

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MOSHI SUB REGISTRY**  
**AT MOSHI**  
**CRIMINAL SESSION CASE NO. 22 OF 2022**

**REPUBLIC**

VERSUS

- 1. GODFREY BERNARD MASAWA**
- 2. EMMANUEL PAUL @ SAFARI @ BOMOA**
- 3. ABDALLAH YAHAYA MSANGI @ JOHN BOSCO**

**JUDGMENT**

14/02/2024 & 19/02/2024

**SIMFUKWE, J.**

The accused persons Godfrey Bernard Masawe, Emmanuel Paul Safari @ Bomoa and Abdallah Yahaya Msangi @ John Bosco jointly and together, stand charged with the offence of Murder contrary to **section 196 of the Penal Code, Cap 16 R.E 2019**. The accused persons are alleged to have murdered one Emmanuel s/o Jeremia Kessy on 13/04/2021 at Chakito Mdawi area, within the District of Moshi in Kilimanjaro Region. The accused persons pleaded not guilty to the charge.

In proving the charge against the accused persons, the prosecution paraded a total of five witnesses; Dr. Edina Langia Mushi **(PW1)**, E. 9154 S/SGT Paulo **(PW2)**, Mr. Juma Said Mdee **(PW3)** G. 309 D/CPL Derick **(PW4)** and E. 8872 D/SGT Issa **(PW5)**. Also, the prosecution had two exhibits, a Post-Mortem Examination Report prepared by PW1 **(Exhibit**

**P1)** and a sketch map of the scene of crime (**Exhibit P2**). In their defence, the accused persons defended themselves as they had no witness to call.

Evidence tendered by the prosecution in support of the charge is to the effect that the death of the deceased Emmanuel s/o Jeremia Kessy was unnatural. The cause of death was said to be severe head injury and other multiple injuries caused by assault. Evidence of PW1 and Exhibit P1 are relevant.

**PW3 Juma Said Mdee** testified inter alia that he works as a bodaboda driver at Kiboriloni bus stand.

On 13/4/2021 at about 22:00hrs he was at his workplace (Kijiweni) at Kiboriloni with his motorcycle. While there, one person went there and approached Godwin who was also a bodaboda driver, as the said person needed transport. The said person wanted to be taken to Chakito at Mjohoroni. Godwin charged that person Tshs 5000/= which that person could not afford, he said that he had Tshs 3000/=. Then, the said passenger went to Emmanuel another bodaboda driver. They bargained and agreed. PW3 said that he could identify the said person who went at their workplace looking for transport (Bodaboda). That, the person was moderate in stature and looked like a person who used to exercise. He was light in colour (maji ya kunde).

PW3 explained that, he managed to identify the said person because at their workplace there was electric light which was bright to the extent that one could read a newspaper. That, the bargaining took about ten minutes. The distance between PW3 and his fellow bodaboda drivers was about

one step. There was no hindrance between them. Thus, he could see them directly.

Thereafter, they continued to work till about 00:00hrs or 01: 00 hrs. Emmanuel did not return. On 14/4/2021 they heard rumours that Emmanuel was died, but they were not sure. Later, a police motor vehicle went at their workplace and stopped. One police officer dropped and was talking to one of them. When they went near the motor vehicle, they saw a human body covered with clothes.

PW3 testified further that on 16/4/2021 at night 01:00 hrs, they were at the funeral of Emmanuel. While there near Mama Tony, they found the person who had hired Emmanuel, standing along the way. They followed that person and put him under arrest. Godwin made a phone call to the police station. Then, a police motor vehicle went there. PW3 heard police officers interrogating that person who was under arrest. He introduced himself as Godfrey Massawe.

PW3 said that they managed to identify the suspect by using an electric light from the house which was nearby. He identified him because he saw him that day when he hired Emmanuel. About three days had elapsed since the day when that person hired Emmanuel. It was elaborated that; the identification was easy because of the light from electric light/bulbs from the wall and that the bulbs were very bright. The distance from where they were standing to the place where the suspect was standing, was about three to five steps. There was no hindrance between them.

PW3 stated further that, when they arrested the suspects, they were about seven people. They had arrested one person. After a while, his fellow went there. They had a bag which had clothes and one phone. The

other person he heard them calling him Bomoa. PW3 insisted that, it was Godfrey who hired Emmanuel that night.

**PW3** identified the first accused Godfrey Bernard Masawe who was in the dock. He concluded that, he never knew the accused person and he had no grudges with him.

Evidence of PW3 was supported with the evidence of **PW2 E. 9154 S/SGT Paulo** whose testimony among other things was that on 16/4/2021 at about 05:00hrs he received a phone call from Afande Leons who was the assistant OCCID. He directed him that civilians had informed him that at Kiboriloni there were two suspects who had been arrested by civilians. PW2 was required to go there. When PW2 reached at Kiboriloni he was directed that the suspects were at Kidia Village at the bus stand. He found two youths who were under arrest. They were put under arrest by civilians and the councillor of that area one Frank Kagoma. PW2 ordered police officers who were with him to take over the suspects. He interrogated the councillor the reason of putting the suspects under arrest. The councillor replied that, the said youths were wanted for a long time as they were involved in theft incidences. The said youths were introduced as Godfrey Massawe and Emmanuel Paulo. Then, PW2 took the suspects to the police station at Majengo.

As they were finishing their shift, they left the suspects at the police station. PW2 handed over them to the in charge of CRO. PW2 informed this court that he was still remembering the faces of the said suspects and could identify them through their stature and colour. He could not remember their specific names on the reason that it was long time.

**PW4 G. 309 D/CPL Derick** was a police officer who participated to arrest the third accused Abdallah Yahaya Msangi alias John Bosco. He stated inter alia that, on 13/05/2021 after being instructed by Inspector Leons to make follow up of a suspect of theft and murder cases, they left in a motor vehicle and headed to the homestead of the wanted suspect. They were informed that the said suspect was called Yahaya Abdallah Msangi alias John Bosco. When they reached at the homestead of the suspect, they knocked the door but it was not opened. They decided to push the door and found the suspect sleeping. Then, they introduced themselves to him that they were Police officers. They asked his names, he introduced himself as Yahaya Abdallah Msangi alias John Bosco. They informed him that he was under arrest, suspected of Murder Charges. Thereafter, they took the suspect to the police station and handed over the suspect to the CRO for further actions.

PW4 elaborated that, they managed to know the homestead of the suspect because there were other suspects who were arrested before. The said suspects were interrogated; they explained that there was another suspect whom they cooperated together. Thus, they were taken to the homestead of Yahaya Abdallah Msangi by the said suspects. That, it took long time to arrest the third suspect because they had gone there previously and missed him. The neighbours informed them that he had gone to Mwanga to his parents. They continued to make follow up and succeeded to arrest that suspect on 13/5/2021.

PW4 identified the third accused who was in the dock and said that he never knew him before.

**PW5 E. 8872 D/SGT Issa** was the investigator of this case. His testimony was that on 14/4/2021 at about 7:00hrs he went to work as usual. He was assigned work with the OCCID. The work included investigation of a case Moshi IR/3237 which concerned a murder case. There was no suspect in the said case. The victim of that case was Emmanuel Jeremia Kessy (the deceased in this case). The incidence had happened at Chakito area at Mjohoroni. First of all, PW5 went at the place where the body of the deceased was found. He inspected the scene and went back to the office. He planned how to find the particulars of the perpetrators.

On 16/4/2021 they received information that there were two suspects who were arrested at Kiboriloni near Kiboriloni Secondary School. That, the said suspects were at Majengo police station. They made follow up and took the suspects to Moshi Central Police Station where the charges of murder were instituted. There were two suspects Emmanuel Paul @ Bomoa and Godfrey Bernard Massawe.

They informed the suspects the charges against them. Then, they interrogated them on the charges of murder which they were facing. In that interrogation they confessed to had committed the offence of murder together with another person who had not been arrested. They said that, they committed the offence the three of them. They explained that they left together on one motorcycle all of them (Mshikaki) up to the bus stand of Kiboriloni to Kidia. When they reached there, they parked their motorcycle aside. One of them went at the bodaboda parking so that he could hire a motorcycle to Chakito at Mjohoroni. He approached Godwin John Maro who had parked near Juma Said a fellow bodaboda driver. They could not agree on the fare of Tshs 3000/=.

Then, the suspect went to Emmanuel Jeremia Kessy who agreed to take him to Mjohoroni Chakito for Tshs 3000/=. Others remained and continued working till at 00:00hrs when they went to sleep, Emmanuel Jeremia Kessy had not returned. Next morning on 14/4/2021 at 7:00hrs Godwin Maro and Juma Said received information that Emmanuel Jeremia was found died and thrown at Chakito area. That, the deceased had a wound on his head, his hands and neck were fractured. After being informed that the offence was committed by three people, PW5 wanted to know the third suspect. The two suspects mentioned Abdallah Yahaya Msangi alias John Bosco as the third suspect. They assigned police officers of Task Force to make sure that they arrest Abdallah Yahaya Msangi and join him with his colleagues.

While waiting the arrest of the third suspect, they took the two suspects to court pursuant to the law. While preparing the charges against the two suspects, PW5 recorded the statements of witnesses who explained how the suspect hired the motorcycle of the deceased and required him to take him to Mjohoroni. They also explained how they saw the suspects after the incidence, arrested them and sought assistance from the police station.

PW5 produced the sketch map of the scene of crime which was drawn by a team of investigators who went to the scene after the incidence. He identified the said sketch map and tendered it as exhibit. It was admitted as exhibit P2.

PW5 concluded his testimony by identifying the three suspects that he was testifying about. The first one was identified as Godfrey Benard Massawe who was wearing a hat, at the middle was Emmanuel famous

as Bomoa and on the left side was the accused who wore a red jersey, Abdallah Yahaya Msangi alias John Bosco.

PW1 was a doctor of Mawenzi Regional Hospital who conducted an autopsy of the body of the deceased Emmanuel Jeremia Kessy. Her testimony was to the effect that the body of the deceased had bruises on his face, was bleeding from the mouth and nose and the eyes were pale. That, the deceased had a wound at the back of his head. His neck was swollen and loose. Both shoulders had closed fracture. PW1 said that, the cause of death was severe haemorrhage and severe injuries. After examination of the body of the deceased, PW1 prepared a report on Post Mortem Examination which she tendered (exhibit P1).

After closure of prosecution case, the accused persons were found with the case to answer. They defended themselves on oath and they had no additional witness to call.

**DW1 Godfrey Bernard Masawe** (first accused) stated that, on 16/4/2021 at about 04:00hrs he was at the club at Redstone which is at Moshi. He decided to go out of the club and went to hire a motorcycle. He hired one Emmanuel Paulo a bodaboda driver and required him to take him to his home at Kiboriloni. They left at Redstone and headed to Kiboriloni. When they reached at DW1's place, Emmanuel stopped, DW1 took ten thousand shillings from his trouser and paid him. While he was giving him a change, some youths went there on motorcycles, each motorcycle had two people. They stopped and asked them what they were doing at such time. Emmanuel Paulo replied them that he had brought a passenger who was DW1. Those youths alleged that they were thieves as they had incidences of theft at that area. They took off the keys of the



motorcycle of Emmanuel Paulo and threw it down. Then, they were ordered to be under arrest for suspicion of theft. The chairman of that street who is called Charles, went there. The Chairman took all of them to Frank Kagoma the Councillor of that area. The Chairman informed the councillor that they were suspected of burglary. Then, police officers were called through a phone and Afande Paulo went there. He asked the Councillor the offence of which they were charged, he was told that they were charged of stealing at night. That, police officer took both of them to Majengo police Station. They arrived at the police station at about 05:00hrs. They were handed over to the Police officer who was at the counter. He was informed that they were suspected with the offence of burglary.

DW1 alleged that he had never killed. He prayed this court to acquit him as he did not commit the offence. He said that, he recalled that he was arrested for the offence of theft and not murder.

**DW2 Emmanuel Paulo Safari** (second accused) stated that on 16/4/2021, while at his workplace at about some minutes to 4:00am, one man went and required him to take him to his home at Kiboriloni. By then he did not know his name. They agreed the fare of Tshs 4000. Then, DW2 carried that man and left to his residence at Kiboriloni at Kidia area. He was shown the house and DW2 stopped in front of that house. He was given Tshs 10,000/=, he received that money and gave him a change. While giving him a change, four motorcycles appeared. They asked him what he was doing at that place. DW2 replied that he had brought that passenger. They asked him what kind of passenger at that time as they had been robbed very much. DW2 asked them if bodaboda drivers had limits of their trips. One of them said that he was talking too much while

they had already told him that they used to be robbed. One of them switched off DW2's motorcycle and threw the keys down. DW2 dropped and went to take the key but he was pushed. One elder person who was at the nearby home went and introduced himself that he was the Chairman of that street. He asked what was wrong. One youth replied that they were thieves. Then, that Chairman said that if they were suspecting them to be thieves, they should take them to the Councillor. Both of them were taken to the Councillor. The councillor was told that, they were involved in theft and that they were arrested down the street. The Councillor made a phone call to the police. Police officers went there, one of them being PW2 who testified before this court as Paul. He asked the councillor they were under arrest for which offence. The Councillor replied that they were involved in theft. Then, DW2 was asked his names. He introduced himself as Emmanuel Paul Safari. His passenger introduced himself as Godfrey Bernard. Then, they were taken to Majengo police station. They were handed over to the police officer who was on duty. That police officer asked the offence which they were charged with. Afande Paul replied that they were suspected with theft offences. That police officer asked their names, they introduced themselves. He told them that they were involved in theft offences and that they should stay in the lock up pending their bail. That, in case they won't have sureties, they could be taken to court. They stayed there for two days. They complained that they should be bailed out. They were replied that they would be taken to court. In the afternoon, they were taken to Moshi Central Police Station instead of being taken to court. When they reached there, they complained that they needed to be taken to court so that they could be bailed out. PW5 Issa said that they should be kept in the lock up

as he had a task with them. They were taken in the lock up without being taken to court for three days. They started complaining again. They were required to wait on promise to be taken to court. They stayed there till on 04/5/2021 when They were taken to court. Surprisingly, when they reached to court, they were charged with a different offence of Murder. They complained to the Magistrate that they were not arrested on that offence. The Magistrate replied that his court had no jurisdiction to determine that offence. They were told that they should wait completion of investigation. Then, they would know if they committed the offence or not.

Then, they were taken to remand. They stayed in remand for 14 days. On 19/5/2021 they were taken back to court. On that date, they were charged with another offence of theft in Criminal Case No. 189/2021. They were taken back in the court lock up. On the same date they were taken to the former Magistrate. They explained to him that they were charged with another offence and they did not know it. For the second time, the Magistrate told them that the court had no jurisdiction to determine that offence. They were required to wait until completion of investigation.

After completion of investigation, Committal proceedings were conducted. Then, they continued to stay in custody. The other case was finalized and they were given a date of hearing of this Murder case.

DW2 prayed this court to acquit him on the reason that he was not involved in these allegations.

**DW3 Abdallah Yahaya Msangi *alias* John Bosco** (third accused) defended himself that, on 09/05/2021 he was at his homestead, at Bomambuzi at Pasua Ward. While with his family, strangers knocked his

door, it was about 03:00 hours. He asked them who were they? They ordered him to open. He went to open the door. After opening the door one police officer went holding a gun and returned DW3 inside. He asked DW3 his names. DW3 replied that he was Abdallah Yahaya Msangi. DW3 managed to identify one of them. After he had introduced himself, the police officer went out and DW3 was required to dress up. He was tied with a cloth on his face and handcuffed. Then, he was taken to the police station. After three days, he was taken out the lock up and taken to the investigation room. He was told that he was suspected to have stolen a motorcycle at Sabasaba area. He was charged in Criminal Case No. 188/2021 and taken to court before Hon. Olambo. The prosecution failed to prove their case. The case was dismissed.

DW3 stated further that, he did not participate in committing the Murder. That, he was not involved in the robbery nor murder. He was arrested for suspicion of robbery, CC No. 188. He insisted that, he did not commit the offence of murder nor robbery. He prayed this court to acquit him so that he may continue with his life.

With evidence of both parties on record, it is undisputed fact that the deceased Emmanuel s/o Jeremia Kessy died unnatural death. Also, the first and second accused persons admitted to have been arrested together on 16/04/2021 at Kiboriloni. The third accused admitted to had been arrested at his homestead at night.

In criminal cases, it is trite law that, the prosecution has the duty to prove the offence charged beyond reasonable doubts. The prosecution ought to positively establish through evidence the elements of murder which are; *death, the involvement of the accused as the persons who caused the*

*death* and *malice aforethought* (evil intention) of the accused persons. On the other hand, the accused persons have the duty of raising doubts on part of the prosecution.

Thus, since the fact that Emmanuel Jeremia Kessy is died and that he died unnatural death is not disputed, there are two issues for determination:

- a) Whether the death of the deceased Emmanuel Jeremia Kessy was caused by the accused persons?***
- b) Whether the prosecution has proved the charges of murder against the accused persons beyond reasonable doubts.***

On the first issue whether the death of the deceased Emmanuel Jeremia Kessy was caused by the accused persons; this issue can be resolved by referring to the evidence of PW3, PW4 and PW5. The first accused was implicated through the evidence of PW3 the only eye witness who testified inter alia that he was present when the deceased was hired by the first accused. PW3 said that, on the fateful day, the first accused approached Godwin their fellow bodaboda driver so that he could take him to Chakito area at Mjohoroni for Tshs 3000/=. Godwin did not agree; thus, the first accused approached the deceased who happened to agree to take him to Chakito at Mjohoroni for Tshs 3000/=. The incidence is alleged to have taken place at 22:00 hrs. Unfortunately, the deceased Emmanuel did not come back at their workplace that night. Next morning on 14/04/2021, PW3 and other fellow bodaboda drivers were informed that Emmanuel was found died at Chakito area the place he was hired to take the passenger at night. Two days later on 16/04/2021, PW3 saw the first accused while in the company of the second accused near the funeral and they managed to put them under arrest.

Explaining how he managed to identify the first accused, PW3 said that at their workplace there was electric light which was bright to the extent that one could read a newspaper. Also, PW3 said that the bargaining took about ten minutes and the distance between him and his fellow bodaboda drivers was about one step. He stated further that, there was no hindrance between them, thus, he could see them directly.

The identification which was done on 16/04/2021 was also said to have been done with the aid of light from electric bulbs of the nearby house. PW3 insisted that, the bulbs were very bright and he explained the distance between him and the suspect (first accused).

I am mindful that evidence of identification in unfavourable circumstances must be watertight. However, for the reasons which I will state hereinafter, while discussing in respect of the second and third accused, from the demeanour and coherence of PW3, I am convinced that the first accused was properly identified by PW3.

The Court of Appeal of Tanzania has underscored the issue of identification of the accused persons in unfavourable conditions in a number of decisions. In the case of **Hamis Ally and 3 Others v. Republic, Criminal Appeal No. 596 of 2015**, CAT at Dodoma, at page 4, it was held that:

*"Time and again this Court has insisted that when a case is centred on evidence of visual identification, such evidence must be watertight before arriving at a conviction. This insistence is borne out of the fact that **visual identification is of the weakest kind and hence the necessity of ruling out any possibility of mistaken identity**. In the celebrated case of **Waziri Amani v. R***

**(1980) TLR 250** this Court stated that visual identification is of the weakest kind of evidence and most unreliable, and that a court should not act on it unless all possibilities of mistaken identity are eliminated.

And in **Raymond Francis v. R [1994] TLR** the Court stated:

*".... It is elementary that in a criminal case whose determination depends entirely on identification, **evidence on conditions favouring a correct identification** is of utmost importance."* Emphasis added

In another case of **Chacha Jeremia Murimi and 3 Others v. Republic, Criminal Appeal No. 551 of 2015 [2019] TZCA 52**, the Court of Appeal stated factors to be considered in issues of identification of the accused person, that:

*".... the common factors are: **How long did the witness have the accused under observation? At what distance? What was the source and intensity of light if it was at night? Was the observer impeded in any way? Had the witness ever seen the accused before? How often?** If only occasionally, had he any special reason for remembering the accused? What interval has lapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witnesses, when first seen by them and his actual appearance? Did the witnesses name or describe the accused to the next person he saw? Did that/those other persons(s) give evidence to confirm it?*

Also, the case of **Waziri Amani v. Republic [1980] T.L.R 250** has clearly provided underlying principles for proper identification and stressed that such evidence must be watertight and leave no doubt. Furthermore, similar situations were discussed in the case of **Said Chaly Scania v. Republic**, Criminal Appeal No. 69 of 2005 (unreported) thus; We think that where a witness is testifying about identifying another person in unfavourable circumstances, like during the night, **he must give clear evidence which leaves no doubt that the identification is correct and reliable.** To do so, he will need to mention all the aids to unmistakable identification **like proximity to the person being identified, the source of light and its intensity, the length of time the person being identified was within view and also whether the person is familiar or a stranger.**" *Emphasis mine*

In addition to the factors stated in the case of **Jeremia Murimi** (supra), as I have already said, I have also considered the credibility of PW3 guided with the case of **Jaribu Abdallah v. Republic [2003] TLR 271** which held that:

*"In matters of identification, it is not enough merely to look at facts favouring accurate identification; **equally important is the credibility of the witness.** The ability of the witness to name the offender at the earliest possible moment is a reassuring though not a decisive factor."* *Emphasis mine*

In the case at hand, PW3 never knew the first accused before and he had no reason whatsoever to connect him to a serious offence of murder. In his defence the first accused explained how he was arrested together with



the second accused on suspicion that they were thieves. The second accused supported the defence of the first accused but he added that, they were surprised to be charged with the offence of murder when they were taken to court. When they complained, they were told that they should wait completion of investigation. In their defence, the first and second accused alleged that after being arrested by PW3 and his fellows, the chairman of that street went at the scene and advised that they should be taken to the Councillor of that area. Both of them were taken to the Councillor who then called the police officers who took them to the police station. In order to establish their defence, I expected the accused persons to have prayed to summon the said Councillor of Kiboriloni so that he could assist them to prove that they were arrested on suspicion of theft and not murder. Having in mind the fact that the standard of proof when the burden shifts to the accused is on balance of probabilities, summoning the Councillor of Kiboriloni could suffice to convince this court that the first and second accused persons were arrested on suspicion of theft and not murder.

PW5 who was the investigator of this case stated inter alia how the suspects were arrested. PW4 D/Cpl Derick also stated in his testimony how they arrested the third accused person. He said that they managed to know the homestead of the suspect because there were other suspects who were arrested before. The said suspects were interrogated, they explained that there was another suspect whom they cooperated together. Then, they were taken to the homestead of the third accused.

In his defence, the third accused said among other things that the offence was fabricated against him due to grudges which he had with Afande Leons.

Having examined evidence of both parties, despite the peculiar setting of the instant matter, from what I observed during the trial from demeanour of witnesses of both sides, my mind is free of doubts that the three accused persons in this matter, jointly and together murdered the deceased Emmanuel Jeremia Kessy. I say so based on circumstantial evidence.

I am aware that, I should warn myself before grounding conviction on circumstantial evidence as there are plethora of authorities to that effect. In the case of **Gody s/o Katende @ Godfrey Katende v. R (Criminal Appeal 399 of 2018) [2020] TZCA 1726 (17 August 2020)** at page 16 and 17, the Court of Appeal of Tanzania held that:

*"This Court has on several occasions emphasized that great caution should always be taken before grounding a conviction on the basis of circumstantial evidence. In the case of **SAID BAKARI VS REPUBLIC**, Criminal Appeal No. 422 of 2013 (unreported) the Court stated:*

*"..... In determining a case cemented on circumstantial evidence, the proper approach by a trial court and appellate court is to critically consider and weigh all circumstances established by evidence in their totality, and not to dissect or consider it in piecemeal or in cubicles of evidence or circumstances."*

In another recent decision in the case of **Shilanga Bunzali v. R, (Criminal Appeal 600 of 2020) [2022] TZCA 750 (1 December 2022)** at page 14 and 15 of the judgment, the Court of Appeal elaborated that:

*"We are aware about the settled position of the law that, one, the circumstantial evidence under consideration must be that of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with accuracy of mathematics. See: **LUCIA ANTHONY @ BISHENGWE VS THE REPUBLIC**, Criminal Appeal No. 96 of 2016 (unreported); two, that each link in the chain must be carefully tested and, if in the end, it does not lead to irresistible conclusion of the accused's guilt, the whole chain must be rejected. See: **SAMSON DANIEL VS REPUBLIC** (1934) E.A.C.A. 154; three, that the evidence must irresistibly point to the guilt of the accused to the exclusion of any other person. See: **SHABAN MPUNZU @ ELISHA MPUNZU VS REPUBLIC**, Criminal Appeal No. 12 of 2002 (unreported); four, that the facts from which an inference adverse to the accused is sought must be proved beyond reasonable doubt and must be connected with the facts which inference is to be inferred. See: **ALLY BAKARI VS REPUBLIC** (1992) TLR 10 and **ANETH KAPAZYA VS REPUBLIC**, Criminal Appeal No. 69 of 2012 (both unreported); and five, the circumstances must be such as to provide moral certainty to the exclusion of every reasonable doubt- See **SIMON MSOKE VS REPUBLIC** (1958) EA 715."*

From the strength of the above authorities, I am of considered opinion that PW3 being a total stranger to the first accused, he could not fabricate the case against him. The connection between the accused persons and their arrest was not discredited by their defences. I am strongly convinced that evidence of PW3, PW4 and PW5 was probable. In the case of **Mathias Bundara v. R [2007] TLR 53**, it was held that:

*"In our considered judgment if a witness is not an infant and has normal mental capacity as were PW.1 Massawe, PW.2 Amani, PW.3 Ngasa and PW.5 Lazaro, the primary measure of his/her credibility is **whether his or her testimony is probable or improbable when judged by common experience of mankind.**"Emphasis added*

Based on the above analysis and authorities, I find the last issue in the affirmative, that the prosecution has proved the charges against the three accused persons beyond reasonable doubts. Therefore, I find the accused persons GODFREY BERNARD MASAWE, EMMANUEL PAUL @ SAFARI @ BOMOA and ABDALLAH YAHAYA MSANGI @ JOHN BOSCO guilty of the offence of Murder, contrary to **section 196 and 197 of the Penal Code, Cap 16 RE 2019**. They are convicted accordingly as charged.



X

S. H. SIMFUKWE  
JUDGE

Signed by: S. H. SIMFUKWE

## SENTENCE

There is only one sentence for the offence of Murder as prescribed under **section 197 of the Penal Code** (supra). It is for that reason that, I hereby sentence the accused persons **GODFREY BERNARD MASAWE, EMMANUEL PAUL @ SAFARI @ BOMOA** and **ABDALLAH YAHAYA MSANGI @ JOHN BOSCO** to suffer death by hanging.

Right of Appeal explained.



X

---

S. H. SIMFUKWE  
JUDGE  
Signed by: S. H. SIMFUKWE

**COURT:** Judgment delivered this 19<sup>th</sup> day of February 2024 in open court.



X

---

S. H. SIMFUKWE  
JUDGE  
Signed by: S. H. SIMFUKWE

**19/02/2024**