

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB-REGISTRY

SITTING AT KARAGWE

CRIMINAL SESSIONS CASE NO. 104 OF 2022

REPUBLIC

VERSUS

- 1. BEGUMISA TIBIKUNDA**
- 2. ROBERT TIBIKUNDA @ KABAO**
- 3. MATESO TIBIKUNDA**
- 4. MUGISHA TIBIKUNDA @ KABIBI**
- 5. HABIBA TIBIKUNDA**

RULING

22nd and 23rd May, 2024

BANZI, J.:

This is a ruling on whether the accused persons, Begumisa Tibikunda, Robert Tibikunda @ Kabao, Mateso Tibikunda, Mugisha Tibikunda @ Kabibi and Habiba Tibikunda have a case to answer. The accused persons stand charged with the offence of murder contrary to sections 196 and 197 of the Penal Code [Cap. 16 R.E. 2022]. It is alleged that, on 6th January, 2021 at Nyamisigati hamlet, Bweranyange village, within Karagwe District in Kagera

Region, the accused persons did murder their biological father one Tibikunda Balema. The accused persons pleaded not guilty to the information.

Thus far, the prosecution side has called in six witnesses namely, Jackline Tibikunda (PW1), F.3035 D/SGT Kengela (PW2), Paulo Francis (PW3), Betson Kaijage (PW4), A/INSP Emmanuel (PW5) and H.84 D/CPL Alphonse (PW6). They also tendered two exhibits, post-mortem examination report (Exhibit P1) and sketch map of the scene of crime (Exhibit P2).

After the prosecution side exercised their right of closing their case, it is pertinent to determine whether or not the accused persons have a case to answer as required under the provisions of section 293 of the Criminal Procedure Act [Cap. 20 R.E. 2022]. In other words, this court is duty bound to determine if the prosecution side has managed to establish a *prima facie* case against the accused persons requiring them to defend themselves.

Prima facie case in criminal proceedings has been defined by the then East African Court of Appeal through the case of **Ramanlal Trambaklal Bhatt vs Republic** [1957] EA 332 where it was stated that:

"Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we

cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. ... the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a "prima facie case," but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence."

This position was re-affirmed by the Court of Appeal of Tanzania in the case of **The DPP vs Peter Kibatala** [2019] 1 TLR 261 [CA] where it was emphasised that:

"It may not be easy to define what is meant by a prima facie, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence."

What I gathered from the extracts above is that, at this juncture, the trial court is not required to decide finally whether the evidence is worthy of credit enough to prove the case conclusively against the accused person. However, such evidence should be sufficient to convict if no explanation is offered by the defence.

In the matter at hand, as alluded above, the prosecution has brought six witnesses and produced two exhibits. I have thoroughly examined the evidence on record thus far. It is undisputed that, the deceased's death was brutal and unnatural as explained by PW4 who concluded that, it was caused by severe blood loss due to multiple cut wounds.

As to whether the accused persons were involved in the said killing, the prosecution relied on the testimony of PW1, PW2, PW3, PW5 and PW6. In the main, PW1 explained how the deceased left home after receiving a call from the second accused person. On his side, PW2 testified about how

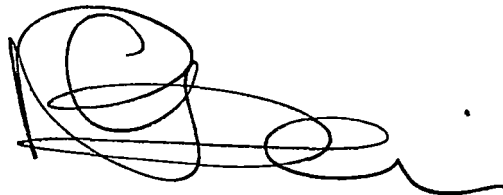
he drew the sketch map. The evidence of PW3 was about receiving the information about the deceased body to be found beside the road and how he reported to the police. Equally, the testimony of PW5 and PW6 was about how they interviewed and recorded the cautioned statements of the first, third and fifth accused persons. Unfortunately, all statements were rejected by this court for being obtained in contravention of the law.

Apparently, among these five witnesses, nobody eye witnessed any of the accused persons killing the deceased. There is no scintilla of evidence establishing that, it was the accused persons who planned and murdered the deceased. One of the deceased's wives (PW1) and hamlet chairman (PW3) both admitted that, the accused persons had no grudges with the deceased. The fact that the second accused person called the deceased on the night of the incident as claimed by PW1 is not sufficient to connect him with the said incident. Likewise, the fact the arrest of the second, fourth and fifth accused persons was made after PW5 being tipped off by the informant is also not sufficient to connect them with the alleged offence. Without tangible evidence or even circumstantial evidence connecting their involvement in the said murder, the available evidence thus far remains to be a mere suspicion which however grave it may be, cannot be used to convict the accused

persons. Basing on the available evidence, no reasonable court could convict the accused persons if no explanation is offered by them.

In view of the above finding, it is the firm view of this court that, a prima facie case was not made out against the accused persons to sufficiently to require them to defend themselves. In that regard, I find all accused persons with no case to answer. Consequently, Begumisa Tibikunda, Robert Tibikunda @ Kabao, Mateso Tibikunda, Mugisha Tibikunda @ Kabibi and Habiba Tibikunda are acquitted with the offence of murder and they are hereby set free.

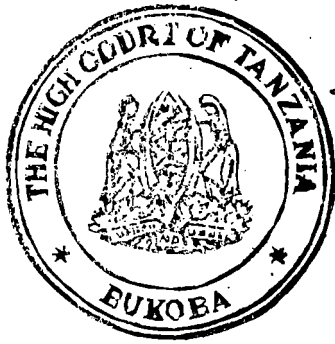
It is so ordered.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

I. K. BANZI
JUDGE
23/05/2024

Delivered in open court this 23rd day of May, 2024 in the presence of Messrs. Lugano Mwasubila and Noah Mwakisisile, learned State Attorneys for Republic, Messrs. Jamal Chamani, Raymond Laurent, Jackson Mchunguzi Mustafa, Diocres Nestory Pesha and Ms. Byera Joanna Nilo, learned

Advocates for first, second, third, fifth and fourth accused person respectively, Mr. Audax V. Kaizilege, Judge's Law Assistant, the first, second, third, fourth and fifth accused persons and Mr. Respichius B. Renatus, RMA. Right of appeal duly explained.



I. K. BANZI
JUDGE
23/05/2024