IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA SUB-REGISTRY)

AT ARUSHA

CRIMINAL SESSION CASE NO. 64 OF 2022

REPUBLIC

VERSUS

ABASHARI HASSANI OMARI ..... 1ST ACCUSED PERSON

YUSUPH ALLY HUTA @ HUSSEIN ..... 2ND ACCUSED PERSON

ABDULRAHMAN JUMANNE HASSAN ..... 3RD ACCUSED PERSON

RAMADHIN HAMAD WAZIRI ..... 4TH ACCUSED PERSON

ABDUL HASSAN JUMA @ ABDUL MASTER ..... 5TH ACCUSED PERSON

KASSIM IDRISA RAMADHAN ..... 6TH ACCUSED PERSON

AMAN MUSA PAKASI ..... 7TH ACCUSED PERSON

JAFARI HASHIM LEMA ..... 8TH ACCUSED PERSON

ABDUL MOHAMED UMUDI @ WAGOBA ..... 9TH ACCUSED PERSON

JUDGMENT

27/11 & 12/12/2023

NKWABI, J.:

The incident leading to this criminal proceeding is unprecedented one in our jurisdiction. It is unprecedented when one apprehends that when the Roman Catholic, Burka parish church believers were to celebrate the most significant religious ritual of anointing a new parish from an outstation, the Olasiti outstation (*kigango*), a bomb blasted in the middle of the believers. More than fifty believers sustained injuries of various degrees

being permanent incapacitation to serious injuries (serious harm). Three persons lost their precious lives due to the bomb blast. The church leaders, including the Pope's ambassador who was to lead the mass, were miraculously, however, unharmed. The mass and the ritual were thereupon suspended due to horror, panic, chaos and intimidation. The believers were ordered to vacate the church premises. Meanwhile, in the days thereafter, masses at the church premises were conducted (cerebrated) under the police security.

The bomb blast occurred on the 5th day of May 2013 at Olasiti area within Arusha City which is located in the northern part of Tanzania. The police cordoned off the scene of the blast with cordoning tape. Then, the police guarded the church premise. On the next day, a forensic team from the police headquarters - Dar-es-Salaam joined the forensic team which is/was stationed in Arusha. They inspected the scene of the blast and traced exhibits and collected the exhibits they were able to find at the scene of the blast.

An investigation was mounted and according to the 8th accused person namely Jaffar Hashim Lema (DW.9), apart from involving police officers, the Tanzania People's defence Force and the security officers were also involved. However, it was not until July, 2014 when some suspects were

arrested. Others were arrested later. The accused persons who have stood trial for the incident to date, are Abashari Hassan Omari (the 1st accused person), Yusuph Ally Huta @ Hussein (2nd accused person), Abdulrahaman Jumanne Hassan (the 3rd accused person), Ramadhan Hamad Waziri, (the 4th accused person), Abdul Hassan Juma @ Abdul Master (the 5th accused person), Kassim Idrisa Ramadhani (the 6th accused person), Aman Musa Pakasi (the 7th accused person), Jafari Hashim Lema (the 8th accused person) and Abdul Mohamed Umudi @ Wagoba (the 9th accused person). In the course of this judgment, I will use the names or the respective number of an accused person for convenience.

In this criminal case, the accused persons are, nevertheless, charged with the following offences:

1. Conspiracy to commit terrorist acts which is contrary to section 4(1), 3 (i) (i) and 27(c) of the Prevention of Terrorism Act, No.21 of 2002.
2. Commission of terrorism act contrary to sections 4(1), (3) (i) (ii) of the Prevention of Terrorism Act, No. 21 of 2002. The counts of this nature are 22. All the 23 counts are against all accused persons. The rest of the counts, save the 25th one, are in the alternative to the 23 counts.

3. On the 25th count, the 4th accused person is charged in isolation to other accused persons, for use of property for commission of terrorism act which is contrary to section 4(1), (3) (i)(i) and 15(a) of the Prevention of Terrorism Act, No. 21 of 2002 because he used part of his house located at FFU Kwa Mrombo area for conducting a meeting concerned with an act of terrorism, thus facilitating the commission of an offence.

The information, which was lodged in this Court indicates that out of terrorism acts, the accused persons caused the death of Regina Loningó Kuresoi (the subject of the 2nd count), James Gabriel Kessy (the subject of the 3rd count) and Patricia Joachim (the subject of the 4th count). The next, 19 counts concern causing serious bodily harm to persons mentioned in the information. That, according to the evidence of the prosecution, the bomb blast incident happened after the accused persons had convened and held several conspiratorial meetings at the home of the 4th accused person and mosque premises and executed their ill intention of detonating a hand grenade at the public gathering at St. Joseph the worker Parish church premises. As a result, three persons died and more than fifty persons sustained serious bodily harm just as I have already indicated above.

All the accused persons resolutely disputed to have committed the offences they are charged with. They ardently claimed that they are good citizens like others, and were simply doing their ordinary shores which earn them their daily bread. Their chores range from banking official, Imam and a primary school teacher, shopkeeper, bus agent, petty business (hawker), and a casual worker on construction. They staunchly maintained in their defence that this case is fabricated by the police. Those, who had caution statements and an extra-judicial statement either repudiated or retracted the same. In essence, the accused persons maintained that they are innocent.

Nonetheless, the prosecution was able to bring 39 witnesses and tendered 38 exhibits. On its side, the prosecution is satisfied, as could be seen in its final written submissions, that it brought to the Court sufficient evidence to prove the charge against the accused persons beyond any reasonable doubt. On the defence side, all accused persons defended themselves on oath. They had neither exhibit to tender nor any defence witness to support their account of events.

In this case, the prosecution was efficiently represented by Ms. Bibiana Kileo, Mr. Basilius Yusuph Namkambe, Mr. Nassoro Katuga and Ms. Ester Martine, learned Senior State Attorneys, Mr. Nestory Mwenda, Mr. Charles

Kagilwa and Ms. Witness Muhosole, learned State Attorneys. At some point in the proceeding, there was the representation of the Republic by Mr. Seif Ahamed, learned Principal State Attorney.

The accused persons, were represented by Mr. Fridolin Bwemelo, learned counsel who represented all the accused persons. He represented them in conjunction with Mr. Nerius Rugakingira, learned counsel for the 1st accused person, Mr. Alexander Shillah, learned counsel for the 2nd accused person, Mr. Alpha Ngóndya, learned counsel for the 3rd accused person, Mr. Stephano James, learned counsel for the 4th accused person, Mr. Mitego Methusela, learned counsel for the 5th accused person, Mr. Emmanuel Shio, learned counsel for the 6th accused person, Mr. Goodluck Michael, learned counsel for the 7th accused person, Ms. Taiyon H. Mtei, learned counsel for the 8th accused person and Ms. Zalfina Abdalla, learned counsel for the 9th accused person. The defence counsel formed an admirable team which defended the accused persons.

I am enormously indebted to the teams of advocates for both sides, the prosecution and the defence, for their extremely helpful advocacy and views in this quest for justice to both parties to this criminal proceeding.

At this moment in time, I illustrate what is at stake between the parties by specifying the issues as underneath:

1. Whether the accused persons conspired to commit terrorism acts.
2. Whether the accused persons committed terrorism acts.
3. Whether the 4th accused person used his property or premises (his house) for committing terrorism act.

I will now move straight forward and embark to consider and determine the 1st issue which is whether the accused persons conspired to commit terrorism acts. For clarity, I begin with making reference to the authorities which will guide me into coming to a just decision on this issue. It is part of our law that a person who joins a conspiracy is responsible in law for all the acts of his fellow conspirators done in furtherance of the conspiracy, whether done before, during or after his participation. That is the position of the law as enunciated in the case of **Stanley Musinga v. Republic** [1951] EACA 211 at page 216.

I also find myself constrained to borrow leaf from the wisdom found in the decision in the case of **Republic v. Gokaldas Karia** [1949] 16 EACA 116 where it was stated authoritatively that:

"Conspirators do not normally meet together and execute a deed setting out the details of their common unlawful purpose. It is common place to say then an agreement to conspire may be deduced from any acts which raise the presumption of a common plan."

Going by the evidence that is in the record of this case, it is clear that the accused persons held conspiratorial meeting at the house of Ramadhan Hamad Waziri. The conspiracy was perpetrated by Yahaya s/o Sensei, the ring leader who is still at large, Yussuf Ally Huta @ Hussein, Kassim o/o Idrissa, Ramadhan, Abdul Hassan @ Abdul Master, Amani Pakasi and Abashari Hassan Omar. This is according to exhibit P. 9, the caution statement of the Yussuf Ally Huta @ Hussein (the 2nd accused person). The meeting had its end result, the bombing of the congregation of believers at St. Joseph the Worker parish premises on 05/05/2013. The 2nd accused person confessed before the Justice of Peace to have committed the offence. The confession is exhibit P. 8. There is nothing to suggest that the 2nd accused person was forced to say anything before the Justice of Peace, due to the fact that the statement at the police (exhibit P. 9) is longer than that which is in exhibit P. 8. This conspiratorial meeting is confirmed by Ramadhani s/o Hamad Waziri (the 4th accused person) in his caution statement (exhibit P. 38).

It is in exhibit P. 38 where it is disclosed how the culprits got the information about the inauguration ceremony of St. Joseph the Worker Parish which was to be done on 05/05/2013 that it was Jafari Lema, the 8th accused person who told them as such. Exhibit P. 38 explains clearly what was discussed and the agreements reached during the meeting on what to do to bomb the congregation. That is the essence of conspiracy.

My position regarding the conspiracy and its agreement thereof is fortified by **Richard Ndege v. Republic,** Criminal Appeal No. 11 of 1979, (Unreported) (CAT) at Mwanza where it was stated that:

> *"Of course, the appellant did not fire the bullet that killed the deceased but under the doctrine of common intention "where two or more persons set out armed with lethal weapons with the common intention of stealing, and one of them (as in this case) in order to fulfill their purpose, kills the custodian of the goods, all are liable to be convicted of murder."*

Further, the decision in the case of **Wanjiro Waimath v. Republic** [1955] EACA 116 cannot escape my eye in the circumstances of the case under my determination. In **Wanjiro's** case it was held that:

> *"Common intention is not necessary to be arranged but can develop in the course of the act."*

It is trite principle of law in our jurisdiction as submitted by the defence counsel in their final written submissions to the effect that in criminal cases doubts are resolved in favor of the accused however slight they may be; backing their stance with the case of **Zakaria Japhet @ Jumanne & 2 Others v. The Republic,** Criminal Appeal No. 37 of 2003, the decision of the Court of Appeal of Tanzania. However, I am of a firm view that this case is not the situation.

I am, however, impressed by the submission of the prosecution that it has proved the offence of conspiracy. It reinforced its view with the decision in **Michael Charles Kijangwa v. The Republic,** Criminal Appeal No. 280 of 2017 CAT. I accept the position as stated by the prosecution. Thus, I reject the view that is held by the defence.

Having discussed as I have done hereinabove, I answer the 1st issue in the affiramative and the accused persons namely Abashari Hassan Omari, Yussuf Ally Huta, Ramadhan Hamad Waziri, Abdul Hassan Juma @ Abdul Master, Kassim Idrisa Ramadhani and Jaffari Hashim Lema are guilty of conspiracy to commit terrorism act.

Next, I turn to scrutinize and decide the 3rd issue which is whether the 4th accused person namely Ramadhan Hamad Waziri used his property or

premises (his house) for committing terrorism act. On this issue, based on the evidence which is in the case file, the prosecution is emphatic that it proved its case that the 4th accused person used part of his property (the house where he was residing) to conduct a conspiratorial meeting on 04/05/2013. There is his caution statement (exhibit P. 38) in which he confesses that a meeting to discuss how to bomb the congregation at St. Joseph the Worker parish church premises. He proceeds in that caution statement and states:

> *"... baada ya kupewa taarifa hiyo tulikubaliana kesho yake tarehe 05/05/2013 tukutane nyumbani kwangu mapema saa mbili asubuhi, ... Siku ya tarehe 05/05/2013 saa mbili asubuhi walikuwa wamefika nyumbani kwangu na YAHAYA S/O SENSEI alituonyesha bomu ambalo litalipuliwa kwenye sherehe ..."*

The prosecution further submitted that there is an oral confession of the 4th accused person and another oral confession of the 9th accused person. It is urged by the prosecution that the oral confessions are sufficient to ground conviction as per **Posolo Wilson @ Mwalyango v. Republic,** Criminal Appeal No. 613 of 2015 and **Peter Didia Rumala v. Republic,** Criminal Appeal No. 421 of 2019 both are the decisions of the Court of Appeal of Tanzania.

I accept the stance of the prosecution that there is corroborative evidence from lies in evidence by the 4th accused persons and the other accused persons in their defences. The authority that guides me in this approach is **Pascal Kitigwa v. Republic,** [1994] T.L.R. 65 CA where it was held that:

> *"Corroborative evidence may be circumstantial and may as well come from the words or conduct of the accused, and may as well also corroborate evidence of a co-accused."*

The 4th accused person denied to have committed the offence which is charged on the 4th count. He claimed that he does not own a house at the material place, and he never rented a house thereto. I am not impressed by the defence of the 4th accused person at all, so, I reject it.

Indeed, it must be borne in mind that, the end result of such conspiratorial meetings conducted at the premises of the 4th accused person is the bomb blast at the church premises which caused the death of three persons and wounded more than 50 persons. I am satisfied beyond reasonable doubt that the 4th accused person used his premises (house be it rented or personal property) for terrorism act. I reject his defence and hold that he is guilty as charged on the 25th count on the charge sheet. Thus, the 3rd issue is answered by this Court in the affirmative.

Lastly, I regress and direct my mind on the 2nd issue. Now that I have already decided that the accused persons are guilty of conspiracy to commit terrorist acts, I have also held that, the 4th accused person used part of his property for terrorist act, my task in determining the 2nd issue becomes effortless.

Even the defence, admits that there occurred a bomb blast at the premises of St. Joseph the Worker parish church premises on the material date. The bomb blast caused death of three persons and injuries to more than fifty persons. Credible eye witnesses including two priests came and testified that indeed the bomb blast occurred and three persons died who later were buried inside the church building. Such witnesses too testified that over fifty persons were injured and sent for treatment.

There are testimonies from medical doctors who conducted postmortem examination to the deceased and the medical doctors who treated the persons who sustained injuries. Their testimonies are authentic and credible. The post mortem examination reports and the PF3s which were admitted in evidence are maintainable, I thus hold that they are reliable. In the circumstances, I sustain the position that is maintained by the prosecution that they have proved that due to the bomb blast, three people died (were murdered) and more than fifty persons sustained

severe bodily harm. My position is supported by **Agness Liundi v. Republic** [1980] T.L.R. 46 CAT where it stated that:

> *"The court is not bound to accept medical testimony if there is good reason for not doing so. At the end of the day, it remains the duty of the trial court to make a finding and in so doing, it is incumbent upon it to look at and assess, the totality of the evidence before it including that of medical experts."*

The defence, in cross-examination to the witnesses of the prosecution, and in the testimonies of the accused persons in their defence, pointed out to some contradictions which are in the prosecution case. Truly, in final submission, the defence counsel pointed out to contradictions. It started with the terrorist meeting (conspiratorial meetings) which PW1 said they were done at Masjid Quba in Arusha City while some of the prosecution witnesses said such meetings were conducted in Ngusero area and others in the house of the 4th accused person at FFU area.

I have examined the complaint about the contradiction about where the conspiratorial meetings were conducted prior to the bomb blast and after the bomb blast. I do not see any contradiction instead; it proves the truth

that the conspiratorial meetings were conducted at different places. It will be naïve of this Court to decide that and think that there was only one conspiratorial meeting which was conducted at the house of the 4th accused person. After all, there is no any witness of the prosecution witnesses who witnessed any of the meetings being conducted. So, the prosecution depends on the caution statements and secret informant(s).

The defence also whined against the prosecution's case that the prosecution did not summon material witness, the secret informer and urged this Court to accord adverse inference against the prosecution. They backed their criticism with the case of **Paschal Mwinuka v. Republic,** Criminal Appeal No. 258 of 2019 CAT (unreported). I agree with the principle enunciated by the Court of Appeal in that case. I am also aware of the position of the law that what would have been said by secret informants who are not called to testify in Court is hearsay evidence as per **Rashid Ally & Another v. Republic**, Criminal Appeal No. 40 of 2001, CAT (unreported), yet secret informants be it a person, institution or business, in these unprecedented times, must be protected and cannot be revealed. I am of the firm view that even if there is witness protection, it is the choice of the prosecution to call the secret informer as a witness or not else, secret informers cannot be discouraged in any way because

it may be left to the government to deal with such serious offences which reach a stage of eliminating of criminal offenders by use of drones as done by some of governments in the world. To me that sounds to be abdication of duties by the Courts of law where by suspects are killed by use of drone, thus, not afforded their fundamental right to a hearing, which may appear to be necessary but bizarre. See also **Sangaru Lugaira Mathias v S.M.Z,** Criminal Appeal No. 183 of 2005 (CAT) at DSM. In **Nyerere Nyague v. Republic,** Criminal Appeal No. 67 of 201, CAT (unreported) it was held that:

> *"It is not therefore correct to take that every apparent contravention of the provisions of the CPA automatically leads to the exclusion of the evidence in question."*

I, however, insist that each case must be decided according to its particular facts and circumstances as stated in **Nyakisia v. Republic** [1971] H.C.D. No. 195. Duffus P., Spry V. P. & Lutta J. A. (E. A. C. A.).

There is also a complained contradiction in respect of the time when the 4th accused person was arrested in comparison to the time he was recorded his caution statement (exhibit P. 38). I do not accept this complaint because, it was explained sufficiently to the satisfaction of this Court that there were other investigative actions which were going on,

like the 4th accused person sending the police officers to the home of another suspect which assisted in arresting that suspect. It should also be borne in mind witnesses were testifying on an incident of arrest that occurred about ten years ago, according to, **Dmitrive Kosya Koff and Another v. Republic,** Criminal Appeal No. 1 of 2001 (Unreported) (CAT) (Arusha) it was underscored that:

> *"We agree that there may well be some discrepancies in their evidence regarding such reckoning of time or the door through which the appellants entered the house. After all it is not unusual that in the course of normal life witnesses to the same incident give description of the incident variously. What is important is the essence of the matter and not the fine and minor details. The incident took place in 1997 and they were testifying in 1999. So, variation or discrepancies of this nature are a common phenomenon in such cases. We think such variation and discrepancies were, but minor, they did not go to the root of the evidence."*

Thus, such discrepancies are to be expected.

The next complaint on contradictions about the prosecution evidence is on the number of metal fragments (shrapnel) removed from the bodies of the victims of the offence. The defence concludes that there is doubt as

to how many fragments were removed from the bodies of the victims. This complaint, will not detain me much because the situation in this case, has ever happened within our jurisdiction. I adopt as mine the words of his Lordship, Makame, J., as he then was, in the case of **Republic v. Agnes Doris Liundi** [1980] TLR 38, whose decision was upheld by the Court of Appeal, that:

> *"PW.9 said that the letters found in the house were six, whereas Tenga PW.5, the superior police officer PW.9 accompanied and who took custody of the letters, said that they were merely four, I am satisfied that PW.9's recollection on this was faulty and that the letters were in fact four, the ones produced in court, and PW.5 said. I do not place much significance on the disharmony regarding the number of vomits."*

One may also wish to have a look at the decision in **Hussein Ally Dotto v. Republic,** Criminal Appeal No. 42 of 1996 (Unreported) (CAT). (DSM) where it was emphasized that:

> *"...The two additional grounds of appeal are that first, a knife was tendered in evidence instead of a panga which was said to have been used in the course of the robbery.*
>
> *....We agree that although a knife was seized from the room in which the appellant was arrested and it was tendered in evidence*

it had no probative value in the case. The complainant in the case together with Hamis Salum were clear in their evidence that the robbers used pangas during the robbery. But the fact that pangas were not found in the room where the appellant was arrested does not prove anything either way. For two and half months there was ample time to dispose of the pangas if the appellant was the robber."

See also **Mukami Wankyo v. Republic** [1990] T.L.R. 46 (CAT) where it was stated that:

"If the contradictions are severed from the central story and the confessions contain nothing but the truth they can safely be relied upon to convict the appellant as per the case of Tuwamoi v. Uganda [1967] E.A. 84"

The defence, too while accepting the legal principle that it is dangerous to act on a repudiated or retracted confession unless it is corroborated, or may be acted upon if the Court is satisfied that the confession could not but be true while making reference to **Kashidye Meli v. Republic** [2002] T.L.T. 374 and **Tuwamoi v. Uganda** [1967] EA 84 just to mention a few, the defence counsel urge me to disregard exhibit P. 8, P.9, P. 13, P. 20, P. 21, P. 32, P.36, P. 37 and P. 38 because they were retracted or repudiated, not corroborated and the stories therein are not related to each other in

respect of where the bomb was purchased, how the accused persons reached at the scene of the offence as well as who kept the bomb. Admittedly, the principle on how to rely on confessions, was clearly stated in **William Mwakatobe v. Republic**, Criminal Appeal No. 65 of 1995 (Unreported) (CAT) (Mbeya) where it was stressed that:

> *".... In this case we are with respect to the learned trial Judge fully satisfied that the appellants confessions to the justice of peace were so detailed, elaborate and thorough that no other person would have known such personal details but the appellants. Appellants retracted confessions were clumsy attempts to evade the consequences of their criminal acts."*

See also **Magongwa v. Republic,** Criminal Appeal No. 31 of 1979 (Unreported) (CAT) (MWANZA) where it was stated that:

> *".... Parliament in its wisdom ... felt it safe to render admissible statements made by suspects to Justices of the peace presumably on the basis that the Justices of the peace and the courts would carry out their duties seriously and thereby safeguard the legal and human rights of suspects."*

Regarding the extra-judicial statement of the 2nd accused person, he claimed that he was tortured and sustained wounds due to the torture, but the Justice of Peace who recorded the extra-judicial statement

testified that the 2nd accused person had no any wounds. In the situation, I follow the decision of the Court of appeal in **Stephen Jason & Others v. Republic,** Criminal Appeal No 79 of 1999 (unreported), the Court of appeal observed that:

> *"Where an accused claims that he was tortured and is backed by visible marks of injuries it is incumbent upon the trial court to be more cautious in the evaluation and consideration of the cautioned statement, even if its admissibility had not been objected to; and such caution statement should be given little if not, no weight at all."*

In the premises, I do not accept the view of the defence. I understand that, apart from being truthful and detailed that no other person could know apart from the accused persons in this case who confessed, the confession statements are corroborated by the lies during the defence hearing of the accused persons who confessed. On my decision on this point, I am also guided by **Paschal Kitigwa v. Republic** Criminal Appeal No. 161 of 1991 (Unreported) (CAT) (MWANZA) where it was clearly stated that:

> *"...it is common ground that corroborative evidence may well be circumstantial or may be forthcoming from the conduct or words of the accused. On this, numerous decisions have been made by the*

then court of Appeal for Eastern Africa- see R v Said Magombe (1946) EACA 1645 and Migea Mbinga v. Uganda (1967) EA 71."

See also **Richard Matangule & Another v. Republic** [1992] T.L.R. 5 in which the Court of Appeal of Tanzania held that:

"... these deliberate lies and the refusal to give an explanation corroborate the case for the prosecution that the appellants are responsible for the death of the deceased."

A position in the like terms could also be seen in **R. v. Sebastiano s/o Mkwe** [1972] H.C.D. No. 217 **(E.A.C.A.)** SPRY, AG. P., and **Ali s/o Mpaiko Kailu v. Republic** [1980] T.L.R. 170 Kisanga, J. In the same vain, I reject the complaint about the exhibit P. 37 that the video was tampered with since there is a contradiction as to the length of the video. I am not moved by the defence.

There is also a criticism by the defence against the caution statements that they were either not certified in accordance with the law, and were not recorded under the proper section of the Criminal Procedure Act. Verily, the defence counsel cross-examined at length on these complaints. I do not find any substance in the criticism, rather I accept the explanation given by the prosecution. In that regard, the case cited by the defence which is **Juma Omary v. Republic,** Criminal Appeal No. 568 of 2020

CAT (unreported) is distinguishable to the present case. My perception is also supported by the decision in **Chacha Jeremiah Murimi & 3 Others v. The Republic,** Criminal Appeal No. 551 of 2015, CAT at Mwanza (unreported) where it was underscored that:

> *"However, the nature of the matter being of high public interest and taking into account the complications in its investigation and having looked at the caution statements in issue, which contains information relevant to the fact in issue, there is no way, they can be said that the omission to comply with provisions of section 50 of the CPA and lack of certificate amounted to an irregularity which goes to the root of the matter so as to invalidate the caution statements in question. What was contravened was procedural matter which does not affect the weight attached to the substance in the cautioned statements"*

See also **DPP v. Nuru Mohamed Gulamrasul** [1988] T.L.R. 88 (CAT) and **Nyerere Nyague v. Republic,** Criminal Appeal No. 67 of 2010, CAT (unreported). In fact, the glaring falsehoods found in the defences of the accused persons cannot go unnoticed. They affect the defence of the accused persons just as stated in **Mathias Timoth v. Republic [1984]** T.L.R. 86 HC Lugakingira, J.

> *Held: (1) "In testimony of a witness, where the issue is one of false evidence, the falsehood has to be considered*

in weighing the evidence as a whole; and where the falsehood is glaring and fundamental its effect is utterly to destroy confidence in the witness altogether, unless there is other independent evidence to corroborate the witness."

In respect of the complaint that exhibit P. 13 contains two different names and signature of the accused person who confessed, thus bringing doubt, I am also not persuaded by that claim by the defence. As to recording the year 2022 by P. 36 whose testimony was recorded as PW. 23, that could be a slip of the pen, it is not fundamental and does not go to the root of the matter.

It is also the argument of the defence that confession of a co-accused should not be used to ground conviction of another accused person. They referred me to section 33 (2) of the Evidence Act, Cap. 6 R.E. 2022 and the case of **Asia Iddi v. Republic** [1989] T.L.R. 174. This can be true of Abdulrahman Jumanne Hassan, Aman Musa Pakasi and Abdul Mohamed Umudi @ Wagoba. See also **MT 38870 PTE Rajab Mohamed and Others v. Republic,** Criminal Appeal No. 141 of 1992, CAT (unreported) where it was held that:

"The only evidence against the third appellant was the confession of a co-accused which was not corroborated. As there was no tenable evidence against him his appeal is allowed."

Next, I consider the lamentation by the defence that there was weak dock identification. With respect to the defence counsel, this lamentation is weak because, no witness testified to see any accused person blast the bomb. The witnesses who did identify the accused persons on the dock were the arresting officers or those who recorded caution statements of the accused persons. They were identifying as such for the purpose of identifying the persons whom they arrested or recorded caution statements. In that regard, the case of **Bakari Jumanne @ Chigalawe & 3 Others v. Republic,** Criminal Appeal No. 197 of 2018 CAT (unreported) is distinguishable.

The defence is also finding fault on the prosecution case against the accused persons based on a chain of custody. It argues that the chain of custody is broken beyond repair about the shrapnel or metal fragments found in the bodies of the victims of the bomb blast. To bolster their argument, the defence cited the case of **Paul Maduka & 4 Others v. Republic,** Criminal Appeal No. 110 of 2007 CAT (unreported).

On my evaluation of the evidence, I am not persuaded by the argument of the defence and I dismiss it. My position is backed by **Joseph Leonard Manyota v. Republic,** Criminal Appeal No. 485 of 2015 CAT (unreported) in which it was held that:

> *"... it is not every time that when the chain of custody is broken, then the relevant item cannot be produced and accepted by the court as evidence, regardless of its nature. We are certain that this cannot be the case say, where the potential evidence is not in the danger of being destroyed, or polluted, and/or in any way tampered with. Where the circumstances may reasonably show the absence of such dangers, the court can safely receive such evidence despite the fact that the chain of custody may have been broken. Of course, this will depend on the prevailing circumstances in every particular case."*

See also **Chacha Jeremiah Murimi's case** (supra).

Failure to tender important exhibits, is a cavil raised by the defence. It pointed out that despite being listed as exhibit intended to be tendered by the prosecution, the prosecution did not tender PF. 16 to see if the exhibits were handled (chain of custody). It was also criticised that the prosecution did not tender the detention register to prove the presence of the 1st, 2nd, 4th, 5th, 6th, and 8th accused persons at the police station.

With profound respect to the defence counsel, I am not persuaded by this complaint. It appears to me that the defence did not appreciate the decision in **Julius Billie v. Republic** [1981] T.L.R. 333 (HC), this Court had this to say:

> *"The non-production of a thing which is a subject matter of court proceedings goes only to the weight and not to the admissibility of the testimony concerning or relating to it."*

See also **Chacha Jeremiah Murimi's case** (supra) where it was underscored that:

> *"On the complaints in respect of the certificate of seizure to the effect that it was not procured according to the law. We agree with the submission of the learned Principal State Attorney that since the said certificate was prepared and signed at the place where the exhibit was seized, then failure to indicate time in the certificate of seizure as to when the exhibit was seized was not fatal as it did not prejudice the appellants. As rightly submitted, the omission did not remove the truth that the first, second and fourth appellants were arrested in possession of a bone of a human being at the scene of the crime which was later diagnosed to be from the deceased body."*

The complaint in respect of failure to material witnesses, crumbles to the ground in the same vein like the complaint about exhibits.

In their defences, some of the accused persons put up some purported alibies. I reject their alibis in accordance with **Makula Kiula v. Republic,** Criminal Appeal No. 2 of 1983 (Unreported) (CAT) where it was insisted that:

> *"If a person charged with a serious offence alleges that at the time when it was committed he was in some other place where he is well known and yet he makes no effort to prove that fact, which if true, could easily be proved, the court must necessarily attach little weight to his allegations."*

Somewhere during the proceeding of this case there was a complaint about testimony detailed than police statement. The answer to that complaint can be found in **Hatibu Gandhi v. Republic** [1996] T.L.R. 12 where it said that:

> *"As to her testimony in court being more detailed than her police statement, we think this is also explicable on the ground that a police statement is not meant to be as detailed and as thorough as the testimony given in a trial court. We are satisfied that PW24 is a credible witness ..."*

As to the complaint that the charge sheet is defective, with respect to the defence, I am unimpressed and dismiss it because, the charge sheet is perfect.

I wish to remind the accused persons and the public at large that the law is clever. It envisages that criminal offenders have intellect to try to dodge the law. The law has mechanism to nail them down. See for instance, a case law which gives answers to the mens rea of the culprits of the offence in this case, the case of **Enock Kipela v. Republic,** Criminal Appeal No. 150 of 1994 (unreported)

> *"... usually an attacker will not declare his intention to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various factors, including the following: (1) the type and size of the weapon, if any used in the attack; (2) the amount of force applied in the assault; (3) the part or parts of the body the blow were directed at or inflicted on; (4) the number of blows, although one blow may, depending upon the facts of the particular case, be sufficient for this purpose; (5) the kind of injuries inflicted; (6) the attackers utterances, if any, made before, during or after the killing; and (7) the conduct of the attacker before and after the killing."*

The law of this country has placed duties to the Court and the prosecution when dealing with criminal cases. The duty of the court first to collect,

analyse and assess the evidence and see how far, if at all, it touches upon accused person; see **James Bulolo & Another v. Republic** [1981] T.L.R. 283. I hope, this Court has observed that law. On the prosecution, there is also that duty assigned to it. The general duty could be seen in **Woodmington v. DPP [1935]** AC 462 where it was stated that it is the duty of the prosecution side to prove its case and the standard of proof is beyond all reasonable doubt. The duty of the prosecution in criminal cases related to murder/killing of a person was stated in **Mohamed Said Mtula v. Republic,** [1995] T.L.R. 3 (CA)

> *"Upon a charge of murder being preferred, the onus is always on the prosecution to prove not only the death but also the link between the said death and the accused; the onus never shifts away from the prosecution and no duty is cast on the appellant to establish his innocence."*

The prosecution has discharged its duty in this case albeit to only some of the accused persons. At this point, I feel indebted to commend the police and whoever they collaborated with the police for their tireless work that led to the culprits of the bombing of the congregation at Roman Catholic parish premises at Olasiti area to be nabbed and brought to justice. I am not the first to commend the police. I remember the Court of Appeal did so in the case of **Hatibu Gadhi** (supra).

With the above discussion I resolve the 2nd issue in the affirmative against the accused persons namely Abashari Hassan Omari, Yusuph Ally Huta @ Hussein, Ramadhan Hamad Waziri, Abdul Hassan Juma @ Abdul Master, Kassim Idrisa Ramadhani, and Jaffari Hashim Lema. I have found them guilty of committing the offences they respectively stand charged with and as listed in the information.

Consequently, I convict the convicts for the offences they stand charged with and those in the alternative counts forthwith as follows:

1. Conspiracy to commit terrorist acts which is contrary to section 4(1), 3 (i) (i) and 27(c) of the Prevention of Terrorism Act, No.21 of 2002, the subject of the 1st count.
2. Commission of terrorism act contrary to sections 4(1), (3) (i) (ii) of the Prevention of Terrorism Act, No. 21 of 2002. The counts of this nature are 22, the subject of the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 14th, 15th 16th, 17th, 18th, 19th, 20th, 21st, 22nd and 24th counts on the charge sheet. All the 23 counts are against all accused persons.
3. Participating in a terrorist meeting contrary to section 4(1), (3) (i)(i) and 5(a) of the Prevention of Terrorism Act No. 21 of 2002.

4. On the 25th count, where the 4th convict is charged in isolation to other convicts, for use of property for commission of terrorism act which is contrary to section 4(1), (3) (i)(i) and 15(a) of the Prevention of Terrorism Act, No. 21 of 2002 because he used part of his house located at FFU Kwa Mrombo area for conducting a meeting concerned with an act of terrorism, thus facilitating the commission of an offence.

I, however, acquit the accused persons namely Abdulrahman Jumanne Hassan, Aman Musa Pakasi and Abdul Mohamed Umudi @ Wagoba forthwith.

It is so ordered.

DATED at **ARUSHA** this 12th day of December 2023.

J. F. NKWABI

JUDGE

PREVIOUS RECORDS

Ms. Mlenza: The convicts are the first offenders. We pray for severe punishment to address the offences, given the nature of the offences the convicts are charged with. They affect the community economically,

security and diplomatic also to be a lesson to the convicts and other persons.

Diplomatically, the country had its image tarnished, regard to the fact that at the incident there was the Pope's ambassador. For counts which involve murder/ causing death, we pray for sentence for death to hanging under section 197 of the Penal Code. In offences which are attempted murder, we pray for severe sentence.

MITIGATION

Mr. Bwemelo: Since I represent all the accused persons, I will speak on behalf of the rest defence counsel. We pray for a lenient sentence for the following reasons:

1. The convicts are the first offenders,
2. The convicts are remorseful of the offence. They are persons of good character.
3. They are still young and some are having children and relatives who depend on them. We pray for lenient sentence including reducing the time they stayed in remand. That is all.

SENTENCE

Court: There is only one punishment for the offence of murder, under the 26th count on the charge sheet that is, sentence to suffer death by hanging. As such I condemn the convicts namely **Abashari Hassan Omari, Yusuph Ally Huta @ Hussein, Ramadhan Hamad Waziri, Abdul Hassan Juma @ Abdul Master, Kassim Idrisa Ramadhani, and Jaffari Hashim Lema** to death by hanging in terms of section 197 of the Penal Code Cap. 16 R.E. 2022.

Because of the reason that I have imposed capital punishment on the convicts for one offence, I will not impose any punishment to the convicts on the offences they have been convicted.

It is so ordered.

J. F. NKWABI
JUDGE
12/12/2023

Court: Sentence delivered this 12th day of December, 2023 in open Court.

J.F. NKWABI
JUDGE

Court: Physical exhibits be disposed of in accordance with the law.

J.F. NKWABI
JUDGE
12/12/2023

Court: Right of appeal is explained.

J.F. NKWABI
JUDGE
12/12/2023