

**THE UNITED REPUBLIC OF TANZANIA**  
**(JUDICIARY)**  
**THE HIGH COURT**  
**(MUSOMA SUB REGISTRY AT TARIME)**  
**ORIGINAL JURISDICTION**  
**CRIMINAL SESSIONS CASE No. 182 OF 2022**  
**THE REPUBLIC v. JUMA RHOBI MONYEKA**  
**JUDGMENT**

04.12.2023 & 07.12.2023

Mtulya, J.:

**Mr. Juma Rhobi Monyeka** (the accused) was brought in this court for allegation of attempt to murder his own blood son aged five (5) years, **Joseph Juma Rhobi** (the victim) in the presence of her own blood daughter aged nine (9) years, **Janeth Juma Rhobi** (Ms. Janeth). According to the Republic, the incident was reported to the Kebaga Mtaa Chairman of Kenyamanyori Ward within Inchage Division of Tarime District in Mara Region, **Mr. Peter Mwita Masero** (Mr. Masero) and police authorities of Tarime District for issuing **Police Form Number Three** (PF.3) and investigation of the alleged incident under the mandate of **WP.3279 Detective Surgent Joyce**.

Subsequent to the complaint levelled to the accused by the Republic, the accused was arrested and arraigned in this court on 4<sup>th</sup> December 2023 to reply the information of attempt to murder the victim contrary to section 211 (a) of the **Penal Code [Cap. 16**

**R.E. 2022]** (the Penal Code). The incident is alleged to have occurred on 6<sup>th</sup> March 2020 at Kebaga Street within Tarime District in Mara Region. However, before the hearing proceedings of the case could take its course, **Ms. Dotto Banga**, learned State Attorney for the Republic, had issued notices to tender witness statements of the victim, Ms. Janeth and Mr. Masero. The notices were issued under section 34B (1) & (2) (a) of the **Evidence Act [Cap. 6 R.E. 2022]** (the Act). According to Ms. Banga, Mr. Masero has expired hence could not produce his evidence in court whereas the victim and Ms. Janeth, could not be procured to testify in the case as they cannot be found at their residence and school.

During plea taking, when the information of attempt to murder the victim was read over and explained to the accused, he denied any involvement in the offence. Following his plea of not guilty, the Republic had marshalled two (2) witnesses and prayed to tender five (5) exhibits to prove its allegation. In order to show that the victim had wounds caused by the alleged offence, the Republic had marshalled **Dr. Masiaga Joseph Chacha** (PW1), a medical doctor at **Tarime District Hospital at Tarime** (the hospital) to testify on the subject.

According to PW1, the victim was brought at the hospital on 6<sup>th</sup> March 2020 at evening hours for medical examination and

treatment and found him with three (3) wounds located at the head, left shoulder and back next to the waist. PW1 testified further that the wounds displayed probable attacks from a sharp object as the wounds were ranging from two (2) to three (3) centimetres in length, three (3) to six (6) centimetres width and two (2) to three (3) centimetres deep.

Regarding pains to the victim, PW1 testified that the victim had grave back pains which affected the spinal code and could not move his steps hence the hospital had referred him to **Musoma Region Referral Hospital** (the regional hospital) for further examination and treatment. In order to support his evidence, PW1 had tendered PF.3 of the victim recorded at the hospital on 6<sup>th</sup> March 2020 as **Exhibit P.1**. Exhibit P.1 shows, in brief, that: *massive cut wounds which are on the arm next to the shoulder, on the back near to the pelvic region and on head*. Its details medical comments display that: *dangerous harm which can cause death due to excessive bleeding and permanent disability*.

In justifying the police authorities at Tarime District were involved in issuing the PF.3 and investigation of the whole saga, the Republic had marshalled **WP.3279 Detective Surgent Joyce** (PW2). In rendering her evidence, PW2 testified that she had investigated the case and uncovered that on 6<sup>th</sup> March 2020, the

accused had attacked the victim on different parts of body organs namely: head, shoulder and waist and following the police investigation, the accused was arrested. In her investigation, according to PW2, she went at the crime scene with police officer Detective Gibert and prepared sketch map of the crime scene. PW2 testified further that the police authorities in Tarime District had recorded witnesses' statements of the victim, Ms. Janeth, Mr. Peter and **Ms. Mariam Rhobi Monyeka** (Ms. Monyeka).

In her testimony, PW2 testified further that the victim had cited the accused as his attacker in his statement whereas Ms. Janeth had recorded to have witnessed the accused attacking the victim by *panga* and had rushed to inform her aunt Ms. Mariam, who finally reported the matter to Mr. Peter. According to PW2, it was Mr. Peter who had reported the incident to the police authorities at Tarime and took the victim to the hospital for examination and treatment.

In order to substantiate his testimony, PW2 had tendered a sketch map of the crime scene (Exhibit P.4), witness statement of the victim (Exhibit P.5), witness statement of Ms. Janeth (Exhibit P.2), and witness statement of Mr. Peter (Exhibit P.3). Exhibit P.4 displays presence of three (3) structures at the crime scene, namely: first, *nyumba ya kulala ya mtuhumiwa Juma Rhobi*

*iliyojengewa kwa udongo na kuezekwa kwa bati ambapo tukio la kujaribu kuua lilitokea; second, nyumba ya udongo ya nyasi inayotumika kama jiko katika mji wa mtuhumiwa [ambapo] tukio la kujaribu kuua lilitokea; and third, nyumba ya kulala watoto akiwemo Joseph Juma. [nyumba] ya udongo iliyoezekwa kwa bati katika mji wa mtuhumiwa tukio la kujaribu kuua lilipotokea.*

On the other hand, Exhibit P.5 shows the following narrations of the victim, in brief, that:

*Mimi...ni mwanafunzi, nasoma Darasa la Kwanza Shule ya Msingi Mtahuru ambayo ipo Kata ya Kinyamanyori Tarafa ya Inchage Wilaya ya Tarime Mkoa wa Kipolisi Tarime/Rorya. Nakumbuka kuwa mnamo tarehe 6/3/2020 majira ya saa 18:40 hrs, nilikuwa nyumbani kwetu. Baba yangu aitwaye JUMA s/o RHOB I alifika akitokea kwenye shughuli zake na alinikuta nipo na dada yangu, JANETH d/O JUMA, ndipo baba baada ya kufika aliniambia nimpatie ile hela Tshs. 2000/= elfu mbili aliyonipatia kipindi kule shuleni kwetu anafanya kazi ya ujenzi, ndipo nilimjibu Baba kwamba ile hela/pesa imepotea ndipo aliniingiza ndani tunapolala na kuchukua panga akanikata mkono wa kushoto mgongoni na kichwani. Wakati huo Dada yangu, baada ya Baba kutoka kunikata na panga alikimbia. Alivyokwisha nikata nilianza kupiga yowe na watu wakafika na yeye akapata nafasi, akakimbia ndipo nililetwa kituo cha polisi.*

Regarding the materials in Exhibit P.2, the narrations of Ms. Janeth show, in brief, that:

*Mimi ni Mwanafunzi wa Shule ya Msingi Mtahuni Darasa la Tatu. Ninaishi na shangazi yangu Mariam. Mama yangu hayupo ameenda Kigoma. Nakumbuka tarehe 6.3.2020 majira ya jioni mimi na Joseph s/o Juma Rhobi tukiwa hapa nyumbani alikuja Baba yetu ambaye anaitwa JUMA s/o RHOB. Alipokuja alimwomba Joseph s/o Juma kwamba naomba ile pesa yangu Tsh. 2000/=. Joseph s/o Juma akamjibu kwamba ile pesa imepotea. Baada ya kuelezwa kwamba pesa imepotea, alichukua panga ambalo lilikuwa chumbani akamvuta mkono Joseph s/o Juma akampiga. Akaanza kumrusha chini halafu akamkata na panga mgongoni na mkono wa kushoto. Baada ya kumkata akafunga mlango kasha akamweleza kuwa baki humo humo ndani, akafunga mlango akakimbia.*

Finally, Mr. Peter, was also recorded witness statement on 8<sup>th</sup> March 2020, and had produced the following facts, in brief:

*Mimi...ni mkazi wa Mtaa wa Kebaga Wilaya Tarime na Mkoa wa Mara. Shughuli zangu ni mkulima na shughuli za dhahabu vile vile. Ni Mwenyekiti wa Mtaa wa Kibaga. Kama Mwenyekiti wa Mtaa shughuli zangu ni kulinda usalama katika mtaa wangu, kuhamasisha shughuli za maendeleo katika Kata. Nakumbuka tarehe 6/3/2020 majira ya saa 18:40 hrs, nikiwa mtaa wa Kibaga, katika shughuli niliyoitaja ni kwamba nilipokea taarifa juu ya kujeruhiwa kwa mtoto aitwaye*

*JOSEPH s/o JUMA. Mtoto aliyejeruhiwa kwa kukatwa panga na Baba yake aitwaye JUMA s/o RHOBİ MONYEKA, ambaye ni mwanamtaa wangu, na ninafahamu siku nyingi. Ambapo baada ya kufika eneo la tukio mimi ndio nilimchukua majeruhi ambaye ni mtoto Joseph s/o Juma @ Rhobi hadi Kituo cha Police Tarime kwa hatua zaidi za kisheria.*

Subsequent to the materials produced by the Republic, the accused was found to have a case to reply. In his defence, the accused had denied participating in attacking the victim with *panga* and testified that on the complained date, 6<sup>th</sup> March 2020, he had left his residence at 05:00 hours to Nyansirura area for his traditional work of construction of houses and returned home at night hours around 20:00 hours and found the victim already injured.

Regarding the cause of grave wounds at three (3) different organs of the victim's body, the accused testified that he was informed by **Ms. Sarah Juma** that the source of wounds is corrugated iron sheets which were shifted by a blowing wind from a kitchen next his house to the victim. However, during cross examination, the accused admitted that exhibit P.4 was tendered without any protest and shows three (3) structures at the crime scene, and the indicated kitchen was constructed by use of mud and grasses without any corrugated iron sheet.



The available practice in this court shows that the test in resolving criminal cases, in order to hold accused persons responsible for alleged crimes, is whether the Republic has established its case against accused persons beyond reasonable doubt. The practice is part of the requirement of the law enacted in section 3 (2) (a) of the **Evidence Act [Cap. 6 R. E. 2022]** (the Evidence Act). The enactment has already received a bunch of precedents in our jurisdiction (see: **Said Hemed v. Republic** [1987] TLR 117; **Mohamed Said Matula v. Republic** [1995] TLR 3; **Horombo Elikaria v. Republic**, Criminal Appeal No. 50 of 2005; **Republic v. Josephat Athman & Two Others**, Criminal Session Case No. 13 of 2023).

The materials brought by the Republic, must not only display that the victim was wounded at different parts of his body by a sharp object, but also a nexus between the said wounds and participation of the accused. This onus does not shift 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).

Accused persons in criminal cases are only required to raise some doubts. It is not proper to convict accused persons on basis that they are found to be liars (see: **Mushi Rajab v. Republic**



(1967) HC 384) or weaknesses on part of his defense (see: **Christian Kale & Rwekaza Bernard v. Republic** (1992) TLR 302).

However, in some cases, lies of accused persons 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 instant case, there is an allegation from the victim that he was attacked and wounded by the accused in presence of Ms. Janeth. Ms. Janeth on the other hand recorded exhibit P. 2 to show that she had witnessed the accused attacking the victim. The law regulating direct evidence is enacted in section 62 (1) (a) of the Evidence Act and provides that: *evidence must e direct, that is to say, if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it.*

According to available precedents in this jurisdiction, 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; **Republic v. Kamhanda Joseph Abel & Five Others**, Criminal Sessions Case No. 46 of 2018; **Republic v. John Mbatira @ Mtuke**,

Criminal Sessions Case No. 181 of 2022; and **Republic v. Mroni Samo @ Ryoba**, Criminal Sessions Case No. 12 of 2023).

In determining whether a witness had the opportunity to see what he claimed to have seen, a witness must be credible and reliable. According to the Court, a witness who testifies consistently statements may be believed and his testimony accepted, unless there are good and cogent reasons for not believing him (see: **Sabato Thabiti & Benjamini Thabiti v. Republic**, Criminal Appeal No. 441 of 2018; **Goodluck Kyando v. Republic** [2006] TLR 363; and **Republic v. Mroni Samo @ Ryoba** (supra).

However, practice shows that a witness who mentions an accused at the earliest possible opportunity, he is considered to be the best witness and his reliability is assured (see: **Marwa Wangiti Mwita & Another v. Republic** [2002] TLR 39; **Republic v. Nyataigo Mwita @ Makende**, Criminal Sessions Case No. 154 of 2022; and **Republic v. John Mbatira @ Mtuke** (supra).

In the present case, the victim had mentioned the accused within two (2) hours after the attacks against him, as the crime had occurred sometimes 18:40 hours and at 20:30 hours, the victim had already mentioned the accused before police officer **E. 5155 Cpl. Essau** at Tarime District Police Station. In his witness statement, the victim also mentioned witness Ms. Janeth, who also corroborated the evidence of the victim in Exhibit P.2. The evidence of the victim and

Ms. Janeth may be considered as credible and reliable witnesses and their evidence in exhibits P.5 and P.2 respectively, may be given higher weight in the present case.

I am aware that accused persons in criminal cases are required to raise some doubts to the prosecution case by bringing necessary materials in their favor. However, in the instant case, the accused had testified that he was absent at his residence when the incident had occurred and was told by **Ms. Sarah Juma** that the source of wounds in the victim's body was corrugated iron sheets which were moved by the blowing wind from the kitchen next his house to the victim. In his testimony, the accused stated that he was at Nyansirura area from 05:00 hours to 20:00 hours of 6<sup>th</sup> March 2020. However, the accused had declined to call **Ms. Sarah Juma** to testify on the source of wounds to the victim or any other person who was with him at Nyansirura area during the indicated hours of construction of houses.

Practice in this court and the Court shows that failure to call material witness to corroborate party's evidence may move courts to draw an adverse inference against that party (see: **Wambura Marwa Wambura v. The Republic**, Criminal Appeal No. 115 of 2019; **Stanley James @ Mabesi v. Republic**, Criminal Appeal No. 115 of 2022; and **Republic v. Mroni Samo Ryoba** (supra).

I am conversant that the accused was required to raise some doubts to the prosecution case by bringing necessary materials. However, in the present case, the accused had failed to do so. I am aware he produced the source of attacks and wounds to the victim, but his allegation does not find any support from Exhibit P.4 which shows a kitchen built by use of mud and grasses. This evidence was admitted and read without any protest from the defence side.

Similarly, PW2 had produced and read exhibit P.4 before the court without any cross-examination from the defence side on this important matter to uncover the truth. Failure of the defence side to cross examine PW2 on important materials displayed in Exhibit P.4, it is regarded that the accused had accepted the contents to be true and correct. There is a large bundle of precedents from the Court regulating the position (see: **Martin Misara v. Republic**, Criminal Appeal No. 428 of 2016; **Damian Ruhele v. Republic**, Criminal Appeal No.501 of 2007; **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010; **Mawazo Anyandwile Mwaikwaja v. DPP**, Criminal Appeal No. 455 of 2017; and **Siaba Mswaki v. Republic**, Criminal Appeal No. 401 of 2019).

I am quietly aware that it is not proper to convict accused persons on basis that they are found to be liars (see: **Mushi Rajab v. Republic** (supra) or weaknesses of his defense (see: **Christian Kale & Rwekaza Bernard v. Republic** (supra) and **Republic v.**

**Mroni Samo Ryoba** (supra). However, the present case, the materials brought by PW2 in P.2 and P.5, show that the victim was attacked by the accused and Ms. Janeth had witnessed the incident. The materials brought by the defence did not shake the prosecution case to invite doubts in the instant case.

The next question to be replied in this case is: *whether the materials brought by the Republic show that the incident falls within the offence of attempt to murder the victim*. In the precedent of **Enock Kipela v. Republic**, Criminal Appeal No. 150 of 1994, the Court stated that in *usually an attacker will not declare his intention to cause death or grievous bodily harm. The intention of accused must be ascertained from various factors, including the following: the type of the weapon used in the attack; the amount of force applied in assaulting; the part of the body where the blow was directed; the number of blows; and the kind of injuries inflicted*.

In the present case, the materials produced by the victim, Ms. Janeth, PW1 and Exhibit P.1 display that the accused attacked the victim by use of *panga* directed at sensitive parts of the human body head, shoulder and back near pelvic region to cause: *massive cut wounds with dangerous harm to cause death due to excessive bleeding and permanent disability*. These facts show that the accused had attempted to murder the victim.

In the circumstances of the present case, I am satisfied that the prosecution has proved its case beyond reasonable doubt as per requirement of the law in section 3 (2) (a) of the Evidence Act and precedent in **Said Hemed v. Republic** (supra), hence I find the accused guilty to the charged offence of attempt to murder the victim contrary to section 211 (a) of the Penal Code.

Accordingly ordered.



  
F.H. Mtulya

**Judge**

07.12.2023

This Judgment was pronounced in open court in the presence of the accused, **Mr. Juma Rhobi Monyeka** and his learned Defence Attorney, **Mr. Tumaini Kigombe** and in the presence of **Ms. Dotto Banga**, learned State Attorney for the Republic.

  
F.H. Mtulya

**Judge**

07.12.2023

#### **ANTECEDENTS**

**Banga:** My Lord, for the Republic, we have no previous criminal record of the accused. However, we pray for grave sentence. We say so for reasons.

1. The Penal Code provides for life sentence;
2. The accused used dangerous weapon *panga*;

3. Sentencing Guidelines provides for high sentence for those who use dangerous weapons;
4. The accused attacked a child of five (5) years by *panga*;
5. To send a lesson to parents who attack their children by *panga*;
6. He caused grave wounds at the head, shoulder and back near pelvic; and
7. The accused would have caused death of the victim.

My Lord, from the Republic, that is all.

F.H. Mtulya

**Judge**

07.12.2023

**MITIGATION**

**Kigombe:** My Lord, the defence says that the accused may receive a lenient sentence. My Lord, we have reasons:

1. The accused has been in custody for three (3) years and nine (9) months;
2. The accused is the first offender; and
3. The accused has thirty-six (36) years and can still raise the economy of this State.

My Lord, that is all. I pray to submit.

F.H. Mtulya

**Judge**



07.12.2023

**Court:** Sentencing order shall be delivered in ten (10) minutes from now. Parties are ordered to wait in open court for the same.

It is so ordered.

F.H. Mtulya

**Judge**

07.12.2023

### **COURT RESUMES**

**Banga:** My Lord, we are ready for the order.

F.H. Mtulya

**Judge**

07.12.2023

**Kigombe:** My Lord, we are also ready for the order.

F.H. Mtulya

**Judge**

07.12.2023

**Accused:** I am also ready My Lord.

F.H. Mtulya

**Judge**

07.12.2023

### **SENTENCING ORDER**

**Mr. Juma Rhobi Monyeka** (the deceased) was brought in this court for allegation of attempt to murder his own blood son aged five (5) years, **Joseph Juma Rhobi** contrary to section 211 (a) of the **Penal Code [Cap. 16 R.E. 2022]** (the Penal Code). After registration of all relevant materials in the case, he was found

guilty to the offence. However, before this court had delivered its sentence, it invited learned minds in **Ms. Dotto Banga** for the Republic and **Mr. Tumaini Kigombe** for the Defence.

According to Ms. Banga the accused had caused grave wounds in attempt to murder the victim hence must receive grave sentence. In her opinions, that is supported by section 211 (a) of the Penal Code, which invites life sentence and **Tanzania Sentencing Guidelines, 2023** (the Guidelines) which placed attacks by use of *panga* directed at sensitive parts of the body head, shoulder and pelvic at the high level penalties. On the other hand, Mr. Kigombe thinks that the accused in a first offender, has been in custody for more than three (3) years and can still be an asset to this nation.

I have perused the enactment of section 211 (a) of the Penal Code and found the section to contain both the offence and its associated penalty, and in brief provides that:

*Any person who attempts unlawfully to cause the death of another is guilty of an offence and is liable to imprisonment for life.*

I have also visited the Guidelines and found nothing related to attempt to murder another person. However, I learned from page 37 of the Guidelines on attacks related to manslaughter and saw

page 2, 16 & 17 relating to General Sentencing Process, and found that the level of seriousness of the offence and use of dangerous weapons is placed at the high level in sentencing and may attract a sentence of ten to life imprisonment.

I have also perused precedents of the Court of Appeal in **Juma Mniko Muhere v. Republic**, Criminal Appeal No. 211 of 2024 and **Abdallah Abdallah Njugu v. Republic**, Criminal Appeal No. 465 of 2007, and noted that first offenders who plead guilty to charges are usually receive lenient sentence. This is intended to see the level of regret on the part of the accused persons. The present accused did not enter a plea of guilty to display regret on what has transpired. He cannot receive less sentence.

Having said so and considering the antecedents of Ms. Banga, mitigations of Mr. Kigombe, the indicated laws and practice of our superior court, I am moved to sentence the accused to six (6) years imprisonment to be a lesson to parents and other persons who attack children with sharp objects to cause grave harm and decline to display regrets.

It is so ordered.

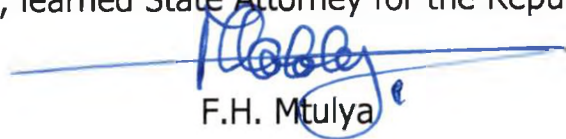


F.H. Mtulya

**Judge**

07.12.2023

This Sentencing Order was pronounced in Open Court in the presence of the accused, **Mr. Juma Rhobi Monyeka** and his learned Defence Attorney, **Mr. Tumaini Kigombe** and in the presence of **Ms. Dotto Banga**, learned State Attorney for the Republic.



F.H. Mtulya

**Judge**

07.12.2023