



**THE JUDICIARY OF TANZANIA**  
**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA**  
**(CORAM: HON. AUGUSTINE RWIZILE)**  
**CRIMINAL SESSION NO. 15 OF 2023**

**REPUBLIC ..... COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF**

**VERSUS**

**JUMA HAMISI ..... RESPONDENT / DEFENDANT**

**JUDGMENT**

**Fly Notes**

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**Facts**

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**Ratio Decidendi**

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7th of June 2024

**Hon. RWIZILE.:**

The accused Juma Hamis is charged with the heinous offence of murder contrary to sections 196 and 197 of the Penal Code. According to the charge sheet, on 13th October 2022 at the Rukoma Village of Uvinza District within Kigoma Region, the accused murdered one Jumanne Nzekeleba.

It was further alleged that the accused, who is resident of the same village, lived in the shamba owned by his brother. In that shamba, he grows cassava and bananas. On the fateful night, it was said, the accused and one Abel Tito, caught the deceased Jumanne Nzekeleba stealing cassava. They severely beat him leading to his death. His body was found in the morning in the same shamba. The accused was then arrested and brought to justice.

Before this court, the accused who was represented by Ms Mary Peter learned counsel denied involvement in committing the offence. This prompted the prosecution led by Ms Happiness Mayunga and Edith Mauya learned State Attorneys to call four witnesses to prove the charge.

Witnesses tendered by the prosecution include Musa Deusdedit (Pw1), Costa Toke (Pw2), Ramadhan Mlindwa(Pw3) and 9872 Corporal Sylvester (Pw4). But on the defence, the accused testified and had no



witnesses.

In his defence, the accused bitterly denied having committed the offence. He told this court that when in his house at night sleeping, he heard noise from the road which is close by towards his farmland. They were saying, there is a thief. He did not go out but rather heard the noise and a few moments later the noise disappeared, and it was calm. Because, he could not get sleep anymore, he lit fire and started enjoying it until early in dawn when Costa Toke Pw2 and his son passed by. But before that happened, his in-law, wife of his brother, came and complained about theft of her cassava that happened last night. The duo went to see the how that was done.

It is this time, according to his evidence, they met the body of the deceased abandoned in the shamba at a banana stem. He said, it was in a pair of shorts, severely injured in the head and bruises around the hands and other parts of the body. The accused further said, his in-law called authorities and informed them about the killing.

But a bit different, is the story of Pw2 who alleged came by the house of the accused in the morning with his son Paschal Toke, when heading to their farm. The accused who was found enjoying his morning fire at his homestead, told them all is not well. As they inquired why, he told them, at the previous night, a thief was caught stealing cassava in his shamba and had beaten him with Abel Tito. It was his evidence that the accused directed them where the body was. They witnessed it and decided to call the local government leaders. The police officers including Pw4, the Village executive officer of Rukoma, Pw3 and Pw1 an assistant medical officer came by later in the day.

Pw3 gave evidence in support of Pw2. He said, he received information of the killing of Jumanne Nzekeleba and called the police. Upon arrival, he said, the accused admitted having beaten the deceased and that it was done with Mchungaji. Pw4, the police officer likewise, said, there was information that the accused participated in the murder. Pw4 drew a rough sketch of the crime scene, which is admitted as P2.

According to the autopsy report done by Pw1, the deceased died because of severe loss of blood. In terms of exhibit P1. It was plain that the cause of death was due to head injury leading to intercranial bleeding. Apart from head injury, still, the report showed, there were bruises and swelling of the hands. All was caused by a blunt object that hit the deceased.

In material terms, there is no evidence directly stating that it is the accused who killed Jumanne Nzekeleba. The only good evidence is an oral confession alleged made to Pw2. There is no other evidence, collected by the police officers. Pw4, said was informed, that the accused admitted to Pw2 to have killed. On his part, Pw3 said was also informed by the gathering mass at the crime scene. He also said, he heard from the accused saying, it was done by him, and another person called Mchungaji.

At law, confessions may be either oral or written. When written, as I understand the law, it has to be made to a person in authority or capacity to receive it. In oral confessions, anybody I think, can receive them. If made to a police officer, confessions must be made on caution and in compliance of the law in terms of sections 48 to 51 of the Criminal Procedure Act.



In all confessions, I think, when made voluntarily and not repudiated or retracted form the best evidence in the trial. An extract in the case of **TUWAMOI v UGANDA** (1967) E.A 91, sums it up. It goes that, 'everything being equal the best evidence in a criminal trial is a voluntary confession from the accused himself'.

As shown, the accused is said to have admitted before Pw2 and Pw3. His confession however was not written by the police officer, Pw4 who also said, he indeed admitted based on the information gathered after investigation. But the accused denied having admitted to anybody about committing the offence. It remains therefore the duty of this court to scrutinize the confessions. It has been held that 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 **TWAHA ALLY AND 5 OTHERS v R** Criminal Appeal No. 78 of 2004 (unreported)).

It follows therefore that, for the confession to hold, it must be in the first place voluntary, and I think, it has to be corroborated by independent evidence. As to whether the confession was made voluntary to Pw2 and Pw3, it remains the matter of evidence. Pw2 said, he arrived at the house of the accused in the morning. The accused admitted to him that at night a thief stealing cassava was beaten. He did not say, they beaten him to death as Pw3 said. It seems, Pw3 interrogated him when people had gathered in numbers. It cannot be said that he admitted voluntarily to him, if he indeed did so.

Still, I think, there is no corroboration of the confession to Pw2. I think so because, the confession to Pw3 was not proper. It is clear to me that as repudiated as it has been, a confession of the accused to both, Pw2 and Pw3 requires, corroboration. It is now a settled law that evidence which requires corroboration, cannot corroborate another, as held in the case of **ALLY MSUTU v R**. [1980] TLR 1.

The weight attached to the evidence of Pw2, in respect to the confession of the accused is little. It is so because, in terms of Pw3, the accused admitted to having committed the offence with Mchungaji, while Pw2 said, he admitted having committed the offence with Abel Tito. I am not sure, if Abel Tito and Mchungaji are one and the same person. The prosecution evidence did not put that in perspective. Pw4, was also informed of the admission but did not bother to record the same by himself or take him to the justice of the peace. Worse still, Pw4 who investigated the case, as he told this court, did not say anything about the existence of Abel Tito and that Mchungaji. There is no reason to believe that the prosecution undevoured to collect sufficient evidence to prove the case. I do not think, based on the existing evidence, it can be surely said, the charged offence has been proved beyond reasonable doubt. It is not safe therefore, to convict the accused person. He is therefore acquitted.

Dated at **KIGOMA ZONE** this 7th of June 2024.



AUGUSTINE RWIZILE

Hon. AUGUSTINE RWIZILE



**JUDGE OF THE HIGH COURT**

