

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB-REGISTRY

AT IRINGA

CRIMINAL SESSION CASE NO. 6479 OF 2024

THE REPUBLIC **PROSECUTION**

VERSUS

MAWAZO VENANTI MTITU **ACCUSED**

JUDGMENT

Date of last Order: 12/06/2024
Date of Judgement: 18/06/2024

LALTAIKA, J.

The accused herein **MAWAZO VENANTI MTITU** (hereinafter referred to, interchangeably, as accused person or simply the accused) is charged with murder contrary to sections 196 of the Penal Code [Cap 16] R.E 2022. The particulars of the offence are that on the **25th day of September 2023** at Ikuvilo Village within the District and Region of Iringa he murdered one **ALAWA s/o MATATA MNYATULE**.

The accused person took plea on 12/06/2023. He denied committing the offence hence this trial. At the hearing, the Republic entrusted prosecutorial services to **Ms. Winifrida Ernest Mpiwa, learned State Attorney**. This being a capital offence, the state fulfilled its obligation of providing legal assistance to the accused person through **Mr. Jassey Mwamgiga, learned Advocate**. I take this opportunity to register my sincere appreciation to the learned counsel for their dedication, commitment, and above all legal expertise that have contributed greatly to giving this judgement its current form and content.

Before expounding on both the prosecution and defence cases, I find it important to provide the following contextual and factual background as can be gleaned from the court file and testimonies of the witnesses. The incidence giving rise to this trial took place at a small village of Ikuvilo, nestled within the serene landscapes of Iringa. The accused, who was 38-year-old then hailed from MAHEVE Village in Njombe District and Region, where he had come to Ikuvilo as a casual laborer, caring diligently for his uncle's tree plantation. It was here that he forged a friendship with **Alawa Matata Mnyatule**, (the deceased) a resident of Ikuvilo known for his amiable nature and spirited demeanor. Among other positive attributes of

the deceased, he sang in a Choir at a Roman Catholic Church in his village where he rose through the ranks until he was appointed assistant choir master.

On the ill-fated evening of 25th September 2023, Mawazo and Alawa were seen together at a Pombe Shop, savoring the local brew **known as Ulanzi**. As the sun dipped below the horizon, they departed together, heading towards Mawazo's humble abode to spend the night. Little did anyone suspect that this seemingly ordinary evening would mark the beginning of a tragic mystery.

From that night onward, neither Mawazo nor Alawa were seen in the village. Concerned whispers spread among the villagers as days passed without sight or sound of the two friends. Desperate searches were conducted by worried family members, scouring every corner of the village and its surroundings in vain hope of finding a trace.

Then, on the somber evening of 28th September 2023, children collecting wild fruits at a nearby bush near Mawazo's house made a grim discovery. They spotted a lifeless figure lying along a trench (referred by the villagers as the "korongo") that bordered Mawazo uncle's land. Shocked and fearful, they rushed to inform Boniface Fueni, a respected

elder of the village, in his 70's, who wasted no time in alerting the village authorities.

As the first light of dawn broke on 29th September 2023, the village leadership, accompanied by Mzee Fueni and a gathering of concerned villagers, ventured cautiously to the korongo. There, amidst the earthy scent of soil and the rustling of leaves, they discovered the body of Alawa Matata Mnyatule. The scene was haunting—a testament to a life cut short, lying in a state of early decomposition.

With heavy hearts, the village authorities swiftly reported the tragic discovery to the police. Responding promptly, officers from Iringa Central Police Station arrived at the crime scene around 23:00 hours the same day. Their meticulous investigation revealed the stark truth: the deceased had suffered a traumatic brain injury, inflicted by a severe blow to the head.

Investigations unraveled unsettling details. It became apparent that the last known whereabouts of Alawa were in the company of Mawazo on that fateful night. On 2nd October 2023, Mawazo was apprehended in Njombe, where he was interrogated intensively before being transferred to Iringa for further legal proceedings. As alluded to earlier, the Accused was

arraigned in this court charged with murder but adamantly professed his innocence during plea taking hence this trial.

It is a settled position of our law that the burden of proof in criminal trials lies with the prosecution. It is equally settled that the standard required by law for such proof is beyond reasonable doubt. In the attempt to discharge this duty, the prosecution paraded seven witnesses and tendered two exhibits. The defence case, on the other hand, had only one witness (the accused) and tendered one exhibit. The next part of this judgement is a summary of both the prosecution and defence cases as judiciously recorded in the trial proceedings.

The first prosecution witness (**PW1**) was **Dr. Bakari Athmani Semiono**, a medic from Iringa Regional Referral Hospital. He affirmed and testified that during his examination in chief that his duties involved consulting with patients, conducting medical tests, and undertaking postmortem examinations when required.

PW1 recalled that on September 30, 2023, around 10:00, he was called to the mortuary and instructed to conduct an autopsy on a body. He was informed that the deceased was named ALAWA MATATA MNYATURE, and the body was identified by his father, Matata Mnyature. During the

examination, he found that the clothes were blood-stained, and the skull was broken, leading to severe brain injuries which caused death. He estimated that death had occurred about four days prior, as the body had started to decompose. After the examination, he filled out the form, stating he could identify it by his handwriting and signature. He tendered the postmortem examination report which was admitted and marked as Exhibit P1.

During cross-examination by Mr. Mwamgiga, PW1 explained that a coroner examines deceased bodies, and while the form mentioned "coroner resident magistrate," he identified himself as a medical doctor and not a resident magistrate. He acknowledged that the resident magistrate was not present, but he filled out the parts of the form indicating he examined the body. PW1 agreed that a person falling into a korongo could sustain traumatic injuries but noted he had not visited the crime scene and did not know how the body was positioned or how deep the korongo was.

During re-examination by Ms. Mpiwa, PW1 stated that the deceased's body suggested he was hit by a blunt object, as indicated by the broken skull and blood-stained brain. PW1 asserted that such injuries would not have resulted merely from a fall.

PW2 was Bonifas Mussa Fueni, a-78-year-old but energetic looking resident of Ikuvilo Village. He testified on oath that on September 28, 2023, around 18:30, while at home, he received information from children who had gone to collect wild fruits at a nearby bush. They told him they had seen a body lying in a trench (korongo) and thought it was lying improperly. At that time, he was tired from having been at a pombe shop. The trench where the body was found was in their village near Mtitu's house. He attempted to contact the Kitongoji Chairman and the balozi, but only reached the chairman at 22:00, who promised to come the next morning.

The following morning at 6:30 AM, the chairman arrived with two other people. PW2, along with them and two young men, proceeded to the place where the body was found. They went past Mtitu's house, which was locked, to the trench where they saw the body. Initially, they did not recognize the deceased. The Kitongoji chairman called the Village Chairman, who then contacted the police. The body, lying on its stomach on top of the sand, was clearly dead as insects had started coming out of it. The body was located very close to Mtitu's house, not even 70 paces away.

After the police were called, many people, including the younger brother and sister of the deceased, came and identified the body as that of ALAWA MATATA MNYATURE. PW2 described the trench as very deep and unsafe, noting that it was the first time they had found a dead person there. He recalled an incident where a woman fell into the korongo, breaking her arms and legs, but survived. The korongo separated a forest and village habitation, with a wooden bridge connecting the two.

As the police arrived and removed the body, PW2 was giving a statement, as required by the authorities. He mentioned knowing Mtitu only by name and had not seen him since. PW2 testified further that he had known the accused for only two or three months, brought to the village by his father to work on a farm.

During cross-examination by Mr. Mwamgiga, PW2 confirmed that the korongo had no stones, and that the deceased partook in local pombe. He did not know if the deceased was drunk on the day he died or if he swayed after drinking. He acknowledged that the korongo was dangerous for drunkards and children. PW2 did not mention the names of the children who informed him about the body and clarified that this was not to conceal

another story. He confirmed he had not seen the body before the children informed him. He also confirmed that the korongo was behind Mama Mtitu's house, not the accused's house, and stated that the accused was male and not referred to as "mama."

He was unaware of the accused's whereabouts on September 28, 2023, and mentioned knowing the accused from a pombe shop but never saw him with the deceased. He reiterated that the woman who broke her legs and arm was drunk, it wasn't the rainy season in September, and he never heard about any quarrel between the accused and the deceased.

During re-examination by Ms. Mpiwa, PW2 stated that the uncle of the accused had requested a house from Mama Mtitu (the wife of the accused's uncle) for the accused to live in.

PW3 was Meshack Aloyce Mlawa, 44 years, Resident of Ikuvilo Village in Iringa DC, Peasant and Village Chairman, having solemnly sworn to tell the truth, PW3 testified that he had served as Chairman for three years. He chairs the security committee and oversees development issues in the village. On the morning of September 29, 2023, while at home, he received a phone call from Boniface Fueni, who informed him that a dead

body had been found in a korongo. He called the Village Executive Officer (VEO) and the Ward Police Officer to inform them. While on his way to the crime scene, he was notified that the body had been identified as that of Alawa Matata Mnyature. Upon arriving at the scene, he saw the decayed body lying on its stomach in a deep korongo near Ms. Anna Mtitu's house.

PW3 called some parents and relatives of the deceased to inquire about his whereabouts. They responded that the deceased used to spend nights at Mtitu's house. He learned from the parents that the body had been discovered by children on September 28, 2023, and that the deceased was last seen alive on the evening of September 25th in the company of Mawazo Mtitu. From their investigation, there were no prints (nyayo), suggesting the body might have been thrown down the korongo. The korongo, described as very deep and river-like, was over 100 meters away from any house.

According to Mwanyekiti, this was the second such incident in the village, the first involving a woman but in a different korongo. The police arrived around 11:00 AM, and PW3 led them to the body and recorded a statement. At that time, Anna Mtitu's house was locked, and no one was

there. PW3 mentioned knowing the deceased for many years but not knowing Mawazo Mtitu.

During cross-examination by Mr. Mwamgiga, PW3 stated he knew Anita Mtuya, who sells local brew, and that the deceased frequented her place. On the day of his death, the deceased was not alone and left the pombe shop with Mawazo Mtitu. PW3 noted that there were no marks indicating that the deceased had fallen, and since the body was discovered four days later, any such marks would have been evident. He confirmed recording a statement with the police on September 29, 2023, and that no one instructed him on what to say. He did not know why Anna Mtitu's door was locked or whom the accused was living with in his room. PW3 added that the korongo had stones on the other side and that a drunk person could lose their balance. He acknowledged calling the owner of the house.

During re-examination by Ms. Mpiwa, PW3 explained that he did not know Mawazo Mtitu because he had never seen him before. However, he had asked the deceased's parents about his living arrangements and was told that the deceased was living with a relative of Mtitu, brought by one Emanuel Mtitu.

PW4 was Sauda Mkini, 45 years old, resident of Ikuvilo Village in the Kitongoji called Ngelewala and mother of the deceased. She testified during her examination in chief that she lives with her husband and their three children: Alawa Mnyature, David Mnyature, and Prisca Mnyature. Alawa, who was 20 years old at the time of his death, was a peasant and sang in the choir of the Roman Catholic Church. His friends included Mawazo Mtitu and Samwel Ngwandi, with whom he had been friends for one month. The accused had been staying with the Mtitu family as a casual laborer, watering a tree plantation, and had been sleeping at Mawazo Mtitu's place for a week.

PW4 recalled that on the morning of September 25, 2023, Alawa bid her farewell, saying he was going to clear a farm. He never returned. They tried calling him using his sister's phone but received no response. On September 27, 2023, PW4 visited her neighbor, Anita Mtuya, and informed her that Alawa was missing. Anita suggested that Alawa might have gotten a job and would call back. Anita also mentioned seeing Alawa on September 25, 2023, with Mawazo Mtitu, who was also missing at that time.

On the morning of September 29, 2023, around 7:00 AM, while washing clothes, PW4 saw the village chairman and others heading to the korongo. She followed them to witness an incident where a body had been found in the korongo. Upon arrival, she identified the body as her son Alawa based on his clothing: a gray shirt with short sleeves and dark-brown trousers. He also had a small handbag. The police arrived and collected the body. PW4 described her son as a good person who drank alcohol only in moderation. She clarified that Alawa used to sleep over at his friend Mawazo Mtitu's place.

During cross-examination by Mr. Mwamgiga, PW4 stated that she has a big house and denied ever chasing her son from home. She emphasized that he was not angry when he left home and rejected the notion that the Hehe people, to whom they belonged, tend to hang themselves or jump over korongos, referencing that Mkwawa never hanged himself. PW4 reiterated that her son drank alcohol in moderation and did not go to the pombe shop on the day he was last seen. She confirmed that her son had never been involved in an accident due to drinking and was not a "walking dreamer." She clarified that the small bag he carried was not for clothes

but a small handbag (kipochi kidogo). PW4 also mentioned that there was no rain in the village at that time and no other signs were present.

PW5 was Anita Michael Mtuya, 54 years old, Resident of Ikuvilo Village, Peasant. She testified that she lives with her children, her husband being deceased. She is a peasant and also engages in small-scale business, selling local brew and soft drinks.

On the night of September 25, 2023, around 8:00 PM, she was cooking at home when Mawazo Mtitu and Alawa Mnyatule arrived. They stood in her compound, and she overheard Mawazo asking Alawa for money to pay her. She went out and received TZS 2,000 from Mawazo. They then continued their journey to where Mawazo was staying. Alawa, who was dressed in a short-sleeved shirt, asked her why she didn't attend choir rehearsals. She explained that she couldn't, and Alawa responded that the songs were easy, and he had written them down, carrying the paper in his bag. Both sang in **the Mtakatifu Maria Magdalena Choir** of their local Roman Catholic Church.

On September 27, 2023, Alawa's mother asked PW5 if she had seen him in the choir, to which PW5 replied that she hadn't and that his bag was

still inside the house. She last saw him on September 25 with Mawazo Mtitu. On September 29, 2023, while fetching water in the morning, PW5 saw five people, including the Village Chairman and Alawa's father, heading towards Mtitu's house. They informed her about a body found in a korongo, which a younger sister of the deceased identified as Alawa's.

PW5 exclaimed and joined them to observe the body, which was lying on its stomach in the trench. She recognized the body as Alawa's from his small bag and shirt. The body was in bad shape due to the time that had passed. The nearest place to the body was the end of Mtitu's farm. The police arrived, removed the body, and took it to Mtitu's compound before transporting it to town.

PW5 testified further that she had known the deceased for a long time since he was born in the village and that he was her paternal nephew. She insisted that Alawa was a choir singer, choir master, and a peasant who dressed smartly and drank alcohol only in moderation. She had known Mawazo Mtitu for three months; he was a casual laborer brought by Mtitu to water a tree farm, and they lived together at the accused's place.

After the funeral on September 30, PW5 traveled to Dar es Salaam to attend to her sick child and stayed for four months. On February 8, 2024,

she received a call to attend court and recorded a statement about Alawa's death. In her statement, she mentioned seeing the deceased and the accused in her compound on September 25, when the accused gave her TZS 2,000. She identified the accused in court and stated that she hadn't seen him since that day.

During cross-examination by Mr. Mwamgiga, PW5 confirmed that selling alcohol is not a sin. She reiterated that the accused had asked the deceased for money and that carrying money at night could be dangerous. She suggested that Alawa might have gotten a job because he left his bag at home. She clarified that Alawa was carrying a handbag, not a bag for clothes. She noted that drunkards don't like light while drinking, and people were drinking at her place that night. Alawa wasn't a smoker, but he was sent to buy cigarettes and went alone. She requested that her recorded statement be used as evidence, **which the court admitted as Exhibit D1.**

PW5 agreed that the statement was read to her and that she signed it as correct, despite a date discrepancy. The statement indicated that Mawazo traveled to Njombe on September 23, and it didn't mention seeing them together on September 25. She clarified during re-examination by

Ms. Mpiwa that she last saw them together on September 25, and the date in her statement was likely a typo by the writer. She said Mawazo was not around on September 23 but returned to the village on September 25.

PW6 was Dominicus Gaudensia Makombe an energetic looking *Mzee*. He testified that on the 25th of September 2023, while on his way from Ngelewala, he encountered the accused and the deceased at Champera pombe shop in their sub-village. They were drinking alcohol and arguing about money. The accused had accused the deceased of taking money meant to pay laborers and sending him to buy cigarettes without mentioning the accused's name to avoid debt deduction. The deceased had mentioned the accused's name, leading to a deduction from the change. PW6 was present briefly as there was no more alcohol, and a bodaboda driver was urging them to leave.

On 29th September 2023, he was at his brother's child's funeral when he heard that the missing young man had been found dead and arrangements for the burial were being made. He knew the deceased, who had been born and raised in the same village, initially selling chips before focusing on religion and becoming an assistant choir master. The deceased was not a troublemaker and consumed alcohol moderately.

PW6 had known the accused for some time as the accused was hired to water trees on a tree farm and stayed in the village. The accused and the deceased often worked together, and it was hoped that the deceased would learn from the accused and secure a job. PW6 later saw the accused at the police premises on 27th September 2023 to testify about his encounter with him.

During cross-examination by Mr. Mwamgiga, PW6 confirmed visiting the pombe shop on 25th September 2023, stating he was not drunk and had arrived on a bodaboda. There was no alcohol available, so he left. He was unsure who the deceased left with or how much money was given for cigarettes. He acknowledged the danger of carrying money at night but noted that no one had been robbed in their village at night. He last saw the accused at the police and was not asked to identify him in a parade. It was around 6 PM when he saw them at the shop, which had no electricity.

PW6 did not know if the accused was in Njombe on 23rd September. He saw the deceased and the accused in a normal state, and the deceased often slept over at the accused's place peacefully. He could not comment on whether the deceased was angered by their exchange after buying

cigarettes and did not generalize about the Hehe people committing suicide.

During re-examination by Ms. Mpiwa, PW6 explained there was no need for an identification parade as he easily identified the accused among other inmates. He could not generalize about the Hehe people being angry and mentioned hearing about one woman committing suicide. He clarified that the deceased was not angry, only the accused was, and he left them at Mperani Pombe Shop.

PW7 was G4395 D/CPL Lubey a, a police detective. He testified that on 29/9/2023, while at Iringa Police Station, he received orders from ASP Eliudi P. Kivuyo, the OC-CID, regarding a murder incident in Ikuvilo. He was instructed to prepare documents for the investigation and organized a team of officers including INSP Kasirati Lufind, D/CPL Mohamed, PC Juma, D/CPL Baraka, and PC Madoke to accompany him.

Arriving at the crime scene around 11 AM, they were greeted by the village chairman and locals. The chairman guided them to inspect the scene where they observed the deceased's body lying face down in a deep trench near Mawazo Mtitu's house, approximately 15 meters away. The deceased was identified as Alawa Matata, and it was determined that the

body had been thrown into the trench. They noted the absence of stones in the trench, which was approximately 10 feet deep.

After conducting a thorough inspection and drawing a sketch map of the area using a tape measure, pen, and paper, PW7 stated that witnesses confirmed the deceased was last seen alive on 25/9/2023 in the company of Mawazo Mtitu. The nearest korongo to the trench was about 200 meters away. Subsequently, on 6/10/2023, following further orders from ASP Eliudi P. Kivuyo, PW7 proceeded with investigations. Mawazo Mtitu had been arrested on 1/10/2023 in Njombe, and PW7 interrogated him upon his return.

During the interrogation, Mawazo Mtitu gave conflicting statements, admitted being with the deceased last, and fled to Njombe after the incident. PW7's investigation revealed the deceased had suffered a head injury from a blunt object, leading to the conclusion of murder. The investigative file was submitted to the OC-CID for further action.

During cross-examination by Mr. Mwamgiga, PW7 clarified points about weather conditions, the presence of vegetation around the trench, the depth of the trench, and the procedure followed in interrogations. He confirmed not conducting an identification parade due to lack of

controversy over the suspect's identity and stated that Mawazo Mtitu denied the allegations during interrogation in Njombe.

In re-examination by Ms. Mpiwa, PW7 reiterated the investigative procedures followed, including the decision not to conduct an identification parade and the conditions under which suspects are taken before a justice of the peace. The rather long time spent in extracting information from PW7 marked the end of the prosecution's case. The next part of this judgement is a summary of the defence case which had only one witness (DW1) followed by my deliberations and the verdict.

DW1 was Mawazo Venanti Mtitu, the accused person herein. He testified on oath that he had previously resided in Njombe but had relocated to Iringa due to employment opportunities. He found himself in court accused of murder but adamantly denied any involvement in the crime, asserting that he was in Njombe on the day in question. According to DW1, his involvement in the case stemmed from a call he received from Deo Mtitu, his aunt's **son and an Education Officer in Njombe**, who informed him about the accusations. He expressed scepticism towards the prosecution witnesses, alleging they were dishonest, and some were even

suspects themselves. DW1 specifically mentioned Dominicus Makombe, who he claimed was also in police custody with him.

During his time in custody, DW1 stated that investigators pressured him to testify against Dominicus and Robert, alleging their involvement in the murder of Alawa. However, DW1 refused, citing moral objections and declaring it would be sinful to falsely incriminate someone. He vehemently denied being present at Anitha's place to purchase alcohol, countering that he had only visited alone to buy pombe around 7:00 PM. DW1 emphasized that he did not reside with the deceased, highlighting that his uncle, Mzee Mtitu, a trained economist, would not tolerate idleness from anyone living in his household.

Regarding his relationship with the deceased, DW1 insisted there was no animosity between them, asserting they had peaceful and cordial interactions whenever they met. However, DW1 expressed frustration with Anitha's testimony, claiming it contained falsehoods and inaccuracies.

During cross-examination, DW1 clarified details about his residence in Ikuvalo Village, Ngelewala Sub-Village, and his acquaintance with the deceased. He acknowledged traveling to Njombe on the date in question but did not provide specific details about his departure or produce a bus

ticket as evidence. DW1 mentioned his involvement in tree budding activities but noted that Deo Mtitu had not confirmed his presence on the farm that day.

When questioned about legal matters such as an alibi, DW1 professed ignorance, stating it was not his responsibility to prove his innocence but rather the prosecution's duty to prove guilt. He reiterated traveling to Njombe by a large bus and denied having any disputes with individuals named by the prosecution. DW1 admitted to seeing Dominicus during his testimony but noted that he was not questioned about being a suspect. He also admitted to not reporting an incident involving Robert's alleged attempt to attack him with a panga.

DW1 recalled receiving a phone call from his sister Lucy about the incident but could not recall the exact date, mentioning his arrest occurred two days after the call. He recounted villagers' discontent with his uncle, Baba Mkubwa, who resides in Mtwivila, and clarified he did not know if his uncle had been arrested. DW1 reiterated that no witnesses claimed to have seen him with the deceased.

In re-examination, DW1 reiterated details about his early morning departure from Iringa to Njombe by bus and confirmed that his trousers

were in Njombe. He stated that he had not been in touch with Deo Mtitu since his arrest and reiterated that Dominicus was also considered a suspect. DW1 explained his delay in returning to Iringa, citing the need to complete work before receiving payment. He reiterated that his last day at the residence in question was on the 22nd.

I have dispassionately considered the rival arguments and carefully examined the records including the exhibits tendered. I have four issues for determination 1. Whether there was death of a human being 2. Whether such death was unnatural 3. Whether the accused person is responsible for such a death and finally 4. Whether in causing such death he acted with malice aforethought.

On the first issue, there hasn't been any contention that a human being by the person of **ALAWA MATATA MNYATULE** is dead. Had it not been the children of his village who, on the evening of 28th September 2023, went out collecting wild fruits at a nearby bush, his body wouldn't have been discovered helplessly lying in a Korongo. His death was testified by among others, his own mother who bitterly recounted how wonderful his son was. I think this issue is too straightforward to detain me. I choose to move to the next issue.

The question as to whether the death of the deceased was natural or not is a factual and medical issue. Factually, there is no doubt that the deceased did not breath out his last quietly while holding hands of his beloved ones at home or in hospital due to long illness. He was not too old either. He was a young, energetic man who had a whole future ahead of him. His body being found in a korongo lifeless, and decomposing does not suggest a natural course of events. Medically PW1 testified that the cause of death was traumatic brain injury. He also opined that the deceased had been hit by a blunt object on his head. I see no need to go further on this issue.

The third issue, whether is highly contested. Throughout his testimony, DW1 maintained his innocence, asserting that he was not involved in the alleged murder and expressing frustration with what he perceived as false accusations and misrepresentations by the prosecution witnesses. The prosecution, in their attempt to prove the allegations, paraded seven witnesses and tendered one exhibit. Since this is a contested issue, it is incumbent upon me to analyse, consider and evaluate the evidence of both the prosecution and defence sides to determine whether the prosecution case has been proved at the required standard.

The entire prosecution evidence can be characterized as circumstantial. No one had witnessed the accused killing the deceased. As a matter of fact, no one even saw the accused carrying the body of his departed friend and throw it to the korongo. Encouragingly, however, studies show that ***Ceteris Paribus*** convictions based on circumstantial evidence are more accurate. Binyamin Blum "Evidence Law: Convictions Based on Circumstantial Evidence" " The Judges' Book: Vol. 3, Article 11.

Available at: <https://repository.uchastings.edu/judgesbook/vol3/iss1/11>
provides as follows:

"Indeed, there is no a priori reason to classify circumstantial evidence as probatively inferior, or to suspect that it leads to less accurate outcomes than direct evidence. On the contrary, some studies have demonstrated that certain kinds of circumstantial evidence are more accurate—and therefore lead to fewer wrongful convictions—than direct evidence. For instance, one study found that 68% of known wrongful convictions stemmed from direct evidence, whereas only 9% relied on circumstantial evidence."

In our jurisdiction, the Court of Appeal of Tanzania has set parameters upon which circumstantial evidence may be applied. In the case of **Seif**

Seleman v. Republic, Criminal Appeal No. 130 of 2005 (unreported)

the Apex Court stated:

*"Where evidence against an accused person is wholly circumstantial, the facts from which an inference adverse to the accused is sought to be drawn **must be clearly connected with the facts from which the inference is to be inferred**. In other words, the inference must irresistibly lead to the guilt of an accused person."*

(Emphasis added)

I have studied the facts of this case very carefully and I find the circumstantial evidence adduced irresistibly linking the accused person with the homicide. His act of travelling to Njombe on the next morning of the very day he was last seen with the deceased remains without explanation. A careful observation of his demeanor during the defence case painted the picture of a person in some perpetual, albeit futile, self-denial. It is my finding therefore that the accused is responsible for the death of the deceased.

Having responded to the third issue affirmatively, I am inclined to widen my horizon in analyzing the fourth issue as to whether, in causing

the said death, the accused had the intention to kill the deceased, in other words, whether he acted with malice aforethought. It should be noted that in the event this issue is answered affirmatively, the accused will be convicted for murder as charged. If the answer is to the negative and given that the first to the third issues have attracted a positive response, signifying that all elements of the offence of murder have been proved serve for malice aforethought, this Court is empowered by section 300 of the Criminal Procedure Act to convict the accused for the lesser offence of Manslaughter. This shows how pivotal the analysis on this issue is.

Although the prosecution bears the duty of proving all elements of the offence of murder, intention is not easy to prove. A researcher and thinker in criminal justice William Irwin puts it in the following words:

"Proving intention has long been a problem in the law and in the philosophy of law. It was once thought that an act being foreseeable was sufficient to prove foresight and that foresight was sufficient to prove intention. None of these is truly the case, however. We must now separately pursue the question of how to prove intention and how to prove foresight." William Irwin **"Intention and**

Foresight in the British Law of Murder"

SORITES Issue No 09, April 1998 p,15

It appears that the accused and deceased were new acquaintances quickly moving to comradeship. They were more or less agemates for those inclined to think in terms of the age-set system (vijana wa rika moja). They needed each other. Whereas the accused was a newcomer in the village and privileged to have been hired as a gardener, the deceased was a local in that village with nothing specifically to do to earn an income. The accused needed someone to assist him to acclimatize to his new work enviros while the deceased delighted in learning the art of tree budding with prospects of being hired for the same in the foreseeable future.

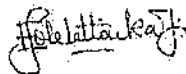
It does not appear to me that the accused intended to bring his life to a complete turnaround by killing a member of the village he had just been to welcome to and could earn an income albeit with his uncle as his "employer". The prosecution has not made any attempt to prove that there was animosity between these two buddies nor deliberate efforts by the deceased which could be inferred as premeditated killing.

Our law requires that both actus reus and mens rea which are essential elements of crimes to be proved. In homicide, absence of malice

aforethought which is the mens rea of murder can lead to conviction for manslaughter which is the lesser offence to murder. In principle, I am fortified to make a finding that the prosecution has proved all elements of the offence of murder save for malice aforethought.

In the upshot, and pursuant to section 300(1) and (2) of the Penal Code [Cap 16 RE 2022] I hereby convict **MAWAZO VENANTI MTITU** of **MANSLAUGHTER** contrary to section 195 and 198 of the Penal Code.

It is so ordered.



E.I. LALTAIKA

JUDGE

18/06/2024

PROCEEDINGS ON SENTENCING

Date:	18/06/2024
Coram:	Hon. E. I. Laltaika – Judge,
For the Republic:	Mr. Sauli Makori, SA
For the Accused:	Mr. Jassej Mwangiga, Adv.
Accused:	Present
JLA :	H. Minja

Court: Invites the learned State Attorney for previous records of the convict

Mr. Makori: My lord we have no record of criminality of the accused.

Sgd
E.I. LALTAIKA
JUDGE
18/06/2024

AGGRAVATING FACTORS

Mr. Makory

1. My lord even though there is no previous record, the right to life is protected by the Constitution of the United Republic of Tanzania (CURT). The accused has therefore violated the constitution.
2. Killing a human being is a criminal offence.
3. The accused was a young man. He had dependent parents.
4. The act of taking away the life of the deceased caused grief and untold mental suffering.
5. The country has lost manpower.

6. God forbids killing one by another.
7. We have had many cases that show the increase in homicide. We need to punish the offenders severely to deter the practice.
8. The offence attracts a life sentence. We pray that this court sends message against taking the law in one's hands.

Sgd
E.I. LALTAIKA
JUDGE
18/06/2024

MITIGATING FACTORS

1. First offender
2. Time spent in custody: almost one year.
3. Possibility of a fight: We cannot tell who started the fight, most possibly the deceased.
4. On the last date he was seen with the deceased in a pombe shop. He was probably drunk and not in his right mind.
5. There may have been provocation. It could have come from the deceased's acts.

6. The convict has two children studying in STD 6 a stepson and a biological son.

9. Habit: He is not a core criminal who takes law in his own hands. He is not dangerous.

We pray this court to invoke section 38(2) to order a custodial or noncustodial sentence.

Sgd
E.I. LALTAIKA
JUDGE
18/06/2024

Convict: I am remorseful: I don't know why he died. It is very difficult to carry a load of 70 kilograms and throw away. That is all my lord.

Sgd
E.I. LALTAIKA
JUDGE
18/06/2024

SENTENCE.

This court has, pursuant to section **300(1) and (2)** of the **Criminal Procedure Act Cap 20 R.E. 2022**, made a finding that the prosecution failed to prove one element of the offence of murder namely malice

aforethought. The court henceforth proceeded to convict the accused of the lesser offence of manslaughter contrary to Section 195 and 198 of the Penal Code (supra) hence this ruling on sentence.

I have considered both aggravating and mitigating factors. In my considered view the manslaughter in question falls under the Medium Level Manslaughter as per **THE TANZANIA SENTENCING GUIDELINES**, 2023 p. 37. The sentence range provided are 10 years imprisonment (highest) to four years imprisonment (lowest). I think the convict displayed the level of cruelty difficult to imagine by deliberately travelling to Njombe while fully aware of the crime he had committed whether intentionally or not. Assuming he was drunk as suggested by Mr. Mwamgiga, he should have turned sober before leaving for Njombe.

All said and done, **I** hereby sentence **MAWAZO VENANTI MTITU** to serve a term of **FOUR (4)** years in prison.

It is so ordered.



E.I. Laltaika

E.I. LALTAIKA
JUDGE
18.06.2024

Court:

Judgement delivered by my own hands in the open court in the presence of **Mr. Sauli Makori**, State Attorney and **Mr. Jassey Mwamgiga** learned Counsel for the convict and the convict.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
18.06.2024**

Court

The right to appeal to the Court of Appeal of Tanzania fully explained.



E.I. Laltaika

**E.I. LALTAIKA
JUDGE
18.06.2024**