IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT SINGIDA

ORIGINAL JURISDICTION

CRIMINAL SESSION CASE NO. 211 OF 2022

THE REPUBLIC

VERSUS

RASHIDI HAMISI RASHID @CHIDI

JUDGMENT

Last Order: 04th October 2023
Judgment: 30th November 2023

MASABO, J.:-

Rashidi Hamisi Rashidi @Chidi, the accused person herein, stands charged with the offence of murder contrary to sections 196 and 197 of the Penal Code [Cap 16 R.E 2019] (now R.E. 2022). The particulars of the offence are that on 12th August 2019 at Manyoni- Itigi road within Manyoni District in Singida Region, he murdered Sechelela Moses. When the charge was read over to him, he pleaded not guilty to the charge.

During the trial, the highly spirited prosecution team led by Ms. Nuru Chiwalo who was assisted by Mr. Nehemia Kilimuhana and Mr. Anyimike Mwamsiku, all learned State Attorneys, paraded a total of twelve (12) witnesses and four (4) exhibits. The witnesses were a hamlet leader, Chuki Maulidi Kavula (PW1), a medical doctor, Peter Nyungu (PW2), D/SGT Juma (PW3), G.8587 D/CPL Sixtus (PW4), G.4593 D/CPL Musa (PW5), H.126 D/CPL Daniel (PW6),

the deceased's father, Moses Leornard Matonya (PW7), Yusufu Antony Mnyamise (PW8), Insp. Aristeds Kasigwa (PW9), Peter Barnaba, (PW10), Elias Zakaria Mulima (PW11) and John George Miyeya (PW12). The four exhibits were a report of postmortem examination (Exhibit P1), a car make Toyota Hiace Custom with registration number T.163 DBX (Exhibit P2), a certificate of seizure (Exhibit P3), and a forensic DNA profiling test report (Exhibit P4). The accused enjoyed the service of a similarly high-spirited counsel, Ms. Salma Musa. He testified as DW1 and paraded no exhibit or additional witness.

In summary, the prosecution evidence was that the deceased and the accused person were a married couple. They had their home at Sayuni Street, Manyoni District. The accused, who is a car mechanic owned a garage that operated on the same compound and he was its chief mechanic. He had several workmen, including Yusufu Antony Mnyamise (PW8) who was an assistant chief mechanic and John George Miyeya (PW12). These two witnesses recalled that 12/8/2019 was Eid day. They went to the garage and performed their duties as per the routine. The deceased and the accused person were present. After work, they were invited a for lunch which the deceased had cooked. On the same afternoon, the accused person left while driving his car (Exhibit P2). After a short while, the deceased bordered a motorcycle and left without saying a word. As the evening when they were leaving the garage, the couple had not returned.

It followed that, when the accused came back in the evening, he did not find his wife and as of 21 hours, she had not returned. He went to look for her at her parents' house which is within the vicinity but she was also not there. PW7 who was not at home on that day was notified of the incident through a phone call. On hearing that is daughter had vanished and knowing that the couple had regular disputes, he advised the accused person to report the matter at the police station. However, the accused did not heed to the advice. He continued with his wild search for the deceased and was regularly updating PW7 on what was transpiring. By then, the accused was using the phone of the deceased's mother as the deceased had left with his phone. At 1 am he notified PW7 that the deceased was answering her phone but PW7 tried unsuccessfully to reach her. At 2 am the accused told PW7 that the deceased had notified her that she was at Kibaigwa hence he was going there but PW7 advised him not to go there before reporting the incident at the police station. However, he did not and at 5 am, he once again phoned PW7 to inform him that his daughter was still missing.

In the morning of the same day, 13/8/2019 the body of a female person was repeatedly found lying dead at the junction of Manyoni- Itigi road. PW3, PW5, PW6, PW10 and other policemen went to the scene of the crime where they found the deceased body lying down. These witnesses recall that the deceased had a wound on her face which appeared to have been inflicted by a sharp object, a bruise on her right thigh and another on her stomach. Both had marks of car trye patterns. Also, there were patterns of car tyres on the ground. Investigation of the incident started immediately. PW6

photographed the deceased body, the car tyres pattern which was near the deceased's body, and the whole scene of the crime. PW5 collected some sand which was mixed up with blood believed to be from the deceased. The body was taken to Manyoni District Hospital where it was identified by PW7 and other relatives as the body of Sechelela Moses the deceased herein. A post-mortem examination to ascertain the cause of death was conducted by PW2. This witness observed that the deceased had a major wound on her face, stomach and her right thigh which caused her to bleed profusely and in conclusion, he reported that the cause of death was severe hemorrhage, severe pain that led to neurogenic shock. Further to the examination, PW2 collected blood samples from the deceased, stored it in a special container and handed it over to PW10.

Meanwhile, on the same morning, the accused went to Manyoni police station to report the disappearance of his wife and when he was still there, it occurred that the female person found dead was his wife. On hearing the relationship between him and the deceased, the police officers took him to his home and had his home searched. Thereafter, the accused was instructed to drive his car to the police station and he had his five workmen as passengers. While at the police station, the car was searched and found to have stains of blood on the driver's side mirror. PW5 swabbed the blood stain and when a DNA profiling test was conducted by the Chief Government Chemist Laboratory (CGCL) in Dar es Salaam, it revealed a strong match with the DNA of the blood drawn from the deceased (Exhibit P4). Further to the samples, PW6 photographed the tyres of the accused's car. When PW9

analysed and compared these photos with the photographs of the car tyre patterns which PW6 had earlier on taken at the scene of the crime, he established that they were similar.

The accused person offered a total denial. Testifying as DW1 he denied to have murdered his wife. He told the court that 12th August 2019 was Eid day and a peaceful one between him and his wife. They woke up in the morning, had tea which the deceased had cooked and having finished, they discussed and agreed to invite their workmen for lunch. In the same afternoon, the accused went to Mhalala village to repair a car and having finished he went back home only to find his wife missing. She was not at her parents' home and by 21 hours she had not come back. Worried about her whereabouts, he embarked on a wild search being accompanied by Lina who was the deceased's friend. As they were still searching for her, they discovered that she boarded a motorcycle at 16hrs. Ibrahim, the motorcyclist who ferried the deceased when she was leaving her home, told them that he took the deceased to Shimoni bus stand where she boarded a motor vehicle make Prado owned by Timoth Leonard Kandulu @Timo.

DW1 testified further that, the deceased mother told him that the deceased phoned her and told her that she was kidnapped but she did not take it seriously as the deceased had a habit of sending such messages when drunk. After a long time of unfruitful search for the deceased, at 23:30 he went back home and slept until in the morning of 13/8/2019 when he went to report the incident at Manyoni police station but was told to wait until the

expiry of 48 hours since her disappearance. After he had returned to his home, he received some news of a body of a female person found dead at Manyoni- Itigi road and when he went to the police station it turned out that it was his dear wife. He was immediately put under police restraint. His home was searched and his workmen were also arrested. They all remained under custody for six days after which other suspects who are Timoth and Godfrey Gervas@ Etto were arrested. On 21st August 2019, they were arraigned in court jointly charged with the offence of murder. Later on, Timoth and Etto were released on 14th December 2020 while he remained as the sole suspect. In his view, the case against him was fabricated by PW 10 who was the investigator of the case as he refused to give him his plot in exchange for his liberty.

After the closure of the defence case, the counsels for both parties filed their final submissions which I have thoroughly read and considered alongside the evidence on record. As the accused has been arraigned of murder which is a creature of section 196 of the Penal Code, the provision of this section shall serve as an entry point. It states thus:

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

Two necessary ingredients need to be established for the accused to be convicted of murder, that is, he unlawfully killed the deceased and that the killing was actuated by malice aforethought. In particular, it has to be proved that: Sechelela Moses Matonya is dead; her death was unnatural; it was

occasioned by the accused person and that the accused did so with malice aforethought. The burden to prove these facts rests solely on the prosecution and the standard of proof required is proof beyond reasonable doubt.

From the evidence on record, there is a consensus that Sechelela Moses is dead. There is also a consensus that her death was unnatural. Her father (PW7) and the accused himself testified to this effect. In corroboration PW2, a doctor who conducted a post-mortem examination of the deceased's body stated that he established that the death occurred as a result of severe hemorrhage and severe pain which led to neurogenic shock. What remains unanswered is whether the accused was the causation and whether he had malice aforethought. The evidence on record loudly demonstrates that none of the prosecution witnesses saw the accused person killing the deceased and thus there is no direct evidence against him. The case against him is wholly based on circumstantial evidence.

The circumstances from which the inference of guilt is sought to be drawn are as follows: **First,** contrary to his previous orders and routine, on the morning of 13/8/2019, the accused tasked PW12 to wash his car although he had previously barred him from washing it as he was not washing it properly. While washing the car, PW8 saw stains of blood at the bumper of the car and alerted PW12 but they ignored and had it washed away as they assumed it was either a bad omen or blood of an animal that may have been run over by the accused. **Second,** after the car had been partially washed as PW8 and PW12 ran out of water, the accused tasked his workmen to park

it at the repair place and pull out its sump although the car was mechanically fit. **Third,** while at the police station, the car was searched and found to have blood stain which when analysed found to have a DNA profile similar to the deceased's blood. **Fourth,** photos of the accused's car had similar patterns to the car tyre patterns photographed at the scene. **Fifth**, the couple's regular marital dispute and **last,** the accused's reluctance to report the matter to the police station.

I have carefully examined each of these circumstances and the following are my findings. Starting with the first circumstances in the chain, I have observed it to have been established as PW8 and PW12 credibly testified that PW12 was forbidden from washing the accused person's car and they were both surprised that on the fateful morning, he was instructed to wash it. They were also consistent on what they saw when they were washing it and on the fact that they ran out of water while washing the car. Thus, they did not finish washing it. Their testimony that the accused instructed them to pull out the sump of his car so that it could be repaired and that, save for PW8 instruction, the sump would have been pulled out, was similarly uncontroverted. As for the stain of blood found on the driver's side mirror, there were inconsistencies between PW5, PW10, and PW'2 on the reason why PW5 and WP Hotensia searched the car. PW5 stated that the police became suspicious after PW12 told them that he was instructed to wash the car. PW12 had the same account while PW10 stated that, PW8 was the one who told them about the drops of blood they saw while washing the car and that, because of that they went to search the car.

It is a cardinal law that where there are inconsistencies in the prosecution's evidence, they should be resolved in the accused's favour. This is however not to say that every inconsistency shall favour the accused or cause the prosecution's case to flop. The law recognizes that inconsistencies between witnesses are bound to happen especially in cases such as the one at hand where the incident took place a relatively long time such that it may not be easy for the witnesses to remember all the details as 4 years has already lapsed. In such cases, minor discrepancies in details due to normal errors of observations or the lapse of memory on account of passages of time are often excused as opposed to fundamental discrepancies that have the effect of discrediting a witness (see **Kavula William & Another vs Republic**, Criminal Appeal No.119 of 2020 [2021] TZCA 279 TanzLII; **Moshi Hamisi Kapwacha V R** Criminal Appeal No 143 of 2015 [2015] TZCA 400 TanzLII; **Bahati Makeja Vs Republic** Criminal Appeal No 118 Of 2006 [2011] TZCA 31 TanzLII.

In the foregoing I have found the inconsistency above minor and inconsequential because, as already stated the incident happened in 2019 hence 4 years have already lapsed. It is not expected that the witnesses will have a memory of each detail. Second, the fact that the car was searched while it was at the police station was uncontroverted and so was the fact that it was PW5 and WP Hotensia who conducted the said search and that in the course of the search, blood stains were seen at the driver's side mirror. Thus, it is immaterial what ignited the search. Not only that, PW3, PW5, PW10 and PW 12 all consistently testified on this issue. Each of them told

the court that the blood stains found on the driver's side mirror of Exhibit P2 were swabbed using swab sticks and they all eye witnessed that swabbing.

As for the search warrant which was admitted as Exhibit P3 there are concerns as to its propriety. The defence has argued that no weight should be appended to this exhibit as it is dissimilar to a receipt acknowledging seizure as envisaged under section 38(3) of the Criminal Procedure Act. I do not intend to dwell much on this point as it is very straight. It suffices to just state briefly that, I agree with the reasoning advanced by the defence as it has merit. Accordingly, I disregard exhibit P3 and accord it no weight. Having disregarded this exhibit, I am left with the testimony of PW8 and PW12 who were present at the police station and witnessed the search and seizure of the car. Should their oral testimonies be disregarded too? The answer is certainly in the negative. The law is settled that, much as documents are a preferred form of evidence, they are not the exclusive evidence more so in the present case where the exhibit seized was a car that cannot easily be tampered with. Besides, the prosecution witnesses and especially PW8 and PW12 who were the accused's workmen credibly testified that the car belonged to the accused, it was driven by the accused person to the police station and that at the time of its seizure, it was at the police station.

The next element in the chain of events is the expert opinion comprising of the DNA report which was tendered by PW11 and admitted as Exhibit P4 and the photos taken at the scene of the crime by PW6 and scientifically analyzed and interpreted at the Forensic Bureau by PW9 who is a photograph expert.

Both were intended to show that the accused's car was at the scene of the crime. I will start with the photographs. Further to the inference that the accused's car was at the scene of the crime, through this evidence the prosecution intended to infer that the deceased was run over by the accused's car. As per PW9, when the two sets of photographs that is, the photographs of patterns of car tyres photographed at the scene of the crime and photographs of the accused's tyres taken while it was at police station, were analysed and interpreted they were found to have the same patterns. Hence, an inference that the accused car (Exhibit P2) is the same car that was at the scene of the crime and by which the deceased was run over.

Much as the photos were rejected at the admission stage, I am obligated to consider the oral testimonies of PW6 and PW9 which were wholly on the production and analysis of the photos. While holistically assessing the testimonies of these two witnesses I have observed that they reveal some disturbing features. The most disturbing feature is that the photos were taken on 13/8/2019 but were not sent for analysis until on 19/1/2021 which was approximately 17 months after the incident. No demonstration was rendered on how the photos were stored for this period. PW6 told the court that after he had taken the photos on 13/8/2019 he generated the printouts and handed them over to the OC CID. PW10 testified that when he assumed the role of investigator of the case a year later on 13/8/2020 after the previous investigator, D/SGT Chiganga, was transferred to Mkalama, he found the photos in the case file. No disclosure was made as to who got them into the case file, for how long were they in the file and how accessible

were they. What I find too obvious from this narration is that, before being sent for forensic analysis, the photos passed through different hands among the hands of PW6 who was the photographer them, the OC CID and the investigators of the case whose numbers are unknown as it was not disclosed whether D/SGT Chiganga was the first and the only person to serve as investigator of the case before it was taken over by PW10. As the photos are of a nature that can be easily tempered, it was pertinent that their chain of custody be established but it was not.

Not only that, PW9 who scientifically analysed and interpreted the photos at the forensic bureau had no clue as to when and where they were taken. During cross-examination, he disclosed that he was not told the date on which the photos were generated and stated further that, with still pictures like the ones he analysed, you cannot tell or guess when they were taken or generated. Thus, it cannot be accurately said that the photos analysed by PW9 are the same photos taken by PW6. For these reasons, I have found the testimonies of these two witnesses devoid of any weight.

Having resolved this, I will now move to the samples of the swab of the blood stain taken from Exhibit 2 and sent for DNA profiling test alongside the sand mixed up with blood collected from the scene of the crime and the blood extracted from the deceased's body. Before I dwell on the results, I will first determine the chain of custody. Admittedly, there was no paper trail documenting the chain of custody in respect of these exhibits. That is to say, the chain of custody for these exhibits was not documented. It has

been stressed in numerous authorities that, for purposes of establishing that the exhibit relates to the crime and the accused who is in court, the prosecution must establish the chain of custody by presenting documents showing the sequence of events in the handling of exhibit right from the point of its seizure, custody, control, transfer, analysis up to the tendering of the same in court. However, as stated above, although documents are the most preferable form of evidence, they are not the exclusive evidence in establishing the chain of custody. The Court of Appeal has held so in numerous cases among including, the case of **Chacha Jeremiah Murimi and 3 Others vs Republic**, Criminal Appeal No. 551 of 2015; **[2019] TZCA 52 TanzLII (unreported) Leonard Manyota v. Republic**, Criminal Appeal No. 485 of 2015, **Abas Kondo Dege v. Republic**, Criminal Appeal No. 472 of 2017 [2020] TZCA 391 TanzLII and **Joseph Thobias & Others vs Republic** (Criminal Appeal No. 296 of 2019) [2023] TZCA 105 TanzLII. In the latter case, the Court having revisited its previous decisions it concluded that:

> Documentation is not always the exclusive requirement in dealing with exhibits. Accordingly, the authenticity of an exhibit and its handling will not fail the test of validity merely because there was no documentation. It is now trite law that, depending on the circumstances of each case especially where the tampering with exhibit is not easy, oral evidence may be accepted as being credible in establishing the chain of custody (see **Joseph Leonard Manyota v. Republic**, Criminal Appeal 25 No. 485 of 2015, **Chacha Jeremiah Murimi and 3 Others v. Republic**, Criminal Appeal No. 551 of 2015 and **Abas Kondo Dege v. Republic**, Criminal Appeal No. 472 of 2017 (all unreported).

> Two points emerge from the above brief-survey of the law. One, that documentation is, of general importance for the establishment of a proper chain of custody. However, it is not the only and exclusive method. It occupies but one half, in a constellation of the methods. Another half, and that is point number two, is occupied by credible testimonial account. [the emphasis is mine].

The Court of Appeal has further held that when relying on oral evidence as the sole proof of chain of custody, due regard must be to the prevailing circumstances of every particular case and this may include, in addition to the credibility of the witnesses, the nature of the exhibits such as for example, if it is one that cannot change hands easily or easily be tempered with (see **Joseph Leonard Manyota v. Republic** (supra) and **Chacha Jeremiah Murimi and 3 Others vs Republic**, Criminal Appeal No. 551 of 2015. Thus guided I have asked myself whether the oral testimonies have credibly established the chain of custody. In answering this question, I will go through each of the analyzed samples. As the record will show, 6 witnesses (PW2, PW3, PW4, PW5, PW10 and PW11) out of the 12 prosecution witnesses dealt with the collection, custody, transfer, oranalysis of the samples.

Now, starting with the sand mixed up with blood, this exhibit was collected at the scene by PW5. After he had collected it, he kept it in a storage bag and later on the same date he took the same to PW4, the exhibit keeper, alongside the swab sticks he had used to swab the blood stains found on the

driver's side mirror of Exhibit P2. PW4, the exhibits keeper acknowledged receipt of these two exhibits on the same date and told the court that after he had received these two exhibits he assigned them numbers, that is No. 59/2019 for the sand mixed up with blood and No. 60/2019 to the swab sticks and he stored them. The third sample, that is, blood from the deceased's body was collected by PW2 on 14/8/2019 and handed over to PW10 who took the sample to PW4 on the same date and upon its receipt, it was assigned number 61/2019 and kept in a special refrigerator.

The three samples remained under the custody of PW4 until 22/8/2019 when PW3 collected them and took them to the CGC laboratory in Dar es Salaam where, as per Exhibit P4 and the testimony of PW3 and PW11, they were received on 23/8/2019. Save for the documentation that was missing, the oral testimonies of these witnesses as to the collection, handling, and transfer of the samples were sold and uncontroverted. It is a trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing him (see the case of **Goodluck Kyando vs. Republic** [2006] TLR 363. There being no reasons for this court not to believe PW2, PW3, PW4, PW5, PW10, and PW11, I find the chain of custody to have been sufficiently established.

Not only that, PW11 narrated at length the procedures used in analysing the three samples to generate the results contained in Exhibit P4. As per the results, a strong match was established after the DNA of the swab of the blood stain found on the side mirror of exhibit P2 was paired with the DNA

of the blood sample drawn from the deceased and it was concluded that the chance that the DNA of the blood from the deceased has no relationship with the DNA in the swab is one in a billion meaning that it is very very unlikely. Much as the results and the testimony of PW11's are an expert opinion and this court has the discretion to believe it or not, I have found no reason to disbelieve it.

The next element in the chain is the accused's ownership of Exhibit P2 a fact which was not only undisputed but prominently acknowledged by the accused in his defence. As per PW8 and PW12, the car was for office use and no one was allowed to drive it apart from the accused himself. And, on the fateful afternoon, the accused person was driving it when he left his house. These two witnesses were not cross-examined on this fact. It was only later on that the accused belatedly objected it during his defence. He stated that the car was used for commercial purposes; it was a passenger car commuting between Manyoni and Itigi and was driven by different people including Salumu Mwaja and Yohana. The belated objection appears to be an afterthought because not only did he not cross-examine PW8 and PW12, but he never summoned any of the drivers to corroborate his story. Hence it just remained as an afterthought exculpatory objection and incapable of casting a reasonable doubt on the prosecution's case. Besides, even if I were to believe that Exhibit P2 was a passenger commuter bus and that it was driven by several drivers, the fact that the accused was the one driving the it on 12/8/2019 will stand.

The last element in the chain regards the couple's regular marital disputes. At the centre of this element are the testimonies of PW1 and PW7 and the inference sought to be drawn from it is both, the *actus reus* and *mensrea*. As per PW1 the deceased was suspected of having extramarital affairs such that there was a time she slept at her lover's home and PW1 being a Hamlet leader, was called to mediate the couple. PW7 told the court that, because of the regular marital dispute between the couple, when the accused told him that his wife had gone missing he immediately advised him to report the matter at police station but the accused was reluctant even though he was insistent that the matter be reported at police. Until the morning he had not reported the incident. Even the accused's defence show that he never reported the matter on the fateful night but reported in the morning. Also, even though he told the court that when searching for the deceased he was in the company of Lina and that they stopped at 23:30 hrs and went to sleep, he did not call the said Lina to corroborate his story and discount PW7 who stated that the accused phoned him at 2 am and told him that he was still searching for the deceased hence did not go to sleep at 23:30 as purported in his defence.

It is a settled law in our jurisdiction that a court may ground a conviction solely on circumstantial evidence where it is satisfied that the evidence irresistibly leads to the interference that the accused and no one else committed the offence. The evidence must point at the accused's guilty and should be incapable of any other interpretation and the chain linking such evidence must not be broken. In the case of **Sadicky Ally Mkindi vs. DPP**

Criminal Appeal No. 207 of 2009 (CAT-unreported), the Court of Appeal cemented its previous decision in **Julius Justine and Others vs. Republic,** Criminal Appeal No. 155 of 2005 (unreported) where it held thus:-

> 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 guilty of the accused and that circumstances taken towards the guilty of the accused and that circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and no one else. (also see **Mswahili Mulugula vs. R** [1977] LRT 25, **Sadicky Ally Mkindi vs. DPP** Criminal Appeal No. 207 of 2009 Augustino Lodariu vs. Republic, Criminal Appeal No. 90 of 2013, the Court of Appeal

This being the law, I will stand accordingly guided and I have warned myself that should the conviction be contemplated based on the above-stated circumstances, the chain of the evidence on record should leave no doubt that no other person than the accused could have committed the alleged crime and that he has indeed committed it.

In my firm view, when the circumstances above when considered cumulatively, they point towards the guilty of the accused person. The fact that blood stains with a DNA profile similar to the DNA of the deceased's blood was found on the accused's car and which was driven by him on 12/8/2019, demanded a plausible explanation as to how such stains of blood

got to the driver's side mirror. As no explanation let alone a plausible explanation was rendered, an inference is drawn that it was the accused who got it there and that, he had his hand on the deceased's death. His unusual instruction to PW12 to wash the car although he was forbidden and his subsequent instruction that the car be packed at the workshop with its sump pulled out while it was mechanically fit, are a further fortification to the inference. It defeats logic why the accused who had his wife still missing found the urgency of washing the car as early as 7 am and decided to have its sump car pulled out hence rendering the car immobile and helpless in the search for his wife who was still missing. In my considered view, these two instructions are a clear manifestation of the accused's intention to conceal what had happened by washing the car so as to remove any traces of blood from the car and by making it look like it was mechanically unfit and immobile. The accused would not have done all that if he had no guilty conscious.

His defence that the deceased was seen boarding Timoth's car and his implicit suggestion that the said Timoth is the one responsible is similarly illogical and devoid of any weight considering that he personally told the court that Timoth was his client and a friend and that he knew that Timoth was bothering his wife when drunk. Thus, if he was indeed told that his wife was seen bordering Timoth's car, the immediate thing for him was to look for Timoth or go to his home and collect his wife. However, he did not and rendered no explanation of what prevented him from contacting Timoth or going to his home. It is similarly incomprehensible why a accused continued

with a wild search even after he was told that his wife was seen bordering the car of a person he personally described as a friend. The accused's non-disclosure of this information in his multiple phone calls to PW7 and when he went to report the matter at the police station, suggest strongly that this defence is purely an afterthought.

From the above analysis, I am satisfied that the circumstances from which an inference of guilty is sought to be drawn are cogently and firmly established and when they are taken commutatively, they form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and no one else.

Having established so, the question for the next determination is whether malice aforethought can be inferred from the evidence on record. I am fully aware that as held in **Enock Kipela v. Republic,** Criminal Appeal No. 15 of 1994, CA (unreported), usually an attacker will not declare his intention to cause death or grievous bodily harm. His intention can be ascertained from diverse factors including, the type and size of the weapon used, if any, the part of the body at which the blow was directed, the kind of injuries inflicted, and the conduct of the attackers before and after the killing. In the present case, the body of the deceased was found with a wound on her face and bruises on her thigh and stomach. There were testimonies that the bruises of the thigh and stomach had marks of car tyre patterns suggesting that she was run over by the accused's car, a suggestion which I outrightly reject as

the post-mortem report is silent about it and so was the testimony of PW2 who conducted the post mortem examination.

As for the wound on the deceased face, the evidence on record shows that it was inflicted using a sharp object which remains unknown. Looking at the part at which it was inflicted one may hastily conclude that the culprit had intended to murder his victim. However, when other factors are considered, it is hard to establish that the accused had intended to murder his wife. Much as the couple had regular disputes, all the evidence on record suggests that on the fateful day they had a peaceful day until the afternoon when the accused went out to fix his client's car. Thus, apart from the anger of finding his wife missing which can easily be inferred from the circumstances above and which might have ignited a dispute between them, nothing shows that the incident was premeditated. What appears very logical from the circumstances above is that after the accused had found the deceased, a fight between them was ignited and in the course of which the deceased was injured and succumbed to death. In disguise, the accused abandoned her body at the scene and went to his home purporting that he had not found the deceased.

For the foregoing reasons I decline to convict the accused persons with the offence of murder contrary to sections 196 and 197 of the Penal Code as I have entertained doubts on his mensrea. Rather, I have found him guilty of a lesser offence of manslaughter contrary to section 195 and 198 of the Penal Code, Cap 16, an offence which I find to have been well established by the evidence on record.

In consequence thereto, although the accused was not charged with the said lesser offence, I invoke the provisions of section 300(1) and (2) of the Criminal Procedure Act [Cap 20 R.E 2022], and convict him of manslaughter contrary to sections 195 and 198 of the Penal Code Cap 16 as an alternative to the offence of murder and sentence him to a jail term for six years. The right to appeal is explained.

DATED and **DELIVERED** at **SINGIDA** this 30th day of November 2023.

J.L. MASABO

JUDGE