

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT KAHAMA**

**CRIMINAL SESSION CASE NO. 103 OF 2022**

**REPUBLIC**

**Versus**

**KULWA MENEJA**

**JUDGMENT**

**24<sup>th</sup> November & 12<sup>th</sup> December 2023**

**F.H. MAHIMBALI, J**

The accused person namely Kulwa S/O Meneja stands charged with the offence of Murder, Contrary to Sections 196 and 197 of the Penal Code Cap 16 R.E 2019. It was alleged that on 12<sup>th</sup> day of **July** 2022 (sic), at Nkonze – Ilelema village within Msalala District Council in Kahama District within Shinyanga region, the accused person murdered one Magreth D/O Makenzi who is his real biological mother.

It was further alleged that on the material date during night hours, while sleeping two men were seen illuminating to the house in which the deceased had slept. The door of the house was heard banged. PW1 woke up and saw the accused standing while carrying panga on his hand. PW1 was assisted by the aid of the moon light which was so bright. The tale goes on that PW1 decided to run to the said house where he found his father tied with ropes. His

father informed him that his mother (the deceased) is no longer. PW1, raised alarm for help where many people gathered among them was a local leader PW2, who ultimately informed the police officer.

While there, PW2 received a call from the accused informing him that he is the doer of the said act, and thus PW2 should protect him as the whole family is against him. PW2 met with the accused person who narrated the whole episode of killing. PW2 then took the accused to a secret room and put him under custody until when the police men came and re-arrested the accused. The accused also confessed to have killed the deceased to PW3 and PW5. After a thorough investigation and interrogation, the accused was arraigned before this court and faced the charge of murdering his own mother Magreth Makenzi.

To substantiate, the information against the accused, the prosecution called seven witnesses; Shija Meneja (PW1), Aljua Simon (PW2), Chepe Elias (PW3), Dr. Silas Zabron (PW4), ASP Juma Sadiki Bahati (PW5), Isaya Benard Kigula(PW6) and Leonidas Daniel Michael(PW7) while the accused person fended himself.

Rachel Cosmas learned State Attorney assisted by Goodluck Saguya also learned State Attorney represented the Republic, Mr. Ishengoma Makanjero learned advocate represented the accused person.

Shija Meneja Mashimba (PW1) testified that on 11/6/2022 at 18:00 hours he visited his father Mzee Meneja Mashimba to pay condolence on the death of his brother's son by name of Fikiri Simon (deceased). While they were there, as family members they also had moments to discuss about the family quarrel that was in existence between Kulwa Meneja and Margreth Makenzi (accused person also in attendant). The source of the said quarrel was the death of Kulwa Meneja's cattle (two of them had died) in which his sibling Kulwa Meneja had claimed had not died a natural death but bewitched by Margreth Makenzi - his mother.

The other dispute was that, Kulwa Meneja's daughter by name of Grace who was sick was also bewitched by his grandmother Margreth Makenzi.

Further to that, another dispute was none-attendance of Kulwa Meneja to the funeral of the deceased Fikiri Simon, in which then their mother was so furious as to why her son Kulwa Meneja had not attended the said funeral nor the mourning of the said death.

The said meeting lapsed at midnight. After the said meeting, they dispersed for sleeping. PW1 further stated that shortly after he had slept, he heard the door bang (puuh) of the house of their parents had slept. Then shortly, he saw torch cell illuminating against the door of the house he had slept that day. The said door was made up of small trees (fito). The said torch

was so illuminating with bright lights. He had been able to identify it as torch cell because of his seeing it via the said door which had some spaces in between. He also saw a person standing. He was a male person; he could not identify the said person as he was somehow distant. Thereafter, he saw two persons walking from the house of his father to the other side (west). By that time, he was about four steps to those persons passing by. It was through the aid of Mbalamwezi power/light which was showing so brightly of the two persons. He had then been able to identify his brother Kulwa Meneja.

He said that he knows very well Kulwa Meneja as they grew together. By that time, the said Kulwa had carried panga.

The other person had carried a button (rungu). He had been able to identify that person by looking at his face. While passing, they were uttering in Kisukuma language the words: "that this is now dharau." PW1 decided to run to mzee Kulwa's home where he saw him tied his hands by rope on the head and he was informed that their mother was no longer alive. He decided to go in the said room, where he saw his mother cut on her neck, right hand, stomach and head. They then decided to call mwano for assistance. People attended the calling amongst the attendants was Mchepe Elias who is a street chairperson. Also in attendant was Majaliwa. The local leader and Police came in the morning. By that time, Kulwa, had already been locked and put under

custody by the local leader. However, he had not witnessed him being detained.

Aljua Simoni Samuti, (PW2) a police officer testified that on 12/6/2022 at 07:00 hours, he was at Bugalama Msalala (at office), where he received information of murder incidence- Nkonze Msalala from the OCD by name of Thomas John. After he had received the information, he organized police officers of CID unit to the scene. There at he saw many people gathered. He was then led to the room where the dead body was laid. In the said room, he saw mattress with the deceased's female body with multiple wounds and pond of blood. The deceased was identified as Magreth Makenzi.

The wounds were on the right hand, neck and abdomen and that the body was naked. The wounds seemed to be occasioned by sharp objects. He was briefed about the incidence by the hosts and the local leader whereby he was told that the suspect of the incident has been arrested and was there. The said arrested suspect was Kulwa Meneja. PW2 re-arrested the suspect. After he had re-arrested him, in the course of search, he noted that he had blood stains on his white shirt he had put on that day.

When he kept on inquiring as where he got the said blood stain, he replied that he had slaughtered goat the previous day. Nevertheless, he failed to establish the slaughtered goat. Even his own family, denounced him

slaughtering goat by the previous day or few days before. PW2 therefore became suspicious. On that suspicious he ordered removal of the put on shirt and ceased it as exhibit. The said seizure certificate in respect of the said one shirt with blood stains was admitted as exhibit P1.

As he failed to establish the said slaughtered goat, he later told him that it was blood of his deceased mother. He said all this before him. Further Pw2 stated that in his interrogation with the accused person, he (the accused) had admitted to have killed the deceased and narrated the whole episode and the objects of murder used. He told PW2 that, at the previous night, he broke the door of the house in which the deceased had slept and got in. There in, he used the panga to cut the deceased on various parts of her body and that the said panga he had hidden at his home. They went to the accused home place and PW2 was shown a panga from the point he had hidden it by the accused himself. PW2 took it, of which had some blood stains though with efforts of rubbing them off. He had also earlier told him that soon after the said murdering, he went about 200 meters to the water stream where he immersed the said panga in for purpose of destroying the features and later cut it against tree in the similar efforts. Later on, he placed against the ground.

Apart from the panga, he also inquired from him about the said rungu. He also showed it to PW2 which was just closer from where they had been. It

is that rungu which he used to break in through the said door. After he had shown the said two objects, PW2 seized both of them and recorded their entries into the certificate of seizure. The seizure certificate for panga and rungu (PF 91 with serial number US25858) dated 12/6/2022 was admitted as exhibit P.2.

Chepe Elias (PW3), testified that on 12/6/2022, around 00:00 hours, he received a call from one Mhangwa Deus that at Mzee Meneja Mashimba, there was a traditional call for help (mwano). Together with sungusungu chief, they went to Mzee Meneja Mashimba's home attending the traditional call "mwano" from where it was being called. While at the scene the whole family members were crying while mentioning Kulwa Meneja as the doer. PW3 was informed that Magreth Makenzi (the wife of Mzee Meneja Mashimba) was murdered by being cut with panga.

The said body had sharp cut wounds on neck, shoulder right hand and abdomen. While there, PW3 received a call from Kulwa Meneja, he told him that he should protect him as he is the doer of the said murder. He did so as the whole of the family members are against him and thus, he had hidden in bushes.

As chairperson, he persuaded him to tell him where he was and went up to the said point where he met him, by that time, he had his shirt held on his

hands. The said shirt was white. When he had put on it had some blood stains on his front part and back.

PW3 persuaded him to go to the scene by hide and there they put him into one room while secretly being under sungusungu guard. PW3 communicated to the VEO and later to police. When police had come, PW3 led them to Kulwa where they saw him. They arrested him, where then the said shirt was seized by police.

Silas Zabroni Kayanda (PW4) a medical Doctor testified that on 12/6/2022 at noon time he received a police order of going to Nkonze village for post mortem of one dead body. They entered into the room where the dead body had been. The dead body was down on mattress, a female African adult. PW4 observed that there were multiple wounds on the deceased's body pond of blood down and clotted blood on her body. The said multiple wounds were on back neck, right shoulder down on right hand and stomach. The said multiple wounds were caused by sharp objects. Other observations were on her nipples (grand mammals), dilated eyes and respiratory organs were dormant. All these suggested that the said person had already died. The said deceased's body was identified to him as of Magreth Makenzi.

PW4 also established that the cause of the deceased's death was by Hemorrhage shock secondary to multiple big sharp cut wounds. These findings

were filled into the post mortem Report which was preceded by the police order for post mortem. The Post Mortem Report for Margreth Makenzi dated on 12/6/2022 was admitted and marked exhibit P3.

ASP Juma Sadiki Bahati (PW5) a police officer from the RPC'S office Shinyanga of Forensic Department stated that on 12/6/2022, around 10:00 hours, he was given a task to conduct forensic investigation. They arrived at the scene around 11.30 hours. Further, he described that when accused person was arrested was found wearing a white shirt with blood stains. And that in the preliminary interrogation the accused person made an oral confession that he had murdered his mother.

The accused person in his own words and in the presence of PW5 together with RCO, Alijua freely narrated how he killed the deceased. As to why he killed her he replied that his mother is a witch as has bewitched his two cows which died mysteriously and also, she bewitched her sick girl.

As to how he committed the said offence, he replied it was by use of panga which he had cut against the deceased on her back neck, right hand shoulder and the stomach. On the instruments of murder, he stated that he used panga and that he had hidden at the pond of water after he had also tried to destroy the blood stains over the said panga. He led us up to the place where the said panga was hidden and later to the place first the said panga was put into

water. Near the pond, he saw sands with blood stains which he had also taken them (sum) for purposes of Forensic investigation. The accused then led them up to his home, he showed them the said rungu he used to break the door, the same was also seized. They also saw one panga and the accused told them that the panga used to inflict against the deceased. They then went to Segese Dispensary where the blood samples of the accused person were taken for purposes of Forensic investigation if it matched with that of the deceased and the accused person. Therefore, sand/soil, shirt, rungu, panga and blood samples of the accused person and the deceased had been taken for purposes of further scientific investigation. From 12/6/2022, PW5 kept the said samples and transported them to DSM police HQ where (Forensic) Inspector Isaya received them.

Isaya Benard Kigula, (PW6) a police officer at Forensic Bureau HQ – DSM at Forensic Bureau, testified that on 19/6/2022, at morning, while was at his office he received ASP Bahati (PW5) being with some exhibits detailed in a covering letter, the said letter had originated from the Incharge of Forensic Bureau Shinyanga (ASP Bahati) with ref. No. BGA/IR/635/2022 – Murder case. The letter was dated on 17/6/2022. The said exhibits were: blood samples in cotton from one deceased, soil mixed in blood, blood from accused person in purple tube container, white shirt with blood stains from accused person in purple tube container, panga with blood stains alleged to have been used in

murdering the deceased. The said letter demanded investigation of Forensic samples in the said exhibits. After he had received them, he first securitized to establish if they satisfied all the conditions for their scientific examination (Whether they have met all legal requirements). They scrutinized the said samples accompanied by the legal forms such as PF. 180, the manner they were packed. Next, is the legal satisfaction whether labelling of the said exhibits have been dully labelled as per law. After that, PW6 was satisfied that they had met the legal requirements for their reception, he thus received them by registering them into the Forensic Register with number FB/DNA/Lab/35/2022. On 22<sup>nd</sup> June 2022, they met together with Leonidas Michael – Government Chemist who received them and dully registered them into their Register form.

Leonidas Daniel Michael (PW7) a government Chemist stated that on 22/6/2022, he was at his office DSM while there being officer on duty, he received one police officer (PW6) from Forensic Bureau who had a parcel sealed with police seals. The said parcel had two letters: one from forensic Bureau and another letter from RCO Shinyanga (Forensic Bureau) and PF/80. The said letters requested the Chief Government Chemist to do Forensic investigation of the DNA samples brought. The PF 180 had listed the samples brought with the said letters. After he had received them, he scrutinized them if they met the laboratory tests. After he was satisfied with that, he had

registered them with the lab. No. 1902/2022. The said police officer handled them to him the said parcel of DNA samples with the accompanying form, in which he had signed certifying receiving them. The said samples were labeled 1-5. Sample 1 was cotton with blood, samples 2 was soil with blood, sample 3 was blood of the accused person, Sample 4 was shirt with blood stains, Sample 5 was panga with blood stains.

In his preliminary investigation, he had to establish whether the said sample carried human blood as alleged. With sample1, he had not found any human blood. It appears, the said sample had decayed due to poor carriage and preservation.

With the DNA analysis, with samples 2-5 he had established being of human being. From sample 2, (soil/sand with blood), the DNA analysis established that it had carried human blood of female gender. With sample 3 (blood of the accused), it was established that had carried blood of a male person. With sample 4 (shirt with blood stains), the DNA analysis established to be blood of a female gender. With sample 5 (panga), the DNA analysis established that it carried blood of a female gender. In his final conclusive analysis, established that the samples from 2, 4, and 5 had similar DNA profile meaning that they all belong to one and the same female human being.

After he had done all these, he prepared a report which was dated on 19/7/2022. Though he had received the said samples on 22/6/2022 but the report of it was made on 19/7/2022. This is because the said DNA analysis passes several stages until the final report is produced including the said report being inspected by the supervisor before it is issued to ascertain whether it passed the quality test as per law and laboratory rules. The Forensic DNA PROFILING TEST REPORT with Ref. No. FB/DNA/LAB/35/2022 dated on 19/07/2022 was admitted as exhibit P4.

On the defence side Kulwa Meneja Mashimba (DW1), testified that on 12/6/2022 while at home asleep, he heard mwano naming him as the doer of the killing of his mother at her home. The one naming him in the said Mwano as doer against his mother was his young brother. He said that, the said mwano was calling from his father's home. Thereafter, he got up and phoned the hamlet chair about the mwano and he being named as culprit. The chairperson calmed him down by telling him that if he is not responsible he should remain there. Then (PW3) came to his home, he got out and went with him at the scene. At 07:30 hours, came police and took him to Segese police station. He was interrogated but he had denied to be responsible of the said Murder as alleged.

They started beating him, took off his shirt and shortly returned it to him being with blood stains accusing him having the blood remains of his murdered mother. He was then sent back to his home together with the hamlet chair (PW3) where they opened door and found one panga which had no any element of being used. In essence they recovered nothing but forced him to admit murdering his mother. They later returned to his home and took that panga and forced it to be exhibit against him. He was then forced to show them the place where he had washed the panga. He then took them aside a certain stream (river). There was nothing of any element of blood. After that they returned to his home where they saw his wife and police officers told her to take care of the family as they were taking him for the alleged accusations of murder.

Later they took him to Segese Health center, where he was taken blood sample. From there they drove up to Ilogi police station. At Ilogi, he was interrogated again, but denied to have killed his mother. On 15/6/2022, they took him to Lunguya Primary Court before Hon. Justice of peace, while before Justice of Peace, he denied murdering the deceased. The justice of Peace then persuaded him to admit the said allegations as he is well informed of all that transpired and his involvement. After that, he was taken back to Ilogi police station where later he was taken photograph (passport size) and finger prints. On 17/6/2022 he was taken to Kahama District court and he was charged for

murdering his mother Magreth Makenzi the fact which is not true. At his home, they were living with his mother very peaceful. He denied the allegation of killing his mother and prayed he be acquitted.

This being a criminal case, the cardinal principle is that the prosecution owes a duty to prove the charge against the accused person beyond any reasonable doubts. It is not for the accused person to establish his innocence. This responsibility never shifts throughout. Since the accused person as already indicated herein above stand charged of murder, the prosecution had the duty to prove beyond reasonable doubts; **that**, death was caused to the deceased person, i.e the alleged deceased person Magreth D/O Makenzi is indeed dead, **that** her death was not natural, **that**, the death was caused by unlawful act or omission, **that**, it was the accused person who did the unlawful act or omission leading to the said death and **that**, the death was caused with malice afore thought in the meaning that the accused on intended to cause such death.

On the basis of the evidence on record, it is undisputed fact that Magreth Makenzi is indeed dead and her death was not natural. She suffocated to death due to hemorrhagic shock secondary to multiple big cut sharp wounds. The deceased body found with pound of blood down and clotted blood with multiple wounds on her neck, right shoulder down and stomach. The said wounds were

caused by sharp object. Thus, the deceased's death was not natural but was forced by external force as evidenced by PW4 the doctor who examined the body and the Post Mortem Report exhibit P3. His evidence was corroborated by several other witnesses as summarized above who testified that they saw the deceased body on the mattress stained with clotted blood, by multiple cut wounds.

Under the circumstances there is no doubt about the death in question. I also find out that whoever caused the said death caused the same with malice aforethought because the deceased body was found with multiple cut wounds which led to suffocation and ultimately death of the deceased.

The only dispute for determination is therefore, who killed the deceased person in the manner herein above explained. According to the prosecution's evidence suggests that it was the accused person who brutally murdered the deceased Magreth Makenzi. But the accused person on the other hand, denies being in any way responsible for the killing of the deceased and thus had been implicated to the murder simply because he had quarrelled/misunderstandings with the deceased.

The question therefore is whether we have sufficient evidence on record to prove that the accused person is the one who murdered the deceased. From the evidence on record, it is obvious that none of the prosecution witnesses

witnessed the crime being committed. The only incriminating evidence against the accused is somewhat circumstantial evidence coupled with the repudiated accused person's own confession.

The circumstantial evidence tending to incriminate the accused is such that;

- i. That, the accused person had made oral confession to have murdered the deceased and there is collaboration of evidence to that effect.
- ii. That the accused was identified committing the crime.
- iii. The accused person is connected with scientific findings (DNA TEST)

For circumstantial evidence to ground a conviction against the accused, the law is settled that for circumstantial evidence to mount conviction, it must establish a case without leaving any legal doubt. It means the evidence must be so convincing that no reasonable person would ever question the accused's guilt. See the cases of **Mohamed Said Matula v Republic** [1995] TLR 3, **Anatory Mutafungwa v Republic**, Criminal Appeal No. 267 of 2010, Court of Appeal of Tanzania and **Festo Komba v Republic**, Criminal Appeal No.77 of 2015, Court of Appeal of Tanzania (both unreported), **Shaban Mpunzu@ Elisha Mpunzu v. Republic**, Criminal Appeal No. 12 of 2002 CAT, Mwanza Registry (unreported),

The evidence must irresistibly point to the accused person and should not lead to any other interpretation. In the case of **Ndalahwa Shilanga Buswelu &**

**another vs. Rep.** (Criminal Appeal No. 62/2004) at page 19 & 20) that circumstantial evidence is like a chain. It must always be connected. See also **Julius Justine & Others v. Republic**, Criminal Appeal No. 155 of 2005, CAT, Mwanza Registry, **Simoni Msoke v. R. (supra) and John Magula Ndongo v. Republic**, Criminal Appeal No. 18 of 2004 CAT, Dar es Salaam, **Ally Bakari v. Republic** [1992] T.L.R. 10, **Anetha Kapazya v. Republic**, Criminal Appeal No. 69 of 2012, CAT, Mbeya Registry **Jumanne Hamis @ Upepo v. Republic**, Criminal Appeal No. 329 of 2009, CAT, Tanga Registry **and Sadiki Ally Mkindi v. D.P.P.**, Criminal Appeal No. 207 of 2009, CAT, Arusha Registry (all unreported).

However, I'm very aware of the best evidence rule as provided under section 62(1) of the Tanzanian Evidence Act, Cap 6, R.E 2019. In fact, it says as quoted hereunder:

*62.-(1) Oral evidence must, in all cases whatever, be direct; that is to say-*

*a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;*

*(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;*

*(c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;*

*(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion or, as the case may be, who holds it on those grounds.*

Now, in the present case, PW1 testified that during the material date while asleep, suddenly, he heard the door bang of the house which the deceased had slept. The PW1 woke up and saw torch light illuminating the house of their parents.

He moved nearby and suddenly through moon light which was very brightly illuminating, managed to see two men and identified one of them to be the accused as he was familiar with him as they grew up together (his sibling). The other culprit was not identified by PW1 as he was a stranger to him, he only identified him by face. He saw the accused carrying panga.

*" I saw two persons walking from the house of my father to the other side (west). By that time, I was about four steps to those people passing by it was through the aid of mbalamwezi power which was casting so brightly. I had*

*been able to identify my brother Kulwa Meneja, I know the said sibling very well as we grew together. By that time the said sibling had carried a panga, the other person had carried a button (rungu). I had been able to identify that person by looking at his face”*

Visual identification has always been taken to be the weakest sort of evidence as at times witnesses may with the honest belief mistake the identity of assailants. See ***Waziri Amani versus The Republic (1980) TLR 250***. It has even been decided in a number of cases that even when the witness is purporting to recognize someone whom he knows, the Court should always be aware that mistakes in recognition of close relatives and friends are sometimes made. See ***Shamir John versus The Republic, criminal Appeal no 166 of 2004***. For visual identification to be a basis of a conviction, more so in serious crime like the instant one, such identification should eliminate all possibilities of mistaken identity and, the court should satisfy itself that the evidence is absolutely watertight. Evidence on conditions favoring a proper identification is of utmost importance.

In the present matter, PW1 testified that the accused person was not stranger to him, they were very much familiar. The accused did not dispute to know PW1. PW1 stated that the source of light for his identification of the accused person was a **full moon light** and that he was close to him just four

steps at the time they were moving from the house where the deceased had slept.

In the case of **Anuary Nangu and Kawawa Athumani versus The Republic**, Criminal Appeal no. 109 of 2006, there were similar facts to the case at hand. The Court of Appeal discussed the circumstances under which **Anuary Nangu** and **Kawawa Athumani** were identified. It stated;

*"The testimony of the complainant PW1 on the identifying circumstances was the time taken to commit the offence, which was long, there was moonlight, the appellants lived in the same village and he had seen the appellants several times before. He was able to describe the types of clothes which each of the appellants wore when the incident took place."*

The Court of Appeal then concluded that such identifying circumstances were favorable for correct identification;

*"The conditions for identification in this case, as gathered from the evidence were favorable. The complainant knew the appellants before, they were staying in the same village and there was moonlight. He was also able to identify the types of clothes the appellants wore.... It took sometime before the offence*

*was committed as the attack was proceeded by a conversation”*

In the instant case as I have already stated, the facts are identical to that of **Anuary Nangu’s** case supra. PW1 knew the accused person prior to the crime. The crime was committed in few minutes after their family meeting and there was moonlight.

All these circumstances have been held to be favorable for the correct identification. Yet such identification by PW1 does not suggest the commission of crime by the accused person. I say so basing on the poor description by the PW1 against the accused person that he had been able to identify him under the bright full moonlight by just mentioning the accused person having won a trouser. Is that a sufficient description of the dress? I had expected that there would have been a proper and detailed description such as the type of the said trouser: plain trouser, colored, etc. By the way, how come by the aid of the same moonlight he described to be brightest on the night had just been able to identify such a partial dress of his sibling but not of the other person? I think that description is doubtful. As well said that visual identification has always been taken to be the weakest sort of evidence as at times witnesses may with the honest belief mistake the identity of assailants. Thus, I put doubt on that evidence by PW1 on proper identification by the accused person as the doer.

On consideration of the evidence of oral confession, we have PW2, PW3 and PW5. Pw3 is the local leader who responded to the traditional call (mwano) and went to the scene. No sooner had he arrived at the scene than when he received a phone call from Kulwa Meneja the accused person and informed him that he is the one who had committed such a crime and therefore PW3 should protect him. PW3 said:

*" while there, I had received a call from Kulwa Meneja. He told me that I should protect him as he is the doer of the said murder. He did so as the whole of the family members are against him"*

PW2, a police officer while at the scene, there he was informed of the incidence by PW1 and informed further that the said accused had been arrested and put to a secret room but is under custody of sungusungu. PW2 decided to re arrest the accused and interrogated the accused who once again admitted to have murdered the deceased.

*" In my interrogation he had admitted to have killed the deceased and narrated the whole episode and the objects of murder used. He told me the previous night he broke the door of the house in which the deceased had slept and got in, after he had got in he used the panga to cut*

*the deceased on various parts of her body and that the said panga he had hidden at his home."*

PW5 on his part, testified that:

*"the accused person in his own words and in my presence together with RCO, and OC-CID Alijua freely narrated how he killed the deceased, I personally heard him confessing so. As to why he killed his mother, he replied that his mother is a witch as has bewitched his two cows which died mysteriously and also, he had bewitched his sick girl"*

It is settled that an oral confession of guilty made by the suspect before or in the presence of reliable witnesses, be they civilian or not, may be sufficient by itself to ground conviction against the suspect. See, **Chamurilho Kirenge@ Chamuriho Julius vs. Republic**, Criminal Appeal No.597 of 2017, **The Director of Public Prosecutions vs Nuru Mohamed Gulamrasul** (1988) T.L.R 82.

In **Mohamed Manguku vs. Republic**, Criminal Appeal No.194 of 2004, quoted in **Posho Wilson@ Mwalyego vs. Republic**, Criminal Appeal No. 613 of 2015 and **Tumaini Daudi Ikeru vs. Republic**, Criminal Appeal No.158 of 2009 (all unreported), the Court of Appeal insisted that such an oral

confession would be valid as long as the suspect was a free agent when he said the words imputed by him. It means therefore that even where the court is satisfied that an accused person made an oral confession, still the trial court should go an extra mile to determine whether oral confession is voluntary or not. What amounts to involuntary confession is provided for under Section 27(3) of the Evidence Cap 6 which states

*"(3) A confession shall be held to be involuntary if the court believes that it was induced by any threat, promise or other prejudice held out by the police officer to whom it was made or by any member of the Police Force or by any other person in authority"*

It has been testified in this case that the accused voluntarily confessed before PW2, PW3 and PW5 that he had murdered the deceased. Therefore, their testimony incriminates the accused with the charged offence.

But further to that, it is the stance of the law that, a confession leading to discovery is reliable. In the instant case, the accused confession led to the discovery of the weapons used in murdering the deceased. The weapons used were mentioned by the accused himself before PW2, PW3 and PW5.

PW5 testified that when they arrived at the scene and told about the episode of the killing of the deceased by the accused, he further averred that

the accused told them how he manipulated the act of killing through the use of panga which had cut against the deceased on her neck, right hand shoulder and stomach. The accused also mentioned rungu to have been used to break the door of the house of which the deceased had slept.

*"On the instrument of murder, he stated that he used panga and that he had hidden at the pond of water after he had also tried to destroy the blood stains over the said panga. He led us to the place where the said panga was hidden and later to the place first the said panga was put into/immersed into water, Near the pond, I had seen sands with blood stains which I had also taken them for purpose of forensic investigation. He then led us up to his home. About 15 meters to his home, he had shown us the said rungu he used to inflict against the door for breaking, from that point we went straight to his home, where he opened the door just at the sitting room, we saw one panga and he told us that is the said panga he used to inflict against the deceased. The said panga was straight in nature and its hand rapped by piece of a cloth"*

Now, the Court of Appeal in the case of **Chamuriho Kirenge @ Chamuriho Julias vs. The Republic**, Criminal Appeal No. 597 of 2017, while quoting the case of **John Peter Shayo and 2 Others vs Republic**, (1998) TLR 198 quoted in **Tumaini Daudi Ikera vs Republic**, Criminal Appeal No. 158 of 2009 (unreported) the Court observed as follows:

*"(i) Confessions that are otherwise inadmissible are allowed to be given in evidence under section 31 of the Evidence Act 1967 if, and only if, they lead to the discovery of material objects connected with the crime, the rationale being that such discovery supplies a guarantee of the truth of that portion of the confession which led to it*

*(ii) As a general rule, oral confessions of guilt are admissible though they are to be received with great caution, and section 27(1) and 31 of the Evidence Act 1967 contemplates such confessions.. "*

The similar position was also proclaimed in the cases of **John Shini vs Republic**, Criminal Appeal No. 573 of 2016 and **Melkiad Christopher Manumbu and 2 Others**, Criminal Appeal No. 355 of 2015 (both unreported).

In the digest to the testimony of PW2, PW3, and PW5, I am satisfied beyond reasonable doubt that the accused person led them for discovery of the objects which used in incidence of murder of the deceased one Magreth Makenzi. And thus exhibits PE 2 which is seizure certificate of Panga is truly connected with commission of the offence by the accused person.

I have carefully scanned the testimonies of PW5, PW6 and PW7 about the chain of custody of samples taken from the accused, the deceased and from exhibit P1 - the seizure certificate of white shirt which was won by the accused, exhibit P2 which is certificate of seizure of one panga which had blood stains and to the production of the scientific DNA report (exhibit p4). The same cumulatively and criminally connect against the accused person.

From their testimonies, the chain of custody is very intact, connected and reliable as its chain is not broken at all.

On the chain of custody, PW5 stated:

*"So sand, shirt, rungu, panga and blood samples of the accused and the deceased I had taken them for purposes of further investigation, I kept them the said samples and transported them to DSM police headquarter (forensic ) where inspector Isaya (PW6) received them.*

PW6 who is Inspector Isaya of Forensic Bureau – DSM, had this to say on how he had received the said exhibits from PW5:

*"I had received ASP Bahati being with exhibits detailed in covering letter, the said letter had originated from the in charge of forensic bureau Shinyanga. The exhibits were; blood samples, soil mixed blood, blood from accused person, white shirt with blood stains from accused person, panga with blood stains, I kept for two days, on the third day on 22/6/2022 I handled them to the government chemist.*

PW7 who is the government chemist, had this in his testimony on what he had received from PW6:

*"I recall on 22/6/2022 while on the duty, I had received one police officer from forensic Bureau who had DNA samples. The said samples were labeled 1-5 sample was cotton with blood, sample 2 was soil with blood, sample 3 was blood of the accused person, sample 4 was shirt with blood stains, sample 5 was panga with blood stains."*

Based from the extract point of view, it is clear that a due diligence in handling the said exhibits were exercised and this makes reliability of evidence.

The rationale of chain custody when comes to exhibits was explained in the case of **Chacha Jeremiah Murimi and 3 Others versus Republic, Criminal Appeal No.551 of 2015**, where the Court of Appeal held that chain of custody when comes to exhibits is very important to prove origin and custody of the exhibits up to the time such exhibits are taken to Court. The aim is to prove that such exhibit was not tempered anyhow.

However, as pointed earlier the other evidence incriminating the accused is the scientific findings. PW7 a government chemist testified that;

*"with DNA test analysis, with sample 2-5, I had established being of human being. From sample 2 soil of blood, the DNA analysis established that it had carried human blood of female gender, with sample 3 it was established that had carried human blood of male person. With sample 4 white shirt with blood stains established to be blood of female gender, with sample 5 panga the DNA analysis established that it carried blood of female gender, in analysis, the samples form 2,4, and 5 had similar DNA profile meaning that they all belong to one and the same human being".*

This testimony is also evidenced by the findings encroached in the forensic DNA profiling Test report which is exhibit P4. The report is scintilla

without any doubts that the blood stains on panga which alleged to be used by the accused during culprits act against the deceased and blood stains on white shirt which was won by the accused on the material date contain DNA identical with gender female. Meanwhile, the soil which had blood stain was found had DNA identical features which belonged to the female gender. All these suggest that the accused person attacked the deceased, and thus in the course blood stains from the deceased jumped over and remained on the accused's shirt and also some blood remains on the panga which he used in attacking the deceased.

The settled principle for credibility of witnesses is that; every witness is entitled to credence and have his evidence accepted unless there are good and cogent reasons for not believing him (**See; Goodluck Kyando versus Republic (2006) TLR 363**). On my side, I don't see any suggestive fact to disbelieve the prosecution witnesses in this case. This is because neither of them had any grudges with the accused and they testified on the facts observed at the crime scene and what the accused told them.

For sure, I am satisfied beyond reasonable doubt that the presumption of credence of the prosecution witnesses in this case has not been rebutted by any reasonable doubt by the defense testimony against the testimony of PW2, PW3, PW5 and PW7. The prosecution's testimony in this case has been cogent

and coherent. Since criminal offence is only established by the prosecution's evidence and not on the weakness of the defense testimony, what was expected from the defense testimony in this case is to raise any reasonable doubt. I have failed to spot any. The testimony of DW1 in totality that is not responsible has not raised any reasonable doubt as per law. That he was tortured and thus forced to confess to the offence, it is a mere little effort trying to exonerate from the said charges against the whip of justice. Not saying that was like putting one's neck against the sharp axe laid against him. It is a mere kick of a dying horse.

In terms of section 33 (1) (2) of the Evidence Act as the said prosecution evidence in this case corroborates each other which give reliability of the evidence. see **Ally Hemedi vs Republic** [1973] LRT No 88, **Richard Lubilo and Mohamed Selemani vs Republic** [2003] TLR 149 and **Brasius Maona and Gaitan Mgao vs Republic**, Criminal Appeal no 215 of 1992, CAT (unreported)].

Similarly, the defense testimony of DW1 is highly laughable and is only considered as a lying defense in the presence of the cogent and coherent evidence of the prosecution case via testimonies of PW2, PW3, PW4, PW5, PW6 and PW7 coupled with evidence in exhibits P1, P2, P3 and P4. The law is, a lie of an accused person corroborates the prosecution's case.

In the light of the herein above analysis, observations and findings I find that the accused's defence has not casted any reasonable doubts to the prosecution case. I reject the accused's defence and find that the prosecution case has been sufficiently proved beyond any reasonable doubts against the accused person **Kulwa Meneja** and find him guilty of the offence of murder which he stands charged. I accordingly convict him for the offence of murder charged with contrary to section 196 and 197 of the Penal Code, Cap.16 R.E 2022.



F. H. Mahimbali

Judge.

12/12/2023

Considering the punishment for murder is only one known as per law, the accused persons are hereby sentenced to suffer death by hanging pursuant to section 197 of the Penal Code, Cap 16 R.E 2019 as read together with section 322 (1) & (2) of the CPA, Cap 20 R.E 2022.



F. H. Mahimbali

Judge

Right of Appeal fully explained to any aggrieved party under section 323 of the CPA, Cap 20 R.E 2022.

DATED at KAHAMA this 12<sup>th</sup> day of December, 2023.

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F.H. Mahimbali  
Judge

Judgment delivered today the 12<sup>th</sup> day of December, 2023 in the presence of Insp Felix Mbise holding brief of Mr. Jairo for Republic, Mr. Makanjero Ishengoma learned advocate for the defense and Ms Beatrice, RMA, present in Chamber Court.



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F.H. Mahimbali  
Judge