

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DODOMA SUB REGISTRY  
AT SINGIDA  
(ORIGINAL JURISDICTION)**

**CRIMINAL SESSIONS CASE NO.111 OF 2022**

**THE REPUBLIC  
VERSUS  
1. ABAS YUSUPH ISSA  
2. VICENT PETER  
3. TUMAIN SHADRACK  
4. JUMA PETER  
5. MUSSA HASSAN KULABATA**

**JUDGMENT**

Date of Last Order: 9/5/2024  
Date of Judgment: 31/5/2024

**MASABO, J.:-**

This is a judgment of a murder trial involving five accused persons who are Abas Yusuph Issa, Vicent Peter, Tumaini Shadrack, Juma Peter, and Mussa Hassan Kulabata. They are alleged to have carried out a common intention of killing the deceased who is commonly identified by his hearing impairment as "*Bubu*" a Swahili word for "deaf", as his true name is unknown. As per the information, the murder incident was committed on 1/11/2021 at Mgulwang'ombe at Manyoni District, Singida Region. When these charges were laid at their door, they all repudiated. Hence, this trial.

During the trial, Ms. Elizabeth Barabara, learned State Attorney, led the prosecution team. Assisting her were Messrs. Nehemia Kilimuhana, Hussein Mkeni and Godfrey Isack Songoro, all learned Attorneys. The defence has a team of five learned counsels comprising of Messrs. Cosmas Luambano, Peter Ndimbo, Hemed Kulungu, Jackson Mayeka, David Rutayuga, counsels for the first, second, third, fourth and fifth accused persons, respectively. I thank all the counsels for their industry and dedication in discharging their respective duties.

The prosecution team paraded four witnesses and four documentary exhibits to prove the allegations above stated. The witnesses were: PW1- Aziza Hassan, a hamlet leader who saw the deceased's body and reported the incident to Manyoni police station; PW2- Charles Fabian Maziku, a doctor who performed the postmortem examination; PW3- Elizabeth Mkela, a Resident Magistrate at the Primary Court of Singida District at Itigi who recorded the extra-judicial confessions the second, third and 4<sup>th</sup> accused person in her capacity as a justice of the peace and PW4 was F7151 D/SGT Paschal, the investigator of the case who also recorded the caution statement of the first accused person.

From these witnesses and exhibits, it was gathered that, on the evening of the fateful day, 1/11/2021, the first four accused persons were at a pub styled as 'Mama Joy's pub'. As they were seeping their alcohol, the first accused person told them that the fifth accused person, Mussa Hassan Kulabata, who was then a supervisor of a mine of one Selemani at Londoni

area, was in need of human blood and private hair which would boost production at his mines which were performing poorly. That, should they agree to help him he will pay each of them a sum of Tshs 200,000/= as the fifth 5<sup>th</sup> accused person had promised to pay him a sum of Tshs 1,500,000/= in consideration.

The deal was concluded and they formed a common intention of killing *Bubu* who was also around at the pub as he seemed to be an easy target. They started to monitor his movement. When they saw him leaving the pub, they followed him and attacked him. The first accused person who was the principal offender, assaulted him with an iron bar on the head and as a result of which, he instantly died. Then, the first accused collected his blood and private hair. When he finished, his accomplices helped him to hide the deceased's body in a bush and they parted ways afterward. The first accused person packed the two items well and sent them by bus to the fifth accused person.

Meanwhile, on the morning of 2/11/2021, the body of the body of *Bubu* was spotted in the bush. PW1 being the hamlet leader went to see it and notified the police. She recalled that the deceased's body had a large wound on the forehead. After being notified, the police went to the scene led by PW1. PW4 was among the police officers who went to the scene. He sent the deceased's body to the mortuary. Later on, a postmortem examination was conducted to ascertain the cause of death. The investigation of the incident also commenced. The accused persons were arrested and put under police

custody. While there, the first accused person confessed to the offence in his caution statement which was admitted as Exhibit P4. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons also confessed in their extra-judicial confession statements which were recorded by PW3 and admitted as exhibits P1, P2 and P3, respectively.

For the defence, each of the accused persons testified under oath and did not call a witness. In these testimonies, each of them distanced himself from the offence. Save for the fifth accused person, the remaining four accused persons alleged to have been severely tortured and forced to confess. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons retracted their respective extra-judicial statements and asserted that while making such statements they were not free agents as they had been severely tortured while at the police station. Also, they alleged that when they were being transported to the justice of the peace at the Primary Court of Manyoni at Itigi which is about 40 kilometers from Manyoni Police station where they were detained, they had a stopover in the middle of a forest. While there, they were threatened that should any of them dare to refuse to confess to the murder, he would be sent back to the forest and be shot dead. Out of that fear, when they got to the justice of the peace, they confessed commission of the crimes.

Vindicating his innocence further, the third accused person, Tumain Shadrack while testifying as DW3 stated that when he was taken to the justice of the peace, he was too weak and unable to sit. When he got to the justice of the peace, he told her that he was severely beaten. Surprisingly,

she ignored him and proceeded to record the statement. PW4 who alleged to have been severely injured in comparison to others, had large scars on his left leg which he alleged to have been exacerbated by the torture. However, much as all the first four accused persons alleged to have been taken to hospital for treatment of the injuries sustained from the torture incident, none of them except the fourth accused person produced a PF3 to back up his assertion. The PF3 was admitted as Exhibit D2. It shows that he was treated at Manyoni Hospital on 11/11/2021. Also, the first accused person had a letter dated 11/5/2022 addressed to the OC CID Manyoni. In this letter, he was requesting to be furnished with a PF3 showing that was treated at Manyoni Hospital on 11/11/2021.

The first second and fourth accused persons asserted further that 9/11/2021 was not their first day to be taken to the justice of the peace as they were first taken to a justice of the peace at the Primary Court of Manyoni District at Manyoni (town) on 8/11/2021. The policemen had instructed them that they should confess the commission of the crime but in defiance of such order, each of them told the justice of peace the ordeal he had been through while under custody, and the justice of peace recorded the same. In retaliation, when they returned to the police station they were severely tortured before being taken to another justice of the peace at Itigi on the following day.

In a nutshell, this is all that I gathered from evidence. Further, at the closure of the defence, the parties prayed and were granted leave to file final

submissions. I commend all the counsel for filing their submissions on time. I have thoroughly read and considered all of them. I commend and thank all the counsel for their insightful submissions and for dutifully discharging their respective duties with dedication.

The sole issue awaiting determination is whether the charge has been proved. According to section 196 of the Penal Code, Cap 16, the offence of murder is committed where, any person who, with malice aforethought, causes the death of another person by an unlawful act or omission. For it to be considered as proved, its two essential ingredients, namely the murderous intent commonly understood as malice aforethought (*mens rea*) and the unlawful act or omission from which the death occurred (*actus reus*), must be proved. The onus to prove these is on the prosecution as it is an elementary rule of law and practice that in criminal trials, the burden of proof lies exclusively on the prosecution and the standard thereof, is proof beyond reasonable doubt (see **Jonas Nkize vs. R** [1992] TLR 213; **Frank Richard Shayo vs R** Criminal Appeal No. 333 of 2020) [2024] TZCA 230, TanzLII, **Malimi Peter vs R** (Criminal Appeal No. 480 of 2020) [2024] TZCA 65 TanzLII and **Matibya Ng'habi vs Republic** (Criminal Appeal No. 651 of 2021) [2024] TZCA 34 TanzLII). In the latter case, the Court stated thus:

"At the outset, it is instructive to state that, this being a criminal case, the burden lies on the prosecution to establish the guilt of appellant beyond reasonable doubt. In **Woodmington v. DPP** [1935] AC 462, it was held inter alia that, it is a duty of the prosecution to prove the case and the standard of proof is beyond reasonable doubt. The term beyond reasonable doubt is not statutorily defined but case laws have defined it. For

instance, in the case of **Magendo Paul & Another v. Republic** [1993] T.L.R. 219 the Court held that:

*"For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed. "*

It is noteworthy that, the duty and standard of the prosecution to prove the case beyond reasonable doubt is universal in all criminal trials and the duty never shifts to the accused."

Therefore, to earn the desired conviction in this case, the prosecution must lead evidence to prove beyond reasonable doubt that, a person commonly identified as *Bubu* is dead; that the deceased *Bubu* did not die naturally; and that, the accused person herein with malice aforethought unlawfully caused his death.

As there is more than one accused person and the allegations are that they jointly committed the murder, it is apposite I think, at this early stage, to refer to the provision section 23 of the Penal Code, Cap 16, which provides that:-

"23. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

Hence, if at the end of the analysis of the evidence on record, it is established that indeed the five accused persons herein formed a common evil intention

to commit murder and they executed their intention as alleged, they will all be liable for murder and they will suffer the same consequences.

The evidence summarized above has revealed that the following facts are undisputed. That, a person commonly identified as *Bubu* who was an irregular resident of Mgulwang'ombe hamlet at Manyoni town is dead. The nature of his death was similarly undisputed. Although the report of the postmortem examination of the deceased did not pass the admissibility test and much as the credibility of PW2 as a doctor was highly shaken as he had nothing showing that he was indeed a doctor, the oral evidence of PW1 and PW4 sufficiently proved these facts. These two witnesses went to the scene of the crime. They saw the deceased's body and their coinciding account was that the deceased's body had a large wound on the forehead which likely occasioned his death. Further to these two witnesses, the second and the fourth accused persons who were also residents of Mgulwang'ombe, confirmed that they were duly informed that *Bubu* died an unnatural death. In the foregoing, and guided by the decision of the Court of Appeal in **Daniel Thomas @ Yusuph @ Ngeni & Another vs R** (Criminal Appeal No. 120 of 2022) [2024] TZCA 103, TanzLII and other cases on proof of death in the absence of a post-mortem report, I find these two elements to have been proved without reasonable doubt.

Having resolved this, I will now turn to the culprit(s) of the murder and determine whether the accused persons herein are guilty. The accused person's guilt can be proved either by direct evidence, circumstantial or



through confessional statements of the accused person(s). In the instant case, the prosecution's evidence is largely dependent upon the accused persons' confessions as contained in the cautioned statement of the first accused person (Exhibit P4) and the extra-judicial statements of the second, third, and fourth accused person (Exhibits P2, P3 and P4). Supporting these confessions is the oral testimony of PW4 who recorded the confession of the first accused person and PW3 who recorded all the extra-judicial confessions.

The law is settled that, a confession statement, be it in the form of a caution statement made before a police officer or an extra-judicial statement made before a justice of the peace is an admissible and valuable piece of evidence (see sections 27 and 28 of the Evidence Act, Cap 6 R.E 2022). It can be acted upon to convict the accused even in the absence of corroboration provided that it was voluntarily made and it has the quality of a confession as defined under section 3 (1) (a), (b), (c) and (d) of the Evidence Act meaning that, it must contain an admission by the maker of the culpable role he played in the offence he is accused of.

Essentially, a confession is presumed to have been voluntarily made unless it is repudiated or retracted in which case, the law requires that, an accused person intending to object to the voluntariness of a confession must do so at the admission stage and not during cross-examination or defence as stated in the case of **Nyerere Nyague vs Republic** (Criminal Appeal Case 67 of 2010) [2012] TZCA 103, TanzLII where the Court stated thus;

"As we understand it, the relevant law regarding admission of accused's confession under this head is this: First, 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. (See SELEMANI HASSANI v R Criminal Appeal No. 364 of 2008 (unreported). Secondly, if an accused intends to object to the admissibility of a statement/confession, he must do so before it is admitted, and not during cross examination or during defence.”

Cementing this position in **Emmanuel Lohay & Another vs Republic** Criminal Appeal 278 of 2010) [2013] TZCA 292 TanzLII, the Court of Appeal dealing with a belatedly raised objection held thus;

“In the instant case the objection, if any, ought to have been taken under Section 27 of the Evidence Act that the statements were not made voluntarily or that they were not made at all. Objection could have also been taken under Section 169 of the Criminal Procedure Act that they were taken in violation of the CPA, etc. If objection had been taken under section 27 above the trial court would have been duty bound to conduct a trial within trial to determine the admissibility or otherwise of the statements. It is trite law that if an accused person intends to object to the admissibility of a statement/confession he must do so before it is admitted and not during cross-examination or during defence - **Shihoze Semi and Another v. Republic** (1992) TLR 330.”

Normally and as stated in countless authorities, when an objection is timely raised during the admission stage, the court must stop everything and proceed to conduct a trial within trial to determine the voluntariness or otherwise of the alleged confession. The procedure allows the court to listen

to both parties on the voluntariness or otherwise of the confession and make a finding thereof (further to the above-cited cases see **Twaha Ally And 5 Others V R** Criminal Appeal No. 78 of 2004 (unreported), **Paulo Maduka & Others vs Republic** (Criminal Appeal 110 of 2007) [2009] TZCA 69, TanzLII).

The accused persons herein were, therefore, duty-bound to make their objections at the admission. Objecting at that opportune moment would have enabled the court to hear both parties and determine the truthfulness of the following three seemingly intriguing facts and allegations: one, that the fourth accused person was severely injured while under police custody and for that reason, on 11/11/2021, a day before arraignment in court, he sent for treatment at Manyoni Hospital and issued with Exhibit D2; two, the disclosure made by the third accused person to the justice of the peace that he was severely beaten up while at the police station; and three, the preference of the Primary Court of Manyoni District at Itigi which is about 38 to 40 kilometers away from Manyoni Police Station as the place for the recording of the extra-judicial confessions as opposed to the Primary Court of Manyoni District at Manyoni (town) which is within the vicinity of Manyoni Police Station.

On the contrary, no objection was made at the admissions stage. As already stated, the first accused herein did not object when his caution statement was tendered for admission. Thus, it was admitted as Exhibit P4. Similarly, no objection was taken when the extrajudicial confessions of the second,

third and fourth accused persons were produced for admission. Hence, they were admitted as Exhibits P1, P2 and P3, respectively. The objections were belatedly raised during cross-examination and defence. Hence, procedurally wrong and tantamount to afterthoughts.

Turning to the second essential element of confession, as stated above, the law is settled that for a confession to attract weight and to be acted upon, it must comply with the provision of section 3 of the Evidence Act. Section 3 (1) (c) states that a confession must contain an admission of all the ingredients of the offence with which its maker is charged. Thus, before apportioning any weight to a confession the court must critically assess it in the light of this provision and the unique circumstances of the particular case. This requirement was underscored in **Joseph Mkumbwa & Anmother vs Republic** (Criminal Appeal 94 of 2007) [2011] TZCA 118 TanzLII where the Court of Appeal stated that:-

"We think that, that presumption does not go with the weight to be attached to every such evidence. Admissibility of the evidence is one thing; its weight or probative value is another. In evaluating the weight to be attached to an alleged confession, a trial court has the duty to look at all the surrounding circumstances. It also has to see whether the law has been complied with in extracting the statement. Thus, in **STEPHEN JASON & OTHERS V R.** Criminal Appeal No. 79 of 1999 (unreported) this Court warned:

*"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 not, no weight at all"*

This position was cemented further in **Nyerere Nyague vs Republic** (supra) when the Court once again stated thus:-

"even if a confession is found to be voluntary and admitted, the trial court is still saddled with the duty of evaluating the weight to be attached to such evidence given the circumstances of each case (See TUWAMOI v UGANDA (1967) E.A 91 STEPHEN JASON & OTHERS v R. (supra)

Thus guided, I have critically scrutinized each of the confessions to ascertain whether or not they attract weight and can be acted upon. My observation is as follows. Starting with the first accused's confession (Exhibit P4), unlike the rest of the confessions, this is fairly detailed. It gives an intense narration of how the offence was committed and the role of each of the first four accused persons. It also contains a narration about the first accused's life, his family, and educational background as appears on the second page of the caution statement. As the narration about his family and educational ground, were confirmed by him in his cross-examination while testifying as DW1, there can be no doubt that the narration as to the accused's family and educational background, came from the first accused himself or a person who is very familiar to him.

This notwithstanding, the caution statement bears different signatures, the authenticity of which needs to be determined by this court. Further to the issue of torture, the first accused person pointed to the disparity in the signatures contained in the 9 pages of his caution statement. Renouncing the content of his caution statement in the course of his defence and in PW4's cross-examination, the first accused person drew the attention of this court to his purported signatures as appearing on all nine pages. He renounced all the signatures save for the one appearing on the first page, a page that contains his profile and the caution paragraph. He asserted that after PW4 had asked him his name and profile, he started recording the statement and after he had finished, he forced him to sign whereby he only signed the first page. When these disparities were brought to the attention of PW4 during cross-examination he conceded that much as the signature was signed in his presence by the first accused person, they sharply contrast. He stated that:

"The signatures in the 1<sup>st</sup> and 2<sup>nd</sup> page of the statement are dissimilar. The signature on the 4<sup>th</sup> page resembles the one on 1<sup>st</sup> page but the ones on the 1<sup>st</sup> and 2<sup>nd</sup> page are dissimilar. The signatures on the 1<sup>st</sup> page and 9<sup>th</sup> page are dissimilar. It is true that the signatures in the statements are different."

Section 69 of the Evidence Act deals with disparities in signatures and provides that:

69. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in

that person's handwriting must be proved to be in his handwriting.

Principally, such proof would come from the person in whose presence the document was signed or in the absence of such person, a handwriting expert or a person who is familiar with the handwriting of the author. In the absence of these, the court may do a comparison of the writings by invoking its powers under section 75 of the Evidence Act. Dealing with a similar situation in **Ahmed Freight Limited & Another vs ECOBANK Tanzania Limited** (Civil Appeal No. 182 of 2020) [2024] TZCA 172 TanzLII, the Court of Appeal stated thus:-

Generally, handwriting or signature may be proved on admission by the writer or by evidence of a witness or witnesses in whose presence the document was written or signed. Moreover, the disputed handwriting or signature may be proved by opinion of the handwriting expert, evidence of persons who are familiar with the writing of a person who is said to have written a particular writing as provided under sections 47 and 49. The decision of the Court in the **DPP v. Shida Manyama @ Seleman Mabuba** (Criminal Appeal No.285 of 2012) [2013] TZCA 168 (25 September 2013, TANZLII) is relevant for this stance. In that decision, the Court made reference to the decision of the Supreme Court of India in **Fakhruddin v. State of Nadhya Pradesh**, AIR 1967 SC 1326 where it was stated that:

*"In either case the court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the*

*disputed one, not to become a handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in other case..."*

Going by this rule, the first evidence would come from PW4 who was the only person present when the first accused person was signing the caution statement. Guided by the cardinal principle that, every witness is entitled to credence and should be believed (see **Kyando Vs. R**, [2006] TLR 363, **Frank Richard Shayo vs R** (Criminal Appeal No. 333 of 2020) [2024] TZCA 230 TanzLII), I would hastily believe PW4. However, since the disparity is appalling and PW4 has conceded that although the signatures were of the same person, they are different, it was incumbent to have a handwriting expert to unmask the quagmire. As there was none, I am of the considered view that, the disparity should be resolved in the favour of the first accused considering that, unlike the prosecution, he had no duty to prove the authenticity of the signatures or the substance of the caution statement. Accordingly, this confession is discounted.

The finding above naturally dissolves the charges against Mussa Hassan Kulabata, the fifth accused person herein, because, other than the discounted confession of the first accused, there is no other evidence implicating him.

Turning to Exhibit P2 which is the extra-judicial confession of the 3<sup>rd</sup> accused person, I have observed that, although its maker confessed to have killed



*Bubu* and to have executed the murder jointly with Abas, Vicent and Juma, the date of the murder to which he confessed sharply contrasts with the one in the present case. His confession is in respect of a murder incident committed on 2/10/2021 about a month before the incident herein which as per the information, was committed on 1/11/2021. The law is settled that the date of the incident appearing on the charge sheet should align with the date in the evidence. In other words, when proving its case, the prosecution must lead evidence showing that the offence was committed on the date alleged in the charge sheet and not otherwise. A variance or uncertainty if any, must be cured through an amendment of the chargesheet at any time before the judgment else the charge will remain unproved and the accused shall be entitled to an acquittal (see the case of **Joseph Sypriano v R** Criminal Appeal No. 158 of 2011 (unreported), **Said Msusa vs Republic**, Criminal Appeal No. 268 of 2013 (unreported) and **Abel Masikiti vs. Republic**, Criminal Appeal No. 24 of 2015 (unreported). Since no such amendment was done and the rest of the evidence on record suggests that the offence was committed on 1/11/2021, Exhibit P2 is discounted. Further and unless there is another independent evidence implicating the third accused person, he shall be entitled to acquittal.

Next is the second accused person's extrajudicial statement (Exhibit P1). Unlike the first and the second confession statements, this confession appears to be too abstract. Although its maker confessed to have committed murder in collaboration with Abas, Adam, and Tumaini and narrated how they executed the murder under the superintendence of Abas, it is silent on

the essential facts such as the name or description of the deceased, the date of the incident and its location. Hence, a missing link between it and the instant case. Accordingly, it cannot be independently acted upon in the absence of a corroboration establishing the missing link between it and the case at hand.

Lastly, is the extra-judicial confession of the fourth accused person (Exhibit P3). The maker of this confession implicated himself and two other persons who are Abas and Tuma. He confessed to have formed a common intention with Abas and Tuma to kill *Bubu* so as to obtain private hair and blood. As per this confession, Abas was the one who killed the deceased by assaulting him with an iron bar. After he had killed him, he collected his blood and private hair and when he finished, he (the fourth accused person) and Tuma assisted him to hide the deceased's body in a bush. Looking at these names, I have observed that, the name of Abas coincides with the name of the first accused person whereas the name of Tuma does not coincide with any of the five accused persons. Hence, a missing link between it and the present case. I understand that there is a slight correlation between this name and the first name of the third accused in that, the name Tuma constitutes the first four letters of the first name of the third accused person, Tumani. However, this alone does not render the two names similar as in law these are distinct and unless there is evidence to the contrary, they should be treated as such. As no such evidence was rendered, no court would treat them as the same as that would amount to conjecture and speculation which have no place in the dispensation of justice. Impliedly, therefore, and in as

far as this case is concerned, the confession only implicates its maker and the first accused person.

This being the only remaining evidence available, I have asked myself whether it suffices to ground a conviction against these two accused persons. I will start with the first accused person. In respect of this accused person, the confession at hand is that of the co-accused person which cannot be acted upon in the absence of corroboration. cannot be acted upon in the absence of corroboration meaning that, for it to be acted upon it must be supported by independent evidence implicating the first accused person. Accentuating the requirement for corroboration, the Court of Appeal in the case of **Ndalahwa Shilanga & Another vs Republic** (Criminal Appeal 247 of 2008) [2011] TZCA 159 TanzLII, held that:

It is true that Section 33 (1) allows a court to take into consideration the evidence of a co accused against another, but Section 33(2) of the same Act, prohibits a conviction to be based solely on such confession. This provision appears to have escaped the mind of the learned trial judge. So, corroboration of a confession from a co-accused, is not just a matter of practice but a matter of law. This provision was enacted by an amendment to the Evidence Act by Act No. 19 of 1980, and thus overriding all case law, that had originally demanded such corroboration only as a matter of practice. Henceforth, a conviction of an accused person cannot rest solely on the confession of a co-accused. (Also see **Thadeo Mlomo and Others vs. R** (1995) TLR. 187 and **Flano Alphonse Masalu @ Singu vs R** (Criminal Appeal 366 of 2018) [2020] TZCA 197).

In the present case, having discounted the confession of the first, second, and third accused persons, the confession of the 4<sup>th</sup> accused person has remained with no corroboration. On the strength of the authority above, the confession of the 4<sup>th</sup> accused person cannot be acted upon as against the first accused person for want of corroboration. Accordingly, the case against the first accused person is not proved.

As for the fourth accused person, much as one's own confession suffices to ground a conviction, I am of the firm view that, in the circumstances of the present case it would be unsafe to ground a conviction based solely on the confession due regard being to the following facts: one, the fact that, the fourth accused person's confession was to the effect that his participation was limited to planning and assisting the 1<sup>st</sup> accused in hiding the deceased's body. Two, his complaints of torture albeit raised belatedly, when considered alongside the large scars on his legs and Exhibit D2, which shows that he was taken to hospital for treatment on 11/11/2021. These are all alarming and leave a doubtful impression of the treatment he received while under custody and the circumstances under which the confession was obtained. In her testimony, PW3 who recorded the confession stated that, when the fourth accused was brought before her he was in good health and physically ok with no scars on his body. This is doubtful, as the scars on the fourth accused's legs, whatever their cause, are too large such that they cannot be unnoticed.

The Court of Appeal in **Stephen Jason and Others vs Republic**, Criminal Appeal No. 70 of 2012 (unreported) stated 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."

In the foregoing, I am hesitant to rely solely on the confession. That said and done, it is patently clear that the prosecution has failed to prove their case to the required standards. Accordingly, all the five accused persons are found not guilty and are hereby acquitted of the charge of murder.

**DATED** and **DELIVERED** this the 31<sup>st</sup> day of May 2024.



  
**J.L. MASABO**  
**JUDGE**  
**31/5/2024**

The judgment delivered remotely through virtual court this 31<sup>st</sup> day of May 2024 in the presence of Messrs. Nehemia Kilimuhana, Hussein Mkeni and Godfrey Isack Songoro, learned State Attorney for the Republic, Messrs. Cosmas Luambano, Peter Ndimbo, Hemedi Kulungu, Jackson Mayeka, and David Rutayuga, learned counsels for the first, second, third, fourth, and fifth accused persons, respectively and in the presence of all the accused persons. The right of appeal is fully explained.



  
**J.L. MASABO**  
**JUDGE**  
**31/5/2024**