

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT TARIME
CRIMINAL SESSIONS CASE NO. 186 OF 2022
REPUBLIC
VERSUS
SIRINGI S/O MCHUMA MARWA

JUDGMENT

02nd & 04th October, 2023

M. L. Komba, J:

*'...the cause of death was acute respiratory failure to H/o organophosphate poisoning; stomach and omenta were gangrenous, eroded; intestine, mesentery, liver, gallbladder and bile ducts **were darkish.**'*

These were the findings observed by PW4, the doctor who examined the body of Erick Siringi Mchuma. Erick Siringi Mchuma, a baby of three (3) month dead while he was under treatment. According to his mother, Eveline Julius who appeared as PW2, foams were coming from the mouth of Erick and he was crying. She found her son in that situation while coming back from her sister in law's compound where she was asked by

her husband to borrow machete. Erick was in good health and when PW2 left to her sister-in-law she left Erick and another child (Jackline 3-years) sleeping with their father, who is the accused person in this case.

When PW2 returned from the house of her sister in-law to her home, she smelled chemical which used to spray vegetables in farms, upon her enquiry to her husband he responded nothing. She found her son in that condition, PW2 took her son and went outside where he met with accused's uncle (baba mdogo) who informed her that her son smells poison and advise her to rush to hospital. PW2 decided to go to pharmacy (Duka la Dawa Muhimu) where her son was given first aid. The condition became worse and the pharmacy attendant asked them to rush to Tarime Government Hospital (Bomani) for further treatment, advice which was adhered. It was her further testimony that while at pharmacy, her husband told his aunt (mama mdogo) to go to their home and pour out some water which was in the bucket as it was poisonous. The addressed aunt refused.

Following advice from pharmacy attendant, it was PW2 mother (Anna Peter Mchuma) who took Erick to Bomani while PW2 went home to take clothes and the sort. When PW2 arrived at the hospital she found his son under treatment whereby, by the assistance from medical practitioners he

managed to vomit unwanted substance. PW2 then decided to report the matter to Police Station and when she returns to hospital, she found Erick already dead.

It was the testimony of PW2 that accused person provided money for medical services of their son on that fateful day and that there was no incidence of cruelty from accused to their son. Eveline, mother of the deceased confessed she did not inform police officers about the bucket which was said to have poisonous water.

The body of Erick was examined by PW1 (Dr. Cletus Deusdedit) a medical doctor who has a degree in medicine. He informed this court that by physical examination that body of Erick was fine without any wound and his eyes were intact. He then decided to operate the body where he found intestine and stomach was swollen and the whole intestine was damaged as it was swollen and the color of internal organ was changed to black. He further said the respiratory system was also burnt. Immediate cause of death he informed this court to be failure to inhale fresh air which was caused by the chemical. He explained that the body was pushing the substance to go out then passed on air passage action which make him lack oxygen. From his observation he said the deceased was given

chemicals (poison) which affect him. That finding was based on the age of the deceased that due to his age he cannot take anything on his own as his movement and life depend on elders, so there is somebody who poison him. This witness prepared post mortem report which was admitted as exhibit P1 without objection.

During cross examination by defense counsel. Dr. Deusdedit agreed that there are trees which when treated can produce chemicals.

The whole incident was investigated by G5081 D/CPL Cyril, a policeman from Sirari Police Station. He informed this court that he was assigned the file by OC-CID with reference number Sirari/IR/1376/2022 about suspicious death. He testified that from the file complainant was Eveline Julius who was complaining of the death of her son (3 months old) which occurred after he was poisoned by her husband Siringi Mchuma, the accused. It was his testimony that on 21/07/2022 he went to Tarime District hospital to witness the post mortem examination which was conducted by PW1. From examination this investigator informed the court that the source of death according to Doctor is poison as he found mouth, intestine and other body organs were burnt and the post mortem report, Exh P1 was handled to him.

D/CPL Cyril further testified that on the same day, 21/07/2022 he went to the scene at Mchoki and draw the sketch map. He saw bed and some domestic utensils and that there was no bucket neither a sign of nor left over of poison at the scene. He testified that the house of accused was surrounded by farms and that the nearby homestead is like 100 meters. The nearby house is one of PW2's uncle but it is not that nearby. After closing investigation and send the file to Director of Public Prosecution, he came to the information that it was the accused who poisoned his son in order to obtain money by way of condolence (Rambirambi) from community.

This witness testified that the child was poisoned by accused because the accused is the one who send his wife away and then he went to toilet. Even when his child was crying with foams from his mouth, accused did not took any step. PW3 then relied on PW1 observation that the deceased was poisoned.

The last prosecution witness was E. 3300 Sgt Vitus, (PW4) as policeman who received accused person while at Korotambe Police Post. He testified that accused was surrendered to Korotambe police post by his relative and two Militia men although those people refused to record their statements.

He further testified that he was the one who attended Eveline the morning of 20/07/2022 when she was looking for PF3 and that is when he knew of the said crime. When Militia men brought the accused to police post they informed PW4 that accused has poisoned his own son and he has died. According to him, that was not a new thing as she heard a story in the morning from accused wife. He testified that it was PW2 (the wife of accused) whom mentioned the accused to be involved in poisoning their son while at police post although he did not remember her name and he did not interrogate her. During cross examination he informed this court that PW2 went to fetch some water in the river left behind the son and accused but when she came back, she found the baby in critical condition.

Having heard witnesses in this case, there is no doubt that Erick Mchuma Marwa is dead, and its death was an unnatural one. He was poisoned. The issue for determination is who poisoned the deceased. I need to address my mind to the predominant legal principles which are of relevance to this case and will guide me in this judgment.

It is the trite law that the prosecution is placed with a heavy burden than that of the accused. The first long-established principle in criminal justice is that of onus of proof in criminal cases, that the accused committed the

offence for which he is charged with is always on the side of the prosecution and not on the accused person. It is reflected under Section 110 and Section 112 of the Evidence Act Cap.6 [R.E. 2022] (The evidence Act) and cemented in the case of **Joseph John Makune vs. Republic** [1986] TLR 44 at page 49, where the Court of Appeal held that;

"The cardinal principle of our criminal law is that the burden is on the prosecution to prove its case; no duty is cast on the accused to prove his innocence. There are a few well-known exceptions to this principle, one example being where the accused raises the defence of insanity in which case he must prove it on the balance of probabilities ... "

The second principle is that the standard of proof in criminal cases that is required by law is proof beyond a reasonable doubt.

In the present case, the accused is charged under section 196 of Cap 16 which establishes the offence of murder. It is therefore pertinent for the elements of the offence to be proved before a conviction can be entered against the accused. The section provides:

'Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder.'

There are four elements requiring proof in the offence of murder. **First**, there must be death of a person. **Second**, the death must be a result of an unlawful act or by an unlawful omission. **Third**, the prosecution's evidence must satisfy, beyond reasonable doubt, that the accused is the one who killed. **Fourth**, the killing must be preceded by a pre-meditated evil intention (malice aforethought). In the case at hand, there is no doubt that Erick Mchuma was died as testified by PW2 and DW1 (who are mother and father of Erick) The evidence shows that, upon postmortem it was discovered that internal organs of the deceased was burnt due to chemical substances which passed in digestive system and respiratory system. From Exhibit P1 there is no hesitation to declare that the death of the deceased was unnatural. Basing on the age of deceased, ***actus reus*** is proved.

Next issue for determination is; who caused the deceased's death or who poisoned the deceased. In other words, whether or not the accused person is responsible for the murder of the deceased. There is no eye witness among the prosecution witnesses. In proving this vital element, the prosecution's evidence is hinged on circumstantial evidence.

It was the testimony of PW2 that she left Erick with accused when she went for a machete at nearby homestead, to her sister-in-law, in her return

she found their son in bad condition and the husband, (accused) has no explanation. To the contrary, PW4 testified that he was informed by PW2 that she went to fetch some water in the river leaving their son with her husband and on return she found the condition of their son changed. I find contradictions on where PW2 went and leave her son. From the evidence, the problem occurred while PW2 is away, where was she and why she didn't take the baby with her? Did she go to borrow machete or to fetch some water. The Court of Appeal in a bundle of decision grade contradictions and rule out there is minor and major contradictions. See **Sylivester Stephano vs Republic (Criminal Appeal 527 of 2016) [2018] TZCA 306 (3 December 2018)**

I find the contradiction as to where PW2 went to be minor as the issue is who poisoned the deceased. As testified by PW1 that by his age, deceased was not capable of controlling himself, he was of full support of the adult and therefore, to my analysis anything that pass to his mouth is given by somebody else. It is immaterial to know where PW2 was.

How now the poison reached the deceased, a baby of three months. There is no eye witness. Investigator, PW3 denied this court to analyse sketch map of the scene may be because he did not find anything material to

support the allegation. He said when he visited the scene of alleged crime, he did not find any mark of poison/chemical or containers that had poison/chemicals when he inspected the house of accused. PW2 testified that when she returns home, she smelt poison used to spray vegetables while in farm but she testified has never used it before. I am asking myself how does she know that the smell was of that chemical used to spray vegetables if she has never used it. PW2 further said there was her uncle whom she consulted and said the Erick smells chemicals although he did not mention the substance.

PW2 testified that she left their son with her husband and latter on Erick had complication. She said she left the deceased was sleeping with another her other child of three years. But of the whole story of prosecution, there was no one talked about this 3years child who left with the deceased. There is no story of this child where was she or what was she doing when the PW2 returned and found the deceased in critical condition. The only reasons she suspects her husband was the fact that he was with the deceased. The same is the position of investigator although he did not find anything in suspicion of that allegation. But what about the other 3years old child who also left with the deceased?

PW2 said their house is neighbored to the house of uncle which is like 20 paces away but investigator testified that the house of PW2 was surrounded by farms and the nearby house is found in 100 meters distance. Regardless of the contradiction on the distance, point here is that, the house of accused and his wife is surrounded by farms and they had neighbours.

In his defence, accused maintained he did not commit any wrong when he testified that he went to harvest sunflowers leaving his wife and children home safe and sound. After a while she was called by his wife in tears that their son was not in good condition. It was his testimony that when he asked his wife what happened she responded that she went to fetch some water and, in her return, she found the child crying with foams from his mouth. Then together with his wife they started to handle the situation. He informed this court that he loves his wife.

As said previous it is the duty of prosecution to prove it is the accused who did the said and that accused is not convicted for his weak defence.

The Court of Appeal of Tanzania in the case of **Mohamed Haruna@ Mtupeni & Another vs. R**, Criminal Appeal No. 25 of 2007 (unreported) held that;

"Of course in cases of this nature, the burden of proof is always on the prosecution. The standard has always been proof beyond a reasonable doubt. It is trite law that an accused person can only be convicted on the strength of the prosecution case and not on the basis of the weakness of his defence."

That means the evidence must be so convincing that no reasonable person would ever question the accused's guilt. See cases of **Mohamed Said Matula vs. Republic** [1995] TLR 3, **Anatory Mutafulungwa vs. Republic**, Criminal Appeal No. 267 of 2010 (unreported) and **Festo Komba vs. Republic**, Criminal Appeal No. 77 of 2015, the Court of Appeal of Tanzania (both unreported).

If accused was not seen by any person committing that crime, then there is possibility somebody else did that. That is the doubt which is not cleared by prosecution and therefore should benefit the accused. See the cases of **Jonas Nkize vs Republic** [1992] TZHC 22 (19 August 1992) and

Fadhili Makanga vs Republic (Criminal Appeal 458 of 2017)
[2020] TZCA 270 (3 April 2020)

I have considered these glaring shortcomings, taking to account that this is a murder case and how slight doubt raises the trial court to direct itself in deciding in favour of the accused since the accused ought to be convicted on the strength of the prosecution case as it was held in case of **Aidan Mwalulenga vs. Republic**, Criminal Appeal No. 207 of 2006 CAT Dodoma.

In conclusion, I hold without demur that the evidence in this case, did not pass the test. The evidence did not exclude every possibility that the death of the deceased could have been caused by somebody else. In human eyes, yes, the deceased died unnatural death, legally it cannot be said it is accused persons who murdered the deceased. Prosecution has failed to prove the case to the required standard and therefore I have no choice but to find accused persons not guilty. Therefore, the accused persons, SIRINGI S/O MCHUMA MARWA is discharged from the offence of murder c/s 196 and 197 of the Penal Code Cap.16 [R. E 2022] and thus he is acquitted. I order accused person, SIRINGI S/O MCHUMA MARWA,

immediately be released from the prison remand custody unless he is otherwise lawful held.


Dated at **TARIME** this 4th Day of October, 2023.




M. L. KOMBA
Judge

Right of appeal explained.

Judgment delivered in open court in the presence of Ms. Daisy Makakala and Ms. Nitike Mwaisaka for prosecution and the Ms. Mary Samson for accused and in presence of accused himself.


M. L. KOMBA
Judge

4th October, 2023