

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT MAFINGA.

CRIMINAL SESSION CASE NO. 109 OF 2022

THE REPUBLIC

VERSUS

VAILETH KENANI LUVENA

RULING

02nd & 2nd November, 2023

I.C MUGETA, J:

The accused and the deceased were husband and wife. It is suspected that the accused killed her husband Erick Valentino Tonga. She is now charged with murder contrary to section 196 and 197 of the Penal Code [Cap. 16 R.E 2022]. The body of the deceased was examined by Dr. Lazaro Mtuya (PW1). In his report which is exhibit P1 he says the cause of death is neurological shock secondary to pulled and swollen scrotum and burn wound right thigh and buttock.

Romana Tonga (PW2) is the deceased's sister. She testified that the deceased suffered from ulcers and had also been diagnosed with one kidney failure which at some point in time caused the whole of his body to swell. She also testified to efforts the accused made to treat her husband

and taking care of him despite the normal matrimonial arguments between them. Both Teofana Kalinga (PW3) and Christina Stephano (PW4) testified to have found the deceased with burns as described by the doctor in exhibit P1. Romana Tonga said she saw them too. The medical doctor said besides the burns and the swollen scrotum, the deceased had no other health condition.

The foregoing is the material evidence on which the accused is charged with murder. Was the deceased murdered?

In the first place I do not agree with the finding of the medical doctor that the accused had no other health condition besides the burns and the swollen scrotum. This is because he met the deceased in the mortuary already dead. Since the medical doctor did neither treated nor attended the deceased in any form before he died, his finding that he had no other health condition cannot be believed where Romana Tonga said the deceased's one kidney had failed which caused his body to swell. It also may be the reason for his swollen scrotum. The assumption by the doctor that the swell of the scrotum was due to a pull by external force may be wrong. He never gave the basis of his conclusion that there was a pull of the scrotum besides the swell. While I always treat expert opinion with his high regard, the same in this case ought to be treated with circumspection.

I disregard it as it is not binding but plays a persuasive role. This is the holding in **Yusuph Molo v. Republic**, Criminal Appeal No. 343/2017, Court of Appeal – Iringa (unreported) at page 13.


There is no dispute that the deceased had burn wounds on thigh and buttocks. The medical doctor admitted the burn wounds can also cause neurological shock. There is no evidence that it is the accused who burnt the deceased. Romana Tonga, Teofana Kalinga and Christina Stephano testified that the accused told them that the deceased got the burns when he accidentally fell into a pot of boiling water due to his weakness when he was making his way to the toilet. The deceased narrated to no one his version of the story as to the cause of the burnt wounds before he died. Therefore, the accused's story as narrated to PW2, PW3 and PW4 ought to be believed.

One may suspect that the accused burned the deceased with hot water. However, this is mere speculation. It is settled that suspicion, however, strong cannot ground a conviction as it was held in **Shaban Mpunzu @ Elisha Mpunzu v. Republic**, Criminal Appeal No. 12 of 2002, Court of Appeal – Mwanza (unreported).

For the foregoing I find that there is no evidence that the deceased died unnatural death. Therefore, there is no evidence of murder. On that

account, I do not consider that there is sufficient evidence on record upon which to require her to enter her defence in terms of section 293(1) of the Criminal Procedure Act [Cap. 20 R.E 2022].

Consequently, I acquit the accused of the charge of murder contrary to section 196 and 197 of the Penal Code.

 *I.C. Mugeta*
I.C. Mugeta
Judge
02/11/2023

Court: Ruling delivered in open court in the presence of the accused person in person, Vedasto Chonya, learned advocate for the accused, Genes Tesha, Senior State Attorney and Phoibe Magiri, State Attorney for the Republic.

Sgd. I.C. Mugeta

Judge

02/11/2023