

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(MUSOMA SUB REGISTRY)
AT MUSOMA
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE No. 12 OF 2023
THE REPUBLIC v. MRONI SAMO @ RYوبا
JUDGMENT

06.10.2023 & 16.10.2023

Mtulya, J.:

Mr. Mroni Samo @ Ryوبا (the accused) lives and runs his economic activities in a small island of Busurwa within Lake Victoria located at Rorya District in Mara Region. Apart from other islanders and fishing communities, the accused is well known to his wife, **Ms. Adventina Hamisi Loge** (Ms. Adventina) and **Mr. Wambura Chacha** (Mr. Wambura). The accused is well known to his wife because they live together as wife and husband at their home residence in Busurwa island. Similarly, when he is at fishing activities, he is well known to his boat man, Mr. Wambura, as they were fishing together.

Sometimes in June 2022, the accused had left his wife, Mr. Wambura and home residence at Busurwa Island for Misuto Hamlet within Manchimweru Village in Bunda District of Mara Region to check and greet his father. The accused had stayed at Misuto Hamlet for three (3) months of June, July and August 2022. At the

end of August, specifically on 28th August 2022, he had left Misuto Hamlet for Busurwa Island. During his time of stay at Misuto Hamlet, and his departure on 28th August 2022, the accused was witnessed by his father, **Mr. Samo Ryoba** (Mr. Ryoba) his brother **Mr. Hussein Samo** (Mr. Hussein) and sister **Ms. Dina Chacha** (Ms. Dina).

On 29th August 2022, the accused alleged that he was at Busurwa island fishing at Lake Victoria with his friend Mr. Wambura. However, on 26th October 2022, the accused was arrested at Busurwa island and was ferried to Shirati Police Station where for reasons of civil claims, but later was transferred to Bunda District Police station, where he was informed murder allegation against **Ms. Mkami James @ Kisaronga** (the deceased) contrary to section 196 and 197 of the **Penal Code [Cap. 16 R.E 2022]** (the Penal Code).

According police officer, **F.1554 D/Cpl. Elijah** (PW2), the accused was cited by the villagers to have participated in attacking and killing the deceased on 30th September 2022 at Manchimweru Village within Bunda District in Mara Region. PW2, who had investigated the case, was brought in this court to assist the Republic in proving its case. In his testimony, he testified that on 1st October 2022 he was informed of the death of the deceased at Manchimweru Village by his boss OC-CID and ordered him to

investigate the matter. In his investigation, PW2 went at the crime scene with a medical doctor and exchanged roles, where for him he sketched a map of crime scene and recorded witness statements of several villagers, including **Mr. Chacha John** (PW3) and **Mr. Mkami Nyimori** (PW4). For medical doctor, **Dr. Hamisi Hassani Mlaponi** (PW1), he examined the body and prepared a postmortem report of the deceased.

PW3 testified further that at the crime scene, they found a body of the deceased at the valley land in overt market area of Manchimweru Village. Upon completion of his investigation, PW2 uncovered that the accused, **Mr. Constantine Marwa** (Mr. Constantine) and **Mr. Juma Edwin** (Mr. Juma) were associated with the killing of the deceased hence forwarded file No. BUNDA/BND/IR/2916 of 2022 attached with all the three (3) suspects to the **National Prosecutions Services** (NPS) for **Preliminary Inquiry Case No. 5 of 2022** before **Bunda District Court**. Finally, PW2 produced the sketch map of the crime scene as exhibit P.1.

PW1, PW3 and PW4 were all summoned by the prosecutions side to substantiate allegation of murder against the accused, and they all appeared in this court on 6th October 2023. The evidence of PW1, was very brief without much protest from the defence. According to PW1, on 1st October 2022, police officers had

requested him to go and do examination of the deceased's body at the crime scene and complied with the request. In his testimony, PW1 stated that they went and examined the deceased and had found multiple wounds on head and neck caused by a sharp object which chopped off the main veins of jugular species to disturb blood flows and heart beats. According to him, the death was caused by a shock emanated from severe pain and loss of blood, and justified his statement by producing the postmortem examination report, which was admitted as exhibit P.1. P.1 shows, in brief, that the deceased's body had: *multiple wounds around neck and head*, and the death was caused by: *shock due to severe pain and loss of blood*.

On his part, PW3 testified that on 29th September 2022, at 23:00 hours had witnessed the accused attacking the deceased with Panga at **Manchimweru Village River Valley** (the valley), when he was moving back home in a company of the deceased and PW4. According to PW3, PW4 also had a torch which could light from five to six human steps and immediately after crossing the valley, two persons, one carrying a torch of high intensity to light fifty meters were coming in opposite direction and upon meeting, they started attacking them with sharp object and stick.

PW3 testified further that he was attacked by the one who was holding a torch and stick, who finally grabbed from him a total

of Tanzanian Shillings 47,000 and a cellular phone make Tecno No, 372. During the attacks, the deceased wanted to escape the scene of crime, but they followed her with the torch-man lighting the accused in a distance of five (5) human steps. According to PW4, he was down to the land from stick attacks, but could easily manage to identify the deceased as: first, the torch light of the second assailant was in high intensity; second, the deceased had mentioned the accused's name and prayed for mercy; third, himself and the *yowe* villagers on the same night went to the accused's residence and could not find him and his lover; he knows the accused before the attacks as they live in the same village and the residence of his lover, **Ms. Vumi Charles** (Ms. Vumi) share the same ten cell leader with PW3 residence. According to PW3, he mentioned the accused before police officers during recording a witness statement in morning hours of the next day of the attacks, 1st October 2022.

PW4 on the other hand had testified on 29th September 2022 at 23:00 hours, he was crossing the valley in a company of the deceased and PW3 and was holding a torch which could shine up to six meters and during the lighting the way towards his home residence, he saw the accused and another person. According to PW4, he was ahead of his group heading towards the accused direction whereas the accused was in front of another assailant and

were in five (5) meters away, before they started launching *panga* attacks to his group. PW4 testified further that the accused was attacking the deceased and the deceased had cited the accused and prayed for mercy.

Replying the question on how PW4 managed to identify the accused at night hours of darkness, he produced four (4) reasons: first, they live in the same village and share the same ten-cell leader for a long time; their residences are separated by five (5) houses; third, he had a torch light and directed to the accused direction; the other assailant had a torch which was on; and he knows the accused's parents. Finally, PW4 testified to have recorded witness statement on 1st October 2022 and named the accused in the statement.

In replying the materials registered by the Republic, the accused testified that he did not kill or participated in attacking the deceased as the indicated day of 29th September 2022, he was at his fishing point within Busurwa island with his family and friends. According to him, he was at Manchimweru Village between June and August 2022, and had left Manchimweru Village for Busurwa island in Rorya on 28th August 2022 and was arrested at Busurwa island in October 2022. The accused had testified further that he went at Manchimweru Village in June 2022 for greetings to his

father and other family member, and went at Mwanchimweru only once in his life time.

Regarding eye witnesses PW3 and PW4, the accused had testified that they were prepared, tanked words and testified lies in court to establish a fabricated murder case against him. On knowing the deceased, Mr. Juma, Mr. Constantine and Ms. Vumi, the accused stated that he does not know them, and even the name Mroni belongs to many human persons at Mwanchimweru Village, including **Mr. Mroni Mlangata** (Mr. Mlangata), **Mr. Mroni Samo Mkirya** (Mr. Mkirya), and **Mr. Mroni Samo Ryoba** (the accused), and that all the three (3) Mroni look similar in age and physical appearance.

However, during cross examination, the accused testified that: first, he went at Mwanchimweru Village twice, during greetings and marriage ceremony; second, he went in 2022 for three activities, namely greetings to his father, farming activities and harvesting activities of maize; and finally, during court questioning, the accused testified that his departure at Mwanchimweru Village on 28th August 2022 for Busurwa island was witnessed by his father Mr. Ryoba, his brother Mr. Hussein and sister Ms. Dina.

Similarly, the accused stated that his stay at Busurwa island in September to October was witnessed by his wife, Ms. Adventina and his friend, Mr. Wambura. On replying the question why, he did not

summon the indicated persons to assist in his defence in a serious case like the present one, the accused had replied that he was not aware that indicated persons are important witnesses, as such, in corroborating his evidence.

The law enacted in section 3 (2) (a) of the **Evidence Act [Cap. 6 R. E. 2022]** (the Evidence Act) requires that upon registration of information of murder, the onus is always on the prosecution to prove the murder not only by the death of the deceased but also the link between the said death and participation of the accused. The onus never shifts away from the prosecution and no duty is cast on the accused persons to establish their innocence (see: **Mohamed Said Matula v. Republic** [1995] TLR 3). The prosecution must produce evidence to substantiate its case beyond any reasonable doubt (see: **Said Hemed v. Republic** [1987] TLR 117, **Mohamed Matula v. Republic** (supra) and **Horombo Elikaria v. Republic**, Criminal Appeal No. 50 of 2005).

The accused in criminal case is only required to raise some doubts. It is not proper to convict the accused on basis that he is found to be a liar (see: **Mushi Rajab v. Republic** (1967) HC 384 or weaknesses of his defense (see: **Christian Kale & Rwekaza Bernard v. Republic** (1992) TLR 302). However, lies of the accused may corroborate the prosecution case (see: **Felix Lucas Kisinyila v. Republic**, Criminal Appeal No. 129 of 2002; **Salum Yusuf Liundi v.**

Republic, Criminal Appeal No. 26 of 1984; **Kombo bin Khamis v. Crown**, 8 ZLR 122; and **Republic v. John Mbatira @ Mtuke**, Criminal Sessions Case No. 181 of 2022).

In the present case, the prosecution has brought a total of four (4) witnesses and two (2) exhibits whereas the defence had brought one witness, the accused himself, without any exhibits. The directives of the full court of the Court of Appeal regarding criminal justice system in the precedent of **Hatibu Gandhi & Others v. Republic** [1996] TLR 12, at page 58 of the judgment, is to the effect that:

*The question which arises in this case is whether in this country we should adopt the position as laid down by the Privy Council in Wong's case [Wong Kam Ming v The Queen [1979] 1 All ER 939] or follow the earlier position which prevailed a number of Commonwealth jurisdictions as illustrated by Hammond's case [R v. Hammond [1941] 3 All ER 318]? We think the position in Hammond's case is more appropriate to this country where **criminal justice is required to be administered not as a game of football but as a serious business of acquitting the innocent and convicting the guilty in a reasonable and sensible manner according to law.** This Court has emphasized this approach in a recent case, that is, the case of D.P.P. v. Peter Rowland Vogel [1987] TLR 4.*

(emphasis supplied).

Echoing on the statement, the Court in the precedent of **Marko Patrick Nzumila & Another vs. The Republic**, Criminal Appeal No. 141 of 2010, at page 14, thought that: *while it is always safe to err in acquitting than in punishment, it is also in the interests of the state that crimes do not go unpunished. So, in deciding whether failure of justice has been occasioned, the interests of both sides of the scale have to be considered.* This thinking has received support of the Court in **Tabu Paulo v. Republic**, Criminal Appeal No. 53 of 2014 and this court in the authorities of **Stephano Ibrahim v. Republic**, Criminal Appeal No. 27 of 2022 and **Muhumbwa Muhumbwa @ Matokore @ Samwel Muhumbwa & Two Others v. Republic**, Criminal Appeal No. 116 of 2022.

The law enacted in section 3 (2) (a) of the Evidence Act show that the onus of proving criminal case is always on the prosecution to prove murder case, by proving not only the death of the deceased but also nexus between the said death and participation of the accused. In the present case, in order to prove its case, the Republic had brought the alleged eye witnesses PW3 and PW4 who have testified to have witnessed the accused killing the deceased with *panga* weapon.

The law regulating direct evidence is enacted in section 62 (1) (a) of the Evidence Act and requires oral evidence to be direct and if

it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it. In the present case, the Republic has brought PW3 and PW4, who have testified to have seen the accused attacking the deceased with *panga* on head and neck and their testimonies on parts of the deceased's body which were attacked, were corroborated by the evidences PW1 and exhibit P.1.

The question could be whether PW3 and PW4 were credible and reliable witnesses, and considering the accused alleged before this court that PW3 and PW4 were summoned to produce swallowed words. First of all, the accused was given opportunity to access committal bundle, long before hearing of the case and was aware of the witnesses and substance of their testimonies; second, the principle regulating credibility and reliability of witnesses is that witnesses who testify consistencies statements and his demeanor is inviting may be believed and his testimony accepted, unless there are good and cogent reasons for not believing him. That is the thinking of the Court of Appeal (the Court) (see: **Sabato Thabiti & Benjamini Thabiti v. Republic**, Criminal Appeal No. 441 of 2018 and **Goodluck Kyando v. Republic** [2006] TLR 363).

In the present case, PW3 had produced consistence testimony to what had transpired and was corroborated by evidence of PW4, who was consistent in his statement. Both PW3 and PW4 are reliable

witnesses. Further, the dual witnesses had recorded the statement on the next day early in morning hours, 1st October 2022, and mentioned the accused. This mentioning of the accused at the earliest possible opportunity has been held to be the best assurance of reliability of witnesses (see: **Marwa Wangiti Mwita & Another v. Republic** [2002] TLR 39; and **Republic v. Nyataigo Mwita @ Makende**, Criminal Sessions Case No. 154 of 2022).

In the instant case, PW3 and PW4 have testified to have seen the accused attacking the deceased. It is a settled law that a witness must show that he *had the opportunity to see what he claimed to have seen* (see: **Johana's Msigwa v. Republic** [1990] TLR 148 and **Republic v. Kamhanda Joseph Abel & Five Others**, Criminal Sessions Case No. 46 of 2018). In case, it is night hours, the accused must display how he managed to identify the accused. In the present case, PW3 stated that PW4 and the second assailant had torch with high intensity which can shine six (6) to fifty meters. Similarly, PW4 testified that he had a torch which could light to six (6) meters and he was in front of the group and had directed his torch to the accused and properly identified him.

However, in the present case, PW3 and PW4 had moved further to register materials of recognition. They testified that they know the accused, his residence, his lover and parents as they live in the

same village. In law, recognition is more satisfactory, more assuring and more reliable than identification of a stranger (see: **Kenga Chea Thoya v. Republic**, Criminal Appeal No. 375 of 2006; **Nicholaus Jame Urio v. Republic**, Criminal Appeal No. 244 of 2010; and **Mussa Saguda v. Republic**, Criminal Appeal No. 440 of 2017). This court has considered the thinking of the Court in the precedent of **Republic v. Pete Msongo @ Patrick**, Criminal Sessions Case No. 179 of 2022.

I am aware that the accused in his defence had testified that he was at his home residence of Busurwa island on 30th September 2022 and was not present at the crime scene at Manchimweru Village. I am aware that every witness is credible and reliable (see: **Goodluck Kyando v. Republic** (supra)).

However, in the present case, the accused alleged that: first, he went at Mwanchimweru Village once, and later during cross examination, he stated that he went at the village twice, and second, he went at Mwanchimweru once in 2022 for one activity of greetings his father, but later he stated that he went for three activities of greetings his father, farming and harvesting activities of maize; and finally, he went at Manchimweru Village twice during greetings to his father and during marriage ceremony.

This inconsistency on part of the accused, makes his credibility and reliability questionable, especially when the dispute is whether

in late September, the accused was at Mwanchimweru Village or Busurwa island. According to the Court of Appeal, a witness who testifies inconsistencies or contradictory statements, his credibility is diminished (see: **Kibwana Salehe v. Republic** (1968) HCD 391; **Surdeyi v Republic** (1971) HCD 316; and **Sahoba Benjuda v. Republic**, Criminal Appeal No. 96 of 1989). In **Sahoba Benjuda v. Republic** (supra), the Court of Appeal stated that:

Contradiction in the evidence of a witness effects the credibility of the witness and unless the contradiction can be ignored as being minor and immaterial the court will normally not act on the evidence of such witness touching on the particular point unless it is supported by some other evidence.

In the present case, the contradictions produced by the accused is material to the present case and cannot be ignored. The accused was expected to bring other witness to support his allegation of leaving Manchimweru Village on 28th August 2022 to Busurwa island and his stay at Busurwa island in September 2022. In the present case, the accused testified that his departure at Mwanchimweru Village on 28th August 2022 for Busurwa island was witnessed by his father Mr. Ryoba, his brother Mr. Hussein and sister Ms. Dina. However, he declined to summon them to support his allegation.

Similarly, his stay at Busurwa island in September to October 2022 was witnessed by his wife, Ms. Adventina and his friend, Mr. Wambura, but declined to call them to corroborate his evidence. Practice in this court and Court of Appeal shows that failure to call material witnesses may make courts to draw an adverse inference against the accused persons (see: **Wambura Marwa Wambura v. The Republic**, Criminal Appeal No. 115 of 2019 and **Stanley James @ Mabesi v. Republic**, Criminal Appeal No. 115 of 2022).

I am conversant that the accused was required to raise some doubts to the prosecution case by bringing necessary materials. However, he failed to do so. I am also aware that it is not proper to convict the accused on basis that he is found to be a liar (see: **Mushi Rajab v. Republic** (1967) HC 384) or weaknesses of his defense (see: **Christian Kale & Rwekaza Bernard v. Republic** (1992) TLR 302). However, in the circumstances of the present case and considering materials brought by prosecutions side, it is vivid that PW3 and PW4 have witnessed the accused attacking the deceased on the head and neck by use of *panga*. The evidence of the accused had declined to shake the materials brought by eye witnesses PW3 and PW4.

The next question is whether, the accused had attacked the deceased with *malice aforethought* as enacted in section 200 of the Penal Code and interpretation of the Court of Appeal in the

celebrated precedent of **Enock Kipela v. Republic**, Criminal Appeal No. 150 of 1994. The Court in the precedent has placed seven (7) important factors to be considered in resolving malice aforethought in the following words typed at page 6 of the decision:

...usually an attacker will not declare his intention to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various factors, including the following: (1) the type and size of the weapon, if any used in the attack; (2) the amount of force applied in the assault; (3) the part or parts of the body the blow were directed at or inflicted on; (4) the number of blows, although one blow may, depending upon the facts of the particular case, be sufficient for this purpose; (5) the kind of injuries inflicted; (6) the attackers utterances, if any, made before, during or after the killing; and (7) the conduct of the attacker before and after the killing.

In the present case, the materials produced by PW3 and PW4 display that the accused attacked the deceased in sensitive parts of the human body head and neck to chop off the main veins of jugular species, which transport blood from the heart. The accused used *panga* and caused *multiple wounds* hence death of the deceased due to *severe pains and loss of blood*. The facts were

supported by PW1 and P.1. From these materials, it is vivid that the accused had killed the deceased with malice aforethought.

In the circumstances of the present case, I am satisfied that the prosecution has proved its case beyond doubt as per requirement of the law in section 3 (2) (a) of the Evidence Act and precedents in **Said Hemed v. Republic** (supra) hence I find the accused guilty to the charged offence of murder contrary to sections 196 and 197 of the Penal Code.

Ordered accordingly.

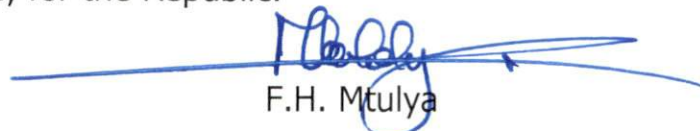



F.H. Mtulya

Judge

16.10.2023

This Judgment was pronounced in open court in the presence of the accused, **Mr. Mroni Samo @ Ryoba** and his learned Defence Attorney, **Mr. Cosmas Tuthuru** and in the presence of **Mr. Abdulheri Ahmadi Sadiki** and **Ms. Natujwa Bakari Iddi**, learned State Attorneys, for the Republic.


F.H. Mtulya

Judge

16.10.2022

MITIGATIONS

Tuthuru: My Lord, in murder cases, after the conviction, this court's hands are tied. It has to follow the law in the Penal Code.

F.H. Mtulya

Judge

16.10.2022

Accused: My Lord, this court has to check my age. I have a family which depends on me. I pray for a lenient sentence. My Lord, That is all My Lord.

F.H. Mtulya

Judge

16.10.2022

ANTECEDENTS

Sadiki: My Lord, we have no previous record of the accused. However, the offence under which he was convicted is enacted in section 196 of the Penal Code and the only penalty under section 197 of the Penal Code is death. My Lord, we pray this court to follow the law. We pray so My Lord.

F.H. Mtulya

Judge

16.10.2022

SENTENCING ORDER

In this State the enactment of murder in section 196 of the Penal Code was followed by enactment of section 197 of the Penal Code which provides for death penalty. It is correct according to Mr. Tuthuru and Sadiki, that my hands are tied. I have to abide by the law without reservations. Having said so, and considering the

indicated conviction, I hereby sentence the accused person, **Mr.**

Mroni Samo @ Ryoba to death, which shall be suffered by hanging.



F.H. Mtulya

Judge

16.10.2022

Right of appeal explained to the parties.

F.H. Mtulya

Judge

16.10.2022

This Sentencing Order was pronounced in open court in the presence of the accused, **Mr. Mroni Samo @ Ryoba** and his learned Defence Attorney, **Mr. Cosmas Tuthuru** and in the presence of **Mr. Abdulheri Ahmadi Sadiki** and **Ms. Natujwa Bakari Iddi**, learned State Attorneys, for the Republic.

A handwritten signature in blue ink, which appears to be 'F.H. Mtulya', is written over a horizontal line.

F.H. Mtulya

Judge

16.10.2022