

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MBEYA SUB - REGISTRY)
AT MBEYA**

CRIMINAL SESSIONS CASE No. 4 OF 2023

REPUBLIC

VERSUS

1. ABEL WATSON MWANGOKA @ HAIBOLE

2. WATSON HAIBOLE MWANGOKA

JUDGMENT

Date of last Order: 25/04/2024

Date of Judgment: 24/05/2024

POMO, J.

The two accused persons, Abel Watson Mwangoka @ Haibole and Watson Haibole Mwangoka, are before this court charged with the offence of murder, contrary to Section 196 and 197 of the Penal Code, [Cap 16, Revised Edition 2022] (the Penal Code). It was alleged by the prosecution that on 11.3.2019 at Shua village within the District and Region of Mbeya jointly and together murdered one, Hadson Haibole Mwangoka @Adson.

On 29.2.2024, the charge was read to the accused persons, who pleaded not guilty. To prove their case, the prosecution brought 6 witnesses and tendered 3 exhibits.

On the same day, the prosecution's case began with Julius Ntandala Nkemo (PW1), a hamlet chairman, who swore that on 13.03.2019, he was at home when he received information from a woman named Tamka Hardson. She informed him that her husband, Hardson Haule, had been missing since 11.03.2019. The woman told him that her husband went missing while he was at the farm in Igagu village. PW1 asked her what her husband had with him when he went to the farm, and she replied that he had a hoe and beans.

PW1 stated that he called two hamlet members for a discussion: Simioni Rashid, who is the secretary to the hamlet, and Safari Yoha, an ordinary member. He informed them and other villagers about the disappearance of Mr. Haibole, who had left home with a hoe and beans, heading to the shamba. He asked the villagers to investigate where Hardson was planting beans.

He further testified that those who went there, including himself, were Onesmo Alphonse, Raphael Rashid, Josephat, and many more. He further stated that a whistle was blown by those who went first, having seen where the body was being dragged. As PW1 arrived, he saw people gathered. They showed him an area where the soil had been dug and was different from the

normal farm soil. The soil was slightly raised and covered with bamboo trees. On that soil, he said, fingers were seen rising.

PW1 told the court that he went to report the matter to Shuwa village and Mbalizi police station. He returned with the police to the crime scene. The police ordered the body be unearthed, and a doctor then examined it, stating that the deceased had been beaten with a heavy object. He told the court that thereafter, the police ordered the villagers, including himself, to go to the police station. He informed the court that among those who went to the police station were Yona Nyanga, Paul, Lisaberth, Jacob, and Fredrick, and they were all interviewed individually.

He went on to testify that while he was at the police station, the first accused was brought in because he had disappeared when they went to find the body of the deceased, even though they had initially been together. The first accused was found in a neighboring village and was arrested by a militiaman named Daud Rashid (PW3). He stated that the deceased was an uncle to the first accused, who was brought to the police station on 13.03.2019 and handed over to the police.

Onesmo Alphonse Maswewa (PW2), testified that on 13.03.2019, he was informed by the hamlet chairperson, PW1, that the deceased had gone

missing and was asked to attend a gathering at the deceased's residence. They gathered all the hamlet members and urged each other to find the whereabouts of the deceased. They began searching for him and, at his farm, they saw beans and what appeared to be blood, as if something had been dragged. They followed the drag marks, which led them to a place where the soil was different from the surrounding area and was covered by bamboo trees. It looked like the area had been dug up. As they approached, they saw a hand palm.

Thereafter, PW1 reported the matter to the police at Mbalizi, who came and asked some of them to unearth the body, which they did. He told the court that he knew the deceased as a fellow villager. He described the body as smelly, with a wound at the back of the head and the mouth. He further stated that the police took the body of the deceased.

Afterwards, they gathered all the hamlet members and began to inquire among themselves why the first accused was absent when the police asked about the deceased's relatives. PW2 told the court that, initially, the first accused was present when they started looking for the deceased, but he was not seen when the police sought the cooperation of the deceased's

relatives. They then agreed that he and Mr. Daud Rashid should find the first accused.

They went to find the first accused and met him in a neighboring village called Shuwa, at his sister's place. They asked him what he was doing there, and replied that he was looking for the deceased. They asked why he was not present when they were initially searching for the deceased. The first accused replied that he was not there. PW2 stated that they requested him to return with them to their hamlet.

Before arriving at the hamlet, the first accused began defending himself, asking for pardon, and claiming that his father had asked him to kill the deceased. They asked him why he had murdered the deceased, replied that it was because of a land dispute. He explained that his father and the deceased had a long-standing farm dispute. The first accused offered them one cow in exchange for his release, but they refused and took him to the hamlet secretary. The secretary and the militiaman then took him to the police station.

Daudi Rashid Fungambili (PW3), a militiaman, testified that on 13.03.2019, he was called by PW1, the Igagu hamlet chairperson. Upon his arrival, was informed about a person who had been missing since

11.03.2019. They agreed to go to the farm where the missing person had gone to plant beans. The deceased's wife showed them the farm, and they began searching for the deceased. They noticed drag marks in the farm and followed the trail until they saw grasses and red soil. Upon closer observation, saw a hand palm, realizing the deceased was buried there. He averred that the police came and unearthed the body of the deceased, confirming it was Hardson.

He told the court that when they were initially looking for the deceased, the first accused was present, but by the time they found the body, the first accused was no longer seen. He testified that when the police were asking about the relatives of the deceased, the first accused was absent. The police asked the hamlet members to convene a meeting and took the deceased's body with them. PW1 went with the police, and the meeting was headed by the hamlet secretary. The hamlet members resolved that the first accused should be searched.

He stated that together with PW2 were appointed to look for the first accused. During their investigation, they traced him to a neighboring village where he was drinking local beer, commonly known as ULANZI. They were informed at the drinking place that the first accused had just left. They then

found him at his sister-in-law's house, eating ugali. They arrested him and asked why he had fled. He replied that he had gone to search for the deceased.

PW3 went on to testify that on their way back, the first accused admitted to participating in the murder of the deceased and offered them a cow in exchange for his release. Upon arrival at the hamlet, PW3 and the hamlet secretary took the first accused to Utengule police station. PW3 further narrated that the first accused told them he killed the deceased because his father, the second accused, was in a dispute with the deceased over the farm.

Petro Jailosi Fumngambili (PW4), stated that from 2014 to 2019, was the hamlet chairperson of Isonso. Recalls that on 11.03.2019, around 1:00 PM, they had a gathering at the church premises for Mzee Ngole regarding community contributions within their hamlet. He further stated that names were called, and when Watson Haibole's name was called, his wife informed them that he was at home with visitors. They continued calling other names and proceeded with the meeting, but Mr. Watson didn't show up.

He avowed that on 13.03.2019, at 11:00 AM, he was at home when the chairman of Igagu hamlet, PW1, sent a member, Justin Rashid, to inform

him that they wanted him to find the second accused and bring him to Igagu hamlet. He told the court that he was not initially told the reason. He went to the second accused's home but did not find him. He then informed PW1 that he could not find him. It was then that he was told that one Hardson Haibole was missing in their hamlet and that his whereabouts were unknown.

He then informed his hamlet members about the missing person in Igagu so they could assist in the search. They searched for the deceased and eventually found him dead. He further averred that they found the deceased's body at a place called Kwa Mpete. He told the court that he knew the second accused and the deceased were blood relatives (brothers).

Juma Musa Nzige (PW5), a medical doctor, stated that on the evening of 13.03.2019, he was at the hospital and was required to examine a body that had been brought in to determine if the person was deceased. He described the deceased as a male estimated to be around 45 years old. He inspected the body, which was dirty, and ordered it to be cleaned and kept for examination the next morning.

He further testified that on the morning of 14.03.2019, he was at the hospital and examined the body in the mortuary of the district hospital of

Mbeya, located in Mbarili district. He told the court that some of the deceased's relatives, who had identified the body as Hardson Haibole, were present. He described the body as having a wound on the head and broken ribs on the right side, specifically the 4th to 6th ribs. It appeared that the person had been dead for about 48 hours then. The cause of death was cardiorespiratory failure, which led to bleeding due to the injuries. He stated that after examining the body, filled report on postmortem examination, which he tendered and was admitted in court as Exhibit P1.

F5636 D/SGT Fadhil (PW6), a police officer, testified that on 13.03.2019, around 11:33 PM, he was on duty at Mbalizi police station as an investigator when the suspect, Abel Watson, was brought in by a militiaman in connection with the murder case No. MBI/IR/453/2019. He was then instructed by the head of investigation at Mbalizi police station to record him the cautioned statement. Therefore, he took him to the office for an interview.

In the interview room, he introduced himself to the accused and informed him of his basic rights: the right to give or not give a statement before the police, the right to call a relative, a friend, or a lawyer at the time of giving his statement, and that the statement he was to give could be used

as evidence against him in court for the offence. PW6 told the court that the accused was ready to give his statement and preferred to do so in the absence of anyone else. He further stated that the accused was in good health, able to talk well, and had no injuries.

He started recording the first accused's statement at 11:33 PM on 13.03.2019 and completed it at 12:49 PM on 14.03.2019. In his statement, the accused confessed committing the offence of murder. After completing the recording, he handed the statement to the accused to read it to ensure it accurately reflected what he had stated. After reading it, the accused confirmed that the statement was correctly recorded. The first accused then wrote and signed the certificate on the statement himself. PW6 also wrote and signed his certificate. PW6 tendered the cautioned statement of the first accused, which was admitted as Exhibit PE2.

He went on to say that on 14.03.2019, around 4:00 PM, he was assigned to continue the investigation of this case. He collected exhibits and recorded statements from various witnesses. The exhibits collected included report on postmortem examination and the sketch plan of the crime scene. He further stated that the sketch plan was drawn on 13.03.2019 by D/SGT Gilbert, who is now a retired police officer, with the assistance of Julius

Ntandala (PW1). He then tendered the sketch plan of the crime scene, which was admitted and marked as Exhibit PE3.

He affirmed that upon concluding his investigation, he submitted the case file to the National Prosecution Service (NPS) for further legal steps. As an investigator, he determined that the murder of Hardson Haibole stemmed from a family dispute, primarily involving disagreements over farming land and the contentious accumulation of wealth. Furthermore, he identified four individuals involved in the incident: Bongo, Yakobo, and Abel Watson, the first accused.

After the prosecution concluded its case, the court determined that they had established a prima facie case against the accused persons. Consequently, pursuant to section 293 (2), (3), and (4) of the Criminal Procedure Act, Cap 20 Revised Edition 2022, the accused persons were required to present their defense.

The first accused, Abel Watson Haibole Mwangoka, defended himself as DW1. He stated that on 13.3.2019, he was in Shuwa village when he was informed by hamlet members that his uncle, Hardson Haibole, had gone missing. Together, they gathered as hamlet members to search for Hardson Haibole in various areas. He further stated that when he discovered some of

his relatives were not present, he went to his sister's place but didn't find her. He mentioned that the meeting was scheduled for the morning, so he went to Igonyama hamlet, where he found people gathered at local brew clubs, but Hardson was not there. He then returned to Maganjo village to check if his sister had returned.

While at his sister's place, he said militiamen and villagers arrived around 1:00 PM and informed him that he was needed at the Igagu hamlet office. They left from his sister's place to Shuwa village. Along the way, they accused him of not being present when needed. Upon arrival, he alleged that some hamlet members conspired to falsely implicate him in a murder case. He vehemently denied any involvement in the killing and stated that he refused to participate. As a result, he claimed they began beating him with sticks, and some suggested taking him to the police station, which occurred around 2:00 PM.

He contested the testimony of Alphonse Onesmo (PW2), denying any involvement in the murder due to a farm conflict, as he claimed he was not involved in the killing. He also refuted the claims made by Daudi Rashid (PW3) in court, denying that he confessed to killing the deceased or promised anything to be released from the situation.

He described being escorted to the police station by numerous individuals, tied up and placed on a motorbike, while others rode alongside, hitting him with sticks along the way. They arrived at Mbalizi police station around 5:00 PM that evening.

At the police station, he recounted that the officers accused him of being involved in the killing incident, allegedly based on statements made by PW6. He vehemently denied any involvement, but despite his protestations, he claimed PW6 and other officers began to beat him and hanged him from the ceiling in an attempt to coerce a confession. Despite the torture, he maintained his innocence, refusing to speak.

He asserted that he woke up on 14.03.2019 in a severely weakened state, unable to even walk. The police officer named Baraka took a PF3 form, filled it out, and transported him to Mbeya Referral Hospital for medical treatment. He was examined by a doctor, given medication, and then returned to Mbalizi police station lockup. He tendered in court the PF3 form, which documented his treatment, as exhibit DE1.

Upon returning to the police station from the hospital, he alleged that the officers resumed their physical assault on him, which persisted until 15.03.2019 when they threatened to kill him if he didn't comply. Fearing for

his life, he claimed he agreed to sign a statement that had already been prepared by the police. He emphasized to the court that there had been no farm conflict within his family, and he vehemently denied ever mentioning individuals named Bongo, Jacob, and another as the killers of Hardson Haibole, stating that he did not know these individuals and had never encountered them in his life.

He vehemently stated that he had never heard of any family disputes within his family, emphasizing that they maintained good relationships and regularly assisted one another. He adamantly contended that the offence was fabricated, asserting his innocence and denying any involvement in the killing.

Watson Haibole Mwangoka (DW2), swore that on 11.3.2019, while in Mbozi, he was informed of the death of a relative. The following day, he stated that he borrowed money from Jackson and returned home to Mbalizi, where he learned that the deceased was Hardson Haibole. He mentioned attending burial services at Igagu, only to find out that the deceased had already been interred/buried. On the third day, he visited the Mbalizi police station, where he discovered that nine of his relatives had been arrested in connection with Hardson Haibole Mwangoka's death.

He continued to explain that out of his family, only seven members were not arrested. After mourning in Igagu hamlet for about three days, he returned to the Mbalizi police station to see his son, the first accused, for the first time. Subsequently, he relocated to Mbozi, where he resided for approximately eight months before returning to Mbalizi at Iyunga Mapinduzi in the Isonso hamlet. He informed the court that he was arrested on 27.5.2021 while farming in Sanga village, Mbozi district, approximately two years and two months after his brother's death.

He stated that he visited his arrested relatives' multiple times at Mbalizi police station and his son, the first accused, in Ruanda Remand Prison. He emphasized that prior to his arrest, he had never been implicated in the deceased's killing. As the administrator of their late father's estate, he asserted that there had never been any farm conflicts within their family. He claimed to have had a good relationship with the deceased, similar to the relationships his father had left him with. He vehemently denied ever instructing the first accused to seek out individuals named Bongo, Jacob, or any others to harm the deceased, as he had no knowledge of such individuals. He further declared that he had neither paid nor owed anyone for the deceased's killing.

He stated that on the alleged date of the deceased's death, he was in Mbozi and only learned of the incident on 14.03.2019. He further stated that he was brought to court for the first time on 10.06.2021, having been arrested since 27.05.2021. He reiterated his innocence and implored the court to acquit him of the charge.

I have considered the evidence presented by the prosecution as well that from the defence side. What this court is to determine is whether the prosecution has proved the case against the accused to the required standard, the standard which has been held to be that of proof beyond a reasonable doubt.

The offence the accused persons are facing is that of murder and is provided under section 196 of the Penal Code, [Cap. 16 Revised Edition, 2022] (the Penal Code). It reads thus: -

"S.196. - Any person who, with malice aforethought, causes death of another person by an unlawful act or omission is guilty of murder."

Therefore, the republic is to prove two things. **Firstly**, that there was a death of a person and the cause of the said death, and **secondly**, that the accused persons committed the unlawful act which caused the death of the deceased.

Regarding the proof of death and the cause thereof, it is indisputable that Hardson Haibole, indeed pass away. The evidence of PW5, who conducted the autopsy as per Report on Postmortem Examination (**Exhibit PE1**) confirmed his death. The autopsy concluded that the cause of death was due to cardiac pulmonary failure, resulting from injuries that led to bleeding.

The deceased was on 13/03/2019 found dead and buried in his farm at Kwa Mpete in Igagu village within Mbeya Rural district entailing that his death was unnatural one. He had gone missing since 11/03/2019 until on that of finding hime dead and buried. Those who searched him are Julius Ntandala (PW1); Onesmo Alphonce (PW2); Daudi Rashid (PW3) and Petro Jailosi Fungambili (PW4) are the villagers, among other villagers. He was found buried and the soil covered with bamboo trees which entails his death was unnatural one.

Now, who are behind Hardson Haibole's death? Is it the accused persons herein? This was the second task cast to the prosecution to prove. It is to be revealed out of the evidence adduced if that task has been discharged or otherwise.

From the adduced evidence, apprehension of the 1st accused came out of what PW1; PW2 and PW3 testified to the effect that on 13/03/2019 while in search of the deceased, they were together with the 1st accused. Having found the deceased, the 1st accused went away out of the crime unseen by them. This fact raised suspicion to them against the 1st accused. As such, the villagers traced and apprehended him.

Again, out of the evidence adduced, of all the witnesses for the prosecution, none who witnessed the accused persons or any other individual committing the unlawful act resulting in the death of the deceased.

The 1st accused is said to have confessed before PW2 and PW3 who went to arrest him upon his arrest. Also, through the cautioned statement (Exhibit PE2) recorded from him by PW6 on 13/03/2019, the 1st accused is said to have admitted killing the deceased in cooperation with those mentioned as BONGO; YACOB and another who didn't mention his name. According to this cautioned statement, the named persons were hired by the 1st accused's father who is the 2nd accused herein for payment of TZS 300,000/- to kill the deceased. That the 2nd accused did so due to their existing farm land conflict between him and the deceased.

Further, it is the wording of the cautioned statement (Exhibit PE2) that prior to the setting into plan of murdering the deceased, had convened a clan meeting under the chairmanship of the 2nd accused in attempt to resolve the farm land conflict. Those attended, among others, were Taifa Mwangoka, Paulo Mwangoka, Fredrick Mwangoka; Joshua Mwangoka. Despites invitation, the deceased refused attending that meeting. Such refusal by deasedd made the clan members resolve out that the deceased is the source of the farm conflict. This clan meeting was held in 2018.

Now, no one among those mentioned was ever called by the prosecution to corroborate such assertion due to the fact that the cautioned statement herein stands retracted.

The master planer, per exhibit PE2, in hiring the murderers of the deceased whom in cooperation with the 1st accused allegedly killed the deceased is mentioned in it the to be 2nd accused. This exhibit PE2 was recorded from the 1st accused by F.56 36 D/SGT Fadhil (PW6) on 13/03/2019. The very recording officer, per is testimonies, is the police officer who came to be assigned the case file to investigate the matter. Surprisingly, it is until September, 2019 when the said 2nd accused was arrested and arraigned before the court, a period of about six (6) months.

In the prosecution evidence, be of PW6 the policed who investigated the case or any other witness, gave no explanation accounting on such delay in arresting the 2nd accused. PW6 was not only an investigator but also a recording officer who recorded the said exhibit PE2 hence aware the 2nd accused is mentioned therein. This delay in the arrest of the second accused suggests uncertainty on the part of the prosecution regarding who to arrest, as highlighted in the case of **Ibrahim Shaban and Shabani Ally Kalulu vs Republic**, Criminal Appeal No. 110 of 2002 CAT (unreported).

In defence, both accused persons disassociated to the commission of the offence. No cautioned statement of the 2nd accused is tendered which could have corroborated the assertions in exhibit PE2. Therefore, this court is left with uncorroborated retracted cautioned statement of the 1st accused, of which, in my view, cannot ground a conviction. In the case of **A. 9249 WDR Kaloli Sylvester @ Mgenzi and 2 Ohters versus Republic**, Criminal Appeal No. 157 of 2006 CAT at Tabora (unreported), the court of appeal, at page 7, had this to state: -

*"Be that as it may, once an accused alleges torture **or any impropriety in extracting such statements**, the law regards them as retracted confessions. **Thought not a matter of law, once retracted the court would***

normally look for corroboration before acting on such evidence."

[See also: **Tuwamoi Versus Uganda** [1967] EA 84]

I have reached such conclusion that it is not corroborated because the other witnesses did arrest the 1st accused on the basis of being suspicious to him. It is a settled position of the law that mere suspicion, regardless of its gravity, cannot serve as the basis for a conviction in a criminal trial. See: **Masota S/O Jumanne versus Republic**, Criminal Appeal No. 137 of 2016 CAT at Tabora (unreported) at page 12 and **MT. 60330 PTE Nassoro Mohamed Ally vs. Republic**, Criminal Appeal No. 73 of 2022 CAT (Unreported), the Court of Appeal, at page 12, had this to state: -

"In our view, the case against appellant was based on suspicion which cannot be a substitute of proof in court. Suspicion, however grave, is not a basis for conviction in criminal trials."

[Also see: **MT 60330 PTE Nassoro Mohamed Ally versus Republic**, Criminal Appeal No. 73 of 2002]

Basing on the above analysis, I therefore find that the prosecution has failed to prove the offence of murder against the accused persons.

In the upshot, I find the accused persons are not guilty of the offence and consequently, I hereby acquit them forthwith unless are held for other lawful cause.

It is so ordered

Right of appeal explained

DATED at MBEYA this 24th day of May, 2024


MUSA K. POMO

JUDGE

24/05/2024

Judgment delivered in presence of Ms. Lilian Chagula, learned state attorney for the republic. Also, in presence of the 1st and 2nd accused persons represented by Mr. Alfredy Chapa, learned Advocate holding brief for Mr. Essau Sengo and Luka Ngogo, learned defence counsel for the 1st and 2nd accused respectively




MUSA K. POMO

JUDGE

24/05/2024