

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB REGISTRY OF MANYARA)**

AT BABATI

CRIMINAL SESSSIONS CASE NO. 48 OF 2023

REPUBLIC

VERSUS

PAULO SIPITECK LAIZER @KUTATU

Date of Last Order: 05.03.2024

Date of Judgement: 08.03.2024

JUDGEMENT

MAGOIGA, J.

The accused person, **PAUL SIPITECK LAIZER @KUTATU** stand charged before this Court with one offence of attempted murder contrary to section 211 (a) of the Penal Code, [Cap 16 R.E.2022].

The particulars of the offence as per the charge sheet were that, on 24th day of May, 2023 (the material day) at Ngage village within Simanjiro district in Manyara region, the accused person unlawfully attempted to cause death of one, WALTER s/o KAAYA by shooting him with the gun.


The accused person pleaded not guilty to the charge; hence full trial was ensued. The prosecution in proof of the charge in issue called six witnesses and tendered 6 exhibits. The defence was entered by two witnesses and tendered 3 exhibits.

The substance of the prosecution case was opened by **H9761 PC TITO** (to be referred herein interchangeably as "**PW1**"). PW1 under oath told the

court that he is police officer stationed at Simanjoro police station situated at Orkesmet. According to PW1, he is the Exhibit Manager responsible for safe custody of exhibits collected during investigations.

According to PW1, he remembers that on 25/05/2023 he received for safe custody one used bullet cartridge from E9338 Jossam allegedly used in ORKT/IR/319/2023. PW1 told the court that, he again on 30.05.2023 received one pistol type of Berreta with registration No. F56517W with five bullets in the magazine and Gun Registration Book. At all material time PW1 used chain of custody form to receive and issue those exhibits when needed for investigations or other official duties and marked them according to the IR report in issue.

Further testimony by PW1 was that on 13.06.2023 using chain of custody form issued the said exhibits to E9338 D/Sgt Jossam to take the said exhibits to Dar es Salaam for examination by the expert and that on 20/06/2023 the said exhibits were returned to him for his safe custody. According to PW1, the Gun Registration Book showed the owner of the pistol is one Paulo Sipiteck Laizer. PW1 tendered in evidence one pistol with registration No. F56517W, three used bullet cartridges, 3 unused bullets and gun registration book as exhibit P3a-d. PW1 also tendered chain of custody in evidence as exhibit P4. And lastly through cross examination, the defence tendered **exhibit D1** which is his witness statement.



Next witness was **WALTER ISAAC KAAYA** (to be referred as '**PW2**'). PW2 under affirmation told the court that he is a farmer in large scale (agribusinessman) and on the material day of 24/05/2023 at around 6 pm he was at Ngage village and exactly at his farming camp when he saw a group of cattle in his farm. According to PW2, him and other persons he mentioned as Jamal Yasin and his neighbour Erasto went to the farm and started taking the cattle outside the farm and that because the cattle were without a shepherd, PW2 managed to take them out of the farm and decided that they should be kept in their temporary kraal till the owner comes. According to PW2, Jamal Yasin identified the cattle as that of Paul Sipiteck Laizer because had a mark of "SK". PW1's further testimony was that they tried to call him but was not reachable. PW1 went on telling the court shortly the owner arrived together with two boys and obstructed the taking of the cattle to the temporary kraal and in the course of arguing the owner of the cattle shot him on his right side of the chest with a pistol on the right chest. PW2 told the court that he pleaded with the attacker not to kill him and in the circumstances, the owner and boys took the cattle and vanished.

PW2 further testimony was that, he severely bled and was taken to hospital and later to Kilimanjaro Christian Medical Centre (KCMC) where he was



admitted, treated and operated to save his life. PW2 identified the accused person as the person who shot him at closer range.

The defence through PW2 tendered in evidence his witness statement through cross examination as **exhibit D2**.

Next was **E9338 D/Sgt JOSSAM** (to be referred as '**PW3**'). PW3 under oath told the court that he is a police officer and was the investigator of this criminal case. PW3 went on telling the court that on 24.05.2023 together with the OC-CID Simanjoro went to the scene of crime after getting information that there was a gun shot and one person has been seriously injured on the chest. At the scene of crime, PW3 was able to draw sketch map with the help of Erasto Ndobanguti using torches and car lights and retrieved one used bullet cartridge. PW3 tendered sketch map of the scene of crime as **exhibit P5**.

Further testimony of PW3, was that he handed over the used bullet cartridge to PW1 for safe custody in the next morning. PW3 told the court that Jamal Yasin was the eye witness from the record of the file he was assigned to investigate. According to PW3, he learnt from witness statement of Jamal Yasin that, the person who injured PW2 was KUTATU. PW3 on telling the court that he started man hunting of KUTATU and was able to arrest him on 30.05.2023 at Nyumba ya Mungu village and that upon his arrest searched him and was found with a pistol, Berreta type with registration

No. F56517W silver in colour, magazine with five ammunition, Gun registration book and he filled a certificate of seizure which he tendered as **exhibits P3a-d and P2** respectively.

Furthermore, PW3 testified that he recorded other witnesses' statements and took exhibit P3 to Dar es Salaam for forensic examination which revealed that the used bullet cartridge found at the scene of crime was fired from the gun owned by the accused person in this case. The other testimony of PW3 as to the custody of the exhibit is as that of PW1. PW3 identified the accused person as the person who owns the pistol which was used to fatally injure the victim.

Next was **JAMAL YASIN** (to be referred as "**PW4**"). Under affirmation PW4 told the story similar to that of PW2 and that he was present and saw the accused pulling a pistol and shot PW2. PW4 told the court that he knew the accused person long time and he has been going to their camp. As to the cattle entering into the farm, PW4 told the court that this was not the first time but second time and he also identified the cattle by the mark of 'SK'. PW4 told the court that the accused person was dressed in traditional Maasai dressing and knew him as Paulo Sipiteck Laizer @Kutatu.

Next is **DR. TERESIA EDWARD MWAKYEMBE** (to be referred as '**PW5**'). PW5 was called for cross examination and identified **exhibit P1** as the document he filled after attending PW2 (the victim) at KCMC. According to

PW5, the injury was fatal and occurred at chest and abdominal and that during surgery there were gun wounds in the body of the victim and clotted blood.

The last prosecution witness was **Superintendent of Police JOHN MAYUNGA SANGIJA** (to be referred as '**PW6**'). Under oath PW6 told the court that he is police officer trained in arms and ballistic examinations. PW6 told the court that on 14.06.2023 while in his official duties he received exhibit P3 from PW3 and examined it against the used cartridge and concluded that the used bullet cartridge was fired from the pistol owned by the accused person. PW6 tendered in evidence ballistic report as **exhibit P6**.

This marked the end of the prosecution case and thereafter, this court found the prosecution to have established prima facie case to require the accused to enter defence. The accused upon being addressed of his rights in accordance with the law, opted to give his defence under oath and called one witness to support his story.

PAULO SIPITECK LAIZER (to be referred as '**DW1**'). Under oath told this court that his names are PAULO SIPITECK LAIZER and denied being known as "**KUTATU**". DW1 went on telling the court that he is a farmer and pastoralist as well. DW1's further testimony was that on 24.05.2023 at around 6pm, he received a phone call that his cattle are in the farm of



Mjeshi and made a follow up. Upon arrival at the scene of crime, DW1 found several men taking his cattle which were not in the farm as told to their kraal and resisted such a move. In the course, PW2 knocked him with the motor cycle which he was hooting all the time. According to DW1, the second attempt to hit him caused both of them to fall down in the trench and upon the victim seeing his pistol in dispute which was hidden in his clothes, tried to snatch it from him and in the course accidentally the bullet went off and injured the victim. DW1 denied to have unlawfully injured PW2 and that it was an accident due to scramble of taking the pistol from him. DW1 told the court that he was the one who helped the victim to hospital and he decided to leave the place for security reasons.

Next for defence was **SUMAYE KALUDIN** (to be referred as '**DW2**'). DW2 is another eye witness on the material day who was with the accused person and gave a similar story as that of DW1 and went to tell the court that he was also injured twice in the fracas by the victim. DW2 told the court that after the bullet they ran away and he knew nothing as to what followed.


This marked the end of hearing of this criminal suit on merits.

The noble task of this court now is to make a finding as to whether the Republic have been able to prove the case against the accused person to the standard required in criminal cases. The standard, is always, beyond

reasonable doubt. See the case of **Mohamed Haruna @ Mtupeni and another Vs. Republic**, Criminal Appeal No.25 of 2007 (CAT) (Unreported).

Having heard both sides evidence in this criminal case, I have noted that there are some facts not in dispute and which will assist this court in resolving the issue at hand. These are: **one**, there is no dispute that on 24.05.2023 the accused person's cattle were at Ngage village and went into the farm owned by Levinda Otieno or Mjeshi. **Two**, there is no dispute as well that on material day in the course of taking the said cattle from the farm to the temporary kraal, the owner arrived and resisted such a move, which raised a commotion between the victim and the accused person herein. **Three**, there is no dispute as well that the victim was shot on his right chest by pistol the property of the accused person. **Four**, there is no dispute that on the material day and date as alleged in the charge sheet the accused person and the victim were at the scene of crime and argued as to where the alleged cattle were to be taken.

However, what is in serious dispute is whether the gun shot which injured the victim (PW2) was unlawfully fired by the accused person as alleged by prosecution or was an accident due to the two falling in the trench in the course of arguing where the cattle were to be kept as defended by the accused person.



Nevertheless, before answering the above issue, I wish to point out that in charge of attempted murder like the instant one, the Court of Appeal in interpreting section 211 of the Penal Code [Cap 16 R.E.2022] in the case of **BONIFAS FIDELIS @ ABEL Vs. REPUBLIC** [2015] TLR 156 insisted and held that:

"There are four ingredients of attempted murder that can be discerned from section 211(a) of the Penal Code [Cap 16 R.E.2002]. Firstly, proof of intention to commit the main offence of murder. Secondly, evidence to prove how the appellant begun to employ the means to execute his intention. Thirdly, evidence that overt acts which manifests the appellant's intention. Fourthly, evidence proving an intervening event, which interrupted the appellant from fulfilling his main offence, to such extent if there was no such interruption, the main offence would surely have been committed."

Guided by the above legal stance, and back to the instant case, I am imperatively enjoined to see if the prosecutions who have unchanging duty managed to prove each ingredient which have to be proved cumulatively for the offence of attempted murder to stand. In this case it was the prosecution case by PW2 and PW4 (eye witnesses) that when the accused

arrived and resisted the taking of cattle to the temporal kraal of the victim, he asked the victim why was he scaring his cattle by motor cycle and before any explanation, the accused pulled out a pistol and shot the victim. The shot was at right chest which is vulnerable part which, if it was not to be attended by proper medical treatment, the offence was to be murder or manslaughter. How to establish intention in criminal cases guidance can be sought in the case of **BUJIGWA JOHN vs. REPUBLIC**, criminal appeal no. 427 of 2018 bukoba cat (unreported) in which the Court of Appeal referred the case of **ENOCK KAPELE vs. REPUBLIC** at page 19 in which the court held that malice aforethought (intention) can be inferred from various factors such as: *'type and size of weapon, if any, used in attack, the amount of force applied in the assault, the part or parts of the body the blow or blows were directed or inflicted, the number of blows although one blow may, depending upon the facts of the particular case, be sufficient for this purpose, the kind of injury inflicted, the attackers utterances, if any, made before or during or after the killing and the conduct of the attacker before and after the killing.'*

In this case, there is no dispute that the alleged injury was caused by the gun the property of the accused person and that the injury was directed to the vulnerable part of the body as evidenced in exhibit P1. In the totality of

the above, I find the Republic have established by both oral and documentary (exhibit P1) evidence that, the accused, actually by his conduct, intended to murder the victim.

The second ingredient to consider is how the accused person employed the means to execute his intention. In this case from the testimonies of PW2 and PW4 who are eye witnesses, the accused used gun to execute his intention and aimed at very vulnerable parts of the body. So, in my considered opinion, I find this ingredient proved in this case.

The third ingredient to consider is evidence that proves overt acts which manifest the accused person's intention. Like in the second ingredient, the prosecution have managed to prove this ingredient by evidence of PW2, PW3 and PW4 that it was the overt act of the accused person who inflicted the shot to the victim.

And lastly that evidence proving an intervening event, which interrupted the accused from fulfilling in main offence, to such extent if there was no such interruption, the main offence of murder would surely have been committed. This ingredient will not detain me much because had it not been the victim been rushed to the hospital, given the evidence of PW2 and PW4 that he was severely bleeding murder could have been complete.

With that note, I find that the four ingredients in this case have cumulatively been established.



I have as well noted some discrepancies in oral testimony of PW2 and PW4 that the victim was shot while on the motor cycle and while down after plunging into a ditch. While PW2 testified that in the course of moving the cattle his motor cycle fallen down and he was shot while lying down, PW4 testified that he was shot while driving the motor cycle. I have carefully considered this piece of evidence but in my respective opinion and guided by the overriding principle, I find the discrepancy so minor and does not by itself negate or create any doubts to the prosecution case because the fact that the accused shot the victim at what position is immaterial whether he was down or on the motor cycle.

I have as well considered the accused person's defence that he was knocked down for the first time and run away to hide in the cattle. And that, the second time the victim knocked him they all fall down in the trench(korongo). I have considered this piece of evidence along the contents of exhibit P5- the sketch map of the scene of crime which was admitted without any objection and I have as well considered that PW3 was not challenged on the place where the accused was and the victim in that exhibit, all considered I find this defence does not hold water in this case. No single question was put to PW3 on where the victim was and the accused person was. Not only that but the accused and DW2 wanted this court to believe them that the victim knocked them down by the motor

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cycle, but unfortunately on their part, none went for medical treatment at least to justify that were injured in the fracas. This is an indication that the accused defending that both fall on the trench is an afterthought on his part and do not discredit the strong evidence by prosecution that he was five paces from where he shot the victim.

Furthermore, if the accused person's life was in threat as he wants this court to believe, reasonably, one would expect the accused person to fire up a shot to warn the victim but this was not done at all. The contents of exhibit P1 speaks volumes of the extent the bullet caused injuries to the victim.

I have as well considered the evidence of DW2 alongside the evidence of DW1 but I don't find anywhere creating any doubts to the strong prosecution case that it was the accused person who shot the victim using his pistol and on that note, I reject the defence of the accused person that the injury was accidental because his conduct after the act does not suggest so because he went hiding till when he was arrested by PW3 at Nyumba ya Mungu village within Simanjiro district in Manyara region on 30.05.2023.

Not only that, but I have as well considered the defence to property, but in this case, taking of the cattle to the temporal kraal was not theft or denying completely the ownership of the accused person but was just to allow the



discussion of the damage caused to the farm. Therefore, there was no legal justification for the accused person to use a gun in the circumstances.

In the circumstances, I find all legal defence of person and property not justified in this case.

That said and done, I am of the considered opinion that, in this case the Republic dutifully discharged their legal duty beyond reasonable doubt and consequently, I hereby convict the accused person for the offence of attempted murder contrary to section 211(a) of the Penal Code [Cap 16 R.E.2022] as charged.

It is so ordered.

Dated at Babati this 8th day of March, 2024.



**MAGOIGA
JUDGE
08/03/2024**