

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB-REGISTRY

SITTING AT KARAGWE

CRIMINAL SESSIONS CASE NO. 89 OF 2023

THE REPUBLIC

VERSUS

EDSON ARON

JUDGMENT

28th and 31st May, 2024

BANZI, J.:

The accused person, Edson Aron stands charged with the offence of murder contrary to sections 196 and 197 of the Penal Code [Cap. 16 R.E. 2022] ("the Penal Code"). The particulars of the Information reveal that, on 7th July, 2022, at Chamchuzi Village, Bweranyange ward, within Karagwe District in Kagera Region, the accused person murdered one Philemon Thadeo (the deceased). He denied to have committed the alleged offence and thus, a plea of not guilty was accordingly entered.

In a bid to prove the case against the accused person, the prosecution side under the services of Messrs. Lugano Mwasubila and Noah Mwakisisile, learned State Attorneys lined up a total of eight (8) witnesses, namely, Jesca Philemon (PW1), Mulinda Sevelian (PW2), Imani Anastazi (PW3), Onolata

Onesmo (PW4), Mohamed Athumani (PW5), G.7525 D/CPL Emmanuel (PW6), Philbert Chilabahwa (PW7) and Vaileth Mushi (PW8). Besides, they tendered three exhibits, cautioned statement of the accused person (Exhibit P1), the post-mortem examination report (Exhibit P2) and extra-judicial statement of the accused person (Exhibit P3). On the other hand, the accused person who enjoyed the services of Mr. Adabart Kweyamba, learned Advocate, was the sole witness for the defence (DW1) and did not tender any exhibit.

Basically, the prosecution evidence reveals that, on the date of the incident, around morning hours the deceased and his wife (PW1) were at their farm. At about 8:00 AM, the deceased received a phone call from the accused person asking him to go to where he was to assist him with his sick cow. Upon such phone call, the deceased took his wife on his motorcycle and dropped her at home. Thereafter, he passed at Chamchuzi centre where he informed his friends including PW2 that, he was going to meet the accused person. According to exhibits P1 and P3, upon arrival at the meeting point, the duo discussed about the money the deceased gave the accused person to buy him millet. A disagreement broke out in the course of conversation, leading to a fight between them, whereby, the deceased

kicked the accused person who fell down. Then, he punched him and in return, the accused person picked panga and cut him on the head and hand.

Thereafter, the deceased ran up to bodaboda centre where he found PW3 who took him to Chamchuzi dispensary. According to PW3, when he saw the deceased, he was serious injured and upon inquiry, he named the accused person as his assailant. On arrival at Chamchuzi dispensary, the deceased also mentioned the accused person as his assailant to PW1 and PW2. The deceased was later taken to Nyakaiga hospital where he was attended by PW7. According to PW7, the deceased had cut wounds on parietal area, occipital area extending to the neck and on the left arm. It was also his testimony that, when the deceased arrived at the hospital, he was in a state of confusion and later, he lost consciousness until he passed away on 8th July, 2022 around 3:00 AM. PW7 conducted an autopsy on the deceased body and his report (Exhibit P2) reveals that, death was due to multiple organ failure 2^o to hypovolaemic shock and head injury.

On 08th July, 2022, the accused person was arrested by PW5 (militiaman) who was instructed by PW4 (village executive officer). Upon being arrested, he was taken to Chabalisa police post where he was put in lock up. On the same date, the OC CID of Karagwe, PW6 with other police officers while on their way to the crime scene, they were informed about the

arrest of the accused person and they decided to pass by at Chabalisa police post. Upon arrival, PW6 was instructed by the OC CID to interview the accused person. The cautioned statement of the accused person was admitted in evidence as Exhibit P1 after conducting inquiry through trial within a trial following an objection that, it was involuntarily made. On 15th July, 2022, the accused person was taken before PW8, the justice of peace who recorded his confession. The same was admitted without objection as Exhibit P3.

In his defence, the accused person categorically denied to have committed the alleged offence. According to his testimony, on 7th July, 2022, he woke up as usual and went to his small shop where he sells sugar, rice, petrol and other goods. He stayed there from 7:00 AM to 8:30 PM when he returned home. On the following day, he went to Nyakaiga to purchase goods for his shop. While he was waiting for public transport from Omurushaka to Chamchuzi, he decided to go to Chabalisa to visit his sister, Leokardia Aron. Upon reaching Chabalisa village, he met with his other sister Venita Marcell and thereafter, while he was at Akadipii area, he was arrested in connection with the death of the deceased. He was taken to Chabalisa police post and later to Nyakaiga police station where he was beaten by PW6 with his colleagues and forced to sign on a document written by PW6 without

knowing its contents. He was later taken to the crime scene and returned to Nyakaiga police station. Thereafter, he was transferred to Kayanga police station where he stayed until 15th July, 2022 when he was taken to the justice of peace, PW8. According to him, he informed PW8 that, at the police station, he was forced to make his statement. Thereafter, he told her how he was arrested at Akadipii on the allegation of killing the deceased. On 19th July, 2022, he was arraigned to court and charged accordingly. Finally, he denied to have killed the deceased and claimed that, the prosecution evidence was a lie. He therefore urged this court to dismiss the information.

In a nutshell, that was the evidence of the prosecution and defence sides. Having considered the entire evidence on record, there is no dispute that deceased is dead and his death was unnatural. This was proved by PW7 who attended the deceased after getting to the hospital and after his death, he examined his body. The autopsy report was admitted without being contested and the same reveals that, death was due to multiple organ failure 2^o to hypovolaemic shock and head injury. Thus, the evidence of PW7 and Exhibit P2, has proved that, the deceased is dead and his death was unnatural. In that regard, the remaining issues to be determined are: **one**, *whether the accused person killed the deceased* and **two**, *if the first issue is answered in the affirmative whether he acted with malice aforethought.*

It is worthwhile noting here that, in criminal trials, the burden of proof always lies on the prosecution and the proof has to be beyond reasonable doubt. See the case of **Nathaniel Alphonse Mapunda & Benjamini Alphonse Mapunda vs Republic** [2006] TLR 395. In that view, it is the duty of prosecution side to prove beyond reasonable doubt that, the accused person killed the deceased and he did so with malice aforethought.

As alluded above, in discharging the aforesaid burden, the prosecution brought eight witnesses. According to PW1 and PW2, on the fateful day, the deceased went to meet with the accused person. It is on PW2's testimony that, after the deceased passed at Chamchuzi centre headed to meet the accused person, 15 minutes later, he saw him carried on the motorcycle with injuries on the head. Upon being asked, he named the accused person as the one who assaulted him. Apart from that, according to PW3, when he was at bodaboda centre, he saw the deceased with injures who asked him to take him to the hospital. Upon being asked, the deceased named the accused person as his assailant. Despite the fact that, none among the prosecution witnesses eye-witnessed the incident, but as what had transpired at the crime scene, the prosecution relied on the confession of the accused person which he made before the police and justice of peace. In both statements, the accused person confessed to cut the deceased on the head and hand by

using panga. As explained above, the cautioned statement was admitted following trial within a trial after the accused person repudiated the same. As a matter of law, it requires corroboration before acted upon. Nonetheless, the extra judicial statement was admitted without any objection from the defence. In the case of **Nyerere Nyague vs Republic** [2012] TZCA 103 TanzLII, it was held that:

"...a confession or statement will be presumed to have been voluntarily made until objection to it is made by the defence on the ground, either that it was not voluntarily made or not made at all."

Apart from that, in the case of **Paulo Maduka and Others vs Republic** [2009] TZCA 69 TanzLII it was stated that:

"The very best of witnesses in any criminal trial is an accused person who confesses his guilt."

The same position was re-stated case of **Nyerere Nyague vs Republic** (supra) when it was held that:

"...the best evidence in a criminal trial is a voluntary confession from the accused himself."

Although the accused person disassociated himself with the alleged crime, in my considered view, his defence has not raised any doubt on

prosecution evidence as far as his involvement is concerned. Looking closely at his defence, although he did not deny to be at Chamchuzi village on the date of the incident, he claimed to be at his shop from 7:00 AM to 8:30 AM. In other words, he denied to be at the crime scene when the incident occurred. If he was not at the crime scene, it was expected to be raised in the course of testimony of PW1 and PW2 who informed the court how they parted with the deceased who was going to meet with the accused person and soon thereafter, he returned with injuries and mentioned him as his assailant. However, the accused person through his advocate did not cross-examine them on this aspect.

It is a settled principle that, failure to cross-examine a witness on a relevant matter ordinarily connotes acceptance of veracity of the testimony. See the case of **Issa Hassan Uki vs Republic** [2018] TZCA 361 TanzLII. This in itself is a clear indication that, the fact about not being at the crime scene is nothing but an afterthought. Apart from that, accused person claimed that, he did not hear about the assault and death of the deceased until he was arrested. It can be recalled that, there was unchallenged evidence from PW1 and PW2 about the accused person to be the neighbour of the deceased. If the claim by the accused person was the truth, how comes he didn't hear about the incident until the next day while they were

neighbours? Besides, in his both confessions, he explained in details how he met the deceased at cattle corridor and argued about the money he was given to buy millet for him. He also explained how disagreement broke out in the course of their conversation, leading to a fight between them, which caused the accused person to assault the deceased. Although in his defence he attempted to repudiate his extra judicial statement, as alluded above, the same was admitted without objection. If what he stated before PW8 was different with what was recorded, it was expected to be raised when PW8 sought to tender Exhibit P3 in evidence. Nonetheless, nothing was raised at that point and as a matter of law, whatever raised later is nothing but an afterthought. See the case of **Nyerere Nyague vs Republic** (*supra*). Therefore, taking all these into account, it is in my view that, the evidence by the defence was an afterthought and it does not raise any reasonable doubt on the prosecution's case. Thus, I give it no weight and accordingly reject the same.

Basing on the foregoing analysis, it is the firm view of this court that, the accused person was the one who inflicted those injuries on the deceased which according to PW7, those injuries were source of the death of the deceased. In that regard, it is the finding of this court that, the prosecution side has managed to discharge its duty to prove beyond reasonable doubt

that, the death of the deceased was a result of the unlawful act of the accused person. Thus, the first issue on whether the accused person killed the deceased is affirmatively answered.

The next issue for consideration is whether the accused person intentionally killed the deceased. Admittedly, malice aforethought, can be established by number of factors including one, type of the weapon used in the attack; two, the amount of force applied in the assault; three, the part or parts of the body the blow were directed at or inflicted on; four, the number of blows; five, the kind of injuries inflicted; six, the attackers utterances, if any, made before, during or after the killing, and seven the conduct of the attacker before and after the killing. See the case of **Enock Kipela vs Republic** [1999] TZCA 7 TanzLII.

Back to our case, looking at the injuries inflicted on the deceased and the part of body injured, one might end up with the conclusion that, the accused person had malice aforethought. Nonetheless, as alluded above, on what had transpired at the crime scene leading to the death of deceased, the prosecution side relied on the confession of the accused person. In his confession before the police, the accused person at page 3 of Exhibit P1 had this to say and I quote:

"...nilipofika akasema kwamba tuanze kuhesabiana pesa anazonidai ambapo akaniambia kwamba nimpatie magunia yake matatu ya mtama ili tuache kudaiana nami nikamwambia kwamba kwa sababu namdai laki moja na elfu arobaini tano hivyo nimlipe gunia moja yeye akakataa kisha akanishika na kunikwida na kunipiga ngwala nikaanguka pia akanipiga ngumi. Nikashindwa kuvumilia na kuchukua panga langu kisha kumkata nalo kichwani..."

It is apparent from the extract above that, the deceased met his death in the cause of fight with the accused person. It is settled law that, when death occurs as a result of a fight, the person who causes death is guilty of manslaughter and not murder. This was stated in the case of **Bahati Ndunguru @ Moses vs Republic** [2021] TZCA 187 TanzLII when they referred to the case of **Zuberi Abdallah vs Republic**, Criminal Appeal No. 144 of 1991 (unreported) where it was stated that:

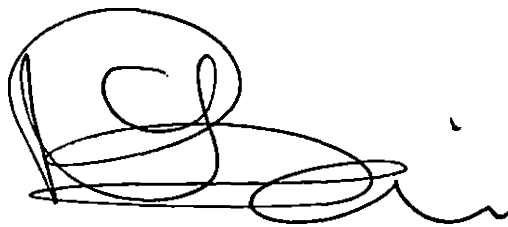
"It has been held a number of times by this Court, and its predecessor, the East African Court of Appeal that death resulting from a fight is at worst, a manslaughter."

See also the cases of **Moses Mungasiani Laizer Alias Chichi vs Republic** [1994] TLR 222 (CA) and **Jackson Mwakatoka and Two Others vs Republic** [1990] TLR 17 (CA).

Considering that the deceased met his death in the cause of fight with the accused person, in the light of the position of the law above, it is apparent that, malice aforethought cannot be established against the accused person. The fact that, the deceased had multiple injuries cannot be a conclusive factor to establish malice aforethought since those injuries were inflicted in the course of fight between the deceased and accused person. Thus, the second issue is negatively answered.

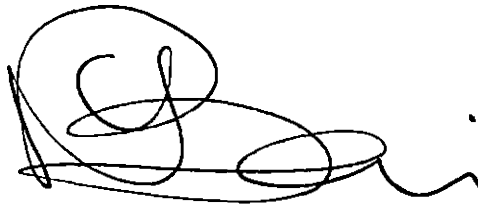
For the reasons thereof, it is the finding of this court that, the prosecution has failed to prove that, the accused person had malice aforethought. Since the death occurred out of fight, I hereby find the accused person Edson Aron guilty with a lesser offence of Manslaughter and convict him accordingly contrary to section 195 of the Penal Code [Cap 16 R.E. 2022].

It is accordingly ordered.

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

I. K. BANZI
JUDGE
31/05/2024

Delivered in open court this 31st day of May, 2024 in the presence of Messrs. Lugano Mwasubila and Noah Mwakisisile, learned State Attorneys for Republic, Ms. Byera Joanna Nilo, learned Advocate holding brief of Mr. Adabart Kweyamba, learned Advocate for accused person, Mr. Audax V. Kaizilege, Judge's Law Assistant, the accused person and Mr. Respichius B. Renatus, RMA. Right of appeal duly explained.



I. K. BANZI
JUDGE
31/05/2024

SENTENCE

Edson Aron has just been convicted with the offence of Manslaughter whose maximum penalty according to law is life imprisonment. The evidence adduced by the prosecution side reveals that, the accused person used dangerous weapon, *i.e.*, panga and he used it to cut the deceased on head which is vulnerable part of the body. Basing on the type of weapon used and part of the body injured it is apparent that, the seriousness of the offence is high as provided under the Tanzania Sentencing Guidelines, 2023. According to the Guidelines, where the level of seriousness of the offence is high, the

sentence ranges from ten years to life imprisonment, and the starting point is ten years.

I have carefully considered the aggravating factors put forward by learned State Attorney and mitigating factors advanced by learned Advocate. It is undisputed that, the life of the deceased was lost something which according to our Constitution, the accused person had a duty to protect. There was no compelling reason for the accused person to use such dangerous weapon in their fight while deceased used kick and fist. Besides, he did not take any action to assist the deceased after he inflicted those injuries which would have demonstrated remorsefulness. However, since he is the first offender and he had already spent two years in custody, I hereby sentence him to ten (10) years imprisonment.



I. K. BANZI
JUDGE
31/05/2024