

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

CRIMINAL SESSIONS CASE NO. 75 OF 2023

THE REPUBLIC

VERSUS

MANENO S/O MAZIKU LUBALA.....1ST ACCUSED

MABULA S/O AMOS IKELENGE.....2ND ACCUSED

JUDGMENT

23^d April & 24th May 2024

MASSAM, J.:

The accused persons Maneno Maziku and Mabula Amos Ikelenge stands charged with an offence of Murder contrary to section 196 of the Penal Code CAP 16 [R. E 2022]. It was alleged that on 4th day of May 2023 during night hours at Ntobo Village, within Kahama District, in Shinyanga Region they did murder one Masanja Shija and Tabu Matula Ikelenge. The brief facts of the case were as such that, the two deceased persons are husband and wife who were living at Ntobo village within Kahama District, and the 2nd deceased one Tabu Matula Ikelenge is the aunt to the 2ndaccused person. On 4th May 2023 at around 22.00hrs the deceased were invaded by the people who blocked the mouth of Tabu Matula from crying for help and started to hit Masanja Maziku by a strong object on his head. After they had done all this the

said persons stole from them some items like TV black color, two cell phones made tecno, two sim cards, and cash amounted to Tshs 330,000. One of the child of Tabu Matula by the name of Majaliwa who was in another house escaped through the door to seek the assistance from the neighbors but unfortunately after their arrival they found Tabu Matula died and her husband was in critical condition after been taken to hospital he passed away the next day. The matter was reported to the police station and policemen started the investigation and 1st accused person was arrested with the phone which was stolen at the scene and in interrogation he admitted to be connected in that murder together with 2nd accused person and he led them to arrest him. Upon his arrest he led the policemen the place where he sold the said TV to one Mwl Rafael. After that they all interrogated and admitted to commit that offence. When the matter was called for plea taking and preliminary hearing, the information of the offence of murder was read out and explained to them, and they pleaded not guilty to the offence and the matter proceeded to full trial.

In order to prove the charge against the accused persons, the prosecution called nine witnesses and produced twelve exhibits (P1-P12). Exhibits tendered included Extra Judicial of DW1 (P1), Extra Judicial of DW2 as exhibit P2, Solar wire as exhibit P3, two pieces of

wood as exhibit P4, Solar TV exhibit P5, Tecno mobile exhibit P6, Solar TV remote exhibit P7, Certificate of seizure of solar wire and two wood as exhibit P8, Sketch map plan exhibit P9, Seizure form that seized mobile phone as exhibit P10, Certificate of seizure of TV as exhibit P11 and two Postmortem Reports as exhibit P12 and 13 respectively.

For easy of reference, I find it more prudent to summarize the evidence from prosecution witness as follows:

Monica Aristides testified as PW1, she testified as the one who recorded extrajudicial statement of the accused persons as justice of peace, she testified that, she received the accused persons on 15/05/2023 to take their statement, and before recording their statements she told them their rights as required by law and that the two were in good health except for the 2nd accused who had a long-time scar on his neck. She told this court that, she started recording the 1st accused statement at 3:21 pm and for 2nd accused at 3:47 pm, she added that the two accused persons confessed before her that they are connected to the crimes committed at Ntobo village on 4th Day of May 2023. She further stated that, they told her that they were three at the robbery, and that DW1 and the other entered into the deceased's house while the 2nd accused remained outside watching if anyone was coming, 2nd accused person told her that Tabu Matula was his aunt and he was

master plan in the commitment of the said offence where they stole two mobile phones, TV, and money Tsh 300,000/=.The said extra judicial statements were tendered and admitted in court as Exhibit P1 and P2 respectively.

Majaliwa Marko (PW2), testified that the deceased were his parents and he was living with them and that on the material date on 4/05/2023 he was sleeping, and where he sleeps is next to the house where his parents sleeps (The deceased persons), he said that, he heard his mother yelling "...inatosha...", he looked through window and saw one person standing outside wearing black clothes, he tried to get out but the door was locked from the outside, he broke the window and escaped through it and went to call neighbors for the help, upon the neighbors arriving at the scene robbers were gone and found both deceased hands tied with solar wire, his father lying down, he was in critical condition, but his mother was already passed away, his father had forehead injury and there were two pieces of wood near his body. Solar wire and pieces of wood were tendered and admitted as exhibit P3 and P4 respectively.

He added that, they noticed that two mobile phones Tecno belonging to his parents were stolen, Solar TV and the remote were missing, and that on 5th May, 2023 he received information that his

parents passed on, he said that on 17th May 2023 he was called at Msalala police station to identify the stolen items from his parent's house on the incidence date and he identified a phone Tecno 372 black with a mark "TM" inside the cover, he also identified Solar TV make Rising and remote which were all tendered and admitted as exhibit P5,P6 and P7 respectively. On cross examination he said that he could not identify the robbers and that DW2 is his cousin.

PW3 SSP-Abdallah Idd, testified that on 5th Day of May, 2023 he received a phone call at night from VEO of Ntobo village telling him about the incidence, he took his team and went at the scene while on their way they received another call telling him that they took the victims to the hospital, they decided to go to the hospital and found the female victim had passed away and few minutes later the husband passed away.

He narrated that, he spoke to the doctor to examine the body and went at the scene where he interrogated PW2 and found that there were some stolen properties belonging to the deceased which are TV make Rising inch 24 and its remote and two mobile phones, and they drew sketch map. He added that inside the deceased persons room there was blood and they found wire which was used to tie the deceased persons, two pieces of wood used to hit the deceased, he then

seized them and prepared certificate of seizure which was tendered and admitted to the court as exhibit P8, and sketch map as exhibit P9.

He explained that on 13/04/2023 he received information from an informer that he suspected someone living at Mbogwe District to be responsible with the crime, he named DW1 (Maneno Maziku) as his life changed suddenly as before he had no phone but now, he has one. On the next day he ordered Inspector Kazuruga (PW7) to go where the direction were given and they managed to arrest DW1 with mobile phone techno T 372 black which was identified by PW2 to be his mother's and that DW1 led to the arrest of Mabula Amos (DW1) at Manzese stand. He said that he managed to speak to both the accused persons and they confessed to have committed the crime and DW2 explained where he had sold the TV and ordered PW7 to go with DW2 to make follow up of the TV, and the next day he took them to the justice of peace to record their statement.

PW4 Dezile Joseph, a land lord where DW1 was renting, testified that on 08/05/2023 he rented Maneno (DW1) one room and living room he paid his rent to Tsh 80,000 for two months. He said that on 14/05/2023 he was called by police at his house, upon reaching he found the policemen in Maneno's room, where they were conducting

search and he witnessed mobile phone taken from DW1 and signed the certificate of seizure, which he identified in this court.

Rafael Manuke Masolwa (PW5), narrated how he met DW2 on 10/05/2023 who sold him TV make Rising 24 inch black in color at the price of 150,000/=, he explained that DW1's wife through the phone she assured him that TV belonged to them, he said that while at Masumbwe he met one Thomas Chacha whom he owed Tsh. 200,000 as a debt, he harassed him demanding to be paid his money, he decided to give him that TV which he buy it from DW2, and agreed to settle his debt on 14/05/2023.

He added that on 15/05/2023 the police and DW2 went to his house asking for the said TV, who told him that the said TV was the stolen one, he was then taken to the police and PW6 was called, and DW2 identified TV as the one he stole from the deceased. He also identified it in this court, Remote TV and DW2 to be the one who he sells the said TV to him.

Thomas Chacha (PW6), testified that PW5 was a customer at their credit microfinance office where he had longtime debt of Tsh 200,000/=. He met PW5 on 12/05/2023 he started to demand his money, but PW5 told him that he had no money, and went to his house

where he gave him TV to settle his debt, he added that after sometimes he was called at police station and been told to bring the said TV as it was stolen one, the same was seized, at the court he identified the certificate of seizure (exhibit P11) as the one which he signed it when the police seized the said TV.

Joseph James Kazuruga testified as (PW7), who gave his testimony that on 14/05/2023 he was assigned to go at Masumbwe-Mbogo to arrest a suspect connected to the murder happened at Ntobo, he testified that upon reaching he communicated with OC-CID at Mbogwe and went at the house where the suspect was renting (belonged to Denzel Joseph) he then arrested DW1 with two other men who were with the suspect, they conducted search and found DW1 with a mobile phone Tecno (Exhibit P9) which he admitted to have stolen it from the scene , he prepared the certificate of seizure which was tendered and the same was admitted as Exhibit P 10.

He further narrated that, DW1 mentioned DW2 and one Emmanuel, who was not yet arrested but he managed to arrest DW2 who planned the whole robbery. Later on he took them to Bugarama police station and wrote DW2's Caution statement who told him that he is related to Tabu Matula (The deceased) and that he planned the said robbery where they stole TV, mobile phone and money Tsh

300,000/=, He added that DW2 told him where he had sold the stolen TV and on the next day he took him to the justice of peace where his extra judicial statement was recorded and later they went to the person namely (Mwl Rafael) who bought the said TV which happened to be taken by one Thomas Chacha to settle his debt. He explained that Thomas Chacha was called at the police station with the said TV and filled the certificate of seizure which was admitted in this court as exhibit P11.

PW9 Mayani Ng'enda Malugu, a medical doctor testified to have conducted postmortem and explained that he found two bodies of a male and female, he explained that the first body of a male his death was caused by brain injury which caused by loss of blood. He said that the said body was pale because of loss of blood which caused by a wound which was caused by blunt object. The second female body finds out that her death was caused by lack of oxygen as her body was blueish, he then filed postmortem reports which he identified them in this court and tendered them, which were admitted as exhibits P12 and P13 respectively.

The last witness on the prosecution side was **Tabiza Elias (PW10)**, who testified that she was a tenant at the house where DW1 was also renting, she testified how the police went to that house on

14/05/2023 and arrested DW1 and two persons who were with DW2, and that upon searching him they found a mobile phone which he had stolen from the scene, she added that she signed the certificate of seizure and identified it and the said mobile phone in this court.

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 persons for both offences and consequently was informed their rights to defense under section 231 of Criminal Procedure Act, Cap 20, R: E 2022. The accused persons chose to give a sworn defense without witnesses and exhibits.

In their defense, both accused persons disputed committing the said offence charged, DW1 Maneno Maziku testimony was to the effect that, he was arrested on 14/05/2023 at Masumbwe-Bogwe, Geita where he lives and that he was taken at Bugarama Police station where he was asked if he knew Tabu Matula he denied knowing her, he was beaten, he was forced to sign some forms which he did not know it, and on 15/05/2023 he was taken to a justice of peace where he was forced to sign a certain paper in the car, he was not taken to the office of the justice of peace, he explained that on 24/5/2023 he was taken to Kahama District Court before Hon. Kente. He denied to be connected to

the death of the said deceased, also being found with a mobile phone. He also denied knowing DW2, his land lord nor his neighbor Tabiza, and lastly, he denied to sign exhibit P1 and P10.

DW2 Mabula Amos Ikelenge, stated that he was arrested at Kahama on 14/05/2023 while heading to Chato from Dar es salaam where he lives. He added that on 15/05/2023 he was interrogated but denied to know Tabu Matula and Masanja Shija and his involvement in their death at Ntobo, he explained that he was beaten and forced to sign a document with promise of been released but on the next day he was taken to the justice of peace where he was told to sign a document. On 24/05/2023 he was taken to District court where his charge was read.

He also denied knowing PW2 let alone being her relative, he denied having any child in lake zone as their children are at Dar es salaam and that using the same surname with the deceased (Tabu) is just a coincidence as they are not related. While cross examined he admitted that he never gave a ticket from Dar es salaam as he alleged and that he did not sell TV to one Rafael nor taking the police to his house, He denied being connected in the said murder and prayed to be left free.

At the closure of defense in this case, the prosecution prayed for final submission the contention which was not opposed by the parties, they complied by the order of the court and submitted the same on 03.05.2024, therefore while determining this case I will be considering their submission to reach my decision.

As a cardinal principle in criminal trials, it is the prosecution side which has the duty to prove the charge against the accused person beyond any reasonable doubts. It is not for the accused person to establish their innocence. This responsibility never shifts, this is per, Section 110 and 112 read together with section 3 (2) (a) of the Evidence Act, Cap. 6 RE 2022. That:

2) A fact is said to be proved when-

(a) in criminal matters, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists;

It was stressed in a number of cases, in this case refer to the case of **Mohamed Matula v. Republic**, [1995] TLR 3 and **Christian Kale & Another Vs. The Republic (1992)** T.L.R 302 CAT where the court insisted 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.

However, in this case at hand the prosecution relied on circumstance evidence to prove the guilt of the accused persons, whereas this court has to satisfy itself that evidence to be relied upon has to irresistibly point to the accused persons on the guilty of the offence charged and no one else. Refer to the case **Augustino Lodaru v. Republic**, Criminal Appeal No.90 of 2013 (unreported) the Court stated that:

*"We should note at the outset that it is settled law that a court of law may ground a conviction based solely on circumstantial evidence. **This is so where the said evidence irresistibly led to the inference that it was the appellant and nobody else who committed the offence. Such evidence must, also, be incapable of more than one interpretation and the chain of linking such evidence must be unbroken**"*[Emphasize is mine]

See also, **John Magulandongo Vs Republic**, Criminal Appeal No. 18 of 2004 (unreported), **Anthony Kayaga @ Mnibhi Vs**

Republic, Criminal Appeal No 550 of 2019 CAT and **R. VS. Taylor and Donavan** (1921) 21 CR. APP. Reports 20 in the following words:

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which by intensified examination is capable of proving proposition with the accuracy of the mathematics. It is no derogation of evidence to say that is circumstantial”

Thus, I will be guided by the principles established in the aforementioned cases to reach my decision. This been the murder case the prosecution side was required to proof 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.***

Now, from the adduced evidence from the prosecution and as submitted by the prosecution in their submission, to start with the first and the second issue as *to whether the deceased persons one Masanja*

Shija and Tabu Majaliwa Ikenyenge actually dead and if yes, if their death were of unnatural causes. There is doubt that the deceased persons died, and their death was unnatural, this is from the evidence of PW9 a medical doctor, who testified that, the death of the first deceased (Masanja Shija) was caused by brain injury caused by loss of blood and that he was pale and his body had a wound caused by blunt object, and for the second deceased (Tabu Majaliwa Ikenyenge) her death was caused by lack of oxygen as her body was blueish. He also tendered postmortem reports which were admitted as exhibits P12 and P13 respectively.

Therefore, it is from the medical personnel and his report in the Post Mortem revealed and proved that the two died and their death were unnatural. Also, the evidence of PW9 and exhibits were corroborating the testimony of PW2 and PW3 who were at the scene of the crime and witnessed one body (Juma) with injuries/wounds and the other (Tabu) was covered with piece of cloth in her mouth which blocked the flow of fresh air. So according to the said piece of evidence proved that the said victim was died and their death was not natural.

On the third issue as to *whether it is the accused persons were responsible for the death of Masanja Shija and Tabu Majaliwa Ikenyenge.*

As I have pointed herein above that the prosecution has relied on circumstantial evidence. In answering this, the question is; **Is there any unbroken chain of the circumstantial evidence which points none other than the accused person as the killer of the deceased persons?** In their circumstantial evidence adduced before this court the prosecution side tried its weight as follows.

On 04/05/2023 at night while sleeping PW2 heard her mother screaming "...**inatasha**" when he opened his window, he could see one person outside but could not identify him, he then decided to break the window and went out to call neighbors as he tried to open the door but it was locked from the outside, by the time he managed to get out and ran to the neighbors for help, the culprits had gone and his parents were robbed and there was blood from the inside. They found the deceased beaten, tied with solar wires and his mother was stuffed with pieces of cloth in her mouth, they took them to the hospital.

At the scene PW2 being the son of the deceased and when the police had arrived, he discovered that two mobile phones belonging to his parents had gone missing, TV make Rising with its remote, they also found two pieces of woods and solar wire which were tendered as exhibits P3 and P4.

Also, PW3 police officer went at the scene took exhibits P3 and P4 he also told the people at the scene if they receive any information leading to the arrest of the culprits will not be disclosed. On 13.04.2023 he received information from the informer that he suspected one Maneno Maziku (DW1) because his life changed abrupt and that he had no phone before but now he has one. It is this information which led to the arrest of DW1 on 14.05.2023 by PW7 who was found with the mobile phone (Exhibit P10) identified by PW2 to be his mother's, he even explained to this court that the mobile phone had a mark "TM" inside the cover which means Tabu Matula, Further to that, PW9 and PW4 who were DW1's neighbor and landlord testified that during the arrest of DW1 he was found with the said mobile phone, PW4 also testified that DW1 was a new tenant who had stayed at his house for almost 8 days.

It did not end there, the prosecution evidence detailed further that on that upon the arrest of DW1 he mentioned DW2 and one Emmanuel Daud that they were involved in robbery at Ntobo, he also led to the arrest of DW2 and when interrogated they confessed to have stolen the mentioned items and money Tshs. 300,000/= which they divided among them. It is narrated by PW3 that on the next day 15.05.2023 he ordered a follow-up of the TV stolen at the scene, DW2 led the police to PW5

whom he sold the TV, which was later seized from PW6 who took it from PW5 to settle his debt, this TV was identified by PW2 to be his parents with special marks that it was black, 24 inch make rising. Also he said that it has a label of which had a red color.

It is from the record that the accused persons were taken to the justice of peace (PW1) who recorded their extra judicial statement on 15.05.2023, PW1 testified that the two confessed before her that they are the one who were responsible for the crime committed at Ntobo village on 04.05.2023 and that it is DW2 who arranged the robbery because he is related to the deceased so he knew the house (His aunt's) and he knew that they had money as the said day they sold cows at the auction.

It is from the information gathered from the accused persons confession that, when the accused persons were executing their plan to steal, they attacked the deceased persons who one died at the scene and the other later at the hospital from the injuries inflicted by the accused persons, the accused's extra judicial statements were admitted in this court as exhibit P1 and P2 respectively.

This piece of evidence is in chain line to prove the offence of murder committed by the accused persons and there is no broken of chain to that effect.

However, it is the general rule that, every witness is entitled to credence and have his evidence accepted unless there are good and cogent reasons for not believing him, as it was well illustrated in the case of **Goodluck Kyando Vs. The Republic (2006) T.L R 363.**

In my observation I find all prosecution witnesses credible and are to be relied upon as they have managed to prove guilty of the accused. The chain established by the witnesses is alongside in connection with the accused persons.

Another thing which I think relevant to determine is the circumstantial facts against the accused persons is the possession of the recently stolen mobile phone and TV make Rising and the remote from the crime scene. In the case of: **Alhaji Ayub Msumari And Others Verus Republic, Criminal Appeal NO.136 OF 2009 CAT**, it was held that “ *before the court of law can rely on the doctrine of recent possession as basis of conviction in a criminal case... it must positively be proven, first that the property was found with the suspect, secondly that the property is positively the property of the complainant, thirdly*

that property was stolen from the complainant and lastly that property was recently stolen form the complainant "

See also, **Hashim Komba Vs Republic**, Criminal Appeal No 452 of 2022 CAT at page 12 as submitted by the prosecution.

In the instance case, I am satisfied that the mobile phone make TECNO was found in possession of the 1st accused person and he confessed to the justice of peace that they stole it from the scene of crime, there is also oral evidence of PW7 the seizing officer, PW5 and PW9 to prove the same, On the other hand, the 2nd accused person was not found with the TV stolen at the scene but as the oral evidence of PW4 and in his extra judicial statement he led the officers to the person he sold the said TV (PW5) and later to PW6 who had taken it from PW5 to settle his debt, in leu there was no dispute of such possession and PW2 being the son of the deceased persons identified the mentioned items to belong to them.

In up short, the fact has been established and the evidence has been proved and there was no obstacle prevented for the prosecution to demonstrate with evidence that accused persons were not the one killed the deceased persons.

And for that finding, now the last question is *whether their action was actuated with malice aforethought*. **Section 200 of the Penal Code** illustrate on what amount to malice aforethought. The same provides as hereunder;

"Malice aforethought shall be deemed to be established by evidence proving any one nor more of the following circumstances-

(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit an offence punishable with a penalty which is graver than imprisonment for three years;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit an offence."(Emphasis supplied).

See also the cases of **Florence Mwarabu v. Republic, Criminal Appeal No. 129 of 2003, Court of Appeal of Tanzania at Dar es Salaam (unreported)** and **Mohamed Said Matula v. Republic [1995] TLR 3.**

The evidence reveals that the accused persons had a plan to execute stealing at Ntobo, where in the due course of executing their plan, they murdered the deceased persons. It is evidenced that the 1st deceased person was beaten with blunt object (pieces of woods) on his head which led to brain injury and loss of blood, and for the 2nd deceased she was covered with pieces of cloth which caused lack of fresh air, their intentions were none other than to kill the deceased persons so they could facilitate the stealing.

I have also considered the defense by the accused persons, the defense by the accused persons is general denial and is afterthoughts, the 1st accused person denied knowing the DW2, his neighbor, (PW10) and his land lord, (PW4) he denied confessing to be connected with this offence, in his defense he could not explain on how he came into the possession of the mobile phone he was found with, as for the 2nd accused also denied everything even his aunt one Tabu Matula (deceased) and his son who was living with deceased. Also he failed to convince this court that he is not related to his aunt (The deceased)

having the same surnames is coincidence, he explained that when arrested he was travelling from Dar es salaam to Chato but could not tender tickets to prove the same .Also in his defense he said that he has no relative at Ntobo, all his family lives at Dar es salaam but he brought nothing to convince this court, Also he forgot that in his statement at the police station and to the justice of peace he confessed to be connected with the offence and he admitted to be related with deceased one Tabu Matula and he was master plan of that commitment of the offence as he was the one who knows the deceased house and he knew that they had the money after sell their cows.

However, their defense is too illogical based on the following reasons; the accused persons confessed to the police officers and when they were taken to the justice of peace they confessed and narrated the whole story out of their will as they could not prove that they were tortured to confess, also it is DW1 who led the officers to the arrest of his fellow DW2 on the other hand these two were found in possession of the stolen items at the scene and they could not explain to this court on how they came into possession of them.

It is my considered view that their defense is typical lie trying to escape the law penal ahead of them.

With all findings and discussion, I proceed to state that the prosecution managed to prove the case beyond reasonable doubt that the accused persons killed Masanja Shija and Tabu Matula Ikelenge, I therefore find them guilty as charged and convict them accordingly.

DATED at SHINYANGA, this 24th day of May, 2024.



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

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