

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
(SITTING AT TABORA)
CRIMINAL SESSIONS CASE NO. 99 OF 2023**

**THE REPUBLIC
VERSUS
1. REUBENI S/O SAMWEL @ MAIKO
2. HAMIS S/O BEMBE @ MAJAZI
3. JUMA S/O NASSIB @ MACHO**

JUDGMENT

Date of the Last Order: 07/03/2024

Date of Judgment: 22/03/2024

KADILU, J.

The trio stand charged with murder contrary to Sections 196 and 197 of the Penal Code [Cap. 16 R.E. 2019]. The prosecution alleges that on the 30th day of March 2020 during night hours at Kidatu 'B' area within Municipality and Region of Tabora, the accused herein murdered a Military Officer one, MT 117342 PTE Samwel Machugu Anthony. When the charge was read over to the accused, each pleaded not guilty. To prove the case against the accused persons, the prosecution paraded ten witnesses and tendered a postmortem examination report together with cautioned statements of all the accused persons. The accused defended themselves and they did not tender any exhibit. Further, the court admitted a sketch map of the scene of the crime for identification and future use in the administration of justice.

The factual narration from the prosecution shows that on a fateful night, the deceased and his two neighbours who are also Military Officers

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went out of their houses for patrol. As time went on, it started raining so they decided to go back. On their way, they allegedly met the accused at Kidatu 'B' area where they planned to rob the M-Pesa shop. The deceased and his fellows started chasing the accused persons, but after a certain distance, the two colleagues got tired and stopped.

The deceased continued chasing the accused alone. They then stopped and attacked him with an axe on the head and chest while others were beating him with a stick at the back until he became helpless. The accused took the deceased's phone, destroyed it, and threw it to rice farms. They escaped to Nzega District leaving the deceased's body at the 7th electricity pole (Nguzo ya Saba). The deceased's fellow tried to call him but his phone was not reachable. They awakened his close friend and went with him to the deceased's wife searching for him unsuccessfully.

The deceased's body was found between the 7th and 8th Electricity poles the next day morning. The incident was reported to police who went to the scene and took the deceased's body. The facts are silent about what followed from 30th March to the 2nd day of June 2020 when the 1st and 2nd accused were arrested at Nzega in connection to the offence of robbery. They were detained in Nzega Police Station and after the interrogation, they allegedly disclosed their involvement in murdering the deceased. They were transferred from Nzega to Tabora Central Police Station where their cautioned statements were recorded.

They were further taken to the Justice of the Peace where they recorded their confessions. The first and second accused were taken to court

on 18/06/2020 whereas the third accused was arrested by the Village Chairman of Kidatu 'B' on the 19th day of June 2020. He was at St. Francis within Tabora Municipality. He was informed that his arrest was in connection with stealing a bicycle belonging to one Ramadhani Nyamandoto. He was taken to Tabora Central Police Station where on interrogation, it was realized that he was also involved in murdering the deceased on 30th March 2020. All the accused persons alienated themselves from the charged offence. They stated that they never knew each other before they met at the police station and joined in the instant murder case.

In a murder charge, the prosecution is required to establish the death of the deceased, that the death was unnatural, and that it was caused by an intentional unlawful act or omission of the accused. In the case at hand, Dr. Laizer Nelson who testified as **PW9** stated that he conducted a postmortem examination of the deceased's body. Before the examination, PW9 found the deceased's body with big wounds on the face, head, and back. He also found black colour in the deceased's eyes which was an indication that his head was hit hard resulting in blood clotting in the skull. According to PW9, the deceased's hands, stomach, and legs had some bruises, and the back side of the head (*kisogo*) was depressed implying that the head was hit with a blunt object.

After the examination, PW9 concluded that the cause of death was severe brain injury which resulted in internal bleeding. PW9 tendered the postmortem examination report that was admitted as exhibit "P3." From the foregoing, it is undisputed that MT 117342 PTE Samwel Machugu Anthony died, and the death was indeed unnatural. The subsequent issue for

determination is whether the accused persons herein were the ones who had killed the deceased. **PW1, SSP – George Wilbard Bagiem**, told the court that at the time of the incident, he was the Officer Commanding District (OCD) of Tabora who was informed through a phone call on 30/03/2020 that the deceased's body was found in Mtendeni Ward, Kidatu area between the 7th and 8th Electricity poles. He went to the scene and took the body to Milambo Military Hospital.

After a while, PW1 was called by an informer (Mang'ombe) who stated that there were people who were not residents of Kidatu but in the past few days were found around Kidatu and were suspected to be responsible for the death of Samwel Machugu. PW1 did not expound on the steps he took after having received the information. He, however, stated further that on 02/06/2020, he was called by the OC-CID of Nzega who informed him that there were two people arrested in connection to other offences at Nzega, but during the interrogation, they revealed that they were involved in a murder incident that took place at Tabora Municipality.

PW1 instructed police officers from Tabora Central Police Station to go to Nzega to take the suspects. **PW3, Super Intendent Isack Lema**, testified that on 02/06/2020, he received a phone call from the RPC - Tabora informing him that some suspects of armed robbery were arrested at Nzega and they were linked with a murder incident that took place in Kidatu 'B' at Tabora. He then communicated to **F.3308 D/C Seth** (PW4) and went to Nzega with him where they found the first and second accused already arrested. They took the suspects to Tabora and on reaching there, he interrogated the suspects orally while in his office.

According to PW3, the second accused admitted that he participated in killing a military officer on 30/03/2020 at 2:45 hrs. He told PW3 that he (2nd accused) was in a gang led by Hussein @Seni and the deceased was accompanied by two other military officers. At Tabora Police Station, PW4 recorded a cautioned statement of the 1st accused person (exhibit P1). PW3 explained that they continued to search for other suspects up to 19/06/2020 when he was informed by Kidatu citizens that they had arrested the 3rd accused, Juma Macho. PW3 and other police officers went to Kidatu 'B' and took the 3rd accused to Tabora police station for investigation.

According to PW3, during oral interrogation with the 3rd accused, he admitted being involved in killing a military officer at Kidatu 'B' on 30/03/2020. **PW8, G.373 D/SGT Mussa** recorded a cautioned statement of the 3rd accused (exhibit P2) in Tabora Central Police Station on 19/06/2020. PW8 testified that the 3rd accused told him that he was arrested by citizens at Kidatu 'B' who then called the police to take him. It was further testimony of PW8 that during the interview with the 3rd accused, he admitted having been involved in killing Samwel Machugu Anthony by using an iron steel (*nondo*) while his friend, Hussein @Seni was cutting the deceased on the head with an axe and others were beating him with a stick.

F.3308 D/C Seth was the investigator of the case who testified as PW4. He narrated that on 30/03/2020, PW1 and PW3 informed him that there was a murder incident that occurred at Kidatu 'B' area. The trio went to the scene between the 7th and 8th Electricity Poles where they found the deceased's body covered with a piece of cloth and surrounded by several people including military officers. They inspected the scene and the body in

which they saw a fresh wound on the head. Thereafter, they took the body to Milambo Military Hospital but at that time, the suspects were still unknown.

PW4 stated in addition that on 02/06/2020, PW3 informed him that he received a phone call from Nzega police station that two suspects had been arrested, and during the interrogation, they disclosed that they were involved in the killing of Samwel Machugu Anthony at Tabora. PW3 instructed PW4 to accompany other police officers in going to Nzega to pick up the suspects. On arrival at Nzega Police Station, they found the 1st and 2nd accused already arrested and took them to Tabora Central Police Station. PW4 elaborated that in Tabora Police Station, PW3 interrogated the 1st and 2nd accused and later instructed PW4 to record their cautioned statements.

PW4 stated that during the interview with the 1st and 2nd accused, they admitted having killed Samwel Machugu at the 7th Electricity Pole in Kidatu 'B.' In particular, the 1st accused confessed to having killed Samwel Machugu on 30/03/2020 at 2:00hrs. He said he was with Hussein @Seni, Swalehe, together with the 2nd, and 3rd accused persons. PW4 explained the 1st and 2nd accused revealed to him that they were going to the 5th Electricity Pole at Kidatu to rob the M-Pesa. On the way, they met three people who introduced themselves as cooperative guards (*Walinzi Shirikishi*) and asked them to stop so they could be searched.

After that order, the 1st accused and his co-offenders ran to the 8th Electricity Pole and the deceased started chasing them. After running for a while, the deceased's colleagues got tired and went back but the deceased continued to pursue the accused. At the 8th Pole, the accused persons

stopped. They lit a torch at Samwel's eyes. Hussein @Seni shot some bullets in the air. He took an axe and cut the deceased on the head. Reuben (first accused) took an iron sheet (*Nondo*) and hit the deceased on the back. Having ensured that Samwel Machugu was already dead, they took his phone and destroyed it before throwing it on rice farms. They left heading to a marketplace (Mnadani) where Reuben went to Nzega accompanied by Hamis (2nd accused) and the rest went to their homes.

PW2, Insp. Jafari Said was the one who arrested the 1st and 2nd accused persons. By that time, he was a Deputy Investigation Officer at Nzega Police Station. His testimonial account was that on 02/06/2020 in the morning hours, he received secret information that there was a gang that was preparing to commit the offence at Nyasa, within Nzega District. He went to Nyasa accompanied by the OC-CID and other police officers. They found the suspects under a mango tree. One of them saw the police officers and informed the others who started running away. PW2 and his colleagues pursued the suspects and arrested two of them although there were five in total.

PW2 took the two suspects (1st and 2nd accused) to Nzega police station and interrogated them. They confessed that they were the offenders involved in several criminal incidents around Nzega and Tabora Municipality. They narrated that they used to commit crimes by using weapons. They hinted that they were the ones who killed a Military officer at Kidatu 'B' within Tabora Municipality. They said they attacked and injured him in the head before robbing him. **PW5, WP 12639 D/C Secilia** was a police officer at

Tabora Police Station at the time of the incident and was the deceased's wife.

She testified that on the fateful date at about 23:50hrs, the deceased and she heard the dogs barking near the neighbour's house. They called the neighbours by phone but were unreachable. They went out but they could not see anything. After a while, the deceased received a phone call from his friend, Sharifu Mwalimu @ Teacher (PW6). The deceased informed PW5 that he was called to join his friends on patrol so, he went out at 00:00hrs. PW5 testified that at about 3:00hrs, PW6 went to the deceased's home accompanied by **MT 117338, PTE Salumu Omari Mshangama** (PW7) and their other neighbour, Ramadhani Swalehe.

PW6 asked PW5 if her husband had come back to which she replied that he had not. PW6 told PW5 that they were at the 5th pole with the deceased but it started raining hence, each of them went back home. He added that the deceased called him stating that he (the deceased) saw the thieves running towards the 6th Electricity Pole. PW6 explained that he called PW7 and followed the deceased, but when trying to call him by phone, he was unreachable which was why PW6 went to the deceased's home looking for him. PW5, PW6, and PW7 reported the incident to the Hamlet Chairman and Isevyu Police Station.

PW5 testified more that PW6 reported the matter to their office and at about 6:00hrs the next day, they all started searching for the deceased. Near the 5th Electricity Pole, they met a motorcyclist who informed them that he saw a body laying along the wayside. PW6 and PW7 were the deceased's colleagues who were with him on patrol before his demise. Their testimonies

are more or less the same as PW5's evidence. They both elaborated that when it started raining, they turned back home. The two escorted the deceased to his home and went to their homes too, but shortly after, PW6 received a phone call from the deceased shouting and running while saying that some thieves had run to the 6th Pole.

They followed the deceased to assist him and at the 6th Pole, they met Maziara who was their fellow military officer. They called the deceased's phone, but he could not pick up and after a while, he was unreachable. After having reported the incident to the Hamlet leader, Isevy Police Station, and to their office that night, they were advised to wait until the morning so they would know what to do. PW6 explained that at about 8:00hrs on 30/03/2020, they were informed through a phone call that there was a dead body found between the 7th and 8th Electricity Poles.

PW10, ASP. Insp. Bakari recorded a cautioned statement of the 2nd accused which was admitted as exhibit P4. PW10 testified that the 2nd accused informed him that in March 2020, he was with his friends in the night going to rob Maganga's M-Pesa shop in Kidatu area. They saw *Walinzi Shirikishi* so, they decided to hide. Later they got out and met three people who started to chase them (the 2nd accused and his friends) heading to rice farms. Two of them stopped chasing the accused, but one of them continued. The accused persons attacked the deceased by using a stick, others used an axe, and others used iron steel. They cut the deceased by an axe on the face and stomach. After seeing he had died, the accused escaped to Nzega District.

On the close of the prosecution case, this Court found all the accused persons to have a case to answer and they were accordingly called to enter upon their defence. In his sworn defence, **DW1, Reuben Samwel @Maiko** denied any involvement in murdering the deceased. He stated that he was arrested on 02/06/2020 at Nzega Airport on his way to Nzega Bus stand where he owned a juice kiosk. He was taken to Nzega police station and interrogated about the robbery of shops within Nzega, which he denied. He told the court that he was beaten hard by the police officers at Nzega Police Station and when he was tired of being beaten, he admitted that he committed robbery.

After that, he was taken to the investigation room where he met a stranger and was asked by the police if he knew him, to which he denied. The police said he would tell them the truth because he knew the person. He was returned to the lock-up together with that other person whom he later knew was Hamis Bembe @Masali (2nd accused). After a while, four police officers went to the lock-up and introduced themselves that they were coming from Tabora Central Police Station. They took DW1 and the 2nd accused to Tabora police station where they were interrogated about murdering a military officer in Kidatu 'B' within Tabora Municipality.

DW1 said he denied the allegation but after a serious beating, he admitted that he murdered the said military officer on 30/03/2020. According to him, he just admitted that he killed the deceased in order to save himself from a severe beating. He requested to be taken to hospital as he had serious pains, but the police refused replying that he would better die like the said military officer. DW1 informed the court that on 09/06/2020, he was taken

to Justice of the Peace to record his confession. He informed her that he was tortured and had wounds. Justice of the Peace directed a male judicial employee to inspect DW1. He informed her that DW1 had wounds. The Justice of the Peace recorded the finding in writing and instructed DW1 to sign. On 18/06/2020, DW1 was arraigned in court facing the charge of murder.

On his part, **DW2, Hamisi Bembe @Masali** insisted that the contents of the cautioned statement he made to PW10 were untrue, as it was procured by torture. He also denied the prosecution's evidence that he participated in killing the deceased. Like DW1, DW2 testified that he was arrested at Nzega Airport, and at Nzega police station, he was accused of having committed robbery within Nzega District. He was tortured and admitted to the accusation. He was brought to Tabora Central Police Station where the accusation was changed from robbery to murder of a military officer.

He stated that at Tabora, he was tortured and forced to sign a cautioned statement admitting to having killed Samwel Machugu Anthony, the deceased. DW2 elaborated that he was taken to court on 18/06/2020 where he was told he committed murder together with the 1st and 3rd accused persons. He denied having killed anybody and that he had never committed any offence. He stated further that he did not know the 1st and 3rd accused before they met at the police station and were taken to the court facing the same charge of murdering the deceased.

DW3, Juma Nassib @Macho gave sworn evidence denying that he was involved in killing the deceased. He did not dispute the fact that he was

arrested by Kidatu B's Village leaders on 19/06/2020 and was taken to the village office. He, nonetheless, explained that his arrest was in connection to the allegation that he stole a bicycle from Ramadhani Nyamandoto. DW3 stated that after the arrest, the police officers took him to Tabora Central Police Station. At the police station, the OC-CID asked him why Kidatu youths were engaging in crime. He replied that he did not engage in any criminal activity.

The OC-CID said a military officer was killed in Kidatu 'B' so, although DW3 was suspected of having stolen a bicycle, he would be charged with murder of a military officer. DW3 narrated that he was thereafter taken to Singa's area and tortured by the police officers who wanted him to mention the people who killed a military officer. According to him, the police officers took off all of his clothes and tied him to the iron ropes that were in a room. They started beating him while saying that the OC-CID instructed them that DW3 should disclose a person who killed the military officer. DW3 said his legs were injured by being beaten with a gun's handle and a clog (*gongo*).

Consequently, he admitted having killed the military officer at the 9th Electricity Pole in Kidatu 'B' area. The next morning, he was taken to the interview room where PW8 recorded a cautioned statement and forced him to sign. Before signing, the OCS went to the interview room and DW3 informed him that he was sick due to the beating and requested to be taken to hospital. The OCS instructed PW8 to take DW3 to the hospital, but when the OCS left, PW8 said he would not take DW3 to the hospital. He was returned to the lock-up and on 21/07/2020, he was arraigned in court joined with the 1st and 2nd accused persons in a murder case.

In this case, as hinted earlier, the issue for the court's determination is whether the accused persons were the ones who killed the deceased, and if so, did they kill with malice aforethought to justify the conviction of murder against them? It is a cardinal principle that in criminal cases, except where any statute or other law provides otherwise, it is upon the prosecution side to prove their case beyond reasonable doubt as per Section 3 (2) (a) of the Evidence Act [Cap. 6 R.E. 2022]. As to what it means by proof beyond reasonable doubt, in the case of ***Samson Matiga v R.***, Criminal Appeal No. 205 of 2007, the Court of Appeal stated that:

"... to put it simply, the prosecution evidence must be so strong as to leave no doubt to the criminal liability of an accused person. Such evidence must irresistibly point to the accused person, and not any other, as the one who committed the offence."

After considering evidence from both sides, it is undisputed that MT 117342 PTE Samwel Machugu Anthony died violently on 30/03/2020 after being wounded on the head, face, and stomach around Kidatu 'B' area within Tabora Municipality. The prosecution side alleges that the accused persons killed the deceased. On the other hand, the accused deny killing the deceased and they maintain that they never knew each other before they were joined in the instant case. Section 62 of the Evidence Act provides a general rule that oral evidence must in all cases be direct, and that whatever that is not direct is hearsay and therefore not admissible as direct evidence is the best evidence.

In the case at hand, except the cautioned statements of the accused persons which I will discuss later, the entire prosecution case depends on circumstantial evidence since no one claims to have seen the accused

persons killing the deceased. Evidence was given by PW5, PW6, and PW7 to the effect that PW6 and PW7 were the last persons who were with the deceased on the night of 29/03/2020 before he met his violent death. They testified that after seeing the rain signs during the patrol, they escorted the deceased to his home and they left for their own homes. However, it was the testimony of PW5 that the deceased left his home with PW6 and PW7 and he never returned home that night. Furthermore, evidence was given by the same witnesses to the effect that the search for the deceased led to the discovery of his dead body on the morning of 30/03/2020 between the 7th and 8th Electricity Poles.

PW5 stated that PW6 called the deceased on the fateful night inviting him to join his friends in conducting the patrol and he immediately went out. On the other hand, PW6 informed the court that on 29/3/2020 at 20:00hrs, he called the deceased who said he would like to participate in a patrol that night. As a result, at about 00:00hrs the deceased went to PW6's home, and the two awakened PW7 and started a patrol. Concerning the same point, PW7 testified that on 29/03/2020, he received a phone call from the deceased informing him that he (the deceased) would like to join PW6 and PW7 in conducting the patrol. PW7 advised the deceased to inform PW6 about it, and then at 00:00hrs that day, they went for patrol.

Whereas PW6 stated that they escorted the deceased to his home, PW5 explained that PW6 and PW7 went to her home asking if the deceased was back that night. PW6 told PW5 that he received a phone call from the deceased who was by then chasing the thieves towards the 6th Pole and shortly after, he tried to call the deceased but was unreachable. This

apparent contradiction regarding the deceased's whereabouts before his dead body was later discovered, cannot be undermined more so because there was no single witness from the prosecution who cleared it with reasonable explanations.

PW5, PW6, and PW7 were categorical that none of them saw the deceased's body since they did not go to the scene of the crime. PW5 went further and stated that she does not know the cause of death of her husband. PW6's testimony reveals that before death, the deceased informed him that he was heading to the 6th Electricity Pole near Maziara's house, but PW6 and PW7 did not bother to go to the 6th Pole, nor did they awaken the said Maziara who was also their fellow military officer. Worse still, their phones were not investigated to verify the nature of their communication with the deceased before he met a brutal death.

As already noted, the prosecution case depends heavily on circumstantial evidence. The law regarding circumstantial evidence has long been settled in our country that to justify the conviction, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

The Court of Appeal has held in numerous cases that in a trial for murder where circumstantial evidence is relied on, the evidence must lead to the inevitable conclusion that the death was the act or contrivance of the accused and if there is an alternative that can, with any reasonable probability account for the death, it excludes the certainty which is required to justify a verdict of guilt. See for example the case of ***Awadhi Gaitani @***

Mboma v R. Criminal Appeal No. 288 of 2017, the Court of Appeal of Tanzania at Dar es Salaam.

Evidence of PW1, PW2, PW3, and PW4 indicates that none of them had personal knowledge about the person(s) who killed the deceased. Each got information after the death through a phone call or from interviews with the accused persons. Moreover, PW1 stated that at the crime scene, he found a hammer (*nyundo*), but he did not know if it was examined during the investigation to ascertain its association with the deceased's death. In addition, PW4 stated during cross-examination that being the investigator of the case, he discovered that there were eight suspects in this case and others had not yet been arrested.

He mentioned that they included Hussein @Seni, a gang leader who owned a shotgun and had cut the deceased with an axe. In the circumstance, there is only a mere suspicion that the accused persons participated in killing the deceased, and in the absence of evidence linking them with the killing, it cannot be said that the deceased was killed by any other person than the accused herein. That is to say, the deceased's brutal death could have been caused by another person who is still at large. According to PW4, Hussein @Seni exploded the bullets in the air before attacking the deceased to death. However, no bullet cover was tendered by any prosecution witness as part of the evidence.

Furthermore, the prosecution witnesses testified that during the interview with the accused, it was realized that they destroyed the deceased's phone and threw it on the rice farms. Surprisingly, there was no follow-up about that hint which could establish a direct linkage of the

accused with the deceased's death. They also allegedly revealed in the interrogation that they were habitual criminals who used weapons in the commission of offences. Unexpectedly, no initiatives were taken to discover more about such crucial information.

In evidence, PW4 testified that he drew a sketch map of the crime scene on 30/03/2020, but he never tendered it. In cross-examining him, Mr. Saikon Justin (Advocate for the 3rd accused) prayed to use the sketch map to impeach the credibility of PW4 under Sections 154 and 164 of the Evidence Act. The prayer was objected to by Mr. Merito Ukongoji, State Attorney on the ground that impeachment of a witness is restricted to previous statements recorded by the police, not on every exhibit. After examining the sketch map, I observed that it was not signed by its maker. I thus, found that it was not worth admitting as an exhibit but was important for future use in the dispensation of justice. For that reason, the court received it for identification purposes.

Apart from the lack of signature, the sketch map shows that the incident occurred on 31/03/2020 at 2:00hrs and the sketch was drawn on the same date. More importantly, it indicates that the incident took place in Kidatu area, Ipuli Ward within Tabora Municipality. Nonetheless, all prosecution witnesses including PW1, PW5, PW6, and PW7 stated that the incident occurred at Kidatu 'B' within Mtendeni Ward. The charge laid against the accused persons is clear that the incident took place at Kidatu 'B' area within the Municipality and Region of Tabora. Therefore, I see no variance between the charge sheet and the evidence in respect of the place where the offence is alleged to have occurred.

Coming to the cautioned statements of the accused persons, it was the prosecution's stance that each accused admitted to the commission of the charged offence. On the other hand, the accused persons elaborated in detail that the alleged cautioned statements were procured after they were tortured. The cautioned statements of the first, third, and second accused were admitted in evidence and marked as exhibits P1, P2, and P4 respectively, after the court had conducted trial within trials. This renders the accused persons' allegation that they were beaten and forced to sign cautioned statements ineffective and the court will not, at this stage, engage itself in determining the voluntariness of the cautioned statements.

The immediate question is whether this court can safely rely on the cautioned statements of the accused persons to find a conviction. I am well conscious that the best evidence to ground a conviction emanates from the accused person's own confession of the offence, but I am also aware that each case has to be decided according to its prevailing facts. It is a trite law that admission of an exhibit is one thing, but its reliability is completely another aspect as it depends on the weight or value of the exhibit. In ***Ndalahwa Shilanga & Another v R.***, Criminal Appeal No. 247 of 2008, Court of Appeal of Tanzania at Mwanza, it was observed that:

"... If the court is satisfied that the statement is properly admissible and so admits it, then when the court is arriving at its judgment it will consider all the evidence before it and all the circumstances of the case, and in doing so, will consider the weight to be placed on any confession that has been admitted. In assessing a confession, the main consideration at this stage will be, is it true? And if the confession is the only evidence against an accused, then the court must decide whether the accused has correctly related what happened and whether the statement establishes his guilt with

that degree of certainty required in a criminal case. This applies to all confessions whether they have been retracted, repudiated, or admitted, but when an accused person denies or retracts his statements at the trial then this is a part of the circumstances of the case which the court must consider in deciding whether the confession is true."

Scanning the accused persons' cautioned statements, I find them contradicting substantially with evidence given by the prosecution witnesses. For example, while the prosecution witnesses testified that PW6 and PW7 were not with the deceased when he was attacked by the accused, all the cautioned statements show that PW6, PW7, and the deceased met the accused and started chasing them. PW6 and PW7 got tired and the deceased remained alone, that was when he was attacked by the accused to death. Additionally, the prosecution witnesses told the court that the accused had an axe, iron steel, and a stick during the incident, but the cautioned statements indicate that they had a shotgun, muzzleloader gun, club, sticks, and iron steel.

The 3rd accused person's cautioned statement creates more doubt because the incident occurred on 30/03/2020 in the same vicinity where he lived, but he was not arrested up to 19/06/2020 long after the 1st and 2nd accused were arrested and arraigned in court. He was arrested by the Village leaders where he lived allegedly for having stolen a bicycle. The cautioned statements do not display any reason for the delay in arresting the 3rd accused who was closer to the crime scene and his co-offenders were arrested three months earlier, if at all had mentioned him. The cautioned statements do not either elaborate how the 3rd accused is joined with the 1st and 2nd accused particularly considering that the statements are clear that


the 1st accused was a resident of Igunga, the 2nd resided in Nzega, and the 3rd was a resident of Tabora Municipality. A common design amongst the accused and its manifestation is indeed lacking.

What is more doubtful is the accused persons' consistent mention of Hussein @Seni as the mastermind and the main perpetrator in this case. It is incomprehensible how the accused persons were so ready to admit to a capital offence of murder, but were unable to disclose where Hussein @Seni was and where the weapons used in the commission of murder were kept. These doubts in my humble view, have to be decided in favour of the accused persons for not according any weight to the admitted cautioned statements. In ***Hamis Chuma @ Hando Mhoja v R.***, Criminal Appeal No. 36 of 2018, Court of Appeal of Tanzania at Shinyanga, it was held that:

"Where an accused claims that he was tortured and is backed by visible marks of injuries, it is incumbent upon the trial court to be more cautious in the evaluation and consideration of the cautioned statement even if its admissibility had not been objected to, and such cautioned statement should be given little if no weight at all."

For the foregoing reasons, it is my considered findings that prosecution evidence in this case did not irresistibly establish that it is no other person than the accused who killed the deceased. As such, the case against the accused persons has not been proved beyond reasonable doubt as required by the law. That said and done, I find the accused persons not guilty of the offence they stand charged with, and consequently, I acquit them, **Reuben Samwel @ Maiko, Hamis Bembe @ Majazi, and Juma Nassib @**

Macho. I order their immediate release from custody unless held for some other lawful cause. The right of appeal is open to any aggrieved party.


KADILU, M.J.,
JUDGE
22/03/2024

Judgement delivered in open court on the 22nd Day of March, 2024 in the presence of the Advocates for both sides.




KADILU, M. J.
JUDGE
22/03/2024