

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB-REGISTRY

AT IRINGA

CRIMINAL SESSION CASE NO. 37502 OF 2023

THE REPUBLIC

.....

PROSECUTION

VERSUS

CHAGUZI MAGODA

.....

ACCUSED

JUDGMENT

Date of last Order: 24/05/2024

Date of Judgement: 18/06/2024

LALTAIKA, J.

The accused person herein **CHAGUZI MAGODA** (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 **22nd day of August 2023** at Kilengapasi Village within the District and Region of Iringa he did murdered one **NAZARETH s/o MAGODA**.

The accused person took plea on 26/02/2024. He denied committing the offence hence this trial. At the hearing, the Republic entrusted

prosecutorial serviced to **Mr. Hubert Ishengoma & Ms. Muzna Mfinanga**, learned State Attorney. This being a capital offence, the state fulfilled its obligation of providing legal assistance to the accused person through **Mr. Mr. Asifiwe Isack Mwanjala, 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.

It goes without saying that the burden is on the prosecution to prove to this court, beyond reasonable doubts, the allegation levelled upon the accused persons. In discharging this duty, the prosecution paraded five witnesses and tendered five exhibits. The next paragraphs are a summary of the prosecution case through the five witnesses as carefully recorded by this court.

The first prosecution witness (herein after referred by well-known acronym **PW1**) was **Prisca Shesa Mchae, a 33-year-old woman, peasant, and Resident of Igumbilo Area, Iringa Municipality**. She testified on oath that she is the widow of the deceased Nazareth Magoda. Under Examination-in-Chief by Mr. Ishengoma, she explained that she currently resides in Igumbilo with her parents and previously lived in Kilolo,

Mtiti Ward, Kilengapasi Village with her husband Nazareth Magoda for 14 years. They had a son named Omari Magoda, who is now 23 years old. Despite not being formally married, they lived harmoniously and were engaged in farming.

PW1 recounted that on the night of 22nd August 2023, around 8:00 PM, she was in the kitchen preparing food for her husband when two individuals entered their house. She recognized one of them as her brother-in-law Chaguzi Magoda due to the light from a solar bulb. Chaguzi Magoda proceeded to attack her husband after being welcomed, while another person stood at the door. She attempted to intervene but was struck on the head and hands with a piece of wood. Her husband suffered severe injuries and was bleeding profusely.

In a rather passionate but sad tone, PW1 mentioned alerting her sister-in-law, Anet Magoda, who then informed neighbors and helped transport her husband to the hospital. Despite accusations of witchcraft against her husband by his relatives, PW1 explained, firmly, they had no prior disputes with the accused. Following the incident, she was hospitalized at her parents' home for treatment of head injuries sustained during the attack.

During Cross-examination by Mr. Mwanjala, PW1 clarified that while her husband's relatives accused him of witchcraft, it did not impact their relationship with the accused person. They maintained a normal relationship. Further, PW1 reiterated that she was very certain of the accused's identity because of the ample light provided by the solar bulb.

During re-examination, PW1 reiterated that despite the accusations, they had no personal conflicts with the accused and maintained a civil relationship. She affirmed that she saw his face clearly under the light provided by the solar bulb and was certain of his identity. PW1 confirmed further that the solar bulb provided the only source of light that evening.

PW2 was F9723 D/CPL Juventus, a 39 years old, Police Detective Resident of Kilolo. PW2 who appeared confident testified under oath and stated that on 22nd August 2023, he was stationed at Kilolo Police Station where Prisca Chahe (PW1) and several others, including Chaguzi Magoda, (the accused) arrived. Ms. Chahe lodged a complaint stating that her husband had been injured, specifically mentioning Chaguzi Magoda as the perpetrator. He then issued a PF3 and proceeded to Kilolo District Hospital to see the patient.

He subsequently arrested Chaguzi Magoda based on the allegations raised by Ms. Chahe and recorded her statement. Afterward, he proceeded to the hospital where he submitted the PF3 to the medic attending to the patient. He personally assessed the patient, who was in a critical condition, unconscious, and unable to communicate. After ensuring that the patient was receiving medical attention, he returned to the police station.

After initiating a case for assault against Chaguzi Magoda, the Detective recounted, he received a call around 5:00 AM on 23rd August 2023 from the deceased's younger brother informing him of the patient's passing. He then obtained autopsy forms and facilitated a postmortem examination at Kilolo District Hospital. The autopsy, conducted by Dr. Hindi in the presence of the deceased's relatives, identified the cause of death as cerebral hemorrhage.

PW2 also narrated how he proceeded to the crime scene at Kilengapasi Area in Luganga Village to conduct an inspection and draw a sketch map. Ms. Chahe guided him through the sequence of events that occurred on the evening of 22nd August 2023. She explained that while she and her husband were in the kitchen around 8:00 PM, two individuals

arrived, knocking on the door. One remained outside while the other entered and assaulted her husband with a club, causing head injuries. She identified the assailant as her brother-in-law, Chaguzi Magoda, noting he wore a white shirt and black trousers.

PW2 went on to share what he gathered from PW1 that after raising an alarm and informing her nearby sister-in-law, efforts were made to transport the injured husband to the hospital with assistance from neighbours. With Ms. Chahe's guidance, he completed the sketch map of the crime scene, **which was later admitted as Exhibit P1.**

After completing all investigative procedures, he submitted the case file to the Officer-in-Charge of the Criminal Investigation Department (OC-CID) for further transmission to the National Police Service (NPS). The file included the postmortem report and other relevant documents from Kilolo District Hospital.

He identified the postmortem report by its contents, including the deceased's name, OC-CID's name, and the hospital's stamp. He requested the court to accept the autopsy report as evidence in this case. The court

subsequently admitted the sketch map, **but the postmortem report was not admitted due to absence of the maker.**

During cross-examination by Mr. Mwanjala, PW2 stated that he relied on the map and denied lying, explaining that he was only estimating. He affirmed that he measured the distance between the crime scene and the houses and was in charge of the investigation. He claimed not to have made any contradictory statements and mentioned being accompanied by local leaders, including the VEO during his visit to the scene of crime. PW2 asserted that Prisca had signed the document, as he believed. He reiterated that the crime scene was surrounded by two houses belonging to the sisters of the deceased, despite initially stating there were three houses on the map.

PW2 recounted that Prisca Chahe had described the incident to him, mentioning a shirt with long sleeves, which differed from a white T-shirt, indicating a potential misidentification of the wearer. He noted it was 20:00 hours when Prisca mentioned there was a torch in the room, though they did not find it. The house lacked electricity, and Prisca had told him she raised the alarm in the room, started screaming in the house, was beaten ("alishambuliwa"), and then went outside.

PW2 insisted that the eye witness did not show him where the person outside was standing, so he could not mark it on the sketch map. PW2 confirmed that Prisca was detained for more than five days in connection with the matter. He recalled that after reporting the incident, she returned with some relatives of the deceased, claiming her initial report was incorrect, which was surprising and required further investigation. PW2 could not determine her trustworthiness.

He interrogated a few more people, none of whom, except Ms. Chahe, provided details about the incident. PW2 acknowledged that the deceased was suspected of witchcraft by the surrounding community, not just relatives, and that the accused was among the accusers. He discovered that the accused held a leadership position, either as Chairman of the Kitongoji or Village, and had rebuked those accusing the deceased of witchcraft.

PW2 confirmed that firewood was used at the crime scene for cooking but found no indicators of firewood or leftover trees. He searched the accused's home but did not find the alleged club used in the attack, only farm equipment like a hoe and a *mundu*. He noted that any object could be lethal depending on where it strikes the body. He was informed

that no one responded to the alarm, although the neighbors' houses were not far away. He agreed that an alarm could be heard 300 meters away and, under normal circumstances, would be heard 70 meters away. He confirmed that the deceased was with his wife, Prisca Chahe, during the incident and stated he was unaware of any other criminal case involving PW2.

During re-examination by Ms. Mfinanga, PW2 stated that in the kitchen, he saw cooking stones "mafiga" and a store with some livestock, as well as traditional stools, but he did not see any light (taa). He recalled that the complainant had stated she was injured on the hands after raising the alarm. PW2 mentioned that the last time he saw the accused was at the police station during his arrest and then again in court. He clarified that the number of houses he mentioned were those close to the crime scene, and he used a tape measure to determine that the distance between the deceased's and the accused's houses was about 150 meters.

PW2 noted that due to the nature of the house, built with earth, it was not easy for the voice to carry outside, and the nearby farm might have also prevented the voice from being heard. He remarked that Ms. Chahe's attempt to change her previous statement was an effort to

exonerate the accused. According to Prisca, she went to inform her sister-in-law, Aneth. PW2 stated that he had nothing to say about the accusations of witchcraft. The above two witnesses were the only prosecution witnesses. The prosecution case was closed paving the way for defence case which was extraordinarily long bringing a total of five witnesses. A summary of the defence case is provided in the next paragraphs.

The first Defence Witness (**DW1**) was **Upendo Samwel Sila, 42 years old, Peasant, Resident of Luganga Village in Kilolo** who testified on oath. During her examination in chief by Mr. Mwanjala, DW1 testified that on August 22, 2023, she received a call from Chaguzi Magoda at around 17:30 in the evening. He inquired if she had any drinks in stock at her grocery store. She confirmed that she did. Shortly thereafter, around 18:00, Chaguzi arrived with two others: his wife, Fridah Nyaulingo, and his neighbor, Semsoola, a lady. They each ordered a beer, and Chaguzi also ordered two liters of Machicha, a local brew commonly known as "common." They drank until around 20:00, then left together. There were other people in the pombe shop at the time. When they left, they were not

drunk. It takes about twenty to twenty-five minutes to walk from the pombe shop to their home.

During cross-examination by Mr. Ishengoma, she stated that she is a peasant and owns a pombe shop in her village. She acknowledged that Chaguzi is facing a murder charge in the death of Nazareth Magoda and confirmed that she was not at the crime scene. By 20:00, Chaguzi had already left her place, and she did not know what he did after leaving her pombe shop.

DW2 was Frida Tusiwene Nyaulingo, 42, Resident of Kilengapasi, Luganga Village, Kilolo. During the examination in chief, she stated that she knew the accused, **Chaguzi Magonda, as he was her husband.** They had five children together and had been married since 2002, living in Luganga Village. Both were peasants who grew maize, green beans, and beans. On August 22, 2023, they were harvesting maize in their shamba until around 16:00. Afterward, they ate food prepared by their daughter, Martha Magoda, who was 19 years old. Later, her husband suggested they go and get some alcohol around 17:00. DW2, her husband, and their neighbor, Mama Tunu Msola, went to Upendo Silla's place, had one beer

each, and added about 2 liters of local brew. They left the pombe shop and returned home around 20:00.

Upon arrival, DW2 saw the children and then went to rest, having eggs for dinner as they had missed lunch. Both she and her husband went to bed, sharing the same room. While they were sleeping, someone came knocking and calling for Chaguzi, who responded and opened the door. **The visitor was Gervas Mbwilo**, who informed them there was a problem and someone had been injured. They went to the scene but found no one, as they had already gone to the hospital. They followed and found the patient being attended to, but the doctor demanded a PF3 form. Her husband and her co-wife, Prisca Chahe, (traditional designation for her brothers-in-law wife) proceeded to the police station for the PF3.

DW2 emphasized that she knew Nazareth Magoda, her brother-in-law, and his wife, Prisca Chahe and that her husband was younger than the deceased. Prisca was the first to get married into the family, and their relationship was challenging, full of conflicts. Since her husband was the chair of the Kitongoji, DW2 narrated, they often submitted their conflicts to him, even going to the village office at times. Their main quarrel was

related to their inability to conceive and have children. DW2 claimed to be with Chaguzi throughout the day on August 22, 2023, and swore that in God's name, her husband did not commit the crime on the mentioned date because she was with him from morning till, they went to bed. She did not hear any alarm that day and received the information from Gervas Mbwilo, who was not a relative but a fellow villager.

During cross-examination by Mr. Ishengoma, DW2 stated that her husband was a peasant who worked from 8:00 to 16:00, and she assisted him. They loved each other as a couple, and she depended on him for the family. She would not allow him to be far from the family. She confirmed that her husband had asked her to become his witness and admitted to drinking alcohol, especially the common type, but also beer. On the day in question, she went to sleep at 20:00, but someone came to them around 21:00.

DW2 narrated that she recorded her statement at the police, stating she slept at 8:40 AM, and did not know what went on afterward, estimating the time. She claimed not to know that the deceased was being accused of witchcraft and acknowledged that the deceased and his wife

were not in harmony, as no couple is free of conflicts. She confirmed being at a pombe club that day.

In additional cross-examination by Ms. Mfinanga, DW2 stated that the deceased and his wife never submitted any of their differences to her. She agreed that her husband had no conflict with the wife of the deceased, making it unlikely to falsely accuse someone without prior quarrels. She stated she could not kill her husband due to the inability to have children.

During re-examination by Mr. Mwanjala, DW2 emphasized that she and her husband went to bed together and jointly received the news. She clarified that the conflicts were submitted to the Kitongoji, with her husband's office being at home. She stated that her husband never came back home to discuss the case with her.

DW3 was Gervas Mbwilo a 51-year-old Resident of Kilo, neighbour to the accused. After taking oath and introducing himself, DW3 testified that on August 22, 2023, around 21:00, he was at home when a young man came and informed him that someone had been injured. He went to the scene and found a person lying down next to the house of the deceased, though he hesitated to name the deceased. After seeing this, he

went to the Kitongoji Chairman and reported what he had seen. They both went to the crime scene but did not find anyone there, so they followed the people to the hospital. He mentioned that he was alone when he went to the Kitongoji.

During cross-examination by Mr. Ishengoma, DW3 stated that he lived in Kilolo and drank alcohol. He mentioned that the accused did not drink alcohol, and he was unsure if the accused's wife drank. He explained that he was at home with his wives when he received the news that someone had been attacked, but he did not know who the attacker was. He found people and the deceased lying down with a head injury. DW3 said he called the Kitongoji Chairman around 21:00 and had to knock several times as the chairman was asleep.

When the chairman opened the door, DW3 narrated, he informed him that someone had been injured in a neighboring house and that it was the chairman's brother who had been attacked. He described the chairman as wearing white trousers, although not completely white. He clarified that he was the one who woke the chairman and stated that he did not know

where the chairman was when the event occurred, as he was not present either.

DW4 was Aneth Rafaeli Magoda, a 40-year-old, Resident of Kilolo, and younger sister to the accused. DW4 testified on oath that on 22/08/2023, her sister-in-law, Prisca Chahe, came to her home and told her to come and help because some people had attacked them, without mentioning anyone in particular. DW4 rushed to the scene of the crime and was the first person to arrive. She explained that the deceased was her brother and the first in their family. She noted that her brother's place was not a good place to be as it was difficult to see the deceased due to poor lighting. She had to use her handset to see him properly and confirmed that he was in critical condition.

As a sister, DW4 recounted, she rushed to the neighbors, and together they took the ailing brother to the hospital. At the hospital, the doctors started to attend to him but shortly after asked them to go for a PF3. DW4 mentioned that Chaguzi Magoda and Prisca Chahe went for the PF3. She clarified that Nazareth Magoda, and she were from the same

father, while Chaguzi Magoda was the son of her uncle, indicating that they were not siblings.

She added that her brother's wife was Prisca Chahe, and they never had a child together. Her brother was older, more than 50 years old, while Prisca was in her early thirties, around 32 or 33. She mentioned that they would frequently quarrel, usually when her brother would come back from a pombe shop and be rebuked by his wife. DW4 witnessed about three instances where they took their grievances to "the Kitongoji" (meaning the accused).

During cross-examination by Mr. Ishengoma, DW4 stated that she was at home with her parents when she was told the news by Prisca. Prisca mentioned in the hospital that the accused was the one who attacked her husband, but DW4 did not go to inform him and never made any statement to the police. She explained that on 23/08/2023, she was not at the police station, but the detective came home, and she gave her statement.

DW4 clarified that she did not report to Chaguzi and was not at the scene of the crime. She did not know where Chaguzi was at 8:00. She saw

the deceased in critical condition by lighting the torch on her phone because the light from the solar bulb was too dim. She showed her phone, indicating that it had a brighter light than the solar bulb. She acknowledged that Chaguzi drinks and usually drinks at Upendo Silla's place but wouldn't stay past 20:00 at the latest. Although they were neighbors, she admitted that she could not know all his movements.

DW5 was Chaguzi Joseph Magoda, 45 years old, the accused herein. During his examination in chief, DW5 testified that on 22/08/2024, he was harvesting crops with three others until around 16:00. He then called Mama Nelly, also known as Upendo Sila, to inquire about drinks, and upon receiving a positive response, they went home and had their meals prepared by their child. Subsequently, DW5, Frida Nyaulingo, and Zaituni Msola left home and ordered three beers at Upendo's place, adding two liters of common brew, although DW5 did not drink common brew and had an additional beer instead. They remained there until shortly before 20:00 and then proceeded home, with Zaituni going to her place farther away.

Upon arrival, DW5 found his children at home, declined food due to lack of hunger, but later ate eggs cooked by his wife before going to bed.

At nearly 21:00, Gervas arrived, knocked on the door, identified himself as Gervas Mbwilo, and informed DW5 that a relative had been injured. DW5 put on a jacket and accompanied Gervas to the scene of the crime.

DW5 narrated that he discovered that the individuals had already departed but followed them to the hospital, arriving shortly after 21:00, where he saw, the patient being attended to. The doctor requested a PF3 form, and DW5 called his sister-in-law, Prisca Chahe, instructing her to accompany him to the police station to explain the situation. They hired two motorcycles and upon arrival, DW5 introduced himself as the younger brother of the patient.

DW5 emphasized that the police officer requested Prisca to narrate what had transpired, and she accused DW5 of attacking her husband. DW5 expressed disbelief and identified himself as Chaguzi, prompting the officer to silent him. The officer took notes, then accompanied DW5 to the hospital to see the patient, after which they returned to the police station, where DW5 was arrested, a decision he accepted.

The following morning, around 10:00, the officer informed DW5 that the patient had died and asked to inspect his home. DW5 agreed, and

upon arrival, found people there who requested permission to enter, which he granted. Inside were DW5, the VEO, the officer, and Michale Magoda, who inspected the house but found nothing incriminating. The VEO stated their findings, but the police insisted DW5 return to the station, where, having already provided a statement, he was arrested. He remained in custody for eight days before being transferred to the main police station in Mbigiri, totaling 16 days in custody.

On 07/09/2023, DW5 was taken to court and charged with murder, which he denied. He asserted that Prisca, the wife of Nazareth Magoda (the deceased), was his sister-in-law, and clarified that the deceased was his brother, the son of his uncle "Baba Mdogo." DW5 explained that as a couple, Nazareth and Prisca frequently quarreled, often over Prisca's inability to conceive despite her young age. He recalled a previous incident involving Dotto Magoda, another brother, who had fallen and was taken to the hospital. The police were informed, and DW5 inspected the scene, noting attempts to clean bloodstains with a hoe, leading to the couple's detention at the police station, causing tension between him and Prisca. He emphasized that his relationship with Nazareth was harmonious, although

Nazareth had been accused of witchcraft, which DW5 vehemently opposed, calling a meeting to address the issue.

During cross-examination by Mr. Ishengoma, DW5 acknowledged the murder charge and noted that the accusations came from his sister-in-law, with no witnesses to their alleged fights. He explained that Nazareth had been accused of witchcraft by many, which he opposed due to its damaging nature. He clarified that the witnesses were neighbors, not siblings or relatives, and confirmed his consumption of beer, excluding common brew. DW5 confirmed returning home around 20:00, receiving the report at 21:00, and waking his wife along with himself.

In re-**examination by Mr. Mwanjala**, DW5 affirmed that he had been asleep with his wife and that the three who left for the crime scene were himself, Gervas, and his wife.

Having carefully attended to the above rival positions and carefully examined the court records, four issues warrant my analysis namely:

- (i) Whether there was death of a human being
- (ii) Whether such death was unnatural

(iii) Whether the accused is responsible for causing such death

(iv) Whether he acted with malice aforethought.

On the first issue, there is overwhelming evidence that a human being in the person of Nazareth Magoda died while receiving treatment at Kilolo District Hospital on the **22nd day of August 2023**. Although a prayer to tender the postmortem examination report was declined for offending provisions of the law of evidence, testimonies of both prosecution and defence witnesses left no contention on the matter. This takes me to the second issue.

As alluded to above, the autopsy report was not admitted. In murder trials, factual issues related to the cause of death are resolved by an expert medic who explains, in medical terms the cause of death leaving it to the court to make a finding whether such death was natural or not. In the absence of such a forensic evidence, I have taken time to examine the testimonies of witnesses of both sides. PW1 testified that with the assistance of her neighbours, she took her ailing husband to hospital and went to the police station to collect a PF3. PW2 confirmed issuing such a PF3, visiting the deceased in hospital and receiving the news on his

passing. To this end, I hereby make a finding that this was not a natural death.

Transitioning to the third issue, it is noteworthy that the same is highly contested. The entire prosecution case aimed at proving beyond reasonable doubt that the accused is responsible for the offence committed. The defence case, likewise, intended to distance the accused from the allegations. Consequently, I am duty bound to analyze, evaluate and consider the evidence adduced by both parties as the basis for my decision.

The defence case paraded five witnesses. These are the accused person, his wife, his younger sister, a neighbour, and a grocery store owner. In sum the defence case managed to draw a picture that the accused was a relative to the deceased, he was aware that he was constantly accused of being a witch and that there wasn't any particular strife between them. It is also notable from the testimonies of these witnesses that the accused was a local leader "Mwenyekiti wa Kitongoji" and would occasionally spend his evenings sipping a bottle or two of beer, in the company of his wife.

The defence case has also managed to explain what happened on the eventful day. The narrative is that the accused and his wife were working on a farm for the whole day and passed by the pombe shop in the evening where they took some alcohol before heading back to their homeplace only to be awakened by a neighbour bringing information that their relative had been attacked.

The prosecution case had only two witnesses. I must admit that I found the testimony of PW1 so pure and extraordinarily convincing. The tone of her voice left no doubt that she was a widow in pain for the loss of a husband. PW1 was also firm that she recognized the attacker of her late husband as his own younger brother-the accused. It would be very difficult for anyone to ignore that wholesome evidence. I have considered all possibilities such as poor light and even family conflicts as meticulously argued by Mr. Mwanjala, but I want to remain true to my conscious, I see no such possibility.

I think PW2 deserves credit as the ***detective extraordinare***. He had an extremely difficult task ahead of him after receiving the news that the accused was responsible for attacking his own brother, fatally. Despite

the efforts by family members to persuade PW1 to disown her previous statement that mentioned the accused, PW2 remained vigilant. This is a rare investigator who deserves commendations. Since my verdict is mainly predicated on the value of testimonies of the two prosecution witnesses versus their five counterparts paraded by the defence counsel, I am inclined to go deeper on the legal position of witnesses in our jurisdiction.

It is often stated that witnesses are the center of success or failure of a criminal trial. The common law legal system to which our jurisdiction belongs is said to be highly witness centric. Edward K. Cheng and G. Alexander Nunn **"Beyond the Witness: Bringing a Process Perspective to Modern Evidence Law"** (2019) 97 Tex L Rev 1077 provide:

"For centuries, the foundation of the Anglo-American trial has been the witness. Witnesses report on their personal observations, provide opinions of character, offer scientific explanations and in the case of parties, narrate their own story. Indeed, even for documentary and other physical evidence, witnesses often provide the conduit through which such evidence reaches the factfinder. Documentary or physical evidence rarely stands on

its own. The law of evidence has thus unsurprisingly focused on-or perhaps obsessed over-witnesses.” (References/footnotes omitted)

In our jurisdiction every witness “is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness.” (See **Goodluck Kyando v. Republic** [2006] TLR 363.) It is also trite law that no particular number of witnesses is required for the proof of any fact (See **Yohanis Msigwa v. Republic** [1990] TLR 148). Nevertheless, and probably more importantly for this discussion, this court is entitled to forming an opinion not to believe a particular witness. The Court of Appeal of Tanzania in **Mathias Bundala v. Republic**, Criminal Appeal No. 62 of 2004, (unreported) spelled out (non-exhaustive) reasons for not believing a witness.

In the matter at hand, I see no reason not to believe PW1. She was married to the deceased for 14 years. This is roughly the time she had known the accused as her brother-in-law. It appears that she immediately reported him to her sister-in-law that he had attacked her husband. Irrespective of the attempts, as alluded earlier, to exonerate the accused for purposes of protecting the family, involvement of the accused in

commission of the offence is too conspicuous to be ignored. I therefore make a finding that the third issue is answered affirmatively. The accused person Chaguzi Magoda is responsible for the death of the deceased Nazareth Magoda.

Before I move on to the last issue, let me employ my imaginations to accord a possible interpretation to the facts and testimonies of the witnesses. Specifically, my concern is, why would the accused walk to his brother's house, attack him and leave only to appear later in hospital to see how he was doing? It appears that the deceased was poorer than the accused. He was a habitual drunkard and had marital challenges. To add salt into injury he was frequently accused (by his fellow villagers) of being a witch. The accused who was more progressive and ambitious wanted to protect the family name Magoda. My imagination tells me that the Kitongoji Chairman decided to take law in his own hands after entertaining bad news about his brother. He was accompanied by one of his "boys" (probably a militia man) to attack his brother as a way of addressing his ego. That is the explanation I get from my careful evaluation of the evidence.

Moving on to the fourth issue, whether the accused acted with malice aforethought, I will widen the horizon of my analysis to cover the situation before, during and after the incident. It appears that the accused and the deceased had no enmity. They lived as brothers in a quite village where the accused was one of the hamlet leaders. It appears also that although the accused and deceased were brothers, they led different lifestyles. As alluded to earlier, the deceased had sunk into deep lives of drunkards while the accused was an ambitious leader, probably even looking forward to vying for a higher position in the near future.

My critical reflection of this brotherly relationship before the incident does not suggest any hidden intentions of the accused to take out the life of his poorer, less ambitious, drunkard brother. There was not any property related conflicts involved. Nevertheless, it appears that the accused was getting irritated that his brother was being associated with witchcraft much to the detriment of the goodwill he had built as the "Kitongoji." As often argued, power corrupts, absolute power corrupts absolutely. The accused had absolute power against his brother socially, politically and economically. His act of beating him up in front of his wife was nothing but an expression of this corrupting power and dominance.

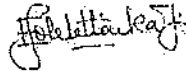
With regards to the situation during commission of the act, I also see no malice aforethought. It appears that the accused was aware that the deceased was with his wife. If the intention was to kill him, he could have called him out or even send one of his "boys" to accomplish the evil act. The type of weapon used, moreover, is indicative of the intention to punish rather than to kill. I think the accused had many options ahead of him if his sole intention was to kill his brother.

The situation after the incident is also equally instructive. PW1 testified that after the attack the accused declared: "nime wakomesha" which can be translated as "I have taught you a lesson." This does not fall under the bracket of pronouncements of accused persons who had accomplished a premeditated homicide. He would probably have declared that he had finished the job or something closer to that expression of that most evil pride.

In the upshot, since, except for malice aforethought, all other elements of the offence of murder have been successfully inferred, the position of the law as per section 300(1) and (2) of the Penal Code [Cap 16 RE 2022] is conviction on a minor offence. In the matter at hand, the minor offence to murder is Manslaughter. Consequently, I hereby convict **Chaguzi**

Magoda 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. Asifiwe Isack Mwanjala, 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.

Sigd

E.I. LALTAIKA

JUDGE

18/06/2024

AGGRAVATING FACTORS

Mr. Makori:

1. My lord the right to life of any member of our Republic is protected by law. No one has a right to take away that right.
2. The action of the accused in taking away the life of his innocent brother is not only violation of the Constitution of the United Republic of Tanzania (CURT) but also against one of ten commandments.
3. My lord, it is the desire of the community at large that problems are resolved amicably. Even if the accused did not intend to kill, he should have thought far.
4. The deceased had a wife, children who depended on him for provision. Moreover, the deceased had relatives and friends. His presence was important in the society. The death caused a huge gap in the community.
5. The punishment for manslaughter is up to life imprisonment. We live it upon your honourable court to decide on the proper sentence, but we pray for a stiff sentence to deter other offenders.

MITIGATING FACTORS

Mr. Mwanjala: My lord on behalf of the convict we have the following mitigations

1. He is a first offender.
2. The accused is a young man. He is only 45 and the workforce of our nation.
3. The accused has a family many of whom depend on him for education and other essentials in life.
4. The accused tried to serve the life of the deceased from looking for the PF3, but he died.
5. He didn't intend to kill. This is because the witness said he had "mti wa muanzi"
6. There was no prior conflict between the two.
7. The accused has been in custody for almost one year. We believe he has learned his lesson. I pray for a lesser punishment.

Convict: I have 18 dependents. It includes an infant. I am also an orphan. I have stayed in prison for one year. I swear before God that I never committed this offence.

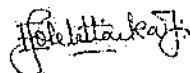
SENTENCE

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 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 death occurred after some time and the weapon used was not fatal.

All said and done, I hereby sentence **CHAGUZI MAGODA** to serve a term of ONE (1) year in prison.

It is so ordered.



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. Asifiwe Mwanjala learned Counsel for the convict and the convict.



**E.I. LALTAIKA
JUDGE
18.06.2024**



Court

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



**E.I. LALTAIKA
JUDGE
18.06.2024**

