19), AT (PW20), AU (PW21), AV (PW22), AW (PW23), AX (PW24), AY (PW25), AZ (PW26), BA (PW27), BB (PW28), BC (PW29), BD (PW30), BE (PW31) and BF (PW32). Further **43 exhibits** both physical and documentary were also tendered in favor of the Prosecution.

At the closure of the Prosecution case, the court found that seven of the accused persons, namely the **1st accused KHALID ALMAS MWINYI @ BANYATA, 10th accused JOSEPH ALEXANDER LUKOA, 11th accused GAUDENCE JAMES MATEMU, 15th accused EMMANUEL THOMAS SONDE, 16th accused KELVIN ATHANAS SOKO, 17th accused SAMIA SALEHE HUJAT and 18th accused ALMAS SWEDI @ MALCOM** had no case to answer and were accordingly acquitted. Therefore, this judgment will continue to refer to the accused persons by their number as seen above in the title of this case. Further, as the third count of **Accessory after the fact to Murder** which involved the **15th, 16th, 17th and 18th** accused persons who have been found with no case to answer, was automatically concluded. Therefore,

we are remaining only with two counts of **Conspiracy to Murder** and **Murder** for all remaining accused persons herein.

During the Defense case, every accused person had a chance to defend himself under oath. All the accused herein had no additional witnesses serve for 4th accused person who had two witnesses to support his case, therefore the Defense had a total of **13 witnesses** and **7 exhibits** to support their cases.

I plan to start by making summary of the Prosecution case particularly the evidence adduced by their witnesses.

The witness namely **AA** appeared as **PW1**, a doctor working with Muhimbili National Hospital for about 20 years. That on 19/08/2017 PW1 in the assistance of another Pathologist, performed a postmortem to the body of the deceased one **WAYNE DERECK LOTTER, A MALE, WHITEMAN,** and **ADULT.** The witness stated that in their internal examination it was revealed that the deceased had a wound near his mouth. Further, through that wound, the internal mouth was torn in small different particles where they saw a small item of metal of which it was believed to a bullet which went straight to the back of the deceased's left shoulder; whereas his respiratory system was blocked with blood. It was further revealed by PW1 that the immediate cause of the deceased's death was lack of air in respiratory system due to blood

clots from the bullet wound. That a small piece of metal which was found in the deceased's body was then handed over to Det. Sgt. Ndege who witnessed the procedure.

PW1 further informed the court that after examination, they prepared a report which revealed the cause of the deceased's death. The witness further identified the Report on Post Mortem Examination in favor of the deceased, duly prepared by a pathologist from Muhimbili National Hospital dated 19th August 2017 of which was admitted for evidence as **Exhibit P1**.

The witness **AB** testified as **PW2**. He identified himself as one of the Directors of a Non-Governmental Organization with the name of **PAMS FOUNDATION** (Protected Areas Management Services). The said Foundation having five (5) Directors in Tanzania dealing with; environment protection, prohibit poaching and illegal cultivation of forests products as well as funding Government entities. The witness testified to have been working with the Foundation for eight (8) years.

In principal, this witness declared to have been informed by his co-director the one who was with the deceased Mr. Wayne Derek Lotter on 16/8/2017 that they have been invaded at Masaki on their way to their residence from the Julius Nyerere International Airport (JNIA). This witness also confirmed to have seen the

deceased at Sally Hospital where he was already declared dead. He is also the person who identified the deceased's body at Muhimbili National Hospital before the post mortem was conducted.

The third witness in this respect was **AC** who testified as **PW3**. He identified himself as a police officer working with **FORENSIC BUREAU** of which has 12 Departments. He also informed the court to have been working with Ballistic and Explosion Department since 2004. His main duty being to investigate different weapons such as **SMG, PISTOL, UZI-GUN** etc which have been involved in criminal activities. PW3 stated that, he procures his legal power in performing his duties under **section 205 A of Criminal Procedure Act; Cap. 20 and section 67 of the Tanzania Evidence Act**.

The witness further testified that on 13/12/2017 around 11:00 hours, he received two letters with regards to two specimen samples from Kinondoni RCO's office. The 1st one was the letter which involved an offence of being in possession of illegal weapons which was annexed with **two guns, 162 small bullets, 5 big bullets and a hand grenade (a hand bomb)**. The said letter wanted him to investigate if the said weapons were in working position.

The 2nd letter is said to have three specimens being, **2 spent cartridges for Uzi-gun and one bullet head.** This letter wanted the witness to investigate from which weapon did the bullet and cartridges come from; either from Uzi-gun or riffle marker 4 which were brought to him. PW3 states that all the specimens were kept in a black bag with red strips which was labeled **OB /IR/7550/2017** from RCO's office. Before the officer who brought the specimen left, PW3 said to have taken out the specimens and confirmed to be **two weapons**, the first one was Uzi-gun while the 2nd was Riffle marker 4 both wrapped in kitenge. Further the witness said to have reached the thermos blue in color which inside the same there was socks which had 162 bullets. It is also said that there was one hand grenade. The witness stated that the items from the 1st letter were registered **FB/BALL/LAB/113/2017**, while the specimens from the second letter were labeled **FB/BALL/LAB/114/2017.**

The witness further testified that, after a thorough and detailed examination of the two weapons and the specimens brought to him, as well testified in detail in his testimony before the court, he came to the conclusion and made a finding that the two weapons were in a good working condition as well as the hand grenade which was in a pair (bomb and a pin) the same was also functioning. Further, that the spent cartridges together with one

bullet head were fired from the Uzi-gun weapon brought to him for ballistic examination. To support his findings on ballistic examination, this witness tendered for evidence two **Ballistic Examination Reports** on Exhibits No. OB/IR/6586/2017 concerning **MURDER**, and Examination Report of Exhibits No. OB/IR/75520/2017 concerning **UNLAWFUL POSSESSION OF FIRE ARMS** both dated 18/12/2017 duly prepared by FORENSIC BUREAU (Ballistic Laboratory) under Criminal Investigation Department; together with **PICTURE ILLUMINATION** with No. 114/2017 prepared by FORENSIC BUREAU dated 18/12/2017 which were collectively admitted as **Exhibit P2**.

Further, PW3 tendered for evidence the following exhibits which are:

- One Uzi - Gun Caliber 9mm with Serial No. 084912 - marked as Exhibit K1 admitted as **Exhibit P3**;
- One Rifle Maker 4 Calibre 3006 K2 admitted as **Exhibit P4**;
- 164 Bullets K5 - admitted as **Exhibit P5**;
- 4 Bullets K 166 - K 160 - admitted as **Exhibit P6**,
- Hand Grenade K 17 - admitted as **Exhibit P7**;
- 2 Spent Cartridges Q 1 & Q 2 - admitted as **Exhibit P8**.
- Bullet Heads Q3 - admitted as **Exhibit P9**;
- 2 Spent Cartridges T1 & T2 - admitted as **Exhibit P10**;

- 2 Bullets Heads T61& T62 - admitted as **Exhibit P11;**
- Spent Cartridge for Riffle - T1 - admitted as **Exhibit P12;**
- Thermos blue in color - admitted as **Exhibit P13;**
- Black bag with red strips - admitted as **Exhibit P14;** and
- Kitenge blue and white in color - admitted as **Exhibit P15.**

Concluding his testimony, PW3 AC informed the court that after his examination, all specimens brought for his examination were collected and returned to RCO's Office via a sealed letter which was handed over to a police officer on 20/12/2017. He mentioned the items he returned to be two weapons as received, a total of 164 bullets and 3 spent cartridges; and K 170 of which was a hand grenade /bomb; 3 bullets, and 1 bag which had specimen, of which he identified before the court upon being referred to.

The next witness was **AD** who testified as **PW4**. This witness testified to the effect that, he was the first police officer who went to the scene of crime where he met a driver to the taxi which carried the deceased and his colleague. He also saw the car at the scene of crime and interviewed the driver on the incident that had occurred. Later, he said to have proceeded to Sally International Hospital at Masaki after being informed that the victim was taken there for treatment. Upon arrival, he was informed that the injured person had passed away.

The witness testified further that, later he went back to the scene of crime which was tapped under security where upon investigation, he found two spent cartridges. One from the ground and the second one from inside the car and placed them in a specimen plastic bag and proceeded to Oysterbay Police Station where he handed the same to exhibit keeper for safe keeping.

PW4 also testified to have been at Muhimbili National Hospital on 19/8/2017 when pathologists were performing the post mortem to the deceased's body. Further, that during the said procedure, the bullet head was found at the left shoulder of the deceased. The same was handed over to him and it was marked **A3** and sent it to exhibit keeper at Oysterbay Police Station.

Before the court, PW4 identified the 14th accused as the driver he saw at the scene of crime on the material date. He also identified Exh. P8 and P9 which are the spent cartridges and a bullet head which was taken out of the deceased's body as **A3**.

AE - PW5 testified before the court that he works at the Shia Isnashirs' drycleaner at Bibi Titty Street at Kinondoni. He testified to the effect that on 19/9/2017 he was approached by the police officer and wanted him to witness the search at Ngazija graveyard. At the graveyard, he testified to have seen the lady who later he came to identify as a 2nd accused before the court, Mzee Maganga

who was the caretaker to the said graveyard and other people, police officers inclusive.

He also testified to have heard the 2nd accused being asked as to where she had buried the weapons. Further, upon pointing to the said place, he testified that Mzee Maganga told the Police officers that he had moved the same and directed them to one of the corners at the graveyard where he took a hoe and dug. PW5 further informed the court to have witnessed "**Kiroba**" that was dug out where the same had a knot. He said inside the same there was a black bag with red strips and a padlock which was not locked. The bag was opened and inside there was a kitenge with two weapons, a bomb and a thermos ocean blue in color. They opened the thermos and found a socks with some bullets in it. He said there were about 160 bullets after they have counted them. Finally, he confessed to have signed against the inventory of those items.

The witness also testified to have seen a police officer taking photographs of all the discovered items and some events related thereto. Further, his statement was also taken by police and signed accordingly. The witness also testified to have seen the lady who was at the graveyard and Maganga being under police custody. This witness also identified the 2nd accused before the court to be the lady he saw on the material date. He also identified the document

he signed on the same day and all the items he mentioned to have seen in the discovery exercise.

During cross examination, PW5 confirmed before the court that Maganga was the only person working at the Ngazija graveyard where he was opening the place and closing the same and also he was the person who was digging the graves thereto. The witness also confirmed that during the search, the second accused was the only female around the place and that it was his first time to see the 2nd accused.

The witness named **AF** testified as **PW6**. He introduced himself as an Investigative Police Officer for 10 years as of now working with Task Force in Major Criminal incidences. Currently working with RCO's office at Temeke.

The witness testified that on 16/9/2017 around 12:00 -12-30 hours while at his work place Police Chang'ombe Temeke where is a base of the Task Force for major incidences, he got information from one of the informers that one of the criminals whom were involved in a murder that had occurred in August 2016 is at Kasoro Guest House at Vingunguti and that the said person is female. From there, him in company of 8 police officers of whom one was the woman they went straight to that place with immediate effect.

At Kasoro Guest House, the witness testified to have managed to arrest the suspect by the name of **RAHMA ALMASI MWINYI** who was found with her passport bearing the name **RAHMA ALMASI**. PW6 AF told the court that he brought the suspect to Oysterbay Police Station and reported that she was not found with any weapons as it was alleged.

Later he was called to lead the investigation team to Ngazija graveyard where the suspect confessed to have hidden the weapons, and that she was ready to go and show the Police. At the site which was Ngazija graveyard, the witness testified to have seen the suspect he named, the caretaker Mzee Mohamed Maganga and other police officers.

Upon directives of the said suspect and Mzee Maganga, the witness said to have witnessed a cement bag Twiga brand with other items being discovered from the ground. The witness ordered the same to be opened so that the team can see everything which was inside. From the cement bag, again there was "kiroba" which inside with a small black bag pack. It has been testified that inside the bag there were three parcels. The 1st parcel, was wrapped with kitenge, the 2nd parcel had a black plastic bag and the 3rd was a thermos of ocean blue in color. Upon the order to open the said parcels, the 1st parcel wrapped in kitenge two guns were found in

it. One Uzi-Gun with serial No. 084912 and the 2nd was a Rifle which had no serial number nor its barrel buttstock of which was cut. In the third parcel the witness testified to have found a grenade (hand bomb) of which was separated from its pin. Finally on the third parcel there was a thermos of oceanic blue color where inside there were handkerchief and socks. Inside the same, there were some bullets of two different kinds, 167 bullets in total, 162 were for Uzi-Gun and 5 for Rifle. The witness informed the court that, during the said exercise, the professional Police Force photographer was taking the photographs for evidence. Finally, the inventory was prepared accompanied by the witnesses' names and signatures. They also wrote their statements to that effect.

Further, the witness averred that, after the said exercise, the 2nd accused whom he identified before the court and Mzee Maganga were taken to Oysterbay Police Station together with all the items discovered at the Ngazija graveyard.

To support what he testified, **PW6** tendered for evidence the **Record of Search by Police Officer / Search Order** and **Seizure Certificate** in respect of file No. **OB/IR/6586/2017** both dated 16/9/2017 which were collectively admitted for evidence as **exhibit P16**.

In cross examination, the witness informed the court that he had knowledge that Rahma the 2nd accused was about to leave the country to **Comoro** as his informer had told him everything about **Rahma's** whereabouts and plans.

PW7 AG testified to the effect that he is a Police Officer since 1990 working with **FORENSIC BUREAU** which has 12 departments. This witness testified to have been serving the Force in **Photo Section** since 2004 while his duty is to take photographs in different criminal episodes and also to investigate photographs which were taken from criminal events as directed by his superiors. His other duty being to investigate photographs and prepare reports and certificates in that respect. The witness who is a gazetted officer under GN 4/6 of 2014 states to have been legally empowered to perform his duties via **section 202 of Criminal Procedure Act**.

PW7 AG testified before the court that on 16/9/2017 on Saturday at around 15:00 hours while in his office, he was directed to go and take some photographs at Ngazija graveyard as there was an accused who wanted to show where she had hidden the weapons. From there he prepared his still picture camera ready for an assignment. At the graveyard he said there were about 15 people being police officers of whom he knew some of them and

other people he didn't know. The witness further revealed that, at the premises, there was also a suspect who was about to show the hidden weapons. The witness averred that, he started to take photographs of the entire graveyard, and the place where the said accused showed that she buried the weapons where two police officers were in a process of digging while he was taking the picture. However, when they were in a process of digging, caretaker revealed to have shifted the same to another place.

PW7 AG further testified that, after the police officers had started to dig at a certain level, there appeared a sulphate bag with something inside; the same had a print of **Twiga Cement** whereas inside too there was a black bag which had plastic bag, thermos and kitenge. The witness testified to have witnessed inside the kitenge there were two guns, one **Uzi Gun** and **Riffle** where the barrel buttstock was cut short. The witness states to have also seen in a plastic bag a hand grenade with the fuse and from the thermos there were bullets which he didn't count. **PW7 AG** testified to have taken photographs of all the items found at the graveyard and gave them numbers as they appear in the booklet he tendered before the court as exhibit of which was admitted as **exhibit P17**. Before the court the witness also identified the 2nd accused Rahma Almasi Mwinyi as the lady she referred as accused he saw at the graveyard

together with the male suspect whom he has failed to locate at the court.

PW8 AH testified that, he is a Police Officer since 1988 working with Criminal Investigation Department where in 2017 was working with RCO's office at Kinondoni Police Region.

The witness testified to the effect that, on 17/8/2017 around 00:00 hours he was at RCO's office. As he was on duty, he was called by Ag. OC CID who was acting as RCO and informed him that there was an event at **Masaki Area** within the City of Dar es Salaam. After receiving that information, he proceeded at the scene of crime in a company of OC CID with other police officers who were on patrol. At the scene of crime, he met a person who identified himself as a driver of the taxi **TOYOTA SIENTA T499 DGB** by the name of **MICHAEL DAUDI KWAVAVA**.

PW8 AH went on to state that, the driver informed him that he was taking his passengers from Julius Nyerere International Airport to their residence at Masaki. However, when reaching at the scene of crime, there was a car which came and blocked them in front where someone got out of the car and shot in air once and the second shot went to one of his passengers whom by that time he was already taken to the hospital.

From that information, the witness informed the court to have tapped the scene of crime and later OC CID went to the hospital to see the said passenger who was injured while he remained at the scene of crime with his fellow police officers and the taxi driver. **PW8 AH** informed to have been told by the OC CID upon his return from the hospital that the person who was injured had died out of the attack.

The witness further testified that, upon inspection and prior investigation at the scene of crime, he picked two spent cartridges one from inside the car while the other was picked from under the car. He kept the same in exhibits plastic bag and marked **A 1** for the one he got in a car and **A 2** for the one which was found outside under the car.

The witness also testified to have drawn a sketch map of the scene of crime as directed by the driver, Mr. Kwavava before they left to the Oysterbay Police Station where he opened the file case on **MURDER** with reference **OB/IR/6586/2017**. He also placed IR in the package where the spent cartridges were kept and handle the same to exhibit keeper. The witness also said to have handled the taxi - **TOYOTA SIENTA T 499 DGD** to **CRO** in charge at Police Oysterbay. That was around 04:00 in the morning of 17/8/2017.

On 13/12/2017 around 10:00 hours; the witness testified to have been ordered to take some specimens to Police Headquarters. Those specimens were spent cartridges and some weapons as there were two cases, the one is for **MURDER** with reference number **OB/IR/6586/2017** and the other one was unlawful possession of weapons with reference number **OB/IR/7550 of 2017**. From the exhibit keeper the witness was also handled two spent cartridges and bullet head.

PW8 AH also testified to have been handled two guns being Uzi-gun with reference number 084912 and the other one was Riffle whose number was rubbed. The witness also testified to have been handled a black bag which had red strips. In that bag, there was also a thermos marked C1. In that bag; there were also a hand grenade, a kitenge and a Twiga Cement used bag. The said 2 spent cartridges were marked A1 and A2 respectively while the bullet head was marked AB, while the Uzi-gun was marked B1, the Riffle was marked B2 while the hand grenade was marked D3.

On 20/12/2017 around 10:00 hours **PW8 AH** informed the court to have been sent by the RCO's office Kinondoni to follow the exhibits which he brought to the Ballistic Expert on 13/12/2017. Upon arrival the witness testified to have given the specimens he

brought and two letters of which he latter handed back to Kinondoni RCO.

In cross examination through Advocate Karoli Mluge the witness tendered for evidence the sketch map of the scene of crime he testified to have drawn titled **"RAMANI YA TUKIO LA MAUAJI (Rough sketch plan) YA WAYNE DERICK YALIYOTOKEA TAREHE 16/08/2017 SAA 23:52 HOURS MASAKI DSM"** dated 17/08/2017 at 00:40 hours which was admitted for evidence as **exhibit D1**.

Before the court the witness also identified **MICHAEL DAUDI KWAVAVA** the 14th accused to be the person he was referring as a taxi driver whom he saw at the scene of crime.

PW9 AI a Police Officer informed the court that, his current duty station is Oysterbay Police Station and that he has been an Exhibit Keeper since 2017, having 5 years' experience in exhibit keeping.

This witness testified that on 17/8/2017 around 4:00 am while at work at Oysterbay Police Station, he received exhibits of which were two (2) spent cartridges from Kinondoni RCO's office for safe custody. He entered the same to the Exhibits Register by giving **Reg. No. 13/2017** and entered in Occurrence Book (O.B).

PW9 AI further testified that on 19/8/2017 around noon while at his office at Police Oysterbay, he received from the police officer a piece of metal which was believed to be a piece of bullet for safe keeping. He said that the same was marked A3 and OB/IR/6586/2017. Further, that upon receipt he entered the same to the Registration book with **Reg. No. 14/2017** and kept the same at the Exhibit room.

Again on 16/9/2017 around evening while at Oysterbay Police Station the witness testified to have received different exhibits from police officer. Those were a black bag of which in it there were other different exhibits being two (2) weapons Uzi-gun and Riffle, one hand grenade, thermos of which inside had 167 bullets. Also there were a bag printed Twiga Cement. There was also a white and red plastic bag printed **MAX** and a piece of kitenge. The witness testified to have entered all the above mentioned items in **Court Exhibit Register** and gave Reg. **No.16/2017**.

On 13/12/2017 around 10:00 hours the witness testified to the effect that he was approached by a police officer who ordered him to take some exhibits for the purpose of bringing them to Ballistic Expert for examination. Upon those instructions, he gave out from the custody the following items: Two spent cartridges, a piece/bullet head, 2 weapons - Uzi-Gun and Riffle, a hand grenade,

a thermos with 167 bullets in a socks and handkerchief. The packaging materials being bag and a piece of kitenge.

Again, on 20/12/2017 around 12:00 hours noon, the witness testified to have received the exhibits which were taken to Ballistic Expert. However, for the Bullets, instead of 167 he received 164, the shortage of three bullets was detected due to investigation and two bullet heads, meanwhile other items remained intact. All the items once again were placed for safe custody under the same reference number.

PW9 AI further informed the court that on 14/3/2022 around morning at Oysterbay Police Station, he received instructions from the State Attorney that he has to release some exhibits to the High Court for the Murder case. He mentioned the same to be: 5 spent cartridges, 3 bullet heads, two (2) guns being Uzi-gun and Riffle, one hand grenade, one thermos with 164 bullets, one used sulphate bag, a used cement bag printed Twiga Cement, the plastic bag and one black bag pack with white and read strips.

In this respect PW9 AI tendered **COURT EXHIBITS REGISTER NO. 1/2015** marked as "**VIELELEZO SILAHA**" **W. E. F. 2015** of which was admitted for evidence as **exhibit P. 18**. Further the witness was referred to **exhibits P3 - P15** (The bag with weapons and other items) and identified before the court all exhibits thereto.

Again, PW9 AI testified that on 14/5/2020 around 15:00 hours at Oysterbay Police Station he received a car **TOYOTA SIENTA** with Registration No. **T 449 DGV** where he entered the said exhibit to Court Exhibit Register for Vehicles under **Reg. No. 34/2020**. The witness informed the court that, it was the second time the said car is kept under custody as for the 1st time the same was received on 17/8/2017 and later handled to the owner. Further both entries were associated with the case **OB IR/6580/2017**.

PW10 AJ being examined in chief stated that she is a South African National and that she has been working in Tanzania since 2009 with PAMS Foundation for Anti-pouching particularly on prevention of Wildlife and Forest. In the cause of working, the witness informed the court that their Foundation is exploring for International Donor Funding for Police who are dealing with Investigation in that aspect and also supports citizens who are living in Conservation Areas by collaborating with Local Communities and Government Institutions.

PW10 AJ testified that on 16/8/2017 at 21:00 hours, she and her Co-Director **Mr. WAYNE DEREK LOTTER** were at Kilimanjaro International Airport (KIA) catching the flight from Kilimanjaro to Dar es Salaam. That before that time, they were in their office at Arusha where she sent a text message to their taxi driver **Elly** whom

they have already known him for few years and whom they have been using him to shuttle them to KIA and *vice versa* to go and collect them later. As scheduled, Elly went to pick them for the Precision Airline that was scheduled to depart at 21:50 hours. Indeed, they left with the said flight and they landed in Dar es Salaam via Julius Nyerere International Airport (JNIA) Terminal 2 at 23:00 hours.

PW10 AJ informed the court that, while they were still at Arusha, she sent a text message to another taxi driver **Michael Kwavava** to collect them upon arriving in Dar es Salaam. According to the witness, this driver was very reliable and that they have been using him for about 10 years. He was to collect them from the Airport to Baobab Village at Masaki within the City of Dar es Salaam where it was their final destination. Indeed, Michael Kwavava is said to be the one who picked them from the JNIA towards Baobab Village. The witness informed the court that Mr. Kwavava took the main road to City Center, then through the Salender Bridge, towards the Embassies and turned left to Kaole Street. However, as they reached at the 'T' junction of Haile Selassie and Kaole, there was a car from behind and very fast the same came in front of their car and blocked them. The witness identified the car to be a small vehicle, IST white in color with black roof and that the back of the car was flat.

Testifying further, **PW10 AJ** informed the court that after they have been blocked, immediately two men jumped out of that vehicle. It has been stated that one of them forced to open the car and unlocked the car from the central system. Later they opened the door on her side while continuing shouting saying "DOLLARS, DOLLARS". The witness further averred that as they were working with their computers while driven, one of the bandits opened the door and grabbed the computers and a bag from Mr. Wayne which also had a computer and a cellphone which was on her lap.

PW10 AJ testified that before they responded to their demand, the bandits fired a first shot while the driver opened the window slightly. The witness informed the court that the man who went to her window had a weapon, and when he approached at her window, he fired a second shot direct to her co-director **Wayne Derek Lotter**. The witness said that the second shot hit Wayne on his face near his chin, and that she clearly saw the shooter as he was just in front of her. **PW10 AJ** informed the court that after the second shot, she looked at Mr. Wayne and his head was lying down bleeding profusely and he was unconscious. The witness also said she used her sweater to wrap around his face to stop the bleeding and lift up his face to assist him to breath. When trying to use the same car to bring the victim to hospital, the same could not work. Instead she managed to get someone who assisted them to reach

at Sally International Hospital at Masaki. At the hospital, some devices were used to revive Mr. Wayne, but there was no sign of life, where the doctor declared him dead.

The witness further informed the court that she managed to call one of their work colleagues using the cellphone that she had hidden who shortly arrived together with police officers whom she explained to them what had happened.

The witness further averred that, the whole incident took like three minutes only and that she can could identify the person who shot Mr. Wayne as he was very close to her, less than one meter from her. Describing further on the person who shot dead Mr. Wayne, the witness informed the court that the man was of average size, African man, light skinned with very distinct feature on his face as he had a big forehead and distinct chick bones and nose. On his clothes, the witness averred that he was wearing khaki clothes. PW10 AJ declared that she was able to see all those features as the light was very bright and intense from security lights, lights from the buildings, street lights and light from their laptops before the same were grabbed. She said the light enabled her to see clearly the man who shot Mr. Wayne as he was very near to her.

The witness averred that, when that person was shouting **DOLLAR, DOLLAR**, she noted a different pronunciation from that

of normal Tanzanians she used to hear. The witness informed the court that after giving her initial description to the police of what she saw, she went to Baobab Village where she lives. PW10 AJ further informed the court that, she explained the incident to the police at the hospital, but also to the police station on the next day.

The witness further averred that, on 19/8/2017 she was asked to go to Muhimbili National Hospital to identify Mr. Wayne's body so as the Doctors can perform the post mortem. She went to mortuary section and inside the mortuary, she was able to identify the body of his co-director Mr. Wayne Derek Lotter though his body still had a lot of blood. After identification, she left the hospital.

Further, PW10 AJ testified that on 9/1/2018 in evening while at her home in Dar es Salaam, she received a phone call from police, where she was asked to go on the next day at Oysterbay Police Station for identification parade. Upon arrival at Oysterbay Police Station on the next day 10/1/2018, the identification parade was conducted and she was to identify the man who shot Mr. Wayne if he was among the people lined up. The witness further informed the court that before she confirmed to her identification, she asked the police if it was possible for the people at the parade to pronounce a word "**DOLLAR, DOLLAR**" and the reply to that effect was positive. As that was possible, the witness informed the court

that at the parade yard, they were nine (9) people all of similar body and complexion and she was asked to identify only one person. Finally, she was able to identify the last person right at the end in the 9th position to be a person she saw shooting Mr. Wayne at that fateful date. PW10 AJ stated that she was able to identify the person from his distinct features being forehead, his cheek bones, his nose, overall body shape and his skin complexion which were all exactly the same. Further was his voice when they were supposed to pronounce a word **"DOLLAH, DOLLAH"**. From all those, the witness said those features gave her complete confirmation that the person she identified was the one who shot Mr. Wayne to death. The witness further testified to have written her statement after identification before she left.

Concluding her testimony, the witness was availed with an opportunity to identify the person she identified at the Police Station whom she said she was sure that he is the one who shot Mr. Wayne and she straight identified the third accused person **NDUIMANA OGISTE @ JONAS ZEBEDAYO @ MCHUNGAJI @ NDAYISHHEMEZE ZEBEDE @ NDAISHIME ZEBEDAYO @ OMARI HASSAN** before the court to be the one. She also identified the 14th accused person **MICHAEL DAUD KWAVAVA** to be the taxi driver they had on the material day and the one they were using his services for more than 10 years.

The witness **AK** testified before the Court as **PW 11**. He stated to be a Police Officer for the past 20 years and that he is an investigator under the Cybercrime Department.

On 10/1/2018 around 10:00 hours while at the Cybercrime offices his supervisor approached him and demanded him not to leave the office for he will bring a person who was to go and attend the identification parade. After a short time his supervisor brought to him a White lady, a foreigner and that after the identification parade the witness will be brought back to him.

PW11 further informed the court that the witness was brought back to him before she was taken by another Police Officer for writing her statement regarding the identification parade exercise before she left.

In cross examination the witness testified not to have approached the area where the identification parade took place neither asked the witness any question in that respect.

PW 12 AL, testified before the Court to be a Police Officer since 2004. In the year 2018 he was working at Oysterbay Police Station. That on 10/1/2018 while in the office at Oysterbay Police Station, he was instructed by his Commander to stay with the witness who was brought for an identification parade. His main duty

was to make sure that the said witness does not get out of where they were until further instructions.

However, after a short while, he was directed to take the witness whom he remembered to be a White lady to the identification parade ground where he handed over the witness to his Commander.

During cross examination PW 12 AL stated that he didn't know where the witness came from and he also didn't know the people who were at the parade for that was not his duty. He only took the lady to his superior where the parade was. PW 12 also informed the Court he didn't sign the ID Parade proceedings and he didn't know the participants of the said parade.

PW 13 AM, testified before the Court to be a bus turn-boy working with SR Classic Coach, a bus with registration No. T 532 CAD Nissan. The said bus travels from Dar es Salaam Tanzania to Bujumbura Burundi and vice versa. He further stated that he has been working with the said company since 2010. His major duties are to keep passengers' luggage in the bus, write the Manifest of passengers, to assist passengers and their luggage, and anything that he will be directed by his employer.

PW 13 informed the court that in April 2017 he remembers to have travelled with a person with the name **Ndayishemeze**

Zebedayo from Bujumbura to Dar es Salaam whom he came to know his names through his passport. And that he remembers the said passenger out of his peculiar habits that he has no custom of boarding the bus at the bus stand from Bujumbura to Dar es Salaam and instead, he always boards the bus at Bugarama Village. Describing more on that passenger, the witness informed the court that, when they drop for health recess, he used much of his time to heavily smoke to the extent of sometimes wanting to leave him; as he was once left and he chased the bus with motorcycle to catch up. Further, on top of all, he is a very stubborn passenger.

PW 13 further testified that in April, 2017, Ndayishemeze boarded the bus at Bugarama Village at Burundi. On that day, he was travelling from Bujumbura to Dar es Salaam Tanzania where he had a small bag which he kept under his seat. Upon arrival at Dar es Salaam he dropped at Ubungo bus stand.

The witness further testified that at the beginning of August, 2017, he remembers Ndayishemeze to have boarded at Bugarama Village Bujumbura to Dar es Salaam and again this time he had a bag pack that he kept under his seat and once again he dropped off at Ubungo bus stand.

It was further averred by PW 13 that on 24/8/2017 around 5:00 a.m. while at Ubungo Dar es Salaam Tanzania they were

travelling to Burundi with SR Classic Bus. Still working as a turn-boy again the passenger with the name of Ndayishemeze Zebede had requested for a ticket from Dar es Salaam Tanzania to Bujumbura Burundi. It was also the witness's testimony that on that day, they travelled through Kobello to Kabanga (Border). As a routine, all passengers were supposed to board off the bus and proceed to the Immigration Department to have their passports stamped. However, surprisingly Ndayishemeze after dropping he did not return to the bus. Instead, he took another transport to Burundi while his ticket was from Dar es Salaam to Bujumbura. PW 13 when given a chance before the court to identify the passenger he referred as Ndayishemeze Zebedayo, he managed to identify the **3rd accused** person to be the one.

In cross examination the witness stated that he had no identity to prove he worked for SR Classic but he used temporary passports on his travels to and from Bujumbura to Tanzania. Further he does not remember if he travelled with Ndayishemeze on 16/08/2017 and that all passengers travelling were issued tickets.

PW 14 AN, informed the Court that he is a Police Officer working the Police Force since July 1991. That on 19/8/2017 around morning while at Oysterbay Police Station he was tasked by the Acting RCO to prepare a certificate to forward the same to Muhimbili

National Hospital for the purpose of performing the post mortem procedure in favor of the body of the a deceased, Wayne Derek Lotter.

It was PW 14's testimony that after preparing the said form, he in the company of the Acting RCO went together to Muhimbili National Hospital and went straight to the mortuary where they met two medical doctors and two deceased's relatives. Before the exercise, those two deceased's relatives identified the body and left. He states to have seen the identified body to be of an adult White male. He also witnessed the same to have a big wound at the lower chin on the right hand while his chest was full of blood. It is said that during the postmortem exercise, **PW 14 AN** witnessed a bullet head removed from the deceased body where he was handled the same and place it in an exhibit plastic bag and marked the same as **A3**. Further, the witness is said to have been handled with the Postmortem Report where both exhibits were placed in file No. **OB/IR/6586/2017**; of which was finally handled to Oysterbay Police Station Exhibit keeper for safe custody.

PW 14 AN also testified to the effect that on 16/9/2017 around afternoon hours, while at Oysterbay Police Station, he was instructed by the Acting RCO to write the statement of one **Rahma Almas Mwinyi @ Baby** who was arrested for murder and unlawful

possessing weapons. At the interrogation room legal requirements for interrogation were complied with and the interrogation conducted. Upon finalization he provided Rahma Almasi Mwinyi @ Baby with the statement that was a result of the interrogation whereas she read the same and was satisfied that the same was correct and signed accordingly.

It was PW 14's averment that, again on the same day at around 18:00 hours while still at Police Oysterbay Offices he was instructed by the Acting RCO to write additional statement in favor of Rahma Almasi Mwinyi's. Further PW 14 testified that in the additional statement the Accused stated how she was involved in the murder, hide the weapons and where the same were hidden.

Before the Court the witness managed to identify the accused Rahma Almas Mwinyi @ Baby whom he wrote her statement. However, when the witness wanted to tender the cautioned statement of Rahma Almasi Mwinyi @ Baby the same faced serious objection from the defense team whereas after rival arguments by the Prosecution and Defense the Court ruled out the objections and the Cautioned Statement was admitted for evidence as **exhibit P. 19**. The said witness was also refereed to **Exhibit P. 9** (bullet head marked Q3) for identification and confirmed to be the bullet head he was handed over on 19/8/2017 at Muhimbili National Hospital.

In cross examination PW 14, stated that he was not the arresting officer. And that he never interrogated the persons that Rahma mentioned in her statement.

PW 15 testified before the Court as **AO**. It was his testimony that he is the Police Officer stationed at the **COMMISSION FOR FORENSIC BUREAU** at Dar es Salaam Head Quarters. His duties are to take pictures of criminals and non-criminal for investigation, to investigate still and video pictures and to prepare investigative reports and tender the same before the court, also to take pictures to the court as evidence.

PW 15 states that on 24/4/2020 around morning hours, while at the office was summoned by his superior who was in company of a Police officer from Oysterbay Police Station and informed him that there were exhibits brought for investigation. The said exhibits were brought by a covering letter and handed over to him. The said letter had different exhibits of which were a Tanzanian Voter's Card, an Identification Card from Republic of Burundi, documents which read Passenger Info, a picture said to be of the accused which was taken at Police and a flush disk make "*Imation*" marked 'B'.

PW 15, told the Court that, the letter addressed to them required that an investigation be conducted as to whether the accused in the picture taken at the Police station appears in the

video which were in the flush. And also, the letter wanted him to see whether the footage in flush are original or not.

The witness informed the court tha, after his thorough and proficiency investigation, he finally came to the conclusion that the picture that was taken at Police, resembles and are of the same person. After the investigation the witness averred to have prepared a picture booklet and investigation report on 30/04/2020 in respect of what he investigated.

Lastly, PW 15 AO tendered the following exhibits of which were admitted for evidence:

1. **TAARIFA YA UCHUNGUZI WA PICHA** OB/IR/6586/2017 with Reg. No. FB/PH/LKB/46/2020 - DSM/KIN/CID/B.1/36/VOL.II/7 dated 30/04/2020 duly prepared by POLICE FORCE Forensic Bureau as **Exhibit P. 20;**
2. **TAARIFA YA UCHUNGUZI WA PICHA** with Reg. No. FB/PH/LAB/46A/2020 dated 30/4/2020 as **Exhibit P.21;**
3. **FLASH DISK** Marked "B" with Ref. No. PH/LAB/46/2020 as **Exhibit P.22;**
4. **A PHOTOGRAPH** Marked P5 with the image of a person as **Exhibit P. 23;**
5. (i) 2 documents named **PASSENGER INFO** marked P3 & P4,

(ii) **Tanzania Voters Identity Card** - in the name of JONAS NDAISHIME ZEBEDAYO marked P1; and

(iii) **Identity Card - Titled REPUBLIKA Y' UBURUNDI IKARATA KARANGAMUNTU**, bearing No. 0201/179.896; Collectively admitted for evidence as **Exhibit P. 24.**

In cross examination the witness confirmed that there is primary investigation before the use of forensic tools. And that he could not disclose the software used in such investigation for security purposes.

PW 16 AP, a Police Officer since 1986 testified that, in 2017 while at Ngara District Police Station was a Chief Investigator to the District (OC CID). He was instructed by the Director of Criminal Investigation (hence forth DCI) to find an accused by the name of NDUYIMANA **JONAS AUGUSTEE ZEBEDAYO @MCHUNGAJI** who was involved with Murder of a "**MZUNGU**" which occurred in Dar es Salaam. Upon receiving those instruction, the witness testified to have detected that the same person was the most wanted criminal in that area, at the boarder of Tanzania and Burundi specifically in **Ibuga, Kabanga** and **Mgunduzi** villages in **Ngara** District.

PW 16 further testified that on 30/12/2017 around afternoon hours while at Ngara Police Station; as OC-CID of Ngara he received

information from their informer that on the night of that day, 30/12/2017, the suspect they are searching for from Burundi has planned to rob at Fadhili Nuhu's Supermarket at the Bus Stand located at Kabanga Village at the boarder of Burundi/Tanzania at Tanzania's side. PW 16 AO stated to have organize his fellow officers and their informer and planned the arrest of the said suspect.

In their hunt for the suspect, they located a motor cycle with a cyclist and a passenger on it. The informer then showed the officers that the passenger to that motorcycle is the one who planned to rob at the supermarket and that he is the one they were after. By then, they were already in Tanzania side in **Nzaza Hamlet** at the Burundi / Tanzania boarder. In such a circumstance they managed to arrest the suspect who is the accused herein but the motorcyclist managed to escape and headed back to Burundi side. They searched the accused and they managed to find him with some items; the first was the Citizenship ID for Burundi which is known as "Karangamuntu" the same bares the names of Omary Hassan and had his picture. He also had another ID which was a Tanzanian Voter's ID with the names of Ndayishime Jonas Zebedayo duly issued at Mugabe Primary School at Dar es Salaam. He also had two mobile phone cards (chips) one for Halotel and the other one for Tigo. The Halotel line had no serial number as the

same was half cut. It was then marked "K". The Tigo line had serial number **8925502041608888217**.

PW 16 also told the Court that after the search they then arrested the accused and introduced themselves to the accused to be police officers and wanted the accused to introduce himself, where he stated to be Zebedayo Augustee. The items found in his possession were seized by a Seizure Certificate whereas the police signed, the accused also signed and further the other police officer whom they were together in that operation, also signed.

PW 16 contended that by the time the above was done, it was about 18:00 hours he then informed the DCI the success of arresting the accused and also shared the same information with the Kagera RCO. It was after the arrest and search he then took the accused to Kabanga Police Station. Upon arrival, the accused's statement was written. PW 16 identified the 3rd accused to be Zebedayo whom he arrested and seized his identity cards.

It was also testimony of PW 16 that on 15/8/2018 around afternoon hours he went to Kabanga Police Station. Being there he was informed by the OC- CID from Biharamulo that they have arrested **Habonimana Auyuni Nyandwi @ Augistee** a Burundi National. There was a need to write that accused statement but the exercise was said not to have been easy as he was not conversant

with Kiswahili but rather with Kirundi. Thereafter, the witness took initiative to secure an interpreter who will assist to translate Kiswahili to Kirundi and *vice-versa*. After that, the interpreter statement is said to have been written to that effect. Then the accused was transported to Dar es Salaam on 17/8/2018.

PW 16 identified Habonimana Augustin the 13th accused before the court to be the accused he was dealing with. He also managed to identify a Halotel line which he marked "K" and a Tigo line with Serial No. 8925502041608888217. When he was referred to the Seizure Certificate, he identified the same he prepared since it had his own hand writing and signature.

The witness then prayed all the items he mentioned to be admitted as evidence since they were seized from the 3rd accused, the prayer which was granted. Search and Certificate of Seizure duly prepared by Police - Ngara dated 30/12/2017, for the search conducted in the body of one Jonas s/o Ndaishime Zebedayo @ Omari s/o Hasan @Mchungaji was admitted for evidence as **exhibit P. 25**. Further two sim cards Halotel marked "K" and the other one of Tigo with serial No. 8925502041608888217 were collectively admitted for evidence as **exhibit P. 26**.

PW17 - AQ a Police Officer with the rank of Assistant Commissioner of Police informed the court that in 2017, he was

working under the DCI's office at Police Headquarters investigating criminal offences. That on 17/8/2017 he was called by the DCI in his office where he was informed of the Murder which involved a foreign citizen that had occurred in Kinondoni. He was instructed to start investigation with immediate effect. For more information he had to go to Kinondoni RCO's office where he was told how the said murder occurred and investigation plan which had three teams. The first team being the Forensic which deals with the scene of crime; the 2nd team dealt with Cyber/Electronics investigation; whereas the 3rd team was intelligence under cover which he was allocated after he knew that the deceased destined at Julius Nyerere International Airport (JNIA) in Dar es Salaam by air from Arusha.

The witness further informed the court that, he straight went to JNIA's control room and took CCTV coverage of the date that the murder had occurred for further investigation as the deceased passed through the said airport. He went on to testify that, at the Airport an expert on Information Technology managed to enter into the server which is under the custody of Airport's Authority. He took all the events for the specific date and time, from when the deceased landed at JNIA and transfer the events into his flash disk IMMUTION GB 4; whose information was of 16/8/2017 between 22:58 - 23:30 hours. The same was placed and marked **Case No. RB/IR/6586/2017**. The said transferred information are said to

be video in 15 clips. The witness informed the court to have obtained authority to perform his duties under intelligence under cover through various laws particularly via **section 40 A of the Law of Evidence, Cap. 6 [R. E. 2019]**.

The witness further averred to have sealed the information flash to Kinondoni Police Region and handed the same to RCO for his further investigation and steps.

When **PW17 - AQ** referred to **exhibit P22** for identification, he identified the same to be the flash that he prepared and handed the same to Kinondoni RCO which has a seal with his signature, RB No. **RB/IR/6586/2017** and marked "B" whereas the witness testified to have 15 clips which involved the arrival place, waiting place, cars which were moving in and outside the Airport, people and buildings.

PW18 AR an Immigration Officer since 1999 with 23 years' experience he testified that, in the year 2020 he was an Immigration Officer incharge at Kabanga, in the boarder of Tanzania and Burundi at Kagera Region. His main duties encompass dealing with all the systems of immigration as well as investigation matters at the border.

He went on to testify that, on 3/2/2020 while at the station at Kabanga (One Stop Centre) Kagera Region at Ngara District, at the

Border of Burundi and Tanzania, he was informed by the Assistant Regional Immigration Officer that there was a Task Force team from Dar es Salaam that needed some information from their system. Then it was around 10:00 hours he received the said team of 5 persons. Upon being shown their identity cards, the team informed him the reason for their visit and that they wanted information of a certain person on his visits to Tanzania and from Burundi and vice versa. Apart from that they handed him two identity cards. The 1st one is a Tanzanian voter's card and the 2nd one is the National ID for Burundi, (Karangamuntu) of the said person. They gave him those IDs so that he can see the trend of that person's entrance in and out of the Country. The team needed information on his passport number, issued date, date of birth and his names. According to PW18, there were two major ways to get such information. The 1st one is to scan the passport where all the information is obtained; the 2nd one is by entering such information to the system, save the same and print. Those IDs had information such as the names, picture of the person and the date and year of birth. The voter's ID card had the names of **JONAS NDAISHIME ZEBEDAYO** while the Burundi National ID had the names of **OMAR HASSAN**. He testified that when he entered the details of those IDs and the same did not show any record thereto.

It was PW 18's further testimony that, he then entered date and year of birth and names appearing in said IDs being JONAS NDAYISHIME ZEBEDAYO from the voter's ID and also the name of OMAR HASSAN which is from the Burundi National ID. He also entered date and year of the person being 1980 which was in the said ID. From that information, the system rejected the existence of those particulars. After such rejection, he asked the team the dates the said accused crossed the border, and the witness was informed the same to be at the **beginning of August; 2017**. PW 18 used the option of search by dates of all people from 1st August 2017 onwards in that system and by observing the pictures of those who appeared comparing to that in the identity cards provided to him from one person to another. When he reached on 5/3/2017, he managed to see the picture resembling with the picture in the said ID's and the year. He testifies to have also detected the shirt (a draft one) which was at the system and also at the pictures in the ID's.

PW 18 told the Court that those pictures in the system had the name **NDAYISHIMEZE ZEBEDE**, a male by gender, born on 11/5/1980 and a businessman. Moreover, the information showed that he is the citizen of Burundi using Ordinary passport and he passed Kabanga going to Dar es Salaam at Kariakoo for visit and

had **returned to Burundi on 25/8/2017**. He was cleared at the boarder at 10:36 hours in the morning.

It was the testimony of PW 18 AR that, the system further revealed that the latter also passed at the Border on 31/10/2014. In that day he used the names of NDAYISHIMEZE ZEBEDE, born 11/5/1980 a male and citizen of Burundi. He used a temporary passport of one year period, and that he identified his activity as Pastor (Mchungaji) and that he was heading to Mbeya for holiday. After having seen that information in passenger information, he states to have printed the same from computer and the server. Thereafter, he signed the same and testified that they are originating from their system and he was working side by side with the station Information Technology Officer who also signed on the same. The said printed information were labeled as "PASSANGER'S INFORMATION" which reveals passenger's movement to and from the Border.

PW 18 AR also stated that by that time they were using a computer and server which was at Kabanga and the other one was at Headquarters at Dar es Salaam. That information could be obtained in those two stations for the system of that time it was only accessible in those two stations. However, the said information could only be accessible to a person with a password to the said system. The witness was referred to the **exhibit P24** and

confirmed to be the documents he worked with during the time of investigation.

PW 19 a Police Officer since 1999 who testified as **AS** informed the court that, he has been in the Task Force dealing with Anti-Poaching Tanzania Mainland and Zanzibar and in the National Task Force dealing with Natural Recourses whereby the headquarters was at Mpingo House at Dar es Salaam, Ministry of Natural Recourses. He went on to state that, he remembers when he was at Kabanga in Ngara District at Kagera Region, on 30/12/2017 he was instructed by DCI to see Ngara OC-CID who was at Kabanga. He straight went to see the OC-CID where he was informed that there was an accused person arrested for Armed Robbery and Murder therefore he was required to take his cautioned statement and transport the said accused to Dar es Salaam who at that time was at OCS's office at Kabanga.

PW 19 testified that the said accused was known as **NDUYIMANA AUGUSTEE JONAS ZEBEDAYO @ MCHUNGAJI**. After the introduction and after the accused was cautioned and given his rights towards interrogation, he consented to write his statement without any other person being around. In the cause of writing the accused's statement, PW 19 told the Court that the latter confessed to be involved in the murder of "Mzungu" which occurred in Dar es Salaam on 16/8/2017. Upon completion of writing the

accused's statement, PW 19 averred to have given him his 18 pages statement to read and see if the contents are what he stated before him. After reading and being satisfied with the cautioned statement, the accused wrote his affirmation signed and placed his thumb print on each page. The witness also testified to have signed the same.

On the next day, which was on 31/12/2017, during morning hours, the witness asserted to have been handed over the accused and all the exhibits in relation to the accused which included his identity cards, the telephone sim cards and a certificate of seizure. They travelled from Kabanga and arrived in Dar es Salaam on 2/1/2018. At Dar es Salaam, PW 19 AS averred to have handed over the accused to CRO and the exhibits were handed over to Kinondoni RCO. The witness was referred to **Exhibits P24, P25 and P26** for identification of which he admitted to be the ones he was handed over at Kabanga on the day they travelled to Dar es salaam.

When he was referred to the accused's cautioned statement for identification, PW 19 confirmed to be the one that he had written and handed over to the Kinondoni RCO after arriving in Dar es Salaam from Kabanga. The said statement was strongly objected by the Defence and a trial within trial was conducted. The Court in its ruling overruled the objections and admitted the cautioned statement in the name of **NDUIMANA OGISTEE JONAS**

ZEBEDAYO @ MCHUNGAJI duly recorded on 30/12/2017 as **exhibit P27**.

PW19 AS, informed the Court that after reaching Dar es Salaam, the accused named his associates in planning the execution of the deceased. The persons he mentioned were **Godfrey Peter Salamba, Leonard Philipo Makoi, Chambie Juma Ally, Ismail Machips, Allan Mafue and Daudi Kwavava** of which were all later arrested at different times.

Further, PW 19 AS testified that on 19/1/2018 while at Oysterbay Police Station the accused NDUYIMANA AUGUSTEE @ Mchungaji volunteered to state to the investigation team what he had disclosed to him while at Ngara so as to assist the investigation. Thereafter, the DCI sent a police from his office who was assigned to record what the accused was to reveal. On his arrival, the accused revealed what he wanted and he was recorded. Before the recording begun the accused was duly informed that he is going to be recorded and he consented to the same. Further, the witness informed the Court that another accused Godfrey Peter Salamba was also recorded as he revealed information in relation to the same incident as it was with the latter.

The witness testified further that on 3/2/2020 around morning hours he was at the Immigration Offices at Kabanga, Ngara. He had

gone to find out whether the accused had crossed the border to Tanzania around the dates of the commission of the Murder. He revealed that the Immigration systems exposed that the accused with the name of **NDUIMANA OGISTEE JONAS ZEBEDAYO @ MCHUNGAJI** had entered Tanzania on the early dates of August and returned to Burundi towards the end of August 2017.

It was also testified by PW 19 that another suspect one Michael Kwavava was arrested on the 08/05/2020 after he was mentioned in the cautioned statement of Nduimana Jonas Zebedayo. The witness testified to have called Michael Kwavava at the Oysterbay Police Station and on his arrival he arrested the same. That later in the cause of investigation, his vehicle with registration number T 499 DGV that was carrying the deceased on the day of the incident, was seized on 13/05/2020 where the same was brought to the station by his relative. A seizure report certificate to that effect was issued and the same placed with the exhibit keeper at Oysterbay Police Station. All these items mentioned were identified by the witness to be the ones he has once dealt with. The said car was admitted in Court as **exhibit P31** while the seizure report was admitted as **exhibit P32**.

PW 20 AT a Police Officer since 2000 and working as an Exhibit Keeper since 2011, testified to the effect that on 2/9/2017 around

16:00 hours while at his work station at Kijitonyama Police Station, he was called by the OC-CID incharge by then and handed him two vehicles and their registration cards as exhibits for the Murder case with number OB/IR/6586/2017. The witness mentioned those cars to be Toyota IST white in color having a black roof with registration number T 372 CMY and its registration card while the other one was Toyota Mark X silver in color with registration number T512 CVT. The witness states to have registered the same in the Court Exhibit Register with entry No. 55 of 2017.

Further, the witness testified that on 18/9/2017, while at Kijitonyama Police Station he was asked by incharge CID to release one of the exhibits he received earlier being Toyota Mark X. The said car was handed to the owner named Almasi Kassim.

This witness successfully tendered for evidence the remained vehicle with Registration **No. T 372 CMY, Toyota IST** white in color with a black roof which was admitted for evidence as **exhibit P 28**; and Motor Vehicle registration card **No. 7197940** in favor of the same vehicle bearing the name of **Khalid Mwinyi Almasi** which was admitted for evidence as **Exhibit P. 29**. He also tendered for evidence **Court Exhibit Register - Titled 02/2015 - KJN 2019** which was admitted for evidence as **Exhibit P. 30**.

PW 21 testified as **AU**, a Superintendent of Police from 2016-2019, stationed at Biharamulo stated that in 2017 August he

received the names of criminals who were supposed to be arrested. Those instructions were for two persons namely; **ZEBEDAYO and HABONIMANA AUGUSTIN NYANDWI**. He was asked to cross check whether those names appear in his list of the wanted criminals. After checking the list he had, he confirmed that those names appears in his list. In searching those people he was supported with the OC - CID Ngara, Incharge Anti Robbery Kigoma, Geita and Biharamulo Anti Robbery Squad Police Officer. They normally used informers to tress them. For Habonimana he also had his picture apart of having his name.

On 15/8/2018 around morning hours, he got information that Habonimana was at Kobelo Centre at Burundi where he was seen. The informer asked to meet him at Ngara Town. He moved to Ngara Town and in the afternoon he received information that Habonimana moved from Kobelo to Kabanga Centre. Around 13:00 hours he managed to arrest the accused Habonimana who had boarded in Burundi motorcycle where they stopped it and arrested him.

PW 21 AU testified further that he managed to identify him through the clothes as he was tipped by their informer. After arrest, he inspected him where he found the Burundi ID with the name of **HABONIMANA AUGUSTI NYANDWI**, of which had his picture and number. After looking his at his ID and being satisfied that it was

his picture, a seizure certificate was prepared and signed by the police officers and himself. Thereafter, he brought the accused to Kabanga Police Station and handed him over to OCD Kabanga. On 17/8/2018 he received instructions from OC - CID to transport the accused from Kabanga to Dar es Salaam via Dodoma and they arrived Dar es Salaam on 18/8/2018. The accused was brought to Mbweni Police Station while the exhibit was handed to OCD Kinondoni.

PW21 identified the 13th accused person to be the one he arrested and brought him to Dar es Salaam. When he was referred to the documents for identification, PW21 identified the ID with the accused's name and picture bearing the names of **HABONIMANA AUGUSTIN NYANDWI** and the seizure which were admitted in court collectively as **exhibit P33**.

PW22 AV a peasant and businessman conducting his businesses at Kabanga and Rusumo at Ngara District in Kagera Region for 18 years, testified that on 15/8/2018 when he was at Kabanga around 14:15 hours while going to his businesses, he received a call from Ngara OC-CID and instructed him to go at Kabanga Police Station as he was in need of an interpreter of Kiswahili to Kirundi and *vice versa*. Upon being asked, the witness confirmed that he can do the work as he is conversant with those two languages.

The witness informed the court that before he started the work, he introduced himself to the person who was with the police and the same introduced himself as **Habonimana Augustin Nyandwi@ Agustee** and that he is Rundi from Burundi. The witness also averred that before the statement was taken, the accused was brought to attention that he is charged with Murder. From there, he proceed to translate the police's questions to the person whom he was interrogating up to the end where the said statement was read over to the accused whom he and the police signed. The witness further testified to have signed the said document.

When asked as when he last saw Habonimana, he said that was in 2018 at Kibanga Police Station. The witness further identified the 13th accused person in court to be Habonimana and the person he translated to when he was interrogated by police. The witness further identified the 13th accused person's cautioned statement which was admitted as **ID 1**.

The evidence of **PW 23 AW**, a Police Officer currently working with the DCI's office at Police Force Headquarters in Dar es Salaam, was that, in 2017 apart from the duties he had, he was also assigned in the Special Task Force dealing with Anti-poaching in the Western Regions of Tanzania being Kagera, Kigoma and Katavi. That on 15/8/2018 around 14:00 hours he was at Kabanga, Ngara

District in Kagera Region making follow up of poaching and poachers information. Around 14:00 hours he was called by his station Incharge who instructed him to go to Kabanga Police Station. The OC-CID told him that there is an accused who has been arrested, so he has to take his cautioned statement. Thereafter the said accused was handed to him.

The accused introduced himself as HABONIMANA AUGUSTIN NYANDWI @ AUGUSTEE. During interrogation PW23 came to know that the accused can hear Kiswahili but he cannot speak frequently. He decided to inform the OC-CID about it and he responded by looking for an interpreter. Thereafter, the accused agreed to continue with interpretation hence the interpreter was fully engaged. Upon completion of cautioned statement writing, the accused signed by writing and affixing his finger thumb. The interpreter also signed by writing. The witness informed the court that in general, the accused confessed to have been involved in the killing.

PW23 identified the 13th accused person before the court to be the accused he wrote his statement. He also identified the statement he wrote and upon admission prayer, the same was admitted as **exhibit P34** respectively after a trial within trial.

PW24 AX informed the court that he is a Police Officer working with the Police Force since 2006. The witness further

asserted that in 2020 he was working with RCO's Office in Kinondoni. On 8/5/2020 at noon while at Oysterbay Police Station, he was instructed to write cautioned statement of a person who was at his office accused for the offence of Murder of a Whiteman namely Wayne Derek Lotter which took place in 16/8/2017. The accused introduced himself as **MICHAEL DAUDI KWAVAVA**, a taxi driver, Hehe by tribe and a resident of Kimara Bonyokwa.

The witness stated that, during interrogation, the accused confessed to have been involved in the plan to execute Mr. Wayne Derek Lotter and the entire plan in that respect. The witness informed the court to have returned the accused cautioned statement after they have both signed the same.

The witness managed to identify the 14th accused person before the court to be the person he wrote his cautioned statement and referred him as Michael Daudi Kwavava.

When the accused's cautioned statement was prayed to be tendered for evidence, Mr. Majura Magafu the learned Counsel who was representing the 14th accused person objected by raising several points. Trial within trial was conducted in that respect whereby upon ruling, the points of objection were overruled and the cautioned statement of **Michael s/o Daudi Kwavava** was admitted for evidence as **exhibit P35**.

Another prosecution witness was **AY**, a Police Officer stationed at Oysterbay Police Station who testified as **PW25**. He stated that he worked with Police Force since 1988. On 18/1/2018 around 22:00 - 23:00 hours he was called by the RCO of Kinondoni. Being there he was given one accused person who was arrested for Murder. The accused introduced himself as **GODFREY PETER SALAMBA**, a resident of Msisiri at Kinondoni. Briefly, the witness informed the court that the accused admitted to participate in Murder of Derek Lotter on 16/8/2017. He also confessed to participate in the plan of that Murder. After he finished writing the accused's cautioned statement, he signed in every page confirming that all the contents were correct.

When the witness was availed with an opportunity to identify the accused at the dock, he identified the 4th accused person to be the one he interrogated on that particular date. When he was referred to the said cautioned statement, he also identified it and prayed to tender the same as exhibit. The court admitted it as **exhibit P36** as the raised objection was overruled after conducting trial within trial.

When cross examined PW25 AY informed the court that Karama, Makoi, Mchina from Arusha Arusha, Machips, were the sponsors of the Murder. Further the witness averred that the

accused Godfrey Peter Salamba confessed to have committed the Murder in collaboration with others.

PW 26 - AZ stated that, he is a Police Officer working as an Investigator with Police Force for 19 years. The witness informed the court that, in performing his investigative works, particularly in recording and collecting evidence, he uses among other items, cameras, pens, buttons, etc.

The witness averred that in 2018 he was reporting to Director of Criminal Investigation (DCI); and that on 19/1/2018 during morning hours while at Dar es salaam Investigation Headquarters, he was instructed by the DCI to go to Oysterbay Police Station to record accused persons who are about to confess on an offence that had occurred. From there the witness said to have prepared his Camera make JDC-GZ HD 500 BU. Later he contacted the Kinondoni RCO who informed him that the said work will commence from 11:30 - 12:00 hours. He said to have reached there at 10:45 hours and reported to RCO who handed him to interrogators team who were expecting him. It is after he has introduced himself, and obtained some instructions, he started recording the persons who were interrogated by the team. The witness testified to have recorded three persons namely: Zebedayo, Godfrey Salamba and the lady who he didn't know her name who were all interrogated in Kiswahili.

The witness testified that the entire exercise took about 10 - 15 minutes and that the main purpose of recording interrogation was to strengthen investigation which was going on. In court, the witness was able to identify the 3rd accused Zebedayo and the 4th accused Godfrey Salamba whom he both recorded on the day he went to Oysterbay Police Station. .

PW 26 AZ asserted that, after he had completed the recording, he informed the RCO and later took the camera and kept it in the plastic bag, sealed and labeled it with No. OB/IR/6586/2017 and handed it to RCO Kinondoni. Before the court the witness also identified the camera type JVC GZ - HD 500 BU with a seal dated 19th January 2018 OB/IR/6586/2017 of which was admitted for evidence as **exhibit P 37** without any objection from the Defense team. The record was played and the 3rd and 4th accused persons were seen confessing to the commission of the crime they are charged with.

The next witness was **PW 27 BA**, he testified to be a Police Officer since 2006 working with the Directorate of Criminal Investigation. In 2018 he was working with Chang'ombe Police Station. It was his testimony that on 20/1/2018 around 23:00 hours he was at Kilimanjaro International Airport, Kilimanjaro Region working as usual. At around 00:00 hours he was called by one of

his supervisors, and directed to write a cautioned statement of an accused named **LEONARD PHILIPO MAKOI**, a resident of Sakina Arusha. The witness went on to tell the Court that he warned the accused for the offence of murder and also informed him all his rights.

Then from there the accused was interrogated and a cautioned statement written and signed by both the witness and the accused. In the statement, the witness averred that the accused Leonard Philipo Makoi confessed to have been involved in the murder plan in collaboration with other persons.

PW 27 further testified that on 24/1/2018 while at Arusha Central Police, he was again assigned to write a cautioned statement of another accused person named **CHAMBIE JUMA ALLY**, a resident of KIA Boma in respect of the offence of Murder.

It was PW 27's testimony that he successfully wrote the said accused's cautioned statement and finally he handed the cautioned statement and the accused to his superiors. Being availed the chance PW 27 identified **Leonard Philipo Makoi** who was 8th accused and **Chambie Juma Ally** the 5th accused. PW 27 was also referred to the two statements he claimed to have written and identified them to be the statements he wrote and he prayed the same to be admitted for evidence. The prayer was objected by part

of the Defense team. The Court then held a trial within trial where the objections were overruled and the cautioned statement in respect of Leonard s/o Philipo Makoi was admitted for evidence as **exhibit P38** and a cautioned statement of the accused **Chambie s/o Juma Ally** was admitted as **exhibit P.39**.

PW28 - BB affirmed and stated that he is a businessman selling fruits at different parts of Dar es Salaam. He testified that on 10/1/2018 around 10:00 hours he was remanded at Oysterbay Police Station alleged with theft. He was informed by the police officer that he will be needed to participate in identification parade and that he will be with another eight (8) people. Before the parade, the witness testified that there was one of the persons who was also to be involved in the exercise who asked him to exchange their clothes, particularly the t-shirts. The witness said that person's t-shirt was green with long sleeves such as truck suit. After the witness had agreed to his request, despite the fact that he didn't know what was the purpose of the request, they exchanged and attended the parade where he stood at the 7th position while the person whom they exchanged clothes, stood at the 9th position from the right side.

PW28 - BB further testified that all the persons at the parade had similar features in shape, complexion and height. From there,

the witness informed the court that while at parade, the police officer went to the parade with a white lady and told them that the lady will pass through them so that she can identify the person who committed the crime. From there it is further testified that the said lady went straight and touched on the shoulder the person at the 9th position whom he had exchanged clothes with. From there, it is attested that the witness who went for identification had a short conversation with the police who instructed each of them to pronounce the word "**DOLLAR, DOLLAR**". They complied with the instructions and again the same witness (white woman) went and touched for a second time the same person she touched earlier. The witness states that after the said exercise, a police officer recorded his statement and returned to lockup.

PW28 - BB confessed that he met the person they exchanged clothes for the first time on that particular day and that if given an opportunity to identify him before the court, he cannot remember him as it is a long time that had passed. When asked which language they were communicating with the person they exchanged clothes, the witness said that they communicated in Kiswahili.

On his part **PW 29 BC** testified that, he is a Police Officer stationed at Oysterbay Police Station and he is among the Task

Force for Crime Prevention within Ilala, Kinondoni and Temeke Police Regions. That on 17/8/2017 the Task Force Incharge informed them that, there was a Murder of a Whiteman named Wayne Derek Lotter at Masaki which occurred at the night of 16/8/2017. Therefore, they were given a task of searching for those who were involved to the said Murder. The witness testified that, in their investigation they managed to arrest some culprits one being Godfrey Salamba who was arrested on 18/1/2018 at Tabata Garage at his girlfriend by the name of Bite. They also managed to arrest Ismail Issa, Allan Elikana, Ayoub Selemani and Abuu Omary Mkingie. Further that the accused by the name of Ayoub Selemani is said to have been arrested on 10/5/2018 at 20:00 hours around Temeke Hospital area. When he was availed with an opportunity to identify the persons he arrested, PW29 BC identified Godfrey Peter Salamba, Ismail Issa, Allan Elikana, Ayoub Selemani and Abuu Mkingie.

Another witness was **PW30 BD** who told the Court that he is a Police Officer since 2001 working with Directorate of Criminal Investigation. In 2018, his work station was at Police Chang'ombe. That on 19/6/2018 around afternoon while at work, his superior handed him over an accused to interrogate and write his cautioned statement. He also informed him that the said accused was arrested

that morning. PW 30 stated that the accused was Omary Abuu Mkingie. After he wrote his statement, the same was duly signed.

In cause of testifying, PW 30 identified Omary Abuu Mkingie to be the 12th accused person as well as his cautioned statement which was not objected and admitted as **exhibit P. 40**.

PW31 - BE affirmed and testified to be the Police Officer working with Kijitonyama Police Station in Dar es Salaam. This witness informed the court that on 10/5/2018 around 11:00 hours, he was directed by OC-CID of Kijitonyama by then to interrogate and record cautioned statement of the accused **AYOUB SELEMANI KIHOLI** who was at Police Station. The same was charged with the offence of Murder. After having cautioned him and provide with his rights, he proceeded to interrogate and record his statement. Finally, the witness asserted to have read the statement to the accused and signed by the accused and himself.

Talking about the accused's cautioned statement, the witness briefly stated that, the accused in his statement admitted to know the incident and his participation and the people whom he cooperated with. The witness identified the said accused Ayoub Selemani Kiholi, and successfully tendered for evidence his cautioned statement which was admitted for evidence as **exhibit P41**.

PW 32- BF a Police Officer since 1995 who was the last prosecution witness testified to the effect that, in 2017 he was a Police Inspector stationed at Kijitonyama Police Station - Criminal Investigation Department. He was also the Incharge of the Special Task Force to control crimes at Kinondoni Police Region under Kinondoni RCO. On 17/8/2017 in the morning he got information that on 16/8/2017 at Kaole and Haile Selassie Road at Masaki, around 23:45 hours, one person a foreign citizen with the name of Wayne Dereck Lotter, while he was in a car- taxi - Toyota Sienta with Registration No. T. 499 DGB registered at Ilala, was killed by being shot and robbed by unknown people believed to be robbers who were using a car IST white in color with black roof. They reported to the RCO - Dar es Salaam who coordinated Special Tasks involved all three Dar es salaam Police Regions to work together to investigate the crime.

The witness averred that. the Special Task collected evidence from the crime scene and other places using intelligence information, people who were at the scene of crime and from CCTV footages of the different places relevant to the case at hand. On 2/9/2017 in the morning while he was at Kijitonyama Police Station, they got information from Police Force informer that, a car used by the robbers/killers in the event of Masaki on 16/8/2017 was Toyota IST white with black roof owned by a person known as KHALID

ALMAS a resident of Mikocheni B. Having that information, he took a team and the said informer to Mikocheni B where the informer showed them a house of the alleged owner - KHALID ALMAS. Inside the premises, they saw two cars. One TOYOTA IST White in color with black roof and the same had registration Number T. 372 CMY. The second car was Toyota Mark X- Silver with Registration Number T 512 CVT. After introducing themselves and the reason of their visit, they proceeded to arrest three persons who were in the premises. Those persons introduced themselves by the names of; Khalid Almas Mwinyi the resident of that house, Almas Kassim Rajab a visitor to Almas Mwinyi and Cecilia Luambano. When asked about the ownership of the two cars, Khalid Almas Mwinyi informed the team that he owns the Toyota IST used by his brother Fahami Haji Karama, a Temeke resident and rarely used by him. The other car, a Toyota Mark X was said to be owned by Almas Kassim Rajab. The witness further informed the court that the team also searched the entire house and its premises in the company of the Local Government Leader (Mjumbe). They further took inventory of items that they collected for further investigation, and signed the Seizure form which was signed by all those who witnessed the search. Thereafter they took all the items he listed together with the people they have arrested to Kijitonyama Police Station.

PW 32- BF also informed the court that, at the Police Station he handed all the items he collected from the suspect's premises to Exhibit Keeper while the accused Khalid Almas Mwinyi and 2 others were handed over for interrogation. Later on, he directed the release of all other items related to this case which were in custody serve for the car T. 372 CMY TOYOTA IST white in color with black roof.

The witness went on to testify that, on 10/1/2018 around 9:30 am, he was at work at Police Oysterbay. He was instructed by his supervisor RCO Kinondoni to conduct identification parade of the person who was arrested for alleged Murder in this case by the name of NDUIMANA OGISTEE @ JONAS ZEBEDAYO @ MCHUNGAJI who was at Oysterbay Police lockup. ID parade was prepared and commenced whereby he prepared nine (9) participants to the Parade; including the accused NDUIMANA basing on the same complexion; height, age outlook and body size. The accused is said to have chosen the 9th/last position on the left. Also, he prayed to exchange t-shirts with the person who stood at the 7th position. The witness was brought to the ID parade to recognize the person who was involved in Murder. At the 1st time, the witness was to pass for identification and she also had to repeat on the second time where each of the accused was supposed to pronounce a word "**DOLLAH, DOLLAH**". From there, the witness passed and touched Zebedayo

@ Mchungaji on the shoulder and who was also identified by the witness after he pronounced "**DOLLAH, DOLLAH**" to be the one who killed the deceased Wayne Derek Lotter on 16/8/2017.

When the witness was given a chance to identify the accused before the court, PW32-BF identified NDUIMANA OGISTEE @ JONAS ZEBEDAYO @ MCHUNGAJI the 3rd accused person to be the one identified during the ID Parade. PW 32-BF prayed to tender the **Record of Search** and **Hati ya Kuchukuliwa Mali** duly prepared by Tanzania Police Force in respect of case file No. OB/IR/6586/2017 both dated 2/9/2017 which were collectively admitted for evidence as **exhibit P 42**. Further, Identification Parade Register PF.186 for the Parade conducted at Oysterbay Police Station on 10/11/2018 for the accused one NDUIMANA OGISTEE JONAS ZEBEDAYO @ Mchungaji was admitted for evidence as **exhibit P43**. The witness was also availed with an opportunity to identify **exhibit P 29 the Toyota IST** which was within the court's premises. He managed to identify the same as the Toyota IST with registration No. T 372 CMY that being the car he took for investigation purposes at 1st accused's residence at Mikocheni B.

Cross examined PW 32 - BF stated that the one who was identified by the witness at the ID parade was a Burundi Citizen.

That was the end of the Prosecution case where upon this court's finding that the **2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 12th, 13th and 14th** accused persons have the case to answer, all the above mentioned accuseds were availed with an opportunity to defend themselves.

The first accused to defend herself was the 2nd accused **RAHMA ALMAS IDDI MWINYI @ BABY**, who affirmed and testified as **DW1**. This witness informed the court that, on 16/09/2017 she was arrested by police while she was in her room at Kasoro Guest House, Vingunguti area-Dar es Salaam. They took her to Kisutu-Ngazija graveyard where they found other police who were not in uniform. Mzee Maganga who was the caretaker of the graveyard was also around being under arrest. The Policeman with the name of Fulsaba told her to act according to their instructions and do what they will tell her while taking pictures. They later took Maganga to the end of graveyard and ordered him to dig at a particular spot. DW1 went on to state that, the bag which was tendered in court as exhibit was lifted from the ground and the one who showed them was Maganga who had it. The witness denied the possession of the said bag as the same was under the custody of Mzee Maganga.

The testimony that she was the one who had the black bag which was brought before the court was not in her favor as the same came from Maganga. DW1 testified further that on 02/09/2017 she was taken to Mbweni Police station and then to Oysterbay Police where she was joined with other four men. There she met Afande Fulsaba who had some papers in his hand and wanted her to sign the same. The witness asserted that, the latter told her if she denies to sign, they will do what they did to her brother Fahami. Further, she was beaten and threatened to take off her clothes in front of her son Almas. Out of those threats and torture, the witness said to have decided to sign those papers. DW1 strongly disputed to have signed any cautioned statement nor supplementary statement. She went on to state that due to police beatings, her leg was affected and she became weak and sick. She was treated at Amana and referred to Muhimbili National Hospital. Different medical documents were tendered and admitted for evidence as Exhibit D2.

According to the claims that she was engaged in the Murder of Mr. Wayne Derek Lotter she denied to have any knowledge of about the plan to Murder, neither be involved in the Murder. On Conspiracy to kill the deceased, the witness denied to have conspired with anyone in that respect.

In cross examination, DW1 denied to know her brother's friends and that she met the 3rd accused for the first time on 11/1/2018 at Oysterbay Police Station and later in court; while she met the 13th accused when they were joined in the case. DW1 also denied that she conspired with Godfrey Peter Salamba in committing crime and she never knew him before until they met before the court. She also denied that she wrote a cautioned statement.

When referred to exhibit P19 (DW1's cautioned statement) she responded that she was warned for the offence of Murder and being in possession of firearms illegally and she has never been warned about the Conspiracy charge. She denied to lead the Police to Ngazija graveyard as they are the ones who took her there and introduced her to Mzee Maganga for the 1st time. Further, the place she showed is where she buried her brother's leg after being asked by Revo who was amongst the Police officers. Moreover, she saw the weapon (exhibit P3), kitenge (exhibit P15) and other items from the bag for the first time at Ngazija graveyard. As to what she was doing at Kasoro guest house, she stated that, she was waiting for her boyfriend who was coming from Tanga and that she did not hide herself as she wanted privacy. When she was asked about the year she was born she responded that it was in **1981**. When referred to **exhibit D2** (a registration card from Muhimbili National

Hospital), she stated that the card indicated that she was born on **06/11/1978**.

The evidence of **DW2 NDUYIMANA BAYUBAHE VICTORY**, the 3rd accused herein, informed the court that on 18/12/2017 at Burundi - Rumonge he was not arrest but was told by Rwandan Police to get into a car, where upon entering the car the same was driven to Tanzania. That on 23/2/2018 he was informed that he was accused of Murder and he was brought to Kisutu RM's Court. When he was referred to exhibit P 27, he responded that, he don't know the document and he didn't write any cautioned statement as the admitted exhibit which was termed as his cautioned statement before the court, does not bear his signature.

DW2 testified further that, he has never conspired with anyone to commit the offence of murder nor he never knew before Karama, Baby and Salamba as he came to know them before the court. He denied to undergone any military training. He denied the fact that he was sent **3 Million Tanzania Shillings** to buy a weapon. He further denied that he was at the scene of crime neither killed anyone.

While cross examined, DW2 stated that it was on 24/12/2017 when he knew that he was accused of murder. He denied to know the 13th accused nor to communicate with the 6th accused. When referred to Exhibit P23 he recognized to be his photograph. DW2

insisted that he didn't know any accused before he was arrested. When he was referred ID from Burundi and required to read it, DW2 admitted the same to be his document though he denied to be a Pastor as it appears in the ID. Further he agreed that the documents in exhibit P. 24 shows that he travelled from Burundi to Tanzania Dar es Salaam on **05/08/2017** and the date he returned to Burundi from Tanzania was **25/08/2017**.

Another Defense witness was **GODFREY PETER SALAMBA** who testified as **DW3** at the outset he denied to have conspired to kill the deceased to this case. DW3 explained how he was arrested by two people at Africando Bar near his home. He mentioned those who arrested him as Philbert Excuper Nemes @ Fulsaba and Ismail Police Officers stationed at Oysterbay. They brought him to Wami Police station and asked him to surrender two laptops. He denied to have the said laptops. He was tortured and injured. While at Mbweni Police station he was given a list of names and asked to read those names and admit that they are his accomplices while being recorded. He was also forced to give answers as they appear in the laptop that was placed on his laps.

Moreover, DW3 stated that on 16/08/2017 in the morning he was informed that her sister Flora Peter Salamba was seriously sick. The same day evening he was informed that she died. Therefore, he went back home to prepare for the journey to Arusha for burial.

On 17/8/2017 at 20:00 hours he travelled to Arusha where he reached on 18/08/2017 at noon. DW3 tendered the death certificate in favor of her sister and 7 pictures of him being at the funeral which were admitted as exhibit D3 and D4.

When referred to exhibit P36, his alleged cautioned statement, DW3 stated that it is said to be his cautioned statement but he had never been taken any cautioned statement at any particular time. He denied to have gone to JNIA on 16/8/2017 as he was at home mourning his sister's death. He also denied to know any accused before the court nor Fahami Karama who is not in court.

During cross examination DW3 denied to have any relationship with Rahma Almasi Mwinyi. He also denied to have seen the 6th accused Allan Mafue, Abuu Mkingie and Mr. Kwavava before his arrest neither met to conspire to commit an offence.

On her part **ZAINA RAMADHANI LUAMBANO** who testified as **DW4**, and in favor of the 3rd accused's case identified herself to be the wife to Godfrey Peter Salamba the 4th accused before the court. This witness stated that, DW3 is her husband since 2000. That on 16/8/2017 afternoon her husband received a call informing him that his sister Flora Peter Salamba was sick and later on the same day he was informed that she died. Their neighbors went and stayed with them until 23:00 hours and that on the next day at the evening her husband DW3 travelled to Arusha for burial.

While cross examined DW4 responded that in 2010, the entire year she was with her husband although she don't remember if in 2011, 2013 and 2014 he was at home or not. DW4 told the court that in 2015 she travelled since January for four years that is until 2019.

Another witness in favour of the 3rd accused case was one **JACKSON FRANCIS MAFUMBI** who testified as **DW5**. This witness identified himself as Godfrey Peter Salamba's brother-in-law, the husband to the late Flora Peter Salamba who died on 16/8/2017 at Arusha. He testified that Godfrey reached Arusha early in the morning of 18/8/2017 where the burial was on 19/8/2017 at Njiro.

DW6, CHAMBIE JUMA ALLY a taxi driver and a resident of Bomang'ombe Kilimanjaro testified that he was arrested on 21/1/2018 and brought to KIA Police Station. Further on 24/1/2018 he was taken to Arusha Central Police where one Police Officer asked him some questions while recording and he was given a paper to sign. He was later taken to Dar es Salaam destined at Madale Police Station.

When he was referred to **exhibit P39** for identification (his alleged cautioned statement), he recognised and admitted that it is the first paper that he signed on both sides at Arusha and he denied to have the knowledge of other papers and he didn't sign on the

same. DW6 went on to admit that he knew the deceased in this case one Wayne Derek Lotter who was his regular client since 2014 as he and his female colleague used his tax whenever they travelled. He also admitted to know Allan Mafue the 6th accused even before he was arrested. DW6 denied neither to conspire nor to kill the deceased.

When cross examined he admitted that the 6th accused was his client too as he served him when he wanted to go to Arusha or Moshi upon his arrival at KIA. He admitted to have written statement which he signed two papers and also he knew only 3 pages of the cautioned statement out of five pages.

On his side **ALLAN ELIKANA MAFUE (DW7)** testified that from farming activities among other success he managed to open a wholesale shop for food products at Dar es Salaam Ilala District, Nyati Street Plot No. 7 Block 30 at Ilala Centre. The business is known as MWEMAZ (East Africa Ltd.) which was registered on 15/6/2017 and issued with the certificate **(exhibit.D.5)** on 22/6/2017. **DW7** also tendered the Business License, Tax Clearance and TIN Number, which were collectively admitted as **exhibit D6**.

DW7 testified further that, on 11/4/2018 around 9:00 am, he received a call from a person who identified himself as a Police Officer informing him to avail himself at Oysterbay Police Station

without failure. At 10:00 am he attended the call at Oysterbay Police Station as required. Being there he was joined with other people and were taken to Kisumu RM'S court. The court clerk told them that they were charged with two counts of **Conspiracy to Murder** and **Murder**. He said that it was a surprise to him as he never committed those crimes.

DW7 went on to state that, he can't deny that the 5th accused was carrying him while in Kilimanjaro which is his Motherland where he regularly travel thereto. Responding on the charge of murder, he stated that he heard the same for the 1st time when he was arraigned before the court at Kisumu. Concerning all the cautioned statements of his fellow accused mentioning him, he denied to know anything on the same. It is DW7's assertion that, nothing was brought before the court to implicate him apart from his fellow accused's statements of which were also denied by them.

Under cross examination **DW7** denied to conspire to commit an offence and also to be involved in meetings relating to committing the offence and that he has never communicated with anyone within the accused to commit offences he is charged with. He also denied to see Zebedayo before he was arrested neither furnished him with Tshs. 20 Million as alleged. He also disputed to own a Bureau de change.

When he was referred to **exhibit D6, DW7** responded that the date of issue of Tax Clearance Certificate was on 23/8/2017, Certificate of Incorporation was issued on 22/6/2017 and acquired a TIN Number on 16/8/2017.

Another Defence witness was **ISMAIL ISSA MOHAMED** who testified as **DW8**. Apart from narrating as to when and how he was arrested at Arusha Municipal parking, he testified that he was tortured and asked to confess that he was involved to Mzungu's murder. He denied to know anything about that but they refused to hear from him and they decided to beat him seriously until when he became unconscious.

On 26/1/2018 around 13:00 hours they ordered him to write his cautioned statement. The same is said to have been written in the presence of his advocate Mr. George while at Arusha Central Police Station. That on 27/1/2018 he was transported to Dar es Salaam straight to Oysterbay Police Station and taken to court on 1/4/2018. DW8 denied to know Makoi and Godfrey Peter Salamba before his arrest. He went on to deny the allegations on conspiracy to Murder and Murder.

When cross examined, he denied to know any of the accused before the court. He also denied to sit with the 3rd and 13th accused persons to organize the alleged crime. DW8 disputed to have any

relationship with Makoi as he neither know him nor had any kind of communication with him be it by telephone or by seeing him.

On his part **LEONARD PHILIPO MAKOI (DW9)** commenced his testimony by narrating that, he was arrested on 17/1/2018 while he was at his Pharmacy at Majengo in Arusha Town by three persons and brought him to Usa River Police Station. They later took him to Central Police Station at Arusha Town where he was forced to agree on the fact that he was involved in theft of medicines valued Tshs. 300 Million from Medical Stores Department (MSD). They then demanded him to bribe them the sum of TShs. 30 Million, but he refused. He stayed there up 28/1/2018, around morning around 6:00 am where he was transferred to Madale Police Station in Dar es Salaam. He stayed there until 11/4/2018 when they finally took him to Kisumu and charged him of Murder. On 29/4/2018 he was brought back to Kisumu where he was joined with other caused whom he didn't know. For the first time, he came to know that he was accused of killing someone - Derek Lotter. He denied to conspire to commit Murder neither committed Murder.

Under cross examination DW9 denied to write any cautioned statement nor having knowledge of **58 Million TShs.** alleged to have been given to him and pay the executors of the deceased's murder.

DW10 AYOUB SELEMANI KIHOLI testified that, on 2/9/2017 he was called by a Police Officer known as DOMI who told him that there was a person they arrested by a name of Riziki Mussa. He was asked if he knew him and DW10 admitted to know that person. He was asked to go to Chang'ombe Police Station. While being there he met the officer who called him and instructed him to go behind the station where he saw a group of 8 people not in uniform surrounding Riziki Mussa. The witness averred that Riziki Mussa was a suspect under arrest since his mobile telephone had regular calls towards him. He was then called to state what was the relationship between him and Riziki and his affairs to that effect. Responding to the questions he was asked, DW10 said that he knew Riziki as he regularly takes goods from him.

The witness testified that he was once again called by Domi on 10/5/2018 who took him to Chang'ombe Police Station and later to Mabatini Police Station - Kijitonyama where he was seriously beaten and tortured by denying knowing Riziki's affairs. He stayed there up to 14/6/2018 when he was taken to Kisumu RM'S court where the charge of Conspiracy to commit Murder and Murder were read to him. DW10 denies to know any of the accused in court as he met all of them at lock-up. He also denies to conspire to kill nor kill anyone.

While under cross examination, **DW10** was referred to exhibit P41 (his alleged cautioned statement), where he admitted the same to be his cautioned statement which was not contested by his advocate. He also denied to know how to ride motor cycle.

ABUU OMARY MKINGIE who testified as **DW11**, at the outset he stated that the allegation on him on conspiracy to murder and Murder are not true. It is on 1/8/2018 when for the first time he knew that he was alleged for Murder when he was arraigned at Kisumu RM's court; and that he didn't know any accused before he was arrested.

When he was referred to **exhibit P 40** (his alleged cautioned statement) **DW11** admitted that, the exhibit has his name. However, he doesn't know Fahami Karama nor does he know how to ride a motorcycle. He further denied to know **exhibit P 40** and its entire contents. The witness further states to have met Zebedayo and Salamba for the first time in court.

When cross examined DW 11, stated that he doesn't remember where he was on 16/8/2017. He remembered that it was Salamba who mentioned him though they don't have any conflict. He also admitted that in Rahma's and Habonimana's statements he was mentioned. However, he doesn't have any grudges with them.

Another defence witness was **MICHAEL DAUDI KWAVAVA**, the 14th accused who testified as **DW12**. Like other accused, he also refuted to commit an offence of **Conspiracy to Murder** nor **Murder**. DW12 a taxi driver at JNIA admitted that he knew very well the deceased **WAYNE DEREK LOTTER** and another white lady (PW10 AJ) since 2009. He was the first person to serve them when they approached him more than 10 years ago at JNIA where since then he was the only person serving them having a good and cordial relationship with them.

On 16/8/2017 before he picked them from Airport, they started communicating from 19:00 hours and they told him that they are coming from KIA and they will arrive at 23:00 hours. They landed at 23:00 hours sharp and spent 10 minutes to check out. He received them, they were just two, the Deceased and PW 10 AJ. The witness informed the court that his clients were going to Baobab Village at Masaki and that they had no permanent residence in Dar es Salaam. He said on that day he was driving his own car Sienta T. 499 DGV. From Airport he drove through Nyerere Road to Ali Hassan Mwinyi via Salendar Bridge to Haile Selassie Road straight to Kaole Street. By that time, it was around 23:30 hours. The witness informed the court that when he wanted to turn right, a car Toyota IST (white and black colour) came and blocked him in front. He thought the person was drunk. Immediately, a person with

the gun came out of the car heeded to his window and bang with the gun where the witness decided to open the door as he was afraid to disobey. As the car was at 'D' (drive motion) the key failed to get out. However, there was a struggle between him and the armed person that caused the key to break and left a piece inside. Immediately the gunman is said to have turned to the other side of the car straight at the back seat where his clients sat. He then said **"GIVE ME DOLLAR, GIVE ME DOLLAR"**.

The witness further averred that, immediately the man left the lady who was near him and shot Mr. Derek Lotter at the neck. Also took their laptops which they had at the back. DW12 confessed to have been granted an opportunity to identify the person who shot the deceased through the ID Parade which was conducted at Oysterbay Police Station. From the parade, the witness testified to have been able to identify the 3rd Accused person NDUIMANA OGESTEE @ JONAS ZEBEDAYO @ MCHUNGAJI @ NDISHEMEZE ZEBEDE; DW2 whom he identified before the court by touching him on his shoulder to be the one who shot the deceased on 16/8/2017. The witness narrated that he was able to identify the killer as at the scene of crime there was enough light from street lights, lights from the cars, and also light from his car as the lights were on. And that he was very near to him. He was also able to identify the car and its registration number.

The witness went on to testify that, after the shooting of Mr. Lotter, he and Christine the co- director to Lotter they got out and started asking for help. There appeared Toyota Hard top high pickup carrying about six people (Indians) who helped to carry Mr. Lotter and placed him into their car and headed to hospital. After half an hour, police officers who were not in uniform appeared and told him that they were from Oysterbay Police Station. They asked him questions and further they were looking at the car and inspected it. Thereafter they told him to drive the car to police station.

Two weeks after ID parade, he was called and told that IGP formed an Investigative Team and that they wanted to interrogate him. Interrogators were said not to be in uniform and that they interviewed him on the incident that had occurred on 16/8/2017.

On 11/5/2020 he was called by one police officer Philbert Fulsaba who wanted him to go to police station. The next day on 12/5/2020 when he reached at the police station, he stated he was forced to write statement under police instructions while being beaten. When he was referred to exhibit P. 35, **DW12** admitted the same to be the papers he signed. However, he prayed the court to disregard the statement in determination of this case. He denied

to know other accused before and that he never received any share from either Karama or anyone else as he doesn't know any of them.

During cross examination DW12 responded that, Lotter and Chris had their residence in South Africa. Before the last trip they were in Tanzania for about two months. That the blockage and the killing hardly took two minutes. DW12 informed the court that the car blocked him side wise. He also confessed to have written his cautioned statement before the Police.

When **DW12** was referred to Exhibit. P35 (his alleged cautioned statement) he denied the same to be his cautioned statement by stating that he wrote cautioned statement on 17/8/2017 and not 25/7/2020. He also denied that at the scene of crime he lowered his window as it was planned. He knew that his clients lost two laptops. He stated further that in those days that he was held by police, he has never been beaten. He was only shifting from one police station to another. Further that he wrote cautioned statement four times. 1st at Oysterbay Police on 17/8/2017. After one month, he wrote the 2nd statement at Mabatini Police Station. The 3rd time he wrote at Temeke Police Station and the 4th time at Buguruni Police Station. He said the detailed statement was the one he wrote at Oysterbay Police Station on 17/8/2016. On 8/5/2020 the witness denied to have written any cautioned statement though

Exhibit 35 has his signatures as he was forced to sign and that the contents of the said statement did not come from him. DW12 told the court that when the incident occurred he was living at Kinyerezi and he shifted there in February 2017 before the incident.

HABONIMANA AUGUSTEE NYANDWI, who testified as **DW13** he told the court that, he never conspired to kill anyone nor killed anyone as those are false allegations. That it is not true that he was arrested at Kabanga District Bujumbura Region in Burundi on 5/8/2018. On that day he was on road walking to his office. Someone touched him at the back and he pointed a gun on him and ordered him to get into the car which was nearby. He informed the court that, in the car there were two men while two men were outside the car. He asked them as to why they hijacked him. They drugged him with a cloth on his nose. He became unconscious without a knowledge of what was going on until he later found himself in a room. He denies the allegation that on 15/8/2018 he wrote his cautioned statement at Kabanga. He admitted that the statement which was tendered as evidence related to him there are names of Karama, Mafue, Zebedayo and Mzungu. However, he has never written that statement.

When he was referred to **exhibit P. 34** (his alleged statement) **DW 13**, responded to have never seen the telephone

print out nor any line for telephone sim card to show that the numbers are in his favor. That he don't know anything on this matter and he never signed any document. DW13 denies to have ever seen the interpreter nor reach any police station with the said interpreter. He told the court that he doesn't understand anything that was brought before the court. They are all stories to implicate him. He neither knows Rahma nor her residence. Apart from this arrest he has never been to Tanzania at any particular time. He also denied to have seen Allan Mafue before this case. He has never been given some money to buy any weapon in Burundi, as there is no any shop that is selling guns.

When cross examined, DW13 stated that, for the first time he found himself in Dodoma Tanzania alone in a room. He further stated that he was brought to court for the first time on 10/9/2018 and charged for Murder. The witness admitted to know a bit of Kiswahili and that in every interview, he needed an interpreter. He had no any conflict with PW18 nor PW23. That was the end of the Defense case generally.

Having summarized the evidence of both parties, it is an ideal to discuss briefly on the contents and ingredients constituting the two offences of **CONSPIRACY TO MURDER** and **MURDER** as they are the offences charged to all the accused persons herein.

To start with **CONSPIRACY**, the law under **Section 384** of the **Penal Code Cap. 16 [R. E. 2002] (now 2022)** reads as follows:

"Any person who conspires with another to commit any offence punishable with imprisonment for a term of three years or more, or to do 'any act in any part of world which if done in Tanzania would be an offence so punishable, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of an offence, and is liable if no other punishment is provided, to imprisonment for seven years or, if the greatest punishment to which a person 4 convicted of the offence in question is liable is less than imprisonment for seven years, then to such lesser punishment".

From the above definition it follows that conspiracy is an **offence consisting in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means**. So, unless two or more persons are found to have combined to do the act there can be no conviction. From the above definition one other point comes to light, that conspiracy is an offence in itself and it is self-sustaining. It does not have to be pegged or combined with another offence. Like any other criminal

offence to be complete, it has in its own right, ***actus reus*** and ***mens rea***. See the case of ***JOHN PAUL @ SHIDA AND ANOTHER VS REPUBLIC, Criminal Appeal No. 335 of 2009 CAT, (Unreported)***.

Turning to the offense of **MURDER**, in law, for the court to convict an accused person of Murder, the following key ingredients must be proved:

- i. That, the victim of the crime (Murder) mentioned in the charge, actually died;***
- ii. That, it was the accused person (s) who in fact, caused the death of the deceased (or killed him);***
- iii. That, the killing of the deceased was with malice aforethought; and***
- iv. That, the killing was performed by committing an unlawful act or omission.***

It is trite law that the Prosecution bears the burden of proving the case as provided under **section 3(2) (a) of the Evidence Act, Cap. 6 [R. E. 2022]** and underscored by the Court of Appeal in the case of ***ISSA MWANJIKU @ WHITE vs. REPUBLIC, CRIMINAL APPEAL NO. 175 OF 2018 (Unreported)***. The law further guides that, the standard of proof is beyond reasonable

doubt. Moreover, the burden of proof placed on the Prosecution is based on the presumption of innocence in favor of the accused.

Other legal principles I have to remind myself in determining this case is that a case may be proved by **direct** or **circumstantial evidence**, but the latter evidence must be such as to lead to no other inference except the guilt of the accused. **[MSWAHILI v R (1997) LRT. 25]**. A mere aggregation of separate facts all of which are inconclusive, in that they are as consistent with innocence as with guilt, has no probative value **(CHHABILDAS D. SUMAIYA v. REGINA (1953) 20 EACA 14)**. That a conviction should always be based on the weight of the Prosecution case and not the weakness of the Defense case. It is not the quantity but the quality of the evidence which matters in deciding on the guilt or innocence of an accused person and finally that Suspicion alone, however strong cannot be the basis of a conviction **(SHABANI MPUNZU @ ELISHA MPUNZU v R (Criminal Appeal No. 12 of 2002 (Mwanza) Unreported))**.

Having in mind the above ingredients of the offence and legal principles as alluded above, the main issues to be determined by this Court are:

- 1. Whether the offence of conspiracy to murder has been proved beyond reasonable doubt?***

2. Whether the offence of Murder has been proved beyond reasonable doubt?

To start with the 1st issue ***whether the offence of conspiracy to Murder has been proved beyond reasonable doubt?***

As it has been indicated above, for there to be an existence of conspiracy there must be an agreement of more than two persons to do an unlawful act. In a bid to prove a Conspiracy to Murder the Prosecution revealed the following:

To start with the 2nd accused one **RAHMA ALMAS MWINYI @ BABY@ RAHMA ALMAS IDDI** the same is said to have been living at Temeke Mkuranga B in the same house with her brother one Fahami Karama who is stated to be still at large. It is the Prosecution's evidence that she was the one responsible in catering for other culprits that landed and assembled at their home for meetings that were conducted aiming to eliminate the deceased. Nevertheless, the said facts have been implicated by her own cautioned statement (**exhibit P. 19**) where she confesses that on **16/08/2017** while at home cooking for her brother Karama and his friends namely **Zebedayo who is a Rundi - 3rd accused, Abuu - 12th accused, Gody Salamba - 4th accused,** and **Mchina Mswahili.**

Further, she confessed that on **02/09/2017**, she was informed by her Nephew one Karim that Fahami Karama has been hijacked by unknown persons. She however believed that her brother has been arrested by the Police. Therefore, she immediately took initiatives to shift and hide the two guns, bullets and a hand grenade that were kept in their house by her and Fahami Karama. The same were at first taken to Midoli Guest house and on the following day they were taken to Ngazija graveyard and buried. After her arrest, she volunteered to show where the weapons were buried. These weapons were found and taken to the Ballistic Expert for examination where after a thorough ballistic examination, findings showed that the bullet head found in deceased's body and two spent cartridges found at the scene of crime related to the **Uzi gun** that was used to kill the deceased. From these facts it is apparent that DW 1 had the knowledge of the plan since she was the one cooking for the culprits at their home and after having the knowledge that her Brother has been arrested, she opted to hide the weapons so as to distort evidence.

2nd Accused was also implicated by the cautioned statement of the 3rd accused **Nduimana Ogiste @ Jonas Zebedayo @ Mchungaji @ Ndaishemeze Zebede (exhibit P. 27)** where he stated that he was left at Karama's home with 2nd accused and was

assured by Karama not to worry since the 2nd accused knows the whole plan and it is the latter who prepared them food the evening of the incident. Further, 4th accused Godfrey Peter Salamba also stated in his cautioned statement (**exhibit P 36**) that after the incident, the 2nd accused was given a share of **Tshs. 1,000,000/=**. Moreover, the 14th accused **Michael Daud Kwavava** in his confessional statement (**exhibit P 35**) mentioned the 2nd accused to have been among the planners in committing the intended offence.

Referring to the 3rd accused **NDUIMANA OGISTE @ JONAS ZEBEDAYO @ MCHUNGAJI @ NDAYSHEMEZE ZEBEDE, a Burundi National**, the Prosecution tendered his cautioned statement (**exhibit P 27**) which in itself, the 2nd accused confessed to have been part of the plan. In his statement he stated to have been contacted by Fahami Karama and informed of a plan of murder to be executed in Dar es Salaam. He was sent **Tshs. 3,000,000/=** to buy weapons for the job. He also confessed to have arrived from Bujumbura Burundi and was received by Fahami Karama at Ubungo Bus Terminal and was residing at Karama's residence at Temeke.

He admits to have been a participant in various meetings for the purpose of executing the deceased held at Karama's and the

2nd accused's residence. Apart from his cautioned statement, he also admitted to have been fully involved in the plan through the video recorded at Oysterbay Police Station which was admitted as **exhibit P. 37**. His statement has been collaborated by his co-accused's cautioned statements being **exhibits P. 34 for the 13th accused, P. 36 for the 4th accused, P. 38 for the 8th accused, P. 40 for the 12th and P. 41 for the 9th accused**.

As to **GODFREY PETER SALAMBA** the 4th accused, he was observed in the video recorded at the Oysterbay Police Station admitted **exhibit P 37** confessing to be participating in the meetings that were held at Karama and the 2nd accused's residence at Temeke in organizing and planning to murder the deceased herein. In his own words he was heard saying that on the **15/08/2017** at the named residence above, they had a meeting and six of them were present. He named the participants to be **himself, Karama, Makoi the 8th accused, Kalisti and Abuu the 12th accused**. All the above facts were corroborated in his confessional cautioned statement (**exhibit P. 36**) and cautioned statements of the 2nd accused (**exhibit P 19**), 3rd accused (**exhibit P 27**), 8th accused (**exhibit P 38**) and **of the 12th accused (exhibit P 40)**.

With regards to the 5th Accused **CHAMBIE JUMA ALLY**, the major evidence against him is his cautioned statement which was admitted as **exhibit P39**. The contents therein reveal how he was involved in the plan to commit an offence which led to his knowledge of the outcome of the plan. He also played a major role of informing the accomplices of the offence in Dar es Salaam that indeed the deceased and his co-director were on their way to Dar es Salaam knowingly that it was Mr. Lotter's last journey. It suffices to say that, by this single piece of evidence, the court is of the firm view that the 5th accused herein had a knowledge and was fully involved in the plan to execute the deceased.

ALLAN ELIKANA MAFUE the 6th accused herein, the court has detected that there is no cautioned statement in his favor that has been tabled before the court. However, he has been mentioned by those who have been caught by tangible evidence against them in this matter, such as the **5th accused Chambie Juma Ally, Rahma Almas Mwinyi the 2nd accused herein, Habonimana Augustin Nyandwi the 13th accused, Michael Daud Kwavava the 14th accused, and the 3rd accused Nduimana Ogiste @ Jonas Zebedayo @ Mchungaji.**

For clarity, the 5th accused whose work station is at KIA confessed that the 6th accused is one of his regular customers and

that prior to the killing of Mr. Lotter, the 6th accused Mr. Mafue tasked him to enquire and inform him the deceased's movements particularly from Arusha to Dar es Salaam.

Further, the evidence before the court through **exhibit P35**, being the 14th accused person's cautioned statement, it was revealed that, few hours before the Murder of Mr. Lotter, the 14th accused Mr. Michael Daud Kwavava before heading to Julius Nyerere International Airport (JNIA) to receive the deceased and his co-director, he passed at the 6th accused's supermarket as planned earlier to finalize the final touches to the plan on how to accomplish the execution.

This fact was corroborated by the 13rd accused **Habonimana Nyandwi** in his cautioned statement (**exhibit P34**) when he said that, on a certain occasion at Karama's residence he was introduced to the 6th accused Allan Mafue saying that he is the rich man who is coordinating the work that is before them and he is the one who is going to pay them upon completion of the task.

Again, **Allan Elikana Mafue**, the 6th accused's involvement in the crime was cemented by the 4th accused person Godfrey Peter Salamba in his cautioned statement when he confessed that a day after the killing, him in the company of Fahami Karama and Zebedayo the 3rd accused went to Allan Mafue's bureau de change

at the Airport where they met him and that, as he was one of the coordinators to the plan, he paid Zebedayo the 3rd accused the sum of **Tshs. 20 Million** as promised.

The fact that the 6th accused was one of the coordinator of the plan, in the 2nd accused's cautioned statement which is evidence before the court, it is stated that Mr. Mafue was among the individuals who were conducting their meetings in respect of the plan at Karama's house which is also the 2nd accused's residence.

As for the 7th Accused person, herein **ISMAIL ISSAH MOHAMED @ MACHIPS**, did not have any cautioned statement in his favour. However, one can tress the areas that he has been incriminated to be in 4th and 8th accused persons' cautioned statements.

Referring to **exhibit P38**, Leonard Philipo Makoi's cautioned statement herein, reveals that he was contacted by the 7th accused person at Arusha for the purpose of seeking a person to be engaged in executing the deceased. From this fact it is clear that it was the 7th accused that initiated the whole plan at first instance.

It was stated that the 8th accused was told by the 7th accused that: **"Kuna Mzungu anayehusika na meno ya tembo anatakiwa auwawe"**. From there, the 8th accused is said to have proposed Fahami Karama to be a fit person for the job.

The second scenario where he is connected is in the 4th accused person's cautioned statement (**exhibit P36**) one Godfrey Peter Salamba, when this accused was asked as to who in Arusha had knowledge of Mr. Lotter's planned murder, this accused person straightly named Makoi the 8th accused, a taxi driver in Arusha, Machips the 7th accused and one Mchina who is said to be amongst the sponsors. After being mentioned by the 4th and 8th accused persons on two different important scenarios this accused to be the inventor of the whole plan.

Turning to the 8th accused person one **LEONARD PHILIPO MAKOI**. The prosecution tendered before this Court **exhibit P19, P27, P36, and P39** all these being co-accuseds' cautioned statements. From the said statements together with his own cautioned statement (**exhibit P38**), indicates that the 8th accused was the coordinator of the plan particularly in Arusha and also he was an active member of the entire plan joining hands with Dar es Salaam team in accomplishing the strategy.

From the above, this court is satisfied that this accused had the knowledge of the outcome of the plan and fully participated in the said organized crime. He is observed to attend the meetings and travelling to and from Arusha and Dar es Salaam all in making sure nothing fails. Apart from the above **exhibit P 37** the recorded

video via the 4th Accused confession cements that he was urged to make sure communication don't go out of place.

It has been testified that **AYOUB SELEMANI KIHOLI** the 9th accused person was a motorcyclist with the duty to make sure that the police would not interfere with their plans. He is said to have physically been at JNIA together with other co-accomplices in the plan. In his statement he admitted to have run errands for Karama on the fateful day and that he had carried one Zebedayo who was dropped off by Karama and another person he did not know and instructed to take Zebedayo back to Karama's residence. He also stated to be aware of the meetings that were held at Temeke and Kinondoni.

ABUU OMARY MKINGIE the 12th accused person from the evidenced adduced before the Court, revealed that his duty towards accomplishing the plan was making sure that the ride of the deceased's car and that carrying the assassinator was intact and safe and in case of any emergency, he was to inform them so they could easily escape.

Further to that, from the availed evidence, it is confirmed that he had knowledge of what was going on as he has been detected by the 2nd accused in her cautioned statement that he was also involved and participated in the plan meetings that took place at

her residence. Through **exhibit P 37** the video recorded, the 4th accused named him to be one of the six persons in the aforementioned meetings.

HABONIMANA AUGUSTIN NYANDWI @ OGISTEE a Burundi National the 13th accused in this case is one of the persons whom are said to have also committed this organized crime. To prove this assertion, Prosecution laid down two pieces of evidence to connect him to the offences charged. **Exhibit P19** being the cautioned statement in favor of the 2nd accused person herein have shown that this accused was in knowledge of the offence to be committed. As he has been mentioned to be involved in meetings that took place at the 2nd accused's residence duly shared with his brother Fahami Karama.

Further are the contents of his own cautioned statement **exhibit P34** where he admits to have bought the weapons from Burundi which was for deceased's execution, a fact well known to him. This is enough evidence to claim that he knew and took part in the fulfilment of the entire plan.

MICHAEL DAUD KWAVAVA the 14th accused person from the evidence adduced, it is not a disputed that he is the one who received the late Lotter and his co-director at JNIA aiming to bring them at their final destination at Baobab Village at Masaki within

the Dar es Salaam City. However, on the way, the tragedy that took life of the late Wayne Derek Lotter took place.

According to prosecution evidence tabled before this court, it is revealed that he had prior knowledge of the ruthless and immoral incident which took place on 16th August 2017 which actually deprived the life of the late Wayne Derek Lotter. This was all stated in his detailed cautioned statement which is **(exhibit P 35)**

This fact is cemented by the cautioned statement of the 3rd accused particularly on what happened few hours before the incident where he said they stopped at Temeke before proceeding to the Airport. In his words, the 3rd accused stated:

"Waiikaa kama dakika theiathini au zaidi, baadaye walitoka na yule mzee aliondoka. Karama aliniambia, tuingie ndani ya gari. Tulipoingia alisema kazi ipo. Na yule mzee aliyekuwa naye ndiye dereva atakayemchukua Mzungu airport. Wameshaongea naye walipoingia ndani kwa Allan, tuliondoka kwenda airport."

I am persuaded by the 14th accused detailed cautioned statement and the 3rd accused person piece of information from his cautioned statement as seen above that the 14th accused person was part of the execution of the deceased.

On response to the Prosecution's evidence to the charge of **CONSPIRACY TO MURDER**, all the accused persons strongly refuted to have conspired to commit the offence charged. Their main claim being that they have never known each other until when they were jointly charged before the Court. The 3rd and 13th accuseds who are foreigners went further by stating that they have never been in this Country before, until when they were arrested in Burundi and brought to Tanzania particularly in Dar es Salaam.

Having carefully and keenly analyzed the evidence of the Prosecution against the Defense of the accused persons and in consideration of **section 384 of the Penal Code** which provides for the ingredients of conspiracy to be an **offence consisting in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means**; I have come to the findings that the accuseds persons herein have been observed to have **sat, met and communicated together** in Arusha and Dar es Salaam for various meetings and conspired to commit the offence of murdering the deceased **Wayne Derek Lotter** who was referred to in their statements as **"Mzungu"**.

It has also been revealed that, the accused persons knew each other to the extent of enabling them to meet and conduct the aforesaid meetings. Their cautioned statements all bare information that connects them to the degree of conspiracy. Each accused when

interrogated adduced information that was partly known by another accused and also named the names of other accuseds and the role they played. The accuseds flatly denying everything even knowing each other before jointly being charged is an **afterthought** which does not reflect their cautioned statements and cannot distort the Prosecution case.

Be it, as it may, the law is well settled that even if the accused persons did not know and meet each other, but they knew the existence, the purpose of the conspiracy and agreed to become part of the plan, they have been conspired to commit an offence. In the case of ***REPUBLIC VERSUS RASHID SALEHE HEMED, (2005) TLR 279*** it was stated that:

"Conspiracy is an agreement between two or more persons to do an unlawful act or a lawful act by unlawful means. It is not necessary that the conspirators should know each other. It is not even essential that all the conspirators should know all the details of the plans or operations of the conspiracy. But it is sufficient to prove that each conspirator knows that there is in existence or coming into existence of such scheme. Therefore, it is imperative that each conspirator must know the purpose or the aim of the

conspiracy and must agree to become one of the members to carry out that unlawful purpose”.

Also in the case of ***SEMENI SALUM VERSUS REPUBLIC, HC Criminal Appeal No. 146 of 2012*** this Court held that:

"Conspiracy as defined by section 384 of the Penal Code only exists where one person agrees with another person to commit any offence punishable for a term of three years or more. It is thus an agreement to do an unlawful act or a lawful act by unlawful means. In the case of R Versus Karia,(1949) 116 EACA it was held that a person becomes part of a conspiracy even if he does not know other suspect and he attaches himself with the crime at any stage, provided he has knowledge of the offence. It is made up of the proof of agreement on intention to commit an offence”.

Being guided with the above position of the law and two cases above, **this Court responds to the first issue in AFFIRMATIVE.**

With regards to the second issue ***whether the offence of Murder, has been proved beyond reasonable doubt,*** responding to this issue, I will test each of the ingredient of Murder as identified earlier.

Starting with the **first** ingredient of Murder the sub issue is ***whether or not the victim of the crime (murder) mentioned in the charge, actually died.*** This fact is not disputed by either of the parties. In order to prove this fact, this Honorable Court received expert opinion from the Doctor from Muhimbili National Hospital who testified as **PW1 AA**; that on 19th August 2017 in assistance of another pathologist, and in the presence of two police officers **PW4** and **PW14** performed the postmortem to the deceased's body of the male adult who was identified by **PW2** and **PW10** as **WAYNE DEREK LOTTER**.

From the findings of the postmortem procedure, the deceased's death was caused by a bullet at his chin. For ease of reference, let me quote the Doctors' finding in the postmortem report of which was admitted as **exhibit P1**:

"BLOOD ASPIRATION ASPHYXIA DUE TO BULLET INJURY AT THE RIGHT LATERAL CHIN."

Another evidence corroborating the death of the deceased is that of **PW2** and **PW10** who are both directors at PAMS who were at the Sally International Hospital and saw the body of the deceased before the same was transferred to Muhimbili National Hospital. From the above, **the first sub issue is answered POSITIVELY.**

The **second** ingredient of murder as mentioned above, the *sub issue* is ***whether it was the accused persons who in fact, caused death of the deceased (or killed him).***

As far as the offence of Murder is concerned in this particular case, the Prosecution in their case has brought **four aspects of evidence; 1st, Visual identification, 2nd, cautioned statements, 3rd Expert evidence and 4th, Electronic evidence.**

On visual identification, the key and material witnesses were **PW 10 AJ** the deceased's Co- Director and **DW 12 Michael Daud Kwavava the 14th accused** herein who was the driver of the taxi that picked the PW10 and the deceased from JNIA.

To start with, **PW10 AJ** testified in court to have identified the 3rd accused **NDUIMANA OGISTE @ JONAS ZEDBEDAYO @ MCHUNGAJI** as a person who shot the deceased at the crime scene. She explained all favorable conditions which enabled her in identifying the accused. She testified that, at the scene of crime there was enough light from the buildings located near the scene, that there were lights from the vehicles which were present at the scene, and street lights. She further testified that the accused was very close to her and the incident took almost three minutes, the distance between her and the accused was less than a meter. She

also described the physical appearance of the accused that he has a big forehead, brown in color (complexion) and the clothes he wore that day were khaki in color.

She further said that she was able to identify him though it was a terrifying situation. She claimed according to the nature of her work, still she managed to stay calm and observe everything that was happening. This accused was also identified by this witness during identification parade by physical appearance and by voice after she required all participants to pronounce "**DOLLAR, DOLLAR**". The Identification Parade Register was tendered by **PW32** the officer who supervised the Parade and the same was admitted as **exhibit P43**. The said identification was witnessed by **PW 28** who also participated in parade and this fact is supported by **PW11** and **PW12** who were the officers who handled PW10 AJ before and after Parade.

The second eye witness was **Michael Daud Kwavava** 14th accused who successfully identified the 3rd accused person **NDUIMANA OGISTE @ JONAS ZEBEDAYO @ MCHUNGAJI** to be at the scene of crime through his cautioned statement which was admitted for evidence as **exhibit P 35**. Further the 3rd accused was mentioned and pointed at by the 14th accused during his cross examination in the trial within trial before admission of his cautioned

statement, when Mr. Lamwai Advocate for the 3rd and 13th accused persons asked him if at the identification parade conducted at the Oysterbay Police Station, he was able to identify any one before this court. Respectfully and sincerely responding to the said question, Mr. Kwavava responded by saying; I prefer to quote as herein below:

"At the parade which was conducted, I managed to see / identify someone who is before this court and he is the one who killed my boss. He is that one, (pointing to the third accused)".

During his defense case the 14th accused again identified and confirmed the 3rd accused person to be the one that murdered the deceased. He moved from the doc and went to touch him on his shoulder to strengthen his identification.

Now considering the evidence above it is very clear that the evidence of visual identification given by **PW10** and the 14th accused was **water tight** and there was no anyway one can say there is a chance of mistaken identity, since the said witnesses elaborated in detail how they were able to identify the said accused. Their testimony has been corroborated by the 4th accused person who confessed to have been at the scene of crime in his cautioned statement **exhibit P 36** at page 11. Hence, they are credible

witnesses and entitled to be believed as it was held in the case of ***GOODLUCK KYANDO vs REPUBLIC, [2006] TLR 363***, that:

"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."

Second aspect of evidence in this sub issue is cautioned statements, whereby all the accused persons' cautioned statements have been tendered and admitted as evidence before this Court by the Prosecution save for the 6th and 7th accused persons.

The Prosecution tendered **exhibit P19** which is the cautioned statement of the 2nd accused **RAHMA ALMAS MWINYI @ BABY**. In the said statement the accused narrated the series of events and admitted to be the custodian of the weapons which among them was the one used to execute the deceased in this case. She also admitted to have hidden the same at Ngazija Graveyard and volunteered to show the Police where she kept the said weapons. Her testimony was corroborated by exhibit **P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16** and **P 17**. Which were 1 Uzi gun, 1 Riffle Maker 4, 162 Bullets for the Uzi gun, 5 Bullets for the riffle Maker 4 ,1 Hand grenade, Thermos, Black Bag with red stripes and a Kitenge. All these were discovered at Ngazija Graveyard upon her confession. Also **exhibit P2** the Ballistic

Examination Report, Picture Illumination, 2 spent cartridges found at the scene of crime (**exhibit P8**), Bullet head found in the deceased's body (**exhibit P9**), Search Order and Certificate of Seizure (**exhibit P16**) and a Photograph pamphlet (**exhibit P17**) these exhibits supports her cautioned statement and she is the one that led to its discovery.

In ***ANDIUS GEORGE SONGOLOKA AND 2 OTHERS VERSUS DPP, Criminal Appeal No. 373 of 2017 CAT at MBEYA***, the Court of Appeal while considering the cautioned statement of the appellant which was admitted without conducting trial within a trial had this to say:

"As long as the said statement led to the discovery of the subject matter it could be considered".

Further, the said Court quoted the case of ***MABALA MASASI MONGWE, Criminal Appeal No. 161 of 2010 CAT at Dar es Salaam at Page 26***, which stated:

"Hence we too satisfied that the circumstances in this case lead us to find that the appellant's confession leading to discovery of the deceased graves is true."

The second accused confession was supported by the evidence of **PW 5** an independent witness, **PW 6** an officer that led the team

to Ngazija Graveyard and **PW 7** the officer who took photographs of the events who all signed **exhibits P16** and **P17** respectively.

The Prosecution case brought against the 3rd accused person **NDUIMANA OGISTE @ JONAS ZEBEDAYO @ MCHUNGAJI** his own cautioned statement **exhibit P 27** whereas in the said statement the accused admitted to be the one that killed the said deceased by shooting him. This evidence is corroborated by exhibits **P19, P34, P35, P36, P38, P40** and **P41** which are cautioned statements of co- accuseds.

Turning to the 4th accused person, **GODFREY PETER SALAMBA**, to prove the case against him the prosecution tendered **exhibit P36** where he admitted his participation towards committing the offence. He narrated to have been at the crime scene and was the one driving the Toyota IST the vehicle that carried Karama and Zebedayo the 3rd Accused. Other cautioned statements that implicated this accused were **exhibits P19, P27, P38** and **P40** of which are his co accused persons' statements.

With regards to the 5th accused **CHAMBIE JUMA ALLY** the prosecution tendered his caution statement **exhibit P 39**. This accused confessed to have been the taxi driver to the deceased and **PW 10 AJ** at all times upon arrival in Arusha from other destinations. He admits to have informed the culprits on the date the deceased

left Arusha to Dar es Salaam and was informed that the said deceased was to be murdered. In his statement he stated I quote **“walitaka kumalizana nae,”** when asked what was meant by that, he responded **“kumuua” meaning to kill him.**

In a bid to prove the case against the 8th accused person **LEONARD PHILIPO MAKOI** the Prosecution lined up his cautioned statement **exhibit P38** where in the same he admitted to have been called by the 7th accused person who informed him that there was a **‘Mzungu’** that was to be murdered. Upon such information he stated to find a person for execution. This accused was also named in **exhibits P19, P27. P36** and **P39** to have participated in the said Murder.

The 9th accused **AYOUB SELEMANI KIHOLI** a motorcyclist was incriminated by **exhibit P41** which was his cautioned statement in which he admitted to have known that the meetings of this plan were held at Karama’s residence Temeke. This evidence has been corroborated by **exhibits P19** the 2nd accused’s cautioned statement to be one of the persons that took part in planning the murder.

ABUU OMARY MKINGIE, the 12th accused, was linked to the offence through **exhibit P40** his own cautioned statement. He was a motorcyclist that was also stationed to patrol the routes to be

used. He confirms to have known the plans of the murder and his confession is also corroborated with **exhibits P19, P27 and P36** his co-accuseds cautioned statements.

HABONIMANA AUGUSTIN NYANDWI @ OGISTEE is the 13th accused person who has been implicated to have been part of the murder upon his admission in his cautioned statement **exhibit P 34**. In this statement he confessed to have been at the crime scene in another car, his duty was to assist the murderers in case they were ambushed by police. He admitted to have bought the weapons and also to have received consideration after the execution. This statement was corroborated by **exhibit P 19**, again the 2nd accused's cautioned statement.

The last accused in this respect is **MICHAEL DAUD KWAVAVA** who was the 14th accused person and a taxi driver to the deceased on the fateful night. He admitted in his confessional statement **exhibit P 35** that he had agreed to assist the culprits in their plan. This accused confessed to have agreed to provide good environment for ease of commission of the offence. This piece of evidence was corroborated by both the 3rd and 4th accused persons herein.

In the case of **JUMANNE AHAMAD CHIVINJA AND ANOTHER VERSUS REPUBLIC Criminal Appeal No.**

371/2019 CAT AT Dar es Salaam at page 10, it was stated that:

"It has long been settled that a person who confesses is the best witness, a position taken by the court in many of its decision."

I am aware of the position of the law that a confession of a co-accused requires corroboration. In the case of ***THADEI MLOMO AND OTHERS VS REPUBLIC, [1995] TLR 187*** the Court held that:

"A confession by a co-accused cannot base a conviction for another accused unless it is corroborated".

In this case the evidence of the cautioned statements have been well corroborated with other evidence which is already before this Court. To mention a few these are **exhibit P 22** a flash disk which showed the video clips from CCTV cameras at JNIA on 16/08/2017 that shows the 3rd accused being at the arrival section a fact that is accommodated in the cautioned statements, this proves that the mentioning of Zebedayo the 3rd accused and his presence at JNIA was a well-known fact as said in the caution statement. Another piece of evidence is **exhibit P 37** the record in JVC camera which shows a recording of the 3rd and 4th accused persons who were confessing to have been part of the plan.

I am aware that there are two accused persons **ALLAN ELIKANA MAFUE** the 6th accused and **ISMAIL ISSA MOHAMED @ MACHIPS** the 7th accused whose cautioned statements have never been tabled before the Court. Referring to this circumstance, I wish to refer to the position laid down by the Court of Appeal in the case of **THADEI MLOMO (Supra)** where an argument was raised that an accused who has not made a caution statement cannot be convicted solely on the confession of a co-accused person. The Court in the said circumstance stated that

"In such a case, the law requires corroboration".

Having this position of the Court of Appeal, I join hands with the Court that indeed, the above accused persons mentioning in their co-accuseds' cautioned statements, needs corroboration.

In corroborating the co-accused statements in regard of the 6th accused person, the same has been mentioned in the cautioned statements of his co-accused. To be specific, the 4th accused Godfrey Peter Salamba in his cautioned statement (**exhibit P 36**) at page 12, he stated, I quote:

"Ndio nilikwenda nyumbani kwa Fahami s/o Karama na baada ya kufika tuiiondoka nikiwa nimeongozana na Fahami Karama na Zebedayo. Tuiielekea eneo la Uwanja wa Ndege katika duka la kubadiiisha fedha za kigeni na bidhaa zingine linalomilikiwa na Allan s/o

Mafue. Na tulimkuta Allan s/o Mafue mwenyewe ambae pia ni mmoja wa watu walioratibu na kuwezesha mauaji ya mzungu huyo. Huyo Allan Mafue alitoa Tshs. 20,000,000/= ambazo alikabidhiwa Zebedayo kama mgao wake katika nafasi yake ya uuaji kama alivyoahidiwa, baada ya hapo tullmrudisha Zebedayo Temeke nyumbani kwa Fahami Karama."

With regards to the 7th accused he has been implicated by the 8th accused Leonard Philipo Makoi who stated specifically at page 2 and 3 of his cautioned statement that, I quote:

"Ni kwamba mwaka 2017 mwezi wa saba tarehe sikumbuki alinipigia simu mzee mmoja anayeitwa Machips jina kamili silifahamu akaniambia kuna biashara anataka aongee na mimi. Majira ya 01:00 hrs nilienda tukakutana Mzee Machips akaniambia kuna kazi ya Dar es Salaam. Nilipomuuliza ni kazi gani akaniambia kuna Mzungu anayehusika na meno ya Tembo anatakiwa auwawe. Akaniambia kama kuna watu wanaweza kufanya hiyo kazi niongee nao tukubaliane Ili kazi ifanyike. Baada ya kuniambia hivyo nilimueleza kwamba kuna kijana anaitwa Karama anaweza akafanikisha hiyo kazi.....Baadaye

Karama alinipigia simu akaniambia nimtumie pesa Tshs. 3,000,000/= kwa ajili ya kinunua bunduki ya kufanyia kazi. Niliwasiliana na Mzee Machips akanipa hiyo pesa nikaituma kwa njia ya basi la Kilimanjaro express. Mwezi wa nane tarehe sikumbuki mwaka 2017. Ile kazi ilikuwa imekaribia na Mzee Machipsi alinipa pesa Tshs. 58,000,000/= nikaenda nazo Dar es Salaam kwa ajili ya kuwalipa kina Karama na wenzake akiwemo Gody na Mrundi ambae simfahamu kwa jina. Ile kazi ilifanyika yule Mzungu akauwawa. Baada ya kazi kesho yake nilimpigia Karama akaja maeneo ya Ubungo katika hoteli ya Blue Pearl nikamkabidhi kibegi kikiwa na Tshs. 52,000,000/= na kiasi kiiichobaki Tshs. 6,000,000/= nikabaki nacho nikarudi. Arusha.”

The said statements have been corroborated with other evidences before the Court. Hence it appears that them being mentioned was not coincidental but were also in the plan and they were involved to execute the deceased.

Going through the cautioned statements of the accuseds one would note that **they revealed a chain of planning events in making sure their plan was accomplished.**

At this juncture let me address myself to another aspect of evidence of **Expert Opinion** particularly from **PW3 (Ballistic**

Expert) and also **Experts who dealt with electronic evidence being the CCTV Footages** stored in a flash disk **exhibit P22** obtained from JNIA and a video recorded through JVC Camera **exhibit P37**.

To start with the **Ballistic Expert** evidence, Prosecution brought PW 3 a Ballistic Expert to prove as to whether the weapons (specimen) brought to him were the ones used to kill the deceased in the incident that occurred on 16/08/2017. Further, to find whether the two spent cartridges found at the scene of crime were fired from the weapons found at Ngazija graveyard. Before the court PW3 explained in length on how he did his general and laboratory examinations to reach the conclusion. The witness also explained the contents of **exhibits P2** collectively which was the Ballistic Reports he prepared and Picture Illumination prepared by the Forensic Bureau. Examination in respect of the said specimens were done scientific in the laboratory by PW3 and the results from the examinations revealed that the two spent cartridges marked **Q1** and **Q2 (exhibit P8)** which were found at the scene of crime of murder matched well with the **UZI GUN** that was found at the Ngazija Graveyard under the 2nd accused's possession.

Further the bullet head that was found in the deceased's body which was marked **Q3** and admitted for evidence as **exhibit P9** was also found to have been fired from the **UZI GUN** Caliber 9mm

with serial number 084912 - marked as **K1** and admitted as **exhibit P3**.

At this stage, let me quote part of the wording from the **BALLISTIC EXAMINATION REPORT OF EXHIBIT OB/IR/6586/2017 CONCERNING MURDER** duly prepared by Forensic Bureau Ballistic Laboratory dated 18th December 2017 which confirms the above examinations as herein below:

"The recovered test fired cartridges caliber 9 mm marked as "T-1 - T-2" were compared under the Comparison Microscope in conjunction with two spent cartridges caliber 9 mm marked as exhibit "Q-1 - Q-2". Sufficient matching of pin impressions, extractor marks and breech face characteristics were noted on two recovered test fire cartridges caliber 9 mm marked as "T-1 - T-2" and on two spent cartridges caliber 9 mm marked as exhibit "Q-1 - Q-2".

The recovered test fired Bullets caliber 9 mm marked as "TB-1 - TB-2" were compared under the Comparison Microscope in conjunction with one spent bullet caliber 9mm marked as exhibit "Q-3". Sufficient matching of striation, lands and grooves were noted on two

recovered test fired bullets caliber 9mm marked as "TB-1 - TB-2" and on one spent bullet caliber 9 mm marked as exhibit "Q-3".

To my opinion, two spent cartridges caliber 9 mm marked as exhibits "Q-1 - Q-2" and one spent bullet caliber 9 mm marked as exhibit "Q-3" were fired from one Uzi gun caliber 9 mm with serial number 084912-084969 black in colour marked as exhibit "K-1" of FB/BALL/LAB/113/2017-OB/IR/7550/2017.

Further, the other specimens that were brought to the Bureau for examination were:

1. One UZI GUN Caliber 9mm with Serial No. 084912 - marked as Exhibit K1- **Exhibit P3.**
2. One RIFFLE MAKER 4 Calibre 3006 K2- **Exhibit P4,**
3. BULLETS K5 164- **Exhibit P5.**
4. BULLETS K 166 – K 160 - 4 - **Exhibit P6.**
5. HAND GRANADE K 17 - **Exhibit P7.**

From the **EXAMINATION REPORT OF EXHIBITS OF OB/IR/7550/2017 CONCERNING UNLAWFUL POSSESSION OF FIRE ARMS**, it is the Expert opinion that all the above specimens were in good working condition and are used by law

enforcement agencies for Defense. Using his words from the Report, PW3 reveals:

"To my opinion, one Uzi gun caliber 9 mm with serial number 084912-084969 marked as exhibit "K-1", one Rifle Mark IV caliber 30-06 without serial number whose barrel and buttstock were cut off marked as exhibit "K-2", one hundred and sixty-two live ammunitions caliber 9 mm marked as exhibits "K-3-K-164" and five live ammunitions caliber 30-06 marked as exhibits "K-165-169" are in good functioning and can cause death to living things when misused. Exhibit "K-170" is one hand grenade with serial No. -79y3PrM-2 marked as Exhibit KY 170 used by law enforcement agencies for defence."

In the case of ***GATHERU SIO NJAGWARA V. R. (1954) 21 384 KENYA*** it was stated that:

"The special skill in S.45 of the Indian Evidence Act is not confined to knowledge acquired academically, but includes skills acquired by practical experience. The competency of an expert witness should in all cases be shown before his evidence is properly admitted.

The above case fits well the case before us since from the testimony of **PW3**, I am convinced that he is a well-trained expert but also with a long working experience of 18 years in the field. From the same, his expert opinion cannot be faulted.

From the precedent, I would like to point that, the case before this court has exactly followed the wisdom of the above case since the expert opinion or rather report is well supported by the testimony of **PW10** and **DW12** who testified to have seen the accused person at the scene of the crime on the day of murder and in fact they identified the same to be the person who shot the deceased to death. On my opinion, the Ballistic expert opinion in this case from the circumstances surrounding this case was of the utmost importance to establish the charge and in my opinion is that the same cannot be questioned.

I don't have any good reason of misbelieving and rejecting PW3's expert opinion in this serious case, and in fact I am taking the same into board to be the leading evidence over this case in order to determine as to whether the 3rd accused herein is the one who shot the deceased with the weapon identified by the Expert as UZI GUN Caliber 9 mm. The answer from the above is that, from the evidence adduced by PW3, the evidence before the court against the 3rd accused and his accomplices is tight which

holds them directly responsible for the deceased's death herein, one **WAYNE DEREK LOTTER.**

On **Electronic evidence**, Prosecution before this Court stated that the accused was also identified by expert PW15 AO through CCTV footages which were retrieved at JNIA and stored in a flash by undercover PW 17 AQ which was tendered as **exhibit P 22**. It is stated that this witness in his possession had a photograph of the 3rd accused taken by police officer at police station which was marked **P 5** and admitted as **exhibit P 23**, photographs from his identity cards (Tanzania Voters Identity Card, Republic Y' Uburundi) and pictures from Passenger Info obtained from Immigration offices tendered by PW18 which were collectively admitted as **exhibit P 24**. Expert's comparison was done by **PW 15** of the clips from CCTV Camera and the photographs of the 3rd accused NDUIMANA OGISTEE@ JONAS ZEBEDAYO which after a scientific examination resulted to a finding that **all photographs were of one and the same person.**

After the finding the said expert stated to have prepared two documents one being a report which was admitted as Exhibit P. 20, and second an Examination Book (Kitabu cha Taarifa ya Uchunguzi wa Picha) which was admitted as **exhibit P 21.**

The Prosecution further revealed that not only did the 3rd and 4th accused confessed in their cautioned statements but also, they

confessed at the time they were interviewed by police officers at Oysterbay Police Station after the 3rd accused requested to confess in the presence of other police officers. The said interview was recorded by PW26 AZ and was tendered and admitted as **exhibit P37**. In the said video the accuseds admitted to have committed the offence and he mentioned his accomplices who were also mentioned in their cautioned statements. The 3rd accused in the recording is heard among other statements saying, I quote:-

"Karama alikuja na watu watatu na waliingia kupitia mlango wa mbele. Aliniita na kuwaambia kuwa msione pesa mlizonipa hazijafanya kazi. Mtu mwenyewe ni huyu hapa ameshafika na kifaa kipo. Niliuliza hela zangu napataje nikaambiwa nisiwe na wasiwasi vitu vyote vitakuwa na Karama. Niliuliza Mzungu anakuja na usafiri gani na basi au na ndege? Nikaambiwa anakuja na ndege".

The 4th accused person Godfrey Peter Salamba in the said video was also heard confessing saying among other statements I quote:

"Nyumbani kwa karama tulikuwepo sita; Mimi, Kalisti, Abuu, Makoi, Karama na Luftin".

From the above the said evidence **exhibit P 37** was among the best evidence since the accused was seen clearly without

cohesion while confessing committing the crime and it facilitated in the investigation.

On the Defense side all the accused denied to have committed the offence charged. For the 2nd accused she came up with a complain that she was tortured by the Police at the time her caution statement was recorded. This accused also denied to have been the custodian of the weapons used in committing the offence. To support her defense, she submitted medical documents which were admitted as **exhibit D2**.

However, from her defense, with respect I do not consider it to be material to the extent of affecting the credibility and reliability of the prosecution evidence before the Court. The reasons to refute are first; the claim she was tortured appears to be an **afterthought** as she didn't raise it when her cautioned statement was tendered. Also, **exhibit D2** did not support her claim as it shows that the accused was treated in 2020 while the cautioned statement was taken in 2017.

With regards to the weapons her defense is weak since in her cautioned statement she confessed to have shifted the weapons after knowing that her brother has been arrested. And also, she volunteered to show where she had buried the weapons of which during the process of unearthing the same, photographs were taken of her at the said exercise. **Exhibit P 17** the photograph pamphlet

duly prepared by the Police Force of the said events was tendered and was never objected.

Referring to the 3rd accused, **NDUIMANA OGISTE @ JONAS ZEBEDAYO @ MCHUNGAJI** in his defense he stated that he was not arrested because of the offence of Murder he was charged with rather he was arrested for stealing. He denied his names appearing in the charge sheet but admitted only the name NDUIMANA however he failed to disapprove that the names appearing in charge sheet were actually not his. Again during trial within trial the accused gave a different story and in his defense he had a new story.

From the above evidence it can be noted that this accused is so crafty considering the fact that is known with different names in order to disguise himself. Refer to **exhibit P24** which are Passenger info, Tanzania Voters Identity, the Burundi Resident ID card (Ikaranga Muntu).

From the Prosecution evidence it is clear that the accused was involved in the incident and what he testified during his defense is the lies and all what is doing is trying to discharge himself from liability.

In the case of ***PASCAL MWITA AND OTHERS VS REPUBLIC [1993] TLR 295 at pg. 300*** the Court of Appeal held that:

"Although lies and evasions on the part of an accused do not in themselves prove the facts alleged against him, they may, if on material issues, be taken into account along with other matter and evidences as whole when considering his guilty."

Therefore basing on the above analysis and the evidence of visual identification which is supported by identification parade, the caution statements, the video clip which shows the interview of the accused confessing the offence, the confession of the co accused, the evidence from Immigration which proves that on the material date the accused was present in the United Republic of Tanzania together with the above precedents, all these pieces of evidence connect this accused with the offence charged.

He had already in him an evil mind to murder as he went to the Airport to confirm and see whether the deceased had arrived and that he was ready for the work assigned. His defense cannot be entertained in anyway as the Prosecution evidence against him was proved beyond reasonable doubt that he was the real

perpetrator who pulled the trigger to assassinate Mr. Wayne Derek Lotter.

The 4th accused during his defense, came with the issue that on the material date i.e. **16/8/2017** he received information that his sister had passed away and that he was at his home from 20:00 hours and on the following day he travelled to Arusha to attend his sister's burial ceremony. Supporting his defense, he summoned two witnesses **DW4** and **DW5** and tendered for evidence **exhibits D3** and **D4**. However, this kind of evidence does not hold water and cannot help him in any way since the prosecution evidence proved that he was in Dar es Salaam on **16/08/2017** the fact he did not dispute since he claimed to travel to Arusha on **17/8/2017**.

In his efforts to disapprove the Prosecution evidence that at the time the Murder occurred, he was not at the scene of crime but at home, he brought **DW4** who is alleged to be his wife to cement that at that material time he was at home. However, her testimony is not reliable since during cross examination she stated not to have been at home living with the accused since **2015 until 2019**. If that is the case, DW4 was lying before the Court as this incident occurred in 2017 a period which she was not living with the accused. In the case of ***SOSTHENES MYAZAGIRO @ NYARUSHASHI vs***

REPUBLIC, Criminal Appeal No. 276 of 2014 the Court held that:

"Lies of an accused person can be used to corroborate the Prosecution case."

Further the evidence of DW 5 who is alleged to be the 4th accused Brother-in-law, does not exonerate the accused from committing the crime. The dates the accused is alleged to have been in Arusha for burial of his sister the offence was already committed. Hence this defense has no value at all.

Now from all the analyzed evidence i.e. the confession of the accused, the video clip and since this accused was implicated by the co-accused as explained, the said evidence is enough to prove that the 4th accused was among the accuseds who are responsible for the Murder.

The 5th accused **CHAMBIE JUMA ALLY**, admits that his cautioned statement was taken and that he only signed two papers out of five. This witness held a very crucial position if he didn't want the death of Mr. Lotter to happen. However, since it was an organized crime, he had to cooperate.

His omission to report the plan at least to KIA Management that the deceased was awaited to be killed in Dar es Salaam could

have assisted the plan to be frustrated and serve the Deceased's life. It doesn't cross my mind that this witness was driving the deceased and his co-director to KIA knowingly that was Mr. Lotter's last journey from Arusha to Dar es Salaam. His omission to report shows that he had an intention for the offence to be committed. In fact, what I can say the 5th accused neglect to prevent an offence was an offence in itself in law.

In the case of ***D.P.P VERSUS JUMA ABDALLAH AWAZI CR. APPEAL NO. 99 OF 2016 (HCT AT MTWARA) UNREPORTED***) it was held that:

"A person may be guilty of failure to prevent the commission of an offence if, having knowledge that another person designs to commit or is committing an offence, fails to prevent it. The main element in such offence is knowledge".

It is from the above averments, the 5th accused cannot escape the responsibility of killing the deceased herein whom he claimed to have known him since 2014.

In his own words through the cautioned statement the 5th accused said that the reason of him not to report was that he was promised a share out of the deal. When asked why he didn't report the plan to anyone, the 5th accused had this to say:

"Niiiamua nisiseme, iakini pia niliahidiwa kupata mgao kwa kutokusema popote."

Therefore, his defense did not shake the Prosecution case against him.

The 6th accused one **ALLAN ELIKANA MAFUE** and the 7th accused one **ISMAIL ISSAH MOHAMED @ MACHIPS** these two accuseds were connected to this offence since they were implicated by the co-accused in their cautioned statements. The 6th accused was mentioned by 2nd accused, 3rd accused, 4th accused, 5th accused and the 14th accused. During his defense, he had no strong evidence to exonerate himself from the offences he is charged with since he had a general denial.

However, in the course of defending himself, the 6th accused tendered some documents which were collectively admitted as **exhibits D5** and **D6** to prove that he was involved in business of wholesale and farming and that he has nothing to do with the business of bureau de change as it was alleged in the prosecution evidence. Although the said documents for instance the TIN Number which was admitted as **exhibit D6** is seen to be issued on 16/8/2017, and the business License which was also admitted as **exhibit D6** was issued on 23/8/2017.

From this evidence it is clear that the accused has shown his guileful, to achieve his mission in proving that he has no bureau de change and that he had no money to facilitate the mission as he was accused of by his co accused. Now what I am asking myself is if at all he had no such a business in 2017, why was it a coincidence that the date of issuing TIN Number is the date of the incident? I don't buy his defense as it is an **afterthought** since there is enough evidence from his co accused which proved that he was among the sponsors. Therefore, coming up with this kind of defense is unusable and cannot ruin the Prosecution case.

The 7th accused was implicated by the **4th** and **8th** accused. During his defense he had a general denial; besides he provided nothing substantial to exonerate himself from the offence he is charged as his co-accuseds' allegations connected him to the plan to murder the deceased. However, if someone traces the midpoint of this case, one will note that the whole plan originated from Arusha and particularly after the 7th accused had assigned the 8th accused person the task to locate the people to assassinate the deceased Wayne Derek Lotter.

The evidence of the 8th accused that he was found by the 7th accused for the above stated motive, confirms the start of this ill motive. As said before, it is not disputed that the 7th accused's

cautioned statement was not tabled though written, as he confessed to write it. There is a big connection to his call to 8th accused who later took the matter and made sure the assassin is found. As it has been observed that the 8th accused was a very active member to the plan to the extent of being handled the **Tshs. 58,000,000/= Million** given by the 7th accused to deliver the same to Karama for the purpose of paying the people who will successfully accomplish the mission.

For his above stated position, this honorable court is of the view that indeed the 7th accused was fully involved in the plan and played his part to facilitate the move. His mention cannot be undermined and the Prosecution case against him has not been shaken.

LEONARD PHILIPO MAKOI, the 8th accused person in his defense stated to be arrested at his place of work which is a pharmacy. He stated to have been accused of stealing medicine from the Medical Store Department and was arrested and later he found himself in Dar es Salaam joined in this particular case. His defense too does not attract distortion of the prosecution case against him. I find it so since in his own cautioned statement admits to have been assigned a duty to seek for an executor and has also been named by his co accuseds to be part of the planners of the said execution.

The 9th accused one **AYOUB SELEMAN KIHOLI**, and 12th accused namely **ABUU OMARY MKINGIE**, during their defense both had general denial and they denied knowing any of the accused and to have committed the offences they are charged with.

It was evidenced that the accused were involved in the plan of murdering the deceased and the two had knowledge on what was going to be done at the scene but still they were the ones who were escorting the accused to the scene by making sure they are not caught, this is as per their confessional statements and the confessions of the co-accused.

From that evidence it is clear that both the accused were of the great help in accomplishing the mission of murdering the deceased.

The 13th accused namely **HABONIMANA AUGISTIN NYWANDI @OGISTEE** defended himself by stating that he never had his cautioned statement written nor signed any papers and that he had never been to Tanzania before. However, his defense had no chance to ruin the Prosecution case against him. This accused was named by his co-accuseds to have been at Fahami Karama's and the 2nd accused's residence at the time of planning the Murder.

The 14th accused namely **MICHAEL DAUDI KWAVAVA** during his defense case, gave general denial on the allegations. This accused also claimed that it was the 3rd accused who removed the keys from the car, but he claimed that the car was on during the whole incident, but when he was asked whether it is possible to remove the key when the car is on he replied that it is impossible.

The whole accused's defense does not shake the prosecution case and does not exonerate him from the charges is facing, this is simply because he is the one who assisted the co accused to succeed in their mission as he knew the plan and he did not disclose to the deceased or PW10 despite the fact that they were his longtime customers of almost ten years. Again, the accused's behavior during commission of the offence suggest that he had a criminal mind and is guilty just as other accused in this case and he is not innocent as he claimed in his defense.

Therefore, owing to the reasons narrated above, **the second sub issue is answered in affirmative that it is the accused herein persons and not any other person who killed the deceased.**

The third sub issue is ***whether the killing of the deceased was with malice aforethought.***

As we all know, **Murder is a capital offence**. It is proved where there is evidence of causing death of another person. However, the killing must be with **malice aforethought**, that is to say **intentionally and unjustifiable**.

Section 200 of the Penal Code provides circumstances that constitutes **malice aforethought**. The law requires that, among other circumstances there must be a proof that there was an intension to cause the death. The accuseds' acts in this case have proved that they all had a common intension to commit the offence of Murder of which was successfully accomplished.

In this case, after the evidence adduced by the Prosecution and analyzed by this honorable court, it is clear that all the accused persons herein intended to kill the deceased.

In Criminal Law, I have to address my mind to two principles which are of relevance to any Criminal case. The first one is on criminal participation or to use the language of the statute, **"principal offenders"**. The second principle is on **"common intention"**.

On the first principle, **section 22 of the Penal Code Cap. 16 (R. E. 2002)** governs the situation. The section provides:

"22 (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the

offence and to be guilty of the offence, and may be charged with actually committing, namely:

*(a) every person who **actually does** or makes the omission which constitutes the offence;*

*(b) every person who does or omits to do any act for the purposes of **enabling** or **aiding** another person to commit the offence;*

*(c) every person who **aids** or **abets** another person in committing the offence;*

*(d) any person who **counsels** or **procures** any other person to commit the offence, in which case he may be charged either with committing the offence or with counselling or procuring its commission;*

(2) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

*(3) A person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission the act or omission would have constituted an offence on his part, **is guilty of an offence of the same kind and is liable to the same***

punishment as if he had himself done the act or the omission."

In the old context, the offenders in paragraph (a) were called **Principal offenders** in the first degree. "Offenders falling under paragraphs (b) (c) and (d), are called" "**principals in the second degree**" or "**accessories before the fact**". But as observed in ***SITA d/o ZATTO AND OTHERS v. R. (1957) E. A. 308*** such category is no more recognized as **all such accessories are now indictable under section 22 as principal offenders.**

The section has received consideration in many decisions in East Africa. Applying the statements in the English case of ***R v CONEY AND OTHERS (1882) 8 QBD534***, the scope and application of that provision has been considered in the often quoted cases of ***ZUBERI RASHID V R (1957) EA 455***, ***R v. MUNDULI s/o CHUI AND OTHERS (1948) EACA 47***, ***SITA d/o ZATTO AND TWO OTHERS v R (Supra)***, and by the Court of Appeal of Tanzania in ***DAMIANO PETRO AND JOACHIM ABDALLAH v R. (1980) TLR 260***, and ***MAKOKOI CHANDEMA v HASSAN MTETE (Criminal Appeal No. 143 of 1999 - Mbeya (Unreported)***. From these decisions, the following principles emerged.

(a) To constitute an aider and abettor some active steps must be taken by word or action with the intent

to instigate the principal offender or principal offenders to commit an offence;

(b) The question whether or not an accused's conduct amounts to countenancing is a question of fact and would depend on the circumstances of each case.

(c) If a person is voluntarily and purposely present and witnesses the commission of a crime, and has the duty and the power to prevent its commission, but offers no opposition, or does not prevent it, it could be inferred that he wilfully encouraged or aided or abetted; and

(e) An accused may be convicted of counselling and procuring the commission of a crime even if he is not present at the scene of the crime.

The second major principle for consideration in criminal law also relevant to the present case is “**common intention**”. The doctrine is formulated in **section 23 of the Penal Code** as follows:

"(23) When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable

consequence of the prosecution of such purpose, each of them is deemed to have committed the offence”.

[Emphasis is mine].

This section has also been the subject of numerous judicial decisions, including **TABULAYENKA s/o KIRYA AND OTHERS v. R** (1943) 10 EACA 51; **R v. MGUNDULWA S/O JALU AND OTHERS** (1945) 22 EACA 169; **R v SELEMANI S/O NGULU AND ANOTHER** (1947) 14 EACA 94; **WANJIRO D/O WAMELLO AND ANOTHER v R** (1955) 22 EACA 521, **LAMAMBUTU S/O MAKALYA AND ANOTHER v R** (1958) EA 706, **R v. NGERERA S/O MASAGA AND OTHERS** (1962) EA 766, **GODFREY JAMES IHUYA v R** (1980) TLR 197, **ALEX KAPINGA AND OTHERS v. R** Criminal Appeal No. 252 of 2005 Mbeya (Unreported) and **SHIJA LUYENKO v R** (Criminal Appeal No.43 of 1999 (Unreported) (Mwanza).

From these decisions, the following principles can be carved out:

- (i) For section 23 to apply it must be shown that an accused person shared with the actual perpetrator(s) of the crime a specific unlawful purpose which led to the commission of the offence charged;*
- (ii) The offence committed must be a probable consequence of the prosecution of the unlawful purpose; and*

(iii) To constitute a common intention it is not necessary that there should have been any concerted agreement between the accused persons prior to the commission of the offence. Common intention may be inferred from their presence, their actions, and the omission of any of them to dissociate himself from the offence.

From the circumstances of this case, there is a need to address the law in respect of **confessions** particularly from some of the evidences that are before the court. The definition of a “confession” and to what extent, a confession could be taken into consideration against the accused is to be taken with the great caution depending each case and its merits, circumstances and other incriminating facts which may lead and amount to a confession.

Section **33 (1) of the Evidence Act** reads as follows:

*"33(1) When two or more persons are being tried jointly for the same offence or for different offences arising out of the same transaction, and a confession of the offence or **offences charged**, made by one of those persons **affecting himself** and some other of those persons is proved, **the court may take that confession into consideration against that other person**".*

(Emphasis supplied).

So, for a confession to be taken into consideration against the other accused(s) persons, it must not only relate to the offence(s) charged; but, also directly affect the maker.

From the evidence well elaborated above which was tabled by the Prosecution against all the accused persons herein, starting with the proved conspiracy against all accused persons herein to be followed by the act of assassinating the deceased out of the organized crime, **this court is satisfied that, all the accused persons killed the deceased with malice aforethought** and that **malice aforethought** have been duly established.

In the event therefore, **the 3rd sub issue is answered in affirmative.**

The last and 4th sub issue is ***whether killing was performed by committing unlawful act or omission.*** As observed above, the accuseds killed the deceased with malice aforethought. Generally, the law prohibits causing death to another person intentionally as provided under **section 196 of the Penal Code.** Consequently, **the 4th sub issue is answered in affirmative that the accused persons' act of killing the deceased herein was unlawful.**

Having responded to all the above sub issues affirmatively, this Court finds the second issue as to ***whether the offence of***

Murder had been proved beyond reasonable doubt has been answered **POSITIVELY**.

After the court has carefully considered the presented evidence from both sides and submissions made by some counsel, **I am satisfied that the Prosecution has proved its case beyond reasonable doubt against all the accused persons for the two offenses charged from the above detailed reasons.**

After the summing up to Assessors, I have been duly furnished with their respectable opinions. Mr. Chautundu Gentleman Assessor was of the opinion that, the **2nd, 4th, 8th, 9th and 12th** accused persons are **NOT GUILTY** of the offences charged. Whereas the **3rd, 5th, 6th, 7th, 13th and 14th accused persons** are **GUILTY** of the offenses charged.

Ms. Sophia Isike the Lady Assessor was of the opinion that the **2nd, 4th, 6th, 9th, accused persons** are **NOT GUILTY** of the offences charged. Whereas the **3rd, 5th, 7th, 8th, 12th, 13th and 14th accused persons** are **GUILTY** of the offenses charged.

I join hands with the Gentleman Assessors and a Lady Assessor for the opinion they gave for all the accused whom they have found **GUILTY** as charged. However, since the opinion does not bind the Court, I am respectfully parting way with the Assessors

in taking a different view in favor of the accused they opined **NOT GUILTY** and my reasons to the same are well explained in analyzing each of the accused person's case. As the evidence adduced by Prosecution against all the accused persons herein is overwhelming and has satisfactorily proved the case against them.

For the reasons that I have earlier stated, I hereby proceed to find the 2nd accused **RAHMA ALMAS MWINYI @ BABY @RAHMA ALMAS IDDI**, the 3rd accused **NDUIMANA OGISTE @JONAS ZEBEDAYO @ MCHUNGAJI @ NDAYISHEMIZE ZEBEDE @ NDAISHIME ZEBEDAYO @ OMARI HASSAN**, the 4th accused **GODFREY PETER SALAMBA**, the 5th accused **CHAMBIE JUMA ALLY**, the 6th accused **ALLAN ELIKANA MAFUE**, the 7th accused **ISMAIL ISSAH MOHAMED @ MACHIPS**, the 8th accused **LEONARD PHILIPO MAKOI**, the 9th accused **AYOUB SELEMAN KIHOLI**, the 12th accused **ABUU OMARY MKINGIE**, the 13th accused **HABONIMANA AUGUSTIN NYANDWI @ OGISTEE**, and the 14th accused **MICHAEL DAUD KWAVAVA**, **GUILTY** of **CONSPIRACY TO MURDER** contrary to section 215 of the of the Penal Code Cap. 16 [R. E. 2002] and **GUILTY** of **MURDER** contrary to section 196 of the Penal Code Cap. 16 [R. E. 2002] as charged and I hereby **CONVICT** them forthwith.

Having heard the prayer by the Prosecution and response of the Defense in respect of the Exhibits that were tendered before the Court for evidence, this Court orders as follows:

1. **Exhibit P3** one Uzi gun Caliber 9mm with serial No. 084912;
2. **Exhibit P4** one Riffle Maker 4 with no serial number and its barrel buttstock cut;
3. **Exhibit P5** Bullets K 5 164;
4. **Exhibit P6** Bullets K. 166-K K160-4;
5. **Exhibit P7 one** hand grenade;
6. **Exhibit P8 2** spent cartridges from the scene of crime;
7. **Exhibit P9 one** bullet head found in the deceased's body;
8. **Exhibit P10 2** spent cartridges resulting from the Ballistic Examination.
9. **Exhibit P11 2** bullet heads resulting from the Ballistic Examination;
10. **Exhibit P12** a spent cartridge from the Riffle resulting from Ballistic Examination; and
11. **Exhibit P37** JVC Camera GZ-HD 500 BU.

All these exhibits to be at the disposal of the RCO Kinondoni Police Region.

Further, in respect of **Exhibit P7** one hand grenade, the same be destroyed by a proper Expert, (Explosion Expert) upon supervision of a proper Authority.

As for Exhibits:

1. **P28** Toyota IST with Registration No. T 372 CMY white in color with a black roof;
2. **P29** Motor Vehicle Registration Card of Toyota IST No. T 372 CMY;
3. **P31** Toyota SIENTA with Registration No. T. 499 DGV, all the above instruments of the crime be forfeited by the Government in accordance to Section **351 (1) (a) of the Criminal Procedure Act Cap. 20 [R. E. 2022]**.

Ordered accordingly.



L. E. MGONYA

JUDGE

2/12/2022

SENTENCE

The deceased, **WAYNE DEREK LOTTER** was a Director and co-founder of the PAMS Foundation, an NGO that provides conservation and anti-poaching support to Communities and Governments in Africa. Tanzania is one of the beneficiaries of these initiatives. His death did not only affect his Family, his Foundation and his Friends, but also Tanzania as a Nation and the World at large.

Right to life is the Constitutional right. The right to life is the most important right to all human rights. There is no doubt that if there was no right to life, there would be no point in having any other human rights. This right can therefore legitimately be referred to as **the Mother of all other Rights**.

In Tanzania, the right to life was incorporated in the **Constitution of the United Republic of Tanzania (1977)** for the first time in 1984 when the Bill of Rights was introduced. Article **14 of the Constitution** provides:

"Every person has the right to live and to the protection of his life by the society in accordance with the law."

It follows then one of the main duties of the State is to protect its Citizens and all those who are within its Jurisdiction. That is to say, Citizens and other Nationals should feel safe at all times. We cannot allow some other Nationals in collaboration with immoral Locals to tarnish our image by killing innocent people like the deceased herein for their own interests.

What happened in this case was an act of extreme inhuman and cold heartened behavior. This case involved a **loss of life of an innocent man**. He was brutally killed while **working assisting the Government of Tanzania to preserve the National's natural resources**. This was the last thing that was expected to happen in this Country. The outcome of this case will be a lesson and reminder to all those who are involved in causing deaths to innocent people for their own benefits.


Human life is something **HOLY** which cannot be terminated in a very simple way as it was in this case. Therefore, one has to be responsible for the same.

There is only one punishment for Murder if it is proved under the provisions of **Section 197 of the Penal Code, Cap. 16 [R. E. 2002]** read together with the **Section 322 (1) and (2) of the Criminal Procedure Act, Cap. 20 [R. E. 2002]**.

As the offence of Murder has been duly proved before this honorable Court, my hands are tied, and I therefore sentence the accused persons **RAHMA ALMAS MWINYI @ BABY @RAHMA ALMAS IDDI, NDUIMANA OGISTE @ JONAS ZEBEDAYO @ MCHUNGAJI @ NDAYISHEMIZE ZEBEDE @ NDAISHIME ZEBEDAYO @ OMARI HASSAN, GODFREY PETER SALAMBA, CHAMBIE JUMA ALLY, ALLAN ELIKANA MAFUE, ISMAIL ISSAH MOHAMED @ MACHIPS, LEONARD PHILIPO MAKOI, AYOUB SELEMAN KIHOLI, ABUU OMARY MKINGIE, HABONIMANA AUGUSTIN NYANDWI @ OGISTEE, and MICHAEL DAUD KWAVAVA, to suffer death by hanging.**

Ordered accordingly.

Right of Appeal Explained.



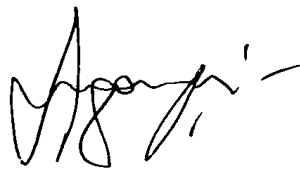
L. E. MGONYA

JUDGE

02/12/2022

COURT:

Judgment delivered under my hand and seal of the Court in open court this **2nd December 2022**; in the presence of **2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 12th, 13th and 14th Accused Persons**, Yamico Mlekano PSA, Halidi Hemedi SSA, Fadhili Mwandoloma SSA, Lilian Rwetabura SSA, Imelda Mushi SA, Haruna Shomari SA, Philbert Mashurano SA, for the Republic; and Mluge Karoli Fabian Advocate for 2nd and 5th Accuseds, Roman Lamwai, Advocate for 3rd and 13th Accused, Abdulai Abdulaziz Advocate for the 4th Accused, Augustine Shio Advocate for 6th Accused, also holding brief for Majura Magafu Advocate for 12th and 14th Accuseds, Gervas Herman Advocate for the 7th Accused, Modesta Medard for the 8th and 9th Accuseds, Assessors Mr. Salehe Chautundu, Ms. Sophia Isike and Mr. Richard RMA.



L. E. MGONYA

JUDGE

02/12/2022

