

**IN THE HIGH COURT OF TANZANIA  
AT SONGEA  
ORIGINAL JURISDICTION  
(SONGEA REGISTRY)  
CRIMINAL SESSIONS CASE NO. 39 OF 2022  
THE REPUBLIC  
*VERSUS***

- 1. JUMA OMARI KIBWANA MSABILA**
- 2. HAMZA YUSUPH @ SINGANO**
- 3. YASINI MPONDA MUSSA @ KAPUFI**
- 4. HASSAN MOHAMED MPONDA**
- 5. SAID STEVEN MUHANDO**

**JUDGMENT**

*27<sup>th</sup> November, 2023 to 22 December, 2023*

**E. B. LUVANDA, J.**

Juma Omari Kibwana Msabila (First Accused), Hamza Yusuph @ Singano (Second Accused), Yasin Mponda Mussa @ Kapufi (Third Accused), Hassan Mohamed Mponda (Fourth Accused) and Said Steven Mhando (Fifth Accused) are indicted as follows: Conspiracy to commit terrorist acts contrary to sections 4 (1), (2) (b) (iii) and 27 (c) of the Prevention of Terrorist Act No. 21 of 2002 (being count number one for First, Second, Third and Fourth Accused); participating in terrorist meetings contrary to sections 4 (1), 3(i) (i) and 5 (a) of act No. 21 of 2002 (supra) (being count number two for the First, Second, Third and Fourth Accused); collecting of funds to commit terrorist acts contrary to sections

4 (1), 3 (i) (i) and 13 of Act No. 21 of 2002 (supra) (being count number three for the First, Second, Third and Fourth accused); commission of terrorism act contrary to sections 4 (1), 3(i) (i) of Act No. 21 of 2002 (being count number four, five, six, seven and eight for the First, Second, Third and Fourth Accused); concealing a person who has committed a terrorist act contrary to sections 4 (1), 3(i) (i) and 19 (a) of Act No. 21 of 2002(supra) (being count number nine for the Fifth Accused): attempt to murder contrary to section 211 (a) of the Penal Code, Cap 16 R.E. 2002 (being count number ten, eleven, twelve, thirteen and fourteen for the First, Second, Third and Fourth Accused).

In the particulars of offences, indicates that conspiracy, meetings, were alleged convened by the First to the Fourth Accused, inclusive between 1/1/2014 to 24/12/2014 at Songea Ruvuma Region; collection of funds a sum of Tshs 1,600,000 for purchasing fire arms and explosives was allegedly done by the First to Fourth Accused, inclusive on 1/1/2014 to 15/9/2014 within Songea Ruvuma; terrorism acts and attempted murder were allegedly done by the First to Fourth Accused by way detonating a homemade bomb and causing serious bodily harm to police officers Felister Abel, Lamadhan ally, G 5515 PC John, WP 8616 PC Mariam, G.9703 PC Mselem on 16/9/2014, and 25/12/2014 at Songea Ruvuma Region, being count number four, five, six, seven, eight, ten,

elven, twelve, thirteen and fourteen for the First, Second, Third and Fourth Accused): concealing the offender of terrorist act one Zuberi was alleged done by the Fifth Accused on 30/12/2014 at Muungano Dispensary within Mtwara District cum Region. All five Accused persons dispelled the information.

According to the evidence presented by the prosecution, in the year 2014, three incidents of terrorism were committed within Songea District Ruvuma region, on 16/9/2014 around 19:03 or 19:04 hours at Maliatabu Street cum Guest House Mabatini, PW1, PW5, PW11, while on foot patrol with two fire arms, noticed two people trailing them from the rear side, after suspecting them, those two people passed on high speed, thereafter PW1, PW5 and PW11 were attacked by a bomb, where PW5 sustained total injuries on his right limb, three toes amputated, fatal injuries on his right limb, skin laceration, undergone surgery to remove a piece of nail penetrated inside a bone, while PW11 sustained injuries on his right limb at the middle, tibia and upper knee. PW1 managed to identify the First and Second Accused as assailant for detonating that bomb.

According to PW25 (erstwhile Regional Crimes Officer Ruvuma Region) and PW21 (expert investigator specialist of terrorism and post blast), they visited post blast at the scene Maliatabu on 17/9/2014 and collected remains of dry cell battery shell, two exploded electric

detonators, remains of pierced plastic, remains of soft and solid metals gold iron sheet, three nails. Also PW25 received a piece of nail which was removed from injured police officers, which were all admitted as exhibit P7 collectively.

On 27/10/2014 around 16:00 hours at Mshangao Area Radio Tanzania, PW4 (traffic officer), detected a planted bomb at a point or shed where traffic usually take a rest, PW4 saw a wire (abrade) of mixed color red and yellow running and spread out from the forest up to a point where there is a bench for seating, it is where a bomb was planted. This bomb professionally called improvised explosive detonator local bomb was defused by PW22 who is an expert (Field Engineer) from Tanzania People Defence Force and no harm was reported. PW25 explaining that after defusing, remained small piece of wire, which PW25 set on fire, only retained pictures taken before and post defusing, exhibit P9 and its report exhibit P10.

On 25/12/2014 during Christmas Eve, around 19:30 or 20:00 hours at Majengo Quarters, PW3, PW7 and PW13 while on foot patrol, armed with two fire arms, where appeared a certain motor cycle on a high speed was about or narrowly to knock them (in particular PW13), where the motorcycle rider and passenger lady dressed on hijab, blamed them for being scattered on the entire road along with insult. Shortly thereafter

they were attacked by a bomb from their rear, with heavy dust, where PW7 sustained injuries on her left shoulder and scar on back head, PW13 sustained head injuries and pain on the back, PW7 and PW13 saw a certain person pulling someone from the center of explosion, shortly thereafter both PW7 and PW13 lost conscious and regained at the hospital. Meanwhile PW3, saw a Huawei phone, a knife, piece of intestine, near the center of explosion. PW3 attempted to pursue and chase those people who were dragging their fellow, in vain.

According to PW25 , PW21 and PW26 the latter is an expert of cyber, they visited at the scene on 26/12/2014 for a joint inspection, they saw a Huawei ( cover Vinko, circuit Huawei), remains of battery cover dry cell Panasonic Special, remains of electric detonator, two pieces of small electric wire, remains of black electric tape, remains of plastic bottle, remains of metal or solid iron sheet and six nails, PW21 collected remains of battery dry cell, electric detonator, electric wire, electric tape, plastic bottle and metal exhibit P5 collectively, while PW26 collected a smartphone Vinko cum Huawei black color exhibit P16.

The casualties of incident of bombing at Maliatabu and Majengo Quarters, were medically attended by PW2 and PW8 vide PF3 exhibit P1 for a lady police officer who according to PW2 was bordering death after sustaining fatal wounds on her left shoulder inflicted by a bomb; and PF3

exhibit P2 for a police lady who sustained three cut wound on the right thigh, right leg and foot; PF3 exhibit P3 for a male police who sustained wound on the right leg, top of a leg and lower limb. According to PW21, exhibit P5 and P7, were resembling, that is bomb maker signature were the same. PW21 made a conclusion that they were done by a person or group of people, with similar training called ID construction signature or bomb maker signature.

Exhibit P7 and P5, after being collected by PW21 at the scene Malitabu and Majengo Quarters, respectively, were handed over to PW25 who in turn handed over exhibit P7 and P5 to PW12 and PW16, respectively. PW12 handed over exhibit P7 to PW10 (ballistic expert). Meanwhile PW16 handed over exhibit P5 to PW9 (ballistic expert). PW10 conducted analysis in respect of exhibit P7, and issued a report on examination report exhibit P6 and PW9 examined exhibit P5 and issued examination report, exhibit P4. Exhibit P6 and P4 indicate that exhibit P7 and P5 are remains of homemade explosive professionally improvised explosive detonator.

By way flash back, PW26 explained that he examined exhibit P16 which was recovered the scene Majengo, through cyber equipment where he extracted information on that smart phone through that line of Airtel which was inside it, number 0782987433 established it belong to Hamis

Omary who dead at the scene Majengo Quarters and revealed phone number 0719871796 was communicating with the former number several times. PW26 explained to have made a trap to net the proprietor, where they revealed that number was located at Majengo. On 29/12/2014 PW26 escorted PW21 up to Majengo, where PW21 arrested Hamza Yusuf Singano who confessed participating on those explosion, done in view of instilling Islamic State in Songea.

According to PW26, Hamza Yusuf Singano upon being exhibited number 0782987433 he recalled it belonging to the late Hamis Omary, his associate and that Hamis Omary passed away at the scene of incident dated 25/12/2014. PW26 explained that Hamza Yusuf Singano also mentioned his associate including Yasin Mponda, Juma Omary Kibwana, Hussein Mponda. PW21 explained that Hamza Yusuf Singano led them to the house of the late Hamis Omary, on arriving there, observed lights were switched off. PW21 explained that on 2/1/2015 they arrested Hassan Mponda at Mkuzo Area where they were led by Hamza Yusuf Singano. Hassan Mponda confessed to have participated on those explosion and claimed membership into that group and mentioned Yasin Mponda Musa to have escape to Mbamba Bay. PW21 and PW26 explained that on 3/1/2015 they travelled to Mbamba Bay led by Hamza Yusuf Singano and Hassan Mponda, where at around 0000 or 00:45 hours they arrested

Yasin Mponda Mussa at Mabuyu Guest House, who confessed to participate in those explosions and also claimed to be a group member.

Meanwhile PW26 explained to have detected another phone number 0759228767 depicting to had departed from Songea to Dar es Salaam, thereafter was heading towards southern regions.

PW6 asserted to have arrested the First Accused on 31/12/2014 at 22:00 hours at Songea, inside a bus on transit from Dar es Salaam. Where he was trailed through number 0782947833. According to PW6, the First Accused admitted participation in the incident of bomb explosion dated 25/12/2014 where their colleague Hamis Omary Ngozi passed away.

PW18 claimed to be the father of the late Hamis Omary, where in the course of washing his body he saw one hand was missing (amputated) and intestine protruded outside.

It was the testimony of PW26 and P21, that from Mbamba Bay they resumed back to Songea, where on 4/1/2015 they joined Hamza Yusuph Singano, Hassan Mponda and Yasin Mponda with suspects who were arrested at Lindi, then transported them to Dar es Salaam for further investigation, where according to PW25 it was the chiefdom for investigation.

PW17 interrogated the First and Fourth Accused on 5/1/2015 at Police headquarters Dar es Salaam (DCI) where the First and Fourth



Accused alleged confessed via a caution statement exhibit P11 and P12, respectively.

PW23 recorder a caution statement of the Second Accused (exhibit P13). PW24 recorded a caution statement of the Third and Fifth accused, exhibit P14 and P15, respectively.

On defence the Fourth accused (DW1) asserted to have been arrested on 2/1/2015 at 23:00 hours, then detained in a certain room up to 6/2/2015 when he was taken to court. He denied involvement in terrorist acts. He disowned exhibit P12, for reason that he never made a statement anywhere and disowned signature and thumb print appearing therein. Disputed a fact that he participated in arrest of other suspects. He denied to have visited at Dar es Salaam at any point in his life time.

The First Accused (DW2) asserted to have been arrested on 31/12/2014 at Lindi Bus Terminal, after one month he was taken to Songea then arraigned in Court on 6/2/2015. He denied vehemently making a statement. He disputed participation in terrorism acts. He denied signing anywhere, neither appending a thumb print. He defended that prosecution did not procure expert to prove finger print (thumb print) or a signature. He dispelled to had communicated with the deceased and disputed a phone number mentioned by PW26, on a ground that prosecution did not procure network or service provider to prove

ownership of that number. He stated that the testimony of PW6 and PW25 was contradictory.

The second Accused (DW3) asserted to have been arrested have on 29/12/2014 in the night at Majengo while having a chat with three ladies, where he was restrained up to 6/2/2015 where he was arraigned before District Court of Songea. He denied accusation against him. He denied making a caution statement, let alone confessing, he denied signing anywhere.

The Third, accused (DW4) asserted to have been arrested on 3/1/2015 at Mbamba Bay at around 15:00 hours while purchasing sardine for sale and alleged to be restrained up to 6/2/2016 when he was arraigned for attempt murder. DW4 said neither of prosecution witness mentioned a phone alleged assisted them to apprehend him (DW4). He dispelled knowing John Saizi, or vending second hand clothes for the explanation that he was vending sardine. He denied to have been arrested at Mabuyu Guest House. DW4 asserted that he never visited at Mshanagano, Maliatabu, Matalawe or Majengo Quarters on between 1/1/2014 to 30/12/2014. He disputed to have made a statement and disowned signature and thumb print appearing therein.

The Fifth Accused (DW5) stated that on 3/1/2015 while at work Muungano Dispensary (government facility), he hosted three people along

the OCCID Mtwara whom they are familiar, used to work together in incident of bodily injuries, attending casualties under his capacity as clinical officer, or sometimes availing gloves to the OCCID. To his bewilderment, only to hear from the OCCID that they visited there to arrest him for participating in the incident of terrorism at Songea. DW5 asserted to have remained in cell at Mtwara till on 5/2/2015 when he was transported to Mtwara by bus and then arraigned in Court on 6/2/2015. DW5 stated that the DCI never appeared to testify to prove that DW5 was arrested on 4/1/2015 as alleged by PW26. DW5 stated that no witness appeared to prove that he was arrested on 4/1/2015. DW5 stated that no witness appeared neither exhibit tendered to prove that he was transported from Mtwara to Dar es Salaam, where PW26 alleged to had recorded DW5 caution statement. He dispelled to have communicated with the First Accused for receiving Zuberi on 30/12/2014. He denied knowing Zuberi.

The issue for determination is whether the information was proved on the required standard against the accused persons.

As per the recap above, there are two sets of pieces of evidence which implicate the accused persons; One, the eye identification of PW1 against the First and Second accused; Two, caution statement exhibit, P11 for the First Accused, exhibit P12 for the Fourt Accused, exhibit P13

for the Second Accused, exhibit P14 for the Third Accused and exhibit P15 for the Fifth Accused.

Regarding the identification of the First and Second Accused at the scene by PW1. According to PW1, while at Mallatabu on normal march heading to Mji Mwema Matalawe, they suspected people were pursuing them on the rear walking on similar steps, they PW1 and colleague PW5 and PW11, stopped to pave way to those people, where those people passed on a high speed. According to PW1 he saw two people passing them on high speed. At the same time PW11 said they noticed three people were trailing them. PW5 who was suggesting to be the first to note the unusual event of people trailing them from behind, asserted to have tipped his colleague. According to PW5 upon suspecting them, those two people accelerated speed, passed them and negotiated to the other side, where they failed to see and locate them due to movement of people at the market.

In view of the above uncertainty of account of events, PW11 suggesting seeing three people, while PW1 and PW5 seeing only two people, indeed PW5 suggested it was a market place with movement of people, it cannot be said that the identification by PW11 was cogent. Above all the testimony by PW1 was suggestion to have identified the two people at the verge of passing, indeed on high speed. To my view, the

identification PW1 to the First and Second Accused allege by shape, due being short, one fat, one slim tall, cannot be said to have amounted to a proper identification. This is because nowhere PW1 said to have even come across eye by eye or face to face with the alleged two people. PW1 did not explain a distance between him and the accused at the time of identification, neither stated any period time remained under observation to say his identification was credible and reliable.

On examination in chief, PW1 did not explain the source and intensity of light which aided his identification. It is on cross examination by the Counsel for the First accused where PW1 said there was enough light illuminating from the house along the rough road. Equally it is on cross examination where PW1 stated to have stood a distance of between 3 to 5 meters, when the two people were passing. But still PW1 could not mention a type of electricity lights and a distance from where it was illuminating.

As much the First and Second Accused were strangers to PW1, and in view of a fact that no even identification parade was conducted to cement his identification and eye recognition, I rule his identification to be too weak and hence unreliable.

The Second cluster of evidence presented by prosecution was caution statements exhibit P11, P12, P13, P14 and P15. It is to be noted

that exhibit P12 for the Fourth Accused and exhibit P13 for the Second Accused, were objected on the point of law only. While exhibit P11 for the First Accused, P14 for the Third Accused and P15 for the Fifth Accused were repudiated. However, all exhibits P11, P14 and P15 were cleared for admission, to have passed a test of voluntariness at the trial within trial.

It is common ground that all exhibits P11, P12, P13, P14 and P15, were recorded after elapse of a statutory period of four hours counting from when the Accused persons were apprehended. Indeed, prosecution witnesses and recording officers PW17, PW23 and PW24 conceded to this fact. The explanation to the delayment, is that it was attributed by complexity of chain of investigation, accused persons leading and assisting to apprehend their associates, as put by PW21 and PW26. In the course of cross examination in respect of the above facts, the defence Counsel queried as to the alleged complexity while the evidence by PW21 and PW26, suggest the chain of arrest was by way of visiting or to be taken (led) to a particular specific destination and pick the intended culprit without any intricacy. Certainly, a quick look on the testimony of PW21 and PW26, one might rush to draw such a simple conclusion. However, as put by PW24 that challenges encountered in investigating terrorism acts, include a fact that they are new crimes emerged over recently mid-2013, offenders plan prior implementing their criminality. Also, PW21,

asserted that investigation of terrorism offences entails secret investigation because incident of terrorism are done secretly.

To my respective view, the argument that investigation and arrest of culprits of terrorism acts is complex and complicated, cannot be easily disdained. As it transpired herein, the arrest of the Second Accused on 29/12/2014 at Majengo area, then Fourth Accused on 2/1/2015 at Mkuzo Area followed by the Third Accused on 4/1/2015 at Mbamba Bay, was gradual and entailed experts and specialist of investigating officers of the terrorism offences (PW21) and cyber (P26).

I agree an argument that in totality, terrorism acts are in a form of organized crimes, committed on top secret, suspects are scattered and suspects led into apprehension of associate as depicted by PW21 and PW26.

In view of that, the argument that the investigation was complex, is valid. It is the law that in computing a period available for interview a person under restrain, the period of time while the police officer refraining from interviewing that person for purpose of doing any act connected with the investigation or being conveyed to other place for purpose connected with investigation, shall not be reckoned as part of period or time, see section 50 (2) (a) of the Criminal Procedure Act, Cap 20 R.E. 2020.

I therefore rule that a delay to record exhibit P11, P12, P13 and P14 was justifiable, and therefore I rule that the period under which the Second Accused (exhibit P13), Fourth Accused (exhibit P12), Third accused (exhibit P14) and First Accused (exhibit P11) were under investigation, is excluded from computation of time of four hours. In lieu thereof, the period of four hours is deemed to have commenced to run against them upon arrival at Dar es Salaam, where they were ultimately formerly interrogated.

I have skipped the Fifth Accused (exhibit P15) from the above exemption, for obvious reason that there was no proof as to when he was actually arrested and taken or arrived at Dar es Salaam Police Headquarters as alleged by PW24. PW24 testified on reported speech that he heard from the DCI that the Fifth Accused was arrested on 04/01/2015.

But neither the DCI or arresting officer appeared to substantiate this fact. Therefore, a defence by DW5 that there is no evidence to vindicate that he was arrested on 04/01/2015, is valid. Above all, no any officer appeared to prove that the Fifth Accused was indeed transported from Mtwara to Dar es Salaam. In view of that, exhibit P15 is worthless.

When I was ruling on admissibility of exhibit P13, I reserved a finding on the question of warranties of arrest, detention register, and movement order in respect of the Second Accused.



However, all that was argued in view of establishing that exhibit P13 was recorded after expiry of four hours accounting from when he was arresting. To my view this issue was taken into board on my findings above, where I have held that indeed it was eligible for exemption for reason stated above. As such this ground dies a natural death.

Regarding an argument that a statement under section 58 ought to be recorded by the Second Accused himself, for the explanation that the role of PW23 ought to have been to facilitate the former with writing materials.

To my view, this argument is invalid following the introduction of subsection (4) to section 58, vide the Written Laws (Miscellaneous Amendment) Act No. 3 of 2011. According to section 58(4) Cap 20 R.E. 2019 provide,

*"Subject to the provisions of paragraph (e) of section 53, a police officer investigating an offence for the purpose of ascertaining whether the person under restraint has committed an offence may record a statement of that person..."*

It is to be noted that the provision of section 58 fall under sub heading (d) of heading B titled powers and duties of police officers when investigation offences, which is under Part II titled procedure relating to criminal investigations.

Therefore, for all intents and purposes when PW23 was recoding exhibit P13 was discharging his duty of investigating an offence. Therefore, exhibit P13 was recorded in compliance with the law.

When I was deliberating on admissibility of exhibit P14 I served a question regarding an argument that the Fourth Accused did not sign at a certificate of exhibit P14. It is the legal requirement that having recorded a statement of the a person under restraint and after being satisfied that there is no further additional statement, alteration or correction, the maker is mandated to sign a certificate to that effect. As alluded by the defence Counsel, the purpose of a certificate is to authenticate the statement.

To my opinion, omission to sign at a certificate is as good one as no certificate was made at all. To my opinion the omission is fatal, because it goes to the root to affect the reliability of its content. A mere fact that the Third Accused had initialed on each page cannot be said to have been done in lieu of a certificate. This is because initializing each page and signing at a certificate are two distinct requirement of the law and each save its own purpose in the statement. The omission is fatal and the resultant render exhibit P14 to be unreliable.

It is to be noted that in exhibit P11, the First accused confessed attending training and meeting (dahawa) for planning to execute terrorist

acts and procuring weapons, fund raising (contribution) among group members for purpose of purchasing fire arms for purpose of carrying out terrorist acts, obtaining or attending of training on making homemade bombs, planning and participating in executing incidents dated 16/9/2014 at Mabatini, and on 25/12/2014.

Likewise, the Second Accused confessed to have attended meeting planning to execute terrorist acts, participated on the incident dated 16/9/2014, attacking police officers by a bomb, planting a bomb at Mshangamo traffic check point, and an incident of detonating a bomb on 25/12/2014.

The Third Accused equally confessed to have attended meeting (shura) on formulating Jihad group and executing terrorism acts to instill Islamic state (sharia) in Songea, attacking police officers on patrol to procure fire arms, to make bombs, participated in the incident of detonating bomb dated 16/9/2014 at Mabatini, 26/10/2014 at Mshangano by planting a bomb and an incident dated 25/12/2014.

The above confession by the First, Second and Third Accused, to my respective view, is compelling. Substantially the First, Second and Third Accused admitted to have committed the terrorism acts mentioned above. The Fourth and Fifth Accused are acquitted.

The First, Second and Third Accused are convicted for count number one, two, three, four, five, six, seven eight, ten eleven, twelve, thirteen and fourteen as illustrated above.



**E.B. LUVANDA**  
**JUDGE**  
**22/12/2023**

Judgement delivered by way of remote judging through virtual court attended by the First, Second, Third, Fourth, Fifth Accused, Mr. Augustino Mahenge learned Advocate, Mr. Makame Sengo Advocate holding brief for Mr. Melkion Mpangala learned Counsel, Mr. Elius Ndunguru learned Counsel, Ms. Naomi John Ngoga learned Counsel and Mr. Zuberi Maulid learned Counsel; Mr. Frank Chonja learned State Attorney for the Republic.



**E.B. LUVANDA**  
**JUDGE**  
**22/12/2023**

## SENTENCE

This is a normal Criminal Sessions, therefore as alluded by Mr. Eliseus Ndunguru learned Advocate the provision of section 60(2) of Cap 200 cited by the learned State Attorney, is in applicable.

Now, considering the time spent in remand by the First, Second and Third Accused from 2015 to date. To my view, the First, Second and Third Accused deserve consideration.

I therefore sentence the First, Second and Third Accused as follows:

Count number one and three, each to serve a term of fifteen years, which is a minimum under the penal statute.

For count number ten eleven, twelve, thirteen and fourteen, each accused person is sentenced to serve a term of fifteen years in prison.

Unfortunate offences under count number two four, five, seven and eight, there is no penal measure prescribed in the statute, therefore posing challenges in sentencing.

Sentence in count number one, three, ten, eleven, twelve, thirteen, and fourteen will run concurrently.



**E.B. LUVANDA**  
**JUDGE**  
**22/12/2023**

