

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY**

AT ARUSHA

(ORIGINAL JURISDICTION)

CRIMINAL SESSIONS CASE No. 12 OF 2021

(PI No. 22 of 2022 from Arusha Resident Magistrates Court)

THE REPUBLIC

VERSUS

JOACHIM MUKAZA MWANAKATWE @ BARAKA

JUDGMENT

28th February & 06th March 2023

TIGANGA, J

In this case, Joachim Mukaza Mwanakatwe @Baraka herein after referred to as “the accused”, stands charged with the offence of murder contrary to section 196 and 197 of the **Penal Code** [Cap 16 R.E 2019 now R.E 2022]. He is accused to have murdered one Furanael Shari Mbise, (the deceased) on 18th October, 2020 at Kimandolu area within the City and District of Arusha in Arusha Region at the home of one Lazaro Mirisho Mafie @ Ishidolya where he was working as a gardener. The deceased was also employed by the said Lazaro Mirisho Mafie @ Ishidolya as a night watchman.

On arraignment, the accused pleaded not guilty to the charge, and during preliminary hearing he admitted to his names and other personal particulars, he also admitted to have been working as a gardener at the house of the said Lazaro Mirisho Mafie @ Ishidolya and admitted to have been informed by the day watchman that, the night watchman was missing. He also admitted to be arrested and charged before the court in connection with the death of the deceased. He disputed to have committed the offence he is charged with.

Following that plea and the response to the facts during preliminary hearing, the prosecution had to call witnesses to prove the case. In the bid to prove it, they called five witnesses namely; SP Gwakisa Minga, Dr. Lwitiko Mose Mwaipopo, Grace Nzali @ Mama Oliva, F. 1481 D/Sgt Kassim and Hon. Neema Mchomvu. These witnesses had their evidence recorded as PW1, PW2, PW3, PW4 and PW5 respectively. They also tendered three exhibits namely the Postmortem examination report, the accused's cautioned statement, and the confession or extra judicial statement which were all admitted and marked as exhibit P1, P2, and P3 respectively.

In these proceedings, both parties were represented by able learned counsels. The Republic was represented by a team of three State Attorneys

namely, Janeth Sekule, Senior State Attorney, Grace Madikenya and Charles Kagilwa, learned State Attorneys, while the accused person was represented by Mr. Richard Manyota, learned counsel.

According to the evidence by the prosecution, on 18th October, 2020, at 14.20hrs in the afternoon PW1, Gwakisa Minga, the OC-CID of Arusha District was called by Lazaro Mirisho Mafie @ Ishidolya who informed him that, his night watchman was found dead and that, the circumstances in which the body was found is suspicious. Following that information, he instructed some police officers one of them being PW4 to go in his company to respond the said call.

When they went to the scene of crime, the said Lazaro Mirisho Mafie @ Ishidolya took them straight to where the body of the deceased was lying. They found the body covered by the tire covers. Upon looking the same, they found its hand were tied from the back using the sisal string while his mouth and nose were covered by a piece of cloth. Near the body of the deceased, there were a bucket and spear. According PW1, on his further inspection of the body he found the neck of the deceased was loose and the body had no any sign of life. Therefore, the circumstances led them to the conclusion that, the deceased was murdered. After that observation, PW1

directed PW4 to draw the sketch map of the scene of crime. While PW4 was drawing the sketch map, PW1 suspected the accused as he seemed to be worried. They decided to arrest him. They took the body of the deceased to Mount Meru Hospital 's mortuary and thereafter went with the accused person to the police station where he was questioned by PW1 in connection of the deceased death.

In reply, the accused told him that, he was involved in the killing of the deceased and he did so in collaboration with the one Joseph Ndelilio Mafie @ Masawe who was the relative of his employer Lazaro Mirisho Mafie @ Ishidolya and that, they did so after they were directed to kill the deceased by Lazaro Mirisho Mafie @ Ishidolya who promised to give him Five Million Tanzanian shillings after completion of the commission of the offence. Over and above that promise, he was also threatened him that, should he refuse to do so, Lazaro Mirisho Mafie @ Ishidolya would kill him using his gun.

Following the accused oral confession before PW1, PW1 instructed PW4 to record the accused's cautioned statement, and proceeded to arrest the said Lazaro Mirisho Mafie @ Ishidolya and Joseph Ndelilio Mafie @ Masawe who upon interrogation, both disputed to have committed the offence.

In the recorded cautioned statement, according to PW4, the accused person confessed to have committed the offence after being instructed by his boss, Lazaro Mirisho Mafie @ Ishidolya and promised to be given a reward of five million Tanzanian shillings should he complete the task, and at the same time threatened to fire him using the gun should he refuse to do so.

After recording the cautioned statement of the accused, PW4 went to the Arusha Urban Primary Court to seek for appointment from the magistrate in-charge so that he can be given a magistrate to record the confession or extra judicial statement of the accused as the justice of the peace. It was PW4's testimony that the magistrate in-charge gave him an appointment of 03rd November, 2020, almost 16 days from the date when the appointment was sought. On 03rd November 2020, the date on which the appointment was allegedly given, PW4 took the accused person to PW5, the justice of the peace who after following the procedures, recorded the confession of the accused. In the confession, the accused almost reiterated what he stated in the cautioned statement regarding the commission of the offence but he kept on insisting that, he in fact did so helping one Joseph Ndelilio @ Mafie Masawe who strangulated the neck of the deceased and caused his death. He also insisted that, he did so after being promised by Lazaro Mirisho Mafie

@ Ishidolya to be given the money, and that should he refuse to do so, he would be killed by his boss using the fire arm. When PW5 was asked in the examination in chief by the learned State Attorney, as what is her opinion regarding that confession, she said in her view, the accused person was held at the police station for so long.

In a bid to prove that the deceased was killed in the overnight of 17th through 18th October, 2020, the prosecution also called PW3 a neighbor who overheard from the unfinished flat owned by Lazaro Mirisho Mafie @ Ishidolya, a struggle which she did not know what was that for. PW3 also said after a moment of struggle she heard a heavy like object falling down from the upper part of the building but he did not know what object fell down.

The other witness who was called to prove that the death of the deceased was unnatural was PW2, a Medical Doctor who conducted postmortem examination on the body of the deceased. After conducting postmortem examination, he found that, the death of the deceased was caused by oxygen deprivation suggestive caused by possible strangulation with the rope. Therefore, in his conclusion, the death was not natural.

The evidence of PW1 and PW4 was that, Joseph Ndelilio Mafie @ Masawe and Lazaro Mirisho Mafie @ Ishidolya were arrested, interrogated and actually charged together with the accused before the subordinate Court, that was before they were all three committed before the High Court for trial. These two witnesses i.e PW1 and PW4 could not explain what happened to these two co-accused. However, the record shows that, on 19th July, 2021 the Resident Magistrates Court of Arusha committed all three accused persons to the High Court for trial. But on 20th August, 2021, the DPP filed a notice of Nolle Prosequi under section 91(1) of the **Criminal Procedure Act**, [Cap 20 R.E 2022] (hereinafter CPA) in favour of the two accused persons. They were consequently discharged, thereby remaining with the current accused alone.

At the closure of the prosecution case, the court ruled in terms of section 293 of the CPA that, the prosecution have sufficiently established the *prima facie case* for the accused person to answer. The accused was thus called to defend himself in terms of that section. In his sworn testimony, while led by Mr. Richard Manyota, learned counsel, the accused disputed to have committed the offence of murder. At first, he disputed to know Lazaro Mirisho Mafie and Joseph Ndelilio Mafie @ Massawe, but later he admitted

to know Lazaro Mirisho Mafie @ Ishidolya as the person who employed him to clean his premises at his home in Kimandolu within the City and Region of Arusha. He said, he was working there as a cleaner and it was his routine that he was entering at work at 09:00 hours and leaving at 14:00 hours. He said his employment started on 12th October, 2020 on the agreement to be paid a monthly salary of Tshs. 100,000/=. He further stated that, on 18/10/2020 at 09:00 hours he went to his work at Kimandolu as usual, but, he found many people gathered. They told him that, they were searching for a person whom they said was missing. Thereafter, Lazaro Mirisho Mafie @ Ishidolya came and told them that, he has seen the person they were searching for. Soon thereafter, the police arrived and one of them introduced himself by the name of Gwakisa PW1. On their arrival, that PW1 was informed by Lazaro Mirisho Mafie @ Ishidolya that, the person who killed the deceased was the accused, Joachim Mukaza Mwanakatwe, therefore he directed Gwakisa to arrest the accused.

After being so informed, PW1 jumped over him and started attacking him before putting him under arrest while accusing him to have killed the deceased. Consequent to his arrest, he was taken to the police station, where he was ordered to submit whatever he had, before he thereafter was

kept in lockup. Soon thereafter, PW1 while in the company of other police officers went and took him out. He took him to the room where they started attacking him while forcing him to say he killed the employee of Lazaro Mirisho Mafie @ Ishidolya. Soon thereafter, PW1 told him to mention Lazaro Mafie @ Ishidolya as the one who killed the deceased. The reasons as to why he was required to mention Lazaro Mirisho Mafie @ Ishidolya was because he was rich. By then he said he had already been seriously injured so he mentioned him.

He said, following the torture he was undergoing, he asked PW1 why were they torturing him, he was told that if he keeps on resisting to say what he was being instructed to say then, they were going to hang him. He said he was told that, when he was returned to the police lockup and after some minutes another police officer who introduced himself as Kassim arrived. That it was PW4, who took him from the lockup and reminded him that, he had already been instructed by his boss, who was in his opinion was PW1, that if he would not mention Lazaro Mirisho Mafie @ Ishidolya they would continue torturing him.

On his further testimony, DW1 said, PW4 told him that, he would take him to his clerk, where he was actually taken and found PW4 with a paper

in his hand. That clerk asked the accused whether he had any scars on his body, he told her that he had a lot of scars, but that clerk said she could not inspect him because she is a woman. The person whom he referred to be a clerk was PW5, Hon. Neema Mchomvu.

According to DW1, PW4 gave the paper that he came with to PW5 who started to copy the content on the plain paper in the presence of PW4. When PW5 finished he was taken back to the police station. He said he did not plan with Lazaro Mirisho Mafie @ Ishidolya to kill the deceased. He said when he was arrested, he had almost six days in his employment because he started to work for Lazaro Mirisho Mafie @ Ishidolya on 12th October, 2020 up to 18th October, 2020 when he was arrested. He further stated that, when they were brought to Court for the first time, he was charged together with two other suspect who were Lazaro Mafie @ Ishidolya and Joseph Ndelilio Mafie @ Masawe. But when they were in remand, he heard the information that the deceased was having love affairs with the wife of Lazaro Mafie @ Ishidolya.

Responding to the question of the where about of the two other accused he said that, Lazaro Mafie @ Ishidolya told him that, since he was rich he would do his best to leave the accused in jail. According to him, that

was before the two accused were called to court on 20th August, 2021 and discharged. He said he was not told the reasons why they were discharged, but since he had already been told by Lazaro Mirisho Mafie @ Ishidolya, that he would give money so that he can be discharged, he knew what was done.

It was DW1's further testimony that, he did not know the deceased and had no any relationship with him. He also disputed to have confessed before any person or authority and he has never killed anybody. He in the end asked the court to find him not guilty and acquit him.

On cross examination, he told the court that, he had never committed any murder and had never confessed before anybody to have committed such an offence. He said he has been sober throughout this trial and had a representation of the Advocate. Refuting the evidence of PW1, he said it was not true that he was fearful, he said he had no any fear when the police went to Lazaro Mirisho Mafie @ Ishidolya's home. He also told the court that, he does not remember whether the prosecution witness said that he confessed in the cautioned statement and an extra judicial statement and neither does he remember that, when the cautioned statement was read it was to the effect that, he confessed and neither does he remember that,

PW4 told the court that, in his cautioned statement, he said he killed the deceased while assisting Joseph Ndelilio Mafie @ Masawe in the killing.

On further cross examination by the learned State Attorney, he said although he did not object or dispute the admission of the cautioned statement, but that does not mean he accept it. When prompted with the question as to whether the clerk he was referring was the magistrate who appeared as PW5, he agreed and said that, PW4 introduced her to him as his clerk. Further that, he told PW5 that, he had injuries following the beating inflicted to him by police officer, but PW5 did not inspect him. Most of the question asked to DW1 in cross examination regarding what was said by the prosecution witness he said he did not remember. So he said he did not remember whether PW5 said that they were alone in her office when she recorded her statement, or that he said that PW5 said he was willing when he recorded the confession statement, or that PW4 and PW5 were cross examined on the voluntariness of the accused when recording the cautioned statement and that, the two documents were admitted without objection from the defence.

He said although he was working from 09.00hrs to 14.00hrs and he was returning to his home but he did not know that, he had a chance to

report the threat and promise to be given Tshs 5,000,000/= advanced to him by Lazaro Mirisho Mafie @ Ishidolya to police. In facts the rest of the question which he was asked in cross examination he either said he did not remember or did not know.

On re-examination, he insisted that, he committed no offence and did not confess to anybody. That marked the end of the evidence of both parties. Both parties opted not to make final submissions hence, this judgment.

That being a comprehensive summary of the proceedings, it is important to once again restate that the accused person is charged with murder of Furanaeli Shari Mbise contrary to section 196 and 197 of the Penal Code (supra). In murder cases these provisions must be read together with section 200 of the same law. While section 196 provides that a person commits murder if, with malice aforethought, causes death of another person by unlawful act or omission. The term malice aforethought, has been defined by section 200 of the Penal Code (supra) to mean, any evidence proving any one or more of the following circumstances—

- (a) *an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;*

- (b) knowledge that, the act or omission causing death will probably cause death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;*
- (c) an intent to commit an offence punishable with a penalty which is graver than imprisonment for three years;*
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit an offence.*

This provision has been interpreted in the case of **Bomboo Amma and Petro Juma @ Lanta vs The Republic**, Criminal Appeal No. 320 of 2016 CAT Arusha (Unreported).

Gathering from the summary of the proceeding in this case the relevant parts are paragraphs (a) and (b) of section 200 cited hereinabove. In that regard, the prosecution needs to prove the following ingredients of the offence.

- (i) That, the said **Furanaeli Shari Mbise** died and his death was not natural;

- (ii) That, the death of **Furanaeli Shari Mbise** was caused by the accused persons in this case;
- (iii) That, the accused person actually intended to cause such death, or had knowledge that the act or omission causing death will probably cause death of the deceased.

In this case, the evidence of PW1, PW2, and PW4 as well as the exhibits P1 which is the postmortem examination report, prove without doubt that the deceased **Furanaeli Shari Mbise** died and his death was unnatural as it has been proved that he died of oxygen deprivation suggestively by strangulation with thin rope. From the evidence of PW2 and exhibit P1, the person who caused death had reasons to believe that his act would actually cause death. This is ascertained from the state in which the body of the deceased was found. According to the evidence of PW1 and PW4 the body was found with its hand tied from the back and its mouth and nose were tied covered by using a piece of cloth. That, in my view, intended either to prevent him from making noise or to prevent his possible resistance.

The next question is who caused such a death. While the prosecution alleges through the evidence of PW1, PW4 and PW5 as well as exhibits P2 the caution statement and P3 the extra judicial statement, that it was the accused person together with other two persons namely Joseph Ndelilio

Mafie @ Masawe and Lazaro Mirisho Mafie @ Ishidolya who caused the death of the deceased, the accused disputes to have caused such death of the deceased. The Republic capitalizes on three types of evidence; **one**, the cautioned statement of the accused recorded at the police station, **two**, the confession or extra-judicial statement of the accused person recorded before the justice of the peace, **three and last**, the credibility of the prosecution witnesses on the evidence they gave orally. On the other hand, the defence side mainly relied on the defence of denial to have committed the offence and to have not confessed before any police or justice of peace.

From the base upon which the prosecution case has been built, I find no direct evidence by the prosecution of a person who witnessed either the accused or any other person killing the deceased. The available evidence as indicated is the accused own confession allegedly made before the police officer as contained in the exhibit P2 and the extra judicial statement recorded before the justice of peace are regulated by law. The confession made before the police officer is regulated by section 27, while the one made in the immediate presence of the Magistrate or justice of the peace is regulated by sections 28 and 29 all of the **Evidence Act** [Cap 6 R.E 2022].

For purposes of easy reference, the same are hereby quoted in extensor as follows;

"27 (1) A confession voluntarily made to a police officer by a person accused of an offence may be proved as against that person.

(2) the onus of proving that any confession made by the accused person was voluntarily made by him shall lie on the prosecution.

(3) A confession shall be held to be involuntary if the court believes that, it was induced by any threat, promise or other prejudice held out by the police officer to whom it was made or by any member of the police force or by any other person in authority.

28. A confession which is freely and voluntarily made by a person accused of an offence in the immediate presence of a Magistrates' Courts Act, or a justice of the peace under that Act, may be proved as against that person.

29. No confession which is tendered in evidence shall be rejected on the ground that a promise or a threat has been held out to the person confessing unless the court is of the opinion that the inducement was made in such circumstances and was of such a nature as was likely to cause an untrue admission of guilt to be made."

Reading between lines the provision cited herein above, the following pertinent issues are clear;

- (i) *A confession made before a police officer or Magistrate may be proved against the accused only where it has been voluntarily made by the accused.*
- (ii) *A confession which was induced by any threat, promise or other prejudice held out by the police officer to whom it was made or by any member of the police force or by any other person in authority shall be held to be involuntary if the court believes that, it was so obtained.*
- (iii) *The onus proving that any confession made by the accused person was voluntarily made by him shall lie on the prosecution.*
- (iv) *A confession which is tendered in evidence shall not be rejected on the ground that, a promise or a threat has been held out to the person confessing unless the court is of the opinion that the inducement was of such a nature as was likely to cause an untrue admission of guilt to be made."*

Looking at the defence of the accused he actually retracted the cautioned statement on the ground that, the contents of the confession was what he was told to say at threat by PW1. In the case of **Geofrey Kitundu @ Nalogwa and Michael Joseph vs The Republic**, Criminal Appeal No.

96 of 2018, at Page 16 the Court of Appeal acknowledged two positions depicted from its previous decisions, one of them is **Abubakari Hamis and Another vs The Republic**, Criminal Appeal No. 253 of 2012 in which the Court insisted on the need of corroborating the retracted or repudiated statement before relying on the same to found a conviction. Second position was the case of **Festo Mwanyagila vs The Republic**, Criminal Appeal No. 255 of 2012 which cited with approval the case of **Tuwamoi vs Uganda**, (1967) EA 84 at Pg 88 where it was emphasized that, the Court can convict based on repudiated or retracted statement even if it is not corroborated if the court is satisfied that, the confession must be true.

Further to that, **Nehemia Rwechungura vs The Republic**, Criminal Appeal No. 71 of 2020, CAT, Bukoba, relied on the authority in the case of **Ali Salehe Msutu v. Republic** [1980] TLR 1, where the Court of Appeal stated that:

"a repudiated confession, though as a matter of law may support a conviction, generally requires as a matter of prudence corroboration as is normally the case where a confession is retracted."

In the case at hand, there is actually no corroboration of both the confession of the accused as recorded in exhibit P2 as tendered by PW4 and

the extra judicial statement exhibit P3, as tendered by PW5. Looking at the statement themselves, they insist that the accused did actually participate in the commission of the offence after he had been promised to be given the cash money Tshs. 5,000,000/= (Five Million) and that he was also threatened to be killed by the said Lazaro Mirisho Mafie @ Ishidolya. The statements go further mentioning the one Joseph Ndelilio Mafie @ Masawe as the person who actually was the leading orchestrator of the killing and the one who strangled the deceased to death. It is on record, that these two later were charged together with the accused at hand, but these had their case withdrawn by the DPP. Although that was done, nevertheless the evidence of the prosecution kept mentioning them as the important assailants in the commission of the offence at hand. It would be expected that; the duo would be called as witnesses but they were not called at least to refute their accusations and say a word on the criminal liability of the accused. Further to that, exhibit P2 and P3 being the evidence by the prosecution, makes the evidence to continue proving the case against the accused whose case was withdrawn by the Republic. In the circumstances, the alleged confession by the prosecution actually needed corroboration, it is not the evidence which can be relied upon without corroboration.

It should also be noted that, although there is no law setting the time limit within which to record the extra judicial statement, the expectation is being that the said statement must be made as soon as possible. See **Awadhi Gaitani @ Mboma vs The Republic** [2020] TLR 140 at 151 and **Mashimba Doto Lukubanija vs Republic**, Criminal Appeal No. 317 of 2013. Where the same is not made as soon as possible, it is upon the prosecution side to give explanation for any delay if it occurs. Suffices to say, where there is no explanation given by the prosecution side, then that makes the delay unwarranted. In this case, the prosecution in the attempt to explain the delay through PW4 said that, the delay to take the accused to the justice of the peace was because the magistrate in-charge gave him the appointment of 03rd November, 2020, which is approximately seventeen days from the date he purportedly asked for the appointment. It is unfortunately that, the magistrate in-charge was not called to prove that, in matters of grave importance and of urgency nature like the one at hand, if he really had given 17 days' appointment to record the extra judicial statement of the accused who wanted to confess.

While well aware that I should not invoke my personal opinion in this matter, but as a judge of the High Court at least I can confidently say that

matters relating to how the Primary Courts functions are matters of common knowledge and need not someone to come here and prove that. In my common knowledge and understanding of the functions of the Primary Court, it is beyond imagination that, a magistrate in-charge could give such a very longer period as an appointment to appoint or assign a magistrate from his station to record the extra judicial statement of the accused person who has readily confessed. This is reinforced by the evidence PW5 when she actually said *"the accused was delayed to be taken to the justice of the peace and was held for so long at the police station"*. Although the cautioned statement was admitted but taking into account the days taken for the accused to record it is doubtful.

I earlier on pointed out that, the evidence by the prosecution mention in more than frequently the participation of Lazaro Mirisho Mafie @ Ishidolya and Joseph Ndelilio Mafie @ Masawe, these were also charged but their case was withdrawn. In my view, these would have been very important witnesses on the prosecution side, failure to call them entitles this court to make adverse inference against the prosecution side as held in the case of **Omary Hussein @ Luganda & Another vs The Republic**, Criminal

Appeal No. 547 of 2017 CAT- Arusha, which relied on the famous case of **Aziz Abdallah vs The Republic**, [1991] TLR 71.

Section 110 and 112 read together with section 3(2) (a) of the Evidence Act provides for the burden and standard of proof in criminal cases. All these sections impose that the burden of proof is on the shoulder of the prosecution and the standard of proof is beyond reasonable doubt. These provisions have been interpreted by a number of case authorities, few of which are to be mentioned here i.e **Woodimington vs DPP** (1935) AC 462 as well as **Mwita & Others vs Republic**, [1977] L.R.T. 54.

Now, with these two principles of burden and standard of proof, I find important to add another principle found in the case of **Maliki George Ngendakumana vs Republic**, Criminal Appeal No. 353 of 2014, CAT at Bukoba (unreported) where the Court *inter alia* held that: -

*"...it is the principle of law that in criminal cases, the duty of the prosecution is two folds, **one**, to prove that the offence was committed and **two**, that it is the accused person who committed it"*

The term beyond reasonable doubt is not statutorily defined, but have been defined by case laws. In the case of **Magendo Paul & Another vs Republic** [1993] T.L.R 219, it was held *inter alia* that,

"...for a case to be taken to have been proved beyond reasonable doubt, its evidence must be strong against the accused person as to leave only a remote possibility in his favour which can easily be dismissed"

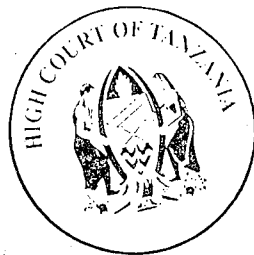
In this case, the evidence is not watertight against the accused person, it has a lot of inherent doubts which ordinarily cannot be based upon to convict the accused person but rather favour him. A conviction may only be based on the strength of the prosecution case and not on the weakness of the defence case. See **Jonas Nkize vs Republic** [1992] TLR 213, **Marando Suleiman Marando vs SMZ** [1998] TLR 375, **Luhemeja Buswelu vs Republic**, Criminal Appeal No. 164 of 2012, CAT at Mwanza (unreported) and in the case of **Abuhi Omary Abdallah & 3 Others vs Republic** Criminal Appeal No. 28 of 2010 CAT at Dsm (unreported), it was held *inter alia* that;

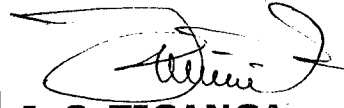
"...where there is any doubt, the settled law is to the effect that in such a situation an accused person is entitled as a matter of right to the benefit of doubt or doubts"

That said, I find the prosecution to have failed to discharge its duty to prove the case beyond reasonable doubt. I find him not guilty of the offence of Murder contrary to section 196 of the **Penal Code** [Cap 16 R.E 2022]. I consequently acquit him and order his immediate release.

It is accordingly ordered

DATED at **ARUSHA** this 06th day of March, 2023.




J. C. TIGANGA
JUDGE