

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

**CRIMINAL SESSION NO. 58 OF 2023**

**REPUBLIC**

**VERSUS**

**DAUD JUMA @ NKIMBILI**

**JUDGMENT**

*14<sup>th</sup> & 24<sup>th</sup> May, 2024.*

**MASSAM, J.:**

The accused person, one **Daud Juma @ Nkimbili** is charged with the offence of Murder contrary to Section 196 and 197 of the **Penal Code** Cap. 16 R:E 2022.

The information was read over and explained to the accused person, he pleaded not guilty to the information.

It was alleged that on 6<sup>th</sup> day of February, 2023 at Kinaga Village, Kahama District, within Shinyanga Region, the accused person did Murder one Christina d/o Nkimbili.

The brief facts of the case were as such that, the deceased and the accused person were both living at Kinaga Village while the deceased is the accused's aunt. That, on 6<sup>th</sup> day of February, 2023 the deceased was found dead by her relatives at her house after they had visited her. Upon finding her dead, they immediately reported the

matter to the police and investigation commenced. In the course of investigation, they got information that, the father of the accused person one Juma Nkimbili had received a call from the accused who admitted to have murdered the deceased on the allegations that she was bewitching his children.

Further, it was established that, the accused person had also early communication with his sibling one Kashindye Juma Nkimbili following the death of his children and that he knows the one who killed them and soon hi will fix it. Subsequently the accused was arrested and when the matter was called for plea taking and preliminary hearing, the information of the offense of murder was read out and explained to him, and he pleaded not guilty to the offence and the matter proceeded to full trial. Throughout trial, the Prosecution side were represented by Ms. Nyamnyaga Magoti, and Mr. Kiwango learned state Attorneys, whereas the accused person enjoyed the legal service of Miss Glory Ikanda Learned Advocate.

In efforts of establishing the guilt of the accused persons beyond reasonable doubts, the Republic called a total of 6 (six) witnesses and tendered two (2) exhibits, while the Defense testified with 3 witnesses' inclusion of the accused with no exhibits.

In the main, the body of evidence by the Prosecution presents a case by taking the evidence from PW1 who testified that, he is residing at Kinaga village within Kinaga Ward with his family, and that, way back on 6/2/2023, within their village during night hours, while at home, he received information from his children that his blood sister (one Christina Nkimbili), the deceased, had been assassinated. He informed other family members and went at the scene and found the deceased lying down while blood was flowing from her neck which has been cut by a sharp object.

After that, he informed the local leaders and upon their arrival at the scene, they gave information to the police who arrived at the scene and witnessed the death of the deceased. Thereafter the police took the body and they both went to the police station for interrogation.

PW1 also contended that, investigation started and they suspected the accused to be the murderer since he was not at the scene, and while at the police station, the accused phoned one Kashindye and they heard their conversation; the accused was asking him as to what was going on at the scene and if the police were around.

PW1 further stated that, before the incidence the accused was living at his house which is not too far from the deceased house and therefore after he heard the incident, he suspected the accused to be

the one who murdered his aunt since he was not around and they did not know where he was.

Further to that PW1 testified that, on 8/2/2023 he went to the police station and the body was handed over to them for burial and on 14/2/2023, he was called by one police officer, Fatuma, who asked him as to where the accused was and he answered it negatively but they asked him that he is the one who is hiding him at his sister's place at Masumbwe. Thereafter they decided to call his number but he was not picking up his phone. One day the accused after he had called him, he picked up the phone but he did not say where he was and end up telling him he is afraid to be arrested by the policemen.

PW1 continued by uttering that, he questioned the accused if he is the one who killed his aunt but he denied and narrated to him that, his wife faced some problems in delivering the children as sometimes the babies were born and late on died. Therefore, his wife left him and decided to find a witchdoctor who told him that the death of her children is caused by his aunt (the deceased). Again, after receiving that information from the accused, he went back to the police station and narrated what he heard from the accused.

Equally, PW1 revealed that, the accused as well told him to sell his cows for the purposes of releasing Kashindye who had been detained at

the police station since the accused refused to come back and sell his cattle by himself.

PW2, testified that he is living with his brother one Daudi and on the 6<sup>th</sup> day of Feb, 2023 in the afternoon he found Daudi, Richard, his wife and another person at home, but later, they left and PW2 remained with Daud and asked him about that visit and Daudi told him that, those people came to pick his wife's clothes but he refused to give them because he is still in love with her. Again, he testified to him that, his wife wants to divorce him since she is delivering the dead and abnormal children, and that, his aunt (the deceased), is the one who bewitching them and thus he knows the problem and he will fix it out in the evening.

He testified that, he later on saw Daudi taking shower, and thereafter, his step mother came and told him that, their aunt felt down and she had a wound so they have to go and see her but Daudi was not around and they went at the scene with his step mother and his young brothers and PW1 arrived later.

PW2 went on by stating that, on 7/2/2023, he was called by the hamlet chairman who asked him as to where Daudi was and he replied negatively. After he had called him, he was not reachable but unfortunately, he received a call from a new number and it was the

accused who asked him as to what was going on and he replied that their aunt had been murdered. He thereafter told him that he is at Mwakitolyo at his mother's home and if the police are at the scene.

Again, he was on loud speaker and everyone who was there heard their conversation and after that Daudi hanged up the phone. He took the police to Mwakitolyo to look for the accused unsuccessful. He added that, he was aware of the accused's problem with his wife who was delivering dead children and that, a witchdoctor told him that the source of their death is the diseased.

PW3, testified that, she was a medical doctor working at Kahama Hospital on 2023, and she had an experience of five years. On 7/2/2023 at 12:00 hours she was at her office and was directed to go and examine the deceased who was at the mortuary. Upon her arrival at the mortuary, she found the body, and also the deceased relatives and the police were around. She received the body for examination and the results revealed that the body had a wound on her neck, and her clothes were covered with blood, again, she had fracture at the mandible and the facial bone and also the results displayed that the wounds were caused by cut using a sharp object.

PW3 added that, after examination she filled the form which she had been given by the policeman to wit, Post mortem report of

deceased one Christina Nkimbili and it was admitted by the court as exhibit P1.

On his side, PW4 testified that he is a police officer working with Kahama Police station with an experience of 28 years, and that, on 30/3/2023, at 10:00pm as the in charge of ant-robbery, he went to Bulige to arrest the accused person successful. Thereafter, he informed him his charge and took him to the police station at Kahama and his statement was taken by D/Sgt Dickson, PW5 who testified to be an investigation officer at Kahama police station with an experience of 10 years, and on 30/3/2023, at 02:00 hours he was at his working station and was directed to take the statement of the accused person.

PW5 went on stating that, after preparation, they introduced to each other including the offence the accused was charged with, and informed him all his rights including the rights to call his friend, relative or advocate, but unfortunately the accused agreed to be written his statement alone.

Thereafter, the accused stated to narrate about his life including the family problems they had with his wife since when she used to deliver babies who later on they are dying, hence his wife decided to go to her relatives and visit the witchdoctor who told her that, her children were killed by Christina (deceased). Later on, his wife told him that he

wants to divorce him, but the accused told her that he will fix that problem of witchcraft.

PW5 went on asserting that, on 6/2/2023, the accused confessed to him that he prepared his bush knife and in the evening, he went to visit his aunt, and cut her on her neck and after that he run away to hide himself to his relative and therefore in his statement he agreed to be the one who killed the deceased.

PW6 testified that, she is a magistrate and justice of peace working at Kahama Urban Primary Court and among her duties is to take down and record extrajudicial statement. On 4/4/2023 she was at her working place and one policeman came with the accused person and was informed that the accused confessed to be connected with the murder case and therefore he wants his statement to be recorded and that the accused person is known as Daudi Juma.

PW6 stated further that, at that time the accused was health by looking and had no wound or any injuries, and he agreed to be recorded his statement since he was not forced to come and testify before justice of peace. Thereafter, she narrated all the rights to the accused person who after being satisfied, he stated to narrate the whole story and confessed to have been killed Christina because he was informed by a witchdoctor that the deceased used to kill his children, and he killed the



deceased with a bush knife. After she had recorded his statement she read it over to the accused and they both signed it and handed it to the police. That Extra judicial statement was tendered and admitted as exhibit P2.

Having heard the evidence from prosecution the court made a ruling by finding out that a prima-facie case had been established against the accused person and consequently was informed his rights to defense under Section 231 of Criminal Procedure Act, Cap 20, R: E 2022 and choses to give a sworn defense with two witnesses without exhibits.

In his sworn defense, DW1 categorically denied to have committed the alleged offense. His testimony is to the extent that, he was born at Kinaga village Kahama District, and he does not remember anything concerning 6<sup>th</sup> Feb, 2023 but on 2023 he took his wife to the hospital as she was pregnant and he was informed that, she has to be operated., unfortunately they were blessed with a child who was sick and died after the expiration of four days. DW1 stated that, he knows the deceased as his aunt and while at Mwakitolyo he heard from his mother who was called by a neighbor that the deceased had been cut with a bush knife.

Following that information, he was arrested on 30/3/2023 at Bulige at his cousin place one Paul Robert since he went there on 7/2/2023 and he was staying there because he heard that the policemen

were looking for him. After being arrested, he was taken to Kahama Police station and started to be tortured for the allegations that he killed his aunt and thereafter was forced to sign unknown document by using a thumb.

DW1 testified further that, later on he was taken to the office of justice of peace and he did not confess anything since he did not claim that the deceased is a witchcraft, and therefore he did not commit that murder hence he prayed to this court to let him free.

DW2, testified that, she is living at Mwakitolyo village and the accused person is her son who was arrested at Kinaga – Kahama and he was living with his wife who left her since she was delivering dead children and that, the accused person came to her place on January, 2023 because he was suffering from chest pain and on 6/2/2023 they got a call that his son's aunt passed away and they were looking for the accused person who later on went to visit his cousin living at Malito known as Paulo since he was afraid to be arrested by the police.

The last defence witness DW3 testified that, she is residing at Kahama with her father and mother, and on 6/2/2023 her brother, the accused, received the information that his aunt had passed away and that Kashindye was arrested and therefore the police were looking for him too. She testified that, the accused person decided to come to their

place on January, 2023 and later on went to his cousin at Malito after he had been informed that the policemen were looking for him.

After the defence had close their case, the learned advocate for the accused person, Miss Gloria Ikanda had no intention to file final submission but only the prosecution did it.

In their final submission, they averred the following facts which strengthening the prosecution testimony to the extent that the defense's case is weak and unreliable since the following facts are not in dispute, the wife of the accused person give birth two times and the children died after birth, that the accused had no quarrel with either of the prosecution witnesses, the accused run away after that incident, both the accused and the deceased were the resident of Kinaga area, when the incident occurred accused and his wife were separated, that, the deceased was murdered on 6<sup>th</sup> Feb, 2023, the deceased name is CHRISTINA NKIMBILI and lastly her death was unnatural.

In his view, the learned state attorney submitted that, the prosecution side had subsequently proved their case beyond reasonable doubt since the evidence tendered met the three tests as it was set in the case of **Jimmy Runangaza V. Republic**, Criminal Appeal No. 159 B of 2017 while quoting the case **Mashaka Juma @Ntula V. Republic**, Criminal Appeal No. 140 of 2022 CAT at Shinyanga, Pg 16.

The learned state attorney averred that, it is from the testimony of PW1, who upon the accuracy of the incident, he suspected some people to be involved and that after a call from the accused to PW2, it raised a lot of doubts that the accused killed the deceased. Again, their conversation made on 14<sup>th</sup>, Feb, 2023 shows that, the accused revealed to PW1 that what had occurred to the deceased related to the problems facing his wife.

The learned state attorney stated that, the evidence of PW1 was properly corroborated with that of PW2, who testified that, on the 6<sup>th</sup> Feb, 2023 at the afternoon he found the accused with other two people and his wife who were already separated and when PW2 asked about that people the accused said that, his wife come for her clothes since she cannot stay with a family that kills her innocent children and it was a reply from the accused that, she cannot let her go since she is still in love with her, and that he knows the problem and soon will be fixed as he has been told two times by a witchdoctor that his wife was bewitching.

Again, it was from the learned state attorney that, the evidence of PW1 and PW2 were corroborated with the evidence of PW5 that after the accused had been interrogated, he confessed to have been killed the deceased he had been told that she was bewitching his children.

Likewise, the counsel contended that, it is from the evidence of PW1, PW2 and PW5 which were supported by the evidence of PW6, justice of peace, who testified that, the accused confessed before her to have killed the deceased and as per exhibit P2 which corroborate his evidence by referring this court to the case of **Chande Zuberi Ngayaga and Another V. Republic**, Criminal Appeal No. 258 of 2020.

Moreover, the counsel invited this court to see the case of **Jacob Asegelile Kakune V.DPP**, Criminal Appeal No. 178 of 2017 and the case of **Geofrey Sichixya V. DPP**, Criminal Appeal No. 176 of 2017 that *the very best of witnesses in any criminal cases is an accused person who freely confesses his guilty.*

The counsel, added further that, through the above testimony by the prosecution, it is wisely proved that the accused murdered the deceased and no one else.

Making clarification to the confession made before reliable witnesses, to wit, PW1, PW5 and PW6, the learned state attorney, submitted that, that principle had been met properly since it is defined to be oral confession and as per the provisions of section 3 (1) (a), (b) and (c) of the **Evidence Act, Cap 6 R:E 2022**, hence the confession made to those witnesses by itself are sufficient to find conviction. He referred this court to the case of **Yusuph Ndaturu Yegera @ Mbuge**

**Hitler V. Republic**, Criminal Appeal No. 195 of 2017 CAT at Tabora while citing the case of **Posolo Wilson @ Mwalyengo V. Republic**, Criminal No. 613 of 2015.

Likewise, the learned state attorney, submitted that, it is the conduct of the accused after and before the accuracy of the act proved that he intentionally killed the deceased since the evidence of PW2 shows that, the accused refused to hand over his wife's clothes as he will soon fix the problem, and in the same date the deceased who was alleged by the accused to be a witch was killed and the accused disappeared and the next day, the accused called PW2 and asked him if the police arrived, and in his defence he admitted that, he run away as he was afraid to be arrested by the policemen hence the conduct of the accused person established malice aforethought. He referred this court to the case of **Nassoro S/O Khamis Ngwele V. Republic**, Criminal Appeal No. 188 of 2017 cited the case of **Enock Kipela V. Republic**, Criminal Appeal No. 150 of 1994 at Pg 15-16.

Further to that, the learned counsel submitted that, even on crucial matter the accused failed to cross examine on it hence it gives chances to prosecution case to flourish and remained to be proved to the extent required. He referred this court to the case of **Shomari Mohamed Mkwama V. Republic**, Criminal Appeal No. 606 of 2021 at

Pg 18, citing the case of **Issa Hassan Uki V. Republic**, Criminal Appeal No. 129 of 2017 and **Martin Misara V. Republic**, Criminal Appeal No. 428 of 2016.

Moreover, the learned counsel submitted on the defense of Alibi raised by the accused and states that, he did not inform this court before the commencement of hearing hence it is against the conditions sets under section **194 (4) of the CPA, Cap 20 R:E 2022** and therefore his defence has to be denied as it was stated in the case, **Edgar S/o Kayumba V. Republic**, Criminal Appeal No. 498 of 2017 CAT at Mbeya.

Yet again, he submitted that the lies of the accused revealed that he committed this offence because he told this court he was at Kinaga that day and he was informed by his neighbour about the incidence, but the evidence of PW2 revealed that the accused called him and ask if the police arrived at the scene. He referred this court to the case of **Masumbuko S/O Matata @ Madata V. Republic**, Criminal Appeal No. 318, 319 and 320 of 2009, where it was stated that, the lies of an accused can be used to corroborate evidence against him.

The learned state attorney pens down by concluding that, from that evidence testified by prosecution witnesses, it is undoubtedly that the accused is the one who killed the deceased.

That marked the end of the evidence from both sides and therefore, the main issues before this Court for determination is;

- (i). That, the victim of the crime mentioned in the charge is actually died,***
- (ii). Whether the death was not natural,***
- (iii). Whether it was the accused person who caused the death of the deceased,***
- (iv). Whether the killing of the deceased was with malice aforethought.***

This being a criminal case, it is worthy and instructive at this stage, to look at what Section 110 and 112 read together with Section 3(2) (a) of the **Evidence Act [Cap 6 RE 2019]** as far as the burden and standards of proof is concerned. These two concepts were interpreted in the case of **Wilmington V. OPP**, (1935) AC 462, and in the case of **Christian Kale & Another V. The Republic**, (1992) T.L.R 302 CAT and **John Makorobera & Another V. The Republic**, (2002) T.L.R 296, which insistently held that the accused person should only be convicted of an offence he is charged with on the basis of the strength of the prosecution case not on the weakness of the defense case.

In line with this principle of burden and standard of proof, another important principle becomes necessary as enunciated in the case of



**Mariki George Ngendakumana. The Republic**, Criminal Appeal No.353 of 2014 CAT - Bukoba (unreported), which inter alia held that:

***"It is the principle of law that in Criminal Cases the duty of the prosecution is two folds, one to prove that the offence was committed, two that it is the accused person who committed it"***

With regard to the first question as to ***Whether the victim of the crime mentioned in the charge is actually died***, is that, it is not disputed by both parties that the victim actually died, the same was proved by postmortem report which was tendered by PW3 and admitted as exhibit P1 which proved that deceased died and the cause of death was loss of blood which was caused by cut wounds on her neck. Also, PW1 and PW2, who are all the family members of the deceased proved the same that the deceased died and they buried her on 08/02/2023.

***On the second issue that whether the death was not natural***, this is answered also by exhibit P1, postmortem report, which proved that the cause of death was due to loss of blood caused by cut wounds, again the evidence of PW2 reveals that, the brother of deceased together with PW2 who after they had been informed that their aunt fall down, they immediately went at the scene and found the

deceased lied down and the blood was flowing from the neck, the evidence which was supported by the testimony of PW3 and exhibit P1, thus this evidence proved that the death of the deceased was not natural.

***On the issue of whether the accused person killed the deceased,*** It is from the evidence of the prosecution that, the deceased was killed by being attacked with a sharp object on her neck and that it is the accused who is responsible for the murder, now the question is whether under the evidence on record the accused was in any way identified to have been the culprit of the crime.

From the evidence testified by the prosecution it is clear that, no any prosecution witness testified to have been seen the accused person committing the offence, this is due to the fact that, the prosecution's testimony is entirely based on oral confession of the accused person made before PW5 and written confession made before PW6 distinguished as Extra Judicial statements, admitted as exhibits P2 before this court including Post-mortem, to wit, exhibit P1 which corroborate with the evidence from other witnesses.

In regard to the evidence testified by PW6, it is openly that the accused person confessed to be connected with this offence, since her evidence reveals the follows,

**“Accused person did admit to kill his aunt called Christina Nkimbili and he killed him because of witchcraft done by the deceased”**

Again, the extra judicial statement tendered and admitted as exhibit P2, preferably at the contents of Pg. 4 discloses the following,

**“.....ilipofika miezi miwili nilimhitaji mke wangu aje, mke wangu alikataa na kusema mji umevunjika nyumbani kwetu kuna uchawi mno. Muda ulipita ndipo tarehe 6/02/2023 nilimuua shangazi yangu Christina Nkimbili na kumkata na panga shingoni muda wa saa moja usiku huko maeneo ya Kinaga Kahama.”**

From the above quotations it is the accused on his own words and without being forced by justice of peace, to wit PW6, confessed to her that, he killed the deceased, and the said confession was admitted to this court, after being satisfied that, it met all the required ingredients to be tendered as exhibit and the same was not objected by the accused, as it was stated in the case of **Rhino Migire V. Republic, Criminal Appeal No. 122 of 2002 that,**

***“For a statement to qualify a confession it must contain the admission of the ingredients of the offence charged”***

Besides, the evidence of PW6 was corroborated with the evidence of PW5 which shows that, the accused person confessed to him that, on 6/02/2023 he prepared his bush knife and in the night hours he went to visit his aunt and cut her on the neck and run away to hide to his relatives. It is from this evidence, this court is concurring with the learned state attorney's submission that, an oral confession made to a witness being it a police or civilian may be sufficient by itself to found conviction.

This was well sated in the case of **Posolo Wilson (Supra)** as cited in the Case **of Yusuph Ndaturu (Supra)** at Pg 28 that,

***"It is settled that an oral confession made by a suspect before or in the presence of reliable witnesses, be the civilian or not, may be sufficient by itself to found conviction against the suspect"***

Likewise, this court managed to observed the conduct of the accused after and before the commission of the offence. The accused intention to cause death to the deceased was vividly explained by the prosecution witnesses, that is PW1 and PW2 which point to the conclusion that he intended to kill the deceased. This is reveled when PW1 testified that, the accused told him his wife was facing with the problem of delivering the children and sometimes she delivered dead

children hence his wife was told by witchdoctor that, the one who is causing the death is his aunt, the evidence which was supported by PW2 who testified that, before the death of the deceased, the accused person told him that, his children were dying and he had gone to the witchdoctor who informed him that his aunt, now the deceased, is the one who is bewitching them and he will fix that problem. Thereafter in the evening the deceased was found dead and the accused was not around.

Again, during cross examination of PW2 he testified that, **“it is Daudi who told me that, he is connected with the death of his aunt”**

Yet again, PW1, upon being phoned by the accused person using a new number the accused told him that, he did not tell him as where he was but end up telling him that he is afraid to be arrested by the police. The question is why would he be afraid to be arrested by the police if he is not the one who committed the said offence, on the other hand the accused was a neighbour to the deceased let alone her being his aunt, this court expected the accused to be at the scene to help, but when he was told about the incidence he run to his mother as he alleges that he was there.

From this evidence, this court is well satisfied that, the conduct of the accused person connects him with the death of the deceased, as first he uttered to those witnesses that the deceased is the one who bewitched his children, then he will fix that problem, thereafter he run away, the deceased was found dead in the same day he run away, yet he told the witnesses that, he was afraid to be arrested by the police. This was well debated in the case **of Nassoro S/O Ngwale (supra)** at Pg 16 that;

*"— usually, an attacker will not declare his intention to cause death or grievous harm. Whether or not had that intention must be ascertained from various factors, including the following:  
..... **(vi) The attacker's utterances, if any, made before, during or after the killing; and**  
**(vii) The conduct of the attacker before or after the killing"**  
**[emphasis made]***

Similarly, this court has been impressed to see wat transpires on the defence evidence and observed that, in his evidence the accused raised a defence of **Alibi**. It is a cardinal principle that the accused person does not have to establish that his alibi is reasonable true, but all he has to do is to create doubt as to the strength of the case for the prosecution, but the law sets some conditions to be observed when

admitting the defence of ***alibi***, and this was pointed out under the provision of section 194 (4) (5) and (6) **of the Criminal Procedure Act, [Cap 20, R:E, 2022]**, that,

*(4) Where an accused person intends to rely upon an alibi in his defence, he shall give to the court and the prosecution notice of his intention to rely on such defence before the hearing of the case.*

*(5) Where an accused person does not give notice of his intention to rely on the defence of alibi before the hearing of the case, he shall furnish the prosecution with the particulars of the alibi at any time before the case for the prosecution is closed.*

***(6) Where the accused person raises a defence of alibi without having first furnished the prosecution pursuant to this section, the court may, in its discretion, accord no weight of any kind to the defence.*** *[emphasis is mine]*

Consequently, this court is blessed to say that, the defence of ***alibi*** raised by the accused and ambiguously supported by DW2 and DW3 does not shake the prosecution case at all since he did not follow the required procedures set above and therefore, the accused's defence

did not thus challenge the prosecution case to the extent of raising reasonable doubts as observed previously.

It is therefore from the evidence of PW1, PW2, PW3, PW5, PW6, the, extra Judicial statement tendered as exhibit P2 and the Postmortem report (Exhibit P1), in criminating the accused person.

Owing to the above reasoning, I may say that, the prosecution managed to link between the death and the accused person, as it was debated in the case of **Mohamed Said Matula V. Republic [1995]**, that,

***"Upon a charge of murder being preferred, the onus is always on the prosecution to prove, not only the death, but also the link between the said death and the accused, the onus never shifts away from the prosecution and no duty is cast on the appellant to establish his innocence"***

Having said so, this court is well satisfied that the accused person murdered the deceased because, the link between the death and the accused persons has been proved to the required standard.

With regard to the 4<sup>th</sup> element of malice aforethought is that, matters relating to what necessitates malice aforethought are provided under section 200 of the Penal Code, supported with numerous cases



including the case of **Makungu Misalaba V. Republic**, Criminal Appeal No. 351 of 2013 I CA (unreported) while citing the case of **Enock Kipela V. Republic**, Criminal Appeal No. 150 of 1994, CAT (unreported) that;

***"Usually, an attacker will not declare his intention to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various, including the following: (1) the type and size of the weapon, if any used in the attack; (2) the amount of force applied in the assault; (3) the part or parts of the body the blow were directed at or inflicted on; (4) the number of blows, although one blow may, depending upon the fact of the particular case, be sufficient for this purpose; (5) the kind of injuries inflicted; (6) the attacker's utterances, if any, made before, during or after the killing; and (7) the conduct of the attacker before and after the killing."***

From the above provisions, it is clear from the post-mortem report (exhibit PI) that, the cause of death of the deceased person was due to **".... irresistible hemorrhagic shock following deep cut wound at anterolateral neck ..... deep cut meant at anterolateral neck...."** This was also evidenced by PW1, PW2 and PW3, who saw the

body of the deceased with deep cut on the neck and all this suggest suggested that the deceased was cut with a sharp object.

From the above analysis attached with the findings on post-mortem report (exhibit P1), I would comfortably conclude that the accused person had killed the deceased person with malice aforethought.

Having said so, I may now conclude this matter by saying that, this court is well satisfied with the prosecution evidence that they properly managed to discharge their duties, thus, the case has been proved beyond reasonable doubt. The accused person is hereby found guilty of committing murder contrary to section 196 of the Penal Code and is hereby convicted forthwith. It is so ordered.

**DATED at SHINYANGA, this 24<sup>th</sup> day of May, 2024.**



A handwritten signature in blue ink, appearing to read "R.B. Massam".

**R.B. Massam  
JUDGE  
24/05/ 2024**