

**IN THE HIGH COURT OF TANZANIA**  
**(IRINGA SUB-REGISTRY)**  
**SITTING AT NJOMBE**  
**CRIMINAL SESSIONS CASE NO. 41 OF 2019**  
**REPUBLIC**  
**VERSUS**  
**BATONI S/O MANGULA @BARAKA MANG'ITA**  
**JUDGMENT**

*3<sup>rd</sup> & 15<sup>th</sup> November, 2023*

**MRISHA, J**

This judgment is about a murder trial involving one accused person namely **Batoni Mangula @ Baraka Mang'ita** who is alleged to have murdered one **Erasto Nzali**, the deceased person, who according to the testimony of his relative one **Mashaka Bohela (PW1)**, is the one who killed the deceased person on 21.03.2016 by using a gun when the two approached the Sigrid Street in Makambako township within the District and Region of Njombe, as they were on their way back home with bicycles after attending trial at the Primary Court of Makambako.

It is also told by **PW1** that that upon being shot by a gun, the deceased person fell down and died on the same day. The accused pleaded not guilty to the offence of Murder he was arraigned of, and the prosecution

Republic paraded a number of eight witnesses and a number of documentary and physical exhibits including a pistol, cartridges which were allegedly been found at the scene of crime together with two spent bullets which were removed from the body of the deceased person after being medically examined by the doctor.

After closure of the prosecution case the accused person **Batoni Mangula @ Baraka Mang'ita** who stands charged before this court with an offence of Murder contrary to section 196 and 197 of the Penal Code, Cap 16 R.E. 2022 hereinafter referred to as the Penal Code, was found with a prima facie case and after been informed of his rights of defence, he began to defend himself as **DW1**.

The evidence on record particularly that of the prosecution side, reveals that there are certain undisputed facts in this case; one, the deceased person is dead unnaturally and two, his death happened at Sigrid Street-Makambako when he was heading home with **PW1**.

As per the Sketch map of the crime scene drawn by E. 3942 D/C Stephen on 21.03.2016 and admitted in evidence on 12.04.2021 as **Exhibit P1** during the Preliminary Hearing conducted before Kente, J (as he then

was), it appears that the deceased body was found just eight (8) meters from where the three cartridges were found at the scene of crime, and the deceased's bicycle was found in just one (1) meter from where the deceased body was which also corroborates the evidence of **PW1**.

Additionally, there is a testimony of **Dr. Magreth Msasi (PW3)**, the medical doctor who conducted a post mortem examination of the body of the deceased person which is also corroborated by the post mortem examination report (**Exhibit P2**) which was admitted by the court uncontested.

The said evidence altogether reveals that the body of the said deceased person was found with deep penetrated wound on the right Illia fossa, deep penetrated wound on the back and distended abdomen aspirated blood on syringe. It is also revealed from such evidence that the cause of death of the deceased person was **severe hemorrhage due to multiple penetrated wounds**.

The testimony of **PW3** also corroborates that of **PW1** who is the friend/brother of the deceased person, and **PW2**, the Street chairman of Sigrid who responded to the call of Street Executive chairman about the

incident of death. Also, there is prosecution evidence to show that upon arrival at the scene of crime, the police found three spent cartridges and described them to the people who were present there, and then a sketch map of the scene of crime was drawn by one of the said police.

The police carried out an investigation which led to the arrest and framing of a charge of murder against one person called Victor Nzali with the murder of the deceased, **Erasto Nzali** on 21.02.2016 at Sigrid Street Makambako. The said accused, who is currently not a party to this case, was arraigned before the Resident Magistrate Court of Njombe at Njombe [before Hon. J.P. Kapokolo (RM)] on 23.05.2016.

However, on 18.06.2017 the charge was substituted under section 234 of the Criminal Procedure Act Cap 20 R.E. 2002 [now R.E. 2022] henceforth the CPA, to the effect that two other accused persons including the accused **Batoni Mangula @Baraka Mang'ita** and one **Rodrick Mpika** were jointly and together charged with the murder of Erasto Nzali.

On 07.12.2018, the prosecution Republic through Mr, Mandua, learned State Attorney, prayed to withdraw the charge against **Victor Nzali** under section 91(1) of the CPA, which prayer was duly granted and charge

against **Victor Nzali** was marked withdrawn. On 04.09.2019 the remaining two accused persons namely, **Batoni Mangula @Baraka Mang'ita** and **Rodrick Mpika** were committed to this court for trial.

In the Information filed by the prosecution Republic with this court, **Batoni Mangula @Baraka Mang'ita** appeared as the first accused person and one Rodrick Mpika, appeared as the second accused person. Thereafter, the Preliminary Hearing in respect of this matter was successfully conducted before Hon. Kente, J, (as he then was) on 12.04.2021.

Upon the Information being read over to the two accused persons, they all pleaded "**Not Guilty**" to the charge of murder and accordingly a "**Plea of Not Guilty**" was entered and recorded in respect of all of them. However, on 09.09.2021, the prosecution Republic Mr. Mandua, learned State Attorney, prayed to withdraw the charge against 2<sup>nd</sup> accused under section 91(1) of the CPA, which prayer was duly granted. As a result, a charge against **Rodrick Mpika** 2<sup>nd</sup> accused was marked withdrawn. From then, only one accused person namely **Batoni Mangula @Baraka Mang'ita** remained facing the charge of murder of the deceased **Erasto Nzali** contrary to section 196 and 197 of the Penal Code.

On 24.10.2023 when the case was scheduled for hearing both parties were ready, but the prosecution Republic under section 276(2) of the CPA, prayed to make a slight amendment on the information that was filed with this court on 12.04.2023; the prayer was uncontested, and the court granted the prayer.

In establishing its case against the accused person, the prosecution was represented by Ms. Pienzia Nichombe, learned Senior State Attorney assisted by Ms. Dhamiri Masinde, learned State Attorney. The prosecution presented seven (7) witnesses to build its case.

On defence side, Mr. Mussa M. Mhagama, learned Advocate represented the accused person Batoni Mangula @Baraka Mang'ita. I am very grateful to both counsels for their commitment and admirable job throughout the conduct of the trial up to its finality.

The summary of prosecution testimonies is as hereunder:

In the present case, the evidence on record as per the first prosecution witness **PW1, Mashaka Bohela** was that on 21.03.2016 he was came from the Primary Court of Makambako with his brother **Erasto Nzali** (deceased person), when they were heading home with bicycle, they

reached at the Sigrid Street, then deceased person was shot and fell down, and he saw a person riding a motorcycle holding a gun with one of his hands, he did not identify the gun, but according to him, it was a gun shot.

PW1 narrated that the rider turned round the motorcycle and shot deceased on his leg and upon witnessing such terrifying incident, he ran to the nearby office of Sigrid Street and he informed the neighbours about the incident and they went to the crime scene.

While he was at the crime scene, they informed the police officers by a phone call about the incident. The police officers from Makambako Police Station went to the crime scene and took the deceased body to the mortuary of Makambako hospital for it to be kept. He further testified that before they left at the crime scene, the police officers took the bullet cartridges they had found at the crime scene. PW1 did not identify the motorcycle rode by the suspect, nor did he identify him.

Upon cross examination, he testified that he knows **Victor Nzali**, he is the young brother of deceased. **Victor Nzali** and deceased had grudges; the grudges were about farms. He also said that deceased had a long conflict with his family members. On 21.01.2016 he was warned by **Victor Nzali**

not to accompany with the deceased. He further said that **Victor Nzali** threatened the deceased person by telling him that he would kill him should he continue to accompany the deceased person. **PW1** did not know the whereabouts of **Victor Nzali**, but he added by saying that Victor Nzali often used to come to their area and disappear. He did not know who killed deceased person.

He further said that the police officers took three-gun cartridges at the crime scene. He also mentioned **Rodrnick Mpika** as the second person who also threatened the deceased person. He threatened deceased and asked him *"Why to do prevent Victor from selling farm lands?"*.

**PW2, Mathias Marcus Mdage**, testified that he was a street chairman of Sigrid from 2014 to 2019. On 21.03.2016 the incident of death of deceased happened at his street. He was called by a street Executive chairman and informed about the said incident. He was not far from the crime scene as he was about five hundred (500) meters from the scene of crime.

**PW2** reached at the crime scene and found deceased lying down. He called the police of Makambako Police Station and informed them about the incident. He testified that he did not examine the body of the deceased



person whom he found lying on the ground. While at the crime scene, the police officers found three spent cartridges and they showed them to **PW2** and other civilians who were present at the crime scene. **PW2** also said that the deceased was killed after being shot by a gun. The police officer drew a sketch map of the crime scene.

When cross examined, **PW2** said that he was called around 1200 to 1300 hours. The deceased was identified by the person whom he was together with; he did not know the deceased before, and the spent cartridges were scattered at the crime scene. They did not see the spent cartridges before the police officers arrived at the crime scene, they were six person. He was a witness when the police officer drew a sketch map. He did not witness when the deceased was being shot.

**PW3, Margreth Msasi**, she said she is a medical doctor, working at Makambako Health Center and has twenty years' experience. On 22.03.2016 she was at work performing her normal duties, she was then informed about the presence of deceased body in the mortuary and was instructed to go and conduct a post mortem examination.

She went to the mortuary with a police officer and some of the deceased's relatives. She found a male body and the deceased relatives identified the body to her. She then medically examined the body of the deceased and removed one piece of iron from the lower part of the stomach and another from the other part of the waist. She then filled the Post Mortem Examination Report which was tendered and admitted in evidence as **Exhibit "P2"** without any objection from the defence side.

Upon cross examination, **PW3** testified that she was handed over the post mortem examination form by the police, then filled in and returned it to the police officer after her conducting a postmortem examination. She increased the size of wounds in order to remove the pieces of iron from the deceased body. She also said that the deceased stomach was normal, as doctors, they normally conduct post mortem without opening the stomach. She found a wound on the right part of the stomach and removed a piece of iron from the said part of the stomach. There were multiple wounds, but she did not state in the form that the said wounds were caused by sharp objects.

**PW4, ASP Paul Methusela Mgema** testified that he is a Police Officer who is working at the Forensic Bureau, Ballistic Laboratory stationed at the sub-Head office in Dar es Salaam. His duties are to investigate/examine weapons such as gun, cartridges, bullets and any sharp objects. **PW4** said that normally, the said exhibits come to their office from both the RCO and OC-CID from all over the country.

He further testified that in order for them to admit the said exhibits for examination, they must be accompanied by a letter from either the Regional Crime Officer (RCO) or the Officer Commanding Criminal Investigation District (OC-CID). Such letter must state where the exhibit was found; whether from the accused person, scene of crime, the body of the deceased person et cetera. It must also state the main purpose of that exhibit, and it must also mention the police officer who brings the said exhibits to their office. Not only that, but also the letter must be signed and stamped by the one who wrote it to them.

**PW4** further testified that they verify the exhibits and register them by giving it the Lab. Number (Laboratory Number) and list the exhibits in accordance with their identification chronological manner. He testified that,

there are two types of examination; one, by physical examination, and two, by using a microscope which is normally called a comparison examination. According to him, physical examination is done by taking the exhibit and uses his eyes in order to see whether it has a serial number, and if the gun's buttstock was cut off, or if the gunshot was cutoff; then another step is to examine if the fire mechanism performs properly. On the side of bullet, he will examine if the bullet was hammered or not in which case it becomes live ammunition; if the bullet was not used then that bullet is a misfire, meaning there was no explosion.

**PW4** also stated that he checks the surface of the cartridge to see if it is depressed (pin impression); that means it is a spent cartridge, and if there is no pin impression, then that is called a cartridge. On the head of bullet, he will check if the bullet has scratches in which case if it has such feature, it is called a spent bullet and if it does not, it is called an unfired bullet.

Regarding comparison examination, **PW4** said he use such method in order to compare the sign (s) left on the exhibit suspected to have been found from the body of the deceased person or anywhere, against the similiar exhibit produced in the laboratory by using the weapons used at the crime scene. After he produce the samples in the laboratory, he compares

them with the exhibit (s) collected at the crime scene in order to see if they all have the corresponding features. In so doing, **PW4** checks if the pin impression, extractor marks and breech face characteristics resemble with the exhibits taken from the scene of crime or the deceased's body.

Having explained about his expertism before the court, **PW4** began to testify that on 12.02.2018 he received exhibits from the police officer one D/C Silvester from the OC-CID of Makambako Police Station to our office and the letter from his boss annexed. He verified the exhibits and registered them by giving a Lab number FB/BALL/LAB/18/2018. He listed the exhibits according to identification chronological order.

He further mentioned exhibit "**K-1**" which was a gun make Uzi gun Caliber **9 mm** shot with Serial Number **3052**, the exhibit "**K-2**" was a gun makes Pistol Caliber **9 mm** shot with serial number **AC 0963**, the exhibit "**K-3**"- "**K-38**" were the live ammunitions caliber **7.62 mm**. He also mentioned other exhibits which were "**K-39**" – "**K-55**" live ammunitions caliber **9mm**, and said that the above-mentioned exhibits were suspected to have been found from the suspect.

Also, PW4 testified that other exhibits were "**Q-1**" to "**Q5**" which were the three cartridges caliber **9 mm** shot, also suspected to have been found at

the crime scene. And the last exhibits were "**Q-4**" and "**Q-5**" which were the two fired/spent bullets caliber 9 mm shot, which were suspected to have been found in the body of deceased person.

That, after receiving the above exhibits; he labeled them and conducted a forensic examination of the exhibits. Then, he made his opinion and prepared the forensic examination report; the said report was tendered and admitted in evidence as **exhibit "P3"** without any objection.

During the examination in chief, **PW4** identified the exhibits he examined in the laboratory and he prayed to this court to admit the said arms and ammunitions as exhibits in this case, the prayer which was objected by the defence counsel in the first place; he objected the prayer on the ground that **PW4** is not the one who seized the weapons, but later, he withdraw his objection and the court admitted said weapons as follows: One Uzi gun with serial number **3052** caliber 9mm was admitted as **Exhibit "P4"**, One pistol with serial number **AC 0963** caliber 9mm shot was admitted as **Exhibit "P5"**, thirty-six (36) live ammunitions caliber 7.62 mm were admitted collectively as **Exhibit "P6"**, Seventeen (17) live ammunitions caliber 9mm shot were admitted collectively as **Exhibit "P7"**, Three (3) spent cartridges caliber 9mm short were admitted collectively as **Exhibit**

**"P8"**, Two (2) spent bullets caliber 9mm were admitted collectively as **Exhibit "P9"**, Two (2) recovered test fired cartridges caliber 9mm shot were admitted collectively as **Exhibit "P10"** and two (2) recovered test fired bullets caliber 9mm shot admitted collectively as **Exhibit "P11"**.

When cross examined, **PW4** testified that he recorded his statement after finishing to conduct his examination; he received exhibits on 12.02.2018 from D/C Silvester, the exhibits were annexed with a letter from the OC-CID of Makambako Njombe Police Station with reference Number MKB/CID/B1/7/346 dated 09.02.2018. He also said that police form number 113 is used to receive exhibit(s) in the laboratory; he doesn't have the document in court.

He received exhibits on 12.02.2018 and he prepared a forensic examination report on 19.02.2018, and, signed the Police Form number 113 after receiving exhibits in the laboratory. The said form was only used for laboratory. The exhibits tendered in court were examined for the purpose of being used in the present case and another case, but he did not recall the case. The D/C Silvester signed the Police Form No. 113 and he also know police D/C Elisha with police force number H.4225; he is subordinate at his working place, his duties are to receive

weapons/exhibits, to examine bullets, guns, ammunitions, cartridges and sharp objects.

On re-examination, the **PW4** testified that the exhibits were annexed with a letter from the OC-CID of Makambako Police Station; the letter requested him to examine the guns and bullets if they function, and examine the three cartridges found at the crime scene and two bullets found in the body of the deceased in order to know if the same were fired by the same guns.

**PW5, WP 9947 Corporal Dorothy** testified that she is a police officer stationed at Tukuyu Police Station, Mbeya Region. Before 28.06.2023 she was working at Makambako police station since May, 2014. Among of her duties is to keep exhibits. On 22.03.2016 she received exhibits from D/C Zainab, which were two bullets and three cartridges and kept them in the exhibit room. Then, she registered them in the exhibit book register and she issued them with registration number 33/2016.

She testified that on 10.02.2018 the exhibits were prepared by ASP Yesaya Sudi for being transferred to the Forensic Bureau, for examination. While, on 11.02.2018 she took the said exhibits and surrendered them to D/C Silvester so that he could transfer them to the Ballistic Specialist for



examination. On 07.08.2018 she received exhibits from the Ballistic specialist; she received exhibits namely, one (1) gun make Uzi gun, one (1) Pistol, thirty-four (34) SMG live bullets, two (2) SMG cartridges, fourteen (14) live bullets of Pistol, three (3) cartridges of Pistol and the Forensic Examination Report from Ballistic specialist. After she received the said exhibits, she kept them in the exhibit room.

During cross examination, the learned defence counsel before he began to cross examine **PW5**, he requested the court to take note that the 17 bullets of pistol which were admitted in court as **Exhibit "P9**, were not listed during a preliminary hearing conducted on 12.04.2021. Parties were given rights to submit on the said issue and the court reserved the ruling up to the final stage of composing this judgment; then cross examination continued.

Upon cross examination, **PW5** testified that she is an exhibit keeper, she has worked for six years. On 07.08.2018 she received exhibits from Ballistic specialist which were already being examined. She received from ASP Yesaya Sudi. She also received the Forensic examination report; it was about 1700-1900 hours. She also said that she received fourteen (14) bullets caliber 9mm, but in court, the bullets with caliber 9 mm are 15

bullets. **PW5** stated that she received (14) bullets caliber 9mm, she doesn't know who added one bullet. She handled over the exhibits to Surgent Nimzana when she was transferred to Tukuyu Police Station. She handled over to her (14) bullets caliber 9mm.

**PW6, G.1981 D/C Silvester**, testified that he is a police officer stationed at Wanging'ombe District. On 2018, he was working at Makambako Police Station investigation department. On 11.02.2018 he was instructed by his superior boss to send the exhibits to the Ballistic office at Dar es Salaam. He further testified that WP Dorothy gave him the exhibits and a covering letter; he was accompanied with D/C Amos. On 12.02.2018 they reported to the Ballistic office and surrendered the said exhibits to Inspector Mgema, who received it and opened the box as well as the letter in front of him. He further said that the receiver verified and confirmed the exhibit and he handled over form No. 133 to him and he was given Lab number 18/2018. Thereafter he returned to Makambako.

When cross examined, he said that he was accompanied by D/C Amos, he was given a letter and he could identify it, he could identify the signature of ASP Yesaya Sudi and the items listed in that letter. He submitted the said letter to the Ballistic Forensic Bureau office; he did not sign a form. He

further said that he was given a Lab number after handling over the exhibits.

The **PW6** said that he is the one who testified in the Economic Crime Case No. 10 of 2020. When he was cross examined in the said case, he testified that he handled over three (3) guns, and one pistol. In Economic Crime Case he handled over four (4) guns. In the said case he testified by mentioning the serial number of guns, one Uzi gun with serial number **3052** and one Pistol with serial number **AC 0963**. He did not testify that he handled over four guns. He is not an investigator of this case. There is exhibit book register which is normally signed by a police officer who takes the exhibits. He did not tender the exhibit book register before this court; He is not the exhibit keeper.

In re-examination, the **PW6** said that the Economic case No. 10 of 2020; was an economic case, the one before this court, is a murder case. He carried the exhibits and handled them over to the Ballistic office.

**PW7, SSP Yesaya Edward Sudi**, testified that he is a Regional Crime Officer at Mwanza Region. On 2016 he was working at Njombe Region, Makambako Police Station as head of Investigation Department at Makambako Police Station. On 21.3.2016 he received information of the

incident of murder which happened at the Sigrid Street; he went with his colleagues to the crime scene where they found the deceased body. The deceased body had three wounds; one, on his stomach, two, on his waist and three, on his right leg. After inspecting the crime scene, he found three cartridges of pistol. He instructed the police officer to draw a sketch map with the help of Mr. Mathias Mdage, the street chairman. Then, they took deceased body and kept it in mortuary of Makambako Hospital, and the three cartridges were handled over to the exhibit keeper of Makambako Police Station.

He further testified that on 22.03.2016 he went to the hospital for the post mortem examination to be conducted, he was with a medical doctor called Magret Msasi and two relatives of the deceased person. Through the examination, a doctor managed to find two spent bullets in the body of the deceased, and he handled over the said bullets to WP Zainab whom he appointed to be an investigator of present case. Thereafter, they proceeded with the investigation in order to know who committed the offence. On 13.05.2017 he received the information from his informer that the suspect who committed the offence is commonly known as **Batoni Mangula@ Baraka Mang'ita.**

That, after receiving such information, on 15.05.2017 at around noon, they went to Mafinga, they were hinted that suspect was residing at Mafinga town. At around 1600 hours they managed to arrest the accused person in the lodge called Ludilo Lodge. The accused had a motorcycle with registration number MC 924 AJL make Fecon at the time he was arrested.

**PW7** continued to state that the accused was interrogated and confessed to have committed the offence of murder, the accused narrated to him regarding the whereabouts of the weapons he used to kill deceased stating that he hid them after killing the deceased person.

That at around 1700 hours on the fateful date, they travelled to Kitandililo village at Mafinga with the accused person **Batoni Mangula @ Baraka Mang'ita**; the village is in a border between Mufindi and Njombe Districts.

Upon arriving there at around 1845 hours, they went to the village office and introduced themselves to the village leaders; one, Fred Kiwale, Village Chairperson and Oswald Mkunda, Village Executive Officer. Then **PW7** informed the village leader about the case and that the accused person wanted to show them the weapons he had hidden in their area.

Subsequently, the accused person directed them to mount Fiho within Kitandililo Village whereupon he showed them the canyon which had a stone on top of it.

That thereafter, they removed the said stone and found a black bag, then they opened it and found a black sweater; they also unfolded the said sweater and found two weapons; one, Pistol with serial number **AC 0963** and another was a gun make Uzi gun with serial number **3052**.

That, they also found a black plastic bag in which they discovered two types of bullets; 17 bullets were of a Pistol and the 36 bullets were of the bullets normally used with AK47 or SMG, also according to **PW7**, the said bullets can be used with the gun called "SAR" that is Semi-Automatic Rifle.

That thereafter **PW7** prepared a certificate of seizure recorded all the discovered items and seized them from the accused person. The said certificate of seizure was tendered and admitted in evidence as **Exhibit "P12"** after objection withdrawn by defence counsel.

**PW7** added that on 09.02.2018 he wrote a letter to the Ballistic office in Dar es Salaam requesting him to conduct examination of the guns and cartridges found at the crime scene. He took the exhibits from the exhibit

keeper and prepared them in order to be sent to the Ballistic for examination.

That, the said exhibits were taken by police officer D/C Amos and D/C Silvester to the Ballistic office on 11.02.2018. He added that on 07.08.2018 when he was at Dar es Salaam, he passed by to the Ballistic office and he was given the said exhibits and ballistic report. He took exhibits together with a report and handled them over to the Exhibits keeper WP Dorothy. He arrived at Makambako on the same day around 1900-2000 hrs. He was a witness in Economic Crime Case No. 10 of 2020; in the said case the exhibits apprehended Kitandililo village, were tendered and admitted in evidence by the subordinate court. The **PW7** identified accused person in the dock.

Upon cross examination, **PW7** stated that he handled over the black plastic bag to the Police Station; the plastic bag was neither not tendered in court, nor the gloves were not tendered in the court, the small black bag and black sweater. The said items were tendered and admitted in the Economic Crime Case No. 10 of 2020 as exhibits. He received the exhibits from the Forensic Bureau on 07.08.2018, signed the document in the office of Forensic Bureau, that document is not tendered in court. He

interrogated the accused person after arresting him, but he did not record his statement. He interrogated the accused person who confessed before him that the weapons/guns were belonging to him and he showed him the place where he had hidden them; and he recorded the seizure certificate.

On the other side, the accused person **Batoni Mangula @ Baraka Mang'ita** who testified as **DW1**, entered his defence on oath by stating that in the exhibit P12, there is his signature, but he was forced to sign it. The said exhibit does not show the date when he signed. **PW7** and E.8390 D/C Hamisi signed the document, but they did not indicate the date too. He also testified that the two witnesses, Fred Kiwale and Oswald Mkumba signed the said document on 15.05.2017. He continued to testify that **PW7** in his testimony said the listed items in seizure certificate were found from him. He further testified that the 17 bullets brought in court were enclosed in the small plastic bag/envelope, but no witness testified about the red gloves, black bag which were not tendered in court.

**DW1** testified that he is a resident of Mafinga, Kinyamabo "B", but he doesn't know Fred Kiwale and Oswald Mkumba who introduced them as a Village leader, he also stated that he did not reach at the place called Iyongobe, Mafinga. The village leaders were not brought to testify before



the court and no reasons were given as to why the prosecution did not bring them in court. That he was not arrested with the guns and all items listed in the certificate of seizure; he was not searched by any one, and he also he had never owned guns.

**DW1** also challenged the evidence of **PW1** by arguing that the said witness confirmed that he did not identify a person who shot the deceased person. He added that no prosecution witness mentioned him as a person who killed the deceased person. He concluded by urging this court to set him free maintaining that he did not commit any criminal offence.

During cross examination, the **DW1** stated that he was coming from Songea and he got out of the car and went to the Timber market. He is not a liar, he got out of the car, he was arrested at Makambako, and he was heading to Mafinga. He was accused of committing the offence of murder, that he killed **Erasto Nzali**, he did not know when the said offence was committed. He was arraigned in court on 06.06.2017 for the offence of murder, PI No. 29 of 207; the deceased is **Costa Pamike**.

That it was Economic crime case No. 10 of 2020 in which the said exhibits were tendered; it was **Republic versus Batoni Mangula**. He was convicted by the trial court in the said economic case, he appealed to the

High Court which upheld decision of the trial court, but he also appealed to the Court of Appeal.

I have gone through the evidence adduced by both parties, the rival submissions as well as the authorities referred to this court by the counsel for both parties. It is glaring that both parties are in one as to the fact that the accused herein was arrested, interrogated and charged with the offence of Murder contrary to section 196 of the Penal Code following the serious allegations levelled against him that he is the one who murdered the deceased person one **Erasto s/o Nzali**.

There are a number of substantive issues to be determined by this court; one, the death of the deceased was of unnatural cause. This is an issue of fact. Evidence on record reveals that the deceased person was assaulted by sharp objects. He was shot by motorcycle rider at Sigrid Street; this is in accordance with the testimony of **"PW1"**. Undeniably, the Post mortem examination report (Exhibit "P2") describes the cause of death of the deceased to be **severe hemorrhage due to multiple penetrated wounds**. As for the fact that the body of the deceased was found with deep penetrated wounds on the back and a deep penetrated wound on

right Illia fussa, it was stated in the case of **Tomola v Republic** [1980] T.L.R 254 that, and I quote:

*"Proof of death in homicidal cases is through medical evidence and or circumstantial evidence"*

From the above-mentioned case and the available prosecution evidence, I am therefore convinced that the accused died and that his death was not natural in sense that he died a violent death.

It therefore remains upon this court to resolve the remaining issue on whether it is the accused before this court is responsible for the death of **Erasto Nzali** who is the subject of this trial. In tandem to that, if it is alleged that it was the accused who committed such terrible offence, then the remaining issue for determination will be whether his action was actuated with malice aforethought.

I now pose at this juncture in order to reaffirm the basic principle of law that the burden of proof in criminal cases lies squarely on the prosecution shoulder; the standard of which is beyond reasonable doubts; See **Wolmington v DPP** (1935) AC 462, **Said Matuka v Republic** [1995] T.L.R. 3 and **Pascal Yoya @Maganga v Republic**, Criminal Appeal No. 248 of 2017 (unreported).

An accused has no duty of proving his innocence, and in making his defence, an accused is merely required to raise a reasonable doubt. Also, the accused person can only be convicted on the strength of the prosecution case and not on the basis of weakness of his defence; See **Mohamed Haruna @Mtupeni and another v Republic**, Criminal Appeal No. 25 of 2007(unreported) and **Mwita and others v Republic** [1977] LRT 54 in which the Court held that:

*"The appellants' duty was not to prove that their defences were true. They are simply required to raise a reasonable doubt in the mind of the magistrate and no more."*

Indeed, there is no dispute that this case is based on direct evidence and circumstantial evidence. I will start with direct evidence to determine the second issue on whether the accused before this court is responsible for the death of the deceased person.

In his testimony **PW1** testified in court that on 21.03.2016 he was with the deceased person coming from the Primary Court of Makambako, when they were heading home, at the Sigrid Street; deceased was shot and fell on the ground. While there, he saw a person riding a motorcycle holding a gun and turned round the motorcycle, then shot deceased on the leg. **PW1** run

to the nearby office of Sigrid Street and informed the neighbours; thereafter, the police officers were informed about the incident. However, the **PW1** neither identified the person nor the motorcycle.

Again, according to the evidence of **PW2**, it appears that he is the one who reached at the crime scene after he was informed about the incident by the Street Chairman; he was about five hundred (500) meters from the scene. **PW2** is the one who called the police of Makambako Police Station and informed them about the incident. Upon being cross examined by the learned defence counsel, **PW2** said that he did not witness the deceased being shot.

From those pieces of prosecution witnesses' evidence, it is obvious that none of prosecution witnesses saw the accused person causing death of the deceased person by shooting him with a gun. Their evidence remains to be circumstantial evidence which can fully prove a charge of murder against the accused person once proved.

I should note at the outset that it is a settled law that a court of law may ground conviction based solely on circumstantial evidence. This is so where such evidence irresistibly leads to the inference that it was the accused person and nobody else, who committed the offence.

Such evidence must be incapable of more than one interpretation and the chain linking such evidence must be unbroken; See **Julius Justine and others v Republic**, Criminal Appeal No. 155 of 2005(unreported) the Court held that:

*"...the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established and that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, and that circumstances taken cumulatively should form a chain so complete that there is no escape from conclusion that within all human probability, the crime was committed by the accused and no one else...."*

Also, in the case of **Sikujua Idd v Republic**, Criminal Appeal No. 484 of [2021] TZCA 427 the Court held that:

*"It is established law that a charge of murder can be fully proved by circumstantial evidence. In determining a case centered on circumstantial evidence, the proper approach by the trial Court and appellate Court is to critically consider and weigh all circumstances established by the evidence in their totality and not consider in piecemeal or cubicles of evidence or circumstance."*

From the above position, I shall now evaluate the incriminating circumstances in the chain of circumstantial evidence from the prosecution

side in order to determine whether they irresistibly points finger to the guilty of the accused person by considering the chain of events.

The evidence of Mashaka Bohela, **PW1** who was a brother of deceased, shows that he saw a deceased already being shot by a person riding a motorcycle holding a gun; the suspect then turned round the motorcycle and shot deceased on the leg. **PW1** run to the nearby office of Sigrid Street and informed the neighbours, they went to the crime scene.

The evidence of **PW1** has corroborated a material particular evidence of **PW2** and **PW7**; **PW2** went to the crime scene and found the deceased person lying down. **PW2** called the police and informed them about the incident of murder.

Also, the evidence of **PW7** reveals that he reached at the crime scene with his fellow police officers and found the deceased body lying down. Upon inspection of the crime scene; they found three cartridges in the crime scene. Taking the evidence of **PW2** and **PW7**, I am persuaded to believe that the evidence of **PW1** was credible and contain the truth.

The next piece of incriminating circumstantial evidence is that **PW2** and **PW7** found deceased body lying down and the police officers discovered the spent cartridges in the crime scene; they showed **PW1** and other

citizens the said cartridges. Thereafter, a sketch map was drawn by the police officer under instruction of **PW7** and assisted by **PW2**, and then it was admitted as **Exhibit "P1"** without objection. Thereafter, the deceased body was being taken to the hospital and kept in mortuary.

The prosecution evidence also reveals that on 22.03.2016 the deceased body was identified by **PW7**, deceased relatives and **PW3** who in the course of conducting a postmortem examination of the deceased body, removed two pieces of iron from the deceased body; one from the lower part of the deceased stomach and another from the waist and handled them over to **PW7**; later it was discovered through forensic examination that the said iron pieces were is bullets.

The two spent bullets were handled over to WP Zainab, an investigator of this case. **PW3** was firm when cross examined by defence counsel when she responded that the piece of irons are the ones which caused wounds on the deceased body parts; they were multiple penetrated wounds.

The evidence of **PW3** is corroborated by the evidence of **PW7** who said that he found the deceased body with three wounds, one, on his stomach, on his waist and on his right leg and they found two cartridges of pistol in



the crime scene. The evidence of the above two prosecution witnesses is also added weight by **Exhibit P2**.

Upon the evaluation of evidence and the surrounding circumstance, I find that the evidence of **PW3** and **PW7** has proved that the deceased had multiple penetrated wounds, which were caused by the two pieces of iron which was being removed by **PW3** during postmortem examination.

Another piece of evidence is that **PW7** was informed by whistleblower/informer that the one responsible for the death of deceased person is commonly known as **Baton Mangula @Baraka Mang'ita**, then he traced and arrested the said accused person at Mafinga in the lodge called Ludilo lodge. That the accused confessed before **PW7** and Fred Kiwale and Oswald Mkunda, the village leaders of Kitandililo village as being the one who killed the deceased person and hid the weapon, he used to commit that homicide offence.

It is also the testimony of **PW7**, that the accused person showed **PW7** and Fred Kiwale and Oswald Mkunda where he hidden the said weapons. The accused was interrogated by **PW7** and confessed to have committed the offence which confession led to discovered of guns and bullets.

It is also revealed by the evidence of **PW7** that after discovering the said weapons, he prepared a certificate of seizure, recorded all the discovered items and seized them from the accused; the seizure certificate was signed by **PW7**, two independent witnesses who are Fred Kiwale and Oswald Mkunda as a witness; and the accused person.

The certificate of seizure was tendered in court by **PW7** and it was admitted as **Exhibit "P12"**. Upon cross examination, **PW7** responded that he interrogated the accused person after arresting him and that the accused person directed them to the place where he kept the guns.

In his defence, **DW1** testified that he was arrested on 15.05.2017 at Makambako when he was coming from Songea to Mafinga, he was associated with the business of selling cannabis sativa drugs. He further said that he was forced to sign the documents among which were Exhibit **"P12"**, but the document does show the date when he signed it.

On evaluating the evidence and exhibits admitted in court, I have observed that the evidence of **PW7** is corroborated by **Exhibit P12** which bears signature of the accused person and two independent witnesses, which indicates that the said weapons including the ones found at the scene of

crime and from the deceased stomach were in possession of the accused person and were used by him to kill the deceased person.

It is also proved that accused was present at the place where the said weapons were found, and it was his confession which led to the discovery of the said weapons.

Also, **exhibit P12** reveals that one Uzi gun with serial number **3052** caliber 9mm, one pistol with serial number **AC 0963** caliber 9mm short, thirty six live ammunitions caliber 7.62mm, seventeen live ammunitions caliber 9mm, plastic bag red in color, red gloves, black sweater and small bag black color had been seized from the accused person.

From the above description, it is my considered opinion that the signing the **Exhibit P12** proves that the accused was in possession of the items listed in the certificate of seizure.

On the issue of preparation and sending weapons to Ballistic office, **PW5** on 22.03.2016 received two spent bullets and three cartridges and she kept them in the exhibit room. She received other exhibits on 15.05.2017 which were one gun make Uzi gun, one pistol, 17 bullets of pistol and thirty-six bullets of a short machine gun; she received from PW7 and kept them in the exhibit room.

On 12.02.2018 exhibits were prepared for being transferred to the Forensic Bureau for examination. To support what **PW5** testified, **PW7** wrote a letter to the Ballistic office of Dar es Salaam requesting him to conduct examination of the guns and cartridges found at the crime scene, he took the exhibits from the exhibit keeper and put in the special envelope for sending the said exhibits. **PW7** instructed PW6 to submit exhibit to the Ballistic office for examination. The evidence of **PW7** is corroborated with the evidence of **PW6** who submitted the exhibits to the Ballistic office in Dar es Salaam, and also corroborate the evidence of **PW4** who receive exhibits and a letter from **PW6**. **PW4** verified the exhibits and conducted forensic examination; he also made his opinion and prepared the Forensic Examination Report which was tendered in court and admitted as **Exhibit P3** without being objected by neither the accused person, nor his advocate.

The said report reveals that the three cartridges suspected to have been found at the crime scene and two bullets suspected found in the body of the deceased person, were fired by the said gun particularly a pistol. Moreover, the weapon which was examined by **PW4** was tendered by **PW4** and the court admitted them as **Exhibits "P4" to "P11"**.

It is my settled view that the evidence of **PW4, PW5, PW6** and **PW7** proves that the exhibits which was found in possession of accused person and which passed through a forensic examination done by **PW4** are the one which were used by the accused person to kill the deceased person.

I am inclined rely on such observation due to the evidence of **PW4** who is a ballistic expert, coupled with the evidence of PW7 and the documentary exhibits which are certificate of seizure and the forensic examination report which depicts that the two iron balls found in the body of the deceased persons were the bullets fired from the pistol which was found in possession of the accused person.

Regarding the complaint of the accused person that the there was a decrease of number of bullets allegedly used by him to kill the deceased person, I am settled that such complaint is unfounded because the evidence of **PW4** shows clearly that the decreased was due to the forensic examination he conducted in the laboratory of the Ballistic Bureau.

Also, the defence submission that the 17 bullets were not listed during a Preliminary Hearing is minimized by the fact that the summary of facts which shows that the said bullets were listed was adopted by this court during preliminary hearing. Hence, they formed part of the court

proceedings. In the circumstance, it is hard to hold that the allegedly bullets were not listed.

Therefore, due to the above-mentioned reasons, I am of the conclusive finding that the chain of circumstantial evidence linking the accused person with the death of deceased person, is unbroken thus leading to no other conclusion than that it is the accused person who murdered **Erasto Nzali**. Hence, the second issue is therefore answered in the affirmative.

After disposition of the second issue, I am therefore remained with one issue. Having established that the prosecution has proved the *actus reus* and has connected the accused with the killing of the deceased, what remains now is to find out if the prosecution has successfully established the mental element that *mens rea* which is commonly known as Malice aforethought.

The Court of Appeal of Tanzania in the case of **Enock Kipela v R**, Criminal Appeal No. 150 of 1994 (unreported) inter alia, articulated in great details, factors constituting the requisite malice aforethought. The Court stated at page 7, that:

*".... 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."*

Similarly, the Court of Appeal discussed these essential factors for malice aforethought in the cases of **Moses Michael@Tall v R** [1994] TLR 195, where it held thus: -

*"(i) Malice aforethought may be inferred from the amount of force which an offender employs in inflicting fatal injury;*

*(ii) The conduct of the accused may be indicative of malice aforethought as it was in this case where the appellant was persistent in beating the deceased for a long time and prevented intervention by persons who wanted to help the deceased".*

Under section 200 of the Penal Code malice aforethought is deemed to be established by evidence proving any one or more of the circumstances referred in that section. These are: -

- (a) *An intention to cause the death of or to do so grievous harm to any person.* In this case the act of the accused to go to deceased's father and cut the deceased three times on the head with lethal weapon and in the most sensitive part of the body, that is the head, he intended to cause her death.

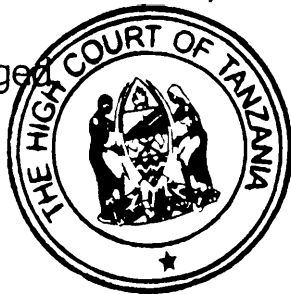
In this case, the evidence of **PW1** shows that he saw a person riding a motorcycle holding a gun, shoot the deceased person and he turned round the motorcycle and shot deceased on the leg. This evidence is corroborated by exhibit P2 which was not objected by defence side. The above piece of evidence is corroborated by the evidence of **PW3** and **PW7**. All those prove the fact that the accused person used a lethal weapon to kill the deceased person.

The second evidence to prove malice aforethought is the part or parts of the body the blows were directed by the accused person in this case. It is revealed that the deceased person sustained severe hemorrhage due to multiple penetrated wounds. According to the evidence of **PW3** which is also corroborated by exhibit P2, **PW3** removed one piece of iron from the



lower part of the stomach and another from the part of the waist. The totality of the above evidence indicates nothing, but the fact the killer wanted the deceased dead.


Therefore, basing on the above reasons I am settled in my mind that the accused person **BATONI MANGULA @ BARAKA MANG'ITA** killed deceased with requisite malice aforethought. Hence, I do hereby find him guilty of Murder contrary to section 196 of the Penal Code, and I convict him as charged



  
**A.A. Mrisha**  
Judge  
**15.11.2023**

### **SENTENCE**

The offence of Murder has only one punishment under the law of the land. This is provided under section 26(1) of the Penal. I have considered all the aggravating and mitigating factors from both sides. However, my hands are tied due to the requirement of the law which I must uphold. I do sentence the accused **Batoni Mangula @ Baraka Mang'ita** to suffer death by hanging until he dies.

  
**A.A. Mrisha**  
Judge  
**15.11.2023**

## ORDER

Considering the fact that the accused person herein used a pistol to murder the deceased person, and that in the course of conducting an investigation, the police discovered the said gun and other weapons under the guidance of the said accused person, I am constrained to make the following order: -

1. Exhibits **P4, P5, P6, P7, P8, P9, P10** and **P11** which were used by the accused person in committing the offence of murder of the deceased person be forfeited, under section 351(1) (a) of the CPA,
2. The said exhibits be destroyed subject to the provisions of section 351 (2) (3) and (4) of the CPA.

It is so ordered.



  
**A.A. Mrisha**

**Judge**

**15.11.2023**