

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(MTWARA DISTRICT REGISTRY)**  
**AT MTWARA**  
**[ORIGINAL JURISDICTION]**

**CRIMINAL SESSION CASE NO 23 OF 2022**

*(PI Case No.2 of 2020 in the District Court of Nachingwea at Nachingwea)*

**THE REPUBLIC..... PROSECUTOR**

***VERSUS***

**OLIVER THOBIAS HOKORORO.....ACCUSED**

**JUDGEMENT**

*03/4/2023 & 28/4/2023*

**LALTAIKA, J.:**

The accused person herein **OLIVER THOBIAS HOKORORO** is charged with the offence of attempted murder c/s 211(a) of the Penal Code [Cap 16] R.E 2019 (now R.E, 2022). The particulars of the offence are that on the 23<sup>rd</sup> day of November 2019 Nammanga Village within the District of Nachingwea in Lindi Region he unlawfully did attempt to murder one **GILBERT s/o FARES SANZE** by cutting him on different parts of his body

by using a panga. The accused person took plea on 16/03/2022 where he denied the allegations hence this trial.

The accused is being represented by Mr. Ali Kassian Mkali, learned Advocate on state docket. Ms. Kijja Elias Luzungana, learned State Attorney, appeared for the prosecutor, Republic. I take this earliest opportunity to register my sincere appreciation to both learned counsel for their commitment and insights that have contributed greatly to shaping this judgement. Chinua Achebe once wrote

*"... a man who calls his kinsmen to a feast does not do so to redeem them from starving. They all have food in their own houses. When we gather together in the moonlight village ground, it is not because of the moon. Every man can see it in his own compound. We come together because it is good for kinsmen to do so. Therefore, let us continue with the team spirit and enjoy the power of togetherness. Let's smile not because we don't have problems but because we are stronger than the problems..."*

The story giving rise to the matter at hand is not difficult to connect. In the evening of the fateful day around 6PM kinsmen namely Gilbert Fares Sanze, PW3 Rashidi Ismail Ahmad, PW4 Aini Shaibu Chilumba and PW5. Lukas Evance Mwaninjisi met at the latter's house. There was no particular reason for meeting except that "because it is good for kinsmen to do so." The host of the kinsmen namely Lukas Evance Mwanjisi excused himself that he wanted to go and see his mother who was not feeling well. He left the rest of the kinsmen in his place.

No sooner had Mr. Mwanjisi left his fellow kinsmen than another member of the village namely **Oliver Thobias Hokororo** (the accused herein) abruptly appeared. He was holding a panga. He asked one of the kinsmen whether he was Gilbert. On receiving a positive response, he started cutting Gilbert Fares Sanze with a panga on different parts of his body. The victim was rushed to accused Nachingwea District Hospital where he miraculously survived. The accused was arrested on 19/10/2020 at Mchonda village. Upon completion of investigation, he appeared in this court charged with attempted murder as alluded to above.

In the highly spirited attempt to prove the allegations levelled against the accused at the required standard, the prosecution fronted seven (7) witnesses (herein after referred to as prosecution witnesses or PWs for short) and tendered in five (5) exhibits. The prosecution case is summarized in the next paragraphs.

**PW1 was Gilbert Fares Sanze** a 50 years-old peasant and resident of Nammanga Village in Nachingwea District. PW1 testified that on 23/11/2019, he was at Mr. Lukas @Soja's place in Nammanga where he had met his host @Soja, along with Aini @Chinga and Rashidi Ismail @Osama. They had been having a normal conversation when their host went out to check on his sick mother who lived nearby.

PW1 then received a call from @Chinga and informed him that he was at Luka's place. At this point, Mr. Oliver @Kanu appeared. He called out his name and began attacking him with a panga. PW1 sustained injuries to his head, hand, neck, back, and left thigh. He identified the attacker as Mr. Oliver @Kanu. He touched him on the shoulder emphasizing that during the

attack he had said he was killing him 'NAKUUA'. PW1 testified further that @Osama, one of the people present, had run away, while @Chinga had followed Lukas. Oliver @Kanu had fled when Lukas and Aini arrived.

During cross-examination, PW1 explained that he had previously been living in Dar es Salaam. He went to Nammanga on the invitation of Mr. Kasela, who owned a Hiace bus that plied the route from Namanga to Nachingwea. PW1 worked as a bus conductor for about 10 months, departing from Nammanga at 7AM and returning from Nachingwea at 1PM. When he was attacked, his family was not with him; they lived in Handeni District, Tanga. PW1 stated further that he did not know what motivated the attack.

**PW2 was Dr. Faraja Peter Nipwapwacha**, Assistant Medical Officer at Nachingwea District Hospital. PW2 recalled an incident that occurred on 23/11/2019 when he was on call at the District Hospital. A male patient named Gilbert was brought in by his friends and relatives with wounds and blood-stained clothes. As per the hospital's protocol for receiving patients with injuries, the patient was immediately taken to the emergency room, where he was given a PF3 and received further treatment for wounds on his face, head, left hand (wrist joint), and the back of his neck.

The patient was then transferred to the major theater for further treatment, where his wounds were stitched, and he was later transferred to the ward. Treatment continued for two more days before he was discharged on the third day. PW2 avowed that the wounds were caused by a sharp object, possibly a knife, panga, or razor blade. In his opinion, the weapon

used was a panga, and the wounds were very serious, particularly the cut on Gilbert's neck, which was deep enough to expose the bone.

He believed that if Gilbert had delayed seeking medical attention, he could have died. PW2 was particularly worried about the cut on the neck stating that the neck is where a nerve that provides blood supply to the brain is located. He prayed to tender the PF3 and the same was admitted as Exhibit P1. There was no cross-examination.

**PW3 was Rashidi Ismail Ahmad** a 48-years old resident of Nammanga. He testified that on 23/11/2019, he was in Nammanga at around 6 PM at @Soja's house with Aini @Chinga and Gilbert . Lukas, the owner of the house, left, and suddenly a person called Oliver arrived and started attacking Gilbert with a panga, while saying "Nakuuwa wewe" (I will kill you). PW3 run away, as it was his first time seeing such a violent attack, and he had only known Oliver as a neighbor who would occasionally visit his wife and two children in Nammanga. He added that he had seen Oliver clearly during the incident, as it was not too dark, and he could identify him clearly while cutting Gilbert on the head and other parts of the body. PW3 emphasized that there were three people present at the time of the attack: himself, Aini @Chinga, and the victim, Gilbert.

During cross-examination, the witness stated that Oliver had two children, and although he did not know the name of his wife, he knew his mother who was called Binti Bokoboko and lived in Nammanga. On further cross-examination, the witness clarified that he too had moved to Nammanga from Newala in 2011 and Oliver came when he was already there, but he did not remember the exact year. The witness stated during re-examination by Ms. Luzungana that he knew Oliver as a fellow villager,

and they used to exchange greetings before the event. Oliver's famous name was mentioned as "@Kanu".

**PW4 was Aini Shaibu Chilumba**, 49 years old, Resident of Nammanga Village in Nachingwea. His part of the story can be summarized as follows. On the fateful day he saw Oliver @Kanu cut Gilbert more than two times while they were at Lukas Evans's place. Lukas, who was the host, had gone to his mother's place when the accused attacked the victim. PW4 mentioned that the accused had warned them that anyone who raised an alarm would be killed. He rushed to Lukas's mother's place to inform Lukas of what was happening in his place and they returned only to find the accused finalizing his attack. The witness could identify the accused because although it was in the evening, it was not too dark yet.

During Cross examination by Mr. Mkali the witness stated that while Gilbert was being attacked, they were seated on a bench and were just talking, not drinking alcohol. PW4 stated confidently that the person he had touched on the shoulder (the accused) was a member of their village in Nammanga.

**PW5 was Lukas Evance Mwaninjisi** a-43-year-old peasant and resident of Nammanga. He testified that on the 23rd of November 2019, he was at his home place in Nammanga with Aini Shaibu @Chinga, Rashidi, and a new villager named Gilbert. They were talking about life, not drinking. At about 6 in the evening, he left for his mother's place, who was sick and lived six houses away. While he was still at his mother's place, Aini Shaibu arrived, breathing heavily, and told Lukas that Gilbert had been attacked with a panga.

PW5 and his informer rushed back to his home place and saw that Gilbert had indeed been attacked with a panga by Oliver, who he knew by his appearance and clothes. Lukas helped the victim and took him to Nachingwea District Hospital. He knew the accused and his family. He saw the wounds, which were on the head, neck, hand, and back, and thought the victim was in critical condition. He did not know the reason for the attack.

During cross-examination the witness stated that he had witnessed the incident with his own eyes, but only towards the end. He mentioned that he did not recall how long it took to make the seven cuts, as he did not have a stopwatch with him. He clarified that he was not present at the beginning of the incident, i.e., the first cut. He added that his mother's place was six houses away from his own house, which was about three football pitches away, as houses were now built close to each other compared to the past.

**PW6 was G7704 DC/CPL PIUS** a police detective. He deponed that on 24/11/2019, while he was at the CID office in Nachingwea, he was assigned a case file number NACH/IR/ 1421/2019 on attempted murder. The accused person in the case was identified as Oliver Thobias Hokororo, also known as Kanu, who attempted to kill Gilbert Fares Isanze. Upon receiving the case, he requested the OC-CID to assign him some askaris to help him go to the scene of crime. They inspected the area and drew a sketch map, after which they linked up with eyewitnesses. However, they were unable to find the perpetrator.

Since the victim had been taken to Nachingwea District Hospital for treatment, the police continued searching for suspects. Eventually, the accused was arrested on 19/10/2020 at Mchonda village. After his arrest,

the file was sent to the office of the prosecution. The witness knew the accused and identified him as the person seated in the corner of the courtroom. Based on his investigations, he discovered that the accused had indeed attempted to kill Gilbert Fares Isanze.

During cross-examination by Mr. Mkali, PW5 stated that he was the investigator for the court file and insisted that the accused was a resident of Nammanga village who had gone to Mchonda as a part of his hideout after attempting to kill Gilbert Fares. On closure of the prosecution case, this court made a finding that the accused person had a case to answer. The next part of this judgement is devoted to the defence case and the evidence adduced therefrom. The defence case had one witness (the accused) and tendered no exhibit.

**DW1 was Oliver Tobias Hokororo**, 40 years old and resident of Mchonda Village in Nachingwea District DW1 took oath and deponed that he was accused of injuring a person and denied the allegations, stating that he could not even remember the names of the witnesses. He explained that he did not know any of the witnesses since they were from different villages, and he was from the fourth village away.

DW1 narrated that he was at his uncle's place in Mchonda in October 2020 when the Village Executive Officer VEO, accompanied by a village militia "*mgambo*", ordered him to go with the VEO to his office. He explained that he was not worried because he was not used to any wrongful acts. However, he was later accused of attacking a man with a panga. He was taken into custody and interrogated by the police, where he denied the allegations. Nevertheless, he was charged with attempted murder.



DW1 faulted prosecution witnesses that they had identified him as Oliver @Kanu, but he clarified that his name was Olive Thobias Hokororo, not Oliver Kanu. He argued that this was proof that the witness did not know him, as their names were clearly different and they came from different villages. He also claimed that the witness had said that he was the one who had attacked him, but he was dumbfounded by this accusation since he had not been identified by anyone else in the incident. When asked about any prior grudges, he denied having any. DW1 emphasized since the attack had occurred at night, it was unlikely that anyone could have clearly identified the attacker.

During cross-examination DW1 admitted that prosecution witnesses had identified him and that his family, including his parents, lived in Mchonda. He acknowledged being charged with occasioning bodily injury but maintained his innocence and stated that the case never came to an end. He further explained that he had previously said that being in jail could affect one's mental state. He denied knowing Gilbert's wife. He also agreed with Ms. Luzungana's statement that six witnesses were unnecessary to prove a case in court, stating that one witness could be sufficient.

**Having dispassionately considered** the records and keenly scrutinized the evidence adduced throughout the trial, the issue for my determination is whether the prosecution has proved the offence of attempted murder at the required standard.

There is no doubt that the offence of attempted murder was committed against PW1. The wounds were visible. The medical doctor PW2 left no doubt in his description that the attack was not a normal assault. The cut on the neck was especially perilous as the back of the neck is where a nerve that

provides blood supply to the brain is located. The main disagreement lies in identification. DW1 emphasized that he believes that he was not properly identified. He also claimed that he was not at the scene of the crime as he lived in the neighbouring village of Mchonda and not Nammanga.

Let me start with later claim, which is coached in the form of an alibi. Section 194(4) of the Criminal Procedure Act (the CPA) Cap 20 R.E. Provides specifically that on conditions governing notice of alibi. The section reads:

*"Where an accused person intends to rely upon an alibi in his defence, he shall give to the court and the prosecution notice of his intention to rely on such defence before the hearing of the case."*

In the instant matter, no such notice had been filed. The accused was duly represented by counsel as early as during preliminary hearing. Nevertheless, it is vital that such a claim, however remotely connected to the doctrine of alibi, be considered. In the case of **Alfredo Valentino v. R.** Crim. Appeal No. 92 of 2006 (unreported) the Court of Appeal of Tanzania emphasized on the importance of considering the defence of alibi. After such consideration, I make a finding that the defence does not hold water. I take the claim to be a general denial and not an attempt to invoke the doctrine of alibi at the eleventh hour.

As for identification, there is no doubt that the same deserves uttermost attention in the form of a thorough examination of the entire prosecution evidence. In the case of **Hamisi Ally & Others vs Republic**, (Criminal Appeal No.596 of 2015) [2016] TZCA 320, [www.TanzLii.org](http://www.TanzLii.org) the apex court emphasized thus:

*"Time and again this Court has insisted that when a case is centered on evidence of visual **identification such evidence must be watertight** before arriving at a conviction. This insistence is borne out of the fact that visual identification is of the weakest kind and hence the necessity of ruling out any possibilities of mistaken identity". (Emphasis added)*

The Oxford English Dictionary (Online) provides the following meaning (among others) of the word "watertight":

*"(Of a theory, plan, or agreement) formed very carefully in every detail so that nothing is uncertain or in doubt."*

The Court of Appeal in the landmark case of **Waziri Amani v. R. [1980]** TLR 250 provided the following guidance on how to assess the evidence of identification.

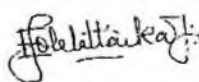
*" Although no hard and fast rules can be laid down as to the manner a trial judge should determine questions of disputed identity, it seems clear to us that he could not be said to have properly resolved the issue unless there is shown on the record a careful and considered analysis of all the surrounding **circumstances of the crime being tried**. We would, for example, expect to find on record questions as the following posed and resolved by him; **the time the witness had the accused under observation**; the distance at which he observed him; **the conditions under which such observation occurred**, for instance, whether it was day or night-time, whether there was good or poor lighting at the scene; and further whether the witness knew or had seen the accused before or not. These matters are but a few of the matters to which the trial judge should direct his mind before coming to any definite conclusion on the issue of identity. "*

It should be noted that the incident took place in a small village. The time was 6PM in the evening. PW3 and PW4 were eyewitnesses. They knew the accused before as a fellow villager. I had the pleasure of observing their demeanor. They were stable. Both PW3 and PW4 testified that although it was in the evening, it was not dark yet. PW4 was pressed by the learned defence counsel to provide more details on the time as it was obvious that both PW4 and PW3 were illiterate. He remained stable. I have carefully examined the record in the light of the language of witnesses. I am satisfied that the designation six o'clock (*saa kumi na mbili jioni*) is in fact a description rather than a specific time. The description is common in rural parts of the country to mean "time before darkness." I have no doubt that there was enough light to identify a person who was known before.

PW3, PW4 and PW5 were consistent that they were seated on a bench. When the accused abruptly appeared with a panga, according to the evidence of PW3 and PW4 there was enough time to identify him as he started hacking the victim on several parts of his body. I have considered other factors that could raise suspicion on whether the accused was really identified or not. The overtly escapist approach taken by the accused simply finds no merit.

Premised on the above, I hereby convict **OLIVER THOBIAS HOKORORO** for attempted murder contrary to section 211(a) of the Penal Code [Cap 16] R.E 2019 (now R.E. 2022).

**E.I. LALTAIKA**



**JUDGE**  
**28.04.2023**



**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(MTWARA DISTRICT REGISTRY)**  
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**[ORIGINAL JURISDICTION]**

**CRIMINAL SESSION CASE NO 23 OF 2022**

*(PI Case No.2 of 2020 in the District Court of Nachingwea at Nachingwea)*

**THE REPUBLIC..... PROSECUTOR**

***VERSUS***

**OLIVER THOBIAS HOKORORO.....ACCUSED**

**RULING ON SENTENCE**

*28/4/2023*

**LALTAIKA J;**

This court has, earlier this morning, convicted **OLIVER THOBIAS HOKORORO** for attempted murder contrary to section 211(a) of the Penal Code [Cap 16] R.E 2019 (now R.E. 2022). Throughout the trial, the accused (now convict) enjoyed skillful legal services of **Mr. Ali Kassian Mkali** learned defence counsel on state docket.

No sooner had the court entered conviction than **Mr. Melchior Hurubano**, learned State Attorney submitted that the state had no criminal

record of the convict. This court then, invited both counsel to submit on aggravating and mitigating factors respectively.

Submitting on aggravating factors, Mr. Hurubano stated that the action committed by the convict was totally unjustifiable. He attacked a person who had done no wrong and the intention was to kill the victim. The learned State Attorney emphasized that had it not been God's mercy, the victim would have died. To deter others from acting so irresponsibly, opined Mr. Hurubano, the accused be given a stiff sentence.

Mr. Mkali, on his side, prayed for lenience on behalf of his client. He argued that the convict was remorseful and had been in custody since 2020. Mr. Mkali also prayed that his client be allowed to add a point or two to what he had just stated.

Upon being invited to speak, the hitherto denialist Hokororo spoke as if he was a completely different person. He stated that was very sorry for what he had done. Displaying a remorseful temperament, the convict stated that although he tried to deny the allegations, the witnesses were consistent in exposing him. Since the victim never mentioned that they had grudges against each other, reasoned Mr. Hokororo, he prayed for an acquittal to go back and take care of his family. The convict added that the incident was "very unfortunate" because he had always been a good, prayerful person free of any substance abuse.

I have taken into consideration the aggravating and mitigating factors. There is no doubt that the convict acted with cruelty. The testimony of the victim (PW1) **GILBERT s/o FALES NZAZE** supported by that of **DR. FARAJA PETER LIPWAPWACHA (PW2)** left no doubt that intention was to kill.

Like Manslaughter, the maximum sentence for attempted murder is life imprisonment. Had it been manslaughter, it would have qualified as High Level because of use of the dangerous weapon (panga). The starting point as recommended in *The Sentencing Manual for Judicial Officers* is 10 years. The Sentence Range is life imprisonment to 10 years. I would start the count at 10. Nevertheless, as pleaded by the learned defence counsel, I proceed to reduce the 3 years already spent in remand custody.

In the upshot, I hereby sentence **OLIVER THOBIA HOKORORO** to a seven (7) years' imprisonment term.

It is so ordered.



Handwritten signature of E.I. Laltaika in blue ink.

**E.I. LALTAIKA**  
**JUDGE**  
**28/4/2023**

**Court:**

Judgement delivered by my own hands in the open court in the presence of Mr. Melchior Hurubano, State Attorney, the accused and Mr. Ali Kassian Mkali learned defence counsel.



Handwritten signature of E.I. Laltaika in blue ink.

**E.I. LALTAIKA**  
**JUDGE**  
**28/4/2023**

**Court**

The right to appeal to the Court of Appeal of Tanzania fully explained.



Handwritten signature of E.I. Laltaika in blue ink.

**E.I. LALTAIKA**  
**JUDGE**  
**28/4/2023**

