

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA SUB - REGISTRY)

AT SONGEA

ORIGINAL JURISDICTION

CRIMINAL SESSIONS CASE NO. 16 OF 2023

THE REPUBLIC PROSECUTION

VERSUS

ALOYCE KELVIN KOMBA @ TABU ACCUSED

JUDGMENT

Date of last Order: 05/10/2023

Date of Judgment: 12/12/2023

U. E. MADEHA, J.

To begin with, the accused person who is none other than; Aloyce Kelvin Komba @ Tabu, stands charged with the offence of murder contrary to sections 196 and 197 of the *Penal Code* (Cap. 16, R. E. 2022). It was alleged by the prosecution side that, on the 22nd day of October, 2022, at Kilanga - Juu Village, Litembo Ward, Mbinga District and Ruvuma Region, the accused person murdered Oresta Desterius Komba.

When the charge was read, the accused person denied to have committed the offence. In a bid to prove the charge against the accused person the prosecution marshalled seventeen (17) witnesses and tendered ten exhibits. The tendered exhibits are; the sketch map of the crime scene (exhibit P1), the DNA Forensic Report (exhibit P2), the envelope with exhibits A, B, C and D inside the said envelope there was the accused's shirt filled with the deceased blood, the accused piece of mattress with blood stains, the deceased blood and the accused blood which were admitted as exhibit P3, a shirt and the piece of mattress filled with human blood (exhibit P4), the certificate of seizure of seizing the accused's piece of mattress with the blood stain and the accused's shirt with blood stain (exhibit P5), the certificate of seizure seizing hoe which was used to kill the deceased (exhibit P6). The other exhibits are; chain of custody (exhibit P7), the sketch map of the crime scene (exhibit P8), the extra judicial statement (exhibit P9) and the accused's cautioned statement (exhibit P10).

Principally, the evidence given by both parties can be briefly narrated as follows: **PW1 (Venant Kapinga)**, a christian and resident of

Mission Street at Mbinga Town, in his sworn evidence, told this Court that he is professionally a Medical Doctor and his working station is at Mbinga Hospital. He has twenty-three years of working experience and his daily activities includes attending patients, conducting operations and investigations of the deceased body and others as directed by his in-charge. He told this Court that, on 24th October, 2022, at around 12:00 hours, he was at his working station in his daily routine. His head of Department directed him to go to the mortuary to conduct Post mortem Examination on the body of the deceased person called Oresta Desterius Komba.

After arriving at the mortuary, he found the deceased's relatives and the Police Officers. Before conducting the Post mortem Examination, the deceased's body was identified to him by the deceased's relatives. Then, he conducted the Post-mortem Examination on the deceased's body and discovered that the body has a big wound at the back of the head and the nose was flowing blood and there were bruises on the left cheek and on the hand. After completion of the Post-mortem Examination, he filled out the Post-mortem Examination Report.

He added that in his findings he was of the view that the deceased was hit with a blunt object in her head causing severe injuries in her brain and he discovered that the cause of death was severe traumatic brain injuries. After conducting the Post-mortem Examination, the deceased's body was given to her relatives and he filled the Post-mortem Examination Report. PW1 identified the Post-mortem Examination Report of the deceased by using his signature and the hospital official stamp and he prayed for it to be admitted as an exhibit. The accused person and his advocate had no objection and it was admitted as exhibit P1.

PW2 (Enerika Mbepera) in her sworn testimony, she stated that she resides at Kilangu - Juu Village and she knew the deceased person, one Oresta Desterius Komba who was her daughter and she died at the age of sixteen (16) years. In the early morning of 22nd day of October, 2022, she left Oresta Desterius Komba at home and went to harvest coffee in their farm. When she returned home during evening hours, she found the deceased was not there. She tried to find on her whereabouts but they failed. At around 21:00, her husband went to his working place as a

watchman. Since her daughter was not seen and her whereabouts not known, she went to the Hamlet Chairman to report.

On the next day, that is on 23rd October, 2023, early in the morning she saw the Village Chairman and the Village Executive Officer (VEO) went at her home and told her that, they found a body of a person besides the road. She replied that, her daughter was missing since last night and her whereabouts was not known. At that time her husband was also coming home from his night work. They went at the road and found the body of their daughter lying on the road lifeless. At that time, she had nothing to do rather than leaving the matter to the Village Government.

PW3 (Simon Thobias Komba), on his sworn testimony told this Court that, he is a peasant and he resides at Kilanga - Juu Village in Mbinga District. He further informed this Court that he is a step-father of the deceased and the deceased's father is called Desterius Julius Komba but two years before the material date she was residing with him. On 22nd October, 2022, he went to harvest coffee until the evening time. The deceased was left at home but when he returned home the deceased was not found. He went to the coffee farm where he was on duty to safeguard

the machines as a security guard and came back on the morning of 23rd October, 2022 and told by PW2 that the deceased was not found at home. After a short period of time, the Village Chairman and Hamlet Chairman arrived at his home and told them that there was a dead body found at the road. They told them that they had never seen their daughter.

Thereafter, they went to see the deceased's body and they were dismayed to discover that it was the body of their daughter. The body had wounds on the head and around the face. After that, the Village Chairman reported the matter at the Police Station and immediately the Police Officers arrived at the crime scene and conducted an investigation. In their investigation the Police Officers discovered that, there were blood drops from where the deceased body was lying towards the room of the accused person.

The Police Officers followed the blood drops which ended into the accused's room. When they entered into the accused's room they found the clothes with blood stains and a mattress which was full of blood stains. At that time the accused was nowhere to be found. The Police Officers

took the accused's shirt, a piece of mattress and the body of the deceased and left the crime scene. PW3 identified the accused person who was at the Court dock.

PW4 (Aloyce Thobias Komba), on his sworn evidence, told this Court that he resides at Kilanga-Juu Village at Miujiza Hamlet and he is the Village Chairman. It is a fact that, he has been the chairman since 2019 until now. On 23rd October, 2022, at around 08:00 hours he was going to find grasses for his cattle. While in the way shocked to find a body of a person lying on the road side while naked. Being unusual thing, he reported the matter to the Village Government.

They together went and found one girl who was lying lifelessly while naked. It seems that, after arriving at the area of the scene of the crime they could not identify the deceased. As a result, they took the action of passing through each house and asking the owner of the house, who is Simon Tobias Komba, and questioned them whether they knew the naked dead body lying lifelessly on the road side? In reply to that question, they told them that they knew her and she resides at their home.

In fact, when they came back at their home; they could not find her at home. Having heard that, they could not sleep at home; they went up to the scene of the crime. No doubt they were shocked and saddened to identify that it was their dearest daughter.

As a consequence, after the identification of the deceased's body, the village chairman called the police officers who arrived at the scene of the crime. When, the Police Officers had arrived; they discovered that there were blood drops on the road from where the deceased's body was lying towards the accused's room. Immediately, the Police Officers went at the accused's room and broke the door and entered on it. He added that, at the material time, the accused was not there and the deceased's body was found about seventy steps from the accused's room. Finally, PW4 identified the accused person who was standing at the Court dock.

PW5 (Desterius Aloyce Komba), on his party told this Court that, he is a resident of Kilanga-Juu Village in Mbinga District. He knew Oresta Desterius Komba as his child. At the material time she had died, and before her death she resided at Miujiza area with her mother (PW2). On 23rd October, 2022, during morning hours, he woke up very early in the

morning and went to the farm. One man approached him and he was told that his daughter was involved in an accident and her body was found on the road.

He immediately went where the body of the deceased was found and he was surprised to see the dead body lying on the road. He also saw the Village and Hamlet Chairmans and other people. Later on, the Police Officers arrived. The Police Officers made investigation and later on took the deceased's body into a police vehicle and went with the body. He added that the Police Officers ordered them to go at the Police Station on the next date to be recorded their statements. They went and recorded their statements at the Police Station and later they were given the deceased's body for burial.

PW6 (Oscar Faustine Mbepera), in his sworn evidence, testified to the effect that, he is a Christian and a Village Militiaman. On the 23rd day of October, 2022 during morning hours, he met with the Hamlet Chairman who informed him that there was a murder incident in their Village. After having some conversations, he went to the crime scene where he found the body of the deceased person, the Village Officers and other people.

Thereafter, the Police Officers arrived at the crime scene and conducted some investigation and they found blood stains which led them to the accused's room. Since the room was locked, the Police Officers broke it and entered on it and discovered that there was a shirt and a mattress full of blood stains.

From the investigation made by the Police Officers, the accused was suspected to be involved in the killing of the deceased and the Police Officers ordered for his arrest. As a militiaman he started looking for the accused person and after a long look he managed to arrest him at Luwino Village where he was found in the forest. He added that the accused told him that if he could know, he couldn't have killed the deceased. PW6 identified the accused person who was at the court dock to be the one who was arrested by him.

On his party, **PW7 (Bernada Komba)** in his sworn evidence, he stated that she is also known as Huzuni and the accused is her twin brother and she resides in Luvunga Village, married to Alanus Mlinga. On that fateful day that is on 23rd October, 2022, she was at home cooking ugali and PW6 arrived there and asked if accused was seen there. She told

them that he had not arrived. Then, they were told that the accused had committed a murder offence. Again, after a few hours; his husband told her that the accused had arrived and they went to arrest him.

PW8 (Alanus Milinga), who is a christian, in his sworn evidence told this Court that that he resides with PW7 as his wife. He was at home whereby he saw the militia men arriving announced at his home, claiming that; they were in search of Aloyce Kelvin Komba. As far as a family tree is concerned, the accused person is his brother-in-law. He was actually not at home, and PW7 was with the militia men. The accused arrived, and he duly sent the information to his wife that the accused had arrived. To add salt to it, the militiamen, together with PW7, went and arrested the accused. Finally, the accused, who was arrested on that particular day is in the court dock. To put it in a nutshell, PW8 identified the accused person.

PW9 (David Ngassa), a christian and a Chemist from the Office of the Chief Government Chemist, told this Court that on 14th February, 2023, while at his working station at the Government Laboratory in Dar Es Salaam he was given a package that was wrapped in a plastic bag. It was

from the Forensic Bureau. It was accompanied by a letter from Mbinga Police Station.

After receiving the package, he gave it the laboratory registration number HQ023. After that, he started to investigate by opening the package, which had been sealed properly. Moreover, after the exhibit was opened, he realized that there were four other packages that were marked as exhibits A, B, C, and D. Then, mark A was the blood stain shirt believed to be human blood, worn by none other than; the accused. The blood sample taken from the accused's body was marked B; C was a piece of mattress with blood stains cut from the accused's mattress and D was the blood sample from the deceased's body.

After opening the four (04) packages, he started to make an investigation do to determine they were human blood. In his initial investigation, he used the rapid test and found that exhibits A and B were human blood samples. In the second stage of investigation, he used a machine and it involved three steps; DNA extraction, DNA amplification and DNA detection. After making that investigation he discovered that, exhibit

C was a human blood of the female gender, likewise exhibit D and exhibit A, which is the shirt has blood believed to be human blood.

Then, he made a comparison of a generic sequence, where he noted that: exhibit A has blood of female human being, exhibit B has a blood of male human being, Exhibit C, had human blood sample which were genetically similar to exhibit D, being the blood of female human being.

Thus, exhibit A; blood taken from a shirt has no genetic connection with exhibit B, the blood sample that was taken from the accused. In addition to that, he identified the forensic DNA profiling test report whereby he prayed to tender it as exhibit. The accused person had no objection to the DNA profiling report and it was admitted as exhibit P2 after being loudly read in Court in a language that the accused person understands.

PW9 also identified the which was used to exhibits A, B, C and D and he prayed to tender it as an exhibit and it was admitted as exhibit P3.

In a nutshell, after opening exhibit P3, collectively, he prayed to tender the piece of the mattress filled with human blood, and it was as exhibited in exhibit P4.

PW10 (Richard Dominicus Ndunguru), who was the chairman of Miujiza Hamlet and a Christian, in his sworn testimony he told this Court that, on the fateful date, early in the morning he found a man sleeping on the road side. He came to him as the village chairman of Kilanga - Juu Village. Notably, he went to the crime scene; after arriving there, he saw that there was a person lying on the roadside. After that, they went through each house to investigate if they are all safe. After going through different houses, at the house of Simon, they were told that there was one girl who was missing from 22nd October, 2023. After that, he moved together with them to the road side. Upon arriving there, they saw it was her and she had already passed away that is she was already dead.

Similarly, she was covered with blood on her face and the wound on her head. After that, he reported to the police at Mbinga. They saw the blood stain from that place with their naked eyes; the blood stain was on the ground from the place where the deceased's body was lying lifelessly. Again, the blood stain was going up to the accused's room.

Then, they followed the blood stain they did break the accused's room and see the blood in the mattress. After that, the police did take the

exhibit, the mattress, and the shirt of the accused person filled with the blood. He filed the certificate of seizure and signed on it. The certificate was identified by using his signature. He added that in that search nothing was obtained.

PW11 (ASP Lugano Keneth), a Police Officer from Mbinga Police Station, a christian in his sworn evidence informed this Court that, he stated to the effect that he is the investigator of criminal offences. He reported at Mbinga on 5th June, 2022. His main work as an investigator is to prevent the commission of the offence, to arrest the suspects, to investigate the criminal offences, and to send the suspects to court if there is enough evidence. On 23rd October, 2023 during morning hours, he was in the office. He received the information over the phone from the Hamlet Chairman of Kilanga - Juu Village.

He told him that in his leading area, murder has been committed of one girl and that the deceased's body was lying on the roadside. After receiving such information; he prepared police officers from the investigation section who are the investigators of the criminal offences.

In addition, after the completion of preparing a team, he moved and went to Kilanga-Juu, and after arriving at the scene of the crime, he found that the deceased's body was lying on the road. He discovered that the body that was lying on the road was the deceased's body whereby the lady had already died.

After questioning the hamlet leader, who is the chairman of the village, and the deceased's father, they identified the deceased's name, Oresta Desterius Komba. In particular, they followed other steps he took and gave the other police officers the work to do, which was to draw the sketch map of the scene of the crime, which was drawn by D/CPL Maige, and he gave them the police duties of writing the witness statement and other police officers to gather the exhibits.

Due to the questioning, the deceased was identified by his parents, and he has not been seen since yesterday which was 22nd October, 2022. However, he did get the information that there was a house in which people were whispering, in which there were blood stain drops from the door of the room to the road where the deceased's body was found, lying lifelessly before they took the deceased body and put it in the motorcycle

in which the said deceased body shows that the killer used to kill the deceased and there was a wound in the left cheek.

Notably, after arriving at the house, which is seventy (70) meters from the place, he found the deceased's body. It is true that, he found the blood drops starting from the accused's door and in the accused's house, they find the owner of the house together with the child's mother, who is called Exavery Kelvin Komba.

Again, he did break the house to remove the doubts, and they entered a room. At the material time, the owner of the room, Aloyce Kelvin Komba @ Tabu, was not there. After breaking into the room, they found the mattress, which was on the bed, together with the blood in the mattress.

Basically, they find that one white shirt was covered by blood all over the shirt. He has observed that there was a need to conduct scientific research or investigation. In that regard, he had to take the shirt covered with blood and the piece of mattress all together, and he filled in the exhibits, which is the certificate of seizure documents.

It is true that, the first person to sign is the Hamlet chairman, who is Richard Dominicus Ndunguru, and one man from the Exavery's house, called Exavery Kelvin Komba. After taking and receiving such exhibits, and before moving to the scene of the crime, he wanted to know where Aloyce Kelvin Komba @ Tabu can be found.

This was after the seizure of the exhibits from the accused's room. He got an answer from her father; whereby it was that they had not seen him. In the morning, they told him that the last day to see her was actually on 22nd October, 2022, in the evening hours, and he did not go to eat food. After that, he spoke with the deceased's relatives in order to conduct an investigation of the deceased's body.

Again, on 22nd October, 2022, they arrived at Mbinga Police Station; whereby he was told by the village chairman that Aloyce Kelvin Komba @ *Tabu* was arrested. After such information, he went to Kilanga - Juu Village together with the evidence and arrested the accused person.

After his arrest the accused confessed to have killed the deceased on 22nd October, 2022 inside his own room and he used the hoe to kill the deceased person. When he was asked to take them to the place where he

committed the offence and how did commit an offence, he took them to the place he had hidden the hoe but it was not found. Thereafter, they filled out the certificate of seizure of seizing the hoe and the certificate of seizure of seizing the piece of mattress and a shirt with blood stains.

At this time, the doctor did take a blood sample from the accused's body in order to investigate whether the blood that appeared on the accused shirt was that of the deceased person. In other words, he went with the sample and dried the blood by using the Goss. After drying it, he put in an enveloped.

Eventually, on 30th October, 2023, he gave the sample to the exhibit keeper, who is none other than, PC Barakah. In brief, he handled it by using the chain of custody records, which show the exhibit needed to be preserved in order to send it to the laboratory for chemistry. On the same note, on 2nd February, 2023, the exhibit keeper sent the exhibit to the laboratory chemistry for investigation. After preserving the exhibits, the police officer who preserved the exhibit sent it to the laboratory chemistry for investigation. He received the report from the Chief Government Laboratory on 20th May, 2023.

In general, the blood on the accused's shirt and mask did not resemble the blood of the accused's person. Moreover, he received exhibit P3 collectively, which is the piece of clothing and the accused's shirt. In the same way, the witness identified the accused person, who was standing at the court dock. At last, he identified the certificate of seizure seizing the accused's shirt which has blood stain and the piece of mattress with blood stain (exhibit P5). The certificate of seizing the piece of mattress and the accused shirt was admitted and marked as exhibit P6. He also identified the piece of mattress and the shirt covered with blood.

PW12 (H9339 PC Barakah), a Police Officer from Mbinga Police Station, in his sworn testimony told this Court that, he is the exhibit keeper at Mbinga Police Station. On 30th October, 2022, he was at Mbinga police station whereby he was called by the investigator, ASP Lugano Ngwasa who gave him an envelope, which was sealed. He registered in the exhibit register and filed the exhibits in a chain of custody book.

In that case, he used the chain of custody records to handle the exhibits he gave in the exhibit, and he received them. After receiving them, he gave them the registry number and preserved them. Apart from that,

he told this Court that, on 2nd day of February, 2023, he was called by ASP Lugano Ngwasa. After, being called; he ordered him to take the exhibit and go with it to his office. He arrived with the exhibits at his office whereby he did give the exhibits to Mr. Aman Mganga because they were supposed to be sent to the laboratory chemistry at Dar es Salaam for investigation. He added that, the exhibits register book and the chain of custody records were filled in the process of handling the exhibits.

Also, on 5th August, 2023, he was called by Inspector Lugano Ngwasa, who gave him the exhibit in order to send at Dar es Salaam for investigation. He sent the exhibit at Dar Es Salaam and signed on the chain of custody. He identified and described the chain of custody records and prayed to tender it as an exhibit and it was admitted as exhibit P7. PW12 read the content of the chain of custody records (exhibit P7) and stated that the exhibits that he handled were one (01) shirt with human blood, a piece of mattress with human blood, dried sample of blood from the accused's body and the dried blood of the deceased.

PW13 was **Inspector Amani Bandoma Mganga**, of Matiri Police Station and a Christian, in his sworn testimony told this Court that, on 2nd

February 2023, he was ordered to go at Mbinga Police Station where he was given exhibits to send at the Government Chemist Laboratory in Dar es salaam. They gave him since he had another work to do at Dar es salaam.

Upon receiving the exhibit from the exhibit keeper (PW12), he signed on the chain of custody which was also signed by the exhibit keeper. The received exhibits included the shirt and a piece of mattress which has blood stains. On 14th February, 2023, he sent the exhibits to Dar-es-Salaam at the Chief Government Chemist Laboratory where they registered the exhibits with the Reg. Number FB/DNA/LAB No. 9 of 2023.

After handling the exhibit, they both signed on the chain of custody and he continued with other activities. Eventually, PW13 identified the chain of custody of sending the exhibits to the Chief Government Chemist Laboratory.

PW14 (Exavery Kelvin Komba), a christian of Kilanga - Juu Village, in his sworn evidence, he stated that: He resides in Kilanga-Juu village, and he knows Aloyce Kelvin Komba @ Tabu as his little brother that his sibling of the same father and mother. Clearly, on 23rd October, 2022,

during morning hours he was at his home and the Hamlet Chairman went at his home and told him that there was a female body lying on the road lifelessly. After getting such information, he went to the crime scene and upon arriving there, he saw the body of a person of female gender lying lifelessly on the road.

After a very short moment the Police Officers arrived and the Village Militiamen arrested him. In their investigation, the Police Officers discovered that there were blood stains from the place where the deceased body was found lying to the room which was used by the accused. They suspected that the accused was involved in the death of the deceased. At that time the accused was not at home and his whereabouts were unknown, they never knew where he had gone and his room was locked. Then the Police Officers broke and entered into the room which was used by the accused.

After breaking into the accused room, the Police Officers found the accused's white shirt in his room which had blood stains and the mattress used by the accused was also full of blood stains. After that, the Police Officers cut the piece of the mattress and took the shirt filled with blood

and filled the certificate of seizure, seizing the accused shirt, and the piece of mattress, which had blood stains and he signed on it.

P14 identified the certificate of seizure of seizing the accused shirt and a piece of mattress by using his name and his signature (exhibit P5). He also identified exhibit P4 collectively (a piece of mattress taken from the accused room and a shirt which has blood stains).

PW15 (G.6144 D/CPL Maige), a Police Officer working at the RCO office in Ruvuma Region, in his sworn testimony, informed this Court that; on 23rd October, 2022, he was working at Mbinga Police Station as an investigator of criminal offence. While at Mbinga Police Station, he received information that there was an incident of murder at Kilanga-Juu Village.

He was informed about the murder incident. Thus, he was prepared to go to the crime scene. After arriving at the scene of the crime at Kilanga- Juu Village, he saw the deceased body lying on the road. When he drew the sketch map of the crime scene, he was directed by militiamen of Kilanga-Juu village called Rashid Ndunguru.

It is a fact that, after drawing the sketch map of the crime scene under the supervision of Rashid Ndunguru. PW15 identified the sketch map

of the scene of the crime by using his signature and his handwriting. Lastly, he prayed to tender the sketch map of the scene of the crime as exhibit; it was admitted and exhibited as exhibit P8, and he did read loudly, the sketch map of the scene of the crime.

PW16 (Jovian Beda), a justice of Peace, working at Mbinga Urban Primary Court as a Resident Magistrate, told this Court that, he recorded the accused's Extra - Judicial Statement and he confessed to have killed the deceased. He prayed to tender the accused's Extra - Judicial Statement as an exhibit and it was admitted as exhibit P9.

PW17 (G. 4236 D/CPL Talama) of Mbinga Police Station was the last witness to be called by the prosecution side. He told this Court that, he is the investigator of criminal offence and on 23rd October, 2023, around 19:00 hours, he was aside to record the accused's cautioned statement as he was charged with murder. He met with the accused person and after telling him his rights according to the law he recorded the accused's cautioned statement and the accused put his signature on it. As much as he can remember.

On 8th November, 2022 he did took the accused person and sent him to the Justice of the Peace in order to write his Extra - Judicial Statement. It is true that, he left the accused person at the Primary Court; so, he was called after the completion of writing his extrajudicial statement and sent him to the police station. PW17 identified the accused's caution statement by using his handwriting and the accused's signature and he prayed to tender it as an exhibit. The defence side had no objection on the tendering of the accused's cautioned statement and it was admitted as exhibit P10. PW17 told this Court that the accused confessed to have killed the deceased after being deceived by the witch doctor called Enos that if he will succeed to killed he will be rich. In fact, he killed the deceased after being administered the local medicine for three consecutive days from 20th October, 2022.

At the closure of the prosecution case, this Court found the prosecution evidence has established a prima facie case against the accused person. The accused was given a chance to give his defence evidence and he opted to defend himself that is to say; he had no witness to call.

In his defence testimony **DW1 (Aloyce Kelvin Komba @ Tabu,** told this Court that, before he was arrested, he used to live at Kilanga - Juu Village in Mbinga District. He used to live with his relatives such as PW15 who is his brother and his parents (PW2 and Kelvin Komba). He testified further that, in his life he married a wife who was called Selina but they had some conflicts and they separated. He knows that the deceased used to reside nearby their house and he has a relationship with her for a short time.

On 22nd October, 2023 from 13:00 to 14:00 hours he was going to his wife in order to ask for forgiveness. The deceased got such information didn't amuse her. She went at his house and knocked the door and he invited her. After entering inside and they had sex and the deceased told him that she was going to harvest wheat. Then he asked to have sex for the second time, the deceased refused. In short, he wanted to take her to bed however the deceased denied. In that regard, there was a quarrel between them which made him to take a hoe, which was used to shut the door and it inside his room at the entrance door. He beat the deceased twice quickly on the head and she died on the spot.

He worried for what he had done and he immediately went out and locked the door and went to his sister who was living at Mbeja Village and he slept there until the next day of 23rd October, 2022 when he went at Luwino Village to another his sister. He added that after killing the deceased he was not in a good mood and it is true that, the piece of cloth taken from his house belongs to him and he admitted to have killed the deceased unintentionally.

The accused person has no other witness to call and that marked the end of the prosecution and defence evidence. With respect to the available evidence, I have considered the evidence from both sides and the law specifically. As per the evidence, the cause of death was a big wound that was found at the back of the deceased's head. Also, blood was coming out through the nose; there were bruises on the left cheek of the face; and bruises on the deceased hand. All these indicates that something wrong had hit the deceased in the area of the head, that the deceased brain was damaged in a large part; and that the cause of death was severe traumatic brain injuries.

It is my view that for the conviction of murder to stand, the prosecution has to prove the following matters:

- i. Whether the circumstantial evidence, along with other factors, proves the accused's guilt of the offence of murder beyond reasonable doubt.
- ii. Whether the prosecution proved the case against the accused person beyond reasonable doubt.
- iii. Does the killing amount to murder.

According to section 196 of the *Penal Code* (supra), for the conviction of murder to stand, the prosecution has to prove that, a person has died unnatural death and her death was caused by the accused person.

Having gone through the prosecution evidence, I have noticed that the prosecution has four kinds of evidence in this case. The first kind of evidence is circumstantial evidence. Almost all the prosecution witnesses told this Court that the deceased body was found lying on the road side lifelessly. They also saw blood stains from the house where the accused was living leading to the place the body was found lifeless. Inside the room

they found blood stains on the mattress and in the shirt which is alleged to be the property of the accused person. A piece of the mattress was cut and taken and the shirt was also taken which were received as exhibit P4 collectively. The available evidence proves that the accused killed the deceased.

The second piece of evidence is the accused's caution statement and the extra - judicial statement. In both piece of evidence, the accused confessed to have killed the deceased person after been told by the witch doctor that he has to kill a person in order to be rich. But in his defence, the accused person denied that allegation and stated that he killed the deceased while they were in the course of making love affairs.

The third piece of evidence is the exhibits that were sent to the Government Chief Chemist (exhibits P4 collectively). These exhibits are the accused's shirt, which had blood on it, and a piece of mattress which was cut from the accused person's room, which has blood stains.

Also, the blood of the deceased and the blood of the accused were all sent to the Chief Government Chemist for analysis and found that, the blood that was in the shirt of the accused, as well as the blood that was in

the piece of mattress of the accused was the blood of the deceased. Thus, the findings of the investigation report are directly connected to the fact in issue. However, the accused himself admitted to have killed the deceased by hitting her on her head twice.

Looking at the available evidence which is directly connected to the fact that the accused person was the one who killed the deceased. In was no need to use great force because the evidence itself explains that the accused is the one who killed the deceased, one Oresta Desterius Komba.

Basically, I see that the first issue has been answered and the second issue is whether the killings amounted to murder. In respect to the second issue, the prosecution has to prove the intention to kill the deceased person. By looking at the available evidence and the accused defense, I have to ask myself whether the accused killed the deceased intentionally? The testimony given by PW1, PW2, PW3, PW4 up to PW17 directly connects the accused person with the offence manslaughter.

As far as I am concerned, I find the prosecution has failed to establish the intention to kill. I agree with the accused person that he killed unintentionally. Moreover, it is the duty of this Court to examine the

evidence and find whether there are major contradictions that can be resolved in favor of the accused.

Personally, I have weighed the evidence alongside the defence, which does not deny the fact that he killed unintentionally. I have reckoned the total of all evidence presented to me, that is, PW1, PW2, PW3, PW4, PW5, PW6, PW7 and up to PW17, are all truthful based on a high degree of manslaughter, according to the sentencing manual.

The third issue is due to the available evidence, the last issue is whether the killings amounted to murder. Another issue is whether the prosecution has proved the case against the accused person beyond reasonable doubt to indicate that the accused person is responsible for the murder of the deceased.

Notably, the general rule in criminal cases is that the burden of proof rests with the prosecution. Usually, in the case of **Alli Ahmed Saleh Amgara v. Republic** (1959), EA 654, the prosecution evidence shows that they have discharged their duties to prove the case beyond reasonable doubt that the accused caused the deceased's death without intention.

Principally, the consequences of the event, until the deceased have been seen with injuries, give clear pictures that it was actually the accused person who caused the deceased's death. As far as I am concerned, my reasons are based on an analysis of the evidence and the circumstances that led to the deceased's death. Undoubtedly, a combination of all these events considered; I see no other conclusion other than that the accused person did not have intention of killing the deceased.

I am of the considered view and find that the second constituent of the offence of murder, namely *mens rea* has not been established by the prosecution since the ingredients of murder, which are malice forebought, have not been established. Reference is made to the case of **Edwin Mbunda Seusi v. Republic**, Criminal Appeal No. 468 of 2007. I am mindful of the requirement provision of section 200 of the *Penal Code* (*supra*), on malice forebought, which has not been established in our case at hand.

Indeed, there is no evidence in records to establish malice forebought. In light of this, I hereby convict the accused of the offence of manslaughter contrary to sections 195 and 198 of the *Penal Code* (*supra*).

DATED and DELIVERED at SONGEA this 12th day of December, 2023.




U. E. MADEHA

JUDGE

12/12/2023

Aggravating factors

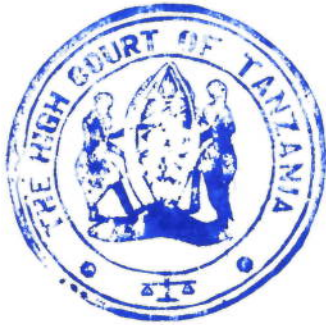
Ms. Esther Mfanyakazi, (the learned State Attorney for the Republic).

We have no previous records, but the accused person committed the offence of manslaughter of high level. He committed the offence for desire of financial gain. This has led to psychological torture to the people surrounding him. We pray that the accused be sentenced to the maximum sentence as provide sentencing manual.

Mitigating factors.

Mr. Innocent Mbunda (Advocate for the accused person).

We pray for a lenient sentence for the reason that, the accused has no previous records, he is only 22 years old, he has got a family of one child and he has been in prison for more than a year now.



A handwritten signature in blue ink, appearing to read "Madeha", with a long horizontal stroke extending to the right.

U. E. MADEHA

JUDGE

12/12/2023

SENTENCE

I have duly considered both the aggravating and mitigating factors; that the accused person has no previous records, that the accused used a hoe to kill the deceased, that the accused's age is 22 years old and he has one child who depends on him.

Basing on the circumstances of this case that the accused and the deceased were close relatives, killing her makes the accused to suffer intimacy or lifetime stigma. I have also considered that the age of the offender is only 22 years old. I hereby sentence the accused person one, Aloyce Kelvin Komba @ Tabu for the offence of manslaughter contrary to section 195 and 198 of the *Penal Code* (supra) to serve twenty years imprisonment. Order accordingly.



A handwritten signature in blue ink, appearing to read "Madeha", with a horizontal line drawn through it.

U. E. MADEHA

JUDGE

12/12/2023

COURT: This judgment is read through virtual court in the presence of Ms. Esther Mfanyakazi, the learned State Attorney for the Republic, the Accused person and Mr. Innocent Mbunda, the learned advocate for defence side. Right of appeal is explained.



A handwritten signature in blue ink, appearing to read "Madeha", with a horizontal line drawn through it.

U. E. MADEHA

JUDGE

12/12/2023