

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CRIMINAL SESSIONS CASE NO. 99 OF 2018

REPUBLIC

VERSUS

CPT SUDI HUSSEIN MABENA

JUDGMENT

7th February & 8th March 2024

KISANYA, J.:

On Christmas Eve of 2017, ASP Laurent Augustino Minja, a police officer, was among the customers present at River Road Bar located at Picha ya Ndege area within Kibaha District in the Coast Region. The bar was hosting a live band, a nightclub, and offering various drinks, among other attractions. His enjoyment was cut short after he became involved in an argument and a fight, resulting in him being assaulted before being taken to Tumbi Hospital in Kibaha for medical treatment.

Although ASP Laurent Augustino Minja was discharged the next day, his condition did not improve. He was rushed to Mlonganzila Hospital for further treatment. He was then referred to Muhimbili Orthopedic Institute

(MOI) and later to Muhimbili National Hospital (MNH) where he was admitted for some days. Unfortunately, his condition continued to deteriorate, and he met his demise at MNH on 12th January 2018. The post-mortem examination (Exhibit P4) revealed the cause of death as “multiple organ failure, post-traumatic injuries”.

Capt. Sudi Hussein Mabena (the accused person), an officer of Tanzania Peoples’ Defence Force (TPDF) was claimed to have attacked ASP Laurent Augustino Minja on the fateful day. He was arrested and brought before this Court on a charge of murder, which was later, substituted with manslaughter, contrary to sections 195 and 198 of the Penal Code, Cap. 16, R.E 2002 (now R.E. 2022). The information of manslaughter alleged that, on 25th December 2017 at River Road Bar - Picha ya Ndege area within Kibaha District in the Coast Region, the accused person unlawfully caused the death of ASP Laurent Augustino Minja (henceforth “the deceased” or “ASP Minja”).

The accused person pleaded not guilty, prompting to a full trial. Representing the Republic were, Mr. Emmanuel Maleko, learned Senior State Attorney and Ms Sofa Gimbija, Mr. Clemence Kato and Mr. Joseph

Isaka, learned State Attorneys. On the other hand, the accused person was represented by Messrs. Dominicus Nkwera, Yohana Michael Kibinda, Francis Mnuo, learned advocates. Additionally, the Court was assisted by three lady assessors, Mses. Yusta Juru, Winifrida Ngabona and Esther Mpangala.

To bolster its case, the prosecution summoned seven witnesses namely, Rose Lucas Shayo (PW1), Aziza Francis Mhingi (PW2), A/Insp. Kilian (PW3), Geoffrey Kaluse (PW4), Esther Laurent Minja (PW5), Benjamin Adam Kiteleke (PW6) and EX E.2126 D/CPL Danstan (PW7). Their testimonies were supported by four exhibits, including the identification parade register (Exhibit P1), medical examination report-PF3 (Exhibit P2), sketch map of the crime scene (Exhibit P3), and the post-mortem examination report (Exhibit P4). Conversely, the accused person provided his testimony as the sole witness for the defence. He neither called a witness nor tendered any exhibit to supplement his oral testimony.

Prior to determining whether the prosecution has substantiated its case against the accused person, a concise summary of the evidence presented by both sides is warranted.

The first witness, Rose Lucas Shayo (PW1), a counter attendant at River Road Bar, testified that on the day in question, the deceased arrived at the bar around 1900 hours, and she attended to him. She further stated that later, the accused person and another lady approached her at the counter, inquiring about payment through M-PESA money transfer. PW1 testified that the deceased warned her not to pay attention to them, calling them scammers. According to PW1, the accused person and the lady reacted to being called scammers and followed the deceased when he went to the washroom. She described the accused person as tall, fat, and black, and that, she identified him with the aid of electric light from a tube light in the bar. During cross-examination, PW1 stated that she did not witness the events outside the counter and that many people were going to the washroom.

The next witness, Aziza Francis Mhingi (PW2), the matron of the bar attendants, testified that on the day of the incident, she was issuing tickets to the nightclub. She saw two people near the stairs leading to the nightclub, initially asserting that they were attacking the deceased. However, upon refreshing her memory, she stated that she saw the deceased talking on his mobile phone and being attacked on the head by a

tall, black person. PW2 stated that, she identified the said person with the aid of electric light from a tube light, standing about 12 meters away. It was her evidence that she later identified the accused person as the attacker during an identification parade conducted by PW4. Upon being cross-examined, PW2 admitted that she did not identify the accused person on the day of the incident. She also failed to elaborate on the attack or describe the accused person's attire. In re-examination, PW3 failed to state what she witnessed on the material date.

Another witness, A/Insp. Kilian (PW3), testified that on the fateful date, while attending a friend's birthday party at River Road Bar, he witnessed one person assaulting another. He described the incident occurring near the live band stage, where there was sufficient light from spotlights, and he estimated his distance from the scene to be approximately 5 meters. PW3 stated that he found a person lying on the ground upon reaching the crime scene and recognized him as Afande Minja, the deceased. PW3 subsequently arrested the accused person for assaulting the deceased and took him to the police station. During cross-examination, PW3 mentioned that it took him less than a minute to reach

the crime scene and asserted that the accused person was wearing a jeans and a black T-shirt.

Insp. Geoffrey Kaluse (PW4), a police officer who supervised the identification parade, testified that eight people with similar physical features to the accused person were paraded. He informed the court that the accused person was given his rights before the identification parade, including the right to choose his position in the lineup, the right to call witnesses or an attorney, and the right to wear any clothes. PW4 stated that Aziza (PW2) identified the accused person during the parade and tendered the identification parade register (Exhibit P1). During cross-examination, PW4 admitted that the accused person's name was not on the list of participants in Exhibit P1 and clarified that the accused person was an addition to the eight people in the lineup.

Esther Laurent Minja, the deceased's wife, testified as PW5. She stated that on 24/12/2017, the deceased left for work at 1800 hours and later received a call informing her of his injury. Upon arriving at River Road Bar, PW5 found the deceased already taken to the hospital. She stated that the deceased was discharged the next day, but described the deceased's

deteriorating health, leading to his transfer to Mlonganzila Hospital and eventually to MOI and MNH, where he passed away few days later. PW5 reiterated that the deceased was in good health before the incident. During cross-examination, PW5 stated that she was unaware of any bullet injuries or whether the deceased's death was caused by a bullet.

Benjamin Adam Kiteleke (PW6), a medical doctor who attended to the deceased at Tumbi Hospital, testified that the deceased was brought in unconscious with alcohol consumption and injuries to his nose and upper lip. PW6 treated the injuries, discharged him the next day and filled out a medical examination report, commonly known as PF3 (Exhibit P2). During cross-examination, PW6 clarified that it was unnecessary to examine the deceased's medical history to determine the cause of death. He also discussed potential causes of kidney failure and emphasized that diabetes is not a direct cause of death.

The investigator of the case, EX E.2126 D/CPL Danstan (PW7), testified that he was assigned to investigate the matter on 13/01/2018. In executing the assigned duty, he crafted a sketch map of the crime scene (Exhibit P3) and later visited Muhimbili National Hospital, where Dr. Leah

examined the deceased's body and noted skull fractures and internal bleeding. PW7 tendered the report on post mortem examination (Exhibit P4) that was prepared Dr. Leah. He also mentioned the arrest of the accused person and the conduct of the identification parade.

After the prosecution had closed its case, I found that a prima facie case had been established against the accused person. Consequently, I invited the accused person to enter a defense. As alluded to earlier, the accused person opted to give his evidence without calling any witnesses or tendering any exhibits.

Sudi Hussein Mabena (the accused person) appeared as DW1. He denied any involvement in the offence charged against him. DW1 explained that he was initially accused of murder and subsequently summoned to answer the information of manslaughter. He contested the evidence presented by the prosecution, particularly that of PW1 and PW2, stating that they did not establish their employment status at River Road Bar or their presence at the crime scene. His contention was based on the ground that, the bar's owner or manager were not called to prove that the said witnesses were employees and that they were on duty on the fateful day.

DW1 also disputed PW2's identification of him during the identification parade, pointing out discrepancies in her testimony and the absence of his name in the identification parade register (Exhibit P1).

Regarding the sketch map (Exhibit P3) tendered by PW7, DW1 criticized its clarity and the absence of a title and scale measured in meters. He further questioned the validity of the identification parade, asserting that he was not in the list of the participants of the parade. It was also the accused person's testimony that, he was not arrested at the crime scene as claimed by PW3.

During cross-examination, DW1 maintained his position of not being present during the identification parade and expressed uncertainty about signing the identification parade register (Exhibit P1). He admitted to lacking evidence to disprove PW2's employment status at the bar and acknowledged the deficiencies in Exhibit P3's title and scale.

After the closure of the defense case, both parties' counsel had an opportunity to make final submissions. I then summarized the evidence and the relevant issues before inviting the lady assessors to provide their opinions. I highly appreciate the inputs and authorities cited by the

counsel, as well as the opinions provided by the lady assessors. I will consider their respective submissions and opinions in determining the issues in this matter.

Having reviewed the cases presented by the prosecution and defence, this Court is duty-bound to determine whether the case against the accused person has been proved beyond a reasonable doubt. In determining the foregoing issue, I will consider whether the prosecution has proven all ingredients of manslaughter against the accused person.

According to section 195 of the Penal Code, the offence of manslaughter involves the unlawful killing of another person without the need to prove malice aforethought. In the case of **Lusungu Duwe vs Republic**, Criminal Appeal No. 76 of 2014, ([2014] TZCA 162 Tanzlii), the Court of Appeal named three essential ingredients in proving the offence of manslaughter, when it held that:

"The offence of manslaughter is deemed to be proven where the prosecution advances evidence capable of establishing that:-

- 1. The deceased had died.*
- 2. The death of the deceased was unlawfully caused by the accused, and*

3. The unlawful act or omission which caused death of the deceased was unintentional and without knowledge that death or grievous bodily harm was a probable consequence"

Based on the above-stated legal position and the particulars of the offence stated in the information, the first sub-issue is whether ASP Laurent Augustino Minja is deceased. The prosecution presented the deceased's wife (PW5), whose testimony indicates that ASP Minja passed away at Muhimbili National Hospital. This testimony is supported by PW7 who witnessed Dr. Leah's examination of the deceased's body. Additionally, there is a post-mortem examination report (Exhibit P4) tendered by PW7. It shows that the deceased died on 12/01/2018 due to multiple organ failure, post-traumatic injuries. This evidence implies that the deceased's death was unnatural. The accused person did not raise doubts in the prosecution's case regarding the deceased death. Therefore, it can be concluded that the first ingredient of manslaughter has been proven by the prosecution on the required standard.

This gives rise to the second sub-issue, whether the death of the deceased was unlawfully caused by the accused. In response to this issue,

it is evident that the prosecution's case relies on two main sets of evidence. The first set is the evidence of visual identification adduced by PW1, PW2, and PW3, whereas the second set is the direct evidence of PW3, who stated that he arrested the accused person after finding him beating the deceased.

Regarding the evidence of visual identification, PW1, PW2, and PW3 claimed to have identified the accused person at the crime scene. Since these witnesses testified that the deceased was assaulted on Christmas Eve of 2017, they provided evidence of visual identification. It is a well-established principle in this jurisdiction that, evidence of visual identification is one of the weakest forms of evidence. The court may only rely on such evidence after being satisfied that it is watertight and that there is no possibility of mistaken identity. This principle was affirmed in cases of **Omari Iddi Mbezi and 3 vs R**, Others, Criminal Appeal No. 227 of 2009, **Oscar Mkondya and 2 Others vs R**, Criminal Appeal No. 505 of 2017 and **Hassan Khatibu Ali vs the DPP**, Criminal Appeal No. 86 of 2018 (all unreported) referred to this Court by Mr. Nkwera and **Charles Nanati vs R**, Criminal Appeal No. 286 of 2017 (unreported), relied upon

by the learned State Attorney. All cases cited the landmark case of **Waziri Amani vs R** [1980) TLR 250, where the Court of Appeal held that:

"The first point we wish to make is an elementary one and this is that evidence of identification, as courts in East Africa and England have warned in a number of cases, is of weakest kind and most unreliable. It follows therefore, that no court should act on evidence of visual identification unless all possibilities of mistaken identity are eliminated and the court is fully satisfied that the evidence before it is absolutely watertight."

In the same case of **Waziri Amani** (supra), the Court of Appeal set out the following guidelines for determining whether the evidence of visual identification is reliable.

"We would for example, expect to find on record questions such as the following posed and resolved by him: the time the witnesses had the accused under observation; the distance at which he observed him; the conditions in which such observation occurred, for instance, whether it was day or night-time, whether there was good or poor lighting at the scene; and further whether the witnesses knew or had seen the accused before or not These matters are but a few of the matters which the trial judge should direct his mind

before coming to a definite conclusion on the issue of identity."

It is important to note that the application of the above-stated guidelines is not conclusive, as it depends on the facts and circumstances of each case. I am supported by the case of **Njamba Kulamiwa vs R.**, Criminal Appeal No. 460 of 2007, CAT at Tabora (unreported), where the Court of Appeal held that:

"As is clear, from the above passage WAZIRI AMANI's case just gave broad guidelines, and it is for the trial court, in each case to assess and apply those guidelines, in the light of the circumstances of each case."

In addition to the factors favoring accurate identification, the court must also consider the credibility of the identifying witness. This stance was reinforced in the case of **Jaribu Abdalla and Another vs. R.**, Criminal Appeal No. 220 of 1994 (unreported) cited with approval in the cases of **Charles S/o Boniface vs R**, Criminal Appeal No. 426 and 427 of 2015 (unreported) and **Oscar Mkondya** (supra) where the Court of Appeal emphasized that:

"In matters of identification it is not enough merely to look at factors favouring accurate identification. Equally

important is the credibility of eyewitnesses. The conditions of identification might appear ideal but that is no guarantee against untruthful evidence."

With the above-stated principles in mind, Mr. Nkwera submitted that none of the prosecution witnesses identified the accused person at the crime scene and that the conditions were not favorable for them to identify him. In her reply, Ms. Sofa argued that the accused was duly identified by PW1, PW2, and PW3 as person who was fighting with the deceased on the ground that the identification conditions were favourable for them. In that respect, the question arises as to whether PW1, PW2, and PW3 identified the accused person as the one who assaulted the deceased.

I prefer to start with the testimonies of PW1 and PW2, who both worked at River Road Bar as a counter attendant, and a matron of the bar attendants, respectively. These witnesses affirmed that they were on duty on the relevant date and night.

As regards the issue under consideration, PW1 testified that she served the accused person and the deceased. According to her, the deceased informed her that the accused person and the woman with him were scammers. However, PW1 clarified that she did not witness what

occurred after the deceased left the counter. During cross-examination by Mr. Kibindu, PW1 admitted that she did not see anything relevant to this case. On that account, I am inclined to agree with Mr. Nkwera that, it was not established that PW1 identified the accused person as the one who assaulted the deceased.

Moving to PW2, she swore that on the night in question, she was assigned to issue tickets at the River Road Bar's night club. Initially, PW2 informed the court that she witnessed two people standing on the stairs leading to the club, attacking Mzee Minja (the deceased). However, after refreshing her memory by reading her police-recorded witness statement, PW2 stated as follows:

"When I was issuing tickets to the night club, I saw Minja talking through his mobile phone. I also saw another person who was tall and black. That person was not known to me. He attacked the deceased on head. I saw Mzee with aid of electricity which was illuminating from the tube light. I was at a distance of 12 meters. Thereafter, I proceeded to issue tickets."

From the above excerpt and as rightly observed by the defence counsel, Mr. Nkwera, it is apparent that PW2 did not specify the exact time

under which the deceased's assailant remained under her observation. Given that PW2 was engaged in issuing tickets to the night club and was positioned approximately 12 meters away from the crime scene, it was crucial to establish the duration of time she had the accused person under observation. Merely stating that the lighting was sufficient to identify the person beating the deceased was not adequate. Furthermore, during cross-examination and examination in chief, PW2 failed to clarify how she identified the accused person and what she witnessed during the attack on the deceased. With due respect, I don't subscribe to Ms. Sofa's argument that the conditions or factors favoured accurate identification by PW2. I hold the view that it was not sufficiently proven that the factors were favorable for PW2 to make a reliable identification of the accused person.

Even if, for the sake of argument, all factors favored accurate identification by PW2, this Court must still be satisfied regarding her credibility as a witness. It is a principle of law established in several cases, including **Goodluck Kyando vs. R**, [2006] TLR 363, that every witness is entitled to credence and must be believed, and his testimony accepted unless there are good and cogent reasons for disbelieving him. The law is further settled that, a witness's evidence may be discredited where the

veracity of his testimony is challenged, a motive to misrepresent facts is established, bias or prejudice is revealed, or even he has given contradictory or improbable evidence, or has been contradicted irreconcilably by another witness or witnesses. For instance, in the case of **Raphael Mhando vs R**, Criminal Appeal No. 54 of 2017 (unreported), the Court of Appeal cited with approval the case of **Shabani Daudi vs R**, Criminal Appeal No. 28 of 2001 (unreported), where it was held that:

"The credibility of a witness can also be determined in two other ways: one, when assessing the coherence of the testimony of the witness. Two when the testimony of that witness is considered in relation with the evidence of other witness, including that of the accused person."

As observed by Mr. Nkwera and opined by the lady assessors, PW2 indicated that the deceased was attacked by two people without stating whether the accused person was one of them. It was only after refreshing her memory that PW2 claimed to have seen an unknown person attacking the deceased. PW2 further stated that the assailant was tall and black, and that during the identification parade, she identified this assailant as the accused person. However, during cross-examination by one of the defense counsel, PW2's response was as follows:

“It is true that I did not identify the accused person on the fateful day. I have identified him in this Court because he is in front of me. Yes, I witnessed when Minja was attacked. (PW2 has failed to answer the question on how the deceased was attacked).”

It is evident that PW2 admitted that she did not identify the accused person on the date in question. Such admission raises questions about how she later identified him during an identification parade conducted by PW4. According to section 60 (1) of the Criminal Procedure Act, Cap. 20, R.E. 2022 (the CPA), an identification parade is held for purposes of ascertaining whether a witness can identify a person suspected of an offence, enabling the witness. The said inconsistency in PW2’s testimony on whether he identified the accused person renders her evidence on identification unreliable. Furthermore, PW2’s demeanor in court, including her failure to answer questions posed by both the defence counsel and the prosecuting attorney, undermines her credibility. Therefore, I find that PW2 is not a credible witness. As a result, I will not consider the evidence and the parties’ contenting arguments on the identification parade in which PW2 allegedly identified the accused person, as depicted Exhibit P1.

Next, I will consider PW3, the final witness to testify on the identification of the accused person. Like the deceased, PW3 is a police officer. He testified that he was celebrating a friend's birthday party at the River Road Bar when he witnessed an assault near the live band stage. I agree with Ms Sofa that, PW3 asserted that the crime scene had sufficient light from spotlights and he estimated the distance from his position to the scene to be 5 meters. Further, PW3 claimed that it took him less than a minute to arrive at the crime scene. While it might appear that these conditions were favorable for PW3 to identify the accused person, it is notable that PW3 did not specify the duration of time he had the accused person under observation. Since PW3 stated he arrived at the scene in less than a minute, this detail was crucial in determining whether the arrested person was the same person he saw assaulting the deceased.

Moreover, it is pertinent to consider that PW3 claimed to have recognized the assaulted person as ASP Minja upon reaching the crime scene. This recognition suggests that PW3 and the deceased were acquainted. However, PW3 did not mention identifying ASP Minja from where he was seated during the birthday party. It is my considered view

that, if the identification factors were truly favorable, PW3 would have stated that he identified ASP Minja before arriving at the scene.

Having resolved herein that PW1 and PW2 did not conclusively prove to have identified the accused person and that the identification conditions or factors were not favorable for PW3 before arriving at the scene, the remaining evidence is the direct testimony provided by PW3. From the arguments advanced by the learned State Attorney, this testimony relates to what occurred after PW3 arrived at the crime scene. In his account, PW3 stated that he found the deceased lying on the ground. He further stated that he arrested the accused person for assaulting the deceased and subsequently took him to the police station.

Was the accused person arrested by PW3 while assaulting the deceased? Mr. Nkwera contended that the prosecution did not prove that the accused person was arrested at the crime scene. He pointed out that PW7 testified that the accused person was arrested at TPDF's office and argued that the prosecution did not establish that the accused person was granted police bail after being arrested by PW3. On her part, Ms. Sofa argued that the accused person did not file the notice alibi as required by

the law and that PW3's testimony about the arrest of the accused at the crime scene was not challenged during cross-examination. Referring the Court to the case of **Martin Misara vs R**, Criminal Appeal No. 428 of 2018 (unreported), she claimed that the accused person admitted to being arrested at the crime scene.

From the outset, the record bears it out that during the preliminary hearing, the fact that the accused person was arrested and interrogated was not disputed. However, the facts read to the accused person did not specify whether he was arrested at the crime scene, admitted on police bail and re-arrested after the deceased's death. That aside, there is no indication that the undisputed facts were read over and explained to the accused person as required by section 192(3) of the CPA. Therefore, being guided by the well-established principle of law, I cannot consider the fact in question as admitted during the preliminary hearing.

I have further taken into account that both PW1 and PW2 were present at the crime scene. As hinted earlier, PW2 claimed to have witnessed the assault on the deceased. Yet, neither PW1 nor PW2 mentioned whether the assailant was arrested at the crime scene or if the

arrested person was indeed the accused. Also, given that the accused person was alleged to have assaulted the deceased whose health condition did not stabilize, prompt identification parade was expected. However, it was only after one month that PW4 conducted an identification parade, during which PW2 is said to have identified the accused person. I am of the view that, this delay and failure to assign reasons for the delay in conducting the identification parade raise doubt on whether the accused person was arrested at the crime scene as claimed by the prosecution.

Further to this, if the accused person was arrested and admitted on police bail, it was expected that the bail conditions, including the date of reporting to the police station, were given to him and/or his sureties. There is nothing to suggest that the alleged arrest for the second time was moved by a failure to comply with the bail conditions. Besides, PW7 did not testify that he is the one who received the accused person on the date of the incident and admitted him on police bail. Moreover, the officer who received or admitted him on police bail and the police officers or people who arrested him at Mgulani JKT or TPDF' office did not enter the witness box to testify before this Court.

Furthermore, the prosecution tendered a sketch map (Exhibit P3) detailing the crime scene, including the positions of the identifying witnesses. I am mindful that, the accused person contested the sketch map, claiming it lacked a title and scale. However, upon examination of Exhibit P3, I concur with Ms. Sofa that the title and scale were indeed indicated. That notwithstanding, the investigator (PW7) who crafted the sketch map labeled the locations where PW1, PW2, and the bar owner, Anselm Kinabo, were positioned in relation to the crime scene. However, the location where PW3 was seated during the birthday party is not featured in Exhibit P3. Considering that PW3 claimed to have witnessed the event at a distance of five (5) meters and arrested the accused person, I am of the opinion that he was the proper person to direct PW7 in crafting the sketch map.

Alternatively, while there is no specific number of witnesses required to prove certain facts according to section 143 of the Evidence Act, Cap. 6, R.E. 2022, the prosecution should have called the bar owner, Mr. Kinabo, who directed PW7 in drawing Exhibit P3. He could have testified regarding whether the accused person was arrested at the crime scene by PW3 and his colleagues. This is when it is considered that, during cross-examination

by Mr. Nkwera, PW3 claimed that he went to the crime scene after being called by the bar manager, Hipolite Ngowi. However, Hipolite Ngowi was not called to testify.

Additionally, PW3's assertion that he was called to the crime scene by Hipolite Ngowi is inconsistent with his earlier testimony that he rushed to the crime scene immediately after witnessing a person beating another person. I am of the considered view that, this inconsistency goes to the root of the case. It raises doubts about PW3's credibility, as he claimed to have witnessed the assault on the deceased's death and ran to the crime scene in less than a minute.

I have not considered the contradiction pointed out by the defense counsel in the testimonies of PW2 and PW3 regarding the location of the crime scene. I agree with argument by the learned State Attorney that, the issue whether the crime scene was the stairs to the nightclub or the live band stage is insignificant. Such contradictions do not undermine the core issue that the offence took place at River Road Bar.

Based on the above analysis, I find that the prosecution has not proven that the accused person was found assaulting or fighting the

deceased. As a result, Ms. Sofa's arguments that the accused person's defense of alibi contravened section 194 of the CPA and the defence's failure to cross-examine PW3 on arresting the accused person at the crime scene lack merit. I hold the view that the principles stated in the cases referred to by the learned State Attorney apply when the prosecution case has been proved. The time-bound principle in criminal cases, including manslaughter, provides that the burden of proof rests on the prosecution; it never shifts, and no duty is cast on the accused person to establish his innocence. [See the case of **Mohamed Said Matula vs R.**, [1995] TLR 3 (TZCA)].

On totality of evidence presented by the prosecution, I am of the considered view that, the second element, whether the deceased was unlawfully killed by the accused, has not been established. Therefore, I find it unnecessary to consider the third element, which hinges on the sub-issue, whether the unlawful act that caused the deceased's death was unintentional and without knowledge that death or grievous bodily harm was a probable consequence.

In agreement with the lady assessors, who unanimously opined that the accused person is not guilty of manslaughter, I hold that the prosecution has not met the burden of proof in this case beyond a reasonable doubt.

Ultimately, and for the reasons stated, I find the accused person, Capt. Sud Hussein Mabena, not guilty of manslaughter contrary to sections 195 and 198 of the Penal Code Cap. 16, R.E 2002 (now R.E. 2022), and therefore acquit him of the charged offence.

DATED at DAR ES SALAAM this 8th day of March, 2024.



S.E. KISANYA
JUDGE
08/03/2024