

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**ORIGINAL JURISDICTION**

**CRIMINAL SESSIONS CASE NO. 46 OF 2022**

**THE REPUBLIC**

**VERSUS**

**SHANIFA HAMIDU**

**JUDGMENT**

*10<sup>th</sup> October & 1<sup>st</sup> November 2023*

**A.Y. Mwenda, J.**

SHANIFA D/O HAMIDU is accused of attempted murder Contrary to section 211(a) of the Penal Code [Cap 16 R.E 2019]. The prosecution alleged that on the 2<sup>nd</sup> day of October 2020, at Misikiro village within Muleba District in Kagera Region she attempted to murder one FARUKU S/O MOHAMED.

A brief background of the matter is that the victim (FARUKU MOHAMED) and accused person (SHANIFA D/O HAMIDU) were a husband and wife respectively. Both were residing at Misikilo village within Muleba District in Kagera Region.

On the 02<sup>nd</sup> day of October 2020, the duo was at home sleeping. At late night, the Accused person stabbed her husband (the victim) on the stomach. The said attack ruptured/punctured the victim's stomach making the intestines protrude

outside. The victim screamed for help. His neighbors including his relatives responded. He was found seriously injured with his intestines hanging out. Accused person was also at the scene of crime. First aid was provided to him and later, he was ferried to Muleba District Council's Government hospital for treatments.

The relevant authorities were notified regarding the said incident. Accused person was arrested and investigation was later mounted. Upon completion, accused person was charged for attempted murder. As she pleaded not guilty to the information, the republic was tasked to prove its case by parading witnesses. Three witnesses were lined up, these are FARUKU S/O MOHAMED KAKERENGE (the victim who stood as PW.1); ABEDI MOHAMED KAKERENGE (the victim's brother who stood as PW2) and a medical Doctor one Dr. HUMPHREY MUTUNGWA MATUNGI (who stood as PW3). Also, the prosecution tendered one documentary exhibit which is the Victim's PF 3.

During trial, PW.1 (the Victim) testified that in the night in question he and the accused person were at home. After they have eaten dinner, accused person went to bed leaving the victim in the sitting room watching a soccer match. After the match's final whistle, the victim decided to go to bed. According to him, when he approached their bed, he pulled a bedsheet which was on bed to cover himself. In the cause he saw a knife falling. He asked his wife (now accused) as

to what that knife was for, and the reply was that that she wanted to kill herself. The victim said the reasons advanced by accused was the quarrel they had in the past two days where the victims ordered her to change the line for her mobile phone. Further to that, PW1 said that he took the said knife and threw it in the dining room and retired to bed. He fell asleep and he woke up after he was stabbed and noted blood oozing profusely from his stomach. According to him, that was around 4.00 hrs. and accused person was still there holding the knife. PW1 further testified that accused person attempted to again stab him on the neck, but he snatched the knife and threw it in the dining area and then they confronted each other. According to him his intestines were hanging out and shortly accused grabbed them and started pulling them out, he asked her as to what the problem and her reply was that that "leo ndio mwisho wako". In the cause, he said he fell and accused person sat on his chest and started squeezing his protruding intestines. According to him he screamed for help and his relatives responded and took him to hospital for treatment. Regarding treatments PW.1 testified that he was admitted at the Hospital for three months and later he was discharged but his condition did not improve. He said that he was later referred to Bugando Hospital where no medical attention was provided due to complications on the injuries he sustained. According to him he decided to return home and later he sought assistance by raising funds through media platforms to carter for his further treatment. He averred that luckily, her excellence, The

President of the United Republic of Tanzania, responded by instructing the Director of Muhimbili National hospital to take care of him. PW1 testified further that he was then admitted at Muhimbili Hospital where after treatments, he was discharged with instructions to continue attending there regularly. According to him he is scheduled to attend there in April 2024. This witness stressed that until now, he has undergone more than five surgeries and the injuries have caused serious health issues/complications such poor digestive system leading to ingesting of only soft meals. Further to that he said that with his poor health condition, he is not required to partake any hard work. On top of that he said that his respiratory system is also impaired as his throat isn't normal as it tends to dry out every now and then. PW1 (victim) showed the damaged part of his lower abdomen to the court. The Court noted a big scar wound on the lower part of his abdomen.

During cross examination, PW1 said that before the incident he and accused person were in good terms and he added in that before going to bed on the night in question, accused had no signs that she would attempt to kill him. He said further in that in their bedroom there was no other person other than them when he was stabbed while still in bed. He asserted further that after he was stabbed, he struggled as he headbutted her (piga kichwani) and later, while confronting each other, they went in the sitting room where he took a knife and threw it

away. Further to that he said that after he was overpowered by her, accused person sat on his chest. In his conclusion, he said that after the incident, they have been communicating to each other and accused at one point apologized for her misdeed against him.

ABEDI MOHAMED KAKERENGE (PW2) testified that the victim is his young brother. He said that the victim married accused person one SHANIFA HAMIDU, and both were living together. According to him, on the night in question while he was sleeping, he heard someone screaming for help. He later noticed that the voice was coming from his young brother's (the victim's) resident. He said he rushed thereto and found the door to the victim's house locked from inside. He knocked but the door was not opened. He said he peeped through the gaps on the door only to see accused person squeezing the victim around the body by using both her hands. He also heard her saying "lazima ufe leo". According to him he beseeched the accused person to open the door and she complied. When he entered, he asked accused person as to why were they fighting, and her reply was that she was still aggrieved by the quarrel between them which occurred some few days past. According to PW.2 he noticed his young brother (the victim) being badly injured. He rushed out to tell his brother whom, together with him, came back and offered the victim with first aid and thereafter rushed him to Rubya Hospital after they were supplied with a PF -3 Form from Police Station.

This witness recognized accused person as she was seated in the Court room (dock identification).

During cross examination, PW2 said that the victim and accused are not divorced. He added in that at the scene of crime he saw accused person squeezing the victim's body by using both her hands. Further to that he said that when accused person said she was going to kill the victim "lazima ufe leo" he was still outside but he did not mention the distance in between. He added in that with the condition the victim had, accused person would have done anything to the victim. Lastly, he said that at Muleba Police Station he did not say if there was solar light at the scene of crime as he was not asked such question by the recording officer.

DR. HUMPHREY MATUNGWA MATUNGI, a medical Doctor stationed at Rubya District Government Hospital (PW.3) testified that on 2/10/2020, while at Rubya Hospital he received a patient (the victim) who was stabbed by a sharp object on the abdomen. According to him, the victim's intestines were hanging out. He said that he took him to the theater room where he performed surgery and noted a portion of the victim's intestine being damaged beyond life. According to him, he was left with no option other than removing/cutting the damaged part and stitch together the two live parts. After the said surgery, he said that he admitted the victim in the Hospital ward and filled in the PF-3 which he tendered it in court as exhibit P.1. He then explained its contents and according to him, the degree

of injuries sustained is grievous harm which may cause the victim's death. He further testified that after a short while, the victim's digestive system was affected as it was not working properly due to emissions of foul discharges in the victim's stomach. He said he was forced to perform another surgery but according to him that was not the end as he performed two more surgeries as the victim's condition did not stabilize. He said that during all that time the victim had been implanted with artificial excretory tubes.

During cross examination this witness said that in the PF-3 he did not show the size of the wound. He said that to perform a surgery he enlarged the wound to view the inner parts. Further to that he said that although the PF-3 was prepared on 02/10 2020, in exhibit P.1 the date of preparation appears to be 21/10/2020 which to him is a mere typographic error.

That was the end of the prosecution's case and upon closing its case, the Court analyzed the evidence in question and was satisfied that the same established a prima facie case warranting the accused person to defend her case.

When she was addressed under section 293(2)(a) and (b) of the Criminal Procedure Act, Cap 20 R.E 2019 regarding her right to give evidence on her own behalf and to call witnesses in her defense, accused person opted to defend herself under affirmation as she had no other witness to call.

In her defense, accused person one SHANIFA HAMIDU (DW1) testified that FARUKU MOHAMED KAKENGERE is her husband as they got married in December 2013. According to her on 2/10/2020 at night hours she was at her husband's home at Misikilo village, Gwanseli Ward, in Muleba District. She said that before she went to sleep, her husband had gone to watch soccer match at their neighbor's resident. Later, she said, while still sleeping she heard her husband screaming for help from outside their house. She described the words used by him as "*mama Hawla nakufa*". In her further testimony she said that when she opened the door her husband was holding his stomach and blood was oozing from the same. She said that she took him inside the house, closed the door from behind and found a piece of cloth which she used to tie his stomach as his intestines were hanging out. According to her, she started screaming for help and some people responded including ABED MOHAMED KAKERENGE (PW2) who was the first person to appear. Upon his arrival, she said, PW2 ordered her to find another piece of cloth (kitenge) to as to tie the victim's stomach properly. This witness said that although the prosecution's witnesses said that the victim was stabbed by a sharp object, the said object was not found because the victim was not stabbed inside their home. Regarding PW2's testimony that he saw her squeezing the victim using her both her hands around his body, she said that it was a confusion on his part as she was just attending the victim and not otherwise.



This witness went on by testifying in that they took the victim to Rubya Hospital after they were supplied with the PF-3 from Police station. At the Hospital she said she did not enter inside because she was crying. She said at around 16:00hours she was arrested by police on allegation that she injured FARUKU MOHAMED KAKENGERE. According to her the victim's condition was not good as he was breathing heavily and requested for drinking water.

Regarding the evidence by ABEDI MOHAMED KAKENGERE (PW2), against her, DW1 alleged he testified lies against her as he previously seduced her, but she refused which made their relationship sour. She added that she is not in good terms with the victim's family because they threatened to harm her through text messages over accusations of injuring the victim.

Regarding the testimony by the prosecution that her family never visited the victim at the Hospital, DW1 said her family visited the victim more than six times at Hospital. However, regarding the prosecution's evidence that her family's never offered any financial support to the victim, DW1 made a U-turn in that her family failed to do so because they were chased away when they attempted to visit the victim at the Hospital.

Further to that she testified that when the victim was discharged from Hospital, they have been communicating through mobile phones and at one point in time the victim called her asking for financial support as he was going to Muhimbili

National Hospital for further treatment. She said in the cause, she donated TZS. 20,000/=. Regarding the contents of the PF-3, DW.1 testified the name of the victim appearing in it is FARUKU MOHAMED while the victim's name is FARUKU MOHAMED KAKENGERE. According to her FARUKU MOHAMED and FARUKU MOHAMED KAKENGERE are two different persons. In conclusion, she said that She did not commit the said offence.

During cross examination DW1 said it is true that PW2 seduced her but she refused and as such they were not in good terms although she never reported anywhere because that was a secret between them. She also agreed that PW2 was not cross examined in that regard and she acknowledged that such failure entail he (PW2) was telling the truth, and her allegation was a mere afterthought.

Regarding her testimony that she donated TZS. 20,000/= to the victim when he was about to go to Muhimbili National Hospital for further treatments, she said that she tendered no proof to confirm that she donated the said sum of money.

Regarding her testimony that her family visited the victim at the Hospital she said that it is true that FARUKU MOHAMED testified that her parents never visited the victim at the Hospital, and she added that he was not cross examined in that regard.

Regarding her claim that the victim went to watch soccer match at their neighbor's house DW.1 said that it is true that he went out to watch soccer match although

she said she neither mentioned the name of the said neighbor nor summon him as a witness.

In further cross examination she said that it is true that FARUKU MOHAMED testified that on the night of the incident he was at his home watching TV (soccer) and that both were at home, but he was not cross examined in that regard.

Regarding her testimony that when she opened the door for her injured husband to enter the house, she covered her body with one piece of clothes (kitenge), DW1 said that PW2's testimony that by that time she was half necked (bare chested) with a skintight only was not subjected to cross examination. Further to that she said that the testimony by the prosecution's witnesses that the victim and her (DW1) were inside the house was not subjected to any cross examination.

Further to that she said that on the night in question she also went at police station to seek a victim's PF-3 and together with PW2 and other persons they took the victim straight to the Hospital.

Also, she confirmed that PW.3 is a Doctor from Rubya Hospital, but she declined knowing if he is the one who treated victim. Moreso, she acknowledged her failure to cross examine PW1 (the victim) regarding his evidence on the following, one that she is the one who stabbed him with a knife; two, that he (the victim) found a knife on bed when he wanted to sleep and three, that when she was asked as

what was that knife for, her answer was that it was intended to be used by her to commit suicide.

Again, she acknowledged that PW1 was not cross examined in his evidence that while stabbing him she said that "leo ndio mwisho wako". She further acknowledged that PW2 was not cross examined regarding his testimony that he heard her telling the victim "lazima ufe leo". She also said that PW2's testimony that FARUKU MOHAMED is his young brother and is her husband was also not subjected to cross examination.

Having concluded her testimony, the defense side closed its case. Finally, the prosecution and defense agreed to make their respective final submissions. The Court ordered the learned counsel for both sides to file their respective written submissions and each complied with the scheduling order.

On his part, Mr. ALI CHAMANI, learned Counsel for accused person submitted that the burden of proof in criminal case lies on the prosecution and it should not rely on the weakness of defense. Relying on the decision of the Court of appeal in SYLVESTER FULGENCE VS. REPUBLIC [1980] TLR 208 he submitted that telling lies cannot make a conclusive adverse inference.

According to him, since accused person is charged under section 211(a) of the Penal Code for attempted to murder the victim, then that section should be interpreted as was the case BONIFACE FIDELIS @ABED VERSUS REPUBLIC,

CRIMINAL APPEAL NO. 301 OF 2014,CAT (Unreported),where the Court enlisted four ingredient of attempted murder which include *firstly ,proof of intention to commit the main offence of murder, secondly, evidence to prove how the appellant begun to employ the means to execute his intention; Thirdly, evidence that proves overt acts which manifests the appellant's (accused person)intention. Fourthly, evidence proving an intervening event, which interrupted the appellant from fulfilling his/her main offence, to such extent if there was no such interruption, the main offence of murder would surely have been committed."*

With the above authority, Mr. CHAMANI further quoted part of the said decision which pointed out that:

"From the perspective of the provisions of section 211(a) and 380(1), the intention to commit the offence is essential, and we may dare say the most important ingredient of offence of attempted murder. We say so, because, if this ingredient is not proved, we will not bother our judicial time to the remaining ingredients."

Having cited the above authority, Mr. Chamani submitted that in this case the republic failed to prove the said ingredient because PW.1 FARUKU MOHAMED KAKERENGE failed to prove intention to commit the main offence of murder.

Further to that, he submitted that the prosecution failed to prove that there were intervening events which interrupted the accused person from fulfilling her main offence of murdering the victim. According to him since the accused was in the room with the victim who was so weak due to inflicted wounds on his body then if accused intended to murder him, she would not have failed to do so. Mr. Chamani further asserted that the evidence from accused person was that she assisted the victim until PW.2 came into the house when she opened the door for him. He submitted further that the victim's evidence that he snatched the knife and threw it on the dining area would not prevent her from committing murder as he was so weak to further struggle against accused. In his conclusion he submitted that even if the principle in GOODLUCK KYANDO v. REPUBLIC [2006] T.L.R at 367 is applied by the prosecution to support PW1'S evidence, still the four elements of attempted murder were not proved. He then prayed the court to acquit the accused person against the charge she is facing.

On his part, Mr. Mwakisisile commenced by taking note on the elements of attempted murder as envisaged in the case of BONIFACE FIDELIS@ABEID VERSUS THE REPUBLIC, CRIMINAL APPEAL NO. 301/2014, CAT which was cited by Mr. Ali Chamani, learned counsel for the accused. According to him, all the ingredients mentioned in the above authority are supported by the prosecution's evidence. The learned state Attorney pegged accused's act of stabbing the victim on the

stomach with a sharp object, her act of attempting to stab the victim around the neck and pulling the intestines which were protruding out as a proof of her intention to commit an offence of murder. In further support to this point he cited the case of AWADH GAITAN@MBOMA VERSUS THE REPUBLIC, CRIMINAL APPEAL NO.288 OF 2017[2020], TZCA at page 30 where the Court enlisted factors upon which courts may infer malice aforethought.

Further to that, the learned State Attorney submitted that the prosecution's evidence from PW1 and PW3 to the effect that following a stab on the stomach with a sharp object, the victim sustained grievous harm which exposed him to four surgeries at Rubya Hospital and the fifth surgery at Muhimbili Hospital and also the fact that the doctor(PW3) testified that the complications caused by a stab wound would cause death which has necessitated the victim to currently be put under continuous medical attention prove the 2<sup>nd</sup> and the 3<sup>rd</sup> element that accused person began to employ the means to execute his intention and the overt act which manifest the accused persons intention.

Regarding the 4<sup>th</sup> element, which is evidence namely a proof of an intervening event, which interrupted the appellant from fulfilling his/her main offence, to such extent if there was no such interruption, the main offence of murder would surely have been committed, the learned State Attorney pegged it to the evidence that after PW1 was stabbed on the stomach, accused attempted to also stab him

around the neck which was intervened by the victim snatching the knife and throwing it in the dining area. Further to that the learned State attorney considered the victim's alarm for help which drew good Samaritan to the scene of crime for a rescue as another intervening factors. Again, he challenged the defense side for failure to cross examine the prosecution's witnesses on that aspect. He considered such failure to cross examination as admission that what was testified was true. He supported this point by citing the case of SEBASTIAN MICHAEL & ANOTHER VERSUS THE D.P.P. CRIMINAL APPEAL NO. 145 OF 2018[2021] TZCA, P.13. With such submissions, the learned State Attorney said that the prosecution side proved its case beyond reasonable doubts. He thus prayed this court to find accused person guilty of an offence of Attempt to murder contrary to section 211(a) of the Penal Code, [Cap 16 R.E 2019]

With the said summary of the evidence and the submissions by the learned counsels for both parties, the court is now enjoined to determine this matter. Before doing so, it is apposite to point out that the burden of proof in criminal cases lies on the prosecution and the standard deployed is beyond reasonable doubt. The said position has been discussed in several decisions of the Court such as SAID HEMED vs R [1989] TLR 117 and MOHAMED MATULA VS REPUBLIC [1995] TLR 3. To emphasize the point, the law went further to forbidding any conviction against accused person's based on the weakness of his /her defense. That position



was stated in the case of FAKIHI ISMAIL VERSUS THE REUBLIC, CRIMINAL APPEAL NO. 146 "B" OF 2017[2019], TZCA in which the Court held inter alia that:

"As we all know, it is elementary that the burden of proof in criminal cases rests squarely on the prosecution, with no requirement that the accused proves his innocence; and that such proof must be beyond reasonable doubt."

From the above legal guidance, this court is now enjoined to determine the fate of the prosecution's case. To do so the following issues need be answered. These are:

1. Whether the victim (FARUKU MOHAMED) sustained injuries caused by a sharp object.
2. Whether SHANIFA D/O HAMIDU (the accused person) is responsible for injuries sustained by the victim.
3. Whether Accused person committed the offence she stands charged for (i.e., Attempted murder).

Regarding the first issue which is whether the victim (FARUKU MOHAMED) sustained injuries caused by a sharp object, the focus of this court will be on the evidence from PW1, PW2, PW3 and Exhibit P1(the PF-3). From the record, PW1 testified how on the night in question before entering in the bed, he noted that

accused had a knife her which she purported it was intended for her to commit suicide. Further to that he testified that he fell asleep and later he noted to be stabbed and blood oozing from his stomach with his intestines protruding outside. On his part, PW2, the victim's brother testified that on the night in question he heard someone screaming for help from the direction of his young brother's (PW.1's) house. According to him he responded to the call for help and at the victim's house, while the door to the same closed, he saw accused person squeezing the victim around his body by using both her hands. This witness testified further that when the door was opened, he entered only to find the victim stabbed with his intestines protruding outside. This witness also testified on how the victim was given first aid and later, having received a PF-3 form, ferried him to Hospital. At the hospital PW3(the doctor) attended the victim. He testified that the victim sustained grievous harm and the intestines were protruding outside. He said he performed several surgeries to the victim as he was in a very bad medical condition. This witness tendered the PF-3 and explained its contents in court. With the said evidence, I am convinced that the evidence from PW1, PW2 and PW3 as well as Exhibit P.1 provide affirmative answers to the first issue in that the victim sustained injuries caused by a sharp object.

Regarding the second issue as to whether SHANIFA D/O HAMIDU (accused person) is responsible for injuries sustained by the victim, it was the victim's

evidence that on the fateful night, he was at his home with the accused person. In his testimony he said it was the accused who went to bed first leaving him in the sitting room watching a soccer match. According to him, after the final whistle of the soccer match, he joined accused in bed but upon pulling a bedsheet to cover himself he saw a knife falling. He asked accused as what was that knife for only to be told that it was meant to be used by herself to commit suicide. He said he took it and threw the same to the dining area and slept. This witness testified how, while asleep he was stabbed with a knife by accused person. He said the incident took place in bed and he asked her as to why was she doing that only to be told "lazima ufe leo". This witness testified that there was no other person in their room apart from them. He also testified that his intestines were protruding and how accused attempted to stab him for the second time around his neck. He also narrated how accused started pulling the hanging intestines and the way he snatched the knife and threw it at the dining area. Further to that he testified that he headbutted her and during the confrontation he was overpowered and accused sat on his chest while squeezing the protruding intestines. This witness further said as he was screaming for help, his brother PW2 came to his rescue. On his part PW2 testified that when he went at the scene of crime, he found the door closed from inside and when he peeped through the gaps on the door, he saw accused person squeezing the victim around the body using both her hands. He said while there at he heard accused saying to the victim that "lazima ufe leo."

I have considered the evidence by these witnesses, and I am satisfied that it is nothing but the truth that it is the accused person who injured the victim. This is so because they were consistent in their testimony and their credibility was not shaken by defense side through cross examination. The law is clear that failure to cross examine a witness by adverse party entails what is put forward by the witness is nothing but the truth. This position finds the legal back up from several authorities. In the case of SHOMARI MOHAMED MKWAMA V. REPUBLIC, CRIMINAL APPEAL NO. 606 OF 2021, CAT(Unreported), it was held inter alia that:

"...it is now a settled position of the law that failure to cross examine the adverse party's witness on a particular aspect, the party who ought to cross examine the witness, is deemed to have taken as true, the substance of the evidence that was not cross examined; see Hassan Uki V. Criminal Appeal No. 129 of 2017 and Martin Misara V. R., Criminal Appeal No. 428 of 2016(unreported)."

From the above reasoning, it is without doubt that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> ingredients as stated in the case BONIFACE FIDELIS @ABED V. REPUBLIC, CRIMINAL APPEAL NO. 301 OF 2014 are proven i.e. proof of intention to commit the main offence of murder, a proof on how accused begun to employ the means to execute his intention and evidence to prove overt acts which manifests accused's intention.

In her defense accused person, despite conceding that the victim (PW1) was injured, she totally denied any involvement in the commission of the offence at hand. According to her, the victim was injured outside their house when he went to watch soccer match. She contended that she opened the door for him and gave her first aid before PW2 came and assisted to ferry the victim to Police station for PF-3 and later to Rubya District Hospital. I have considered accused person's defense and noted the same as weak to shake the prosecution's case against her. This is so because firstly, PW1 and PW2's evidence was not subjected to cross examination and as such what was testified by the prosecution witness is true. See the case SHOMARI MOHAMED MKWAMA V. REPUBLIC (supra). Secondly, the victim (PW1) who is her husband gave a detailed account on how accused person committed the offense. He was clear that before the incident they were in good terms and even after the incident, they have been communicating through mobile phones. With his evidence, I find no reasons as to why the victim, would testify lies against her. In her defense she tried to shake Pw1's credibility by alleging that the victim's relatives are the ones behind this matter, but her story was not substantiated. Regarding PW2 testimony, accused person alleged he testified lies against her as sometimes in the past, he seduced her, but she refused which led them to be in a bad relationship. I have also considered this defense and others such as one, that her husband was not injured inside their house, two, that her husband went out of the house to watch soccer match while in fact he watched it

inside their house and the failure to cross examine prosecution witnesses (PW1 and PW2) in that regard and came to conclusion that her defense is a blatant lie. It is trite law that accused's lies may corroborate the prosecution's case against him/her. In the case of

FELIX LUCAS KISINYILA VERSUS THE REPUBLIC, CRIMINAL APPEAL NO.129 OF 2002, CAT(Unreported), the Court held inter alia that:

"Lies of an accused person, appellant here, may corroborate the prosecution case."

Regarding her contention that the victim's name is FARUKU MOHAMED KAKERENGÉ and the name FARUKU MOHAMED appearing in exhibit P1 isn't her husband's name, I have also considered this and noted the following. Much as I agree that the names do not mean to refer to the same person, the evidence adduced by both the prosecution and defense shows they refer to one person who is the victim. Firstly, PW2 and DW1 testified that the victim was taken from home to Police station to be issued with PF 3 and thereafter went straight straight to Rubya Hospital where PW3 attended the victim and prepared the said exhibit. That chain from when they collected the PF-3, going straight to Hospital where PW3 attended the victim shows the PF3 which was prepared by PW.3 is the same which was collected at police station thus the victim in it is none other than PW1. Secondly, when PW2 testified in court that accused SHANIFA D/O HAMIDU is the

wife of FARUKU S/O MOHAMED he was not cross examined. Even during her defense, accused person (DW.1) was referring to the victim by the names FARUKU MOHAMED and FARUKU MOHAMED KAKERENGE. Since the said names were being used interchangeably by even accused herself, then it is my firm view that both names refer to one and the same person and exhibit P1 is in respect of the victim FARUKU MOHAMED(PW).

Regarding the fourth element which is the evidence proving intervening event, which interrupted the accused from fulfilling his/her main offence, to such extent if there was no such interruption, the main offence of murder would surely have been committed, Mr. Chamani was of view that the republic failed to prove that ingredient because PW.1 FARUKU MOHAMED KAKERENGE failed to prove intention to commit the main offence of murder.


Further to that, he submitted that the prosecution failed to prove that there were intervening events which interrupted the accused person from fulfilling her main offence of murdering the victim. According to him since the accused was in the room with the victim who was so weak due to inflicted wounds on his body, then if accused intended to murder him, she would not have failed to do so.

I have considered Mr. Chamani's assertion and with respect I do differ with him. This is because, after accused person have stabbed the victim while asleep, the victim woke up and that was the first intervening factors. Secondly the victim

snatched the knife and threw it away and headbutted her. Thirdly, the victim screamed for help and PW2 responded by knocking at the door. All these are intervening factors which prevented the accused person from killing the victim.

Accordingly, the four elements of the offence of attempt to murder are fulfilled since accused person's act manifested an intention to kill PW1 as gathered from nature of act done, intention of offender and the obtaining circumstances that led to the unlawful act against PW1.

I am thus of the view that the prosecution proved the offence charged beyond reasonable doubt and I hereby convict SHANIFA D/O HAMIDU for attempted to murder Contrary to section 211(a) of the penal Code, [CAP 16 RE. 2019].

  
**A.Y. MWENDA**

**JUDGE**

**01.11.2023**

### **SENTENCE**

In mitigation, the learned counsel for the convict prayed for a lenient sentence that she is the first offender, that the children she is co-parenting with the victim depend on her as the victim can no longer work for gain. He also said the victim

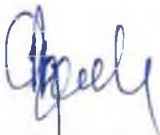


and the convict are now in good terms as they have been communicating through mobile phones. I have considered these mitigating factors only to find then incapable to warrant lenient sentence. This is so because she committed the offence using a weapon (a knife) and she prepared herself by having it on bed. She stabbed the victim on the valuable part of the body(the stomach) leading to serious injuries leading to a prolonged sufferings to the victim who is still undergoing medical treatment at Muhimbili National Hospital.

That said, I hereby sentence SHANIFA HAMIDU to serve a term of twenty (20) years jail imprisonment.


Right of appeal is fully explained.



  
**A.Y. MWENDA**  
**JUDGE**  
**01.11.2023**

Judgment delivered in the open court under the seal of this court in the presence of Mr. Noah Mwakisile, Learned State Attorney for the republic and in the presence of Mr. Alli Chamani learned counsel for the accused person (Ms. Shanifa Hamidu).



  
**A.Y. MWENDA**  
**JUDGE**  
**01.11.2023**