

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**SITTING AT KAHAMA**

**CRIMINAL SESSION NO 69 OF 2021**

**REPUBLIC**

**VERSUS**

**LATIFA BUCHANDABA @ MASPANA**

**JAMES SENGIYE @ CLEMENT**

**IMMANUEL PINDUZI@ MWEGAMIZO**

**JUDGMENT**

*8<sup>th</sup> May & 1<sup>st</sup> June 2023*

**MASSAM, J.:**

The accused persons, **Latifa Buchandara @ Maspana, James Sengiye @ Clement and Emmanuel Pinduzi @ Mwengamizo** are charged with murder contrary to section 196 and 197 of the Penal Code Cap. 16 R:E 2019. The information was read over and explained to the accused Persons who were required to plea thereto, on their particular plea, they pleaded not guilty to the information.

It was alleged in the particulars of offence that, the accused persons on 21/03/2020 at Kigwa Village within Kahama District in Shinyanga Region Murdered one Meshack s/o Jonas.

The prosecution established the facts that the deceased one Meshack s/o Jonas was an employee of one Salehe Shabani his daily routine job was to graze and take care the cattle. On 22/3/2020 the deceased got missed but the said boss had no worried. On 23/3/2020 at 4:00pm he heard mwano and he received a call from Sungusungu (Village Militia) and he got information that one Paschal Makoye and Kapela Mshila discovered a died body in Makoye Kayeye's Farm after following the body stains, they conveyed information to one Makoye Kayaya who went at the alleged blood seen, and found the human body hidden in his shamba. He informed the police and Village authority.

The body of the deceased was identified by Salehe Shabani who was his employee Meshack Jonas was missing from 21/3/2020. At the scene the said Salehe Shabani disclosed that the deceased had dispute with 1st accused person over a phone, but the dispute was resolved amicably.

Police conducted investigation, following the statements at the scene, they suspected James Sengiye who was interrogated, in course of interrogation he admitted to kill the deceased and mentioned other two accused persons who were arrested, interrogated and confessed before Police and Justice of the Peace to have killed the deceased.

On 25/07/2022 when the matter was called for Plea taking and Preliminary hearing the information of murder was readout and explained to them, they pleaded not guilty.

When the matter was called for hearing the Republic was represented by Ms. Wampumbulya learned State Attorneys whilst Accused persons had the service of Mr. Gervas Genea learned Advocate for the 1<sup>st</sup> accused person, Good luck Herman learned advocate for the 2<sup>nd</sup> accused person and Evodius Rwangobe for the 3<sup>rd</sup> accused person.

To prove the offence against the accused persons, prosecution had a total of twelve (12) witnesses and they tendered seven (7) exhibits which are Extra Judicial Statement for 2<sup>nd</sup> accused person, Extra Judicial Statement for 3<sup>rd</sup> accused Person, Post Mortem Report, caution statement of the 1<sup>st</sup> accused Person, Sketch Map of the scene, Caution Statement of



the 2<sup>nd</sup> accused and caution statement of the 3<sup>rd</sup> accused. Accused persons in their defence, had only three witnesses themselves tendered no exhibit.

**PW1 Lea Emily Kyomushola** was the first witness to testify, her testimony was to the effect that on 25/03/2020 at 12:00pm she was at her office at Ukune Primary Court, the 2<sup>nd</sup> accused person one James Sangiye brought to her by Police Officer namely Gwakisa. She said that the accused was alleged to be connected with murder case who voluntarily agreed to be recorded his Extra Judicial Statement. After she introduced to him that she is a Magistrate and Justice of Peace, accused stating to narrate his story by telling him that he was arrested on 23/3/20120 at 1:00pm at kigwa area and taken to Nyamilangano Police station.

PW1 went on testifying that accused confirmed to her that he was not beaten nor forced to go to her Office. Also she told that his statement will be used as evidence, accused agreed. Thereafter PW1 started to write his Statement. After that she read over to him and accused signed it and the PW1 also signed the same. She tendered the said statement of 2<sup>nd</sup> accused person and court admitted it as exhibit P1.



**PW2 Happyness Andrew Mtawala** a Magistrate at Ushetu as the former witness, testified as a Justice of Peace who recorded the Extra Judicial Statement of the 3<sup>rd</sup> Accused person. She said, on 25/03/2020 at 3:15pm at Urban Primary court one Policeman namely Steven brought to her an accused who was ready to be written his Extra Judicial Statement. She said that the said accused called Emmanuel Pinduzi. After she introduced to him and gave him his rights accused told her that he is free, and started to tell her that he was arrested at kigwa at 7:00am and taken to Police station at Nyamilangano accused told her that he was not forced to go to her and he was ready his statement to be used as evidence at the court, and started to narrate his story what happened, after finished she read over the said statement to him, after that she signed and the accused person signed it. The said statement was admitted as exhibit P2.

**PW3 Alfred Mshumbusi** a doctor. His testimony evidence is to the effect that on 23/3/2020 at 5:00pm, he was at Ukune Health Centre, when he was told by a Policemen to go with them to examine a deceased body which was found at kigwa Village. They went to the scene at the maize farm and found the body covered with maize branches (mabua) the said body had no head and one hand was dislocated.

He testified further that, the cause of death was due to loss of blood, he then filed the Postmortem Report which he tendered and the same was admitted as exhibit P3.

When cross examined, he responded that deceased was wearing a t shirt of Ihunda Secondary School and he estimated that deceased was died within 24 hours.

**PW4 Salum Mabala Nyange**, a resident of Kigwa testified that on 2/3/2020 at 12:00hrs he was called by one Salehe to go to his home as he saw two goats which were not belonged to him. On the next day he went there and saw those goats, Salehe told him that the said goats belonged to his house boy (the deceased) who exchanged it with the phone with 1<sup>st</sup> person. Later on he went to the house of Clement and asked his house boy who is taking care his cattle, the said house boy (1<sup>st</sup> accused person) said that he got them at the place of grazing. The said boy was beaten by Sungusungu and he was ordered to return the phone to the owner and the goats to remain at Clement's house.

**PW5 Salehe Shaban** an employer of the deceased, on his part testified that the deceased one Meshack was helping him grazing his cattle.

He said on 1/3/2020 he found out that there were two goats, which were not his, he asked the said Meshack where did they came from, he answered that he exchange the same with his phone with Latifa (1<sup>st</sup> accused person).

PW5 continued to testify that he called the Sungusungu commander who came to his house to take the goats, later on the said Sungusungu Commander went to the house of Clement where the deceased sell that phone. He said the deceased on 21/3/2020 went to the Centre for his evening walk, on 22/3/2020 he did not see him, but he was not worried because it was Sunday and it was his day off.

On 23/3/2020 at 4:00pm he said he heard mwano (cry for help) later on he received a call from Sungusungu who told him that they wanted to wrote him statement of whereabouts of Meshack, he went with them to the scene (mwano) he saw a body with a red t-shirt and blue jacket, the said clothes used to be weared by Meshack, the said body had no head. Later on he was taken to Police station together with Emanuel Pinduz (3<sup>rd</sup> accused person) Pascal and one adult.



He continued to inform the court that while they were in lock up, one Ema (3<sup>rd</sup> accused person) admitted to conspire in that killing and they were three, who they cut the deceased by using a bush knife. The said Ema mentioned his fellows to be James (2<sup>nd</sup> accused person) and Latifa (the 1<sup>st</sup> accused person). So he called Policemen who took Ema directed the Policemen the place where they could find Latifa and James. The said Emma was working to his neighbor house one Makoye Kayaya.

He ended by testifying that Emma was not forced to tell them what he told them and he had no dispute with Emma.

When cross examined by Mr. Genea, he said that the deceased was 18 years old, he was the same age with Emma. He added that the jacket which found with deceased wearing he was the one who gave him and the said t-shirt belonged to his grandchild who was a schooler at that school. He again testified that he knew one Latifa who was working to the house of Samwel who had the same age with Emma and Meshack and one James was working to the house of Shija Mayanda. He said he identified the body to be of Meshack because of that clothes and he was missing.

In re examination, he said that the body was of Meshack, as the clothes which he was wearing are the one which he gave to him.

**PW6 Samweli Edward**, a resident of Kigwa, his testimony was that he knew Latifa (1<sup>st</sup> accused person) as he was grazing his cattle. He worked for him for two months. He said that on 23/3/2020 he was at home, he heard people crying for help at a centre area, he went to the scene and saw a body of deceased person which was in the farm of Makoye. He said that he called the Policemen of Nyamilangano and they arrive, they told them to take the body. PW5 told them that the body was one Meshack who was working with him, later on at night hours he was arrested by Policemen with his houseboy one Latifa. The said Latifa on 24/3/2020 was taken his statement.

PW6 testified further that Policemen went to the room of Latifa and searched and found a red T shirt which had blood, then he was told that the said Latifa was connected in the murder of Meshack. He said Latifa is the 1<sup>st</sup> accused person.

When cross examined he responded that he don't know the age of Latifa but he knew PW5 as when fellow Mwananzengo (neighbor). He said

the T-shirt which found in the room of Latifa belonged to him and he used to wear it. He again said that he did not know if the said Latifa had any dispute with Meshack. In re examination, he answered that, the body had no head.

**PW7 No. F.7276, CPL Shamsi** a Police Officer at Nyamilangano testified that, on 24/3/2020 he was in his Office, he was told by OCCID to write the statement of 1<sup>st</sup> accused person Latifa Buchandaba @ Maspana. He said he introduced to him and gave him all his rights and told him that he was there to write his statement. After that he started to write him his statement from 7:15am and finished up to 8:00am. He said he read over to him and both signed the statement. He tended the said statement which admitted as exhibit P4.

**PW8 Shija Manyanda Mpondi**, he was employer of the 2<sup>nd</sup> accused person who was working as a house boy. He testified that 2<sup>nd</sup> accused used to graze his cattle for five months. He said on 23/3/2020 at evening hours he heard cry for help (mwano), so he went to the scene, and been told that there was a person who was killed and the body hidden in the farm of one Makoye. He notified that Policemen came and examined the body of the said deceased. After that he went to his house at 01:00hrs,



he was knocked by Policemen of Nyamilangano, who were asking for James, he showed them the room which James used to sleep. They arrested him and took him to Police station, later on the said Police came again with James to search his room and found black t-shirt the one which he was wearing on the commission of the offence. When cross examined, he said that he did not see the body of the deceased and he did not know who killed.

In re examination, he said that he heard that Meshack was the one who was killed and he was a houseboy of Mzee Salehe.

**PW9 No. F. 5208 D/CPL Stephen,** a Police Officer at Nyamillingano he testified that on 23/3/2020 there was a murder case happened at Kigwa, he drew a sketch map and witnessed the examination of the deceased body. He said the body had no head, Again he took the nail, hair and T-shirt of the said deceased for more investigation. He then wrote the statement of some of the witnesses and later at 02:00hrs the OC-CID told him that one of the accused persons, admitted to be connected with the murder and mention his fellows. After that they went to Kigwa where they arrested the said two accuses persons.

He further testified that on the next day they went to the room of Latifa (1<sup>st</sup> accused person) where they found one t shirt covered with blood and the house of the James (2<sup>nd</sup> accused person) was found with a black t shirt with blood also. He said those exhibits (clothes, hair and nail) were taken to the Government Chemist. The report came and shown that the t-shirt of Latifa did not match with the deceased blood and the said the hair and nail did not match with any one as they failed to get the close relative of the deceased. He said he came to realize that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused persons were connected in murdering one Meshack. He prayed the sketch Map be admitted in the court, and admitted as exhibit P5.

When cross examined, he answered the question by saying that, the deceased body was identified by his boss. And the t shirt which was found with the deceased was given by his boss. The reason why they took the hair of deceased was to know if the hair or nail was related with the blood which found in the said t- shirt.

He answered that Latifa was not taken to the Justice of Peace as he did not confess to be connected in that murder case, but Emmanuel Pinduz was the one who admitted to be connected in that killing and mention 2<sup>nd</sup> and 3<sup>rd</sup> accused persons.

PW10 **No 1689 D/SGT Steven** in his evidence was to the effect that on 24/3/2020 he was at home, he was called by the OC-CID and ordered to join his fellow to investigate the murder case, then they went to scene at Kigwa Village where they were looking for the head of the deceased as the body of the deceased was found without head. He said on their search they failed to get the said head. When they returned to the Office, he was given a task to write the caution statement of one James Sengiye (2<sup>nd</sup> accused person). He said before he started writing the statement, he told him all his rights like to call his advocate, relative or friend. He told him that he was ready to write his statement alone.

PW10 went on testifying that accused started to write the statement from 9:10 am, he finished at 10:00. After he finished, he read over to him and both signed it. He ended to inform him that he will identify that statement by his name, handwriting, and signature. Thereafter he prayed the court to admit the said caution statement was admitted as exhibit P6.

When cross examined by Gervas Genea, advocate he replied that as per statement of James, Latifa was the one who took the said head. They looked for that head to the scene for almost one hour. He added that from Nyamilangano to Kigwa Village it was like 245 kilometers. Also from the



time when the said James alleged to be arrested and the time when he wrote his statement was 8 hours.

PW11 **Seleman Hamis Juma** a Superintendent of Police (SP) serving at Unguja Zanzibar said on 23/3/2020 he was at Ushetu as OC-CID. He received information that there was the dead body which was found at Kigwa Village, he went at scene with a doctor and found the body which had no head, they continued with investigative measures and they were mentioned the last person who was seen with the deceased, they arrested him together with the owner of the farm where the body was found.

He told the court that on 23/3/2020 at 8:00pm he was informed that 3<sup>rd</sup> accused person did admit to be connected in that murder. He told the investigator to write his statement so as to see if his statement can be used to get more information and the suspects. The same helped them to go and arrest the 1<sup>st</sup> and 2<sup>nd</sup> accused persons.

He narrated that the said suspect did agree to be connected with the said killing and the 1<sup>st</sup> accused person admitted that he was the one who

took the head. On the next day Police Officers went to the scene to find the head but they did not find it.

He directed the Police officer to take some of exhibits which he directed to be taken to Government chemist, and 2<sup>nd</sup> and 3<sup>rd</sup> accused persons to be taken to Justice of Peace to be written Extra Judicial Statement, in the end he came to realized that the deceased and the accused persons were known each other as they had business of phone which caused the dispute among themselves and later cause the death of Meshack.

Responding to cross examination, he said that they started to arrest Latifa at his home in midnight at 01:00hrs then James and Makoye Kayaya who was a boss of Emmanuel and owner of the farm which the body of the deceased was found. He said accused person never mentioned Makoye to be the one who killed Meshack and after they got information from Emmanuel as to who connected with the murder. One Latifa was the one who directed them the place where he throw the deceased head. He responded that no eye witness testified to see the accused persons killing the deceased. He said he never directed Police Officers to beat those accused persons.

Responding to re examination, he said that Makoye did not kill Meshack but the accused persons did and Latifa took them to the place where he throw the head of the deceased.

PW12 **NO F. 8001 D/CPL Basil**, a Police Officer at Ushetu his duties was to investigate. His evidence to this case was to the effect that on 23/3/2020 at 9:00 he was told to write the statement of the 3<sup>rd</sup> accused person. He said he took him to the investigation room, before he wrote his statement he told him that he is not forced to give him information but voluntarily and the same can be used in court as evidence.

Also he told him that he has a right to call his friend, relative or advocate but he said he was ready to be taken his statement alone. He started to write his statement at 9:00am and finished at 10:30am. He read over to him as he said he don't know how to read and write, there after he signed and he signed too. Again he prayed to tender the caution statement as exhibit to the court and admitted as exhibit P7.

In cross examination he said that he did not beat the 3<sup>rd</sup> accused person he was free and confess to be connected with the offence alleged



to him. After PW12 ended his evidence, the prosecution had no more witness to add, therefore closed its case.

After the close of the case this court found out that the accused has a case to answer which will made them to enter to their defence.

In defence, DW1 Latifa Buchandaba @ Maspana testified that, he was living at Kigwa at first he was working with one Nugwa grazing his cattle for one year. After that he went to the house of one Samweli where he was doing the same work for two months then he was arrested on 23/3/2020 at 01:00hrs while he was at home asleep. He said that the arresting Officers came to him with James (2<sup>nd</sup> accused person) they arrested and handcuffed him and taken to lockup were they continued to beat him, he said that he was asked the charge against him, but he was to be informed later.

He stated that those Policemen were writing something which he did not know. On the next day he was told to go to his boss one Samweli Edward as they want to search the said place and after that he was taken to Kahama Police Station then to court where the charge of murder was read over to him.

Again he said that his fellow accused were beaten and forced to admit the charge. He was not taken to Justice of Peace because he was sick after being beaten. He ended by defending that he don't know the charge against him but he was told that he killed Meshack while is not. He prayed the court to set him free.

When cross examined he responded that he was beaten and his condition was not good. He said at police station, he was bitten by hanged up his head down and legs up. He said he used to see the deceased at centre and the other accused persons at a place of grazing cattle.

DW2 James Sangiye in his defence he told the court that he was grazing the cattle and farming at the house of shija Manyanda. Again he was arrested by Policemen on 23/3/2020 at 01:00 hours at kigwa while sleeping, He was taken to the lock up, and other Policemen went to arrest Latifa, all taken to Nyamilango Police Station where he was beaten. He said he did nothing but he was forced to admit the charge.

He went on defending that he did not write caution statement but Policemen was the one who wrote it. He said the same was not signed by him. He also denied to know one Latifa and Emmanuel (1<sup>st</sup> and 3<sup>rd</sup> accused

persons) he came to know them when they were at police station. He again testified that he was taken to Justice of Peace where he also forced to admit the statement while he don't know how to read and write.

He ended to defend that it was at the Police station where he was told that he killed one Meshack but he did not kill him. He prayed the court to set him free.

When cross examined, he responded that he used to see Latifa at centre and Emmanuel at grazing place and at the Justice of Peace he did not sign the statement and he don't know who signed it. Lastly he said that he was not beaten by Justice of Peace.

DW3 Emmanuel Pinduz @ Mwegamizo on his defence testified that on 23/3/2020 he was grazing the cattle with the son of his boss, policemen came and handcuffed him. He was told by the Police Officers that he killed Meshack while he did not know him. He said that in lock up he found Makoye, Salehe, Kapera and Pascal.

He again testified that he did not mentioned Latifa nor James but his statement was written at 7:00pm at Lock up he said he told them he know nothing about the said killing, but one Makoye told him to admit the



charge. He said that he did not admit to kill Meshack before Justice of Peace.

After the 3<sup>rd</sup> accused person ended his defence, it signifies the closure of evidence from both sides and the same learned counsels from the sides had no final submissions to offer, the work was left in the hand of the court to determine the case on its merit.

In deed, my main task is to determine this case (the Murder Case) of which the way forward is to determine whether the accused persons in this case committed the offence as per information. This offence the proof requires the standard of proof beyond reasonable doubt as per, Section 3 (2) (a) of the Evidence Act, Cap. 6 RE 2022. That

2) A fact is said to be proved when-

*(a) in criminal matters, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists;*

This provision cited above couched that in proving a criminal case beyond reasonable doubt the prosecution side bound duty to establish the facts which satisfy the court to believe the existing facts in evidence that

accused committed the offence. It was stressed in a number of cases, but for the better understanding, goes to the case of **Mohamed Matula v. Republic**,[1995] TLR 3 thus:

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

The above being the main principle for the prosecution prove the case beyond reasonable doubt against accused persons, for easy task this court will confine to the following issues that;

- (i) **Whether the person one Meshack s/o Jonas alleged to have died is actually dead; if yes**
- (ii) **Whether the death was of unnatural causes, if in affirmative,**
- (iii) **Whether it is the accused persons; Latifa s/o Buchandaba @ Maspana, James s/o Sengiye @ Clement and Emmanuel Pinduz @ Mwegamizo are**

**responsible persons for the death of Meshack s/o Jonas who are subject to this trial, if the answer is in affirmative.**

(iv) **Whether their action was actuated with malice aforethought.**

Now the first issue **whether the person one Meshack s/o Jonas is dead**, the answer of this issue will depend from the evidence as testified in the court by the prosecution side and the same was not in disputed by the defence side. It was evidenced by the PW3 Alfred Mushumbuzi a doctor who examined the body of the deceased. He proved the death of one Meshack Jonas by testifying that on 23/3/2020 in a company of Policemen went to Kigwa Village at the maize farm where they found a deceased body covered with maize branches. He said the body had no head and his hand was dislocated. He said the death of the deceased was caused by loss of blood.

He said he recorded the death and the cause of the death by filling the Post Mortem. The Post Mortem report (exhibit P3 detailed that *;the body was burred with the left the arm left out, after removal, the body was found decapitated. These were some bruises on the left scapula Regime,*



*the Right Index finger was chopped. The power and planter Regim/ surface were severally pole"* It is from the medical personally and his report in the Post Mortem revealed and proved that one Meshack Jonas is died and head was separated from the body.

Evidence of PW3 plus Exhibit P3 were corroborating with testimonies of PW5, PW6, PW9 and PW11. These witnesses told the court that they managed to attend at the scene where they found the body of the deceased was covered with the maize leaf and its head was chopped separated from the body (kiwiliwili) the said head was not seen at the scene. PW5 the boss of the deceased testified to prove the death of the deceased that he saw the body of the deceased with no head, he said he recognized the body to be the body of the deceased as he was wearing a red T-shirt which which he gave him. PW6 also testified that he went to the scene and found the dead body and he helped to carry the said body. PW9 together with other thing, his testimony was that he removed some body's parties like nail and hair of the deceased so that to take them to the Government chemist, he said those parties were taken for the sake of tasting if it matches to the deceased relative.

PW11 who was then a OC-CID of Ushetu proved that he was the one who went to the scene with a doctor. They found the body of the deceased with no head. They conducted investigation and they got some information concerning the suspects in connection to the said murder.

It is from those witnesses and the medical report (exhibit P3) that there was no doubt that one Meshack Jonas was died and the fact as per prosecution evidence that the body of the deceased had no head, it meant that the death of the deceased was unnatural death and the act of killing was acted by chopping the head of the deceased.

Now I move to the (iii) contentious issue that **whether or not it was the accused persons Latifa s/o Buchandaba @ Maspana, James s/o Sengiye @ Clement and Emmanuel s/o Pinduz @ Mwengazo are the one and very responsible for murdering one Meshack s/o Jonas who is subject in this trial.**

As we have noted earlier that the onus is always on the prosecution to prove not only the death but also the link between the said death and the accused persons, in this light basing on the evidence on record, it is clear that the prosecution called no eye witness who testified to have seen

the accused persons killing the deceased, but the fact established linking the circumstances which connect the accused persons in murdering the deceased, that being the position. I am bound duty to thorough scrutiny the evidence of both sides to reach a point of answering this issue for yes or no, for me to ground conviction in this case which based solely on circumstantial evidence or to acquit the accused persons. I have to borrow the decision established in Augustine **Lodaru V. Republic**, [2014] TLR 45 held that:

*"It is settled law that a court of law may ground a conviction based solely on circumstantial evidence. This is so where the said evidence irresistibly led to the inference that it was the Appellant and nobody else who committed the offence. Such evidence must also, **be incapable of more than one interpretation and the chain linking such evidence must be unbroken**"*

In linking the accused persons in commission of the offence, in nut shell I will demonstrate how prosecution established the fact since Preliminary hearing to the trial. It has shown that, on 23/3/2020 one Pascal Makoye and Kapela Mshila the sons of Makoye Kayaya were in the farm of their father. While there they saw a blood stains, they followed it



and discovered a hidden thing, they informed their father one Makoye Kayaya who came and searched the same, in his searching he discovered the human body in the farm, he conveyed information to the Police and Villagers. Upon the Police and Villagers gathered at the scene, one Salehe Shabani (PW5) the employer of the deceased identified the deceased to be his employee (Meshack Jonas) who went missing from his house from 21/3/2020.

PW5 at a trial testified to link the story by stating that on 1/3/2020 at afternoon he found two new goats, he asked the deceased where are they from, the deceased responded that he sold his phone to Latifa (1st accused person) he did not believe what he was told by the deceased, but the deceased promised him to make a follow up concerning the phone. He said he called the Sungusungu Commander who went at PW5's house to make a follow up concerning that goats. The said police militia (sungusungu) went to the house of Clement where the deceased exchanges his phone, he said on the next day on 22/3/2020 he did not see the deceased but he was not worried because it was Sunday and it was his day off. On 23/3/2020 at 4:00pm he heard cry for help (mwano) and he received a call from Sungusungu telling him he was needed to

write a statement concerning the whereabouts of deceased, when he gathered at the mwano he saw a body with no head wearing a red t-shirt and blue jacket. He said he identified the body of deceased to be the body of Meshack as the clothes which he was wearing are known to him and the said Meshack was missing. He said later on he was taken to Police Station together with 3<sup>rd</sup> accused person, Pascal and one adult and while entered in lock up, he found other three adults. In the lock up, the said Emma (3<sup>rd</sup> accused) person admitted to be conspired in the said killing, in his admission he said that they were three they cut the deceased by using a bush knife, he mentioned his fellow to be James and Latifa. Later on the 3<sup>rd</sup> accused directed the Policemen at the place they can find Latifa and James. He informed the court that the said Emma (3<sup>rd</sup> accused) was working as a house boy at his neighbor's house one Makoye Kayaya who said to discover the body of the deceased in his farm.

PW6 the employer of 1<sup>st</sup> accused his evidence featured the same of the testimony of PW5 that on the material date he heard the people's cry for help and went to the scene. At the scene he saw a deceased body found in the farm of Makoye. PW5 told the gathered people that the

body was of one Meshack who was working with him. Later on at night hours he was arrested with his houseboy Latifa. He said the Police were taken his statements, and 24/3/2020 they took the statement of Latifa and went to the room of Latifa and found the red t-shirt which had blood, then he was told that the said Latifa was connected with the Murder of Meshack.

The evidence move on detailing that on the material date PW11 upon received the information that there was the body found at Kigwa Village, he went together with the doctor and PW9 to the scene, while there found the said died body with no head. They conducted investigation, they were told and mentioned with the last person who was seen with the deceased. They arresting him together with the owner of the farm. On 23/3/2020 at 8:00pm, he was informed that 3<sup>rd</sup> accused person did agree to be connected in the murder. He said he ordered the said 3<sup>rd</sup> accused to be written his statement, on writing his statement, the said accused person's assisted them to arrest the 1<sup>st</sup> and 2<sup>nd</sup> accused persons and the said accused persons they both agreed to be connected with killing. The 1<sup>st</sup> accused admitted that he was the one who took the



head of the deceased. Again on the next day the Policemen went to the scene to look for the head of the deceased, but they did not find it.

Also PW11 ordered the suspects who admitted to be taken to Justice of Peace. The narrative evidence of PW5, PW6, PW9 and PW11 are the facts established to link the accused persons in commission of the offence, as for the testimonies of the above witnesses, PW11 told the court when recording the accused statements found out that two accused persons confessed to commit the offence, he said he ordered the admitted ones to be referred to the Justice of Peace for them to write their Extra Judicial Statement.

It is in record that, before accused persons were taken to write their Extra Judicial Statement, PW7 recorded the caution Statement of 1<sup>st</sup> accused person which was written on 24/3/2020 from 7:15am and finished 8:00am the said caution Statement is Exhibit P4. PW10 interviewed 2<sup>nd</sup> accused person on 24/3/2020 from 9:00am up to 10:00am. The said statement is exhibit P6. And PW12 recorded the caution statement of the 3<sup>rd</sup> accused person the said recording took place from on 23/3/2020 at about 9:00am and finished at 4:30am.

It is from the information gathered from the statement of the accused persons, PW11 ordered 2<sup>nd</sup> and 3<sup>rd</sup> accused person to be taken to Justice of the Peace to record their confession via Extra Judicial statement. The said Extra Judicial Statements were recorded by PW1 and PW2.

It is from the above facts established, as I have noted that in this case no eye witness who demonstrated to have seen the accused persons killing the deceased, what is in record is a purely circumstantial one, the prosecution side tried to pull the shirt of the court to look into the narrated story and ground conviction against the accused persons basing on the adduced evidence that accused person confessed to commit the charged offence.

So far so good, admissibility or confession is a matter of law but for the same to meet the standards, admissibility or confession must comply with the ingredients so that the court may consider, underlining what to be considered, the Court of Appeal in **Rhino Migire Vs. R**, Criminal Appeal No. 122 of 2002, it was held that:-

*"For a statement to qualify as a confession it must contain the admission of the ingredients of the offence charged as provided for under section 3 (c) of the Evidence Act"*

In this trial the prosecution's witness on allege that accused admitted at Police and to the Justice of the Peace and informing how they killed the deceased by cutting his head and the 1<sup>st</sup> accused took away the head of the deceased. For the accused persons at a trial during the defence they denied to commit the offence and repudiated the confession of commission of offence. In their defence 1<sup>st</sup> accused defended that he was arrested at home when he was as sleep, when he was arrested, arresting officer was with the 2<sup>nd</sup> accused person. He said at the lock up he was beaten and the Police wrote something which he did not know he was forced to admit the charge. DW2 and DW3 disowned the charge and repudiated to admit that he was connected to the alleged murder. He said after he was arrested, he was beaten while he did nothing. He was forced to admit the charge of murder. He said he did not write the statement, he also denied to know the 1<sup>st</sup> accused, even when he was taken to Justice of Peace, he was forced to admit the statement and he did not sign the Extra Judicial statement. In this denial of the 2<sup>nd</sup> accused person that at Police Station he was beaten



and he was forced to admit even at the Justice of Peace he was forced to admit. His statement had no evidential proof that he was beaten and forced to admit the charge at Police and at the Justice of Peace, however when he cross examined, he said Justice of Peace did not beat him.

I have also considered the defence of DW3 it was his defence that he was arrested on 23/3/2020 Policemen told him that he killed Meshack who he did not know him and he did not mention the 1<sup>st</sup> and 2<sup>nd</sup> accused at his statement at Police station and to the Justice of Peace. And he never admitted to kill the deceased, rather the said Justice of Peace wrote something which he did not know.

At the beginning before started to evaluate the evidence, this court will to demonstrate the facts which the prosecutions relied upon the circumstantial evidence via their witnesses who together with exhibits thought were enough to convince the court to ground the conviction.

Be it may, the cautioned statement and extra judicial statement incriminating the accused persons as detailed they both confessed at the Police custody and at the Justice of Peace for the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons. But in trial defended in denial. Practically for a court to convict an

accused person on a retracted /repudiated confession, that confession must be corroborated by other independent evidence unless the court is satisfied that the confession contains nothing but the truth, in **Ndorosi Kudekei vs The Republic**, Criminal Appeal No.318 of 2016- CAT Arusha, (unreported) the Court held:

*"A trial Court should accept any confession which has been retracted or repudiated or both the retracted and repudiated with a caution and must before founding a conviction on such a confession be fully satisfied in all circumstances of the case that, the confession is true."*

In another case of **Hemed Abdallah V. Republic**, (1995) TLR, 172 the court also said:

*"Generally, it is dangerous to act upon a repudiated or retracted confession unless it is corroborated in material particular or unless the court after full consideration of the circumstances, is satisfied that the confession must be true; and that once the trial court warns itself of the danger of basing a conviction on uncorroborated retracted confession and having regard to all the circumstances of the case it is satisfied that*

*the confession is true, it may convict on such evidence without any further ado."*

In this case the testimonies of PW5, PW6, PW9 and PW11 that accused persons killed the deceased and when 2<sup>nd</sup> accused person arrested, mentioned the fellow accused persons that they were connected to the killing of the deceased, upon such information the Police Officers arrested the rest accused who at the Police custody when cautioned they admitted to kill the deceased, that evidence of the said witnesses suggests in corroboration with exhibits P4, P6 and P7 which detailed in admission that accused was committed the offence and revealed what was the cause for such doing so.

The caution statement was also supplemented by the Extra Judicial Statements which 2<sup>nd</sup> and 3<sup>rd</sup> accused persons recorded their statement at the Justice of Peace of which both the 2<sup>nd</sup> and 3<sup>rd</sup> accused person admitted to the extent and clear that they murdered the deceased. Exhibits P1 and PW2 (Extra Judicial Statements of 2<sup>nd</sup> and 3<sup>rd</sup> accused persons) detailed to the facts that, on 22/3/2020 accused persons were at centre watching T.V. at about 5:00pm 3<sup>rd</sup> accused told the deceased to go back home, at 5:30pm they started to go home, when reached at the farm, 2<sup>nd</sup> accused



held the shirt of the deceased, then 1<sup>st</sup> accused started to cut the deceased, the deceased fall down, 1<sup>st</sup> accused told the 3<sup>rd</sup> accused to hold the legs of the deceased, he hold the said legs then 1<sup>st</sup> accused cut the neck till he separated it between the head and the body. He took the head and a trouser of the deceased and left with them.

The exhibits detailed again that on that occasion, 2<sup>nd</sup> accused person hold the chest of the deceased while 1<sup>st</sup> accused cutting him. After they finished cutting the deceased, 1<sup>st</sup> accused took away the head and buried the rest of the body in the farm.

It is also corroborative evidence that accused when recorded their evidence before the Justice of Peace, they were given the statement voluntarily and free minded. The voluntariness of accused persons was proved by PW1 and PW2 who in their testimonies at the trial told the court that accused confirmed that they were not beaten nor forced to come to the offices of Justice of peace and when were told that their statements would be used as evidence, they agree and wrote their statements. The same 2<sup>nd</sup> accused when cross examined, he confessed that at the Justice of Peace he was not beaten.

Another thing which I think relevant to determine is that, it is in record that 1<sup>st</sup> accused was not taken to Justice of Peace for recording his Extra Judicial Statement of which for my opinion it may be taken that the caution statement with no support of extra judicial shake the involuntariness confession, that the confession at police station was obtained by torture as in the case of **Ndorosi Kudekei v. R**, Criminal Appeal No. 318 of 2016, CAT at Arusha (unreported) where the Court stated that:

*"With the absence of the extra-judicial statement, the trial judge was not placed in a better position of assessing as to whether the appellant had confessed to having killed the deceased or not."*

The principle above cannot solve the contentious issue in hand and circumstantial evidence in the hand case. The fact that 1<sup>st</sup> accused defended in denial and repudiated his caution statement, but the evidence available and in absence of the extra Judicial Statement, the remaining evidence adduced by prosecution are enough to link the 1<sup>st</sup> accused person in the commission of the offence. My arrival of so opinion based on principle established in **Hemed Abdallah V. Republic**, (supra)

*"Generally, it is dangerous to act upon a repudiated or retracted confession unless it is corroborated in material particular or unless the court after full consideration of the circumstances, is satisfied that the confession must be true; and that once the trial court warns itself of the danger of basing a conviction on uncorroborated retracted confession and having regard to all the circumstances of the case it is satisfied that the confession is true, it may convict on such evidence without any further ado."*

In up short, the fact has been established and the evidence has been proved and there was no obstacle prevented for the prosecution to demonstrate with evidence that accused persons were not the one killed the deceased, and for that finding, the (iii) issue is answered in affirmative.

Now the last issue (iv) that ***Whether their action was actuated with malice aforethought.*** The act of intending to kill another person is said to be Malice aforethought. In our land section 200 of the Penal Code (Cap 16 R.E. 2022) provides: -

Malice aforethought shall be deemed to be established by 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 the death of or grievous harm to some person, whether that person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous harm is caused or not, 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'

Basing on provisions above, I have discussed in length when I was determining the (iii) issue which in general proved that accused persons murdered the deceased. In this last issue it is undisputed fact that, accused persons had malice to kill the deceased. the evidence of malice aforethought is well proved in the accused person's confession in both caution statement and extra Judicial statements. (Exhibits P1, P2, P4, P6 and P7). In the said exhibits accused persons narrated the way they

planned to kill, killing by cutting and they separated the head from the body of the deceased. In their confession they said, 1<sup>st</sup> accused person cut the deceased by using a bush knife while the 2<sup>nd</sup> and 3<sup>rd</sup> accused were assisting to hold the chest and legs for the 1<sup>st</sup> accused to accomplish his act of killing.

With all findings and discussion, I proceed to state that the prosecution managed to prove the case beyond reasonable doubt that the accused persons Latifa Buchandaba @ Maspana, James Sengiye @ Clement and Emmanuel Pinduz @ Mwegamizo with intention killed the deceased one Meshack Jonas contrary to section 196 of the Penal code Cap 16 RE 2022 with those reasons both accused persons are convicted to the charge.

It is so ordered.

**DATED** at **SHINYANGA** this 1<sup>st</sup> day of June 2023

  
**R.B. Massam**  
**JUDGE**  
**1/6/2023**

**COURT:** Right of appeal explained.