

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

**CRIMINAL SESSION CASE NO. 90 OF 2022**

**REPUBLIC**

VERSUS

**1. BONIFACE S/O SELESTINE LEKULE  
2. COLMAN S/O JOSEPH MINJA**

**JUDGMENT**

29/02/2024 & 08/03/2024

**SIMFUKWE, J.**

The accused persons Boniface s/o Selestine Lekule and Colman s/o Joseph Minja stand charged with the offence of Murder contrary to **section 196 and 197 of the Penal Code, Cap 16 R.E 2022**. The accused persons are alleged to have murdered their mother one Victoria Amedeus Lekule on 06/06/2022 at Mbahe Marangu area, within Moshi District in Kilimanjaro Region. Both accused persons denied to be responsible for the murder of their mother.

In proving the charge against the accused persons, the prosecution paraded a total of five witnesses; Dr. Thomson Victoria Masanja (**PW1**), Mr. Amedeus Innocent Shayo (**PW2**), Mr. Ambrose Walikanga Mlay (**PW3**), Mr. G.1514 D/CPL Athuman (**PW4**) and Mr. Elia Lyaba Hilabajojo (**PW5**). Also, the prosecution tendered two exhibits, a Post-Mortem Examination Report prepared by PW1 (**Exhibit P1**) and sketch map of the scene of crime (**exhibit P2**).

In their defence, the accused persons defended themselves and they had no witness to call.

**PW1 Dr. Thomson Victoria Masanja** his testimony was that he was a medical doctor at Kilema Hospital at Marangu. On June 2022 he was stationed at Kilema Hospital at General Surgery Department. His responsibilities included treating patients, surgery and conducting autopsies. He had ten years working experience as a doctor, and four years of surgery. He was trained at IMTU (International Medical and Technological University) from 2008 to 2014. He was awarded a degree in medicine.

He said that on 8/6/2022 during working hours he was at work at Kilema Hospital. While at work, one police officer went there in the company of three relatives. The said police officer informed PW1 that there was a

body of the deceased person which was to be examined. PW1 accompanied the police officer to the mortuary where they found attendants. The attendants took the body of the deceased to the examination room. The relatives identified that body. Thereafter, PW1 did physical inspection of the body of the deceased. He discovered that it was a body of an adult female person of African origin. The said body had nine wounds on the head inflicted by a sharp object. The said wounds caused severe haemorrhage which was the cause of death. The wounds extended to the skull, eye and eye muscles. They were deep to the extent of five centimetres. After examination, PW1 prepared a post mortem examination Report and gave it to the police officer.

PW1 identified the Post Mortem Examination Report through his handwriting, signature, seal of Kilema Hospital and his title – Medical officer. He prayed to tender it as exhibit. It was admitted as exhibit P1.

**PW2 Innocent Amedeus Shayo** testified that meanwhile, he is a resident of Simiyu in Meatu District. On June 2022 he was a resident of Longuo B Ward in Moshi District.

He informed this court that on 8/6/2022 at about 12:00hrs he was at Kilema Hospital in Moshi District. Prior to that, he went to Himo Police Station where he was required to report so that they could go to hospital

for identification of the body of the deceased. He was accompanied by Stanslaus Paul Lekule and Pascal Stephen Mtui.

At the police station, they left with Afande Athumani and headed to Kilema Hospital. At Kilema Hospital they left in the company of the doctor and went to the mortuary where they found attendants. The attendants allowed them to enter inside the mortuary. Stanslaus was left outside because he was afraid while Pascal Stephen Mtui, Afande Athumani and the doctor entered in the mortuary. The attendants placed the body of the deceased on the table. Then, the police officer asked them whether they knew that body, they managed to identify it. PW2 said that it was a body of his sister Victoria Amedeus Lekule. He explained that, the body had wounds on the head and face. After examination, they went to the police Station.

PW2 testified further that pursuant to the information he had received, the deceased was assaulted by two people, Boniface Selestine Lekule and Colman Joseph Minja. He identified the accused persons who were before the court as the said persons. He concluded that, he never had grudges with them.

**PW3 Mr. Ambrose Walikanga Mlay** a resident of Lyasongoro at Marangu; stated that on June 2022 he was residing at the same place.

He testified that on 6/6/2022 in the morning at about 8:00hrs he was at the farm. While there, he saw three youths bending down, they were squatting down. He followed them and asked what was wrong. One Michael Eugene Mushi appeared and informed PW3 that the said youths had done an incidence at the village. The said youths were Boniface, Colman and the third was a girl whom PW3 could not remember her name. He took them to the hamlet chairperson. The hamlet chairperson made a phone call to their uncle, the uncle of Boniface and his fellows. Their uncle said that they should hold them right there. He went with their mother in the vehicle, who was seriously injured. PW3 learnt that the said youths (Boniface and Colman) had injured their mother.

Thereafter, they took Boniface and Colman to the police station. They left them there, while the body of their mother was taken to hospital. PW3 acknowledged that he knew Boniface and Colman. He identified the accused persons who were before the court by showing and naming them one by one.

PW4 was a police officer **G. 1514 D/Cpl Athuman**. He stated that he was stationed at Himo police station at Criminal investigation department. He had a working experience of four years. His daily responsibilities

included safety of civilians and their properties, patrol, arresting criminals and investigation of criminal cases.

He testified further that on 7/6/2022 at about 08:00hrs he was at the criminal investigation department at Himo Police station when he received a case file HIMO/IR1709/2022 from the OCCID so that he could proceed with investigation of that case. The said case file concerned a murder case.

The suspects were Boniface Lekule and Colman. The deceased was Victoria Amedeus Lekule. PW4 communicated with the village chairperson of Mbahe - Marangu, Mr. Peter Dominic Mtui and went to Mbahe village. He met that chairperson and went to the scene of crime. The chairperson showed PW4 the scene of crime and he drew the sketch map. PW4 was in the company of the chairperson and the neighbour one Elia Nyaba. The person who led PW4 signed the sketch map and PW4 signed. Then, PW4 went back to Himo Police Station. PW4 clarified that before the case file was assigned to him, the suspects had already been arrested and their statements were recorded.

On 8/6/2022 at 12:10 hrs PW4 was at Himo Police Station when the relatives of the deceased went there so that they could go to Kilema Hospital for conducting an autopsy, that is examination of the body of the

deceased. They went to Kilema Hospital where they met Dr. Thomson Masanja whom PW4 had already communicated with. They went to the mortuary; the body of the deceased was taken out and the relatives identified it. The relatives were three, PW4 remembered Pascal Mtui and forgot the rest. After identification of the body of the deceased, the doctor started the examination.

PW4 stated further that, the body of the deceased had wounds on different parts, on the head, stomach and legs. After examination, the doctor filled the report on post mortem examination. Then, they went back to Himo police station for recording the statements of the relatives.

PW4 collected all the evidence and referred the case file to the National Prosecution office. He alleged that in their statements the accused persons had confessed to had committed the offence.

He identified the sketch map of the scene of crime through his handwriting, reference number of the case Himo/IR/1709/2022 and the name and signature of the witness who was guiding him. That is Peter Mtui. He prayed to tender the sketch map of the scene of crime as exhibit. It was admitted as exhibit P2.

**PW5 Mr. Elia Lyaba Hilabajojo** a pastor of T.A.G at Mbahe village stated that, on June 2022, he was a resident of Mbahe. He said that on

5/6/2022 at about 19:00hrs he was at his homestead at Mbahe. While there, he heard a cry of a child from his neighbour Victoria. That cry persisted for a while. Later, PW5 heard Victoria crying **"Mchungaji nisaide! Mchungaji nisaide!** PW5 responded and went there. He found Boniface holding his young sister Queen in the rain on allegation that he was bathing her. As that was not normal, the same caused their mother to raise an alarm. Since it was dark, PW5 switched on the torch of his phone, Boniface rebuked him that he should switch off the torch.

PW5 clarified that he had an umbrella that's why he managed to switch on the torch. Also, Boniface ordered PW5 to go back to his homestead as he could not managed those things. Thus, he went back to his homestead and made a phone call to the hamlet chairperson. He explained the situation to him. The hamlet Chairman told PW5 that he would make a phone call to the police station. PW5 saw Victoria crying seeking assistance but the circumstances were not friendly.

PW5 testified further that, as he had already said, he made a phone call to the hamlet chairperson and the owner of the house and told them the situation which he found at Victoria's homestead. The hamlet chairperson said that he was not feeling well. Thus, he could not go to Victoria's homestead. At about 22:00hrs Victoria continued to raise an alarm crying



pastor help me! Pastor help me! PW5 had to go for the second time. He found Colman assaulting his mother. Victoria had fallen down, Colman was sitting on the shoulders of her mother Victoria and beating her with fists on her face. PW5 went back to his homestead and made a phone call to the owner of the house and the hamlet chairperson and explained to them the real situation. They told him that they should wait till morning as they had no alternative and that they had already informed the police.

At about 23:00hrs that woman continued to seek assistance. PW5 had to go again. He found the door closed but since their house was wooden, he could see what was going on inside the house. He peeped and could not believe what he saw. He believed that he won't see such a thing in his lifetime. He saw Boniface attacking his mother with a knife on her face, she was bleeding. PW5 stated that Boniface was saying that they were killing Satan.

After witnessing what he saw, PW5 went back to his homestead and made a phone call to the hamlet Chairperson and the owner of the house.

PW5 went on to testify that at about 02:00hrs on 6/6/2022 that woman continued to cry seeking assistance. He said that his window is facing their house, thus, he could hear what they were saying. The voice of that woman was low at that moment. PW5 heard Boniface saying that they

had finished the work and they applauded. In the morning at about 06:00hrs, PW5 went to the hamlet chairperson, they left together and went to the homestead of Victoria. They found the representative of the owner of the house and other neighbours who had gathered there. The house of Victoria was open. They entered in the house and found Victoria laying down. She was bleeding from her head, face and other parts which PW5 could not observe as he was allergic to blood. There was no one else apart from Victoria.

The hamlet chairperson started communicating with the relatives of Victoria while waiting Police officers to arrive. Then, PW5 left as he had to attend burial ceremonies at Moshi. Police officers arrived at about 15:00 hrs and took the body of the deceased to Kilema Hospital but PW5 was not there. While on the way to Kilema Hospital, Victoria passed away. That's was pursuant to the information which PW5 had received from the hamlet chairperson.

Explaining the condition of identification, PW5 stated that he could identify Boniface because he had switched on the torch of his smartphone. Boniface told him that he should switch off the torch. That, PW5 stood very close to them and there was no impediment between them. The incidence took not more that two minutes. Boniface's face was abnormal

and he had a weapon in his hands. PW5 informed this court that he knew Boniface since 2014 till 2016 when they moved to another place. Whereby they got another house in the nearby village, not far from there. He used to meet Victoria and Boniface often. PW5 never met the young son (Colman). In 2022 they went back to the house which they were staying in the past and PW5 had known the accused persons for almost ten years.

PW5 explained further that he could identify the accused persons because there was a solar light at that area. The distance from him to them was not more than five meters. There was no hindrance between them. The incidence took about five minutes. PW5 knew Colman because he was their neighbour. They used to meet at the village.

PW5 said that when he went back to Victoria at 02:00hrs he could see what was going on inside the house because their house is wooden and there was enough light inside the house. It was a solar light. The house had holes which enabled him to see inside. At that time, he did not stay there for more than two minutes, as he had to go back and make phone calls to the hamlet chairperson and the owner of the house.

PW5 finalised his testimony by identifying the accused persons Colman and Boniface.

In their sworn defence both accused persons denied to have killed their mother and prayed to be acquitted.

Having considered evidence of both sides, I am of considered opinion that the following facts were not disputed by both parties during the trial:

**1. That, the deceased person died unnatural death on 06/06/2022.**

**2. That, the accused persons are sons of the deceased.**

As a cardinal principle of criminal law, the onus of proof lies on the prosecution side. The standard of proof is beyond reasonable doubts. Thus, the prosecution must establish through evidence the elements of murder which are; ***death, the involvement of the accused as the person who caused the death*** of the deceased and ***malice aforethought*** (evil intention) of the accused person. Also, it is settled law that, the stories of the accused persons do not have to be believed by the Court, but only raise reasonable doubts on part of the prosecution.

On the available evidence, issues for determination are:

**1. Whether the deceased was killed by the accused persons or not.**

**2. If the first issue is answered in the affirmative, whether the accused persons killed the deceased with malice aforethought.**

**3. Whether the offence of murder has been proved beyond reasonable doubts.**

On the first issue, whether the deceased was killed by the accused persons or not; the only eye witness was PW5 Pastor Elia Lyaba Hilabajojo. His evidence was corroborated with the evidence of PW4 the investigator of the case who stated in his testimony that in their statements the accused persons confessed to have committed the offence.

Before I proceed to consider whether the accused persons committed the offence or not, at this juncture, I wish to comment that if what was stated by PW5 is true, it goes without saying that the tragedy in this matter is more than the story of a **Good Samaritan**. In the sense that the deceased died for lack of Good Samaritans who could intervene the situation and stop her sons from assaulting her before she could succumb to death. In the book of **St. Luke 10:25-37** of the Holy Bible it is written:

*"25. On one occasion an expert in the law stood up to test Jesus.*

*"Teacher," he asked, "what must I do to inherit eternal life?"*

*26. "What is written in the Law?" He replied. "How do you read it?"*

*27. He answered, "Love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind; and Love your neighbour as yourself."*

*28. "You have answered correctly" Jesus replied: "Do this and you will live."*

*29. But he wanted to justify himself, so he asked Jesus, "And who is my neighbour?"*

*30. In reply Jesus said: "A man was going down from Jerusalem to Jericho, when he was attacked by robbers. They tripped him of his clothes, beat him and went away, leaving him half dead.*

*31. A priest happened to be going down the same road, and when he saw the man, he passed by on the other side.*

*32. So too, a Levite, when he came to the place and saw him, passed by on the other side.*

*33. But a Samaritan, as he travelled, came where the man was; and when he saw him, he took pity on him.*

*34. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, bought him an inn and took care of him.*

*35. The next day he took out two denarii and gave them to the innkeeper. "Look after him," he said "and when I return, I will reimburse you for any extra expense you may have."*

*36. "Which of these three do you think was a neighbour to the man who fell into the hands of robbers?"*

*37. The expert in the law replied, "The one who had mercy on him." Jesus told him, "Go and do likewise."*

Albert Eistein once said,

*"The world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing."*

Also, Martin Luther King Jr. once said:

*"... For evil to flourish, it only requires good men to do nothing."*

In our case, it may sound strange, I firmly believe that the deceased was impliedly killed by PW5 and other neighbours. The deceased cried for help almost the whole night. If at all the accused persons assaulted their mother, their mother died not because of the assault but rather due to

the passiveness of PW5 and other neighbours. In real sense and context of the example of a Good Samaritan, PW5 and other neighbours were not neighbours of the deceased. PW5 narrated how he went at the scene several times and went back to his home on the reason that he was threatened and chased away by the accused persons. PW5 stated inter alia that he did not offer any help to the deceased and that he did not raise an alarm because the alarm of the deceased sufficed. He never bothered to gather other neighbours or notify the ten-cell-leader who could have rescued the deceased from the hands of her "***possessed sons***." I refer to the accused persons as "***possessed sons***" because what is said to have been done by them is abnormal.

I find PW5 as a witness of his own kind. Apart from his passiveness, I hesitate to comprehend his story that he saw the first accused stabbing his mother with a knife by peeping into the holes of the wooden house. Possibly the holes were big. He said that, there was heavy rainfall that night and that he was using a torch of his smart phone. Inside the house there was a solar light. However, this being a capital offence, the testimony of PW5 raises some reasonable doubts.

The prosecution also sought to establish the guilt of the accused persons through the evidence of PW4 the investigator. PW4 testified that in their



statements the accused persons confessed to have committed the offence. However, no cautioned statement nor extra judicial statement was produced by the prosecution to substantiate the testimony of PW4. In absence of the cautioned statement and extra judicial statement, it cannot be proved beyond reasonable doubts that the accused persons confessed to have committed the offence. **Section 27 (1) and (2) of the Evidence Act**, Cap 6 R.E 2022 provides that:

*"27. -(1) A confession voluntarily made to a police officer by a person accused of an offence may be proved as against that person.*

*(2) The onus of proving that any confession made by an accused person was voluntarily made by him shall lie on the prosecution."*

Section 28 of the same Act provides that:

*"28. A confession which is freely and voluntarily made by a person accused of an offence in the immediate presence of a magistrate as defined in the Magistrates' Courts Act, or a justice of the peace under that Act, may be proved as against that person."*

In the case of **Dickson Elia Nsamba Shapwata and Another v. Republic** (Criminal Appeal No. 92 of 2007) [2008] TZCA 17 (30 May 2008) at page 9 first paragraph it was stated that:

*"The recording of interviews and statements by the police is governed by sections 57 and 58 of the Criminal Procedure Act, Cap 20 R.E 2002 (CPA)."*

**Section 57(1) and (2) (a) to (f) of the Criminal Procedure Act, Cap 20 R.E 2022** provides that:

***"57. -(1) A police officer who interviews a person for the purpose of ascertaining whether the person has committed an offence shall, unless it is in all circumstances impracticable to do so, cause the interview to be recorded.***

***(2) Where a person who is being interviewed by a police officer for the purpose of ascertaining whether he has committed an offence makes, during the interview, either orally or in writing, a confession relating to an offence, the police officer shall make, or cause to be made, while the interview is being held or as soon as practicable after the interview is completed, a record in writing, setting out-***

***(a) so far as it is practicable to do so, the questions asked of the person during the interview and the answers given by the person to those questions;***

*(b) particulars of any statement made by the person orally during the interview otherwise than in answer to a question;*

*(c) whether the person wrote out any statement during the interview and, if so, the times when he commenced to write out the statement;*

*(d) whether a caution was given to the person before he made the confession and, if so, the terms in which the caution was given, the time when it was given and any response made by the person to the caution;*

*(e) the times when the interview was commenced and completed;*

*(f) if the interview was interrupted, the time when it was interrupted and recommenced."*Emphasis added

Guided by the above quoted provisions, since PW4 did not record the confessions of the accused persons, the same cannot be acted upon as they fall short of the requirements set out under section 57 and 58 of the CPA (supra).

Based on the above noted weaknesses of the evidence of PW4 and PW5, I hesitate to find that the deceased was killed by the accused persons. Under normal circumstances, it is abnormal for a sane person to kill

his/her parent. Without being influenced with cannabis or intoxication etc it is very rare for one to kill her/his parent. Therefore, the first issue is resolved in favour of the accused persons.

Since the first issue has been resolved in the negative, the second issue which concerns malice aforethought collapse. The third issue is obvious, that the prosecution has failed to prove its case beyond reasonable doubts.

On the strength of the above findings, I find the accused persons Boniface s/o Selestine Lekule and Colman Joseph Minja not guilty of the offence of **Murder** contrary to **section 196 and 197 of the Penal Code**, (supra).

I therefore acquit them under **section 235 (1) of the Criminal Procedure Act, Cap 20 R.E 2022**; and order their immediate release from custody, unless held for other lawful reasons.

Order accordingly.

Dated and delivered at Moshi, this 08<sup>th</sup> day of March 2024.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

**08/03/2024**

