

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
ARUSHA SUB REGISTRY  
AT ARUSHA**

**CRIMINAL SESSION NO. 05 OF 2023  
REPUBLIC**

**VERSUS**

**MOHAMED HIPOLITI @ MUDDY.....1<sup>ST</sup> ACCUSED  
ISMAIL SHABANI @ AFANDE.....2<sup>ND</sup> ACCUSED  
SAMSON LEMBRIS @ CHANJA ..... 3<sup>RD</sup> ACCUSED  
ENOCK JOSEPH.....4<sup>TH</sup> ACCUSED**

**JUDGMENT**

29<sup>th</sup> November & 04<sup>th</sup> December, 2023

**KAMUZORA, J.**

The accused persons above named stands charged for the offence of manslaughter contrary to Section 195 and 198 of the Penal Code, Cap 16 R.E. 2022. The particulars of the offence show that on 25<sup>th</sup> day of September, 2022 at Kisongo area within Arumeru District in the Region of Arusha, the accused persons did unlawful kill one Bryson Alfred @ Braison @ Mohamed S/O Ally @ Bryson S/O Alfred Singano.

When the information was read over and explained to the accused persons, they pleaded not guilty. In proving their case, the prosecution

summoned eight witnesses and tendered one exhibit. On the defense side, they presented only four witnesses, the accused person themselves and did not tender any exhibit.

Throughout the hearing of this case, the republic was represented by Ms. Riziki Mahanyu who was the leading counsel and was assisted by Ms. Caroline Asenge, Ms. Amanda Lushakuzi and Ms. Thobiesta Chang'a, all State Attorneys. On defence side, the accused persons were represented by Mr. Lecton Ngeseyani. Mr. Ayubu Rashid, Ms. Tayon Mtei and Mr. Derrick Kiashama, all Learned Counsel.

It was the prosecution evidence that the deceased had mental illness as he was suffering from amnesia and sometimes behaved like a mentally disordered person. Although there is no Doctor's report to confirm the deceased's mental condition, the story from family members; PW1 and PW4 reveal that the deceased was behaving abnormal every month specifically from 19<sup>th</sup> to 25<sup>th</sup> dates of every month but he was mentally fit on all other dates. They claimed that during attack, the deceased could damage home utensils/properties and sometime disappear from home. They were therefore supposed to take good care of him during those times when he was suffering attack. They testified that because of mental attack, the deceased disappeared from

home on 24<sup>th</sup> September, 2022 and they tried to look for him unsuccessful. They were later informed that the deceased was found abandoned near KKT Samaria Church while badly injured. They rushed to the scene and did take him but, he died on the way to hospital.

It was also the prosecution evidence that the third accused surrendered at the police station escaping from angry civilians who wanted to kill him. He also informed the police that his two fellows; the 2<sup>nd</sup> and 4<sup>th</sup> accused persons were held hostage by civilians who were attacking them for they had involved in the deceased's murder. It was claimed that two accused persons were rescued by police from the civilian hands and they both confessed to attacking the deceased. They also mentioned first accused as among people who attacked the deceased and the 1<sup>st</sup> accused was arrested and joined with other accused persons.

From the prosecution evidence the pertinent issue for determination is whether the prosecution has proved its case beyond all reasonable doubts.

There is clear and uncontested evidence that the deceased was known by the names of Brayson Alfredy and Mohamed Ally. It is also undisputed fact that Brayson Alfredy or Mohamed Ally died and the

cause of death was unnatural as per the evidence of PW2, who is the doctor who examined his body. I understand that Exhibit PE1 which is a report on postmortem examination was challenged for the form used was not in conformity with the law. In my view, such a report cannot in itself prove death but, this court takes cognizance of the existence of doctor's evidence as well as relatives evidence proving that Brayson Alfredy or Mohamed Ally died. Both prosecution witnesses who came in contact with the deceased claimed that the deceased's body was full of injuries and the Doctor confirmed that the cause of death was traumatic brain injury. He said clearly that the blow that resulted into the death was inflicted by a blunt object. In that regard, this court conclude that the deceased did not die a natural death as his death was triggered by injuries sustained.

The issue is who is responsible for the deceased's injuries which resulted to his death. The prosecution side paraded 8 witnesses in need to prove that the accused persons herein are responsible for inflicting injuries to the deceased which led to his death. For purpose of clarity, I will briefly recap what was said by the prosecution witnesses as well as the defence witnesses.

PW1, Rabinsia Elisha Mongi is the deceased's mother and her testimony reveals that before his death, the deceased was sent to hospital but he was not diagnosed with any disease. They thus decided to try spiritual treatment by sending him on prayers for healing in different churches but still the mental problem reoccurred on 19<sup>th</sup> to 25<sup>th</sup> of every month. PW1 testified that on 24/09/2022 the deceased suffered a mental attack as he was claiming to see people through the window who wanted to kill him. PW1 works as cleaner at Seliani Hospital thus she left the deceased with her relative and went to work. When she returned home, she was informed that the deceased was not at home thus, they started searching him but in vain. That, on 25/09/2022 two young men went to her house and informed her that the deceased was found lying down naked and was seriously injured. They went to that place and found the deceased lying on a pool of blood while naked. They dressed him and rushed him to the hospital but while on the way, she discovered that her son was not breathing and upon reaching the hospital the doctor confirmed that her son was dead. PW1 also witnessed the postmortem examination and the Doctor informed them that the cause of death was brain injury caused by a blunt object. PW1

claimed that she was later informed that people responsible for her son's death surrendered at the police station.

PW2, Dr. Amon Petro Bamanyi, a medical doctor who examined the deceased's body. He testified that he discovered that the deceased had injuries in different parts of his body; face, back of the head, chest, and abdomen. He concluded that the cause of death was traumatic brain injury caused by a blunt object. A postmortem report was admitted as exhibit PE1.

PW3 CPL Fredrick John Mashi is a police officer at Kisongo police station. His testimony reveals that on 25/09/2022 he was at the police station when the third accused Samson Lembris @ Chanjaa surrendered. He explained that Samson went there running and claimed that he was being chased by people who accused him of murder. Upon asking him of the truthfulness of the allegation, Samson confessed that it was true and mentioned to him that his fellows were held hostage by civilian and were in danger of being killed. PW3 also confirmed that murder was reported in the report book as No. OS/IR/316/2022. That, before he could take any action a group of people appeared at the police station asking for Samson as they wanted to beat him. In order to save his live, he retained Samson in police cell and communicated with the police in

charge of Ngaramtoni police station for assistance to rescue other accused persons who were held by civilian. The Police from Ngaramtoni went there and did take Samson with them to the area where he claimed to have left his fellows. That, when they went back at Kisongo they had two more accused persons and they sent them to Ngaramtoni.

PW4, Riziki Ally Adam works as a nurse and she is the deceased's sister. Her testimony on the deceased's mental problem is similar to that of PW1. She added that she was living with the deceased together with their parents. She was left with the deceased on the date of his disappearance. She left the deceased going to the shop to buy milk and on her return, the deceased was nowhere to be found. They started looking for him and when they could not get him, she reported at Kisongo police station that her brother was missing and was mentally ill. On 25/09/2022 two people went to their house and informed them of what befallen her brother. PW4 was the one who rushed again to the police station to ask for PF3 so as they could send the deceased to hospital. That, her brother died on the way to hospital. She claimed that she later heard people at his area saying that the accused are linked to his brother's death.

PW5 Abubakar Swalehe Rajabu testimony reveals that he was the one who informed the deceased's whereabouts. He testified that he found a group of people surrounding the deceased and he was able to identify him. He volunteered to go and informed his family and sent them where he saw the deceased.

PW6 one F.8874 CPL Seif was working as a police officer at Kisongo police post. He testified that, on 24/09/2022, Riziki (PW4) went there and reported about her missing brother Mohamed. She wanted to know if he was sent at the police station but upon crosschecking into the report book, he did not find anyone by that name. Later on, the same day, three people went at the police post in a motorcycle one among them had injuries on the back of the head and face. That, two of them introduced themselves as Ismail and the other Chanjaa while the injured one introduced himself as Bryson Alfred. He gave them PF3 so that they could take the injured person to the hospital. He came to know later that the same person PW4 was looking for, is the same person who was sent there by a motorcycle. PW4 went there asking for PF3 again so that they could send the deceased to hospital and upon arrival PW6 discovered that he was the same person sent there before by a



motorcycle. He was informed later that person died on the way to hospital.

PW7 G. 1827 D.CPL Gilliama was one among other investigators in this case. His testimony reveals that he was involved in the arrest of Mohamed, the first accused person and he recorded his statement. He claimed that Mohamed confessed to have been involved in attacking the deceased as he was claimed to be a thief who invaded him at his house. That, Mohamed admitted to be the one who gave money to two accused persons; the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons to take the deceased to the police station but he was later informed that the thief who was arrested at his house died. PW7 claimed that on 27/09/2022 he conducted search at the house of the 1<sup>st</sup> accused person and seized one spade that was found behind the front door and one machete with no handle that was found under the bed.

PW8 J.1269 DC Felix was working at Ngaramtoni police station. He was among the police officers who went to rescue two accused persons who were held hostage by civilian. They passed at Kisongo post and did find CPL Seif who was officer on duty. He handled to them one accused by the name of Samson who took them to where other accused persons were held hostage by the civilians on allegation of murder. That, when

the reached at the scene people fled away upon seeing their car and two accused persons were left sitting down. They did take them together with Samsoni to Ngaramtoni police station. PW8 interrogated all three accused persons and they all confessed to have attacked the victim. They also informed him that the owner of the house also attacked the victim with a machete.

In their defense all accused person denied being involved in the attack and consequently, death of the deceased. Each of the accused gave out his history on his whereabouts on the date of incident. The first accused Mohamed Hipoliti Temu testified as DW1. He claimed that his house is located near the road and many people pass at his house going to other places. He admitted that on the date of incident he saw people beating a man outside his house but they all left after few minutes together with the person they were beating. He tried to call his neighbor but did not respond, he then decided to stay inside the house for his safety and after the people left with the person, he went back to sleep. DW1 denied to have participated in attacking that person and claimed that after he was arrested, he was tortured and forced to confess to the offence of murder. That, after a prolonged torture, he signed a statement which he did not know its contents. He also denied the fact

that his house was searched and the spade and machete were found in his house.

DW2 Ismail Shabani Humay is the second accused person. He denied being rescued from civilian as claimed and denied to be the one who sent the deceased at the police station with a motorcycle as so alleged by the prosecution witnesses. He also denied to know the house of the 1<sup>st</sup> accused person or to have gone there on the material date of incident. He claimed that he did not know either of the accused before he met them at the police station and realized that they were charged with the same offence. He also denied to have confessed to any offence at the police station.

The third accused Samson Lembris Samwel testified as DW3. He denied the charge against him and denied knowing other accused persons before he was joined with them for this offence. He claimed that he was arrested on his way back from watching football match and was sent to a police station. He came to learn later that other three people were arrested for the same offence and joined with him. DW3 deny being responsible for the death of the deceased.

DW4 Enock Joseph, the 4<sup>th</sup> accused, like other accused persons denied being involved in the attack of the deceased. He claimed that he

is motorcyclist (bodaboda) riding motorcycle for business. He claimed that he was phoned by a passenger for a pick up. When he reached at a meeting point, he found two people who arrested and sent him to the police station at Kisongo. He was later informed that he was charged for murder.

Having summarised the evidence, I find it pertinent to assess if the prosecution evidence proves all elements of the offence manslaughter subject to the provision of section 195 of the Penal Code. For the offence of manslaughter to stand the following elements need be proved; **one**, death of the deceased, **two**, proof that the deceased died as a result of an unlawful act or omission of the accused person(s) and **three**, proof that the said unlawful act or omission was committed without malice aforethought.

The first element is already discussed above that there is proof of death of the Bryson Alfred @ Mohamed Ally. It was also proved that the deceased's death was triggered by injuries sustained from suspectedly, attack. The question is, who is responsible for the deceased's attack. Here comes the second element in which the prosecution is bound to prove if the the deceased died as a result of an unlawful act or omission of the accused persons.

From the prosecution evidence, the matter was treated as mob justice on allegation that the accused attacked the deceased believing that he was a thief and they ended up causing his death. There is no direct evidence connecting the accused persons with the attack of the deceased. Neither of the prosecution witnesses witnessed the attack as three witnesses PW1, PW4 and PW5 saw the deceased at the place he was abandoned. Other four witnesses; PW3, PW6, PW7 and PW8 are police officers. They did not witness the attack but their evidence is based on their involvement in arrest and interrogation of the accused persons. However, their evidence could not safely link the accused persons with the offence. I say so because, while PW3 claimed that the third accused surrendered at the police station, nothing was brought to link his story. Similarly, while PW8 claimed to have interrogated three accused persons and they both confessed to have involved in the attack of the deceased, their allegedly confession statements despite being recorded, were not made part of prosecution evidence. Thus, in the circumstance under which written evidence could support oral evidence, it was expected for the prosecution to make available of such evidence to support their oral assertion over the fact. Failure to do so makes this

court to draw an inference that the accused never surrendered or confessed to the offence as so alleged by the prosecution witnesses.

Since there is no eye witness that was brought by the prosecution side, the available evidence which is basically circumstantial, is weak and could not be safely relied upon to conclude that the accused person attacked the deceased and abandoned him to the place he was found. It is settled principle that the chain of circumstantial evidence must be unbroken leading to no other conclusion but that the accused persons were responsible to the death of the deceased. See, the case of **Hamidu Mussa Thimoteo and another V R** [1993] T.L.R. 125.

In the above cited case, the court sustained conviction for murder after the unbroken chain of circumstantial evidence linked the accused persons with the death of their father. Unlike in the present case where there is no direct link between the deceased's death and the accused persons, in **Hamidu Mussa's** case, there was a direct chain of events pointing at the accused persons only as people responsible to the death of the deceased.

In the matter at hand, the prosecution evidence is based on the accuseds' confession. The same is linked to the claim that one of the accused surrendered at the police station and confessed. That, his

confession led to the rescue of other who accused persons who were being held hostage by the civilian. That, the first accused was arrested based on the confession by other accused persons who in turn mentioned him as among the culprit. It is unfortunate that no confession statement was tendered to support the prosecution allegation that the accused persons confessed. In fact, I find that the defence side raised reasonable defence by claiming that they never confessed. It remained the prosecution duty to prove with evidence that the accused persons confessed to the offence. Failure to tender cautioned statements justify the accused' defence that they never confessed to the offence.

Apart from confession, neither of the people who witnessed the accused being held under hostage came to testify in court. Since the police officers were just called to assist, it was expected for the prosecution side to bring a witness who will link the police story. Bearing in mind that the accused denied being rescued from angry civilian and raised different story of their arrest, it was remained the duty of the prosecution side to prove the circumstance of their arrest.

In short, the chain of events does not directly link and or connect the accused persons to the offence they are charged with. The record reveals that the deceased was not mentally fit at the time of his demise.

There is no evidence linking the story of his attack; whether he was attacked as a thief and who attacked him. It was alleged that the deceased was attacked by many people, the accused inclusive. If that is the case, the place to where the offence was committed, there are people who could have witnessed the incident but the prosecution chose not to call any of the people who witnessed the incident.

I am mindful of the law that, there is no a specific number of witnesses that is required to be summoned before the court to prove on a particular fact. See the case of **Bakari Hamis Ling'ambe Vs. Republic**, Criminal Appeal No.161 of 2014 (unreported). I know that the prosecution side may choose to bring witnesses whom they think will prove facts of the case. In **Abdallah Kondo Vs. Republic**, Criminal Appeal No.322 of 2015 (unreported), it was held that: -

*"...it is the prosecution which have the right to choose which witnesses to call so as to give evidence in support of the charge. Such witnesses must be those who are able to establish the responsibility of the appellant in the commission of the offence..."*

In the case at hand, the prosecution side chose to call witnesses who saw the deceased at the place he was abandoned and those who claimed to have rescued the two accused from the hands of civilian. They however chose not to bring the witnesses who were present at the



time the deceased was attacked and those present at the time two accused persons were rescued from civilian. It is unfortunate that those witnesses did not prove existence of facts linking the accused persons with the deceased's attack. As pointed out earlier, it was important for the prosecution side to call at least one person who would link the story that the accused was attacked at the 1<sup>st</sup> accused's house and all accused persons were responsible for the attack. In the case of **Aziz Abdallah vs. The Republic** [1991] T.L.R 71 it was held that;

*"...the prosecution is under a prima facie duty to call those witnesses who, from their connection with the transaction in question, are able to testify to material facts. If such witnesses are within reach but are not called without sufficient reason being shown, the court may draw an inference adverse to the prosecution."*

From the set of prosecution evidence, this court similarly wondering why in the circumstance under which an incident was witnessed by a group of people, no one could be found to verify the fact that the deceased was attacked at the house of the 1<sup>st</sup> accused and people responsible. How the deceased left the house of the 1<sup>st</sup> accused to the place he was found abandoned. If civilians were not ready to volunteer, we expected at least a local leader to verify the incident and what action were taken. Out of that, this court draw adverse inference that the

prosecution side failed to present witnesses who could testify on material facts. The fact that the 1<sup>st</sup> accused admitted to have seen a person being beaten outside his house does not justify the prosecution claim that such person was the deceased and the accused were the one responsible in beating him. It remains the duty of the prosecution side to prove such fact and not otherwise. In the case of **Mohamed Said Matula v. Republic**, (1995) TLR No. 3 the Court of Appeal held that:

*"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."*

In considering all the factors surrounding this case, I am of the firm stance that the prosecution side failed to prove that it was the accused persons who attacked the deceased leading to his death. There are broken chain of the circumstantial evidence which does not link the accused with the offence they are charged with. Apart from jointly charging the accused persons, the prosecution side did not adduce strong evidence linking the accused persons relationship leading to their being charged jointly.

In concluding, I find that the prosecution was unable to prove the offence beyond reasonable doubt as required in criminal cases. Consequently, all the accused persons are found not guilty of the offence of manslaughter hence, are hereby acquitted.

**DATED** at **ARUSHA** this 04<sup>th</sup> day of December, 2023



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora".

**D.C. KAMUZORA**

**JUDGE**

