

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(MOROGORO DISTRICT REGISTRY)**

**AT MOROGORO**

**CRIMINAL SESSION CASE NO. 38 OF 2022**

*(Original Case PI No. 9 of 2022 in the Resident Magistrate Court Morogoro)*

**THE REPUBLIC**

**VERSUS**

**MAJALIWA MOHAMED NGARAMA AND 20 OTHERS**

**JUDGEMENT**

*Hearing date on: 02/06/2023*

*Judgement date on: 28/6/2023*

**NGWEMBE, J.**

This judgement is in respect to charges related to terrorism and attempt murder, whereby twenty-one (21) accused persons were jointly and together arraigned in this house of justice charged accordingly. When the charge was read to them, all denied to have been involved in those offences. Hence, the Republic lined up thirty-four (34) prosecution witnesses accompanied with twenty-nine (29) exhibits with a view to establish and prove the offence preferred against them. For clarity and according to the charge sheet, the names of twenty-one accused persons are; *Majaliwa Mohamed Ngarama; Malick Abbas Kajugusi, Muhudi Omari @ Jambia, Ramadhani Mohamed Athuman @ Nkumba, Juma Ismail Salimu @ Shebughe, Nassir Abdallah Musa @ Juru @ Kessy,*

*Ally Shabani Athukan, Ramadhani Hamisi Wawa, Juma Ramadhan @Ibrahim, Hassan Ally Hamis, Hamis Hassan Ntuko, Maulid Hassan Sultan, Khalid Omary @ Jumbe @ Abuu Sumaya, Mabilika Wales @ Abuu Majanga, Ridhiwan Issa Mwilu, Fredrick Evarist Chamnungu @ Yassin, Yusufu John @ Bakayoo, Twaibu Abdu Chenjele, Mustafa Ally Chombo, Mwale Juma Omary and Abeid Abeid Lihinga @ Abuu Osama.*

In this case and due to its nature, both parties were represented by competent and experienced criminal lawyers. The Republic was represented by three senior State Attorneys, while the accused had their own lawyers lead by Buruhan Mussa, Deckrine Kweka and Alfa Boniface. As part of introduction, I proceed to narrate the charges hereunder as I will proceed to analyze them in due course.

- i. Conspiracy to commit terrorist acts contrary to section 4 (1) (3) (i) and section 27(c) of the Prevention of Terrorism Act No. 21 of 2002 as amended;
- ii. Participating in a terrorist meeting contrary to section 4 (1), (3) (i) (i) and section 5 (a) of the Act;
- iii. Possession of property for commission of a terrorist act contrary to section 4 (1) (2) (b) (iii) and 15 (b) of the Act; and
- iv. Five counts on attempt to murder contrary to section 211 (a) of the Penal Code.

This court being aware of how special the proceedings were, endeavoured to accord its judicial care of the whole proceedings from the beginning to the end, in order to make sure that, reasonable caution is taken, impartiality is maintained, and at the same time the accused are afforded fair trial with timely justice. In maintaining fairness of the

proceedings, I was guided by the Prevention of Terrorism Act, The Criminal Procedure Act (Cap 20 R.E. 2022) and other applicable rules and doctrines relevant to the criminal trials of this nature. Also, I was much persuaded by **The Global Counterterrorism Forum's *Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses (Hague Memo)***, which though not binding upon our jurisdiction yet are highly persuasive. The Memo identifies nine (9) good practices on the role of the judiciary in handling terrorism cases, aimed to promote strong judicial institutions capable of serving as an effective deterrent to terrorism. The nine good practices are recapped hereunder: -

- i) The use of specially trained judges;
- ii) The use of continuous trials;
- iii) The development of effective trial management standards;
- iv) The establishment of measures to protect witnesses and victims;
- v) Maintaining the right of the accused to a fair trial with adequate legal representation;
- vi) The establishment of a legal framework for the use and protection of evidence from intelligence sources and methods;
- vii) The development of effective courthouse and courtroom security;
- viii) The development of media guidelines regarding the court and parties to the trial; and
- ix) Ensuring victims of terrorism access to justice.



Notably, these guidelines are fundamental to the ends of justice in trials of terrorism and similar offences. In our court system, at least there is a specialized court division for terrorism which currently is The Division of Economic and Corruption Offences and all other eight practices are practised even though there might be a room for perfecting it more.

Our jurisdiction and this court have adhered to practices, as the case was tried in a scheduled session; hearing was conducted continuously and through virtual court (video conferencing); and witnesses' details were anonymised and were protected from being seen throughout the trial of this case. This was in accordance to the court's ruling delivered on 21/03/2022. Therefore, in this case I am confident to evaluate that, the minimum of good practices itemised above were attained and maintained throughout the trial. Also, I hold a legitimate expectation that in the near future these good practices developed in the *Hague Memo* may be domesticated in the laws and practice of trials of terrorism cases in our jurisdiction.

Now I find it is important to underscore just briefly, the nature of offences facing the accused persons. The accused are faced with three counts of offences related to terrorism, and five counts of attempted murder contrary to sections 211 (a) of the Penal Code. I will begin to give breath on the concept of attempt and later I will consider the concept of terrorism before embarking in recap of evidences adduced by both parties during trial.

The concept of *attempt*, according to **Black's Law Dictionary, 9<sup>th</sup> Edition** provides an elaborative interpretation to mean: -

*"The act or an instance of making an effort to accomplish something, esp. without success. An overt act that is done with the intent to commit a crime but that falls short of completing the crime. Attempt is an inchoate offense distinct from the intended crime. Under the Model Penal Code, an attempt includes any act that is a substantial step toward commission of a crime, such as enticing, lying in wait for, or following the intended victim or unlawfully entering a building where a crime is expected to be committed."*

Many authors who have tried to elaborate and define the term *attempt* have made reference to prominent jurists **John Salmond, Glanville Williams and J.W. Cecil Turner** in their various good works and proceed: -

*"An attempt to commit an indictable offence is itself a crime. Every attempt is an act done with intent to commit the offence so attempted. The existence of this ulterior intent or motive is the essence of the attempt...Yet although every attempt is an act done with intent to commit a crime, the converse is not true. Every act done with this intent is not an attempt, for it may be too remote from the completed offence to give rise to criminal liability, notwithstanding the criminal purpose of the doer. I may buy matches with intent to burn a haystack, and yet be clear of attempted arson; but if I go to the stack and there light one of the matches, my intent has developed into a criminal attempt"*

*"Attempt is the most common of the preliminary crimes. It consists of steps taken in furtherance of an indictable offence*

*which the person attempting intends to carry out if he can. As we have seen there can be a long chain of such steps and it is necessary to have some test by which to decide that the particular link in the chain has been reached at which the crime of attempt has been achieved; that link will represent the actus reus of attempt"*

Rightly so, section 211 of the Penal Code (Cap 16 R.E. 2022) provide circumstances upon which, may constitute the offence of attempt murder. That whoever attempts unlawfully to cause the death of another; or with intent unlawfully to cause the death of another, does any act or omits to do any act which it is his duty to do, the act or omission being of such a nature as to be likely to endanger human life is attempt murder. In simple meaning attempt murder is any act or omission intended to cause murder to another person.

In line with the above understanding of attempt, the fundamental question subject to determination by this court is whether the alleged acts committed by the accused constituted the offence of attempt murder? This is a key question for determination in this case.

Equally important is the meaning of offences related to terrorism. In this trial, three charges comprise offences related to terrorism. From the outset, the offence related to terrorism in many African countries including our country are new offences which originally, we had no experience of similar nature. Therefore, it is important to understand its true meaning as understood in other jurisdictions.

**Black's Law Dictionary (Eighth Edition)** defines terrorism to mean the use or threat of violence to intimidate or cause panic, as a means of affecting political conduct. The **Department of Defense**

**Dictionary of Military and Associated Terms (USA)** defines terrorism as: -

*"Unlawful use of violence or threat of violence, often motivated by religious, political, or other ideological beliefs, to instil fear and coerce individuals, governments or societies in pursuit of terrorist goals"*

In the case of **R Vs. F [2007] 2 All ER 193** specifically page 197, basing on **The Terrorism Act 2000**, The English Court of Appeal Criminal Jurisdiction construed terrorism in the following terms: -

*"The use or threat of certain kinds of action where the use or threat was designed to influence the government or to intimidate the public or a section of the public"*

These few references out of many definitions reveals the truth that, there is yet no universal definition of what is terrorism. This may be due to the fact that criminal and security laws differ from one jurisdiction to another. It is known an act constituting terrorism in one jurisdiction, may fall short in another jurisdiction. See also **The UN High Commissioner, Human Rights, Terrorism and Counter-terrorism, Fact Sheet No. 32.**

However, as it is correctly observed by The **International Institute for Justice and the Rule of Law** in the *article of Good Practices for the Judiciary in Adjudicating Terrorism Offenses in the Horn of Africa Region*, there are cross cutting elements generally included in definitions of terrorism, such as: - (i) the use of violence or threat; (ii) directed at civilian or government, usually on non-combatants; (iii) for the purpose of intimidation and coercion for political ends.

Usually, terrorism is an unlawful use of violence and intimidation, especially against civilians, in the pursuit of political aim. In fact, there is no simple and direct definition of terrorism, rather in every definition they provide circumstances or acts when taken together constitutes terrorism. Fundamentally, terrorism involve the use of violence with a view to instill fear, panic and confusion not just within the direct victims, but among a wide range of audience or the whole society. Terrorism may appear in different forms like suicide terrorism, domestic terrorism and war terrorism.

In some jurisdictions, terrorism is understood as political violence in an asymmetrical conflict that is, designed to induce terror or psychic fear through religious terrorism, state terrorism, nationalist terrorism etc. In totality, terrorists may target young people; they may exploit real or perceived grievances of young people easily manipulated against the existing Government for their personal gain or replace the existing Government with theirs.

Terrorism which occurs primarily within the territorial jurisdiction is best known as domestic terrorism. Likewise, terrorism that occurs primarily outside the territory is best known as international terrorism. Such terrorism transcends national boundaries in which it is carried out, the people intended to intimidate, or the place where the perpetrators operate or seek asylum.

Having defined the key terms in this case, that is attempt and terrorism, the question for determination in this case is, whether the accused actions amounted into terrorism and attempt murder as known by our laws? To answer the above questions, first I have opted to narrate concisely on the background of this trial; second, I will recap



just briefly on the evidences adduced during trial; third, I will analyze those evidences in line with the prevailing laws and precedents; lastly, I will determine if at all, the accused are liable as charged or otherwise.

Tracing the background of this case goes back to February up to May, in year 2015, where a group of persons including the accused and others who are at large, allegedly organized and had meetings with common intention to commit terrorism against the lawful Government of United Republic of Tanzania. That the prosecution alleges that such group had evil intuition to overthrow the Government and replace it with new leadership following religious faith. It is also alleged that; the group was associated with Islamic State (IS) and Al-Shabaab of Somalia which operates in other places of Africa and abroad.

The leaders of that group are said to have started recruitment of young persons from all over Tanzania including, but not limited to Morogoro, Arusha, Dar es Salaam, Coastal region, Mtwara, Geita, Lindi and other parts of the United Republic of Tanzania. The main purpose of that group was to commit terrorist acts, to wit, overthrowing the Government and establishing in its place an Islamic State. Such intent and action could seriously destabilize the foundation of political, constitutional, economic and social structures of the United Republic of Tanzania.

Having so determined, it is alleged the accused persons and others who are at large, actualized their evil intention by travelling from different places of our country to Masjid Al Salah Al-Fajih Mosque at Kidatu ward within Kilombero district in Morogoro region, having in their possession various military equipment and explosives, to wit; two hand grenades, thirty (30) dynamite explogel Vol. VI, two detonating cord and

two electrical blasting caps 1.5 inches, one pair of Tanzania Peoples' Defence Force Coat, Tanzania Peoples' Defence Force Barret hat and one pair of Tanzania Peoples' Defence Force combat boots. Those properties would directly be used to facilitate the commission of terrorist acts, to wit; attacking police stations within Kilombero district in Morogoro region, for purposes of acquiring firearms intended to be used in overthrowing the lawful Government of the United Republic of Tanzania and installing an Islamic State, an act which can reasonably be regarded as having been intended to seriously destabilize the fundamental political, constitutional, economic and social structures of the United Republic of Tanzania.

Unfortunate may be to the accused persons, prior to actualization of their evil intention, they were arrested in various places within Kilombero and Kilosa District in Morogoro region. Hence arraigned in court and charged with eight (8) counts as narrated above. This is the source and background of the trial before this house of justice.

At this juncture, let me summarize just briefly, the evidences of both parties. All prosecution witnesses testified on conspiracy; being found with explosives; and use of explosives in attempt murder. They testified on oath or affirmation depending on one's faith. In concise summary of the prosecution's testimonies are as follows: -

PW15 (P18) gave his evidence that on 13/04/2015 he was at Morogoro for special operation against terrorism with his fellow police officers including P28, P21 & P30 and other police officers from Morogoro. That joint force was formed after terrorist acts at Oshirombo Police Station where police died and many guns were confiscated. Other attacks of police stations at Mkuranga District, whereby police were killed and

several guns were confiscated. A task force of police was formed to collect all intelligence information in respect to all terrorists. In that operation, they used intelligence methodologies and cooperation means with civilians.

They were informed of existence of terrorist groups in Morogoro specifically at Kidatu. On 14/04/2015 were informed that two culprits were arrested at Kidatu with explosives and manual of military training, after arresting them, they were taken to Morogoro Central Police. Those two culprits were Majaliwa Mohamed Ngarama and Ramadhani Hamisi Wawa, who upon interrogation concerning their military training manual, they confessed, they were going to Kidatu at Udzungwa forest to camp for military training of *Jihadi* and that others were gathered at Sunni Mosque at Kidatu, coming from different regions in Tanzania. Proceeded to testify that, Regional Crimes Officer (RCO) Morogoro directed the OC CID Kidatu to go at Sunni Mosque to arrest all therein, an immediate action by OC CID was made and all in that mosque were arrested.

On 15/4/2015 they went to Kidatu at Sunni Mosque around 4:30am and found OCCID had already arrested 13 accused persons who were at that Mosque, forming a total of 14 people. They were found with hand grenade, explosives, knives, masks and military uniform.

The culprits were taken to Kidatu Police charged for terrorist acts. Upon interrogation, they confessed to have been in that Mosque ready for *Jihadi* training. After such training they were planning to attack police stations and military camps for guns and explosives, so as to wage a war against the Government of the United Republic of Tanzania and install Islamic Government under Sharia Law. Then, after that, all were

transported to Central Police Station Morogoro where they reached around 07:30am. They were recorded their statements. All were healthy.

Added that he recorded two accused persons namely, Muhudi Omari @ Jambia (3<sup>rd</sup> accused) and Maulid Hassan Sultan (12<sup>th</sup> accused). Having followed all laid down procedures, he recorded the statement of the 3<sup>rd</sup> accused from 08:00am to 09:40 on 15/04/2015. He gave it to the accused the recorded statement for him to read and also, he read it loudly, finally the accused signed in all pages and also, he signed. The statement was admitted unopposed during trial, marked exhibit PE5.

Same way, he recorded the cautioned statement of Maulid Hassan Sultan. That the accused was healthy and good looking when he recorded his statement. After recording it, the accused read it and accepted as his statement, then he signed in every page. The statement of Maulid Hassan Sultan was made on 15/04/2015 and same was admitted during trial, marked exhibit PE6. Those accused explained how they were involved in terrorist activities to overthrow the Government and replace it with Islamic State.

Another prosecution witness was PW1 (P8), who testified that on 14/04/2015 at around 09:00 hours, while at his office, he got from a secret informer that at Ruaha area in Kilombero district, some strange people were spotted being in two autorickshaws (bajaji). So, he went along with other 5 police officers to the place. They met the informer who told them that those people had some bags and were heading to Kidatu.

They went near the bridge area, met two autorickshaws coming the opposite direction, they stopped them and one of the officers went close to one of the riders, when addressed, he told them that their

passengers were sent to the mosque, but their leader was in one of the two autorickshaws. Immediately the person said to be the leader came out of the auto and ran away. Police chased him for about ten steps far, then the suspect took out a sword and injured one police officer on back of his neck in what seemed an attempt to behead. The assaulted officer had serious bleeding, but was taken to a nearby hospital by one of his fellow police officers, while PW1 continued chasing the culprit.

In the course, he fired four bullets on air, but the culprit would not surrender, continued running away. Around the cane field, PW1 shot the culprit on the right leg, sustaining injuries, thus fell down. The witness revealed that, civilians came close to the crime scene. Also, PW1 went close to the suspect and disarmed him by taking his sword, also one bullet and detonator wire were found in his coat, which were as well seized and took the suspect from the cane field to an open space.

Proceeded to testify that, it happened that angry people came across and attacked the suspect to death, despite his (PW1) attempt to stop them by firing ten bullets in air. The angry mob burned the suspect's body. The suspect was recognized as Mohamed Makwenda.

While still there, PW1 was informed by the informer, that at another place of Ruaha Mashineni area, there were two (2) unknown suspicious. Went with other officers and found two (2) young boys sitting on the out-of-used tyre. They arrested them and conducted an inspection. One of the boys had a bag, which had one knife and an exercise book, which contained some notes on military training. It was later known, the two young-men were Mohamed Majaliwa Ngarama from Mwanga district Kilimanjaro region, and Ramadhani Hamis Wawa a Nyaturu resident of Dar es Salaam, both were not residents of Ruaha.



They took them to Ruaha Ruhembe Police Station where they were inspected and interrogated.

PW2 (P15), a police officer corroborated the evidence of PW1 that on 14/04/2015 at about 10:30pm while at Ruaha police station the accused Majaliwa and Ramadhani were brought at the station. That upon inspection by P in the presence of PW2, the accused had a knife and one book in their bag, which were seized and a seizure certificate was issued. Both the accused signed and the officers signed thereafter the accused were taken to police lockup.

When cross examined, the witness told this court that, the arresting of those accused was one of emergence, hence no warrants were taken along and the arrested were not resident of Ruaha area, but were from other regions.

The next witness PW5 (P16), who testified that, he is a police officer with 23 years experience in service. He corroborated the evidence adduced by PW1 on the event of 14/04/2015 as they were together. This is the officer who was attacked by suspect known as Makwenda. He testifies that, when the suspect started running, he chased him. At about ten (10) paces the suspect took out a bush knife (probably a sword) and cut PW5 on the left side of the neck. He lost memory until the next morning when he was found himself at hospital. The scar was shown to court during his evidence.

Equally, the testimonies of PW4, (P1) who also is a police officer testified that on 14/04/2015 at about 10:45 midnight, while at Kidatu, he was informed that some suspects were arrested for committing a crime, that they should be prepared to arrest others. Then he alerted P7 to be ready awaiting for P's arrival. P came and together they went to

the Sunni Mosque where they called P4 and inquired on those culprits in the mosque. Then they went to the house of Imamu Maulid Hassan Sultan a leader of the mosque, together they went to the mosque. At the mosque, Imamu opened the door of the mosque. In the mosque they found thirteen (13) youth, who came out and 4 of them were residents and 9 were strangers from Geita, Tanga and Arusha. P found many bags, which were brought out and inspected. They found 30 explosive jelly, one knife, one metal saw, 4 wires, 2 hand grenades, one cap of JWTZ, one coat, shoes and masks. He filled search certificate and signed together with Imamu. Items were seized and taken along with the accused to Ruhembe Police Station, others left leaving PW4 to provide security to that place. Seizure certificate was witnessed by all persons around including the suspects. PW6 (P7) accompanied PW4, his testimony is mainly the same as PW4 on what transpired on the fateful night.

Another testimony which is similar to the above is the testimony of PW16 (P20), a forensic expert from Forensic bureau Morogoro, whose evidence on what transpired in 14/04/2015 midnight at the mosque is mainly the same as others recorded above. Further verified the chain of custody of the explosives and other exhibits extracted at the mosque on that midnight. Maintained that, all the above-mentioned exhibits were found from the same crime scene at the mosque. He kept them separate and put in one big box he labeled KDT/IR/123/2015. At around 06:00am he left for Morogoro Central Police and arrived around 09:00am, where he kept those exhibits for safe custody.



Further narrated that, at the Central police, those exhibits were separated due to their explosiveness. Then kept in one of the forensic bureau's rooms where the temperature is regulated.

On 18/08/2015 at around morning hours he handed over the explosives to PW 26 (P21) who took them to the head office of forensic bureau at Dar es Salaam for investigation. On the same day in the evening PW26 (P21) returned those exhibits to PW16 for safe custody. So, he kept them safe.

On 17/03/2016 the explosives were handed over to PW27 (P24) an expert of explosives from Tanzania Peoples Defence Forces (TPDF) Pangawe camp and chain of custody was duly recorded at every step.

He classified those non explosive exhibits that were knife, metal saw, Military uniform and a manual of military training. All those were remained in the forensic office at Morogoro Central Police.

The evidences of PW27 (P24), a Military officer of Pangawe Military School, testified in this court that, he is an expert of ammunition, artilleries and explosives, trained within the country, and outside, like Kenya and China. That on 29/12/2015 he was requested by Morogoro RCO via his letter to keep in safe store the explosives found at Kidatu Kilombero. Having consulted his superior, he was allowed to accept the request. Thus, on 17/03/2016 in a company with other two military officers, went to RCO's office to inspect those explosives. P20 took them to where those explosives were kept. He found a box, when opened, he found explosives and non-explosives material; namely stick, 2 hand grenade, detonating code, safety fuse, electric detonator, water jelly explosives (V6) and non explosives, were a screw driver, gloves and military uniform. P20 handed over all explosives to him and he took

them to Pangawe accompanied with Police officers, using military vehicle. Non explosives were left to P20. On arrival, he handed over the box to PW21 (P22) by dispatch and the box was closed. The box was labelled KDT/IR/123/2015 and FB/BALL/LAB/77/2015. The explosives were kept in explosives store, over which he was also responsible to inspect every time and observe their behaviour.

Then on 13/03/2017 he inspected those explosives and found some leakages in water jelly explosives (exudation). He advised his commander, on the danger of those explosives. Thus, advised those explosives be destroyed. Eventually, the permit was issued to destroy them. Therefore, on 11/04/2017 Police and other military officers from Pangawe, went to PW21 (P22) and took those explosives for destruction. The destruction was done in a specified place. In such exercise, non was injured. Went further to testify that, he prepared a military report to the military head quarters.

The store keeper of TPDF Pangawe store, appeared in court and testified as PW21 (P22) That he is a military officer responsible to keep military materials in store. Confirmed that he was informed by PW27 (P24) that there were explosives brought from Morogoro Police Central to be kept in the military store. He received a box containing those explosives, which was labelled as KDT/IR/123/2015 and FB/BALL/LAB/77/15. He recorded in the register book kept in the military camp bearing the same numbers. Took those explosives and kept them in the safe store of explosives.

Then on 13/03/2017 at Pangawe military school, PW27 (P24) he inspected those explosives and observed, they were in a serious danger



of exploding. Thus, he Followed the laid down procedures of destroying them.

That eventually, on 11/04/2017 at around 11:00am, PW27 went to the store with other Government officers and took those explosives to a safe place for destruction. He again recorded those explosives that, they are removed from the store.

P25, a police detective officer testified as PW3, that he was assigned a duty to participate in destruction of explosives and artilleries which were kept at Pangawe Military Training School. He prepared PF 12 (an inventory form) and went to Pangawe along with a Magistrate and other police officers. On arrival, the Magistrate recorded all explosives, that is, two hand grenade, electric detonators (9 meters) with red colour, detonator with safety fuse 9 meters and 30 bluish colour jelly in the box marked KDT/IR/123/2015. Thereafter, the witness and magistrate signed in that form then the explosives were destroyed by experts from among Pangawe military officers and police at a specified and safe area which they witnessed.

Having stated that the original form was kept by the RCO's office, this court allowed tendering of a copy under section 67 (1)(c) of **The Evidence Act**, thus, admitted it as exhibit PE1 which was accompanied with the resident magistrates' court ruling in Misc. Criminal Application No. 06 of 2017.

He went further explaining the destruction process, he stated that, the explosion had a terrible sound and turned the soil upside down. The witness in cross examination testified that, the explosives were kept at Pangawe Military school.



The evidences of PW7 whose name is (P53) and that of PW13 (P65) police officers, their testimonies are to the effect that, at Central Police Station Morogoro, PW7 prepared an identification parade whereby, PW13 conducted an identification parade. 9 people of the same look, colour and height, including the 13<sup>th</sup> accused were lined up. P36 and P57 managed to identify the 13<sup>th</sup> accused person. Even after changing the arrangement, yet the accused was properly identified as a person found in the scene of crime and as the one who was involved on the alleged crime. The accused was properly informed on the purpose of the parade and that all rights were explained to him, including the right to call his relatives or other persons of his choice. The parade was conducted in an open space within Morogoro Central Police Station. P36 identified the 13<sup>th</sup> Accused Khalid Omary Jumbe, PW13 filled in PF186 (Identification parade form) in both occasions and the identifying witnesses signed. The forms were tendered without objection as exhibit PE4 (i) and (ii).

The testimonies of PW8 (P55), PW10 (P40), PW24 (P70) and PW28 (P34) all being the victims of an explosion caused by 13<sup>th</sup> accused Khalid Omary Jumbe had similar evidences. That on 01/05/2015 around 5 - 6pm, Msolwa Ujamaa Village at Kilombero. PW24 when was with a village leader, they received a phone call from one person that two suspicious persons and strangers to their village were at Airtel-Money Shop. Therefore, they went to the place and met with motorcyclist and other villagers. The motorcyclist told them that he took those suspects and strangers from Sumbuguru area in Kidatu Village to the Airtel Money shop and that one was speaking a language he could not know it. That the suspect had no money, thus, they went to Airtel Money to draw

some money as fare. He managed to draw some money. Thereafter, they were arrested and started interrogating them. One introduced himself as Khalid, another did not say anything. Then a village militia men came to the scene of crime.

One of the militiamen is PW28 a leader of ward militia, he was ordered by the hamlet leader to take those two suspects namely Khalid Omary Jumbe and another young man to the Ward Executive Officer at CCM offices. On arrival, the Ward Executive Officer ordered PW28 to inspect them for safety. PW8 and PW10 were around. One of the two suspects, was a bit tall, but slim another one put on a hat (Mzura). The tall and slim introduced himself as Khalid Omary, while the other did not speak. When he started inspecting them, the one with a hat ran away, so villagers went for him. He proceeded to inspect the other one who remained therein, telling him to surrender everything, but using his left hand took out from his trouser a small book. On his right-hand side there was a big thing in his trousers pocket. Then he took one explosive from his right-hand side pocket and threw it down which exploded.

Those four witnesses were seriously injured by that explosion. All fell down and most of them fainted. PW28 regained his consciousness at St. Kizito hospital Mikumi. His lefthand and right leg had multiple fractures and other wounds on other parts of his body, including a noticeable scar in his head. One finger from his left hand was amputated and others were maimed. He went through several surgeries of his head and limbs. Some iron bars were inserted in his left hand and right leg. He remained at St. Kizito Mikumi for two days, then transferred to Morogoro Regional Hospital for two days, lastly was transferred to Muhimbili where he was admitted for two weeks, followed by outpatient

services for another two months. He showed the court his scars on the head, and the left hand was badly disfigured with four fingers instead of five fingers. Demonstrated and stated that, he is not able to work because of his injuries, thus has permanent disability caused by that explosion. All victims were badly injured at the scene of crime, they were taken to Kidatu Police and given PF3 then taken to different hospitals.

PW10 testified that he sustained serious injuries to his head, legs and left shoulder, showed the court his head, both legs and left shoulder which had permanent scars and disfigurements. This one was hospitalized at Nyandeo Dispensary, later to St Kizito Hospital Mikumi where he stayed for one day, then transferred to St. Francis Ifakara for 3 days. Currently the witness suffers numbness in the left hand and leg.

Explained that, the explosion was heavy and damaging, it damaged even the vehicle which was nearby. PW8 participated in interrogating the suspects, she heard a big explosion. Upon regaining her consciousness, she could not walk, tried limping and people helped her and was taken to a safe place, four of them were badly injured. PW24 showed the scars on his leg, eye and head. He was treated at St. Kizito Hospital where he was admitted for three (3) days. Currently, his visibility is reduced significant to the extent that, he can't easily read as the result of the explosion attack. PW24, tendered PF3 which was admitted as exhibit PE17

PW25 (P57), testified to have been around at Msolwa Ujamaa at CCM offices on 01/05/2015 and witnessed the arrest of two young men and during explosion. He describes the two young men that one was short dressed draft shirt and black trouser, another had white T-shirt and

track suit. That during inspection, the one with draft shirt, black trouser and cap ran away. PW25 was among the villagers who unsuccessfully chased him. However, they failed to arrest him, because after a short distance they heard a big explosion, thus they turned to the crime scene where he witnessed some villagers injured by that explosion. They assisted those victims to hospitals.

On 02/05/2015 he was called to the Dispensary of Msolwa Ujamaa, for interrogation on the event that occurred on 01/05/2015. He was interrogated by police whom he did not know their police station. Then was informed to report to Central Police Morogoro, where he went on 14/05/2015 and around 05:00pm he recorded his statement regarding the event of 01/05/2015. Then he was asked to participate in identification parade. He went there at Central Police, met with P65 who was in the identification parade. The parade involved nine (9) people standing one line, all were men, young looking, similar in height and colour. P65 required PW25 to identify a person who was at the incidence on 01/05/2015 at Msolwa Ujamaa – CCM offices. He passed at front and at the back, then managed to identify the perpetrator whom he touched on the shoulder. The witness described that the suspect wore blue T-shirt, trouser and shoes. The one he identified is the one who exploded artilleries. His name is Khalid. Then returned to office and record statement of identification

In cross examination, the witness added that, he knew the name of Khalid on the eventful date of 01/05/2015. Other damages caused by the explosion was the CCM offices and a car were damaged.

Other witnesses like PW18 (P38), PW 30(P39) and PW 33 (P62) who are medical doctors of St. Francis Hospital Ifakara, Mkamba Health

Centre and St. Kizito Mikumi Hospital treated those victims of the explosion. PW10 was treated at St Francis Ifakara by PW18 where he arrived on 01/05/2015 evening and was attended by PW18 on 02/05/2015. He verified that, actually PW10 had blood in all his clothes and had fresh deep wounds on his ankle and legs caused by sharp objects, his pressure was very low, they stabilized his pressure then treated his wounds. He tendered a PF3 which he himself filled in respect to PW10, which was admitted as exhibit PE9 without any objection.

PW 30(P39) proceeded to testify that on 01/05/2015 at around 08:00pm at St. Kizito Mikumi where he worked, was called to attend 5 OPD patients who had operating injuries. Three (3) of them were badly injured those are, PW24 (P70), PW8 (P55) and PW28 (P34). P34 was badly injured, the whole of his body was full of blood. Big wounds, all burns and other wounds in his both legs. Stated that he treated and stitched of the wounds. Prescribed blood transfusion, pain killer and POP Slabs. The patient was admitted for three days; on 01-2/05/2015 to 03/05/2015 when he was referred to Morogoro Regional Referral Hospital. The PF3 was filled in on 03/05/2015 when the patient was being referred to Morogoro Referral Hospital. Without objection, the PF3 was admitted as PE 19. The other patient he treated on that fateful date is PW24 who was also badly injured in his left leg and head. He performed stitching and on 03/05/2015 PW24 had recovered, hence was discharged. PW8 had no fracture, but burns and was admitted for three days.

He identified exhibit PE17 (PF3 for PW24) and PE2 (PF3 for PW8) properly. Stated that the injuries to three patients were caused by heavy and strong explosive objects, which injured the patients differently.

PW 33 (P62) received P43, another victim of the explosion who was injured in both legs. He examined him and found having minor bruises on his left leg. He treated and discharged him conditionally, that he should return to hospital for checkup after three (3) days. On the 3<sup>rd</sup> day the patient appeared before him and on inspection, he was satisfied to have good development, he filled in PF3 on 04/05/2015 and returned to Police Station Kidatu. The PF3 was admitted as exhibit PE23.

PW9 (P41) stated that together with other police officers, on 25/04/2015 at about 07:00am were ordered by PW1 to go at Sumbuguru where villagers suspected some accused persons. They went and found one person called Ridhiwan Issa Mwilu (the 15<sup>th</sup> accused) who was tired, lying on the ground. They brought him to Kidatu police at 08:00am handing him to P1. The witness testified that the appearance of the accused that he dressed with pit short. He was slim and black in colour.

PW 11 (P56), a police officer, testified that on 13/04/2015 at about 07:00hrs, at Ruaha Village having been informed on the presence of young men in some questionable conduct. He called the OC CID, together they went to police KII reporting the matter, fortunately in charge confirmed to have received the information and that he had deployed some officers already to the crime scene. At about 10:30 police officers returned to the police station with 2 suspects, those were Majaliwa Mohamed and Ramadhani Wawa who are the 1<sup>st</sup> and 8<sup>th</sup> accused.

The witness inspected their bags and clothes. In Majaliwa's bag there was a knife, one exercise book written military tactics, Ramadhani

Wawa had nothing dangerous. He prepared seizure note for Majaliwa and ordered them be kept in Police custody.

At the same moment he was informed that, others were in Sunni Mosque at Kidatu. He therefore, called police at Kidatu and informed them about those people. Instructed them to arrange for their arrest. He went together with other police officers and government leaders including P7 (PW6) and P1 (PW4). The village leader denied to know those boys. They went to the Imamu of the Sunni Mosque. As PW6 and PW4 testified, there were 9 strangers out of 13 young men.

Upon interrogation some of them were indigenous in the village who told them that, those bags belonged to nine (9) strangers/ guests all of whom accepted that, those bags were theirs. He inspected those bags in the presence of all leaders, including the Imamu and suspects.

He listed what he found in those bags; (nyanya za milipuko) 30 pieces of jelly explosive, one screw driver (bisibisi), a metal saw (msumeno wa chuma), a knife, two hand grenade, combat boot, a sword, military uniform, one military cap, 4 face masks and 5 pieces of groves.

Prepared a seizure note which was signed by suspects together with Imamu and witnesses, he also signed and took them to Kidatu Police at around 5:00 am. He then opened an investigation file and those exhibits were kept by storekeeper of police. Those suspects were taken to Morogoro Central police at about 07:45 am.

The Seizure note dated 15/04/2015 was admitted in court as exhibit PE3. Proceeded to mention those suspects he arrested at the mosque to be; Muhudi Omary Jambia (3<sup>rd</sup> accused), Hassani Ally Hamisi (10<sup>th</sup> accused), Kasimu Hassan Ntuko (11<sup>th</sup> accused), Ally Shaban

Athumani (7<sup>th</sup> accused), Maliki Abasi Kajugusi (2<sup>nd</sup> accused), Juma Ramadhani Ibrahim (9<sup>th</sup> accused), Maulid Hassan Sultan (12<sup>th</sup> accused), Juma Ismail Shebuga (5<sup>th</sup> accused), Ramadhani Mohamed Athuman (4<sup>th</sup> accused), Nasri Abdallah Musa (6<sup>th</sup> accused), and the Imamu of that mosque called Maulid Hassan Sultan (12<sup>th</sup> accused).

In cross examination, the witness stated that, the items recorded in the seizure note were all what were found in 10 bags without specifying each one's bag. But each suspect signed in the seizure note. PW12 (P4) when was at his duty station at Nyandeo Kilombero he was instructed to go to Msolwa Ujamaa Village where the CCM offices were bombed by an explosion, he went to the crime scene and observed that the offices of CCM and one vehicle property of Kilombero District Council were destroyed. Also, other people were injured by the explosion occurred outside the offices. Investigation proceeded and a sketch map was drawn. He visited the Airtel – money shop where the suspects went to ask for money transfer. The service provider confirmed the transaction having been made in that shop and got the number involved therein.

Through that number they managed to arrest the accused one Khalid Omary (13<sup>th</sup> accused). The arresting officer was PW14 (P67) at Mazimbu area on 04/05/2015, after missing him in his house at Kasanga where he used to hide after commission of a crime at Kidatu area on 01/05/2015. After arrest, he was taken to central police Morogoro.

PW23 (P68), testified that, on 15/04/2015 at around 02:00am, he was in a patrol with other officers. One accused had mentioned Mabilika Walesi (14<sup>th</sup> accused) to be among the culprits. One of the accused helped them to identify Mabilika Walesi. PW23 was an in charge of the

arresting team. They arrested him at Kidatu and took him to Kidatu Police Station. On 07/06/2015 at 12 noon he was tipped by an informer that another person involved in terrorism was at Ruaha Sokoni in Kilosa District, a tailor who operates a sewing machine, that person is Abed Lihinga (21<sup>st</sup> accused). He went there, introduced himself, then arrested him. Searched him and found only had a Mobile phone, took him to Kidatu Police where they arrived about 12:40pm.

The evidence of PW26 (P21), was to the effect that on 18/08/2015 at the morning was instructed to take exhibits to headquarters of forensic department at Dar es salaam, RCO's letter was written in respect to the case of KDT/IR/123/2015. P20 gave him those explosives and two (2) hand grenades, 30 explosive jellies, 2 detonating code, 2 electrical plastic caps each having 1.5 inch. He took them to forensic department at Dar es Salaam for scientific examination. All were in a closed box labeled: KDT/IR/123/2015 with police seal. That he travelled to Dar es Salaam by using police vehicle from Morogoro. Handed over to P31 together with a letter and exhibit. PW22 (P31) took it and went for their scientific examination. Then on the same date, he received those exhibits and report and went back to Morogoro. Those exhibits were in the same box labeled FB/Ball/Lab/77/2015. They returned using the same police vehicle. Upon arrival to Morogoro, he handed them over to the storekeeper PW16 (P20) together with the report.

PW22 (P31) an expert of weapons and explosives adduced that, on 18/08/2015 he was at the head office of explosives and investigation of police at Dar es Salam. That he verifies to have received exhibits from RCO's Office Morogoro and a letter requesting for examination of the nature of those exhibits, make, function test, effects if any and

usefulness, same were brought by PW26 (P21) being 2 hand grenades (hand stick grenade) (recorded in laboratory as K-1 and K-2) 30 explosive jelly – V6 (K-3 to K-32), two detonating code 9 meters each (K33 to K34). two electrical detonating caps (K-35 and K-36). All were in a box labelled as KDT/IR/123/2015. That after receipt, he recorded them and labelled as FB/BALL/LAB/77/2015. All those exhibits were in a box.

He performed physical examination, which he observed that K - 1 and K-2 were stick hand grenade, made in United States of America (USA), they are used in a war zone, specifically to destroy the opposite party, they can kill and destroy properties and were still active with safety pins and functioning.

K-3 to K-32, were dynamites made specific for exploding rocks; they are insensitive until activated by another explosives. K-33 and K- 34 were Detonating codes (nyaya maalumu za kulipulia K-3 hadi K- 32). All were active and well-functioning. K - 35 and K – 36 were electrical detonating Caps, sensitive explosives used to activate K-3 to K-32. K-3 to K32 were also very active and not yet used.

Testified further that, after the examination, on 21/8/2015 he prepared ballistic examination report and returned those exhibits to P21 parked in the very box and labelled as stated. The ballistic examination report was admitted during trial as exhibit PE13 without any objection.

In cross examination, he expressed his qualification as a diploma holder on explosives and ballistic examinations obtained from Turkey in year 2004, also a police officer trained at Moshi (C.C.P) and trained in laboratory examinations by experts from Israel on firearms, identification and protocol analysis in year 2001 – 2002.

Further explained that Exhibit PE1 say those explosives were made in China, but according to his ballistic examination report, those hand grenades were made in USA. Exhibit PE1 when compared with records in exhibit PE 13, are not comparable as the report was according to expert examination.

All the accused persons were duly handled by the relevant authorities and according to the prosecution, they were properly arrested and their cautioned statements duly recorded. PW15(P18), PW17(P30), PW19(P21), PW20(P49), PW29(P71), PW31(P58), PW32(P28) and PW34(P27) are the police officers who among others prepared the facilities for recording the accused persons' cautioned statements. Those witnesses who recorded the cautioned statements of the accused persons, in different language testified that the accused persons were availed with all rights as required by the law.

Their testimonies are mainly the same on the fact that each witness prepared conducive environment for recording the particular accused person's cautioned statement. Also, that during recording of the statement, only the accused with the officer were in the room.

Further, testified that, except for Ridhiwani Issa Mwilu, (15<sup>th</sup> accused) whose statement was recorded by PW20, the rest were healthy and normal, each accused verified to be healthy before he had his statement recorded. Although it was also stated that the 13<sup>th</sup> accused on the day of arrest, seemed not to be ready for recording the statement, thus it was recorded the next day.

In all cautioned statements, each officer introduced himself and warned the accused that he was accused of terrorist offences. The accused was told that he was not forced to say anything, but only on his



voluntariness and that the statement may be used in court, rights of the accused were well explained including entitlement to call an advocate or relative. The witnesses stated that, each of the accused was comfortable and preferred to record the statement himself without calling an advocate or a relative.

The witnesses testified that they recorded their statements carefully and according to what the accused was telling. It is testified that each of the accused read or had the statement read to him, some accused read thereafter by themselves. All the accused persons verified that the contents were true and signed in every page and the witness signed.

In total the above witnesses told this court that the cautioned statements were recorded by following all procedures, while availing the accused persons all their rights and the accused themselves made their choices.

Regarding the 15<sup>th</sup> accused Ridhiwani, PW20 testified that he was arrested by civilians at Sumbugulu, he was exhausted and tired, his legs had some wounds due to having walked a long distance (Parallel to PW9 testimony). He was taken to Central Police Morogoro around 07:45am. He was given food and water, and looked ok. Thereafter, PW20 recorded his statement from 09:10am to 10:25am, he read the statement to the accused and finally the accused signed in every page. The cautioned statement dated 25/04/2015 was identified and admitted in court as PE14. All other cautioned statements were admitted without objection. Further testimonies regarding the arrest and recording of the cautioned statements of the accused are as given hereunder;

PW17 (P30) testified to have recorded the cautioned statement of Maliki Abasi Kajugusi (the 2<sup>nd</sup> accused) on 15/04/2015 at Central Police Morogoro from 07:48am to 08:55am, the accused read it and authenticated the content, signed and put a finger print. In like manner, he recorded the statement of Nasri Abdallah Musa@ Juru @ Kessy from 09:00am to 11:00am, he as well read the statement and signed. These cautioned statements were admitted as exhibits PE7 and PE8.

PW19(P21) stated that he recorded Hamis Hassan Ntuko's statement at Morogoro Central police (This is the 11<sup>th</sup> accused) on 15/04/2015. When the accused was handed to him, he inspected him and found he was healthy and the accused himself confirmed to be so. The statement was recorded from 08:15am to 10:30am. As the accused could not read properly for being a STD V drop out, PW19 read the statement to him. The latter was satisfied and he signed along with the witness. Soon thereafter, around 10:45 the witness, along with P18 and P30 were ordered to go to Ruaha area at Kilombero, another accused one Twaibu Abdul Chenjele @ Ustadhi Kijembe (18<sup>th</sup> accused) was arrested by civilians, took him to Morogoro Central Police around 12:00 being healthy. The cautioned statement of Hamis Hassan Ntuko was admitted in this court as exhibit PE10.

PW29 (P71) recorded the cautioned statement of P43 from 11:50am to 12:35 noon who was among the villagers who witnessed and affected by the explosion on 01/05/2015 at CCM offices. The statement was admitted as PE18.

PW31 (P58) a police officer from Kidatu Police Station, gave his testimony to the effect that on 21/06/2015 at around 06:00am, along with other police officers managed to arrest Mwale Juma Omary (the

20<sup>th</sup> accused) and took him to Kidatu Police Station upon receiving information from an informer that the said Mwale was involved in terrorism at Mikoroshini Kidatu as the situation was tense in Kidatu regarding terrorism.

Having corresponded with the RCO's Office at Morogoro, PW31 was instructed to record the 20<sup>th</sup> accused cautioned statement. Having followed the preliminary procedures as earlier stated, he inspected the accused who was completely healthy and recorded the statement from 08:30am to around 10:00am. The accused was given the statement and read the contents, he verified and signed in all pages and put finger prints. In that statement, the accused admitted to have participated to collect money for Islamic State. The RCO Morogoro arranged to take the accused to Morogoro. The cautioned statement of Mwale Juma was recorded on 21/06/2015 same was admitted as PE20.

PW32 (P28) stated that on 15/04/2015 at Morogoro Central Police, he recorded Ramadhani Mohamed Athumani @ Nkumba's cautioned statement (the 4<sup>th</sup> accused). He recorded the statement from 07:55am to 10:43am, and gave the accused to read who having verified, he signed in every page and put his finger print. On the same date the witness recorded another statement of Juma Ismail Salum @ Shebuge (the 5<sup>th</sup> accused) from 11:20am to 1:20pm, who also read, verified and signed in every page and put his finger print. The cautioned statements of the 4<sup>th</sup> and 5<sup>th</sup> accused were admitted as exhibit PE21 and PE22 respectively.

PW34 (P27) also a police officer, is the one who recorded the cautioned statements of the 1<sup>st</sup> & 8<sup>th</sup> accused. Said on 14/04/2015 he was instructed by RCO to go to Ruaha for arresting of suspects. He went

with other Police Officers and arrested Majaliwa Mohamed and Ramadhan Hamis Wawa, the 1<sup>st</sup> and 8<sup>th</sup> accused at Ruaha Stand. They took them to Kidatu Police Station at about 10:30pm then took them to Central Police Morogoro at around 11:30pm. On 15/04/2015 at around 12:30 midnight to 01:15am, he recorded the statement of Majaliwa Mohamed and gave it to him, the accused read it and signed in each page, PW34 also signed. That cautioned statement dated 15/04/2015 was admitted marked PE24.

He proceeded that from 06:00 – 07:30am again he recorded the statement of Mabilika Walesi and Ally Shaban Athuman. Likewise, he introduced himself to the accused persons and explained to them all their rights including their right to call an advocate or a relative. He states that, the accused persons chose to record their statements without presence of an advocate or a relative. Having recorded the statement, he read the statement to the accused and they themselves read and signed their respective statements in each page. The cautioned statement of Mabilika (the 14<sup>th</sup> accused) was admitted as exhibit PE25 and that of Ally Shaban Athuman (the 7<sup>th</sup> accused) was admitted in court as PE26, both statements dated 15/04/2015

The witness continued testifying that also he recorded the statement of Khalid Omary Jumbe (the 13<sup>th</sup> accused). At first, on 04/05/2015 he called the accused from custody. That prior to recording his cautioned statement, he looked on him and found that he had a wound on the leg and he said that on 01/05/2015 at Msolwa Ujamaa the explosion had injured him in his leg, therefore he was not ready to record his statement. The witness therefore recorded that the accused was not ready and returned the accused back to the custody at the

same time he reported to the RCO on that fact. Proceeded that, it happened that the next day, on 05/05/2015 he received instruction from the RCO that the accused was ready for recording his statement. At around 09:00am PW34 prepared a room and facilities, called the accused to the room. Again, he introduced himself and told him the accusation and that the statement he would record may be used in court. Having also explained to the accused his rights, the accused opted to record the statement while alone. He recorded the statement and read to him. Both statements were admitted jointly as Exhibit PE27 (a)(b).

The other accused whom the witness recorded his cautioned statement was Mustafa Ally Chombo on 10/05/2015 from 05:30pm to 06:45pm and Abeid Abed Lihinga on 07/06/2015 from 03:30pm to 05:05pm, both of which were admitted without objection and marked exhibits PE28 and PE29 respectively. Also, on 11/05/2015 recorded the cautioned statement of Ramadhani Hamisi Wawa (the 8<sup>th</sup> accused) same was admitted as PE11. Even the statement of Twalib Abdul Chenjele (the 18<sup>th</sup> accused), which was admitted marked exhibit PE12, Fredrick Evalist Chamnungu, whose statement was admitted as PE15 and Yusufu John Bakayo which was admitted marked exhibit PE16.

The prosecution having closed their prosecution case, this court at that level was satisfied that the case against all accused persons was built and all had case to answer. Having complied with section 293 (1)(2) of The Criminal Procedure Act, this court invited the learned advocates for defence to come up with their defence case. The defence counsels disclosed that, they had twenty-one witnesses, but had no exhibits, also the learned counsels expressly abandoned the notice of

alibi as was recorded during committal. Thus on 26/5/2023 the defence case was opened by calling defence witnesses who were the accused persons. All defended under oath and affirmation depending on their religious affiliation.

Nasri Abdallah Musa (6<sup>th</sup> accused) testified as DW1, upon affirmation he testified that, the accusations against him were not correct. That he was arrested alone on 14/04/2015 when was on the road at Msolwa Station. That upon search, he was found with nothing and he did not sign to the certificate of seizure. Then taken to Nyandeo Kidatu Police Station, later to Dar es Salaam on 24/04/2015. Thereafter while was still at Dar es Salaam on 01/05/2015 he recorded his cautioned statement from 08:00am up to 09:00am by P27 at Mikocheni area in one house which he did not know it. He recorded his cautioned statement in presence of police officers. That he was not told any information and even the purpose of that statement. He generally denied participating in any offence like terrorism.

In cross examination, he maintained that, he was not arrested in the Mosque at Kidatu. Admitted that P30 testified together with PE8 were admitted in court, but he maintained his denials.

Abeid Abeid Lihinga (DW2), confirmed that he is a tailor Stationed at Sokoine Ruaha at Kilosa. That he was arrested on 05/06/2015 at his work place. Narrated the movement after arrest and that eventually P27 recorded his cautioned statement. That he was not informed of anything about recording his cautioned statement. He is not aware of the charges against him. Prayed this court to find him innocent. Admitted that when testifying both P27 & P68 his advocate did not cross examine on the issue of arrest. Denies to have recorded the cautioned statement on

07/06/2015 (as per P27). Maintained that, he was not told of any right when recording the cautioned statement, just that at the end Police told him to sign and the statement was recorded at Mikese Police where he was taken to.

The third defence witness (DW3) Ramadhani Mohamed Athuman Nkumba, testified that he was arrested at Dar es Salaam by unknown police who said he was required to report at Central Police for interrogation. When he went thereto, he was locked up without any explanation. Some 5 police officers covered his face and eyes by a black handkerchief, both hands tied up, tortured and was taken to Morogoro.

Denied the charges against him, saying they were false even about the Mosque of Suni at Kidatu, that he did not sign in exhibit PE3. Upon cross examination, he admitted that the facts he testified to dispute the prosecution evidence were not cross examined.

Juma Ismail Salimu @ Shebughe (DW4), was arrested on 15/04/2015 at Sunni Mosque when was preparing for morning prayer. That there were many people in that mosque, alone was arrested without any reason. His narration goes further, that he was transferred to Morogoro Police Central on 15/04/2015 at around 09:00am then to Dar es Salaam Police Central. They recorded his names and returned to custody where he stayed for 9 days. Then was taken to different strange places where he was questioned on his names, work ad domicile then was given a paper to sign which he signed. Thus, they returned him to Central Police Dar es Salaam. The cautioned statement was recorded at Dar es Salaam not Morogoro. Denied all accusations as not correct as he never committed those offences. When he was arrested, he had nothing

in his possession. Lastly, he prayed his evidence be considered and the court may be pleased to release him.

In cross examination, he took notice of P28's testimony as well as exhibits PE3 and PE22, but denied them all the same.

Mwale Juma Omary (DW5), admitted to have been arrested on 20/06/2015 at about 06:00pm in the evening at Ruaha near Kibanda cha Magazeti, but without being informed on the reason or offence he committed. Then was taken to Ruhembe Police Post, later on to Nyandeo Kidatu Police station, where he was kept for two (2) day, then was taken to Morogoro Central Police, but did not drop him there instead was taken straight to Mikese Police Post. Thereat, about six Police officers interrogated him on some issues he did not know. Then on 24/06/2015 at around 12:00noon, they recorded his statement and forced him to sign. He disputed what P58 testified in court, that his cautioned statement was recorded at Kidatu on 21/06/2015. Denied all the charges and negated all testimonies given by the prosecution, then beseeched this court to consider his evidence and let him free.

The defence of Mabilika Wales @ Abuu Majanga (DW6) was brief that his true names are Mabilika Wales Gingiri as opposed to Mabilika Wales @ Abuu Majanga. Testified that on 20/04/2015 he was arrested by six police at Mvomero district in Mlali Ward without being told any accusations. Further said he is a resident of Shinyanga, that he came to Morogoro on 16/04/2015 for funeral ceremony of his brother-in-law namely Masanja Samson at Doma.

Further testified that his cautioned statement was recorded on 07/05/2015 around 07:00pm at a place that he did not know in presence of many Police officers. He was threatened and tortured prior

to recording that statement. He said he came to know the offence when he was arraigned in court that, he is accused for terrorism. Denied generally that all accusations are not true. Although he admitted to have heard the testimony of P68 and P27, but he denied all accusations. Also, he disputed his religion that, he is a Christian not Muslim as the prosecution witnesses claimed. He said he professes Pentecostal Imani ya Bwana.

DW7 - Ally Shaban Athuman defended that, he was arrested on 15/04/2015 around 04:45am at BAKWATA MOSQUE Kidatu B, when he was in the middle of a prayer. He was taken to Morogoro Central Police. Then was taken to Oyster Bay Dar es Salaam on 15/04/2015 at around 07:00pm and on 25/04/2015 his cautioned statement was recorded by Oyster Bay Police, Dar es Salaam. In recording his statement, he was not asked anything, save his names and work then was forced to sign a document he did not know.

He noted exhibit PE3 which was tendered in court, but denied to have found with explosives. Denied also the truth of PE 26 which was tendered by P27. In short, he denied everything what was adduced by prosecution.

Maliki Abbas Kajugusi (DW8), testified that on 13/04/2015 at around 07:00am at Msowero, when preparing to go to his farm, police with their vehicle came and arrested him for no reason. Taken him to Mikumi Police Station, then transferred him on 15/04/2015 to Dar es Salaam at Mabatini. It was around 20:00pm when they arrived to Mabatini Dar es Salaam. On 20/04/2015 was transferred to a place he doesn't know, in a house with two women and 5 men. They recorded his cautioned statement and forced him to sign. He discredited exhibit PE3

which was recorded on 15/04/2015 saying, though his name is therein, but denied it. That he denies the testimony of P30 to the effect that, he recorded his cautioned statement (PE7), but he denied its contents and the whole testimonies of the prosecution witnesses.

Added that, he never found with any explosives and involvement in terrorist acts. The items listed in exhibit PE3 were strange to him even PE3 itself did not concern him. He admitted that most of his statements, including that, he was transferred to Dar es Salaam, did not tell his advocate.

Another defence witness was Muhudi Omary @ Jambia (DW9), who is a resident of Machinga street Kilombero – Kidatu. His daily activities are done at Kidatu in sugar cane farms. That he was arrested on 15/04/2015 at Sunni Mosque Kidatu around 05:30am when he was about to Worship. The arresting Police officers did not tell him any offence, but put him in their vehicle and took him to Central Police Morogoro and kept him at police lockup. That he was alone. Later was transferred to Central Police Dar es Salaam. He stayed from 15/04/2015 to 20/04/2015, when he was asked his names, religion and about some people that he did don't know them. On 21/04/2015 they also took him to interrogation room where they tortured him. On 03/06/2015 police returned him to Morogoro Central Police and finally, on 06/06/2015 they arraigned him to court. He was aware on exhibit PE3 and his name is the 1<sup>st</sup> one, but he denied same that he never involved. Denied all accusations against him.

Ridhiwani Issa Mwilu (DW10) is another defence witness and an accused who was arrested on 09/05/2015 at Ludewa – Kidatu at his house, was taken to Morogoro Central Police and kept in lockup. Then

he was transferred from Morogoro central police to Mikese Police post, tied his hands and recorded his statement in presence of 9 persons on 17/05/2015. He admits the statement was related to terrorism and he signed, but the police did not explain anything to him.

In cross examination, he maintained that, he doesn't remember if civilians were the one who arrested him. Also, he forgot if P49 was the one recorded his statement. He just remembered PE14 that after admitting it was read loudly in court and that he signed the statement. Added that when he was arrested, his neighbours were not present and did not know it.

DW11 - Juma Ramadhan @ Ibrahim, is another defence witness and stood as accused, that on 15/04/2015 he was going to BAKWATA MOSQUE for worship. Just outside the Mosque while alone, he was arrested around 05:00pm. No reason for arrest was given. The police searched him and found nothing harmful. Took him to Central Police Morogoro on the same date at around 09:00am. They took him to Dar es Salaam Central Police on the same date at around 08:00pm. Then on the following morning of 16/04/2015 they took him to Mabatini Police Post where he stayed therein for more than 2 weeks. On 05/05/2015 he was returned to Morogoro Central Police and arraigned in court on 06/05/2015 for offences of terrorism. That all accusations against him are not true. Added that, he was 13 years old when he was arrested. That he could not commit such an offence of terrorism.

In cross examination, he maintained that he was arrested at BAKWATA mosque and not Sunni Mosque, which he does not even know if at all exists in Kidatu. He was alone at the mosque as well as in the police vehicle after being arrested. He did not sign exhibit PE3 nor did

he sign the cautioned statement. He explained that, he was born on 05/09/2002 at Kidatu and never went to any formal school. That he cannot remember if he had a birth certificate.

DW12 - Hassan Ally Hamis, said he is 23 years old this year. He was born on 01/01/2000 at Dodoma, Kondoa at Ndampori village. He was arrested when going out to Alharamine Mosque at Kwa Azizi Ally, Dar es Salaam on 17/04/2015 at around 07:00pm. At that time, he was still a child. He narrated to have been taken to different places by police officers, but eventually was arraigned for terrorist acts in court. Denies P's testimony along with exhibit PE3. Testified that, he was not arrested at Kidatu Sunni mosque Morogoro. He doesn't know any Sunni Mosque in Kidatu. Denied all the charges against him. Added that, in Dar es Salaam he was living in his uncle's house with other family members at Mtoni Mtongani and his family is aware of his arrest.

When the court sought some explanation on his education, he testified that, he was educated to standard seven where he completed Primary School at Soleni Kondoa District, Dodoma Region in year 2014.

That he started standard one in year 2008. The head teacher was Teacher Senkondo and that he went to Dar es Salaam on January 2015.

Hamis Hassan @ Ntuko, (**DW13**) is another accused and defence witness who testified that he is a resident of Minyuke Village in Mkarama District within Singida region. Prior to arrest, he was at home keeping animals (cows). He was arrested on 02/05/2015 at his village around 08:00am. As of now he is 24 years old. After arrest he was taken to Morogoro Central Police on 22/05/2015 at about 04:00pm.

That he narrated some stories that he was taken to different places between SUA police post, where he recorded his names and later

to Morogoro Central. That on 06/05/2015 he was arraigned in the Residents Magistrate's Court charged alone for terrorism. In court he found many people whom he did not know them. He noted P's testimony and exhibit PE3 but disputed his name therein written Kassim Hamis Ntuko, while his name is Hamis Hassan Ntuko. Thus, disputed that the one who was recorded in PE3 is different from him, thus he could not talk about a person whom he did not know. Prayed the court to take his evidence, and that he was arrested while was still a child and due to his age, he could not have committed such offence.

On cross examination, he maintained to have been born on 22/08/1999 and that his names are Hamis Hassan Ntuko the evidence of P and PE3 refers to him as Kassim Hamis Ntuko. Stated further he did not introduce himself to P21 as Kassim Hamis Ntuko. When arrested he was living with his parents and were present on arresting date.

Mustafa Ally Chombo (**DW14**), of Mianzini Arusha gave his testimony that, he was a carpenter working at Kwa Mrombo area where he was arrested on 03/05/2015 at about noon. He was not informed of any accusations. Taken to Central Police Arusha on the same day.

There was a time he was transferred to Dar es Salaam, kept in police lock up, later was transferred in different places within Dar es Salaam, but on 26/06/2015 he was taken to Morogoro Central Police. Kept in lock up for three days till 29/06/2015 when he was taken to court alone. Denies the contents of P27 to have recorded his statement on 10/05/2015 at Arusha Central Police. Added that on that date, he was locked at unknown place. Denied that all charges against him are untrue. In cross examination he stated that, Police asked only his name and tribe and that a security guard gave him food in that unknown

house. Denied the contents of P27 and when was asked about exhibit PE28 claimed that he does not hear properly.

**DW15** was Maulid Hassan Sultan, who disclosed that he resides at Kidatu CCM area since 1998. He is the Imamu of a Mosque at Kidatu. The Mosque is called Masjid Farhia owned by Sunni from year 2005 to 2015 when he was arrested.

That he was arrested on 15/04/2015 in the morning hours, at his house. A door was knocked, he opened and found many police together with a Hamlet leader. They introduced and police asked him to go to the Mosque. When they arrived to the Mosque, they found many police around the Mosque. Then went to the door of the Mosque, which was closed. He opened it then we entered inside the Mosque himself and police in charge. They found many Worshipers, worshipping while others were seating down.

Then he was taken to the Police vehicle and entered with one police, but he did not know what was happening in the Mosque. Thereafter, he was tied his hands and the car was driven to Morogoro Central Police.

They arrived at Central Police around 08:30am, later they took him to Dar es Salaam, where they arrived at around 01:30pm at Oysterbay Police. That is when he stayed to 20/04/2015, in the morning police came and took him to Mikocheni garage. There was a big house, inside there was a bench. Then four (4) police men came and opened another door, he entered therein and sat down. Then they interrogated him on his name, work, age, parents, children and the issue of guests at the Mosque at Kidatu, but he denied.

That all who were in that Mosque, were worshipers from the same locality, no strangers in the Mosque at Kidatu. Hearing such reply, police tortured him for about 5 minutes, though he maintained his truth. That remained in that Mikocheni area for about 35 minutes and they told him to sign some papers and he signed. Thereafter, they took him to Police Central Dar es Salaam.

On 18/04/2015 he was returned to Central Police Morogoro and on 20/04/2015 was taken to court and charged accordingly, while alone. He denied exhibit PE3, which has his name, saying police came to his house and found nothing dangerous. He never recorded any statement in Morogoro or Dar es Salaam. In cross examination he stated that at the mosque some other persons were arrested, but are not among the accused.

Stated further that, an Imamu is not responsible to know the guests who come to worship at his mosque. He admitted that Police came to his house together with Hamlet leader and that he had no conflict with that Hamlet leader. He saw when P tendered exhibit PE3 and when he read, he heard it properly.

DW16 - Majaliwa Mohamed Ngarama, testified that he worked as casual labourer at Sugar Company at KII Ruaha. That he never went to school and that, he did not know how to read and write. He was arrested on 14/04/2015 at Ruaha in Kilosa District near the shop when he was coming from the shop going home. That about 4 Police arrest him, no reason was disclosed. In the morning of 15/04/2015 he was taken to Central Police Morogoro, wherein he was kept in lockup, on the same day, they took him to Central Police Dar es Salaam.



On 20/04/2015 they recorded his cautioned statement, while he was at Dar es Salaam in a strange place with around 7 people, most of them were police in uniform, while others on plain clothes. He said they asked him his name, religion and domicile. On 01/05/2015 Police took him back to Morogoro Central and on 06/05/2015 he was arraigned in court, charged for 3 counts and was not allowed to plead.

He totally denies the testimonies of P27 and PE24. That is worshipping at BAKWATA MOSQUE at Ruaha Kidatu. That he denied to have been found with explosives when he was arrested. Instead, he was found with nothing, he added. Admitted to hear the testimonies of P27 and that he recorded the statement at Morogoro Central Police, but he denied to hear that he gave him all rights before recording his statement.

Yusuph John @ Bakayo @ Abuu Beida, (DW17) testified that, he did not attend any formal school. He is a small businessman, selling shoes in different areas of Singida region. In his defence he stated that he was arrested in Dar es Salaam on 05/05/2015 at around evening hours of 06:00pm for no reason. They searched him and took his mobile phone, ticket and TZS 800,000/=.

That, they took him to a strange place police station, beaten and tortured him and baptized him as Yusuph John @ Bakayoo @ Abuu Beida. He did not record any cautioned statement, but kept in that police station for 3 days, then taken to Mikocheni by about 4 Police, asked his religion. On 19/05/2015 he was taken to Morogoro Central Police and on 20/05/2015 was arraigned in court, where he found many people, he did not know them, where the court read the charge, which he denied.

Denied also exhibit P16, which is said as his cautioned statement, which he denied even his names. But he accepted that he was addressed by those names. Proceeded to name the said proper names of Yusuph John @Bakayoo @ Abuu Beida. He did not remember the testimonies of P49 and that he was arrested by civilians. That he is an illiterate, but he did not record his cautioned statement at Morogoro, but in Dar es Salaam.

Ramadhani Hamis Wawa (DW18), told this court that his education is up to standard seven and is a truck driver. That all accusations against him are not true, he was not responsible for any of them. Admitted to have been arrested at Ruaha Mikoroshini outside a garage on 14/04/2015 around 07:30pm, where he took his lorry to be serviced. The arresting police did not tell him the reason for arrest. He was taken to Ruhembe Police Station, searched him and found nothing, but kept him in lockup. On 15/04/2015 he was taken to Dar es Salaam Central Police, then at Oysterbay, where he was questioned and tortured. Alleged at that torture, at one time he lost consciousness.

That on 03/05/2015 he was returned to Central Police Morogoro and alone was arraigned in court on 06/05/2015. He denied everything which was testified by the prosecution. Disassociated himself from Majaliwa Mohamed Ngarama.

Khalid Omary @ Jumbe @ Abuu Sumaya (DW19), testified that he is a business man selling clothes at the Mosque Boma road within Morogoro Municipality a business he started on January 2015 to 04/05/2015 when he was arrested at his house before his wife. All accusations against him were denied as untrue. Testified that he is



suffering from heart diseases, therefore he could not commit those offences.

Added that he resides at Kihonda Magorofani. Police searched his house and himself, but found nothing. Thereafter they took him to Mikese Police Post. Kept him in lock up and interrogated him as to whether his faith is by birth or by conversion and other questions regarding his business and other affairs. That he remained there until 18/05/2015 when he was taken to Central Police Morogoro and on 20/05/2015 was taken to court for several counts. Negated all testimonies of P67, P27, P65, P34 and P57.

The last but one defence witness was (DW20) Fredrick Evarist Chamnungu @ Yassin @ Abuu Nassiro testified that, he is a Sunni Muslim worshipping in different mosques in Morogoro. He is a resident of Kihonda Mbuyuni in Morogoro since 1998 to the day he was arrested. He is an electrician as he studied electricity in Arusha Technical Collage from 2013 – 2015.

Narrated that, he was arrested on 13/05/2015 at Msamvu bus terminal by 6 police officers who were in a car when was going in a bus heading to Dar es Salaam. When the police arrested him, no reason for arrest was communicated to him, but was taken to Mikese Police Post.

At Mikese was put in lockup where he was tortured up to losing consciousness. On 18/05/2015 two police took him to Central Police Morogoro. On 20/05/2015 was arraigned in court. Proceeded to deny all evidences of prosecution and exhibit PE14, which was admitted in court unopposed. He claimed its contents as incorrect as he did not record any cautioned statement.

The last defence witness (DW21) Twaibu Abdul Chienjele stated that, he was a Hamlet Chairman of Ruhembe, since 2009 to date. He was arrested on 13/06/2015 at around 11:00 am, by OCD. Ruhembe Police called him to go to Ruhembe for some conversation. When he went, he met the OCD who ordered him be kept in lockup. Later was transferred to another Police Post at KI then to Nyandeo – Kidatu. Narrates to have been transferred further, to Mikese Police post, then to Morogoro central police. Later was taken to court. He denied all charges against him and all prosecution evidences, although he accepted that they testified in his presence.

Having closed the defence case, both counsels were invited to file their final written arguments same be filed on 09/06/2023. With appreciation, the learned counsels rightly observed the court schedule. This court has paid a serious consideration to their submissions, all rules, principles and precedents that parties have referred are taken into account, although they may not appear in full.

The prosecution's final submission was prefaced by a brief summary of the charges facing the accused persons. Then pointed out some authorities in respect of the offences of Conspiracy to commit an offence, ranging from **Mattaka and others Vs. R [1971] 1EA 495** and section 12 of **The Evidence Act, Cap 6 R.E 2022** and the case of **Michael Charles Kijangwa Vs. R, Criminal Appeal No. 280 of 2017.**

Went on to refer to section 4 (2)(3) and (4) of **The Prevention of Terrorism Act**, which provides for *mens rea* and *actus reus* of the offence. The State Attorneys have put reliance on the oral testimonies and cautioned statements of the accused persons, which all were

admitted without objection from the accused. Those cautioned statements, gave out the hidden agenda of the accused traveling from different places to Kilombero district to execute their plan of overthrowing the government in lieu therein to establish an Islamic State. They further referred to section 27 of **the Evidence Act** and in the case of **Ally Mohamed Mkupa Vs. R, Criminal Appeal No. 02 of 2008** on reliability of the cautioned statements.

The learned State Attorneys, pointed out the contents of exhibit PE 5 – 8; PE11 – 16; PE20 – 22 and PE24 – 29, which contents proved that, all 21 accused persons confessed on conspiracy to have formed a criminal syndicate with other persons not in court, for the purpose of committing terrorist acts. Those confessions together with the conduct of accused persons corroborated the testimonies of PW15 on intelligence information they received on the accused persons, being engaged in terrorist acts of overthrowing the lawfully elected Government of the United Republic of Tanzania and replacing it with Islamic State.

Referring to the testimonies of PW11, PW15, PW16, PW19, PW20, PW31, PW32 and PW34 the planned acts would result into prejudicing the public safety and cause intimidation to the public. On the above submission, the learned State Attorneys, believe that, they have managed to prove the offence of criminal conspiracy to commit terrorist acts against all accused persons.

Referred this court to section 12 and 33 (2) of **The Evidence Act**, along with the holding in the case of **Pascal Kitigwa Vs. R, [1994] T.L.R 65**. They suggested to this court to find their confessions directly or by conduct corroborated each other.



The prosecution then addressed some other aspects like the accused persons telling lies to the court under oath and affirmation in their testimonies and their failure to cross examine and object on the place and time of arrest as was testified by the prosecution witnesses and exhibits tendered in that respect. Justified their argument by referring this court to the case of **Felix Kasinyila Vs. R, Criminal Appeal No. 120 of 2002** and **Issa Hassan Uki Vs. R, Criminal Appeal No. 129 of 2017 CAT**, along with other precedents on the test of confessions, that a confession is said to be true if: -

- i) leads to the discovery of some other incriminating evidence,
- ii) contains a detailed, elaborate relevant and thorough account of the crime in question that no other person would have known such details but the maker,
- iii) coherent and consistent with the testimony of other prosecution witnesses and evidence generally especially with regard to the central story and the chronology of events.
- iv) the facts narrated in the confession; must be plausible.

That despite the accused persons retracting their confessions, the law allows conviction without corroborative evidence as long as the court is satisfied that the confessions are nothing but true by following the precedent in the case of **Flano Alphonse Masalu @ Singu and 4 others Vs. R, Criminal Appeal No. 366 of 2018, CAT**.

They had a position that the proven facts constituted terrorist acts by all the accused persons. Also, that PW11, PW15, PW16, PW19, PW20, PW31, PW32 and PW34 established that the acts would seriously destabilize the fundamental political, constitutional, economic or social structures of the United Republic of Tanzania.

Advancing to the 2<sup>nd</sup> count, the learned State Attorneys submitted that exhibit PE5, PE6, PE7, PE8, PE10, PE11, PE12, PE14, PE15, PE16, PE20, PE21, PE22, PE24, PE25, PE26, PE27(a) and (b), PE28 and PE29 proved the accused confessed to have involved with others planning to overthrow the lawful Government of the United Republic of Tanzania and establish in its place an Islamic State through violence. The tendered exhibits established the existence of the meeting as what they agreed and planned as were disclosed in the exhibits. The acts which according to PW11, PW15, PW16, PW19, PW20, PW31, PW32 and PW34 would seriously destabilize the fundamental political, constitutional, economic and social structures of the United Republic of Tanzania.

They sought proof from oral testimonies of P (PW11), P1 (PW4) and P7 (PW6) that on 15<sup>th</sup> April 2015, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> accused persons were found in Sunni Mosque at Kidatu, while in possession of articles for commission of a terrorist act. The meeting constituted an agenda of committing terrorist acts.

In addressing the 3<sup>rd</sup> count, the learned State Attorneys, interpreted section 15 (b) of the Prevention of Terrorism Act, 2002, regarding possession of property for committing a terrorist act. They relied on exhibits PE3, PE1, PE13, PE11 and PE24 along with PW4, PW6, PW11, PW16, PW21, PW26, PW27 and PW22 claiming that the same proved the 3<sup>rd</sup> count in respect of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10, 11<sup>th</sup> and 12<sup>th</sup> accused persons being found in possession of explosives intended to be used in the commission of terrorist acts. To bolster the argument, they referred to the case of **R Vs. Seif Abdallah Chombo @ Baba Fatina and Five Others Economic Case No 4 of 2022**, by this court sitting at Songea. State Attorneys asked this court to adopt

the holding in that case to bring the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counts are within the domain of terrorism offences. They listed five elements established in that case.

Borrowing from the Pakistan Supreme Court in **Ghulam Hussain and 4 others Vs. The state, Criminal Appeals No. 95 and 96 of 2019** where an extended interpretation of terrorism following the amendment of their domestic laws was made. Then argued that the evidence reveals the acts in 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counts falls in the domain of terrorism offences, this is the evidence of PW11, PW15, PW16, PW19, PW20, PW31, PW32 and PW34 to whom the accused persons disclosed their purpose, intent or motivation.

That evidence is backed up by the cautioned statements received in the court without objection. In total, the prosecution submits, the evidence reveals that the acts in 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> counts were for motivation and purpose of committing terrorist acts by conspiring to attack any person or group of people that are against Islamic belief; to attack police stations with the aim of acquiring weapons; to invade prisons with the aim of rescuing inmates held for terrorist offences so they can join the main operation of overthrowing the Government of United Republic of Tanzania and establish Islamic State.

In respect of the last five counts of Attempt to Murder against the 13<sup>th</sup> accused, they pointed out the contents of exhibit PE2, PE9, PE17, PE19, PE23 and PE27(a) and (b) proving that the 13<sup>th</sup> accused person threw an explosive material in a public gathering at Chama Cha Mapinduzi (CCM) Offices Msolwa Ujamaa area within Kilombero district and caused grievous bodily harm to P34, P43, P40, P55 and P70. In their submission, taking exhibits together with the testimony of PW28,

PW30, PW18, (PW29 & PE18), PW10, PW8 and PW33 proves that the 13<sup>th</sup> accused threw a bomb in public intending to cause death or endanger health of the public who were gathering around the scene.

They referred to **Samweli Jackson Saabai @Mng'awi & 2 Others Vs. R**, on the four (4) elements of the offence of attempt to Murder. Applying the said elements in the case at hand, they stated that; the act of throwing an explosive material in public gathering was clearly intended to cause death to people gathered with malice aforethought which could be inferred from the weapons used. The injuries sustained by PW8, PW10, PW24, PW28, P43 (deceased) whose statement was admitted under section 34B of TEA as exhibit PE18, were confirmed by PW18, PW30 and PW33.

Reference was made also to the medical officers who attended the victims and PF3, PE2, PE9, PE17, PE19 and PE23 respectively. The injuries constituted a grievous harm, this to the prosecution established the three elements. The condition of the victims after the explosion and the immediate medical attention to the victims received constituted the last element.

In their position, the four ingredients of the offence of attempt to murder were proved. Went on to the issue of visual identification at the scene of crime in respect of 13<sup>th</sup> accused, which they say was proved by oral testimonies of PW24, PW25, PW13, and PW28, before and at the scene also on identification parade whose exhibit PE4 disclosed clearly.

They prayed this court to find that all the offences against all the accused persons were proved. They went further to analyse the defence case and covered the legal issues raised in tendering of prosecution exhibits, cross examination and the actual defence.

Took note that all exhibits tendered by the prosecution were admitted without any objection from defence and that cross examination did not shake the credibility of prosecution witnesses. They were surprised to hear all accused persons repudiating or retracting their confessions. Here they prayed this court be guided by the case of **Nyerere Nyague Vs. R, Criminal Appeal No. 67 of 2010, CAT Arusha.**

Noted that the witnesses who arrested and cautioned them appeared and testified in Court on that respect. Also, that the witnesses were not cross examined nor were the admissibility of their cautioned statements objected. They relied on the case of **Nzwelele Lugaila Vs. R, Criminal Appeal No. 140/2020 CAT Mwanza at page 16-17** arguing that those objections are nothing but an afterthought.

Likewise, discredited accused persons' alibi defense for not giving prior notice as per section **194 (4) and (5) of the CPA.** Basing on **Kubezya John Vs. R, Criminal Appeal No. 488 of 2015, CAT,** where it was *inter alia* observed that, an alibi set up for the first time at the trial of the accused is more likely to be an afterthought than genuine one, considering also the fact that defence side gave Oral Notice of intent to rely on alibi defence in preliminary hearing, but later was withdrawn. They prayed that alibi raised by almost all the accused persons be disregarded as even other persons accused claimed to be with them, were not called to testify on their favour.

On chain of custody raised by the defence on exhibits seized from the 1<sup>st</sup> to 12<sup>th</sup> accused persons, saying was broken for lack of documentary proof, maintained that, the chain of custody was not broken. They based on oral testimonies of PW4, PW6, PW11, PW16,

PW21, PW26, PW27 and PW22 whose evidence explained how they received, stored and transmitted those exhibits from one point to another. Those witnesses were credible, their evidence was not shaken by cross examination and defence. Same proved maintenance of chain of custody even in absence of documentary evidence, relied on the case of **Abas Kondo Gede Vs. R, Criminal Appeal No. 472 of 2017, CAT at Dsm** where documentary evidence was held not to be necessary to supplement oral evidence, but oral evidence in circumstance sufficed.

Further, they revealed that, there might be minor inconsistencies and contradictions on the part of some prosecution witnesses, but trite law is that not every discrepancy is fatal to the case. They warned that only fundamental discrepancies should count, exemplifying **EX. G. 2434 George Vs. R, Criminal Appeal No.8 of 2018 CAT at Moshi** where minor contradictions were held to be a healthy indication that the witness did not have a rehearsed script of what to testify in court. They suggested that, as the incident dates 8 years back, witnesses won't be positioned to exactness, as was held in **Chukwudi Denis Okechukwu and 3 others Vs. R, Criminal Appeal No. 507 of 2015, (CAT, Dsm)** and others.

The State Attorneys further unveils that the theme by accused that they were charged separately and used to attend in court separately while the court record in respect of P.I No. 16 of 2015 and P.I No. 17 of 2015 shows that the accused persons were charged jointly and together from the time they were arraigned in court is nothing but lies and such lies should be used to collaborate prosecution case as in **Felix Kisinyila's case.**

Proceeded facing the accused persons submission that they were not taken to Morogoro Police Station for interrogations as testified by prosecution witnesses and that no police register was tendered to prove their presence in Morogoro Central Police, arguing back that PW11, PW15, PW16, PW19, PW20, PW31, PW32 and PW34 were consistent in their testimonies about the arrest and arraignment of the accused persons, nothing was adduced to fault their testimonies nor were they cross – examined. They sought support from **Nzwelele Lugaila's** case, suggesting this court to adopt their thought; that the accused persons defence was nothing but lies and afterthought.

In turn, the learned defence counsels for the accused persons, in their joint brief final submissions, rightly pointed out in the very beginning on the cardinal principles surrounding the burden of proof in criminal cases. They cited one of the earliest decisions of the Court of Appeal of Tanzania in the case of **Joseph John Makune Vs. R, [1986] T.L.R. 44 (CA)**. Driving home, they argued rightly well that, it was the duty of the prosecution to prove that, the accused persons committed the offences charged. The learned advocates argued that, they are surprised to find the entire body of prosecution evidences adduced by 34 witnesses did not prove the case beyond reasonable doubts.

Went further to cite necessary ingredients for the offence in first count of conspiracy to commit terrorist acts, and participating in terrorist meeting and the second count. Submitted that no common intention was established and proved as the accused were arrested individually.

Further addressed on the rest of counts, wherein they made a brief survey of the prosecution evidences and concluded that, the



prosecution did not prove the offences, but mere speculations. They challenged the prosecution evidence being contradictory in respect of the number of items, seized from the accused in the third count. In respect of hand grenades as to whether they were made in China or USA. That the prosecution case was based on broken chain of custody and that, even the cautioned statements were not proved to have been duly recorded on the respective police stations.

In addressing the issue of age of the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, and 14<sup>th</sup> at the time of arrest, that were below the age of 18 years. It was the defence counsels' opinion that at that age of 17 years and 16 years respectively, the accused should be acquitted. I think the learned defence counsel meant that the accused should not be criminally liable for offences they committed when were still children below the age of majority. Rested by a prayer that since the prosecution failed to prove the offences against the accused, this court should find them not liable, hence acquit them.

At this juncture, the main duty of this court is to determine the case as per the charge sheet in line with the evidences adduced during trial, applicable laws and relevant precedents. The fundamental question to be answered is whether the prosecution established and proved the offences against the accused persons to the standard required by law, which standard is beyond reasonable doubts. In so doing and in answering this question, I wish to commence with some persuasive descriptive statements on cases of terrorism, given by our fellow justices and jurists from other jurisdictions who also handled terrorism cases earlier than in our jurisdiction.

One of the renowned Appeal Justice of England and Wales who also happened to be a Judge in Charge of the Terrorism List on 2017 –

2018 **Sir Charles Haddon-Cave**, in his article **The Conduct of Terrorism Trials in England and Wales**, demonstrates how terrorism cases are specially treated in their jurisdiction, entrusted to a cohort of highly experienced Circuit of High Court judges familiar with the field. In summary he characterised them as follows: -

***First**, "there is a public interest in terrorism cases; **Second**, terrorism cases stand apart from "normal" crime because of their exceptional seriousness to society as a whole; **Third**, very often these cases will involve national security material or security service personnel and may require exceptional orders to close the court for a period of the trial and orders ensuring that national security material or information is not inadvertently released; **Fourth**, it is quite often the case that there is a vast amount of material discovered by the prosecution which, as one judge put it to me, is beyond the capacity of a single human brain to analyse and therefore requires search by computer (often complicated because the material may be encrypted or in a foreign language), but which therefore also requires at an early stage the active involvement of the case-managing judge to ensure the search terms used by the Crown at the request of the defence are apt."*

Proceeded further to analyse and observe as follows: -

*"There is a heavy burden on the courts and the judiciary to conduct trials of those who are charged with terrorist offences in a manner which is both transparently and scrupulously fair, and ensures the process is completed within a reasonable*

*timescale. A fair trial in a constitutional democracy grants a terrorist of precisely that which they would deprive us of, namely a fair trial. As Lady Hale has observed "compromising the rule of law was not the way to defeat terrorism"*

Also, in the prominent English case of **Woolmington Vs. DPP [1935] A.C. 462; [1935] UKHL 1** by the House of Lords, which also has been accepted in our jurisdiction through precedents, Lord Viscount Sankey L.C observed *inter alia* that: -

*"But while the prosecution must prove the guilt of the prisoner there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt ... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the Common Law of England and no attempt to whittle it down can be entertained"*

In similar vein, the Court of Appeal in **Anthony Kinanila & Another Vs. R, Criminal Appeal 83 of 2021, [2022] TZCA 356** among others, accepted the **Woolmington's** statement to be fit for guidance in our jurisdiction. It observed as follows: -

*"As to the standard of proof which we shall also have the opportunity to consider in the instant case, the prosecution has the duty to prove all the ingredients of the offence beyond reasonable doubt and here, one should not waste time trying to invent a new wheel as that is exactly what was stated by the House of Lords in England way back in 1935 in **Woolmington Vs. DPP [1935] AC 462** from where our*

*present general principles of criminal law and procedure emanate"*

*Pari materia* to the principles, the **Law of Evidence Act**, correctly as the learned State Attorneys and advocates for defence have submitted, provides clearly that the burden of proof in criminal cases lies on the prosecutor. Sections 110 and 111 read together with section 3 (2)(a) of **The Evidence Act**, discloses the proof in criminal case should be attained if the fact is established beyond reasonable doubt that it exists.

Proving an offence in criminal cases is to establish facts, which exhibits ingredient constituting the offence. Hence, the requirement of the law that, the prosecutor must establish each ingredient necessary to prove an offence correctly as the learned advocates for the defence built their theme by citing the case of **Joseph John Makune Vs. R, [1986] T.L.R. 44**. These principles glanced in brief; I stand mainly as my guiding map in all relevant points which, to put them in bullet form are: -

- i) Every person is presumed innocent until proved guilty;
- ii) The one who mounts a criminal allegation against another person is bound to prove those allegations, generally the burden never shifts;
- iii) The standard of proving the said allegations is beyond reasonable doubt;
- iv) The accused is not bound to prove his innocence, but to raise reasonable doubt; and
- v) Where under the law, the accused is required by the law to prove any fact, the standard of probability is sufficient.

For a regular and consistent flow, I will deal with the last five counts of attempt murder contrary to section 211 (a) of **The Penal Code**, which are created in the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> counts, all against the 13<sup>th</sup> accused (Khalid Omary Jumbe @ Abuu Sumaya). Having dealt with those counts, I will revert back to the first three counts, which descends on all the accused persons.

According to the charge sheet, the prosecution alleges that, on 1<sup>st</sup> May, 2015 at Chama Cha Mapinduzi Offices at Msolwa Ujamaa Village within Kilombero District in Morogoro region, the accused attempted unlawfully, to cause death of P43 in 4<sup>th</sup> count, and that at the same place, same date and time, the 13<sup>th</sup> accused attempted unlawfully to cause death of P70 (in the 5<sup>th</sup> count), P34 (6<sup>th</sup> count) P55 (7<sup>th</sup> count) and P40 (8<sup>th</sup> count). I therefore, going to discuss on the question of whether the accused committed those offences. Specifically, whether acts of attempted murder were committed and who committed those acts, if any.

From the prosecution side, witnesses like P70, P34, P55 and P40 testified quit eloquently with deep feelings as I observed their demeanor as PW24, PW28, PW8 and PW10 whose evidences were referred previously by this court that at CCM Offices, Msolwa Ujamaa, there was an explosion caused by a person who was under arrest in the course of interrogation and inspection by PW28. The victims were badly wounded by such explosion. Exhibits PE2, PE9, PE17, PE19 and PE23 have shown that, the victims were badly wounded, maimed and three of them sustained permanent disfigurement. It was pointed out that, PW28 has iron bars inserted in his arm and leg to support him, one finger was amputated with a deep scar in his head. Currently, he cannot walk

properly and also, he cannot work due to maiming of his fingers. PW24 and PW8 have developed vision problems as a result of explosion, they suffered from multiple fractures of their limbs.

For easy of reference, I have picked some three quotations from three witnesses who were at the crime scene. Part of PW24's testimony which was corroborated with others testified: -

*"Thereafter, we arrested them and started interrogating them. One introduced as Khalid, another did not say anything. Then village militiaman came to the scene of crime. That militiaman together with us, took them to Village Executive Officer. When we arrived at CCM offices, Khalid exploded an explosive, while another one ran away. P40, P42, P52 and P55 together with myself, P70 all were confused and injured due to that explosion. There was a nearby vehicle which also was badly damaged. I fell down unconscious. Injured in my left leg, and near my left eye and on my head"*

Also, PW8 brought this picture from the scene: -

*"On 01/05/2015 at afternoon I was at Msolwa in the building of offices of CCM. It was a workers' day which we started celebrating from 2:00pm but at 06:0pm we went out of the office waiting for transport. In such process we saw two youths who were not resident to the area, we interrogated them while we were seated a bit far.*

*When those boys were there, one of them started running away, but people ran after him with a view to arrest and one was under arrest. He took something like stone and threw it to*

*where we were. A big explosion occurred and I lost memory/I fainted.*

*I regained my conscious after some time, I started walking using one leg and people helped me and I was taken to a safe place ... Later we were taken to Kidatu Police, we were given PF3 and we were taken to hospital"*

Another piece of evidence is that of PW28 who was in the course of inspecting the said accused: -

*"When we arrived at CCM offices I found Ward Executive Officer and Councillor of Sauze within Kilombero. Then I was instructed by Ward Executive Officer to inspect them for safety. One was a bit tall but slim. One dressed with a hat. When I started inspecting them, one ran away who dressed with a hat (Mzura), villagers started to run after him, while I remained with one suspect. I told him to surrender, but by using his left hand took in his trouser a small book on his right-hand side there was a big thing in his trousers pocket. Then he took one explosive from his right-hand side and throw it down which exploded. Immediately, I fell down unconscious. I recovered and become conscious when I was at hospital at St. Kizito Mikumi. One of my left hand was badly injured, one finger was amputated and the right leg was also badly injured. To date I have iron in my left hand and right leg"*

PW25 (P57) is one of the witnesses who were at the scene of crime before and after the explosion. While he was in the chase endeavouring to capture one suspect who escaped from arrest, he heard a heavy explosion at the offices, and when he returned, he saw the

injured victims, others on the ground faint. PW25 was among those villagers who assisted the victims to police and then to hospital.

PW29 (P71) one of the police officers recorded the cautioned statement of P43 the victim in the first count which was admitted as PE18. PW12 (P4) is another Police officer from Nyandeo/Kidatu Police Station, who went to the crime scene immediately after the explosion, although the victims were already rushed to various hospitals, the scene was *ipsa loquitor*. The CCM offices were damaged and even a motor vehicle which parked outside those offices was as well damaged.

Apart from the victims, PW18 (P38), PW 30(P39) and PW 33 (P62) medical doctors who attended the victims immediately after the explosion, within their expertise, have explained, the patients had blood stains on their clothes, burns all over their bodies, deep wounds and others had penetrating wounds in different parts of their bodies, while others had multiple fractures of the bones in the organs. Victims were alert, and with a lowered blood pressure. Each of the Medical Doctor had established in his own language, which together gave the conclusion that the wounds were caused by heavy sharp objects.

With all the evidences on record, together with the testimonies of victims, medical doctors and police, obviously this court is satisfied beyond doubt that, the event of a deadly explosion at Msolwa Ujamaa, CCM Offices is established to have happened and that in any case such explosion was intended to cause death to the victims.

The remaining question is who caused such explosion, to answer this question, the prosecution evidence has marshalled numerous pieces of evidences as above shown. Herein I am referring to the evidence of PW8, PW24, PW25, PW28, who saw the 13<sup>th</sup> accused and in

interrogation he introduced himself as Khalid Athuman, the witnesses identified him in a very close distance, also he was properly identified by two witnesses during identification parade organized by Morogoro central police. I have no slight doubt, all fingers point to the 13<sup>th</sup> accused as the one who exploded the explosion with purpose to kill or cause serious injuries to people around him.

Not only that, the accused recorded a cautioned statement, (PE 27 (b)) by PW34 on 05/05/2015. This cautioned statement, according to its information and its coherent nature to other pieces of prosecution evidence, shows that it was voluntarily given and its content were nothing but the truth known by the accused himself. For the purpose of this issue, I will quote page 11 and 12 of the cautioned statement, it is recorded thus: -

*"Baada ya zoezi la kuvamia kituo kushindikana, tulibadilisha uongozi, ABUU IDD alichaguliwa kuwa kiongozi mkuu wetu. Baada ya uchaguzi huu zilipita ziku mbili nikiwa nimelala mchana, tulikurupushwa na milio ya risasi. Nilikimbia na kubeba bomu moja la kutupa kwa mkono na mwenzangu FASBIR alibeba lingine tukatokomea porini ambapo tulilala huko hadi siku iliyofuatia tulitokea Kijiji cha MSOLWA UJAMAA ambapo tulikodi pikipiki na kuelekea Mang'ula, lakini dereva wa pikipiki alidai ana njaa hivyo tumpe nafasi apate chakula. Mimi KHALID OMARY JUMBE na FASBIR tulienda kutafuta duka la kutoa fedha na niliwasiliana na kaka yangu ATHUMAN ili anitumie fedha na alifanya hivyo. **Wakati tunatoa fedha ghafla tulikamatwa na kundi la watu vijana na kutupeleka Kijiji cha MSOLWA UJAMAA. Tukiwa nje***

***walianza kutupekua na ndipo nilitoa bomu na kutoa pini na kulitupa na mimi nilianguka chini na kukimbia na kutokomea kwenye mashamba ya miwa na mwenzangu sikujua amekimbilia wapi."***

To paraphrase the bolded part in the language of this court, the accused expressed that they were arrested at the *e – money* agent in the actual withdrawal of money and taken to Msolwa Ujamaa, where they were being inspected/searched. Thereby he took out a grenade, detonated it and threw on the ground, it exploded. He fell down, but managed to flee to the cane fields.

The content of the cautioned statement of 13<sup>th</sup> accused is almost word to word with the testimonies of the victims of that explosion and other witnesses. Under normal circumstances, no other person can provide such clear explanation than the one who participated fully on the action of crime. As such, I am satisfied that the one who explode the explosion was none else, but Khalid Omary @ Jumbe @ Abuu Sumaya (the 13<sup>th</sup> accused).

The remaining question is whether the accused had an evil intention to cause murder or injuries to people around him? I think the law as to the intention is well developed, clear and settled that, every person is presumed to be sane, and every sane person when intentionally does any act, let alone the damaging act, intends the natural result of that act. **J.W. Cecil Turner in Russel on Crime, 12<sup>th</sup> Edition (1964)**, at page 34 introduces the principle of intention as a paradoxical objective test of *mens rea* by the following: -

*"It is essentially the rule of evidence; the references to 'natural' and 'probable' consequences mean no more than this,*

*that if in the opinion of the tribunal a man of ordinary or average mentality, standing in the prisoner's place would have foreseen the particular consequences, he would have stopped, or altered, his conduct so as to avoid producing them, unless he intended to produce them; it was therefore safe to assume that the prisoner also foresaw and intended to produce the consequences an assumption which therefore must prevail unless the defence can demolish it"*

The principle is as much older tracing from the case of **R Vs. Cooke (1838) 8 C & P. 582, R Vs. Fisher (1837) C & P. 182**. Under our law, **The Penal Code** section 12, presumes a person to be sane at the time of commission of the offence unless and until the contrary is proved. The section is quoted hereunder: -

*"Every person is presumed to be of sound mind and to have been of sound mind at any time which comes in question until the contrary is proved"*

All the above bring home an inevitable conclusion that, a person whoever caused the explosion at the CCM offices on the 01/05/2015, which was a May Day, when several people were gathered together must have intended to murder them or cause serious injuries.

Section 211 (a) of the **Penal Code**, which I have already discussed earlier states that, if any one attempts to cause death of another or he does an act of such a nature as to be likely to endanger human life will have committed the offence of attempt murder.

In the case of **Bonifas Fidelis @Abel Vs. R, Criminal Appeal No. 301 of 2014** the Court of Appeal regarding the offence of attempt murder offered a living guidance as follows: -

*"We must hasten to point out that section 211 (a) is not a standalone provision in so far as all the ingredients of attempted murder are concerned. The word "attempt" which is mentioned under section 211 (a) is defined under section 380 of the Penal Code. This means, to appreciate the scope of the ingredients of the offence of attempted murder, sections 211 (a) and 380 must be read together."*

This court also had a serious meditation of section 380 of **The Penal Code**, of which I am of the determined view that the section is exhaustive as to what means by attempt to commit an offence. Apart from the authorities I have already pegged at the beginning, I will reproduce the section hereunder: -

**Section 380.- (1)** *"When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfillment, and manifests his intention by some overt act, but does not fulfill his intention to such extent as to commit the offence, he is deemed to attempt to commit the offence.*

*(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfillment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.*

*(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence"*

In **Bonifas Fidelis @Abel** the court again gave more elaborate interpretation by listing the ingredients, which must be proved to establish the offence of attempted murder, it ruled: -

*"Firstly, proof of intention to commit the main offence of murder. Secondly, evidence to prove how the appellant began to employ the means to execute his intention. Thirdly, evidence that proves overt acts which manifests the appellant's intention. Fourthly, evidence proving an intervening event, which interrupted the appellant from fulfilling his main offence, to such extent if there was no such interruption, the main offence of murder would surely have been committed"*

On how to establish the intent to commit the main offence of murder, which is the first element, the Court of Appeal in another case of **Samweli Jackson Saabai @ Mng'awi & Others Vs. R, (Criminal Appeal No. 138 of 2020) [2022] TZCA 338**, observed as follows: -

*"On the first ingredient, we are of the view that, the act of cutting PW1 on the head with machetes, arrows and bows was clearly intended to cause the death of PW1 with malice aforethought. Malice aforethought may be inferred in the weapons use... The second and third ingredients are evidenced by what is stated in explaining the first ingredient. The fourth ingredient is fulfilled by the fact that according to PW1 when he had fallen down, hurt and almost unconscious, he heard the 1<sup>st</sup> appellant state that they had already finished him. Therefore, the intervening factor was the severe*



*conditions he was in which led the assailants to believe he was already dead, and they had completed their mission"*

Actually, I am not claiming to impute any resemblance of **Samweli Jackson Saabai @ Mng'awi & Others** case to this at hand. I understand in that case, several appellants had formed common intention against a specific person and when they had attacked him, they were communicating, at least they appreciated their work to have been completed. While in our case, which flows from continuity of terrorist acts, I am mindful a terrorist motivated murderer does not necessarily target against one particular known person. To the contrary, he may target against a group of people. A terrorist murder or malice aforethought in cases of that nature is much broader covering not only specific persons, but also a class of people like Civilians, the police, magistrates and son on.

This court has also considered one of the Australian terrorism cases of **R Vs. Sevdet Ramadan Besim [2016] VSC 537**, which emanated from a notorious terrorist attempt on the 25<sup>th</sup> April Anzac Day in Australia. ANZAC is an abbreviation of Australian and New Zealand Army Corps. It aimed for commemoration of about 11,400 soldiers of Australian and New Zealand who were killed by the end of 1915 of First World War by the German Army. Therefore, the conversation of the perpetrators was referred by the Victoria Supreme Court of Australia. In determining the sentence, the court considered the correspondence of the convict (Besim) in Australia with another perpetrator (anonymized as **S** for he was a minor of 14 years old) from the United Kingdom, it was recorded: -



*"Later, S presented three options for weapons for the attack – a knife, a car or a gun. Mr Besim said that it was "tough to decide ... all are so good" and that he was thinking of "a combo of knife and car because the gun is not an option at the moment". He explained that Endeavour Hills Police Station was close to his house.*

*S suggested making a false call to the police in order to attract them to his house so he could attack them...S told him to get a machete, "sharpen it as hard as you can and then run a police man over and decapitate him" Mr Besim confirmed that that was what he had in mind... He reminded S that he had told him his real name was Sev; and said that his middle name was Ramadan. S suggested that the attack should be during Ramadan, in June. Mr Besim said he had been wanting to do the attack since September. S said that, it was his choice. Mr Besim responded to the effect that "25 April is a good day because it is ANZAC Day and this will mean they will remember this on that day every year after" He said ANZAC Day is "close to the kuffar heart because they lost so many people ...The government gives a speech on how they will always be remembered" ... S asked how many would die or be injured if he ran over a crowd on ANZAC Day"*

The above shows that attacks of the sort like the one alleged in our case will need a liberal interpretation of malice aforethought along with the principle of presumed intention which I earlier attempted to expound from **Cecil Turner** and some old English cases.

What I have extracted to be much useful and relevant to this case before me is the methodology applied by the Court of Appeal in testing the ingredients. That methodology, I perceive to be applicable in this case as well.

In our case, it is common ground that, the 13<sup>th</sup> accused was being suspected of being involved in terrorist acts. It is when the accused along with his fellow, were arrested and PW28 was conducting search upon him, that is when he defied the order of lifting his hands up, instead he took out what appears to be a locally made explosive tossed it on the ground in presence of multitude of people. Obviously, it exploded and injured himself and other five innocent victims, damaged the CCM Office, and a motor vehicle which was parked outside the office.

Undoubtedly, the accused aimed at killing as many people as he could, probably without even caring about himself. It seems the strength of the 'bomb' was a little bit reduced or the set up was not well grounded, although still the impact it had occasioned, I would say, were deadly as above referred. I therefore, convinced that, the four elements of attempted murder are clearly established by the prosecution in all counts, that the 13<sup>th</sup> accused intended those who were attacked, would die instantly.

I would therefore conclude that Khalid Omary @Jumbe @ Abuu Sumaya (13<sup>th</sup> accused) is undoubtedly guilty of the five offences of attempted murder against P43 (4<sup>th</sup> count), P70 in the (5<sup>th</sup> count), P34 (6<sup>th</sup> count), P55 (7<sup>th</sup> count), and P40 (8<sup>th</sup> count).

Having done with the last five counts, I now revert back to the first three counts. To begin with, the first count is Conspiracy to commit terrorist acts contrary to section 4 (1) (3) (i) and section 27 of the

Prevention of Terrorism Act No. 21 of 2002 as amended. The prosecution alleged that all the 21 accused persons on diverse dates between 1<sup>st</sup> February 2015 and 1<sup>st</sup> May 2015 at various places in Morogoro, Arusha, Dar es Salaam, Coastal region, Mtwara, Geita and Lindi region, did conspire to commit acts constituting terrorism to wit; attacking police officers at various Police Stations in Kilombero district in Morogoro region for purposes of acquiring firearms intended to be used in overthrowing the lawful Government of the United Republic of Tanzania and establish an Islamic State, an act which involves [prejudice to national security and public safety, acts which were intended to intimidate the public.

Section 4 (1) of the Act provides generally, that it is an offence to commit a terrorist act. Subsection (3)(i) provides a terrorist act to be an act or threat of action, which involves prejudice to national security or public safety, and is intended, or by its nature and context, may reasonably be regarded as being intended to intimidate the public or a section of the public or to compel the Government or an international organization to do, or refrain from doing any act and is made for the purpose of advancing or supporting act which constitutes terrorism.

This court sitting at Songea in another case of similar nature between the **R Vs. Mohamed Mohamed Adam Masumbuko, Economic Case No. 05 of 2022, (Tanzania)** attempted to provide a practical interpretation of section 4 (1)(3) as follows: -

*"The provisions of section 4 (1) and (3) if read together with the provisions of sections 5, 6, 7, 8, 9 and 10 of the Prevention of Terrorism Act (hereinafter referred as the Act), will require fulfilment of the hereinafter elements to constitute*

*terrorist acts: One, it must be a terrorist action, two threat of action; three, the action or threat must be done with terrorist intention; four, such act or omission may seriously damage a country or an international organization; five, the act or threat is intended or can reasonably be regarded as having the following inter alia object; seriously intimidate a population; and seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of country or an international organization."*

Having read the whole of section 4 and other subsequent provisions, I find the interpretation provided by my brethren in the cited case was correct. The question is whether the 21 accused persons did conspire to commit acts constituting terrorism. Generally, the offence alleged herein is created under section 27 of the Act, which for clarity and with a danger of having a long judgement, I reproduce it hereunder:

**Section 27, "Every person who (a) aids and abets the commission; (b) attempts to commit; (c) *conspires to commit*; (d) counsels or procures the commission of, *an offence under this Act, is guilty of an offence and shall on conviction, be liable to the same punishment as is prescribed for the first mentioned offence.*"**

Specifically, the charge levelled against the accused persons is stemmed on section 27 (c). Therefore, the prosecution is bound to sufficiently prove two ingredients: *first* – that there was conspiracy among the accused persons; *second* – that the said conspiracy was on intention to commit (any) offence under the Act.

I will deal with the two ingredients in lumpsum for good cause. The concept of conspiracy is important to be addressed first, as the learned State Attorneys, cited useful authorities on it. The cases of **Mattaka and others Vs. R [1971]1 E.A. 495; Michael Charles Kijangwa Vs. R, Criminal Appeal No. 280 of 2017 (Unreported)**. In these cases, criminal conspiracy was interpreted as an agreement between two or more persons to commit an offence.

The law is settled in our jurisdiction that conspiracy to commit an offence, is a complete offence in its own. This is notwithstanding the feasibility of the offence intended to be committed by the conspirators. The Court of Appeal in **Hatibu Gandhi and Others Vs. R [1996] T.L.R 12** and **John Paul @ Shida & Another Vs. R, Criminal Appeal No. 335/2009** held that, in law, the conspiracy itself constitutes an overt act. This law is mainly the same in most of other jurisdictions, both the Federal and Common Law. See **R Vs. Newland [1953] 2All ER; [1954] 1QB 158** and **Shaw Vs. DPP [1962] AC 220**.

In our case, the accused persons are said to have conspired to commit terrorist acts contrary to section 4 (1)(3)(i)(ii) of **The Prevention of Terrorism Act**. From the prosecution, the learned State Attorneys have relied on exhibits PE5, PE6, PE7, PE8, PE10, PE11, PE12, PE14, PE15, PE16, PE20, PE21, PE22, PE24, PE25, PE26, PE27(a) and (b), PE28 and PE29 in which the accused persons confessed that, they conspired to use violence, attack the police stations with a view to overthrow the Government and in lieu thereof install the Islamic State. But all accused persons in their defence strongly denied the offences, they even denied any acquaintance to each other. At some point, during

defence, each accused was charged alone. But at a later stage was joined with other persons strange to each other. This theory suggests that the 21 accused persons were strange to each other and have had no communication of any nature whatsoever.

As to how these cautioned statements came into being, the prosecution has presented a very friendly procedure which they claim to have followed. They stated that, each of the accused volunteered information.

In the contrary, all the 21 accused persons were either repudiating or retracting their confessions. They all narrated some blood chilling apocalyptic journey they passed through in extraction of those cautioned statements containing confessions. The 8<sup>th</sup> accused Ramadhani Hamis Wawa (DW18) and 16<sup>th</sup> accused Fredrick Evarist Chamnungu (DW20) for example, they claimed to have been subjected to a serious torture, that they even lost consciousness. The 14<sup>th</sup> accused Mabilika Wales @ Abuu Majanga @ Abdallah Wales (DW6) claimed to have recorded the statement on 07/05/2015, but in cross examination he changed the story saying he did not record any statement, but the police tortured him forcing him to sign a document he did not know, yet he did not sign any. The baseline is that all the accused persons denied to have made the respective cautioned statements, which are now before this court for use. As to how now those statements were born, the accused persons have claimed in almost the same rhythm, that their cautioned statements, in different designs were prepared by the police themselves, then after torture and threat the accused were being forced to sign. But in themselves they never confessed any offence and what is contained in the statements were the inventions of the police themselves.

I deeply considered on those cautioned statements and the total denial from the alleged authors. The question is whether the cautioned statements were properly extracted. Therefore, applying the law in respect of retracted and repudiated confessions, I as well studied the statement of each of the accused person among other exhibits. The guiding principles regarding confessional statements were referred by the learned State Attorneys. This court will test the weight of those cautioned statements even though their admission were never objected by the parties. Before testing the cautioned statements, I will briefly refer to the relevant rules.

A general overview was offered in the case of **Tuwamoi Vs. Uganda [1967] 1 EA 84** where the East African Court of Appeal developed voluntariness and truthfulness of the confession clarified thus:-

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

The general rule is that, if any confessional statement is retracted or repudiated, the court should be cautious as to whether to accord any weight as it was followed in the cases of **Richard Lubilo and Mohammed Seleman Vs. R [2003] T.L.R. 149, Hemed Abdallah vs. R, [1995] T.L.R 172** and where actual torture is proved, the statement will be inadmissible as per the judgement of **Thadei Mlomo and Others Vs. R, [1995] T.L.R. 187.**

In exhausting this issue, the 12<sup>th</sup> accused cautioned statement (exhibit PE6) mentioned his birthdate, village, ward, district and region. Full names of his parents and other relatives born from the same womb. Names of his wife, number and names of his children. The fact that he did not go through formal education, but later educated, while an adult (NGUMBALO), the fact that his father was a public servant in TANESCO. Another part is at page 6 and 7 as quoted hereunder: -

*"Nakiri kuwa mimi ni mwanaharakati wa harakati za kigaidi ambapo malengo yetu makuu ni kuhamasisha vijana kujifundisha dini, mafunzo ya kijeshi pamoja na mafunzo mbalimbali ya silaha za kivita kwa lengo la maandalizi ya kupigana vita vya Jihadi dhidi ya serikali hii iliyopo madarakani na kuiondoa madarakani na kusimamisha dola ya kiislamu hapa nchini Tanzania. Hata hivyo mimi ninawafahamu baadhi ya wanaharakati wenzangu wa harakati za kigaidi ambao huwa tunafanya nao vikao au shura za harakati za kusimamisha dola ya kiislamu ambao ni IMKANA...tumeisha kaa shura au vikao pamoja na kujadili AJENDA kuu ikiwa ni namna ya kusimamisha dola ya kiislamu. Mimi siwezi kwepa*



*kosa kwa sababu mimi ndiye niliyewahifadhi na walikamatwa wakiwa msikitini."*

The maker of this statement confesses that, he is jihad activist who inspires the youngsters to train in the military and war techniques in order to wage war against the government and overthrow it. He reveals that he has attended several meetings which had the main agenda of installing Islamic State. He proceeded to state that, those young men he hosted at the mosque were truly found with explosives and other articles intended for the commission of the terrorist acts.

In exhibit PE25, a cautioned statement by the 17<sup>th</sup> accused, Mabilika Wales @ Abuu Majanga @ Abdallah Wales, disclosed in details the year he was born, names and residence of his parents, education and schools he attended, death of his father and failure to continue with secondary education. Just like other accused persons, a lot of information is given therein. He states how he started to hear about Islam by Ustadh Yusuph and eventually he converted to Islam and given new name of ABDALLAH and that he was staying in one of the Mosques in Arusha. Explains further indoctrination and the plan to come to Morogoro for Jihad, then at page 4 he said: -

*"Tulikaa sana pale kiasi cha mwaka mmoja akituhamasisha kupigana kwa ajili ya dini ya kiislamu. Alisema silaha za kupigana tutazipata Morogoro...mwezi wa nne mwaka 2015 alitueleza kwamba wakati umefika wa kutupeleka kwa wenzetu ambao wapo Mlimani kwa ajili ya mafunzo ya mapigano ya kigaidi...Tulipofika Morogoro nakumbuka kituo cha Mbuzi njia ya Ruaha...Baadaye tulikaa kikao wote pamoja tukiwa na viongozi*

*wote huku tukitathmini mapungufu. ABUU IDD alidai ana mabomu mawili ya kutupa kwa mkono..."*

In this court's language, the above means the accused persons stayed for about a year being trained to fight for Islam. The host told them that guns would be secured upon arrival to Morogoro. Later they traveled to Morogoro and they convened a meeting, where one of them claimed to have two grenades. Further arrangements were made and tasks were allocated to each of the conspirators.

All accused persons stated in sufficient details of their personal history and the way they participated in preparation of the intended terrorist acts. Such compatibility in my understanding would not be easily attained if what the accused stated therein were falsehood for fear of torture, even if we assume that police themselves designed the same, I am much convinced, police would not be able to secure true biological data, historical background, their family affairs and other facts not in issue in those statements so consistently and coherently as they appear on all the 21 accused persons. The information contained in those unopposed and undisputed cautioned statements, in my view, were nothing but the truth, which only the person concerned would author. Taking the cautioned statements and other prosecution evidence together, the court accepts the prosecution's suggestion that the confessions were nothing but the truth even testing them against the parameters in **Felix Kasinyila** and **Issa Hassan Uki's** case, among others cited by the learned State Attorneys.

In a fair weighing of the evidence from both sides, in respect of this point, having in mind of the legal principles which came to my guide, some of which have been presented herein and some were pointed out

by the learned State Attorneys in their submission, I am justified to conclude that, the cautioned statements were made by the accused persons voluntarily, with no doubt reflected the truth which the accused persons each one knew.

Considering the ratio decidendi in the cases of **Lameck Gamaliel & Another Vs. R, Criminal Appeal No. 210 of 2012, Mohamed Haruna Mtupeni and Another Vs. R, Criminal Appeal No. 259 of 2007;** and **Edward Joseph Vs. R, Criminal Appeal No. 44 of 2011** all met in one conclusion as quoted hereunder: -

*"The very best of witnesses in any criminal trial is an accused person who freely confesses his guilty, the trial court found the appellant guilty as charged."*

In the broad capture of the evidence in this case, the cautioned statements which all were admitted in court unopposed, their contents are in total support of the prosecution case.

Although all the accused persons, each expressed how he was part of the conspiracy, the prosecution suggested to this court to consider section 12 of the **Evidence Act** as well. The section provides that: -

*"Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons referring to or in execution or furtherance of their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy*



*as for the purpose of showing that any such person was a party to it."*

Under the above provision, the cautioned statements of the accused persons are taken against each of the maker and the fellow conspirators.

Taking also the evidence of PW11, PW15, PW16, PW 19, PW20, PW31, PW32 and PW34, the acts which accused persons were conspiring had the inevitable effect prejudicial to the public safety and intimidation to the public in the United Republic of Tanzania.

Despite the fact that the defence counsel stood firm to oppose the offence of conspiracy, that the main ingredient of common intention was not proved, I am sure the learned counsel did not revisit inquisitively on the 21<sup>st</sup> cautioned statements. By a non-biased eye, they would agree with this court that, common intention was apparently exhibited by the accused themselves. Not only that all accused persons were prepared to take part in the terrorist acts, but also there is sufficient evidence of organizational correspondences amongst the accused persons with some other persons not parties to this case.

In all respect, justice and fairness, I would conclude that, the first count is proved beyond reasonable doubt, that all accused persons had a complete common intention, conspired to commit terrorist acts in the period stated by the prosecution in the charge sheet.

The second count is participating in a terrorist meeting contrary to section 4 (1), (3)(i)(i) and 5 (a). Specifically, section 5 (a) is quoted hereunder: -



*"A person commits an offence who (a) arranges, manages or assist in arranging or managing or participates in a meeting or an act knowingly that it is concerned with an act of terrorism"*

Again, developing from the cautioned statements, all accused persons have confessed that, they had several meetings in order to arrange their operations of terrorist acts. The 12<sup>th</sup> accused who was the Imamu of Sunni Mosque at Kidatu, clearly confessed that he was teaching other youths the indoctrinations of Jihad and he himself was a Jihad Activist.

Further, at the mosque, he said about 14 young men were attending his teachings. According to exhibit PE3, the 3<sup>rd</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 7<sup>th</sup>, 2<sup>nd</sup>, 9<sup>th</sup>, 5<sup>th</sup>, 4<sup>th</sup>, 6<sup>th</sup> and the 12<sup>th</sup> accused were in the mosque at the time of arrest. The fact is supported by their respective cautioned statements. Also, according to PE27 (a)(b) his cautioned statement, the 13<sup>th</sup> accused stated that, they convened a meeting and changed the leadership. In another occasion they attended a meeting at the same mosque with his fellows including the 21<sup>st</sup>, 14<sup>th</sup>, 2<sup>nd</sup>, 17<sup>th</sup>. Yet in different times they were at the forest known as their camp. Further, they had another meeting where among other things, the death of their fellow Hamad Makwenda @Abuu Sharif was announced. Also, the first accused Majaliwa Mohamedi in his cautioned statement (PE 24) verified that he participated in the meetings not only in Morogoro, but also at Arusha as the charge sheet discloses.

Apart from that, the evidence from PW15, PW7, PW11 and PW16, corroborated the exhibits, among other things, the accused persons were organizing themselves in order to discuss the agenda on furtherance of the terrorist acts. On the other side, the defence did not

shake the prosecution's evidence on this count. I noted the argument by defence that, there were contradictions in respect of the items seized from the accused at the mosque and the origin of the hand grenades. Following the events as stated by the witnesses I noted minor inconsistencies here and there in the prosecutions' evidences.

One of them is on identification of the 13<sup>th</sup> accused and his fellow who is at large. PW28 described that one was a bit tall but slim, the other one put on a hat. PW25 said they were short, one dressed draft and black trouser and a cap, another had white T-shirt and track suit. Yet PW24 said Khalid was short with white t-shirt and green tracksuit, another had a cap, long sleeve shirt and black trouser. Even with those minor inconsistencies, the message is not distorted that the 13<sup>th</sup> accused was in white t-shirt and a tracksuit, while his fellow was in long sleeve (draft) shirt and a black trouser.

Regarding the question of where the grenades were made, I think this was not a contradiction so to say. This court understood PW27 clearly that by a preliminary examination the grenades appeared to be made in China, but by a ballistic examination it was settled that they were made in USA. Also, I accept the suggestion by the Republic that minor inconsistencies may be occasioned by time lapse as in this case, at least seven years had passed from the incidents to testifying in court. The case of **Marando Slaa Hofu and 3 others Vs. R., Criminal Appeal No.246 of 2011, CAT** where it was held: -

*"Contradictions by any particular witness or among witnesses cannot be escaped or avoided in any particular case. However, in considering the nature, number and impact of contradictions, it must always be remembered that witnesses*

*do not always make a blow-by-blow mental recording of an incidence. As such contradictions should not be evaluated without placing them in their proper context in an endeavour to determine their gravity, meaning whether or not they go to the root of the matter or rather corrode the credibility of a party's case."*

Considering the nature of the offences charged in this case, it is impossible to eliminate all inconsistencies. The paramount test should be whether the inconsistencies are material going to the root of the case, the test which this court rules in the negative.

Another aspect the court is bound to address is the 9<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup> accused persons argument that they were still young at time of arrest, hence they should be released or acquitted. This same argument was adopted by the learned defence counsel. I understand that age is a material fact and good defence in criminal cases against criminal responsibility and in some cases a good mitigating factor in sentencing principles.

However, considering that they claimed to have been 16 and 17 years old at the time of arrest and presumably at the time of commission of the offence, this court takes cognizance of the provision of section 15 of the **Penal Code**. which provides: -

*"15.- (1) A person under the age of ten years is not criminally responsible for any act or omission. (2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that, at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission. (3) A male person*



*under the age of twelve years is presumed to be incapable of having sexual intercourse. (4) Any person under the age of twelve years who commits an act or omission which is unlawful shall be dealt with under the Law of the Child Act."*

This is parallel to the doctrine which goes by Latin maxim '*doli incapax*' applicable in many other jurisdictions. The **Black's law Dictionary** gives interpretation of *doli incapax* as *incapable of committing a crime or tort*. See also the reasoning by Lord Goddard CJ in **Walters Vs. Lunt and Another [1951] 2 All ER 645** and **Russel on Crime (supra)** at page 98, where the author gives a detailed background of the doctrine that: -

*"As we have previously noted, the ancient doctrine of absolute or strict liability really rested on an assumption that the ordinary man does realise and intend natural consequences of all his acts. This was an assumption which obviously could not be safely made the basis for inflicting the full severity of criminal punishment upon children of tender years. The predicament was increased when the doctrine of mens rea as a legal necessity developed as can be seen from the old reports of cases in which children were accused of crimes...But after the Norman Conquest, it was settled that complete immunity ceased at seven years. Thereafter under the common law of England a child under seven could not be guilty of any criminal offence, whatever evidence might be available."*



What it means generally is an irrebuttable presumption that a child of immature age can do no harm, can commit no offence and thus cannot be responsible criminally. Having shown above, the issue of age will never work any better in favour of the accused persons since though they may have been under the age of majority at the time of commission of the offence, they were not of immature age of 10 and below.

Moreover, I have discussed the cases of **R Vs. Sevdet Ramadan Besim (Supra)** which involved two young boys, one was in England another was in Australia, yet the trial court found them liable and accordingly were punished according to the applicable laws. The three accused persons who claim to be under the age of majority but above ten years old that is, 16 and 17 years knew what they were doing and were fully engaged thus, capable of being found guilty.

Perusing inquisitively on the Prevention of Terrorism Act, specifically section 11, its contents indicates that in case of inconsistencies with other laws, the Act will prevail. For ease of reference, the section is quoted hereunder: -

*"The provisions of this Act shall have effect notwithstanding anything inconsistent with this Act, contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act"*

A simple understanding of this section is that, the Act has an overriding effect over any other laws or provisions of law. To the best, even the Law of the Child cannot apply as the accused so intended to escape through that door.

Taking into account the cautioned statements and other relevant evidence pointed, I am satisfied that all the 21 accused persons attended



meetings which were aimed for furtherance of terrorist acts. The second count is therefore proved against all the accused persons beyond reasonable doubt.

The 3<sup>rd</sup> count is on the charge of possession of property for commission of a terrorist act contrary to section 4 (1), (2)(b)(iii) and 15 b) of the Act. The prosecution alleged that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> accused persons on 15<sup>th</sup> April 2015 in Masjid Al Salah Al-Fajih Mosque at Kidatu Ward within Kilombero district in Morogoro region, were found in possession of properties to wit; two hand grenades, thirty (30) dynamite Explogel Vol. VI, two detonating cord and two electrical blasting cups 1.5 inches, one pair of Tanzania Peoples Defence Force's Coat, Tanzania Peoples Defence Force's barret hat and one pair of Tanzania Peoples Defence Force's boots, knowingly that the said properties will be directly used to facilitate the commission of terrorist acts, to wit; attacking police stations within Kilombero district in Morogoro region, for purposes of acquiring firearms intended to be used in overthrowing the lawful government of the United Republic of Tanzania and establish an Islamic State, an act which can reasonably be regarded as having been intended to seriously destabilize the fundamental political, constitutional, economic and social structures of the United Republic of Tanzania.

Section 15 (b) of the Act, provides that;

*"Every person who possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act, commits an offence and*

*shall on conviction, be liable to imprisonment for a term not less than fifteen years and not more than twenty years"*

In adducing their testimonies, the prosecution witnesses maintained that the accused persons were arrested at Sunni Mosque at Kidatu, while in the preparation of terrorist acts. That they were found with some bags which upon search, the bags had items which were intended to be used for committing a terrorist act. Exhibit PE1, PE3, PE13, PE11, and PE24 shows the search seizure, labelling, analysis and disposal of the explosives and other items which were found in possession of the accused persons.

Again, cautioned statements of all the accused persons shows that at the time when they were organizing the plan to attack police stations in order to get some guns, they already had other facilities like Mark IV, explosives and non-explosive articles. In total there were two grenades, 30 explosive jelly, one knife, one metal saw, 2 detonator wires, 2 electrical detonator caps, one beret cap of TPDF, one army coat, combat boot, masks, gloves and military training manual.

PW11 in his sworn testimony stated that, he arrested 10 culprits at the mosque and upon arrest they were found with the listed properties kept in their bags. He tendered exhibit PE3 HATI YA DHARURA YA KUKAMATA MALI wherein it is shown that on 15/04/2015 around 04:45 he conducted search in the accused persons who were arrested inside the Sunni Mosque and found in their possession the listed items.

Also, the ten accused persons signed in PE3 along with other independent witnesses. These are 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10, 11<sup>th</sup> and 12<sup>th</sup> accused. The 1<sup>st</sup> and 8<sup>th</sup> accused were arrested at Kidatu under the circumstance explained in the cautioned statements of the accused

persons. The first accused was found in possession of one knife and an exercise book on military training. PW15 and PW11 testified sufficiently on the arrest and search of these accused persons. I understand that the knife and the book were in possession of Majaliwa (first accused) also according to exhibit PE24, the cautioned statement of the first accused he confessed that, when they were arrested with his fellow (the 8<sup>th</sup> accused), he was conducting surveillance of the area to see if the residents in the street knew anything about the plan. At the time of arrest, the 8<sup>th</sup> accused was sitting near to where he sat, on the grounded tyres, a place used as a station, passengers would sit waiting for transport.

Apart from that, there was exhibit PE11, a cautioned statement of the 8<sup>th</sup> accused, who confessed that he was arrested while was with the first accused who at that time, he did not know his name. He was a new recruit having reached from Arusha, coming to Morogoro for jihad training. From these pieces of evidence, it suggests the 8<sup>th</sup> accused, not only possessed nothing than his phone, but at that time it seems the two were yet to know each other, although the circumstances raise a very strong suspicion, on the evidence available, the arresting officers testified that they found nothing in the possession of the 8<sup>th</sup> accused. Such accused therefore cannot be adjudged to have been in possession of the items that were in the 1<sup>st</sup> accused custody, unless common goal at that time was established.

On the other hand, there was comprehensive evidence from PW11, PW16, PW26, PW21, PW22 and PW27 on how those exhibits, explosive and non-explosive articles were retrieved, kept and disposed.

The accused persons have been denying the contents of exhibits

which they did not object at the trial. Even in their defence as earlier analysed, most of them strongly denied to have been involved in any of the offences. The submission advanced by the learned State Attorneys in this aspect earns a point that the defence seems to be an afterthought.

In our case the Republic relied also on the contents of exhibit PE3, PE1, PE13, PE11 and PE24 to prove the 3<sup>rd</sup> count in respect of the 12 accused persons being found in possession of explosives and other articles intended to be used or facilitate the commission of a terrorist act and testimonies of PW4, PW6, PW11, PW16, PW21, PW26, PW27 and PW22. Apart from exhibit PE3 which listed all the articles seized at Kidatu Sunni mosque, I have considered the coherent evidence of PW22 who explained in detail his expertise and analysis of the explosives and how each particular item was to be used, including the explogel.

PW21 proved to have received the explosives among the exhibits seized at the mosque, which establishes without any doubt that those items seized were for no other purpose than for terrorist act. PW25 witnessed destruction of the explosives and PW27 confirmed the nature of the explosives and actually is the one who undertook the inspection and recommendation that, they should be destroyed for having started exudating, hence were posing danger if were to be kept any further.

The nature of the defence evidence as earlier pointed, was of a general denial and unexplained alibi. Not only that, they denied to have made the statements, but all accused persons denied even being arrested at the respective places stated by the prosecution. Despite the fact that they withdrew their notice of relying on alibi defence, the accused persons based their defence on alibi. Those who admitted that they were arrested outside the mosque, all mentioned almost the same

time, while still each maintained that, they were arrested alone and never met anyone of the co-accused. However, the defence evidence was weak, hence did not raise any reasonable doubt against the prosecution case, save for the 8<sup>th</sup> accused in this count. The respective cautioned statements of the 1<sup>st</sup> accused and 8<sup>th</sup> accused suggests that when they were arrested, though the first accused was in possession of some articles for commission of terrorist act, they had not yet shared any information of the operation though they were both in the common mission.

Therefore, this court finds the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10, 11<sup>th</sup> and 12<sup>th</sup> accused persons guilty for the offence of possession of property for commission of a terrorist act contrary to section 4 (1)(2)(b)(iii) and 15 (b) of The Prevention of Terrorism Act, No. 21 of 2002, save that the 8<sup>th</sup> accused person, Ramadhani Hamisi Wawa, is not guilty for the offence in the third count.

Having so reasoned, I now proceed to convict all accused persons on the 1<sup>st</sup> and 2<sup>nd</sup> counts contrary to sections 4 (1), (3) (i) (1), 27 (c) and 5 (a) of the Prevention of Terrorism Act No. 21 of 2002. Also, I proceed to convict all accused persons in the third count save only the 8<sup>th</sup> accused person contrary to sections 4 (1) (2) (b) (iii) and 15 (b) of the Prevention of Terrorism Act No. 21 of 2002. Thus, the 8<sup>th</sup> accused is acquitted forthwith in the 3<sup>rd</sup> count.

Further I proceed to convict the 13<sup>th</sup> accused (Khalid Omary @ Jumbe @ Abuu Sumaya) for the offence of attempt murder on all five counts numbers 4, 5, 6, 7 and 8 of the charge sheet, contrary to section 211 (a) of the Penal Code (Cap 16 R.E. 2002).

**Dated** at Morogoro this 28<sup>th</sup> day of June, 2023.

**P. J. NGWEMBE**

**JUDGE**

**28/06/2023**

**SENTENCE**

Upon consciously consideration of the whole circumstances of this case, the court found all accused persons had common intention of committing terrorist acts of overthrowing the lawful existing Government and replacing therein with another form of Government known as Islamic State led by Sharia Law. Since this court has already convicted them, obvious at this juncture is to pronounce an appropriate punishment according to law.

I have sought guidance from several authorities to gain the best principles related to sentencing the accused persons. The guidance from the old precedent of the case of **Francis Chilema Vs. R, [1968] H.C.D 510**, judges pointed out certain factors to be considered in considering an appropriate sentence to accused persons; first, if the accused pleads guilty; second, the time he has been in custody; third, an overall circumstance surrounding the case.

Equally, as I have indicated from the beginning, offences of terrorism are still a gray area in our jurisdiction, thus I sought guidance from other jurisdictions. The Supreme Court of New South Wales in the case of **R, Vs. Alou [2018] NSWSC 221** dealing with terrorism case,

came up with the following principles: - first, protection of the community; second, punishment of the offender; third, denunciation of the offending person in both specific and general deterrence; that is, religious and ideological motivation of the offender; resilience from previously held extremist views; degree of planning - research, complexity and sophistication involved together with the extent of offenders commitments to carry out the acts of terrorism; lastly, the depth and extent of radicalization of the offender by the possession of extremist materials and communication of such views to others.

Based on those principles, I find most of the accused were still youth and may be did not receive adequate education, knowledge and skills to help them in their life. Thus, were easily waived by indoctrination of religious radicalization.

Unfortunate may be, the law did not provide for punishment in respect of the first and second counts, which involve all accused persons. The amendment effected in **the Written Laws (Miscellaneous Amendments) (No.2) Act, 2016**, cannot apply retrospectively in this case. However, the offenders cannot walk freely while they have willfully engaged into endangering the society. Common law and Tanzania Sentencing Guidelines provide living principles to be followed in a situation like this one. Applying the same, I therefore, proceed to invoke my inherent powers of this court to sentence all accused persons to serve imprisonment of ten (10) years imprisonment for the first count and ten (10) years imprisonment for the second count, sentences will run concurrently.

In respect to the third court, which involve eleven accused, that is the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> accused shall serve the statutory minimum sentence of 15 years imprisonment.

The 13<sup>th</sup> accused who is Khalid Omary @ Jumbe @ Abuu Sumaya is convicted for five counts of attempted murder, which offence attracts up to life imprisonment. However, the accused is a first offender, hence this court find justice will be done and seen to be done by passing a sentence of twenty (20) years imprisonment for the 4<sup>th</sup> count; twenty (20) years imprisonment for the 5<sup>th</sup> count, twenty (20) years imprisonment for the 6<sup>th</sup> count, twenty (20) years imprisonment for the 7<sup>th</sup> count and twenty (20) years imprisonment for the 8<sup>th</sup> count. All sentences to run concurrently.

Since the 13<sup>th</sup> accused person is also convicted for the 1<sup>st</sup> and 2<sup>nd</sup> counts, then the sentences of the 1<sup>st</sup> and 2<sup>nd</sup> counts shall run consecutively with the sentence of attempted murder.

**I accordingly order.**

**Court:** Sentence delivered at Morogoro in open Court through Video Conferencing in this 28<sup>th</sup> day of June, 2023.



A handwritten signature in blue ink, appearing to read 'P. J. Ngwembe', is written over the seal.

**P. J. NGWEMBE**

**JUDGE**

**28/06/2023**

**Court:** this court sentence is delivered today this 28<sup>th</sup> day of June, 2023 in open court vide Video Conference in the presence of Verdiana Mlenza learned Senior State Attorney for the Republic assisted by Joseph

Makene State Attorney, also in presence of Deckrine Kweka and Alfa Boniface learned advocates for all the accused persons.

**Right to appeal against judgment and sentence is explained.**



A handwritten signature in blue ink, appearing to read "P. J. Ngwembe", is written over the printed name.

**P. J. NGWEMBE**

**JUDGE**

**28/06/2023**