

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOSHI)
AT MOSHI
CRIMINAL SESSIONS CASE NO. 35 of 2020
REPUBLIC
VERSUS
**PETER s/o MANGONG'O AWANAHURUMA @ DESTRATION HONEST SHAYO
@ DESTROTON HONEST @ DEO STRATONE HONEST SHAYO @ STRATONE
HONEST @ OMBENI**

JUDGEMENT

Date of Last Order: 10.08.2023
Date of Judgment: 28.08.2023

MONGELLA, J.

**PETER S/O MANGONG'O AWANAHURUMA @ DESTRATION HONEST SHAYO
@ DESTROTON HONEST @ DEO STRATONE HONEST SHAYO @ STRATONE
HONEST @ OMBENI** is faced with a charge of murder contrary to section 196 and 197 of the Penal Code, Cap 16 R.E. 2002. The particulars in the charge state that the offence occurred on the 6th day of February 2020 at Kilema Pofu village within Moshi district-Kilimanjaro region whereby the accused did murder one, **Samwel Honest Shayo**, his biological brother. The facts presented by the prosecution further state that the accused committed the offence in anger following his goat being slaughtered by the deceased. That, when he found out that his goat had been slaughtered, he cut the deceased on the neck using a machete. The deceased bled severely leading to his death.



The accused distanced himself from the charge. This shouldered the prosecution with the burden of proving the charge beyond reasonable doubt as required under the law. In discharging its obligation, the prosecution mounted five witnesses and four exhibits. Considering the evidence by the prosecution, I find the death of the deceased, Samwel Honest Shayo being proved as unnatural. PW1, the deceased's mother and PW3, the deceased's cousin brother, testified as to the death and burial of the deceased. Exhibit PW3 (Postmortem Report) tendered by PW4 further corroborated the testimony of PW1 and PW3 on the deceased's death. The question remaining therefore is whether the charge against the accused has been proved by the prosecution beyond reasonable doubt.

PW1, Lillian Honest Shayo, like I stated earlier, is the biological mother of the deceased. She as well testified to be the biological mother of the accused. It was her testimony that the accused is her last-born child known by the names Destratone Honest Shayo, but usually called Destratone or Ombeni. She said that, on the material day, that is, on 06.02.2020 while she was cleaning the surroundings of her home, she told the deceased to slaughter a baby goat that was sick and give the goat meat to the dogs. That, the goat belonged to the accused, but could not stand or feed from the day it was delivered. The deceased did as ordered whereby after slaughtering the goat he put it on top of the dog hut. By that time the accused was somewhere cutting grass. When he went back home and found the goat slaughtered, he asked PW1 as to who did that. The accused told him that it was the deceased and he did that after seeing the goat was not well. That, the accused told PW1 that he shall as well cut the neck of the person who slaughtered his goat. PW1



told him to let it go as he could not kill someone for a goat. The accused told PW1 that she shall see.

PW1 continued to testify that after her conversation with the accused, she continued with her chores whereby it was between 09 and 10 hours in the morning. She said that, after a while, she heard the deceased calling her saying that Ombeni (the accused) had cut him. That, she ran to where they were and found the deceased trying to get the machete from the accused's hands while bleeding severely. PW1 further said that she told the deceased to leave the accused as he (the deceased) was bleeding severely. She then called her daughter in law, one named "Lucy" to come and see what was happening. Lucy came out and when she saw the deceased bleeding severely, she ran out to call her husband. She added that the accused then went inside the house leaving the deceased laying on the ground. Later, Lucy arrived with her husband and they took the deceased to hospital. That, when Lucy's husband came from the hospital to arrest the accused, he informed her that the deceased had already passed away.

PW1 identified the accused by touching her in the dock repeating that the accused is her last-born. That, the accused is her sixth and last born and they used to live together at home before the incident. When questioned by the court as to the mental state of the accused, PW1 stated that the accused was of good mental health and had no record of any mental illness.

PW2, was one, **G.8990 D/CPL Benjamin**. He recorded the accused's cautioned statement. He testified that the accused told him that his name was Peter Mang'ong'o Awanahuruma @ Stratone Honest, aged



24 years and of Maasai tribe. He identified the accused in the dock as the one he recorded the statement of and stated that the accused admitted into committing the offence following the deceased slaughtering his goat. That, the accused confessed into cutting the deceased on the neck with a machete. The defence opposed admission of the cautioned statement on the ground that the accused never made any statement. However, after conducting trial within trial, the cautioned statement was admitted as "exhibit P2."

PW3 was the accused's cousin named **Cletus Optati Shayo**. He said he was informed of the incident by one, Oscar Honest Shayo, the brother of both the accused and the deceased. That, Oscar informed him that the deceased slaughtered the accused's goat without his consent something which led to the accused cutting him on the neck with a machete. That, the incident occurred at their home. PW3 said that he boarded a bus to Moshi from Dar es Salaam where he lives on 10.02.2020. That, upon reaching home, the family sent him and one, Gasper Shayo to the police station and to witness examination of the deceased's body at the hospital. They went to the hospital with officer Neema. After the deceased's body was examined, the doctor showed them the body part which was cut. He said, it was on the neck. After that they were given the body for burial whereby, they buried the deceased on 11.02.2020 at Kilema-Pofu area. PW3 identified the accused in the dock as "Stratone." He said that he had known him from childhood as his cousin as the accused's father is his uncle.

The prosecution further presented one, **WP 6346 D/CPL Neema (PW5)**. This is the police officer who investigated the murder incident. PW5 testified that in the course of investigation, she discovered that all the



witnesses in the case were related to the accused. She said that the witnesses whose statements were recorded were one, Oscar Honest Shayo, the accused's brother, Lucy Oscar Shayo @ Mary Jacob (the wife of Oscar Honest Shayo), and Lilian Honest Shayo, the accused's biological mother. That, she as well discovered that the accused and the deceased were siblings. That, she further noted that upon being interrogated by the police, the accused stated his names to be Peter Mang'ong'o Awanahuruma or Destratone Honest Shayo. In the circumstances, she said, she asked the accused's mother (Lilian) to bring the accused's birth or baptism certificate. That, it was the baptism certificate that was brought and it bore the names Stratone Honest Shayo.

She testified further that, she asked the accused's mother about the names "Peter Mang'ong'o Awanahuruma" and she told her she did not recognise those names. Thereafter, she fetched the accused from the lockup room and brought him to Lillian. Lilian recognised the accused as her son named Stratone Honest Shayo and said that they also call him by the nickname "Ombeni." Just like PW3, PW5 also testified to have witnessed the postmortem examination of the deceased's body. She as well identified the accused in the dock as the one concerned with the murder incident she investigated.

PW5 further tendered the statement of Oscar Honest Shayo and of Lucy Oscar Shayo following Oscar being demised and Lucy having relocated to somewhere she could not be found. The statements of Oscar Honest Shayo and Lucy Oscar Shayo were admitted without objection from defence side as "exhibit P4 and P5" respectively.



In his defence, the accused denied committing the offence. He said that he was arrested at a bus stand in Arusha on 06.02,2020 at around 09:00am. That, at that time he had finished his work of selling water and biscuits and boarded a bus to Dodoma whereby there came two police officers, introduced themselves and told him that he was under arrest. That, he kept quiet, but they held his hands and put him in a vehicle. That, they took him straight to Karanga prison in Moshi without telling him his offence. At the prison, he was kept with fellow remandees. Then his name was called by the supervisor who told him that he was faced with murder charge, but was never told who the deceased was. That, he stayed in prison until the date he was brought to court for the murder charge and that is when he came to know the name of the deceased.

He insisted that he did not commit the offence and prayed to be set free. On cross examination, he said that he was in good condition when brought to Moshi. He said he had no any quarrels with any of the prosecution witnesses. He insisted that his name was Peter Mang'ong'o. When questioned by the court, he said that he was raised in Arusha and is a Maasai by tribe. He denied Lillian (**PW1**) being his mother or even knowing Cletus Optati (**PW3**). He insisted that he did not commit the offence.

Both parties were given the opportunity to make final submissions whereby they filed written final submissions on 17.08.2023 as ordered by the court. The submission by the prosecution was drafted and filed by Ms. Bertina Tarimo, learned state attorney whereas the defence submission was drafted and filed by Mr. Yusuf Mwangazambili, learned advocate.



Starting with the prosecution side, Ms. Tarimo framed 5 issues for determination of the matter being: (i) *whether Samwel Honest Shayo died*; (ii) *whether the killing was actuated with malice aforethought*; (iii) *whether the accused person was identified at the crime scene*; (iv) *whether the use of alias can exonerate the accused person*; and (v) *if the above is answered in the affirmative, whether the accused person is responsible for the death of the deceased*. I shall not consider the submission on the first issue as the same has already been resolved in this judgment and there is no dispute thereof.

With regard to the second issue, Ms. Tarimo had the firm view that the killing of Samwel was actuated with malice aforethought. She had that stance on the argument that throughout the proceedings, the fact that the deceased was murdered has not been contested. She cited **section 200 (a) of the Penal Code, Cap 16 R.E. 2022** which defines malice aforethought to include the intention to cause death or to do grievous harm. She contended that the accused had malice to kill Samwel Honest Shayo by inflicting a serious bodily injury on him, which was after his statement that "*since the deceased had slaughtered the goat, he will also slaughter him like a goat*" and he acted afterwards. She referred the court to the testimony of PW1 and exhibit P4 and P5, the statements of Oscar Honest Shayo and Lucy Oscar Shayo, respectively, which contain such testimony. She further referred the case of **ENOCK KIPELA vs. REPUBLIC**, Criminal Appeal No. 150 of 1994 (CAT at Mbeya, reported at Tanzlii), and that of **ELIAS PAUL vs. REPUBLIC**, Criminal Appeal No. 7 of 2014 (unreported).

On the third issue she had the stance that the accused was identified at the crime scene by PW1 who went immediately to the crime scene and



found the deceased bleeding and struggling to take the machete from the accused. She also referred to the statement of Lucy Oscar Shayo (exhibit P4), which showed that Lucy found the accused at the crime scene holding a machete stained with blood and the deceased bleeding from the wound. She considered PW1 an eye witness.

The 4th and 5th issues were argued collectively. Ms. Tarimo argued that PW1 testified that the accused is her son and she was present at the time the crime was committed, and also identified the accused in the court room. That, the accused was also identified in court by PW2 who interrogated him, and by PW3 and PW5. She added that the accused never cross examined PW1 and PW3 on the fact that they knew him and that he was the one who killed the deceased. She referred the case of **NYERERE NYAGUE vs. REPUBLIC**, Criminal Appeal No. 67 of 2010, which settled the principle that failure to cross examine a witness on certain matters serve as admission of the same.

Ms. Tarimo further challenged the defence evidence for containing general denials whereby the accused had denied everything including his mother (PW1). She referred the court to the case of **LEONARD JOSEPH @ NYANDA vs. REPUBLIC**, Criminal Appeal No. 186 of 2017, which ruled that *"a general denial is inherently a weak defence, it is negative and self-serving."* She stated that the accused testified to have been arrested in Arusha by prison officers and later changed stating that he was arrested by police officers and taken straight to the prison where he was interrogated. Ms. Tarimo, in the circumstances, had the opinion that the accused lied in his oral confession and cautioned statement about his names, the manner he was arrested and about the place he was arrested and interrogated thereby citing the case of **FELIX LUCAS**



KISINYA vs. REPUBLIC, Criminal Appeal No. 129 of 2002, which ruled that lies of the accused person can corroborate the prosecution case.

She further argued that the accused, during interrogation, accepted to have cut the deceased, but during his testimony in court he denied ever being at the crime scene and distanced himself from having anything to do with the deceased. However, she reiterated her point that the accused failed to cross examine PW1, her mother, on the testimony she gave. In that respect, Ms. Tarimo had the firm conclusion that the prosecution proved the offence against the accused beyond reasonable doubt. She prayed for the court to find the accused guilty of the offence of murder, convict and sentence him accordingly.

In the defence submission, Mr. Mwangazambili, had the firm stance that the offence against the accused has not been proved beyond reasonable doubt by the prosecution. First, he disqualified the evidence of PW1 for being contradictory. Identifying the contradictions, he said that while in examination in chief, PW1 stated that the accused told him that he shall as well cut the deceased with a machete and she proceeded with her chores and later Samwel went to her telling her that the accused had cut him; in cross examination, PW1 stated that he saw the accused hitting the deceased with the machete.

Mr. Mwangazambili further challenged "exhibit P2," the cautioned statement of the accused person tendered by PW2. He challenged the exhibit on the ground that PW2 did not present any certificate in terms of **section 57 (3) (a) and 4 (a) of the Criminal Procedure Act, Cap 20 R.E. 2019**. He further referred the court to a Court of Appeal decision in the case of **TUMAINI FRANK ABRAHAM vs. REPUBLIC**, Criminal Appeal No. 40



of 2020; and that of **IBRAHIM ISSA & 2 OTHERS vs. REPUBLIC**, Criminal Appeal No. 159 of 2006 in support of his argument. He thus concluded that exhibit P1 cannot be used to corroborate other evidence by the prosecution as itself needs corroboration. That, the purpose of corroboration is to confirm the evidence which is sufficient. He referred the case of **MBUSHUU @ DOMINIC MNYAROJE AND ANOTHER vs. REPUBLIC** [1995] TLR 97.

Mr. Mwangazambili further challenged the prosecution evidence for failure to furnish the machete which was stated to have been used by the accused to cut the deceased. In concluding his submission, he referred to **section 3 (2) of the Evidence Act, Cap 6 R.E. 2019**, which provides that in criminal matters a fact is said to have been proved by the prosecution when the court is satisfied that the prosecution has proved the existence of the fact beyond reasonable doubt. He considered the prosecution evidence insufficient to prove the charge of murder against the accused to warrant legal conviction. He prayed for the accused to be discharged.

In consideration of the prosecution evidence, I can say with certainty that there was no eye witness to the act of cutting the deceased. PW1, who I consider a strong witness in the case, found the deceased already cut and bleeding and struggling to grab the machete from the accused's hands. PW1 went to the scene after hearing the deceased crying for help saying that he was cut by the accused. The act of finding the deceased bleeding from the wound and struggling to grab the machete from the accused is very strong circumstantial evidence that it was the accused who committed the act. It is trite law that for a conviction to be based on circumstantial evidence, such evidence must



be undoubtedly connecting the accused to the commission of the offence. In the case of **ECKSEVIA SILASI AND ANOTHER vs. THE REPUBLIC**, Criminal Appeal No. 93 of 2011 (CAT at Mtwara, unreported), the Court of Appeal while quoting its previous decision in **SHABANI ABDALLAH vs. THE REPUBLIC**, Criminal Appeal No. 127 of 2003 held:

"The law on circumstantial evidence is that it must irresistibly lead to the conclusion that it is the accused and no one else who committed the crime."

In the case of **MOHAMED SELEMANI vs. THE REPUBLIC**, Criminal Appeal No. 105 of 2012 the Court also while quoting a decision in an Indian case of **BALWINDER SINGH vs. STATE OF PUNJAB**, 1996 AIR 607 held:

"In a case based on circumstantial evidence the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, however strong they may be, to take the place of proof."

It also quoted in approval the case of **R. vs. KIPKERING ARAP KOSKE AND KIMURE ARAP MATATU** (1949) 16 E.A.L.R 135 whereby the Eastern Africa Court of Appeal held:

"That in order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than of his guilt, and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused."

Apart from PW1 finding the deceased struggling to take the machete from the accused, "exhibit P4" further shows that Lucy Oscar Shayo also found the accused holding the machete while the deceased laying down bleeding. Exhibit P4 was admitted without objection from the defence following the prosecution's prayer to tender the same under **section 34 (1) & (2) (a-e) of the Evidence Act, Cap 6 R.E. 2022** following Lucy moving to a place she could not be located.

In addition, according to the testimony of PW1, the deceased mentioned the accused as the person who cut him. In accordance with **section 34 (a) of the Evidence Act**, the deceased made a dying declaration before PW1. For ease of reference the provision reads:

"34. Statements, written or oral, of relevant facts made by a person who is dead or unknown, or who cannot be found, or who cannot be summoned owing to his entitlement to diplomatic immunity, privilege or other similar reason, or who can be summoned but refuses voluntarily to appear before the court as a witness, or who has become incapable of giving evidence, or whose attendance cannot be procured without any amount of delay or expense which in the circumstances of the case appears to the court to be unreasonable, are themselves admissible in the following cases-

(a) when the statement is made by a person as to the cause of his death as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, whether the person who made them was or was not, at the time when they were made under expectation of death, and whatever may be the nature of the



proceeding in which the cause of his death comes into question"

The prosecution, through PW2, tendered the accused's cautioned statement in which he confessed killing Samwel Honest Shayo, the deceased in this case. The statement was however, retracted/repudiated by the accused, who denied making any statement to the police. He claimed that he was made to sign a document he did not know the contents of. After conducting trial within trial, the court found the statement to have been made by the accused and went on to admit it as "exhibit P2." The law is trite that the court can rely on a retracted/repudiated confession in convicting an accused where the same is corroborated by another independent evidence. See: the celebrated case of **TUWAMOI vs. UGANDA** (1967) EA 84, in which the Court provided the warning and consideration to be taken by the court in dealing with a retracted/repudiated confession of an accused person. It held:

"A trial court should accept with caution a confession which has been retracted or repudiated or both retracted and repudiated and must be fully satisfied that 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 act on the confession if corroborated in some material particular by independent evidence accepted by the court. But corroboration is not necessary for 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."

Further, in the case of **HEMED ABDALLAH vs. REPUBLIC** [1995] TLR 172 it was held that:



"Generally, it is dangerous to act upon a repudiated or retracted confession unless it is corroborated in material particulars or unless the court, after full consideration of the circumstances is satisfied that the confession must but be true."

See also: **YUSTAS KATOMA vs. THE REPUBLIC** (Criminal Appeal No. 242 of 2006) [2008] TZCA 38 TANZLII. In the matter at hand, the testimony by PW1 corroborates the averments in the cautioned statement to the effect that the accused cut the deceased with a machete which caused his death.

In defence, the accused denied almost everything connecting him to the charge. He denied cutting the deceased with a machete leading to his death or knowing or even being related to the deceased. He denied PW1 being his biological mother or even knowing her. He denied being arrested at Kilema-Pofu area saying that he was arrested at Arusha bus stand whereby he had boarded a bus to Dodoma. He as well denied his names being Destratone or Stratone or Ombeni as stated in the charge or testified by prosecution witnesses, particularly PW1 and PW3.

Under the law, every witness to credence unless there are cogent reasons not to believe the witness. See: **DANIEL MALOGO MAKASI & 2 OTHERS vs. THE REPUBLIC** (Consolidated Criminal Appeals No. 346 of 2021[2022] TZCA 230 TANZLII. In that respect, the credence to the witnesses ought to be accorded to both sides of the case, that is, to the prosecution and the defence. See: **EFESO WASITA vs. THE REPUBLIC** (Criminal Appeal No. 408 of 2020) [2023] TZCA 42. I have examined and considered the evidence by the accused, but I find the same not credible on the following observation.



PW1 testified that the accused is her biological son. Her sixth and last born. She as well identified the accused in court by touching him. I find no reason to doubt the credibility of PW1 as her testimony was not shaken in any way by the defence. The defence never cross examined PW1 regarding her asserted relationship with the accused thereby rendering acceptance of her statement. The law is trite that failure to cross-examine on a fact amounts to admission of such fact as true. See **DAMIAN RUHELE vs. REPUBLIC** [2012] TZCA 160; **NYERERE NYAGUE vs. REPUBLIC** [2012] TZCA 103; and **KANAKU KIDARI vs. REPUBLIC** [2023] TZCA 223. The accused's denial of PW1 is found to be an afterthought in an endeavour to escape liability. Further, I find PW1 having no reason to implicate the accused, her own biological son, by stating lies in court on his involvement in the death of the deceased. In fact, she is the one risking to lose two sons in the incident. When cross examined as to whether he had any quarrels with any of the prosecution witnesses, the accused categorically stated to have no any ill feelings with the prosecution witnesses. This shows that PW1, PW3 or any of the prosecution witnesses had no reason to make up the case against the accused.

Further, in the cautioned statement, the accused told PW2 that his names were Peter Mang'ong'o Awanahuruma, the names he maintained during trial, though considering the evidence of PW1 and PW3, who knew him from birth, I am of the view that he lied about his names from the beginning to escape liability. He knew what he was doing. Nevertheless, the important thing is that he admitted in the cautioned statement to have caused the death of Samwel Honest Shayo by cutting him with a machete on the neck on the reason that the deceased slaughtered his goat.



In his final submission, Mr. Mwangazambili challenged the cautioned statement "exhibit P2" on the ground that PW2 did not present any certificate in terms of **section 57 (3) (a) and 4 (a) of the Criminal Procedure Act, Cap 20 R.E. 2019**. What I discern from his contention is that there ought to be a separate form/document as certificate. With due respect, I find the learned counsel misconceived the application of the provisions. The provision clearly requires the recording officer to write or certify at the end of the record. No separate certificate is needed. For ease of reference, the provisions read:

"57 (3) A police officer who makes a record of an interview with a person in accordance with subsection (2) shall write, or cause to be written, at the end of the record a form of certificate in accordance with a prescribed form and shall then, unless the person is unable to read-

(a) Show the record to the person and ask him-

(i) To read the record and make any alteration or correction to it that he wishes to make and add to it any further statement that he wishes to make;

(ii) To sign the certificate set out at the end of the record; and

(iii) If the record extends over more than one page, to initial each page that is not signed by him.

(4) where the person who is interviewed by a police officer is unable to read the record of the interview or refuses to read, or appears to the police officer not to read the record when it is shown to him in accordance with subsection (3), the police officer shall-

(a) read the record to him, or cause the record to be read to him;

(b) ask him whether he would like to correct or add anything to the record;



- (c) permit him to correct, alter or add to the record, or make any corrections, alterations or additions to the record that he requests the police officer to make;*
- (d) ask to sign the certificate at the end of the record; and*
- (e) certify under his hand, at the end of the record, what he has done in pursuance of this subsection.*

Exhibit P2 shows that the recording officer (PW2) certified to have recorded the statement at the end of the record. The accused as well verified with his signature and thumb print that he read the statement and the same was the correct version of what he had stated before PW2. On the other hand, even if the cautioned statement is found to be faulty and expunged, there still remains overwhelming evidence from PW1 to prove that the accused committed the murder offence he stands charged.

Before I wound up, I wish to address the defence of insanity the defence counsel notified the court to rely on during trial. The same was communicated to the court during preliminary hearing leading the court to order for the accused to be taken to Isanga National Mental Hospital for examination in terms of **section 219 of the Criminal Procedure Act**. The report that was adopted by the court shows that the accused was of sound mind at the commission of the offence and was still of sound mind when examined. My finding as well is that the accused was and still is of sound mind. He knows what he did and the consequences thereof. The act of giving a false name, that is, Peter Mang'ong'o Awanahuruma, during interrogation by the police, in the cautioned statement and during trial; and the act of denying his mother and relatives shows that he knows what he did and the consequences thereof and wants to



escape liability. I agree with the medical report that the accused has never suffered from any mental illness.

However, having keenly considered the environment in which the offence was committed, whereby it is obvious that the accused was provoked by the deceased's act of slaughtering his goat, I find that the prosecution had further obligation of proving that the offence committed was premeditated. No evidence was led by the prosecution showing the time that lapsed between the accused learning about the slaughtering of his goat and him cutting the deceased. That, in my view, would have assisted the court to calculate whether the accused acted under heat of passion or not. In the absence of such crucial piece of evidence in the circumstances of the case at hand, benefit of doubt is accorded to the accused. See: **KAGAMBO s/o BASHASHA vs. REPUBLIC** (Criminal Appeal No. 591 of 2017) [2021] TZCA 748 on provocation and the question of time. In the premises, I am of the finding that the prosecution managed to prove beyond reasonable doubt that the accused killed the deceased Samwel Honest Shayo, but failed to prove whether the killing was premeditated. In the premises, I find it just to convict the accused on a lesser offence of manslaughter of his brother Samwel Honest Shayo.

Dated at Moshi on this 28th day of August 2023.


L. M. MONGELLA
JUDGE

CONVICTION

Given the findings and considerations in this judgement, this court convicts the accused person **PETER s/o MANGONG'O AWANAHURUMA @ DESTRATION HONEST SHAYO @ DESTROTON HONEST @ DEO STRATONE HONEST SHAYO @ STRATONE HONEST @ OMBENI** for the offence of **Manslaughter contrary to section 195 of the Penal Code, Cap 16 R.E. 2002** read together with **sections 235 (1) and 300 (2) of the Criminal Procedure Act, Cap 20 R.E. 2002** for having killed **SAMWEL HONEST SHAYO** on 06TH February 2020 at Kilema-Pofu Village, Moshi district.


L. M. MONGELLA

JUDGE

28/08/2023

SENTENCE

In sentencing the accused person, I have taken into account a number of factors being: the aggravating factors by the prosecution whereby besides admitting not having previous criminal record on the accused, prayed for severe punishment for curtailing the life of his brother which is protected under the Constitution. The prosecution also urged the court to consider the weapon used, which is dangerous; the body part attacked, to wit, the neck, which is delicate; and that the force employed was excessive.

On the other hand, the defence prayed for lenient sentence on the grounds that: the accused is not a habitual offender; has spent in custody almost 3 years; has learnt his lesson not to take the law on his hands; is a young man aged 24 years; and has 4 children who need his care.

Apart from the aggravating and mitigating factors by the prosecution and defence sides, respectively, the court has further considered the environment in which the offence was committed and the behaviour of the accused after commission of the offence. The accused cut his brother on account of him slaughtering his goat. In that respect, he compared the life of his brother and that of a goat and saw the goat was better than his brother. Further, like presented by the prosecution, the weapon used, to wit, a machete, was dangerous and excessive force was unnecessarily employed. This falls under the highest level of commission of the offence in accordance with "**The Tanzania Sentencing Guidelines, 2023.**" After commission of the offence, the accused endeavoured to escape liability by concealing his true identity, his residence and place of arrest before the interrogating police officer. He as well maintained his motive throughout the trial.

In consideration of the above factors, the accused, **PETER s/o MANGONG'O AWANAHURUMA @ DESTRATION HONEST SHAYO @ DESTROTON HONEST @ DEO STRATONE HONEST SHAYO @ STRATONE HONEST @ OMBENI** is hereby **sentenced to serve 27 years imprisonment.**


L. M. MONGELLA

JUDGE

28/08/2023

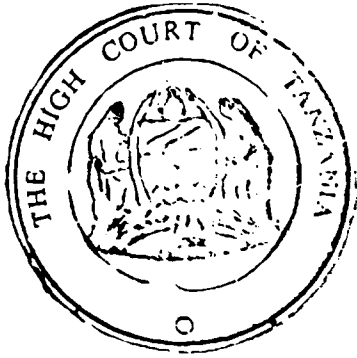
Court: Right of appeal to the Court of Appeal against the decision duly explained to the accused person.


L. M. MONGELLA

JUDGE

28/08/2023

Court: Judgement delivered at Moshi in open court on this 28th day of August 2023 in the presence of the accused person, Mr. Yusufu Mwangazambili, learned advocate for the accused person, and Ms. Bertina Tarimo, learned state attorney for the Republic.




L. M. MONGELLA
JUDGE