

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA DISTRICT REGISTRY)

AT KASULU

CRIMINAL SESSION CASE NO. 41 OF 2022

REPUBLIC

VERSUS

1. LUCAS S/O CHARLES

2. EMMANUEL S/O CHARLES

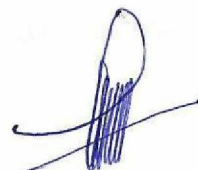
3. JUMA MAGARARIZI @ NGUVUMALI

JUDGMENT

28/6/2023 & 13/7/2023

Mlacha, J.

Three people namely, Lucas Charles, Emmanuel Charles and Juma Mgararizi @ Nguvumali (hereinafter referred to as the first, second and third accused respectively) were sent to this court charged of murder contrary to section 196 and 197 of the Penal Code, cap 16 R.E.2019. It was alleged that they murder Mr. Yamungu on an unknown date of February 2022. They denied the charges. The prosecution led by Amina Mawoko, senior state attorney and Edna Makala, state attorney called 7 witnesses. They also tendered the postmortem report, a sketch map and cautioned statements of the first and second accused as exhibit. At the closure of the prosecution case it was



found that there was no evidence showing that the third accused committed the crime. He was acquitted and set free. The first and second accused who were represented by Mr. Hamisi Kimilomilo and Mechitilda Mpeta respectively, were found as having a case to answer and were put to their defences.

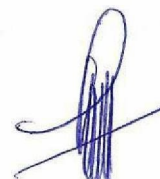
The summary of the evidence on records is as follows. PW1, Rajabu Mrisho Kakombe (55), the chairman of Kinyo hamlet, Msebei village, Uvinza district said that he knew the deceased Yamungu for about 10 years. His job was cutting fire woods to people who included PW6 Dafroza Jumanne Shabani (33), the wife of Hamisi Nzuvu. He knew Mr. Hamis as having two wives.

PW1 went on to say that while on a coffee pub at the village center on 14/2/2022, he received information from Mr. Moshi Kagoma and Mr. Yona William that there was a dead body at Ruchugi river which was spotted by fishermen. The river is in Msebei village. It was night about 9:30 PM but they moved to the area. They saw the dead body in the river but they could not identify it because it was dark. He returned home and slept. On the other day, he received information that Mr. Yamungu had disappeared. He moved to see PW6 who confirmed that her employee had disappeared at the camp for 10 days. He was aware that Hamis Nzovu and Yamungu had a dispute which he he solved. He reported the matter to the police station.



It was the evidence of PW6 that she is married to Hamis Nzuvu. She is his second wife. Yamungu worked for her and lived nearby. His husband suspected her of having a love affair with him. There were 2 clashes between them on the issue. The second incidence was in February 2022 when Yamungu had come to demand his money. She gave him Tshs. 20,000/= and he left. Soon her husband came and demanded to know who was talking to her. She said that it was Yamungu who had come to pick his money. He picked a torch and moved to Mr. Yamungu. She heard them quarrelling because Yamungu was living nearby. She slept. She rose up early in the morning and moved to see Mr. Yamungu. She was told that he had gone to cut firewoods. That he left during the night with his axe. She crosschecked in the evening but could not see him. She proceeded with her daily activities until 15/2/2022 when she was told by PW1 that there was a dead body floating in the river. She moved with PW1 to the police station. The police questioned her and she gave the story to them.

It was the evidence of PW1, PW2 Hamza Musa Maulid (37, a resident of Kinyo hamlet), PW3 Dr. Kasian Adamu (60), PW4 D/constable Charles Kumbi (35), PW5 ASP Menas Temba (47), PW6 and PW7 G 3138 D/CPL Rajabu Nyangasa that they moved to Ruchugi river on 16/2/2022 following reports



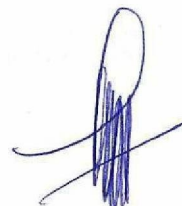
of a dead body. They all said that they saw the body in the river which had started to decompose. It was tied with a rope on its chest and attached to 2 sticks to prevent it to move. It was in the river in a rocky area. It was between two rocks laid on its back.

It was the evidence of PW3 that after receiving a request from the police to go to conduct postmortem, he sought leave of the District Medical Officer and proceeded to the scene of crime in the company of police men led by PW5, the OC-CID. They passed through a big bush which had many trees. They finally reached at Ruchugi River where they saw a dead body floating. It was laid on its back. His chest was tied with a rope linked to 2 sticks to prevent it to move. It had started to decompose but could be identified. Hamza Musa and Rajabu identified him as being Yamungu. PW5 allowed him to do his job. He found his left hand cut off at the shoulder. His right hand had been cut off at the middle link. His private parts – the penis and testicles - were chopped off. His stomach was normal showing that he did not die in the water. He had the opinion that death was caused by excessive bleeding from the cut hands and chopped private parts. He reported to PW5 who handled the body to the residents for burial. He went back to his office and filled the postmortem report, exhibit P1, and gave it to the police. Other



witnesses who visited the area corroborated the story of cut off hands and chopped off private parts.


It was the evidence of PW5 that they got a report from their confidential person on 20/3/2022 showing that Hamis Nzovu, the suspect, had returned back and was drinking alcohol at Kanenge center. He picked D/CPL Rajabu, DC Charles and S/SGT Edward and moved to the area. They left around 10:00Pm using motorcycles. They arrived at Kinyo and picked the chairman who could take them to the area. They left their motorcycles behind because the ways were not friendly due to rains. They walked on foot to Kanenge. On arrival they were told that he had left. They returned to Kinyo hamlet to arrest other suspects, Lucas Charles and Emanuel Charles. Juma was not in the village. They knocked the door and Mzee Charles who came out. He assisted them to locate his children. They put them under arrest and left. They arrived at Uvinza police station in the morning at around 6:00Am. That was on 21/3/2022. He assigned DC Charles to question Emanuel and D/CPL Rajabu to question Lucas. He retired home to rest. He returned later and read the statements which showed that they had confessed. The made efforts and arrested the third accused. He denied to commit the crime. They



made efforts to arrest Mr. Hamisi Nzovu without success. He sent the file to the RCO and later to the NPS who framed the charges.

It was the evidence of PW4 DC Charles that the second accused, Emanuel Charles, confessed to commit the crime in the company of Mr. Hamis Nzovu, Lucas Charles and Juma Mgararizi @ Nguvumali. That Hamis Nzovu was the one who was cutting the deceased. They held the deceased to allow Hamis Nzovu to cut him. They later moved and dumped him to the river. They moved away. The statement was received as exhibit P2 after a trial within trial because the accused alleged torture. The statement of the first accused, Lucas Charles was tendered by PW7, D/CPL Rajabu and received marked exhibit P4. It was received after a trial within trial on the same reasons. The court was satisfied that they were made voluntarily. The sketch map was drawn by PW7, tendered in evidence and received as exhibit P3.

The accused were arrested due to secret communications between the police and their confidential agents. That, they were heard in a pombe shop saying that they had assisted Mr. Hamis Nzovu to kill Mr. Yamungu. People who heard them remained confidential to the police. They were not called as witnesses. It is on this basis that the third accused was found as having no case to answer for want of corroboration because the confessions being



evidence of an accomplice could not be the basis of a conviction against him at the end of trial without corroboration.

It was the defence of DW1 Lucas Charles that he was at home on 16/2/2022 but could not hear anything in connection to the death of Yamungu. He was arrested on 21/3/2022 at 2:10AM while at home. His brother Emanuel Charles was also arrested. They were sent to the police station accused of killing Mr. Yamungu something which is false. He said that Rajabu, Dafroza and Hamza are known to him because they are his neighbours at the village but denied to know Mr. Hamisi Nzovu and Yamungu. He challenged prosecution witnesses saying that they did not mention him or show the place where Yamungu was killed. He went on to say that the statement tendered is not his statement. He said that there was an earlier statement which was torn and replaced by the statement. He said that they beat him before he signed. They fixed him on a 'mtego wa popo style'. He then agreed to sign. He said that he does not know Mr. Yamungu. He denied to know Yamungu and Hamis Nzovu. He denied knowledge of the death of Yamungu. DW2 Emanuel Charles admitted to be a resident of Kinyo hamlet. He said that he was arrested by the police on 21/3/2022 at 2:00Am and told that he had killed Yamungu. He said that he does not know Mr. Yamungu. He said



that Rajabu Mrisho Kakome, Hamza and Dafroza live at the hamlet and are well known to him but he does not know Mr. Yamungu and Mr. Hamis Nzovu. He added that witnesses did not associate him with the crime but Hamis Nzovu. He said that he agreed to sign because of police beatings. He denied the charges and asked the court to set him free. In cross examination he said that he had lived in the area for 5 years but did not know Mr. Yamungu and Mr. Hamis Nzovu. He accepted to know PW6 Dafroza. He insisted that he signed the statement by force after being beaten. He was hanged on a 'popo' style and got pains. He fell unconscious at the lock up but could not be given any PF3.

As it is evident from above, it is not disputed that the deceased was found dead in the river with cut hands and chopped off private parts. It is not disputed that he worked for PW6, the wife of Hamisi Nzovu. It is not disputed that there were some grudges between Hamisi Nzovu and the deceased who was suspected of having a love affair with PW6. Death and the cause of death are not disputed. Looking at the manner in which the killing was done, cut off hands and chopped off private parts and the place where the body was finally dumped, I find no doubt that those who killed him had malice. There is good evidence showing that Yamnugu was killed in a savagely

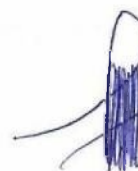


violent manner which involved the chopping off of his manhood. So this is a pure murder case which can be associated with witchcraft or revenge for love. The issue is who committed the crime?

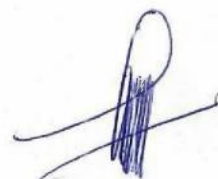
The prosecution case is based on confessional statements and evidence of the existence of grudge between the deceased and Mr. Hamisi Nzovu, the husband of PW6. Mr. Hamisi Nzovu is not an accused in court. The accused now before me confessed to commit the crime and I am invited to find them guilty based on their confessions.

I will now examine the evidence closely to see if there is good evidence to convict the accused on the offence charged. For easy of reference, I will reproduce the statements extensively. The statement of the second accused, Emmanuel Charles, reads as follows;

".... Rafiki yangu mkubwa kwa Kinyo/Mrinda ni Juma s/o Mgalalizi ambaye pia anaishi hapo Mrinda/Kinyo. Mbali na Juma s/o Mgalalizi Rafiki zangu wengine ni Juma s/o Simon aliyetokea MISHAMO, Mpanda na mwingine ni William s/o Nkambi aliyetokea Kibondo. Kuhusiana na Hamis s/o Nzovu tulifahamiana toka 2019 baada ya kukutana naye kwenye harusi ya mdogo wangu aitwaye JOSEPH S/O MAIGE ambaye ni mtoto wa Baba mdogo wakati anaoa kwa Baba Adam. Huyu Baba Adam ni kaka yake na Hamis s/o Nzovu. Baada ya kufahamiana na Hamis s/o Nzovu ndipo




tukaanza urafiki tukawa tunashirikiana kukata kuni kuwauzia wapika chumvi wa kule mrinda kwenye machimbo ya chumvi. Pia tukawa tunakunywa pombe pamoja sehemu mbalimbali. Huyu Hamis s/o Nzovu ana wake wawili ambao ni Mama Festo na Mama Wawili na mimi nina mke mmoja aitwaye HADIJA D/O SAMWEL na Watoto wawili ambao ni Charles na Schola japo kwa sasa mke wangu yupo safari alienda nyumbani kwao Mishamo kumuuguza mama yake anaumwa. mkata magogo wa mama wawili alikuwa YAMUNGU "Marehemu kwa sasa". Yamungu s/o? aliajiriwa na mama wawili kukata kuni zake ... Huyu Yamungu nilikuwa namfahamu kwa kuwa tulikuwa tunakutana kwenye pombe. Wakati Yamungu anaandelea kumkatia kuni mama wawili ikafika wakati Hamis s/o Nzovu akaanza kuhisi anafanya mapenzi na mama wawili. Baadae Hamis s/o Nzovu akawa ananiambia anaambiwa na watu kuwa Yamungu anatembea na mkewe mama wawili. Baadae Hamis s/o Nzovu alikuwa kila akilewa anasema Yamungu anamchukulia mkewe ambaye ni mama wawili. Ilifika wakati Hamis s/o Nzovu na Yamungu wakawa wanagombana mara kwa mara ikafika kipindi Hamis s/o Nzovu alimvamia Yamungu kwenye nyumba yaani chumba alichokuwa amepanga. Uadui uliendelea hadi kuuawa kwa Yamungu. ... Siku moja tarehe sikumbuki mwezi Januari 2022 tukiwa kwa Mathias s/o Kahuku kwenye kilabu cha pombe tukiwa mimi, Hamis s/o Nzovu, Lucas s/o Charles, Juma s/o Mgalarizi. Muda huo tulikuwa tunakunywa pombe aina ya gongo na ilikuwa saa 19:00hrs na tuliendelea



kunywa hadi saa 21:00hrs. Ilipofika saa 21:00hrs akatuomba tumsindikize mto Ruchugi kuna kitu ameacha kule. Muda huo anatuambia hivyo Hamis s/o Nzovu alitueleza kuwa alienda kwa mama wawili akamkuta Yamungu anamuaga kuwa siku hiyo lazima atoke kijijini pale aende porini kwenye kazi ya kukata kuni ambayo kazi hiyo anamfanyia MAMA WAWILI. Aliongeza kuwa YAMUNGU anasema hataiwe usiku vipi anasema lazima avuke mto Ruchugi. Baada ya maelezo hayo alisisitiza kuwa tumsindikize mto Ruchugi na muda huo ilikuwa imeshafika saa 22:00hrs usiku. Kabla hatujaondoka Hamis s/o Nzovu alienda kumuulizia Mama Wawili kama Yamungu ameondoka na alirudi na kutuambia kuwa tuondoke kuelekea mto Ruchugi kuna kitu anafuatilia. Tukaondoka kuelekea mto Ruchugi na wote wanne tukiwa hatuna silaha yoyote. Tulipofika mto Ruchugi na kuvukia kwa BUHANGULE kupitia daraja la miti lililopo pale. Wakati tunavuka tuliona kuna mtu mbele yetu na alikuwa tayari ameshavuka na tulitambua ni mtu kwa kuwa kulikuwa na mbaramwezi. Tulikuwa tumeshavuka, Hamis s/o Nzovu akatuambia tusimame kwanza amfuate yule mtu. Akiwa umbali wa kama hatua kumi toka tulipokuwa tumeosimama tulimuona HAMIS S/O NZOVU anampiga ngumi kwa nyuma kwa kushitukiza maeneo ya shingo. Zilianza purukushani akawa ametufuata wote watatu tukawa tunasogelea pale. Tulipofika pale, alipotuita tulihoji anapigana na nani na akasema njooni muone. Tulipofika **Hamizi Nzovu akasema huyu mtu ananitesa na maisha yake yataishia**

hapahapa. Tulipomwangalia yule mtu tulimtambua ni YAMUNGU akiwa katika hali ya ulevi na alikuwa hatoi sauti maana alikuwa amezibwa mdomo na tulitambua kwa kupitia mwanga wa mbaramwezi. Baadae Hamis Nzovu alichukua shoka alilokuwa analo YAMUNGU na kuanza kumshambulia kwa kumkatakata. Alianza kumkatakata bega la kushoto halafu akakata mkono wa kulia kwa kuutenganisha kwenye kiwiko na baadae akakata pumbu na mboo yake kwa kutumia shoka hilohilo. Wakati hayo yanafanyika ya kukatwa katwa kwa Yamungu mimi nilikuwa nimshika YAMUNGU mkono wa kushoto, Lucas yeye akashika mkono wa kulia na Juma s/o Mgalalizi alishika miguu. Yote hayo tulifanya ili kumdhibiti ... Alichana mguu wote wa suruali upande mmoja ili kurahisisha ukataji wa mboo na makende. Baada ya kufanyiwa vitendo hivyo YAMUNGU alifariki pale pale. Baadae Hamis s/o Nzovu alichukua Kamba alimfunga mguu mmoja lakini kabla ya kumfunga Kamba hiyo tulikuwa tumeshambeba hadi mwambao yaani pembeni mwa mto Ruchugi ambapo ni umbali kama hatua saba alipouawa YAMUNGU. Tulipokuwa tunamuweka na mbali na daraja la miguu la miti la mto Ruchugi na tulipomfikisha mtoni Hamis s/o Nzovu alimfunga na jiwe kwa kutumia ile Kamba aliyofungwa miguuni ili azamishwe na asielee au kuibuka. Alivyomaliza kumfunga na jiwe HAMIS S/O NZOVU alisukuma lile jiwe pamoja na mwili kwa kutumia miguu akawa amezama. Baada

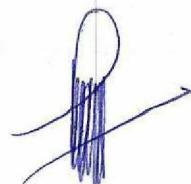


ya kuwa amezama HAMIS S/O NZOVU alichukua shoka, pumbu na mboo yake, mkono aliokuwa ameukata alioutenganisha ule wa kushoto kuenzia eneo la bega na mkono wa kulia kuanzia eneo la kiwiko nao aliuchukua. Alikuwa na mfuko mdogo wa salufeti kama wa sukari wa kilo hamsini akaweka pumbu na mboo na mikono yote miwili akawa ameondoka navyo pamoja na shoka. Alisema viungo vile anavipeleka kwake ili akavibanike. ... Hamis s/o Nzovu mwenyewe hapo kijijini anaogopeka kwa sababu inasemekana alishawahi kuua pia mtu Nguruka ambapo alimtilia sumu kwenye gongo kabla ya kumuua Yamungu. ... Ilipofika mwezi Februari katikati mwaka 2022 mwili mmoja ukatambuliwa na baadae nilishiriki mazishi ya marehemu YAMUNGU na mimi nilishiriki uchimbaji shimo wa kuzikwa mwili huo pembeni mwa mto Ruchugi. Mwili ulikuwa umeshaharibika"

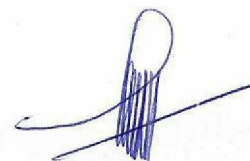
It is a narration of a story of the second accused. He admits to know both Mr. Hamisi Nzovu and Mr. Yamungu. He narrated the way they moved behind him and killed him. His role was holding the hand while Mr. Hamisi was cutting. They took him to the river where they dumped the body. It is a clear admission.

The statement of Lucas Charles reads as under:

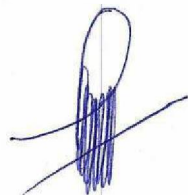
"... Nakumbuka mnamo tarehe nisyokumbuka mwishoni mwa mwezi wa 01/2022 nilikuwa katika kilabu cha pombe ... nilikuwa na Hamis s/o Nzovu, Juma s/o Gabriel @ Mgalalizi pamoja na



mdogo wangu aitwae Emanuel s/o Charles na watu wengine ambao siwakumbuki, katika kilabu hicho tulikuwa tunakunywa pombe za kienyeji aina ya gongo. Majira ya 22:00hrs Hamis s/o Nzovu alinitaka mimi na EMANUEL s/o CHARLES pamoja na JUMA S/O GABRIEL @ MGALALIZI tumsindikize kwenda nyumbani kwake kwa mke mkubwa, kwa pamoja tuliondoka nae kuelekea alikotaka tumsindikize lakini badala ya kwenda njia ya kwake alitupitisha njia nyingine, tulipofika eneo la kukaribia kuvuka katika mto Ruchugi tulimuona mtu mmoja aitwae YAMUNGU S/O? akiwa anavuka mto huo katika daraja la miti na sisi tulivuka daraja hilo na kumfikia marehemu YAMUNGU S/O?. Tulipomfikia YAMUNGU S/O ? HAMISI S/O NZOVU alimpiga marehemu ngumi ya nyuma ya shingo na kisha kumunyang'anya marehemu shoka aliyokuwa ameibeba. Alipomnyang'anya shoka hilo, ndipo **HAMIS S/O? alipomkata nayo marehemu kwenye bega la mkono wa kushoto na mkono huo ukanyofoka na marehemu kuanguka chini. Akiwa ameanguka chini HAMIS S/O NZOVU alimkata tena mkono wa kulia kwa kuanzia kwenye kiwiko kwa kutumia shoka hiyo hiyo ya marehemu na kumnyofoa kiwiko hicho. Baada ya hapo sisi wote watatu tulimshika marehemu na mimi na Emanuel s/o Charles tulishika mikono ya marehemu ili HAMIS S/O? aweze kuinyofoa ambapo mimi nilishika mkono uliokatwa kuanzia kwenye kiwiko na mdogo wangu kushika mkono uliokatwa kuanzia kwenye bega huku HAMIS S/O NZOVU**



akimalizia kuikata baadae JUMA S/O GABRIEL @ MGALALIZI yeye alipanua miguu ya marehemu na kisha HAMIS S/O NZOVU alishika sehemu za siri uume na pumbu ... HAMIS S/O NZOVU akiwa na mfuko wa sandarusi alikuwa ameuweka mfuko wa suruali yake aliuchomoa na kuviweka viungo vyote alivyovitoa kwenye mwili wa marehemu ambavyo ni mkono mzima, mkono ulioanziwa kukatwa kwenye kiwiko na sehemu za siri za marehemu, pumbu na uume...mara baada ya kumaliza kuhifadhi viungo hivyo kwenye mfuko wa sandarusi, tukiwa ng'ambo ya pili ya mto huo **tulisaidiana kwa pamoja kuubeba mwili wa marehemu na kwenda kuuzamisha kwenye mto Ruchugi ... tulimfunga kwa Kamba ya muyombo kutokea shingoni na kupitia makwapani na kisha kusimika vipande vya miti kwenye mwamba wa jiwe na kisha kamba tuliyokuwa tumemfunga marehemu kuifunga kwenye miti hiyo/vipande vya miti hivyo viwili na tulifanya hivyo kwa malengo ili mwili huo usibebwe na maji kupelekwa karibu na kiwanda kwa hiyo malengo yetu tulitaka mwili wa marehemu ukae pale pale usiondoke na maji kwa kuwa ukiwahi kuonekana watu waliopo kiwanda cha chumvi watawahi kumuona na tatizo linaweza likajulikana mapema ... Ninavyomfahamu HAMIS S/O NZOVU ana wake wawili ambao mke mkubwa anaitwa mama Yusto na Mke mdogo Mama Wawili, kwa upande wa mke mdogo amezaa nae Watoto wawili ambao ni Nzovu na Justina ... HAMIS S/O NZOVU, pia alikuwa akihisi marehemu alikuwa akifanya mapenzi na mke**



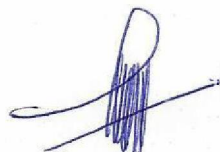
mdogo ... kitendo hicho ndicho kilichopelekea HAMIS S/O NZOVU kumuwinda YAMUNGU S/O? ili amuuwe ..."

It is also a narration which contain a clear admission that he committed the crime.

The accused denied to have made the statement voluntarily. They alleged to have been beaten and forced to sign on statements which contain words which they did not say. This is what is called a repudiated confession. A repudiated conferssion is on one which the accused denies to have made it at all, or denies making the one before the court or that the record through faulty translation, does not represent what he actually said. A retracted confession is one which an accused person admits to have made but which he says he made it under such circumstances that it must not be admitted. See **Annes Allen v. Director of Public Prosecutions**, Criminal Appeal No. 173/2007 (CAT) page 19.

The law on repudiated and retracted confessions has a long history. In the case of **Ali Salehe Msutu v. Republic**, [1980] TLR 1, the Court of Appeal stated that:

*"a repudiated confession, though as a matter of law may support a conviction, **generally requires as a matter of prudence***



***corroboration** as is normally the case where a confession is retracted.*"(Emphasis added)

The court spoke of the need to have another evidence to corroborate the confessions.

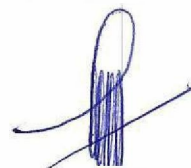
In **Hemed Abdallah v. Republic** [1995] T.L.R. 172 at page 176, it was said thus:

*"It is trite law that generally it is dangerous to act upon a repudiated or retracted confession **unless it is corroborated in material particular or unless the court after full consideration of the circumstances is satisfied that the confession cannot but be true.**"*(Emphasis added)

The Court of Appeal widened the principle by adding that if the court is satisfied that the confession contain nothing but the truth it can convict.

The case of **Geofrey Kitundu @ Nalogwa & Another vs The Republic**, (CAT), Criminal Appeal No. 96 of 2018 tried to mix the two principles. It said the following at page 16: -

*"We are alive that in the case of **Abubakari Hamis and another** Criminal Appeal No 253 of 2012, the Court underscored the need of looking for corroboration in support of the confession which has been retracted or repudiated. Yet, in the case of **Festo Mwartyagila v. Republic**, Criminal Appeal No. 255 of 2012 in which the case of **Tuwamwoi v. Uganda (1967) EA 84** was*

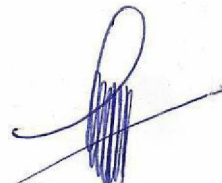


adopted with approval, it was emphasised that the court could enter conviction based on repudiated or retracted statement even if it is not corroborated, if the court is satisfied that such confession must be true”.

See also **Abdallah Rashid Namkoka V. The Republic**, (CAT), Criminal Appeal no. 206 of 2016 and **Flano Alphonse Masalu Singu vs Republic**, (CAT), Criminal Appeal No 366 of 2018. In Flano Alphonse Masalu Singu page 32 the court reaffirmed the position when it said:

*"The law is that where an accused person retracts his confession the court can convict him on the uncorroborated confession provided that **it warns itself of the dangers of acting solely on such confession and if it is fully satisfied that the confession cannot be but true.**" (Emphasis added)*

So, in principle a court can convict on uncorroborated confession if it warns itself of the dangers of acting on uncorroborated confessional statement and if it is satisfied that the confession cannot be but the truth of what happened. I will add this. That the court should also check the demeanour of policemen who appeared before it. It should check their faces, stories and mode of response to questions and be satisfied that their words are worth of belief. If it will believe them, it can proceed to hold that the statements were not concocted and contain what happened. I had that chance in this case.



Having examined the demeanour of policemen who appeared before the court, I was satisfied that they were speaking the truth. I could not doubt them. They were led by PW5 ASP Meneas Temba who has appeared before me on several cases. PW5 appears to be a serious police officer who knows his job and whom, I think, had no reason to fabricate the statements against these young boys. And looking at the contents of the statements, I could see no way in which the police could get the details unless they were told by the accused. They also resemble what was said by witnesses on the features and location of the body. The statements, in my view, contain nothing but the truth of what happened. The issue of torture was ruled out during trial within trial and I cannot have a different opinion.

On the other hand the accused's defence appear to contain nothing but lies. I will point two areas. One, the accused agree that they know the civilian witnesses who came before the court. They have lived together at the village for many years. PW1 is their hamlet chairman. If that is the case, why did they deny to know Mr. Hamis Nzovu, the husband of Dafroza and Mr. Yamungu who worked for PW6? Hamis Nzovu and the deceased are well known by PW1 and PW6 whom they agree to know. They had no reason to deny to know them unless they have an evil mind. Two, Yamungu was found



floating in the river and buried at the village. They are saying that they were in the village on the day. How comes that they were not aware of this fact? Burial ceremonies in the village are common issues which everybody must attend. It could not be possible to be in the village and fail know this fact. It is obvious that the accused said a lie in their defence. A lie of the accused take the prosecution case a stage ahead. See **Felic Lucas Kisinyila v. The Republic**, Criminal Appeal No. 129 OF 2002

Having gone through the confessional statements and examined the demeanour of policemen who appeared before me, and having warned myself of the dangers of basing a conviction on uncorroborated confessional statements, and having been convinced that the confessional statements contain nothing but the truth, I find you the said Lucas Charles and Emanuel Charles guilty of murder as charged and convict you accordingly.



L.M. Mlacha

Judge

13/7/2023

SENTENCE

There is only one sentence for murder which is death by hanging. Personally, I don't want this sentence but my hand are lied by the law and the judial oath. I sentence you the said LUCAS CHARLES and EMANUEL CHARLES to suffer death by hanging.

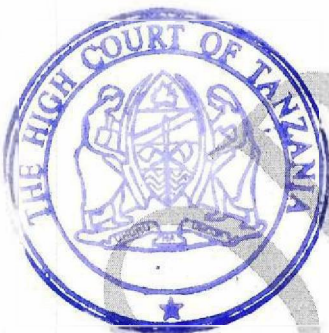



L.M. Mlacha

Judge

13/7/2023

Court: Judgement delivered. Right of Appeal Explained.




L.M. Mlacha

Judge

13/7/2023