

**IN THE HIGH COURT OF TANZANIA  
MUSOMA DISTRICT REGISTRY  
AT MUSOMA**

**CRIMINAL SESSIONS CASE NO. 114 OF 2021**

**REPUBLIC**

**VERSUS**

**STELLA LAZARO @ MAMA ANGEL**

**JUDGMENT**

03 & 14 July, 2023

**M. L. Komba, J.:**

In this case, the accused person **Stella Lazaro @ Mama Angel** is arraigned before this court for the offence of manslaughter contrary to section 195 of the Penal Code, Cap. 16 R. E. 2022. According to the information filed in this court, it is alleged that, on 15/09/2017, at Kirumi village in Butiama District, while in a quarrel with another person, using a stick the accused beat William (the deceased) who volunteered to rescue the situation. The deceased fell down unconsciously and a few hours later he died.

To prove this story for accused person to be convicted, the prosecution had a total of four witnesses namely, Nyamtondo Mtegi (PW1), Pendo William (PW2), Ass Insp Castory (PW3) and Bismama Leo (PW4). The

prosecution had one exhibit which is the deceased's post-mortem report (Exhibit P1).

During the trial, the Republic was represented by Ms. Agma Haule and Mr. Zarubabel Ngowi both learned State Attorneys. The accused enjoyed the legal service of Mr. Emmanuel Gervas, an advocate.

On the prosecution evidence, **PW1** testified that it was on 15/09/2017 around 20:00hrs she was about to sleep then she heard voice of Mama Angel (the accused) and William from outside, the voices made her get outside and stand nearby. When she paused, PW1 saw Mama Angel going inside and came out with a wooden spoon and beat William in stomach. William felt down. According to this witness that day the moon was bright so she managed to see clearly as she was standing just 20 footsteps from the place where accused and William were.

It was her testimony that after that incident she called the wife of William (PW2) who took William and they went inside the house. Before PW2 went inside, this witness informed PW2 that it was accused who beat William. Witness lives in neighborhood with Mama Angel who used to sale *Mabuju* (local beer) and confirm to know her well and she pointed Mama Angel while at the dock.

During cross examination witness elaborated words she heard while inside. That Mama Angel said '*nitakupiga*' meaning I will beat you and then she heard the voice of William when he was falling down '*umeniua*' meaning you have killed me. When William shouted those words, he was falling down. She informed this court further that she did not remember how William was dressed she only remembered appearance of Mama Angle who worn *dera* (a long dress). She further said there were three people at the scene who are William, Mama Angel and Wandiba. It was her testimony that William was helped by his wife and children to stand up.

It was the testimony of PW2 that she was called by PW1 who informed her that her husband, William was beaten by Stella and PW2 saw her husband could not stand up. When she went closer, her husband told her that he was beaten by Stella in his ribs (*ubavuni*). She took William inside the house then he died. It was her further testimony that, she phoned police who went to the village and took the accused person. In the following morning police officers went in the village with (PW4) a doctor who examined the body of deceased. This witness testified to know Stella Lazaro who was her neighbour and identified her while on the dock.

During cross examination this witness informed the court that in the fateful night she went to sleep leaving her husband outside without knowing where he was going. She found her husband laying down and he said she was beaten by Stella without elaborating further he was beaten by what instrument and it was PW1 who informed this witness that her husband was beaten by wooden spoon and that this witness was assisted by Monica (her daughter) to took William inside. She denied to phone police and testifies that it was villagers who called police and denied to took her husband inside as she was not able and shocked so William was taken by villagers inside his house. She further informed the court that Wandiba was at the scene but he told her nothing. He confesses her husband used to drink local beer but, in that day, he was not drunk and denied to inform police that her husband was beaten by stick. She further denied that her husband was not drunk.

Following her testimony defence counsel prayed to tender the statement of PW2 which was recorded in police on date 19/09/2017 and it was admitted as Exh. D1.

PW3 a Police Officer who interrogated the accused on 16/09/2017 and he was informed by the accused that there was a dispute between her and her lover called Anthony Keya. While arguing with Anthony then

William emerges and wanted to solve the dispute. The accused asked William if he wants to join effort with her lover and she decided to go inside and took a wooden spoon, beat William and he fall down. He further informed this court that on 20/09/2017 he handled a case file by OC-CID to investigate the crime and discovered that the crime occurred on 15/09/2017 and that the accused was arrested at 01.30 by good Samaritans and he managed to identify accused in court.

During cross examination he informed this court that he believes accused is the one who commit crime as she was seen by the wife of the deceased and neighbors. He further informed this court that deceased informed his wife that he was beaten by Stella by using *mwiko* although he did not saw the said *mwiko* but strongly believe on the deceased's wife statement. As investigator he testified that at the scene there were four people who are William (deceased), Wandiba, Anthony Keya and accused.

PW4 who is a clinical officer testified that on 16/09/2017 he went to Kirumi village where he found police officers and village chairman who requesting him to examine the dead body. He found the deceased had a swallow stomach suggesting that he was beaten by a heavy object leading to internal bleeding. He said he discover liver was affected

much. In his examination although he did not operate the body neither use any equipment for examination, he insisted that there was internal bleeding of blood and not water and that he did not witness the said blood inside the stomach.

The prosecution case was marked closed and the accused was required to enter her defence in accordance with section 293(2) of the Criminal Procedure Code Cap 20 R. E. 2019 after being found with a case to answer. The defence case was opened and the accused testified as DW1 (Stella Lazaro).

In her defence DW1 informed this court that on 15/09/2017 at night she had a fight with Batili who drunk *mabuju* and did not pay. Batili and William (the deceased) were drinking together outside so deceased witnessed the fight and salvaged them. Following the shout, Pendo (PW2) and her daughter came and went off with William. At night around 01:00 hrs she heard PW2 calling Vero and inform that her husband is not well he is roaring, she went at PW2 house and following the condition of William they raised an alarm and relatives came. When asked PW2 what was wrong she replied they have to ask Mama Angel (accused), that is when she was told to be under arrest and taken to Mazami police post and in the following day he was taken to Butiama

Police station. During cross examination she maintained that he had a fight with Batili and not William although she confirmed that William is died in the night of 15/09/2017.

Upon closure of defence case parties made final submission and defence counsel submitted that they had one witness, accused herself while prosecution had four (4) witnesses. The defence counsel, submitted that it was PW1 who informed this court that she saw accused beating deceased with *mwiko* and she told PW2 the same that it was *mwiko* which was used. But PW2 informed this court that she was told by her husband that he was beaten by stick and on 30/06/2023 while PW2 was testifying in court informed the court that should not consider what was recorded while in police as she was confused.

He further submitted that PW1 informed she saw blood but later on she said she was informed by doctor (PW4). While in court PW 4 informed this court that he did not saw blood rather he made finding that there was internal bleeding. PW3 investigator give a different number of people at the scene contrary to what was testified by PW1. And finally submitted that as per accused defence, deceased solved the fight between Batili and accused and that prosecution failed to prove the offence beyond reasonable doubt.

Ms. Agma for republic submitted that they had an eye witness who is the key witness and that according to section 143 of the Evidence Act there is no fixed number of witnesses required to prove the offence. She said PW1 managed to cover the night identification with all elements as elaborated in the case of **Chacha Jeremia Muniri and three others vs. Republic**, Criminal Appeal No. 551 of 2015 and in **Waziri Amani vs. Republic** [1980] TLR 250. PW1 explained source of light, the distance and familiarity with accused as she was selling *mabuju* and managed to name the accused to PW2 in the same night as provided in the case of **Marwa Wangiti**. It was her submission that although the postmortem report was not admitted as exhibit, both sides agree that William died in the night of 15/09/2017.

It was the submission of State Attorney that shortcomings which may be found does not go to the root of the case as was in the case of **Mohamed Said Matula vs. Republic** [1995] TLR 3. In the case at hand, it was used a blunt object. She further submitted that defence does not shaken the prosecution and she was of the considered view that republic managed to prove the offence to the required standard.

Having considered the prosecution's evidence, the major question for determination by this court is whether the prosecution proved the case



beyond reasonable doubt. I should make it clear that, the law imposes an obligation for the prosecution to prove the case beyond reasonable doubt as provided under section 3 (2) (a) of the Evidence Act, Cap. 6 R.E. 2019 that;

*'A fact is said to be proved when- (a) In criminal matters, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists;'*

It implies that the prosecution evidence must be so convincing that no reasonable person would ever question the accused's guilt. See **Anatory Mutafulungwa vs. Republic**, Criminal Appeal No. 267 of 2010, Court of Appeal of Tanzania and **Festo Komba vs. Republic**, Criminal Appeal No. 77 of 2015, Court of Appeal of Tanzania (both unreported). The stance was fortified in the **Mohamed Matula vs. Republic** (supra) where the Court insisted that;

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

Now, in this case, the accused was charged under section 195 of Cap 16 which establishes the offence of manslaughter. It is therefore pertinent

that the offence must be proved before a conviction can be entered against the accused.

It is obvious that the evidence to consider in order to determine whether the accused is responsible for the deceased's death although in lesser offence rests on the testimonies adduced by PW1 who was an eye witness who witnessed the accused assaulted the deceased, **William**.

However, after I closely listen and studied the evidence of PW1 and PW2 I found a lot of discrepancies that tainted the whole prosecution evidence. **First**, PW1 told this court that on material date at night she heard voices of accused and William from outside then decide to go outside and found accused and William. Accused went inside and come out with *mwiko* and beat William. When she was asked what words she heard, PW1 replied she heard William while falling down saying 'Stella *unaniua*' meaning Stella you are killing me. How then can PW1 said she heard voices while inside her home while the only words uttered by William are those when he was falling.

**Two**, PW1 informed his court that he saw accused beating the deceased with *mwiko* and she told the same PW2. But deceased before facing his death he informed his wife, PW2, that he was beaten with a stick. Prosecution denied this court right to assess what was used to beat the

deceased as did not tender in court the said *mwiko* for them to clear what was it.

**Three,** PW1 testified she saw accused while committing the crime and she was the one informed the wife of William, Pendo (PW2) who also testified that she was told by PW1 that it was accused who beat her husband, on the other side, investigator of this case informed this court that among the people who saw the crime include the wife and neighbors. How many eye witnesses were there. This court asks whether there is anybody who actually saw what made William to fall down.

**Four,** PW1 informed this court that it was PW2 who took her husband and went inside their house and PW2 testified the same. During cross examination PW2 informed this court that neighbors assisted her to took her husband inside as she was shocked. It is not clear how William went inside, was he assisted by his wife or assisted by neighbors? Was he real assisted to go inside or walked himself? Till when prosecution close their case these questions were not answered.

**Five,** PW1 testified that when accused beat William there were three people outside who are accused, William and Wandiba. PW4 who was investigator of this case testified that when the crime occurred there

were four people who are accused, William, Wandiba and Antony. I failed to choose whom to believe among these two prosecution witnesses.

**Last**, PW2 repudiate her own testimony, she informed this court that she was the one who called police by her phone who came and took accused, but later on she denied to calling police and informed it was villagers who called police.

As I stated early above, the cardinal principal in criminal law is that the burden of proof always lied on prosecution shoulders. There are plethora authorities on this stance. See the decision of the Court of Appeal in **Galus Kitaya vs. The Republic**, Criminal Appeal No. 196 of 2015 CAT at Mbeya where it was held as follow;

*"It is cardinal principle of criminal law that the duty of proving the charge against an accused person always lies on the prosecution.*

*In the case of **John Makolebela Kulwa Makolobela and Eric Juma @ Tanganyika vs. Republic** [2002] T.L.R. 296 the Court held that: "A person is not guilty of a criminal offence because his defence is not believed; rather, a person is found guilty and convicted of a criminal offence because of the strength of the*

*prosecution evidence against him which establishes his guilt beyond reasonable doubt"*

The way prosecution builds their case, in the case at hand, as elaborated in a foregoing paragraph, it raises a gigantic doubt due to the contradictions between material witnesses PW1 and PW2. I am of the views that, the contradictions and doubts arose between PW1 and PW2 and PW3 evidence are not minor, they go to the root of the case. This court is left without answers on what cause deceased to fall down, what weapon was used if at all deceased was beaten, who assisted deceased to go inside and many more. It is the settled position that contradiction can be considered as fatal if it is material going to the root of the case. See **Sebastian Michael & Another vs Director of Public Prosecutions (Criminal Appeal No. 145 of 2018) [2021] TZCA 37 (25 February 2021)** and **Nelson Mang'ati vs Republic (Criminal Appeal No. 346 of 2017) [2018] TZCA 54 (2 July 2018)**.

In the case at hand, I found hardly to believe which witness between PW1 and PW2. PW1 stated that William was beaten by *mwiko* while on the other hand William informed his wife that he was beaten by stick. Beating is said to be source of all of these, what was used is not

explained. These witnesses make their testimonies to contain lying at some points and as indicated this court denied access of the weapon to make necessary assessment. This contradiction is not minor as it can answer the question whether the accused attacked the deceased and by using which kind of weapon. I find these as a major and fundamental contradiction which raises genuine doubt and from the practice of our courts, doubts are to be resolved in favour of the accused person. There is a large family of precedents insisting on the subject (see: **Enock Kipela vs. Republic**, Criminal Appeal No. 150 of 1994; **Faustine Kunambi vs. Republic**, Criminal Appeal No. 32 of 1990; **Mohamed Said Matula vs. Republic** [1995] and **Marwa Joseph @ Muhere & Another v. Republic**, Criminal Appeal Case No. 96 of 2021).

The Court of Appeal in the case of **Mohamed Said vs. The Republic**, Criminal Appeal No. 145 of 2017 held that a witness who tell a lie on a material point should hardly be believed in respect of other points. See also **Zakaria Jackson Magayo vs. The Republic**, Criminal Appeal No. 411 of 2018, CAT at Dar es salaam.

In the upshot, I have found critical deficiencies in the prosecution case as their testimonies are tainted with contradictions, and it is not safe for the court to rely upon their testimonies. Therefore, I am left with no

solid evidence to support the conviction of the accused person for the offence charged. For the reasons I endeavoured to explain above, I am of the opinion that the prosecutions have failed to prove their case beyond reasonable doubt as required by the law.

Eventually, I find **STELLA LAZARO @ MAMA ANGEL** not guilty and acquit her of the offence of manslaughter contrary to section 195 of the Penal Code [CAP 16 R.E 2019]. I order the accused person to be released from the prison unless he is otherwise lawful held.



  
**M. L. KOMBA**

**Judge**

**14<sup>th</sup> July, 2023**

Right of appeal is fully explained.

  
**M. L. KOMBA**

**Judge**

**14<sup>th</sup> July, 2023**