

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BIHARAMULO**

**CRIMINAL SESSION CASE NO. 88 OF 2017**

**THE REPUBLIC**

***VERSUS***

***JACKSON WILLIAM  
JAMES OBED***

**JUDGMENT**

*Date of last order 31/03/2022*

*Date of judgment 01/04/2022*

***Kilekamajenga, J.***

In this case, it is alleged that the deceased (Gabriel Martine) worked as a herdsman. He was hired by Samwel Kapyolo (PW3) to take care of forty five herds of cattle which were jointly owned by Samwel Kapyolo and Nyakasaza Karoli. It is further alleged that, on 24<sup>th</sup> January 2014, he was attacked and murdered by a group of unknown people. Thirty six herds of cattle and two sheep were stolen. On the next morning, PW3 was informed about the death of the deceased. On the way to the crime scene, he passed through Lusahunga police station to report the incident. While at Lusahunga, PW3 was informed that, three people were arrested driving thirty six herds of cattle to Lusahunga without a permit. He went to witness the cows and found his own cows arrested.

He also witnessed somebody called Abubakari alias Abuba was arrested because he was among the persons who were driving the cows at that night. However, the other three suspects had escaped. It is further alleged that, on the same day, the first accused was also arrested and the second accused was arrested after two years.

Before this court the two accused persons, namely Jackson William and James Obed were arraigned for the offence of murder contrary to **section 196 of the Penal Code, Cap. 16 RE 2002**. The information of murder filed before this court showed that, on 24<sup>th</sup> January 2014 at Ngarambe hamlet within Biharamulo District in Kagera District, the accused persons murdered Gabriel Martine. During the trial, the two accused persons pleaded not guilty to the information of murder. Determined to secure a conviction against the accused persons, the prosecution paraded eight witnesses and tendered five exhibits.

The following exhibits were tendered to support the prosecution case: the sketch map (exhibit P1) which was admitted during preliminary hearing and read in court during the trial; the post-mortem examination report (exhibit P2) which was admitted during preliminary hearing and read in court during the trial; the 2<sup>nd</sup> accused's caution statement (exhibit P3); the 1<sup>st</sup> accused's caution statement (exhibit P4) and the 2<sup>nd</sup> accused's extra-judicial statement (exhibit P5). The

learned State Attorney, Ms. Naila Chamba commenced the trial and later the learned State Attorneys, Messrs. Hezron Mwasimba and Geoffrey Malagala took over the case for the Republic. The 1<sup>st</sup> accused enjoyed the legal services of the learned advocate, Miss Esther Santozi whereas the 2<sup>nd</sup> accused was represented by the learned advocate, Mr. King Manase.

The gist of the prosecution evidence is as follows: Elias Musa (PW2) testified that, the deceased was their herdsman. On 25<sup>th</sup> January 2014, PW2 and his young brother called Edward went to Ngarambe village (Ngazi saba) and found their herdsman dead. Also, the herds of cattle were missing in the kraal. He witnessed the deceased wounded on the head. He further confirmed that, they kept forty five herds of cattle and two sheep in the kraal. Thereafter, PW2 phoned his father (PW3). The evidence of PW2 was supported with Samwel Kapyolo (PW3) who further confirmed that, the deceased was his herdsman who lived at Ngarambe village. On 25<sup>th</sup> January 2014 at 9 am, his son (PW1) informed him about the death of the deceased. When going to the crime scene, he passed through Lusahunga police station to report the incident. He was also informed about the herds of cattle that were arrested at Midaho at Rusahunga. He saw the herds of cattle and identified 36 cows and two sheep for having a mark of PS and NK on the right thigh. He further testified that the mark PS is an acronym of Paulo Samweli. Paul being the name of his father and his name is

Samwel. NK is the acronym of Nyakasaza Karoli the person that they shared the kraal. After identifying the herds of cattle, he went to the crime scene and found the deceased dead. The deceased was beaten with a blunt object.

PW3 further stated that, three persons were driving the cows; one of them (Abubakari @ Abuba) was arrested. He also remembered that Abuba was a friend of the 1<sup>st</sup> accused (Jackson William) and the two lived together. He further told the court that, Nyakasaza Karoli previously hired the 1<sup>st</sup> accused to be the herdsman of the same cows. The deceased and the 1<sup>st</sup> accused had a misunderstanding and the 1<sup>st</sup> accused left the job and went to join Abuba. During cross examination, PW3 clarified that, the total number of cows were forty five (45) but only 36 cows and two sheep were stolen. He testified further that, one person was arrested with the herds of cattle and the other two ran away. Before this court, he confirmed that, he knew the 1<sup>st</sup> accused. On 25<sup>th</sup> January 2014, he talked to Abuba who told him that, they were together with the first accused when driving the cows.

The evidence of PW3 corresponds to the testimony of Almasi Luswetula (PW6) who was the chief of the traditional security group called *Sungusungu* at Midaho in 2014. He informed the court that, on 24<sup>th</sup> January 2014, bandits stormed their village prompting an alarm and gathering of the villagers. On 25<sup>th</sup> January 2014,

at around 3 am, they spotted three people driving herds of cattle. Villagers stopped them and asked for the permit to drive the cows at that night. The three persons replied that, the permit was in the hands of their boss. Villagers told them to phone their boss. Two of those suspects went to a hill for a mobile phone communication and one of them remained behind. Those two suspects came back and informed villagers that their boss would arrive at 8 am. Villagers continued to hold the three suspects until at 8 am but their boss was nowhere to be seen. Again, the two suspects went to the hill for communication; this time they did not return. Therefore, villagers remained with one suspect (Abubakari). PW6 phoned the OCS of Lusahunga and informed him on the arrested of the herds of cattle and one person. The OCS arrived at Midaho village and interrogated the remaining suspect. PW6 saw the cows with PS and NK marks. In total, the cows were thirty six and two sheep. PW6 thereafter handed the cows and the suspect to the OCS. On the next day, the OCS went to Midaho village and informed PW6 that the herds of cattle were stolen and the herdsman was killed.

Dr. Tumpare Hakimu (PW1) examined the deceased's body. She testified that the deceased's death was due to brain tissue injury and severe bleeding from the wound caused by a blunt object. She further testified that, the deceased had multiple wounds on the head. Her evidence was supported with the post-mortem

examination report (exhibit P2). On his part, Sargent Masele (PW4) drew the sketch map which was admitted as exhibit P1. ASP Kusaya Mayala (PW7) testified that, on 25<sup>th</sup> January 2014, he went to the crime scene and witnessed the deceased wounded on the head. On the same date, he was informed about the arrest of a suspect with herds of cattle at Midaho. He followed-up the information up to the place where the herds of cattle were and found one suspect called Abubakari Dionis who was arrested by the Sungusungu. He took the herds of cattle to Nyakahura police station. He had a conversation with Abubabakari who named the 1<sup>st</sup> accused as the person they were together driving the herds of cattle at night. As the 1<sup>st</sup> accused lived at Nyakahura, he was immediately arrested by villagers and presented to Nyakahura police station. PW7 received the first accused and immediately commenced an interrogation. During the interview, the first accused confessed to participate in the murder of the deceased. In this case, the 1<sup>st</sup> accused's cautioned statement was admitted as exhibit P4.

Assistant Inspector Salum (PW5) was assigned by the OC –CID of Biharamulo to take over the investigation of the case from the erstwhile investigator. After reading the case file, he discovered that, the third suspect was not arrested. On 19<sup>th</sup> January 2016, at around 5 pm, he arrested the 2<sup>nd</sup> accused at Kiruruma village and took him to Biharamulo police station for interrogation. He

commenced the interrogation at 8 pm. During the interview, the second accused confessed to participate in the murder of the deceased. During the trial, the 2<sup>nd</sup> accused's caution statement was admitted as exhibit P3.

Edward Samara (PW8) who was the Primary Court Magistrate and justice of peace from Biharamulo Primary Court testified that on 20<sup>th</sup> January 2016 while at work, Detective Constable Salum arrived with the second accused for recording an extra-judicial statement. The accused introduced himself to PW8 as James Obed who was a suspect of murder. PW8 filled in the appropriate standard form for recording the extra-judicial statement. When recording the extra-judicial statement, the second accused confessed to have been involved in the murder. Before this court, the extra judicial statement of the second accused was admitted as exhibit P5.

In his defence, the second accused (DW1) testified that, on 24<sup>th</sup> January 2014, he woke-up in the morning and went with his brother called Alistides Obed to prepare a shamba for growing beans. They worked at the farm until at 1 pm and returned back home. In the evening, they went back again to the farm and came back home and finally went to bed. He spent his night at home until the next day when he again woke up and continued with agricultural activities. He testified further that on 14<sup>th</sup> January 2016, DW1 went to Biharamulo to sell his maize and

he was arrested by the police. He was taken to the police station and interrogated whether he knew Jackson and Abuba. He denied knowing them and he was tortured and forced to confess to the murder. On 19<sup>th</sup> January 2016, he was taken into the interrogation room and forced to confess but he denied. On 20<sup>th</sup> January 2016, he was taken to the justice of the peace whom he later knew him to be Samara. Before the justice of the peace, he was again asked whether he knew Jackson and Abuba but he denied. The justice of peace continued to write. He was later told to sign on the papers and he did so. The justice of the peace and the police who accompanied him also signed. He was later taken to Biharamulo District Hospital for medical treatment and finally taken back to the police station. On 22<sup>nd</sup> January 2016, he was taken to court. DW1 further stated that, the police who interrogated him called Salum had previously fought with his brother called Alistides Obed. The two fought for a girl in Biharamulo at the bar owned by Fabian. DW1 was present during the fight and intervened. Since then, Salum had planned for revenge.

DW2 (Alistides Obed) testified that, on 24<sup>th</sup> January 2014, he went with DW1 to harvest maize and later went home and they did not return to the farm. On 14<sup>th</sup> January 2016, DW1 went to sell maize at Biharamulo and was arrested. When DW2 got the information on the arrest of DW1, he went to see him at the police station he found him okay and he was not beaten. DW2 told the court that, he



worked as a militia man and he therefore knew Salum because he was also assisting the police. He further stated that, he previously fought with Salum for a girl and there was no conflict thereafter. He insisted that DW1 had no conflict with Salum.

DW3 (Jackson William) testified that, he was arrested on 23<sup>rd</sup> January 2014 in the game reserve where he went to collect firewood with his friend. As his friend was very young, he was released and DW3 was taken to Biharamulo police station. Later, the police called Mayala came and recognised him because he previously worked for him (Mayala) as he grazed the goats of Mayala. On 25<sup>th</sup> January 2014, he was handcuffed and blindfolded and taken to Nyakahura police station where he was tortured and forced to confess on the murder. He further informed the court that, through the torture, he lost three teeth and lost consciousness. He came back to his senses and found himself at Biharamulo District Hospital. He was later taken back to the police station and forced to sign some papers. He only signed the documents because his condition was bad. On 29<sup>th</sup> January 2014 he was taken to court and charged with murder.

Having considered the evidence from both sides, the pertinent issue in this case is whether the prosecution has satisfied the requirement of proving the case

beyond reasonable doubt. The law requires every criminal case be proved without leaving any shred of doubt. See, **section 3 (2) (a) of the Evidence Act, Cap. 6 RE 2019**. Also, it is an obligation of the prosecution to satisfy this requirement of the law. This position of the law was reinforced further in the case of **Mohamed Matula v. republic [1995] TLR 3** thus:

*'Upon a charge of murder being preferred, the onus is always on the prosecution to prove not only the death but also the link between the said death and the accused; the onus never shifts away from the prosecution and no duty is cast on the appellant to establish his innocence.'*

The accused persons before this court are facing a charge of murder under **section 196 of the Penal Code**, which establishes the offence of murder. Before sustaining a conviction against the accused persons, certain conditions must be met. There must be **death** of a person; the death of the deceased must be a result of an **unlawful act** or by an **unlawful omission**; it must be proved that the accused persons are the ones who killed; the killing must be preceded by a pre-meditated evil intention (**malice aforethought**).

In the case at hand, I wish to clear the facts which are not contested. There is no doubt that the deceased (Gabriel Martine) died on the night of 24<sup>th</sup> January 2014. He was attacked and hit with a blunt object on the head leaving him dead.

The postmortem examination report (exhibit P2) revealed the cause of death to be severe bleeding due to brain tissue injury. The death of the deceased was witnessed by PW1, PW2, PW3 and PW4. Furthermore, there is no doubt that the deceased suffered a brutal death after a blunt object hit his head. Surely, this was not a natural death but an act of an evil man. I cannot doubt that the person who caused the death had planned to take away the life of the deceased. The deceased, therefore, died as a result of an unlawful act caused by someone's malice aforethought. See, **section 200 of the Penal Code, Cap. 16 RE 2019.**

The most pertinent issue is whether the accused persons before this court killed the deceased. At hand, the court was availed with evidence surrounding the death of the deceased. No any person witnessed the death of the deceased. Before applying circumstantial evidence to ground a conviction against the accused persons, the court must warn itself on the danger ahead. The law is already settled on this area of the law. For instance, in the case of **Bahati Makeja v. The Republic, Criminal Appeal No. 118 of 2006**, Mwanza (unreported), the Court of Appeal of Tanzania observed that:

*"in a case depending conclusively on circumstantial evidence the Court must before deciding on a conviction, find that the inculpatory facts are*

*incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis that of guilty”.*

Also, in the case of **R v. Kerstin Cameron [2003] TLR 84** the Court had the following to say in connection with application circumstantial evidence:

*To ground a conviction on circumstantial evidence, the following principles must apply:*

- (a) The evidence must be incapable of more than one interpretation;*
- (b) The facts from which an inference of guilty or adverse to the accused is sought to be drawn, must be proved beyond reasonable doubt and must clearly be connected with the facts from which the inference is to be drawn or inferred;*
- (c) In murder cases, evidence should be cogent and compelling as to convince a jury, judge or court that upon no rational hypothesis other than murder can the facts be accounted for.*

See also the case of **Sadiki Ally Mkindi v. DPP, Criminal Appeal No. 207 of 2009**, CAT at Arusha, (unreported).

Furthermore, the case of **Lucia Anthony @ Bishengwe v. The Republic, Criminal Appeal No. 96 of 2016**, CAT at Mwanza (unreported) reproduces various conditions for the application of circumstantial thus:

- i. *That the circumstances from which an inference of guilty is sought to be drawn must be cogently and firmly established, and that those circumstances should be of a definite tendency unerringly pointing towards the guilty of the accused, and that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused none else (See **JUSTINE JULIUS AND OTHERS VS. REPUBLIC**, Criminal Appeal No. 155 of 2005 (unreported)).*
- ii. *That the inculpatory facts are inconsistent with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of guilt; and that before drawing inference of guilt from circumstantial evidence, it is necessary to be sure that there are no ex-existing circumstances which would weaken or destroy the inference [See, **SIMON MSOKE VS. REPUBLIC, (1958) EA 715A** and **JOHN MAGULA NDONDO VS. REPUBLIC**, Criminal Appeal No. 18 of 2004 (unreported)].*
- iii. *That each link in the chain must be carefully tested and, if in the end, it does not lead to irresistible conclusion of the accused's guilt, the whole chain must be rejected [see **SAMSON DANIEL VS. REPUBLIC, (1934) E.A.C.A 154**].*
- iv. *That the evidence must irresistibly point to the guilt of the accused to the exclusion of any other person. [See **SHABAN MPUNZU @ ELISHA MPUNZU VS. REPUBLIC**, Criminal Appeal No. 132 of 2002 (unreported)].*
- v. *That the circumstantial evidence under consideration must be that of surrounding circumstances which, by undersigned coincidence is*

*capable of proving a proposition with the accuracy of mathematics. (See **JULIUS JUSTINE AND OTHERS VS. REPUBLIC** (Supra).*

- vi. *That the facts from which an inference adverse to accused is sought must be proved beyond reasonable doubt and must be connected with the facts which inference is to be inferred. (See **ALLY BAKARI VS. REPUBLIC (1992) TLR, 10** and **ANETH KAPAZYA VS. REPUBLIC**, Criminal Appeal No. 69 of 2012 (unreported).*

However, considering the evidence at hand, the only circumstances that link the accused persons to the murder is the evidence on the arrest of three persons driving thirty six herds of cattle at night. The evidence adduced intended to prove that, the two accused persons before this court together with Abubakari were arrested driving the said herds of cattle. The accused persons were the persons who pretended to call their boss and ended up escaping leaving behind Abubakari. The evidence of PW3 shows that, he found Abubakari arrested with the cows at Nyakahura police station. PW3 knew Abubakari to be a close friend of the first accused. He further testified that, his fellow cattle keeper, Nyakasaza Karoli previously hired the first accused as a herdsman but later left after a conflict with the deceased arose. The first accused relocated to the place of Abubakari. After the arrest with the cows, PW3 talked to Abubakari who told him that he was together with the first accused when driving the cows. Generally, PW3 knew both Abubakari and the first accused.

ASP Kusaya Mayala (PW7) was informed on the arrest of Abubakari together with the herds of cattle. He took Abubakari and the arrested cattle to Nyakahura police station. Furthermore, Abubakari named the first accused to be person they were together when driving the cows at night. On the same date, the first accused was arrested by villagers and taken to Nyakahura police station. PW7 interrogated the first accused who confessed to participate in the murder together with Abubakari and the second accused. These pieces of evidence link the first accused and Abubakari to the murder of the deceased. However, it may not be sufficient to sustain a conviction unless coupled with other evidence.

In my hand, the other piece of evidence is based on the repudiated/retracted confessions of the accused persons. Again, the court must take an extra-caution before basing a conviction on the confessions of the accused persons. In the case of **Kashindye Meli v. Republic [2002] TLR 374**, the Court of Appeal of Tanzania stated that:

*'...it is now settled law that although it is dangerous to act upon a repudiated or retracted confession unless such confession is corroborated, the court may still act upon such a confession if it is satisfied that the confession could not but be true.'*

The same stance was taken in the case of **Hatibu Gandhi and others v. Republic [1996] TLR 12** where the Court of Appeal held that:

*'A conviction on a retracted uncorroborated confession is competent if the court warns itself of the danger of acting upon such a confession and if fully satisfied that, the confession cannot but be true.'*

The above position of the law is further expounded in the case of **Tuwamoi v.**

**Uganda [1967] 1 EA 84**, where the East Africa Court stated that:

*'We would summarise thus a trial court should accept any confession which has been retracted or repudiated with caution, and must before finding a conviction on such a confession be fully satisfied in all the circumstances of the case that the confession is true. The same standard of proof is required in all cases and usually a court will only act on the confession if corroborated in some material particular by independent evidence accepted by the court. **But corroboration is not necessarily in law and the court may act on confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true.**'* (Emphasis added).

The above authorities clearly confirm that, before applying a retracted or repudiated confession to find a conviction, the court must warn itself. However, the court may ground a conviction on a retracted or repudiated confession, even in absence of independent evidence to corroborate, where the court is satisfied that the confession has a true account of the offence. On this aspect, I now find it pertinent to gauge the contents of the cautioned statements of the accused



persons and the extra-judicial statement of the second accused. For clarity and easy understanding, I wish to reproduce the excerpt from the cautioned statement of the first accused thus:

*Baada ya kujadili tulikubaliana kuwa mimi nitawapeleka kwenye zizi la Nyakasaza ambalo wanachunga pamoja na WEO KAPYORO. Mnamo tarehe 24/1/2014 muda wa saa 17:00 tulikusanyika tena na kuweka mkakati wa kwenda kuiba mifugo hiyo, muda huo na ABUBAKARI S/O DIONIZ @ JAPHETI S/O ALBERT yote ni majina yake alipiga simu naye tukamweleza aje tuungane naye kwenye dili. Alikuwa na kuongea kiasi atakacholipwa ni Tshs. 20,000/= kuswaga tu hadi Lusahunga. Mimi nilikuwa nalipwa Tshs. 800,000/= Laki nane, ambayo nilipaswa kulipwa huko Lusahunga baada ya kufikisha mzigo wa ng'ome hao. Muda wa saa 20:00 tulitoka mzani watu watatu, mimi ABUBA S/O? JAMES S/O OBEDI na JAMES S/O? Yule mnyarwanda yeye alitangulia mbele kwani alikuwa anajifichaficha tulimkuta daraja la Ngararambe. Tulienda hadi kwenye zizi la ng'ombe tulikuwa wanne na mimi nilitangulia hadi kwenye ng'ombe na ABUBAKARI S/O DIONIZ @ JAPHETI S/O ALBERT. Wengine walibaki na mchungaji wakimhoji maswali naye anawauliza kwanini wafike kwenye ng'ombe wake usiku? Muda mfupi baadae tulisikia kelele ya JAMES OBED akisema tuje tumsaidie amemuuma, tukamkuta mchungaji huyo nguvu zinaelekea kumuishia, mimi nilipiga fimbo moja mabegani, ABUBAKARI S/O? naye alipiga miguuni mchungaji huyo alikuwa akiitwa GABRIEL S/O? alikuwa anevuja damu nyingi sana na damu zilikuwa zinavuja toka kichwani. Mimi na mwenzangu ABUBAKARI S/O? kidogo tuondoke wakatuita tukarudi kwa kuwa walisema kazi imeisha pia na maelewano tayari tusife moyo. Ng'ombe tuliwachikua tukaanza kuwaswaga watu watatu mwenzetu yule*

*mnyarwanda JAMES S/O? yeye alikuwa ameondoka na kurudi mzani. Tukio hilo lilifanyika muda wa saa 22:30 na tulipofika Midaho saa 04:00 usiku wa tarehe 25/01/2014 tulikamatwa na walinzi wajadi tukapelekwa ofisi ya kijiji Midaho hadi asubuhi. JAMES S/O OBEDI alianza kutafuta mtandao ili kumpata bosi wa Lusahunga tuliyekuwa tunampelekea ng'ombe ili alete vibali naye alipompata alisema ataleta. Tulisubiri hadi saa 8:00 lakini hakuleta. Walinituma niende Lusahunga na namba hiyo nimpigie aje kuleta kibali. Nilienda hadi Lusahunga lakini sikumpata nikaja hadi mzani na sikupita tena kule Midaho kwani nilihofia nitakufa kwa kupigwa na wananchi.*

The above statement clearly shows how the first accused together with the second accused and Abubakari planned to steal the cows from the kraal owned by PW3. The coherence of the story matched with other pieces of evidence adduced before this court. For instance, it is true that, the kraal was owned by Samwel Kapyolo (PW3). The accused persons and Abubakari drove the cows to Lusahunga and they were arrested by Sungusungu at Midaho village on 25<sup>th</sup> January 2014. The evidence of PW6 confirms that, while on guard, they arrested three people driving the cows at night. The statement also shows that the deceased was beaten with a stick. This information mirrors the evidence of PW1 together with the medical report which showed that the deceased was beaten with a blunt object causing brain tissue injury. The fitting of the confession with other pieces of evidence at hand leaves no doubt that the first accused was

involved in the murder of the deceased. The police or any other persons who were not involved in the murder could not have coined such a coherent story on the deceased's death.

Also, the cautioned statement of the second accused shows that:

*Mara baada ya hapo alisema kuna ng'ombe wanachunga lakini yeye ndiye muhusika mkuu nataka tukamuue yule mwenzangu alielalanazo kisha tuchukue ng'ombe hao ili tuweze kuwapelekea wale matajiri LUSAHUNGA. Mara ya kuniambia hayo ndipo tulipoanza kurudi Mzani tulifika muda wa saa 18:00hrs. Mara baada ya kufika tulikaa tukasubiri muda wa saa 20:00hrs ndipo tulipoanza safari ya kuelekea kwenye zizi. Tukiwa njiani tulikutana na mtu mmoja aitwaye ABUBA S/O? ndipo JACKSON alipomwita kisha akamwambia kuwa twende naye kazini kwani kuna mzigo tunatakiwa tuupige. Mara baada ya kumwambia hayo, alipeleka baiskeli nyumbani tukamsubiri, muda si mrefu alirudi ndipo tulipoanza safari ya kuelekea zizini. Tulipokuwa njiani ndipo alipoanza kumueleza kazi ambayo tunakatikiwa kufanya kuwa kumvamia yule mchungaji na kumnyang'anya wale ng'ombe kisha tunazipeleka Lusahunga. Mara baada ya kuambiwa hivyo alikubali, hivyo safari iliendelea. Mara baada ya kufika zizini tulimkuta mchungaji ndipo JACKSON akahojiwa na mchungaji kuwa mbona amekuja usiku na watu ambao hawafahamu. JACKSON akajibu kuwa hao ni rafiki zake. Mara baada ya hapo, tulikaa pale tunaongea na yule mchungaji. Mara baada ya kama nusu saa niliamka nikaelekea haja ndogo ndipo JACKSON akawa amemrukia yule mchungaji kisha*

*alianza kuomba msaada twende tukamsaidie ndipo ABUBA S/O? alipoenda kumsaidia. JACKSON akamwambia kuwa ampige kichwani. JACKSON akasema kuwa na mimi niende kuwasaidia nikiacha kwenda wakimaliza wananifuata na mimi. Mara baada ya hapo niliogopa kisha nikaenda kuwasaidia nilimshika kifuani. JACKSON naye alikuwa amemshika. ABUBA S/O? akawa anampiga fimbo za kichwani. Mara baada ya hapo, nguvu zilimwishia ndipo nilipomuachia JACKSON akaendelea kumshikilia huku ABUBU S/O? akawa anaendelea kumpiga. Nilienda mbali kidogo wenyewe wakaendelea kumpiga hadi akaanguka chini wakamvuta wakampeleka pembeni. Mara baada ya hapo ndipo walipoanza kuniita lakini sikuitika ndipo walipoanza kuswaga ng'ombe muda si mrefu name niliwafuata tulianza safari hadi maeneo ya Midaho mida ya saa 02:00hrd ndipo tulipofika pale na kukuta eneo hilo majambazi wamevamia ndipo wannchi hao wakatusimamisha na kuanza kutuhoji kuwa ng,ombe hao tunawapeleka wapi? JACKSON akasema kuwa tunawahamisha ndipo tulipopelekwa hadi maeneo ya ofisini tukalala hapo hadi asubuhi ndipo mimi nilipoondoka kurudi nyumbani Kiruruma nikawaacha maeneo ya Midaho wakiwa na ng'ombe hao.*

The above contents of the statement show that, the first accused was the mastermind of the plan to kill the deceased. He was known to the deceased and as he was also one of the herdsmen; he previously worked with the deceased. The above statement further shows that, three people namely the first and second accused and Abubakari were involved in the murder of the deceased.

When driving the cows, they were arrested at Midaho at night. The statement shows that the second accused later escaped. In fact, his statement fits with the other pieces of evidence adduced in court. The evidence at hand shows that the first accused was arrested on 25<sup>th</sup> January 2014 whereas the evidence of PW5 shows that he arrested the second accused on 19<sup>th</sup> January 2016 because he had escaped. Furthermore, the second accused's cautioned statement is further fortified with his extra-judicial statement recorded by the justice of the peace (PW8).

The coherence of the information contained in the cautioned statement leaves nothing to desire but to concluded, without a shred of doubt that, the accused persons were involved in the murder. The first accused named the second accused in his cautioned statement. Also, in the cautioned statement and extra-judicial statement of the second accused, he implicated the first accused. I am alive on **section 33(1)(2) of the Evidence Act** which provides that:

*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.***

*(2) Notwithstanding subsection (1), a conviction of an accused person shall not be based solely on a confession by a coaccused. (Emphasis added).*

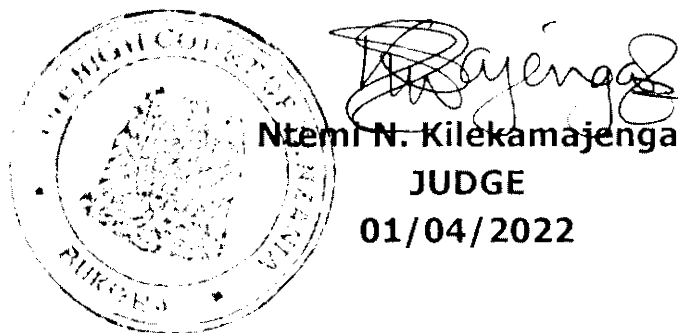
I have considered the above confessions and other evidence adduced before the court, I am confident that the accused persons are responsible for the murder of the deceased.

I am also aware that, where two persons form an intention to commit a crime, the two shall be criminally responsible even if only one of them executed their common intention. **Section 23 of the Penal Code Cap. 16 RE 2019** provides clearly on what amounts to common intention thus:

***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.*

There is no way to exonerate the accused persons from the murder of the deceased even if one of them struck the deceased. The accused persons planned and finally executed the murder and departed with thirty six herds of cattle. In their defence, the first accused (DW3) testified that, the case was framed against him by ASP Kusaya Mayala (PW7). He alleged that, DW3 was hired to graze the

goats of PW7 and they had a conflict. On his part, the second accused (DW1) defended that, he had a conflict with Assistant Inspector Salum (PW5) who later promised to revenge. However, DW2 objected the allegation that DW1 had any conflict within PW5. Generally, the defences of the accused persons were pure lies intended to convince the court that the case was framed against them. In fact the lies of the accused persons fortified the prosecution's case. I also considered the opinions of Honourable assessors who unanimously opined that the accused persons are guilty of the offence charged. Based on the evidence at hand and reasons stated above, I find that, the prosecution has proved its case beyond reasonable doubt. I hereby convict the accused persons with the offence of murder as per **section 196 of the Penal Code, Cap. 16 RE 2019.**




**Court:**

Judgement delivered this 01<sup>st</sup> April 2022 in the presence of the accused persons, their counsels, Mr. Kinga Manase (Adv) for the second accused and Miss Esther Santozi (Adv) for the 1<sup>st</sup> accused. The two learned State Attorneys, Mr. Hezron

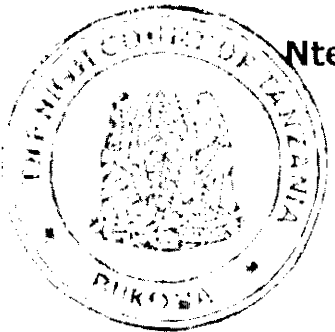
Mwasimba and Godfrey Mlagala were present. The Honourable Assessors were also present.




  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**01/04/2022**

### **SENTENCE**

Having convicted the two accused persons namely, Jackson William and James Obed, I hereby sentence them to suffer death by hanging (until death).



  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**01/04/2022**