

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT SONGEA**

**ORIGINAL JURISDICTION**

**(SONGEA REGISTRY)**

**CRIMINAL SESSIONS CASE NO. 52 OF 2022**

**THE REPUBLIC ..... PROSECUTION**

**VERSUS**

**EDGER JACKSON LULEMI @ EDGER**

**JACKSON LULENI ..... ACCUSED**

**JUDGMENT**

Date of last Order: 28/12/2023

Date of Judgment: 09/02/2023

**U.E. Madeha, J.**

First and foremost, the accused person Edger Jackson Lulemi @ Edger Jackson Lulemi is charged with the offence of murder contrary to sections 196 and 197 of the Penal Code (Cap. 16, R.E. 2019). In fact, it is alleged by the prosecution side that on 18<sup>th</sup> August, 2021 at Dar-Pori area within Lunyele Village in Nyasa District and Ruvuma Region, the accused person murdered one person who is none other than Jeofrey Filmon Mbepera.

As a matter of fact, when the charge was read to the accused, he denied having murdered the deceased. In a bid to prove the charge of murder against the accused, the prosecution side paraded a total of ten (10) witnesses and twelve (12) exhibits, which are as follows: shotgun with registration number TZ CAR 89319 and serial number 05068026 which was exhibited as "Exhibit P1", one unused bullet exhibited as "Exhibit P2", and three cartridges of used bullets which were exhibited as "Exhibit P3". On the same note, the motorcycle with registration number MC 840 CNY make Haojue was exhibited as "Exhibit P4". The Forensic Bureau Examination Report was admitted as exhibit P5 and it displayed the investigation report for exhibits P1, P2 and P3, and Exhibit P6 displayed the certificate of seizure for seizing one bullet and three bullet casings (exhibits P2 and P3).

To add to it, the certificate seizure of seizing the shotgun (exhibit P1) and the motorcycle (exhibit P4) were admitted as exhibits "P7" and "P8". The certificate of seizure of the contract of employment of the accused person was exhibited as "Exhibit P9"; the employment contract was exhibited as "Exhibit P10", the accused's cautioned statement was exhibited as "Exhibit P11" and lastly, the Postmortem Examination Report was exhibited as "Exhibit P12".

During the trial, the prosecution was represented by Mr. Grey Uhagile (State's Attorney), while the accused enjoyed the services of none other than the learned advocate, Mr. Alex Nyoni. Briefly, the evidence of the prosecution side is to the effect that:

To begin with, **PW1, WP. 11520 D/C Tedy** in her sworn testimony, stated that she is a Police Officer working at Nyasa Police Station at the Investigation Department. Also, she stated that as an investigator, she has a duty to arrest culprits, make investigations, collect exhibits and store them. On 23<sup>rd</sup> August, 2021 she was at her working station doing her daily routine. It is true that G. 2749 D/C Elia arrived from Tingi Police Station and he brought to her a shotgun with registration number TZ CAR 89319 and serial number 05068026 so that she can preserve it. In that regard, she kept it in the exhibit room.

To add, she was also given a red motorcycle with the registration number MC 840 CNY make Haojue. Moreover, on 31<sup>st</sup> August, 2021, G. 2749 D/C Elia arrived with three (03) bullet casings and one unused bullet. Having received those exhibits she actually registered them in the exhibit register book and kept them in the exhibit room. She registered them as

exhibit No. 1 of 2021. Notably, she was informed that the exhibits were connected with the charge of murder.

Basically, on 20<sup>th</sup> September, 2021, the shotgun with serial number TZ CRA-89319, the bullets and the used cartridges were given to ASP. Zabron Msusi so as to be sent to the Weapons and Explosive Testing Laboratory. It is worth considering that on 2<sup>nd</sup> January, 2022 those exhibits were returned by G. 2749 D/C. Elia who was from Tingi Police Station. Actually, she was given a shotgun and preserved it in an exhibit room. The serial number of the preserved shotgun was TZ CAR 89319. In fact, she preserved a shotgun as well as a red Haojue make a motorcycle with registration number MC 840 CNY which was the property of the accused person. Before keeping the exhibits in the exhibit room she registered them in the exhibit's register whereby they were marked as exhibits No. 9 of 2022.

On 01/02/2022, a shotgun with registration number TZ CAR 89319 and three used bullet casings, one unused bullet was handed over to her for the second time. In that regard, she had to register them in the exhibit's book register and preserved them as exhibit No. 9 of 2022.

In fact, PW1 identified the shotgun and stated that the matching button was tied to an ordinary black card which separates the muzzle of the gun and the breach of the gun. To add to it, it has cracks from the tiger to the butt. One of the butts of the gun was torn, and there was a hole where it has cracks, the registration number is TZ CAR 89319 and the serial number is 05068026. She well identified the shotgun and prayed for it to be admitted as an exhibit and it was admitted as **exhibit P1**.

To crown it all, PW1 continued to state that she handled one (01) bullet and three (03) bullet casings which were red and grey in colour. She identified those exhibits and prayed to tender in Court as exhibits. Notably, one unused bullet (01) was admitted as **exhibit P2**. The three (03) bullet casings were admitted and marked as **exhibit P3**.

Lastly, PW1 testified that after receiving the motorcycle with the registration number MC 840 CNY she preserved it as an exhibit it was still under her custody. She identified it and prayed to tender as an exhibit. The motorcycle was admitted and received in evidence as **exhibit P4**.

It is worth considering the fact that, **PW2, H. 4225 Forensic Constable Elisha Timothy Mwakalinga** in his sworn testimony testified

that he is a Police Officer working at Dar Es Salaam at the Commission for Scientific Investigation dealing with the investigation of weapons. In fact, he stated that he is an expert in that area and he got training from the East African Referral Laboratories in Kampala – Uganda. Moreover, he had four (04) years of working experience in the field of investigation of weapons and explosives.

In fact, on 22<sup>nd</sup> September, 2021, during working hours he received three (03) exhibits and exhibit letter from ASP Zabron Msusi, who was from Nyasa Police Station. Basically, the exhibits were the shotgun with Registration Number 05068025, three (03) spent cartridges of bullets and one (01) unused bullet, which were red and grey in colour.

The letter was requesting the investigation of the exhibits to know whether the spent bullet cartridges (casings) were used by the shotgun with Registration Number 05068025 and whether they are explosive and offensive weapons. He assigned a laboratory number to each exhibit in the file and dispatched it for investigation. He started the procedure with the usual examination. He took the bullets with a diameter of twelve (12) bores from their laboratory. In the process, he blew up by using a shotgun with

registration number TZ CAR 89319. After blasting, he picked up the casing and took them to the laboratory to continue with the investigation.

Moreover, he placed the casing of the bullet and continued with the investigation by comparing the three (03) bullet casings with the one (01) bullet that was brought in as an exhibit. Basically, he eventually observed that their characteristics matches. Principally, he had to put them through their paces with the three (03) bullet casings brought in as exhibits.

To put it in a nutshell, after the investigation, he found the three (03) bullet casings that were brought as exhibits were fired from the shotgun with registration number TZ CAR 89319 and serial number 05068025. As a matter of fact, after investigation, he prepared the report concerning the herefore-mentioned exhibits. On the same note, PW2 identified the exhibits by using the reference numbers, which are FB/BILL/Lab/65/2021, his name and signature which he wrote after the investigation.

Also, PW2 identified the Forensic Bureau Examination Report for the investigation of exhibits P1, P2 and P3. The Forensic Bureau Examination Report was admitted as **exhibit P5** and it was read loudly in Court using Kiswahili language which the accused person clearly understands.

In fact, he received test-fired cartridges of calibre - 12 bores and he marked them as T-1 and T-3. They were compared under the Comparison Microscope in conjunction with the three (03) spent cartridges of calibre 12 bores marked as exhibits Q1, Q2 and Q3, and the three (03) test-fired cartridges of calibre 12 bores.

Additionally, PW2 continued to identify the shotgun exhibited as Exhibit P1 by using the serial number 05068026 and registration number TZ CAR 89319. Apart from that, he identified it by the mark of Exhibit K-1, the Lab Reference, and he continued to identify it by its calibre and it has red colour. He also identified exhibit P2, stating that the bullet diameter was twelve (12) bores whereby three (03) bullet casings were grey and red in colour. Principally, the exhibits were examined and investigated in the laboratory whereby it was discovered that the spent cartridges resembled the shotgun (exhibit P1).

To add to it, **PW3, Ditrick Flavian Ndunguru**, in his sworn testimony stated that he is living at Kunganita Village in Nyasa District. Also, he testified that he is a farmer and a militiaman. On 22<sup>nd</sup> August, 2021, he was busy working on his farm and when he returned home at around 19:00 hours he got information that someone had committed



murder. As a village militiaman, he started making an investigation and he managed to get information that the one who committed that act was none other than Edger Jackson Lulemi (the accused). The accused person was arrested on the same day during night hours and he was arrested while trying to sell the motorcycle. After the arrest of the accused person, they informed the Police Officers. Before the arrival of the Police Officers, the accused was sent to the Ward Executive Officer.

That on 23<sup>rd</sup> August, 2021, at around six (6) o'clock early in the morning, the Police Officers arrived whereby they took the accused person together with the motorcycle that was caught in the hands of the accused when he was arrested. It is true that, they took the motorcycle after signing the certificate of seizure which was also signed by the accused.

Furthermore, PW3 told this Court that when interrogated by the Police Officers, the accused confessed to have killed the deceased by using a shotgun which he had hidden at Mtungulusi. They took the motorcycle and the accused and went to Mtungulusi Village, where the accused showed to the Police Officers where he had hidden the shotgun.

Also, PW3 stated that the deceased was called Jeofrey Filmon Mbepera and he was working with the company dealing with minerals at Dar - Pori Village. He also stated that on 18<sup>th</sup> August, 2021 at around 6:00 hours he was at home and he heard people discussing someone's dead body. In that case, he went to see the body and discovered that the deceased was lying on his back with blood all over his body.

Apart from that, PW3 further testified that he informed the Village Executive Officer (VEO) about the dead body. The Village Executive Officer (VEO) informed the Police Officers who came to the crime scene and the body of the deceased was taken to the District Hospital for investigation. Also, he testified further that at the crime scene, they saw the used bullet cartridges (bullet casings), which were taken by the Police Officers. In addition, PW3 stated that the Police Officers also drew the sketch map of the crime scene and he was the one who directed the drawing. Finally, PW3 identified the accused person who was at the dock and he is none other than Edger Jackson Lulemi @ Edger Jackson Luleni.

Basically, **PW4 F. 6985 D/CPL Nyabwise** in his sworn testimony, stated that he is a Police Officer from Tingi Police Station in Nyasa District whereby he works at the Investigation Department. It is worth considering

that, on 18<sup>th</sup> August, 2021, he got the information that there was a businessman called Jeofrey Filmon Mbepera had been killed with a shotgun in Dar - Pori Village. He immediately went to the crime scene and he was accompanied by a Police Officer, G. 2749 D/C Elia. After arriving at the crime scene, he found the villagers, including PW3 and the Village Executive Officer. They investigated the crime scene and they found the used (the spent cartridges of bullets) and one unused bullet in the deceased's office. They signed the certificate of seizure and took those exhibits. He identified the certificate of seizure seizing one (01) bullet and three used bullet casings and he prayed to tender it as an exhibit. In fact, the certificate of seizure seizing one (01) bullet and three used bullet casings were admitted as **exhibit P6**.

On top of that, PW4 added that they were informed that in the deceased's office there were two (02) security guards working there, however on that day they were not found. After making an investigation, they obtained information that the accused person left the area by using a motorcycle.

Besides, he was told that those security guards were using a shotgun although it was not found at the crime scene. On 22<sup>nd</sup> August, 2021, he

received a mobile phone call from PW3 informing him that the accused (Edger Jackson Lulemi) had been arrested at Kunganita Village in Nyasa District. As a matter of fact, the accused was caught selling the motorcycle. He went with other Police Officers to the area where the accused was arrested and they found the accused at the Ward Executive Officer (WEO). Also, he seized the motorcycle and filled out the certificate of seizure, and he prayed to tender the certificate as an exhibit and it was admitted as **Exhibit P7.**

Likewise, he interrogated the accused about the offence he had committed whereby he confessed to have killed Jeofrey Filmon Lulemi. To add to it, he told him that he used a shotgun to kill the deceased. In addition, the accused person further told him that the shotgun was at Mtungulusi Village, in the house of his father-in-law. On the same note, they went together with the accused person in order to take the shotgun. Upon, arriving at Mtungulusi Village the accused led them to the farm where he had hidden the shotgun. The accused showed them the shotgun which was hidden under the ground. It was under the Mwanga tree beside the river and it was found after digging on the ground and it was sealed

with a plastic bag. On top of the ground, there were grasses and beans sacks.

To crown it all, there were other people who witnessed the whole incident. Actually, the accused was also present and he told them that the shotgun was used to commit murder on 18<sup>th</sup> August, 2021, at Dar - Pori Village. The shotgun was seized and the certificate of seizure was filled out and signed by witnesses including the accused person. It is a fact that, the certificate of seizure seizing the shotgun was admitted as **exhibit P8**. Principally, Exhibit P7 was read in Court loudly in Kiswahili language which is well understood by the accused person.

PW4 further testified that they found the shotgun disassembled into two parts, the butt-stock and the body of the gun. Moreover, PW4 testified that all the collected exhibits and the accused person were sent by DC Elia and J66 PC Shafiki at Nyasa Police Station for investigation.

On the other hand, **PW5, J. 66 PC Shafiki Ramadhani**, in his sworn testimony testified that he works as a Police Officer at Mbambabay Police Station in Nyasa District. On 23<sup>rd</sup> August, 2023 he was at Tingi Police Station where he received information that there was a murder incident at

Shawishi Ward and the suspect was already arrested. Upon receiving such information, he went to a place where the accused was arrested. Basically, he was accompanied by other Police Officers. They found the accused person sitting on the ground and he was surrounded by people.

As part of his duties, he managed to protect the accused person. Strange as it may sound, the accused person was very cooperative, he told them that he owned a shotgun that he used in the commission of murder. In that case, they were sent to the place where the accused person had kept the shotgun. Actually, it was hidden under the ground so they had to dig the ground. The Ward Executive Officer and the Village Executive Officer were the witnesses who witnessed the shotgun being taken from the place it was hidden after being led by the accused. PW5 managed to identify the shotgun (exhibit P1).

Also, PW5 testified that the accused person was found with the motorcycle that he used to run away after committing the offence. It is true that, it has the registration number MC 840 CNY with a red colour made Haojue. PW5 also recognized exhibit P4 (a motorcycle). Lastly, when cross-examined by the defence's learned counsel he stated that the accused person was found with no wounds or injuries on his body.

Furthermore, **PW6 Kamilius Winfred Lupembe** in his sworn testimony stated that he has been working as a watchman employed by Mbinga Security since 2016. The accused person also was an employee of Mbinga Security Company and he was working as a security guard at Dar - Pori Village since 8<sup>th</sup> July, 2021. On 18<sup>th</sup> August, 2021 he received shocking and terrifying information through a mobile-phone call that the accused person had killed a thief. He tried to call the accused person through a mobile phone but he was not reachable. He phoned the accused's co-watchman who was working together at the same station but he was also not reachable. He decided to go to the accused's working station at Dar – Pori Village, whereby he found the body of the deceased lying in the office. In fact, there were no other people in that office. He looked for the watchmen, but he didn't see them. He went up to the area where the watchmen were living, unfortunately, they were nowhere to be found. He further testified that at the deceased's office, the doors were not broken.

It is worth considering that, PW6 further testified that he found one unused bullet and stayed there until the Police Officers arrived. When the Police Officers entered the office where the body of the deceased was lying on the ground and they found three (03) used bullet casings. He added

that the accused person and his colleague were using a shotgun, which they used to store in the deceased's office. Moreover, PW6 identified the shotgun (exhibit P1) and the accused person who was standing in the dock.

It is important to note that, PW6 stated that the accused person and his colleague were given the shotgun by the company which employed them as security guards to use in their duties. PW6 added further that the entire company was baffled by what was done by the accused person and his colleague.

On the contrary, **PW7 G. 2749 DC Elia** in his sworn testimony, he stated that he is a Police Officer working at Tingi Police Station in Nyasa District. He works in the Investigation Department. On 18<sup>th</sup> August, 2021 he was at Tingi Police Station and he was on his daily routine whereby he received information from CPL Nyabwise that there was a murder incident at Dar - Pori Village. They went to visit the crime scene where they met with PW6 and they found the body of the deceased's person who was identified as Jeofrey Filmon Mbepera. The deceased's body was lying on the ground, at the exit door of the deceased's office. After that, they



started searching around the crime scene and they found one bullet and three (03) bullet casings which were on the table inside the envelope.

Similarly, they seized the exhibits and prepared the certificate of seizure. Also, he drew the sketch map of the crime scene and he was directed by PW3. Moreover, PW7 identified the sketch map of the crime scene by using his handwriting and signature. In fact, after drawing the sketch map of the crime scene he went back to the office.

Furthermore, on 23<sup>rd</sup> August, 2021 he was at Tingi Police Office and he was ordered to send one accused person to the OCCID at Mbambabay Police Station. The accused person was introduced to him as Edger and he was accused with the offence of murder. In that case, he transported the accused and handed him and the exhibit at Mbambabay Police Station. The exhibits were the shotgun and the motorcycle with registration number MC 840 CNY make Haojue. He handed over the accused to the Police Officer called ASP Msusi and the exhibit which is a shotgun and the motorcycle was handled to WP Teddy (PW1).

On 31<sup>st</sup> August 2021, he was at his working station at Tingi Police Station and he was given a shotgun and three (03) used bullet cartridges

in order to preserve them. In fact, the three (03) used cartridges were red in colour and one was grey. To add to it, PW7 identified three (03) used cartridges and the shotgun (exhibit P1) and the motorcycle with Registration number 840 CNY with red colour make Haojue.

It is important to note that, **PW8 ASP. Zabron Msusi** in his sworn testimony averred that he is a Police Officer and on 18<sup>th</sup> August, 2021, he was at Mbambabay Nyasa, which was his working station at that time. While at the office he received information that the accused had committed the offence of murder at Dar - Pori Village.

As a concerned Police Officer he immediately ordered the Police Officers of Tingi Police Station to conduct an investigation into the reported incident. On 23<sup>rd</sup> August, 2021 the accused was arrested and brought to Tingi Police Station. After that DC. Elia (PW7) brought the accused person to Mbambabay Police Station.

Furthermore, on 26<sup>th</sup> August, 2021 he took steps of taking the weapons used by the accused to commit murder. Since the accused was a watchman, of the company, he called the manager of the company and he wanted to know how the weapons come into the hands of the accused

person. He was told the company manager that the accused person was an employee of the company called Mbinga Commercial Security and he had an employment contract.

Notably, the accused was given the firearms license by the company and it was delivered. He has taken the initiative to fill out the certificate of seizure which proves that he was given a licence and the accused contract of employment. PW8 identified the certificate of seizure of seizing the licence which was admitted as **exhibit P8**.

On the same note, he averred further that he took from one Danford E. Mbunda the contract of employment between the accused and Mbinga Commercial Security Company and it was witnessed by DC Teddy and the company manager also signed it. The certificate of seizure, seizing the accused's employment contract was admitted as **exhibit P9**.

Principally, he identified the contract of employment by using the accused's handwriting and the employment contract had the accused's handwriting and signature. It is important to note that, in the employment contract the shotgun with registration number TZ CAR 89319 was listed, as the shotgun that the accused person was given by the company. The

accused had no objection to the employment contract. Consequently, the accused's employment contract was admitted and marked as **exhibit P10**.

He contended further that as the investigator he took the shotgun with serial number TZ CAR 89319, one (01) bullet and three (03) bullet casings and sent them to the Explosive Weapons Investigations Centre. He took those exhibits from DC Teddy (PW1) who was keeping those exhibits. He further stated that he sent those exhibits to Dar Es Salaam where he arrived on 22<sup>nd</sup> September, 2021. After, the investigation he took the exhibit and handed them over to DC Elia together with the Investigation Report and brought them at Nyasa Police Station. PW8 identified the shotgun by using the registration number TZ CAR 89319 with serial number 05068025. Moreover, he identified the three (03) bullet casings which were red in colour and one (01) grey in colour.

On the same note, PW8 continued to state that he was ordered to record the cautioned statement of the accused person. He introduced himself to the accused person and told him that he was to record the accused's caution statement. He gave the accused person all his rights such as the right to give his statement freely and the right to call the witnesses.

He recorded the statements under section 57 of the *Criminal Procedure Act* (Cap. 20, R. E 2019). He started recording the accused's cautioned statement at around 06:00 hours and after recording it was read and signed by the accused. To put it in a nutshell, the accused was interrogated on the suspicion that he was involved in killing Jeofrey Filmon Mbepera. In fact, the accused person told him that he killed the deceased with his fellow watchman called Emmanuel Ngunda who had not been arrested. To add to it, PW8 stated that after recording the accused's cautioned statement, it was read by the accused and they both signed on it.

Moreover, PW9 identified the accused's cautioned statement by using his handwriting and signature and he prayed for it to be received as an exhibit. The accused's cautioned statement was received by this Court and marked as **exhibit P11**. To crown it all, PW9 read loudly the cautioned statement of the accused in Court. For more clarity, I find it is better to reproduce part of the accused's recorded cautioned statement. It reads as follows:

*"I conspired with my colleague to commit murder. My colleague was none other than Emmanuel Ngunda, he*

*persuaded me that we could steal minerals and money in the office of the deceased. He continued to persuade me that if we did not use that opportunity we will be poor "the accused said aloud". My co-watchman emphasized to me that there is a lot of money in the deceased's office. I agreed with him, there was a grill-covered door inside. In that case, we together agreed to kill and silence him. We used to shoot guns in the past so that people around that place would not be awakened. In that regard, neighbours were not shocked and perplexed on the incident day. He grumbled at us and went back to his room. He was lucky; he had slept with his lover. Acting on impulse, we had to call him outside his room. When he showed up we used signs to prove that the thief had run away. At that time, when we saw that there were no more people passing by, we called him again, and my job was only to kill him".*

PW8 stated further that the accused told him that he worked as a team with his colleague and he was the one who shoot the deceased with a shotgun. His co-watchman began to search and found the key to open the office doors. In fact, Emmanuel Ngunda informed Neema that they were looking for the keys. It is true that they entered the office and took the minerals and money which were in the draw tied in the nylon bag. It is important to note that, the accused person told him that his fellow security

guard disappeared with all the stolen items and he remained with nothing. In that case, he decided to leave with Denis' motorcycle and hide himself at Kunganita Village.

The State's Attorney for the Republic prayed for PW8 to testify and tender the Postmortem Examination Report because the witness who examined the body of the deceased and filled it had died. There was no objection from the defence side, and the prayer was granted.

On the same note, PW8 testified that he witnessed the doctor making an investigation on the body of the deceased when the doctor was filling out the Post-mortem Examination Report. The deceased was known as Jeofrey Filmon Mbepera. The investigating doctor found that the deceased died due to internal brain damage. After the investigation, the doctor prepared a Post-mortem Examination Report which was sent to the Police Investigation Department.

In fact, the investigation was conducted on 19<sup>th</sup> August, 2021 at around 11:00 hours and Embriana Ndunguru also witnessed the investigation of the deceased's body.

Principally, the deceased's Postmortem Examination Report was identified by PW8 and he prayed to tender it as part of his evidence and there was no objection from the defence side. The deceased's Postmortem Examination Report was received in evidence as **Exhibit P12** and it was read loudly in the Court.

**PW9, Alex Samwel Malimi** in his sworn testimony averred that he is a Village Executive Officer at Kunganita Village in Nyasa District. As a Village Executive Officer, he is also a justice of the peace in that village. On 23<sup>rd</sup> August, 2021 during the morning hours, he received a mobile-phone call which informed him on murder incident that had occurred at Dar - Pori Village and he was told that the accused had been apprehended at Shaushi hamlet in his village. He went to Shawishi and found the accused person that is none other than Edger Jackson Lulemi. He informed the Police Officers and they came to take the accused person who was in possession of the motorcycle (exhibit P4). The accused person was interrogated by the Police Officers and he admitted to have killed the deceased by using the shotgun. Also, the accused person told the Police Officers where the shotgun was hidden. They went to that place and found it. It is worth considering that, it was hidden under the ground and on top there were



grasses and beans sacks. It is true that, the shotgun was taken, and the certificate of seizure was filled and signed. PW9 identified the shotgun and the red Haojue motorcycle with registration number MC 840 CNY. In fact, the accused was sent to the Police Station, together with the seized motorcycle.

Furthermore, **PW10, Neema Kasian Komba** who is a resident of Mpepai Village in Mbinga District, in her sworn testimony testified that she used to live at Dar - Pori Village from June to August, 2021. She was living with the deceased Jeofrey Filmon Mbepera. They lived together as lovers. She also stated that the deceased was killed on 18<sup>th</sup> August, 2021. It is worth considering the fact that, she told this Court that before the incident she knew the accused person and his co-watchman called Emmanuel because they used to guard the office of the deceased who was her lover.

On the incident day, before they went to bed they went to the office of the accused where they saw the accused with his co-watchman. She recognized the accused person by using the electric bulb light which was in the office of the accused person. The electric bulbs have enough light to enable her to identify the accused person. When PW10 and the deceased were passing they greeted them and they went to bed. She slept with the

deceased and after half an hour, the deceased received a mobile-phone call that required him to go to the office that the accused and his friend were guarding. After a few minutes, the deceased was back and they continued to enjoy their sleep. After a short period of time, the deceased was called by the accused person for the second time. He responded and went to the office that the accused and his colleague were guarding. While the deceased was in the office she heard the gun shoot. She was not afraid since the deceased used to shoot guns from time to time to threaten people who were trying to attack his office. Actually, she continued enjoying her sleep since she thought that they were chasing people who tried to attack them as they used to do.

Later on, the accused person came and asked for the office keys, whereby he entered the room in which she was sleeping and took the keys from the deceased's trouser pocket. In fact, it was already midnight. She saw the accused person taking the keys since there was a light solar bulb and she knew him before the incident date. Notably, then she asked the accused where the deceased was and she was told that he was in the office.

In that regard, the accused person came back again with his colleague and ordered her to go out but she refused and told them that it was already midnight. The accused ordered her that she had to leave that area early in the morning. It is true that the accused person asked for her mobile - phone in order to use its flashlight. She gave him an Itel mobile - phone and he never returned it to her. She slept until around 6:30 hours when she woke up and was surprised to see her neighbours outside the office of the deceased. Strange as it may sound, she went closer and she was shocked to see the body of his lover, Jeofrey Filmon Mbepera that is the deceased lying down lifelessly. However, the accused and his co-watchmen were not present even though they used to work there every day.

On the contrary, the accused person (**DW1, Edgar Jackson Lulemi @ Edgar Jackson Luleni**) in his sworn testimony, stated that he works as a farmer and a watchman. He received six (06) months training course at Mlale JKT in Magagura Ward. On 7<sup>th</sup> August, 2021, he went to Dar - Pori Village where he was working as a watchman. He was working with a company called Jilawema which was under a company called Commercial Security.

On the incident day, he was working in the office of the deceased as a security guard. On that day in the mid night, the deceased (Jeofrey Filmon Mbepera) came to him and asked to be given the weapon which he was using. He handed over the weapon (a shotgun) to the deceased. The deceased told him that he wanted to go to the office to take the gas container, but he told him that it was midnight and he must wait until morning.

In that regard, he was supervised by a man, and the weapon (shotgun) was under the control of the deceased. He testified further that, he was beaten in the mouth and fell to the ground. A number of people came to the crime scene and he saw the shadow of four (04) people who tied him to his face, burned his eyes, and fitted him with a sharp object.

On the same note, they told him that he was supposed to take the weapon that is (exhibit P1). Eventually, a fight started between him and the deceased and he was afraid that the weapon would be taken, and he didn't know what was happening since his face was wrapped.

To add to it, the deceased beat the accused in the mouth, and he fell down. Later, he found himself armed and accidentally hit the deceased on

the neck by using the shotgun with registration number TZ CAR 89319, causing his death. To crown it all, the accused continued to state that it was not his intention to hit the deceased. In addition, he screamed without help and no one came around to rescue him and he managed to go to the village called Kunganita and he used a motorcycle. He identified the motorcycle which registration number MC 840 CNY (exhibit P4) and the shotgun with registration number TZ CAR 89319 (exhibit P1).

DW1 further added that on 26<sup>th</sup> August, 2021 he was sent to the Justice of the Peace at the Primary Court. He was sent by a Police Officer called Zabron Msusi and his Extra - Judicial Statement was recorded. He signed on it and after recording the Extra-Judicial Statement he was taken back to Nyasa Police Station. Obviously, he stayed there for a period of three (03) weeks before he was sent to Songea District Court. Also, he went on to state that at the police station, he was taken the photograph and not the cautioned statement and he was never sent to the area where he was working as the prosecution claimed.

Lastly, the accused asked for the mercy of this Court to set him free. When cross-examined by the State's Attorney for the Republic, he replied that he was employed by Mbinga Commercial Security Company and he

had an employment contract with that company. Also, he stated that on the incident day, he was hired by the deceased, Emmanuel was not around and he didn't see the people who beat him since they ran away.

After the closure of the defence evidence, the prosecution's side preferred to file final written submissions. But the defence counsel never filed his final submission in this case.

Mr. Uhagile, the State's learned Attorney argued in his submission that, while the evidence presented by the prosecution is circumstantial, it is sufficient to support the conviction of murder against the accused. To buttress his argument, he cited the case of **Mashaka Juma @ Ntalula v. Republic**, Criminal Appeal No. 140 of 2022, where the Court cited with approval the case of **Simon Musoka v. Republic** (1958) E.A. 715.

Furthermore, the learned State Attorney stated that PW10's evidence and the confession made by the accused in his cautioned statement are the best evidence to support a conviction against the accused. He argued that the confession made by the accused person is the best evidence and he relied on the decision made in the case of **The Republic v. Khamis**

**Said Bakari**, Criminal Sessions Case No. 119 of 2016, in which it was held that:

*"It is a trite law that the best evidence in criminal trial, is that of an accused person who has confessed to have committed the crime".*

As a matter of fact, he insisted that murder cases are rarely proved by direct evidence and reference was made to the case of **Mathias Bundala v. The Republic**, Criminal Appeal No. 06 of 2006. Moreover, he added that the available evidence in this case cumulatively points irresistibly to the accused's guilt for the offence he is charged with.

Similarly, he contended that the evidence of the prosecution witnesses is credible and should be believed because there is no flaw in their credibility. This is because they gave a coherent testimony which shows how the incident occurred and how the accused person committed the offence. For more clarification, he cited with approval the case of **Goodluck Kyando v. Republic** (2006) TLR 363, where it was held that:

*'It is trite law 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 the witness'.*

Lastly, he submitted that with the foregoing submission, the prosecution side has managed to prove the case beyond reasonable doubt and he prayed for the accused person to be convicted and sentenced accordingly.

As a matter of fact, for the conviction of murder to stand, according to section 196 of the *Penal Code* (supra), the prosecution has to prove the following major issues:

1. Does the killing amount to murder?
2. Whether the prosecution proved the case against the accused beyond a reasonable doubt?

To start with the first (1<sup>st</sup>) issue of whether the killing amounted to murder? the evidence from the prosecution side is clear that the death was unnatural. To add to it, the evidence establishes a chain of custody for the crime of murder. Beginning with the evidence of the prosecution witnesses, it is from the evidence of PW1 that he received exhibits P1, P1, P2, P3 and P4, which are the shotgun with Registration Number TZ CAR 89319, the motorcycle with the registration number MC 840 CNY exhibited as exhibit P4. He preserved three (03) bullet casings, one of which was still unused,



and she was informed that the exhibits were connected with the case of murder. Basically, those exhibits were received in Court as exhibits. The shotgun with Registration Number TZ CAR 89319 was exhibited as Exhibit P1, one (01) unused bullet was exhibited as Exhibit P2 and three (03) spent cartridges were exhibited as Exhibit P3. The motorcycle was admitted as Exhibit P4.

According to PW7's evidence, the accused was an employee of Mbinga Security Company since 2016. Principally, he was employed by that company and worked at Dar - Pori Village as a watchman. Basically, on 18<sup>th</sup> August, 2021, his employer received a phone call informing him that the accused had killed a thief. In addition to that, PW7 tried to reach the accused person through his mobile phone but unfortunately, his phone was not reachable. He decided to go to the crime scene, where he found the deceased body lying lifeless.

The combination of the weapons tendered before this Court during the trial; which are the shotgun, three (03) bullet casings and one (01) unused bullet and the testimony of PW7, those weapons were given to the accused by his employer to use it in his duties. The prosecution evidence proves that the shotgun was taken from the accused, and the bullet and

three bullet casings were found in the office of the deceased in which the accused was working as a watchman. The evidence of PW2 clearly proves that exhibit P3 were used by exhibit P1 which was found to be in possession of the accused. In his testimony, PW2 stated that:

*"After blasting, I picked up the bullet casings and took them to the laboratory to continue with the investigation. I placed the bullet casing and after that, I continued with the investigation by comparing the three (03) bullet casings from the laboratory with the three (03) bullet casings brought as exhibits. After that, I observed that their characteristics matched the bullet which was brought as an exhibit. I put them to the test with the three (03) bullet casings brought as exhibits and after the investigation, I found that the three (03) bullet casings that were brought as exhibits were fired from the shotgun with registration number TZ CAR 89319 and serial number 05068025. After the investigation, I prepared the report concerning the mentioned exhibits".*

PW2 identified exhibit P5 by using the reference number, his name and signature. PW2 continued to identify the shotgun exhibited as exhibit P1 by using the serial number 05068025 and registration number TZ CAR 890319. In fact, he identified it by the mark of exhibit K-1 and laboratory

reference number. He identified it with the calibre 12 bores and they were red in colour. He also identified Exhibit P2 and stated that the bullet diameter was twelve (12) bores and the two (02) bullet casings were grey. The exhibits were examined and investigated in the laboratory, and it was found that the spent cartridges resembled the shotgun (exhibit P1).

PW2 also identifies the report of the weapons investigation that he wrote. The Forensic Bureau Examination Report was admitted as exhibit P5, and it was read loudly in Court using the Swahili language. Exhibit P1, a shotgun of calibre-12 bore with serial number 05068025, was taken from the possession of the accused person. Exhibit P2 which is an unused bullet of 12-calibre ammunition allegedly taken from the deceased's office. Exhibit P3 is three spent cartridges of calibre -12 bores purportedly discovered inside the office of the deceased.

To crown it all, according to the evidence given by PW3 and PW4 the shotgun was found at Kunganita area at Mtungulusi Village, where the accused had hidden. They went to take the weapons at Kunganita area in Mtungulusi Village after being led by the accused. After arriving at the village, the accused without hesitation, directly led them to the farm, where he had hidden the shotgun (exhibit P1). The weapon (Exhibit P1)

was taken near Mwanga tree it was under the ground and at the top, there were grasses and bean sacks. Basically, exhibit P1 was found after digging under the ground and it was sealed with nylon bags. In fact, the shotgun was separated into two, the butt stock and the body of the gun. A number of people including the Village Executive Officer (PW9) witnessed when the weapon, a shotgun with registration number TZ CAR 89319 was taken from the ground, where the accused had hidden. Eventually, that weapon was seized. Moreover, the shotgun (exhibit P1) was actually the one used to commit the offence of murder at Dar - Pori Village.

As a matter of fact, the accused was given the shotgun by his company to facilitate the work of the watchman at the deceased's office. After arresting the shotgun, they filled out the certificate of seizure, which was admitted as exhibit P8 after identification by the accused.

In this case, I find that the issue of the chain of custody regarding the weapons used, which is a gun, the three bullet casings and one (01) unused bullet which was admitted as exhibits P1, P2 and P3 directly connects the accused person with the commission of the offence of murder.

To add to it, the combination of events clearly shows that the accused is the one (01) who killed the deceased. In a very special way, if you look at how the accused had left the scene of the incident using exhibit P4, which is a motorcycle. He used the aforementioned motorcycle to help him to run away from the scene of the incident while carrying the shotgun (exhibit P1).

Either PW8 testified that the accused (DW1) was employed by the company and he was given a shotgun with registration number TZ CAR 89319 and bullets (exhibits P1, P2 and P3). Those exhibits were to be used by the accused person in his duties as a security guard but they were used by the accused to kill the deceased in order to take money and minerals which were in the deceased's office. The deceased was dealing with mining activities. From the flow of events, it is clear that the chain of custody has been established by the prosecution as provided under section 38 (3) of the *Criminal Procedure Act*, (Cap. 20, R. E. 2022), which provides thus:

*"Where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his nearest relative or another person for the*

*time being in possession or control of the premises, and the signature of witnesses to the search, if any."*

As a matter of fact, I find that due to the chain of events, the shotgun (exhibit P1) was taken from the accused and the accused himself signed the certificate of seizure, seizing the shotgun which was exhibited as Exhibit P8. This flow of the events shows that the accused had committed the offence of murder by using the shotgun with registration number TZ CAR 89319 (exhibit P1) which he was given by his employer.

Furthermore, PW9's evidence shows that the accused person committed a murder offence and he told the prosecution witnesses, including PW9, where he had hidden the shotgun and it was taken under the ground. The Ward Executive Officer and the Village Executive Officer saw the shotgun (exhibit P1), which was taken from the ground where the accused had hidden. It was the accused person who showed where he had hidden it. Also, it is clear that the three (03) used bullet casings were found in the deceased's office and they were used by the shotgun (Exhibit P1) which was found in the hands of the accused person and they facilitated the killing of the deceased. Moreover, those bullets were consistent with the weapon (exhibit P1) which was found in the hands of the accused

person as testified by PW2. The issue of chain of custody has been established. The prosecution has been able to establish the chain of custody due to the flow of events and how they handled the exhibits and they preserved the exhibits properly.

As a matter of fact, in order to prove the offence of murder, the first (1<sup>st</sup>) issue is to establish is *actus reus* in which it is important to prove that the accused person killed the deceased person called Jeofrey Jackson Lulemi @ Jeofrey Jackson Luleni by using the shotgun (exhibit P1).

In addition, the second (2<sup>nd</sup>) issue before this Court is whether the prosecution witness's testimonies and the exhibits corroborate each other. I have keenly evaluated the evidence given by the prosecution side and I find all the testimonies of witnesses from the prosecution are consistent with the exhibit tendered by the prosecution side. Basically, Ditriect Flavian Ndunguru (PW3) stated that he received information that a stranger had entered their village and they managed to arrest the accused with a motorcycle which is exhibit P4. They signed the certificate of seizure of the motorcycle, which was exhibited as Exhibit P7.

To add to it, he went on to state that the accused admitted that he was the one who killed the deceased. His testimony was supported by the testimony of PW4, who went to the crime scene and found three (03) used bullet casings and one unused bullet and the certificate of seizure of seized bullets was admitted and marked as exhibit P6.

On the same note, PW4's testimony is consistent with PW3's who testified that he arrested the accused person and he was with the motorcycle and the accused was able to show them the place he used to hide the gun. The shotgun was hidden under the ground and on the top there were grasses and beans sacks. The certificate of seizing the shotgun was exhibited as Exhibit P8.

PW6's testimony is consistent with the testimony of PW4 and PW5. All three (03) witnesses' testimony supports the claim that the accused was the one who killed the deceased. PW6 has supported the evidence by showing that he was employed by the company which the accused also was employed and they signed an employment contract and were given a licence to use shotguns. They were given shotguns to use for security purposes as they were security guards of the company. The evidence given by PW6 is similar to that given by PW7 and PW8 that the accused was



employed by a security company and given a license to use exhibit P1 (shotgun) that was used in the murder incident.

Furthermore, PW8 stated that the accused was given a license and contract to work in a security company where he was assigned to work in the area of the deceased office. PW8 also tendered the accused's cautioned statement which was admitted as exhibit P11. In the cautioned statement the accused person admitted to having killed the deceased by hitting him with a shotgun which he was using as a weapon as a watchman. The statements found in the accused's cautioned statement (Exhibit P11) link the accused with the crime of murder directly and make the Court believe the prosecution's testimony that the accused was the one who killed the deceased.

As a matter of fact, PW8 tendered the Post-mortem Examination Report which was admitted in Court as exhibit P12. The report was tendered by PW8 who witnessed the whole process of examining the body of the deceased person since the doctor who examined it had already passed away.

It is worth considering that, PW9's evidence is supported by the evidence of PW4 and PW5, who testified that the accused showed them where he had hidden the gun he used to commit the murder and admitted to having killed the deceased with the shotgun and he handed over the shotgun in their presence.

It is important to note that, PW10's testimony connects the events and shows that the accused and his colleague security guard were the ones who killed the deceased. Similarly, this witness testified that the accused called the deceased and told him that there were robberies and it was during night time. The deceased went out to the crime scene which was his office. After a few minutes, he was back. But after half an hour the deceased was called again by the accused person. PW10 heard the shotgun shoot. The accused person and his co-watchman came back and asked for PW10 to open the door so that they could take the office keys. PW10 allowed them to take the office keys as they told her that they were sent by the deceased person to take them. The keys were found in the pockets of the deceased's trousers. In that case, early in the morning of the following day, PW10 discovered her husband's body lying lifelessly in

the office of the deceased. She learnt that the accused killed the deceased and stole his property.

As much as I am concerned, I find that there is a piece of ample evidence to prove that the accused was present at the crime scene, and he is the one who killed the deceased in collaboration with his colleague for the desire of money. He killed the deceased by using exhibit P1, a shotgun with registration number TZ CAT 89319 which they were given to use as a weapon by the security company and they were working in the office of the deceased.

Strange as it may sound, he was killed by people very close to him, who are the accused and his co-watchman. Ridiculously, one's enemy is the one from his home. As a matter of fact, from the evidence given by the combination of ten (10) witnesses paraded before the Court by the prosecution, I find that the prosecution has been able to establish the *actus reus*. The prosecution evidence also leaves no doubt that the accused is the one involved in the killing of the deceased.

Principally, the prosecution evidence is strong enough to prove the offence the accused person stands charged with. The testimonies of PW10

and PW8 which corroborates with the cautioned statement are the evidence forming part of the same transaction. To the best of my knowledge, I have gone through the cautioned statement of the accused person (Exhibit P11) and find that, it links the accused with the offence of murder.

Furthermore, on the issue of identification of the accused person, as it was night time, the accused was identified by PW10 as they knew each other. PW10 used to find the accused person and his colleagues as they were working as security guards in the office of the deceased. Also, the evidence given by PW10 shows that there were solar bulb lights. According to PW10, the bulb lights in the accused office and the deceased house were bright enough to enable her to identify the accused person. The second thing to consider is the fact that when they entered the deceased's room to look for the keys she saw them. Also, the accused person went for the second time when PW10 handed over her mobile phone to him. Therefore, the identification evidence was clear. In that regard, the accused was identified by PW10 in the deceased's room.

Essentially, On the incident day, before PW10 and the deceased went to the office of the accused where they saw the accused with his co-

watchman. She recognized the accused person by using the electric bulb light which was in the office of the accused person. The electric bulbs have enough light to enable her to identify the accused person. Also, the accused person went to the deceased's room, in which PW10 was sleeping, to take the office keys, and they told her that they were instructed by the deceased. Also, the accused person went for the second time to take the mobile phone from PW10 and the bulb was lighting. I have carefully examined the available evidence and I find that PW10 recognized the accused in the deceased's room while he was looking for the office keys and they went on to take PW10's mobile -phone. As a result, the evidence of PW10 concerning the issues of identification is absolutely watertight to prove the identification beyond a reasonable doubt.

To put more emphasis on this, reference is made to the case of **Waziri Amani v. Republic** (1980) TLR 250, in which the Court set up standard parameters that must be met on the identification of the accused person during the night time. It is obvious that the required parameters are: *first* proximity to the person being identified *second* the source of light and its intensity *third* length of time, *fourth* whether the person being

identified was within the view and *fifth* whether the person is familiar or a stranger.

Basically, in the case at hand, there is no doubt on the issue of identification since PW10 was not a stranger to the accused persons, there was enough light, and the witnesses had ample time to identify the accused persons as the incident took more than an hour according to the prosecution's evidence. Either the prosecution witnesses' evidence shows that the accused was the last person to be seen with the deceased. That fact is taken with all the events, it is to be believed that the accused is the one who killed the deceased. In fact, they called the deceased (Jeofrey Filmon Mbepera) to go to the office and they told him that there were robberies and the deceased went to the office where he was killed by the accused.

Consequently, from the prosecution evidence, the accused person was the last person to be seen with the deceased (Jeofrey Filmon Mbepera). He called him on his mobile phone, and the deceased went into his office. PW10 was listening to them while the accused called the deceased to go to his office. When the deceased went where the accused was, the accused managed to kill him by using the shotgun (exhibit P1),

which was used by the accused as a weapon to protect the office of the deceased. Reference is made to the following cases; **Katobe Kachoba v. Republic** (1986) TLR 170 (Court of Appeal of Tanzania), **Dauget Saitay, in re and W.R. 863, Rajwali v. State**, A.I.R. 1959 J. SCK 66 at P.67: 1959 In Cr. L.J. 839, **Makungire Mtani v. Republic** (1983) TRL 179 (Court of Appeal) and **Aman Shaban v. Republic**, Criminal Application No. 4 of 1981, Court of Appeal of Tanzania at Dar Es Salaam (unreported), the Appellants were convicted of murder because they were the last persons to be seen with the deceased. In this case, the accused was also the last person to be with the deceased which proves that he was the one who killed the deceased.

On the issue of whether the accused killed the deceased with malice aforethought or whether the killing amounted to murder, looking at the trend of the existing evidence in this case the question is whether there was malice aforethought that is; whether the accused had the intention to kill the deceased. Reference is made to the case of **Enock Kipela v. Republic**, Criminal Appeal No. 150 of 1994 and it was stated that:

*'... including the following (1) type and size of the weapon, if any used in the attack: (2) the amount of force applied*

*in the assault: (3) the part or parts of the body the blow was directed on: (4) the number of the blows, although one blow may, depending upon the facts of the particular case, be sufficient for this purpose (5) the kind of the injuries inflicted (6) the attacker's utterances if any made before, during or after the killing: and (7) the conduct of the attacker before and after the killing'.*

According to the prosecution's evidence, the Postmortem Examination Report shows that the deceased died due to brain damage. Moreover, considering the kind of weapon used, a shotgun (exhibit P1) is a dangerous weapon, and the force used was excessive as given in the postmortem report. To add to it, evidence shows that the deceased died due to brain damage. Also, it is clear from the prosecution evidence that after the incident, the accused person ran away and was arrested in another village.

It is worth considering that, the accused and his colleague found the office of the deceased locked. Therefore, they went to the deceased home to take the keys. They entered the house of the deceased in the presence of PW10 and looked for the office keys which were in the pockets of the deceased's trousers.



Also, after some time the accused came back inside the house of the deceased where PW10, the deceased's lover was sleeping and asked to be given the mobile phone and he was given an Itel mobile phone, which was never returned to PW10.

On the same note, the accused realized he had been betrayed by his colleague. It is true that his fellow security guard who had cooperated with him left with the stolen property. The accused person decided to go at Mtungulusi Village to hide exhibit P1 a shotgun with registration number TZ CAR 89319. Considering the conduct of the accused after the incident clearly shows that he had the intention of killing the deceased.

Therefore, taking into consideration the flow of events and the conduct of the accused, there is cognate and credible evidence that when pieced together or taken cumulatively irresistibly points to the conclusion that the accused has the intention to commit the offence of murder. In my humble opinion, the above guidelines provided in the case of **Enock Kipela v. Republic** are met.

Strange as it may sound, the accused person admitted to have killed the deceased in his defence evidence. As much as the defence evidence is

concerned, it is not different from that given by the prosecution. As a matter of fact, it is obviously true that the accused in his defence evidence does not deny the fact that in August, 2021 he was working as a watchman at Dar - Pori Village. Basically, he was working with a company called Jilamwema which was under the company called Mbinga Commercial Security and he was with his colleague working as a security guard in the office of the deceased person.

In addition, the accused person contended that on the incident day, there was a fight between him and the deceased. The deceased beat the accused thoroughly on the mouth which made him lose control as a result he fell down. Later on, he hit the deceased causing his death. Apart from that, the accused stated that it was an accident that he hit the deceased, but he did not do that intentionally.

As a matter of fact, if the defence evidence is carefully and keenly scrutinized, the accused was trying to tell this Court that he was robbed a weapon (exhibit P1) by the deceased. Surprisingly, he contradicted himself by stating that he hit the deceased with the same robbed weapon (exhibit P1). This is ridiculous because the said weapon cannot have multiple users.

The accused was trying to establish the defence that he killed the deceased unintentionally because he had taken away his weapon and there was a fight between them, thus he committed manslaughter. I am mindful of the required provision of section 200 of the *Penal Code* (Cap. 16, R.E. 2022) that malice aforethought has been established in the case at hand. That defence of manslaughter raised by the accused in this case cannot stand as it is of nonsense.

It is the duty of this Court to examine the evidence and find whether there are major contradictions that can be resolved in favour of the accused. As much as I am concerned, I have keenly passed through the prosecution evidence along with the defence evidence which is not different from that given by the prosecution, and I find that there is no any colour of contradictions.

In my view, I am of the opinion that the accused person has failed to raise any doubt to the prosecution evidence. Thus, in this case, I find that the prosecution has proved malice aforethought, that is, killing with intention. The prosecution has proved that the killing amounted to murder.

To put it in a nutshell, there is ample evidence on record to find a conviction for the accused person. In light of the above, I hereby convict the accused person on the offence of murder contrary to sections 196 and 197 of the *Penal Code* (Cap. 16, R.E. 2019). Order accordingly.

**DATED and DELIVERED** at SONGEA this 9<sup>th</sup> day of February, 2023.



  
**U. E. MADEHA**

**JUDGE**

**09/02/2023**

### **PREVIOUS RECORDS/AGGRAVATING FACTORS**

Ms. Tumpale Lawrence (State Attorney) for the Republic.

The Republic have no previous records of the accused person. Since the accused persons have been convicted with the offence of murder contrary to sections 196 and 197 of the *Penal Code* (Cap. 16, R.E. 2019) which has one sentence of death by hanging, I pray that the accused person be punished according to the law.

### **MITIGATION**

Mr. Alex Nyoni (Advocate for the accused person)

Since the accused person has been convicted with capital offence which has no option of sentence, I have no mitigating factors.

### **SENTENCE**

There is only one sentence for the offence of murder which is death by hanging. I hereby sentence the accused person to death. So, under section 197 of the Penal Code (Cap. 16, R.E. 2019), I direct the accused person; one Edger Jackson Lulemi @ Edger Jackson Luleni to suffer death by hanging. I so direct under section 332 (2) of the *Criminal Procedure Act* (Cap. 20, R.E 2022). Order accordingly.



  
**U. E. MADEHA**

**JUDGE**

**09/02/2023**

**COURT:** The Republic and the accused person have been informed their right of appeal under section 323 of the *Criminal Procedure Act* (supra) by giving the notice of intention to appeal within ten days and also lodging petition of appeal within 45 days from the date of judgment or from the date of obtaining the copies of proceedings.

The motorcycle with registration number MC 840 CNY make Haojue  
(exhibit P4) to be forfeited by the government.



  
**U. E. MADEHA**

**JUDGE**

**09/02/2023**