

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA REGISTRY

AT MWANZA

(ORIGINAL JURISDICTION)

CRIMINAL SESSION CASE NO. 75 OF 2019

THE REPUBLIC.....PROSECUTOR

VERSUS

EMMANUEL SOSPETER.....1ST ACCUSED

YUNIS PHILIMON.....2ND ACCUSED

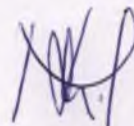
JUDGMENT

Date of Last Order:15.06.2022

Date of Judgment: 24/08/2019

M. MNYUKWA, J.

The accused persons, one EMMANUEL S/O SOSPETER and YUNIS PHILIMON stand charged with the offence of murder contrary to section 196 of the Penal Code, Cap. 16 [RE: 2002] now [RE: 2022]. The accused persons denied the charge hence the full trial involving calling of eight (8) prosecution witnesses and two for the defence.



The prosecution alleged that on the 6th day of May 2016 at Koromije within Misungwi District in Mwanza Region, the accused persons did murder one BENGWE ERASTO. During the trial, the prosecution side thus the Republic was represented by Mr. Hemed Khalid, Rehema Mbuya, and Sabina Choghogwe, the learned State Attorneys while Mr. Steven Kaijage, learned advocate represented EMMANUEL S/O SOSPETER (who will be referred to as the 1st accused person), and Mr. Musa Nyamwelo, learned counsel represented YUNISI PHILIMONI (who will be referred to as the 2nd accused).

The trial was conducted with the aid of three assessors namely; Kassim Athumani (56 yrs), Mariam Chandela (47yrs), and Martin Katingizu (56 yrs). I thank the counsels for their time and efforts in the finalization of this case and I extend my thanks to the lady and gentlemen assessors who sat with me and stated their opinion based on the facts of the case. In summing up, the lady and gentlemen assessors, gave their opinion whereas, in their opinions, they both opine to find the first accused EMANUEL S/O SOSPETER guilty of murder as charged and the second accused YUNIS PHILIMONI not guilty.

The prosecution called eight (8) witnesses, namely; MAGUZO Sengerema (PW1), ELISHA MARK KASULA (PW2), ESTER MALIKI (PW3), SAIDI AHMED SAID (PW4), G.2873 DC JUSTINIAN JULIUS BOSCO (PW5),

E8001 DETECTIVE SARGENT WILSON (PW6), BARNABAS MAKANZA (PW7) and SUNDAY PASCHAL ERNEST (PW8). The prosecution also tendered a total of four (4) documentary exhibits that is, Emergency Search Form (Exhibit P1), the Extra judicial statement (exhibit P3), Caution Statement (Exhibit P5) and Post Mortem Examination (Exhibit P6). The other physical exhibits tendered include, a computer laptop make Samsung black in colour (Exhibit P2) and a mobile phone (Exhibit P4). The death of the deceased was among undisputed matters which was agreed and the Medical Doctor sufficiently proved that BENGWE S/O ERASTO died and his death was due to *excessive bleeding (haemorrhage) due to extensive cut wounds.*

At the trial, MAGUZU SENGEREMA, (PW1) a village executive officer of Kolomije, testified on oath and stated that on 07/05/2016 he received a call from the auxiliary police called Nestor Obela informing him about the incidence of killing in his village. PW1 went to the scene of crime and found the body of the deceased laying on the floor and other people (wananzengo) and the wife of the deceased who told PW1 that, they were invaded by unknown persons who killed her husband. PW1 then reported the matter to the police.

ELISHA MARK KUSULA (PW2), testified that, he is a police officer and on 07/05/2016 when he was the head of the criminal investigation



unit, at around 00.00 Hrs he received a call from PW1 reporting an incidence of killing at his area. PW2 summoned four police officers who accompanied him to the scene of crime, PW2 entered in the bedroom and found the body of the deceased laying on the floor. He then interviewed and suspected the second accused to be aware of the cause of death of the deceased who was her husband for the reason that she was not in sympathy. PW2 further testified that, he went to *Mwalimu Sunday* house a neighbour of the deceased house, as he was informed that the murderers also committed the offence of armed robbery after killing the deceased. PW2 was informed by the wife of *Mwalimu Sunday* that the assailants entered to their house, threatens them with a club and stole three mobile phones, a laptop and money Tshs. 70,000/-

PW2 went on to testify that, he took the IMEI Number of the mobile phone alleged to be stolen so as to help them in investigation including tracing the mobile through the cyber-crime unit at Mwanza. He also took the second accused to Misungwi police station for more interrogation. He added that on 17/05/2016 in the evening hours, he received a call from a police officer called Justina informed him that they have arrested the first accused and seized one of the mobile phones, Huawei make. PW2 went to the police station at Mwanza accompanied by other police officer and they were introduced to the first accused. PW2 interviewed the first



accused who confessed to have committed the murder of Mr. Bwenge and armed robbery to the house of *Mwalimu Sunday*.


PW2 went on that, the 1st accused confessed that the second accused, a wife of the deceased who had a family misunderstanding with her husband, Mr. Bwenge and she hired his brother to kill the deceased in promise to pay him Tshs. 300,000. The first accused went on that, he was hired by Elisha and they went to Koromije and murdered the deceased and also entered the house of *Mwalimu Sunday* and stole mobile phones, a laptop and money.

PW2 testified further that, after interrogation, they took the accused person from Mwanza police station to Misungwi and on the way to Misungwi, when they reached at Mkuyuni, a police officer accompanied them asked them to stop as the accused showed them the place he sold the laptop in the saloon. PW2 and the 1st accused entered the saloon and find one Said Ahmed PW4 who agreed to have bought the laptop from the accused and handed the same to them. Coplo Edward filed the emergency search form and PW4 gave them the laptop and accompanied them to Misungwi Police station where they reached at around 00.00 hrs. PW2 tendered the emergency search document titled (Upekuzi wa dharura) as an exhibit and it was admitted as Exhibit P1. He also tendered a computer laptop, black make Samsung and it was admitted as exhibit

P2. PW2 testified further that, on arrival at Misungwi police station at around 00.00 hrs, the accused complained to be tired and that he was hungry that's why the first accused's cautioned statement was recorded in the following morning. The exhibits were registered and given reference No. 16/2016 and kept in a safe custody and were released when this case was called for hearing.

PW2 went on to testify that, the first accused mentioned the other three accused persons namely, Elisha, Doma and Macheni who were arrested on 04.06.2016. PW2 testified to have interrogated Elisha and Doma who confessed to the murder of the deceased and their statements were taken. He avers that the other three accused persons were convicted of the offence of armed robbery and acquitted on appeal where they managed to escape.

When cross-examined, PW2 insisted that the exhibits were kept in a safe custody and given a Reference no 06/2016. He enlightens that the other three accused persons were charged with the offence of armed robbery and convicted, and on appeal, they were released and managed to escape the charge of murder. He went on that the mobile phone was not tendered before the court and he did not know why the other accused persons were not arrested after their appeal.



ESTER MALIKI, PW3 a justice of peace testified to have recorded the extrajudicial statements of the 1st accused on 18/05/2016 at 12.00 hours when she was on her duty station at Misungwi Primary Court. After conducting the preliminaries for ascertainment on voluntariness and free will of the suspect, PW3 recorded the statement, read it out to the suspect and after confirmation from the suspect on its correctness, both the suspect and herself signed the certification of the statement. PW3 pointed finger to the first accused who was at the dock that he was the one to whom she wrote his statement. The statement was admitted in evidence as Exhibit "P3" as it was not objected by the defense counsels.

When cross-examined, she avers that the appearance of different dates on the statement was a slip of the pen and the correct date was on 18.05.2016.

SAID AHMED SAID, PW4, a barber testified that on 17/05/2016 the police officers searched his saloon and seized the laptop as they alleged that the same was stolen. He testified that he bought the said laptop Sumsang make and black in color from the first accused for Tshs. 200,000/-. PW4 testified that he knew the first accused for almost a year and that he is a fisherman. He went on that when the police officers were in his saloon, he called his father, the ten-cell leader and the chairman of the street who can give an account of his character as to whether he is a



thief or not. PW4 testified that the accused did not enter his saloon but was in the police car and he was arrested and taken to Misungwi police station where he wrote the statement and was released on police bail.

When he was cross-examined by the defence counsel he stated that, he knew the first accused as a person who was doing a business of fish and that he trusted him and he don't know if the laptop sold to him by the first accused was stolen.

G 2873 DC JUSTINIAN JULIUS BOSCO, PW5 a police officer testified that on 07/5/2016 he was informed by the OCCID of Misungwi of the incidence of murder and that of armed robbery and was given an IMEI Number of the stolen mobile phone for trace. PW5 further testified that on 17/05/2016 the IMEI number shows that the user of the mobile phone was around Butimba and Mkuyuni and that after close follow up he arrested the first accused and found him with the phone in his pocket. PW5 confirmed that the IMEI number given was the same with the phone traced, and that they have arrested the accused and sent him to Mwanza police station. PW5 prays to tender the mobile phone Huawei make to be admitted as exhibit which was objected by the defence side because the same were not listed among the list of the intended exhibits but the same was admitted and marked as exhibit P4 serve for its weight.



When he was cross-examined, he testified that he is an expert on cybercrime and that he managed to find only one mobile phone among the three that were stolen. He mentioned the IMEI No. to be 864344021846446, and he handed the mobile phone to PW2

E 8001 DETECTIVE SARGENT WILSON, PW6 testified that he recorded the first accused's cautioned statement on 18.05.2016 at around 7.34 up to 10.50 after he has informed the accused all of his right. He testified that the accused admitted to have killed the deceased at Koromije on 06.05.2016. PW6 testified that, after he finished taking the accused's cautioned statement, he read it over to him and signed after satisfying that the statement was correctly taken. PW6 identified the caution statement and tendered it as an exhibit and the caution statement of the accused person was admitted as exhibit P5.

When cross-examined PW6 testified that the accused person informed him that he did not know how to read and write.

BARNABAS MAKANZA, PW7 the assistant medical doctor, testified that on 07/05/2016 he conducted a post-mortem examination of the body of the deceased at Kolomije. PW7 testified that he conducted an autopsy on the body of the deceased which was identified to him as a body of a person called Bengwe. He found out that the deceased was cut by a sharp



object and formed opinion that the cause of death was due to excessive bleeding from a cut wound on the neck caused by a sharp instrument. PW7 tendered the report on post mortem examination which was not objected by the defence side and it was admitted and marked as Exhibit P6.

SUNDAY PASCHAL PW8 testified that he is a teacher and on 06/05/2016 at night about 23.00 hours he was at his home and his wife was collecting water outside because it was raining. That they were invaded by the persons who carried on machete and sticks and they threaten to kill his wife if they were not given money. PW8 went on that, the assailants stole three mobile phones, that were Huawei make, Itel make and Techno smartphone, laptop, Samsung make black in colour and money Tshs. 70,000/-. PW8 testified that, the assailants invaded their house after committing the offence of murder to Bwenge and the assailants told him that if they will not be given money, they will do like what they have done to Bwenge. PW8 further testified that, he saw the assailants and weapons they carried on with the aid of the solar light and they stayed in his house for 20 to 30 minutes. He pointed the 1st accused that he was the one collecting phones and the laptop. He further testified that, the police called him and he went to identify his properties and when shown exhibit P2 and P4, he identified to be his stolen phone and a laptop.

When cross examined, PW8 avers that he gave the receipts to the police to prove his ownership of the properties but that fact do not appear on his statement. He went on to testify that the distance from his house to that of the deceased, Mr. Bengwe is about 10 paces and at the fateful day it was raining but the solar lights was bright.

After the prosecution case marked closed this Court ruled that all the two accused persons, in terms of section 293(2) of the Criminal Procedure Act (CPA), [Cap. 20 R. E. 2019], had a case to answer and were addressed in terms of section 293(2)(a) and (b), (3) and (4) of the CPA whereas they all chose to defend on oath without calling witnesses.

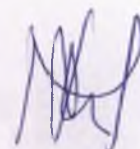
EMMANUEL SOSPETER, DW1 testified on oath and stated that, on 17/05/2016 he was arrested at Mkuyuni bus stand and was sent to the central police station where he was informed to have committed the offence of murder and armed robbery. He testified further that, he slept at the central police station and on the following day he was sent to Misungwi police station where he was kept in custody for 11 days. His statement was taken the second day at Misungwi police station after being tortured by six police officers and as a result, after being severely beaten he confessed to the commission of the offence.



When he was cross-examined, DW1 denied to involve in the offence of murder and armed robbery and that his friends Elisha and Doma who are the co-accused were acquitted over the offence of armed robbery and they were not included in the murder charges that's why they were released. He testified that he does not have any proof that he was beaten when his cautioned statement was taken and he was not beaten when his extra-judicial statement was taken before the justice of peace.

Re-examined, DW1 maintained that, he neither show nor entered with the police officers in the residence of Said Ahmed, PW4 and he did not know how the exhibit got to the PW4 residence.

YUNIS PHILIMON, DW2 admitted that the late Bengwe was his husband and they were blessed to have five children. That on 06/05/2016 at around 23.00hrs they were invaded by the unknown persons and ordered him not to raise an alarm and that the said persons cut his husband by machete. DW2 further testified that, the assailants ordered her not to witness what happened and asked her to cover her face. She could not identify the assailants for she was on shock and when the assailants left the place she found her husband laying on the floor dead. She testified that, on 07/05/2016 she was arrested and sent to Misungwi police station and she was informed that she was alleged to have killed her husband.



When cross-examined, DW2 stated that the case was planted to her and that she does not know if her brother Elisha took a loan worth Tsh 300,000 from her husband and she does not know if the same was repaid.

Having heard the prosecution and defence witnesses in this case, there is no doubt that BENGWE ERASTO is dead and her death was unnatural. The issue for determination is whether it was the accused persons who caused the deceased's death. Based on the principles of law in both criminal law and the law of evidence, I am duty bound to make sure that no innocent person is convicted of freak or flimsy evidence and the prosecution is placed with a heavy burden than that of the accused persons. This is the position of the law as reflected under Section 110 and Section 112 of the Evidence Act, Cap.6 [RE: 2002], now [RE: 2022] and cemented in the case of **Joseph John Makune v R** [1986] TLR 44 at page 49, where the Court of Appeal held that: -

"The cardinal principle of our criminal law is that the burden is on the prosecution to prove its case; no duty is cast on the accused to prove his innocence. There are a few well-known exceptions to this principle, one example being where the accused raises the defence of insanity in which case he must prove it on the balance of probabilities..."



Again, it is the principle of law that the standard of proof in criminal cases which is required by law is proof beyond a reasonable doubt. The doctrine is stated under section 3 (2)(a) of the Evidence Act, Cap. 6 RE: 2002. The doctrine was amplified by the Court of Appeal of Tanzania in the case of **Mohamed Haruna @ Mtupeni & Another v R**, Criminal Appeal No. 25 of 2007 (unreported) held that: "

"Of course, in cases of this nature, the burden of proof is always on the prosecution. The standard has always been proof beyond a reasonable doubt. It is trite law that an accused person can only be convicted on the strength of the prosecution case and not on the basis of the weakness of his defence."

As it stands, the present case before me, is a murder case, and therefore, crucially important for the prosecution to prove malice aforethought, for the offence of murder involves the killing of a person with malice aforethought. The accused persons are charged under Section 196 of the Penal Code, Cap.16 [RE: 2002] now 2022 which provides that:-

"Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder".

Therefore, it is the duty of the prosecution to prove the case against the accused person at two stages; *first*, that it is the accused person(s) who killed the deceased BENGWE, and *second*, that he did commit the

killing with malice aforethought as stipulated under section 200 of the Penal Code, Cap. 16[RE: 2002] now [RE: 2022]. The Actus Reus is well proved for it is not disputed that the deceased BENGWE ERASTO died and the cause of his death was due to multiple cuts inflicted on his body which resulted to severe bleeding (exhibit P6). Mercilessly, the cut wounds was brutally inflicted by using a heavy and sharp object, therefore, the assailant(s) do it with malice aforethought and there is no dispute that the assailant(s) contemplated and intend to kill.

The issue before me and which prompted the trial of this case is *whether it is the accused persons, EMMANUEL SOSPETER and YUNISI PHILIMONI who killed the deceased BENGWE ERASTO.*

The prosecution had eight witnesses who testified in connection to the death of the deceased BENGWE ERASTO as against the accused persons who gave their evidence under oath as DW1 and DW2 respectively and denied the charges against them.

First, the evidence of a medical doctor, PW7 who testified to have examined the body of the deceased, and without doubt or objection, his testimony established that the deceased died and the death was unnatural. Secondly, PW2 and PW5, police officers testified to have arrested the accused persons, whereas, the accused persons did not dispute and were before this court facing their trial.

In the accusation of the accused persons, the prosecution evidence hinged on the testimony of the prosecution witnesses PW1 to PW8, tendering of physical exhibits and the confession of the 1st accused person and in conjunction with the evidence before this court no one had eye witnessed the commission of the crime. Therefore, the prosecution evidence is built on the circumstantial evidence related to the testimony of PW2, PW4 PW5 and PW8 in conjunction to the exhibits P2 and P4 tendered and on over the 1st accused confessions exhibit P3 and P5 and testimonies of PW3 and PW6.

On the first take, prosecution accusation over the accused was built up by PW2 who testified that DW2 the wife of the deceased killed her husband fronting two reasons that, first when he visited the scene of crime he suspected DW2 to have involved in the killing of the deceased for she was not in sympathy. Secondly, PW2 testified that DW1 gave a statement that the 2nd Accused person paid his brother who then hired him to kill the deceased. When going to the records, the evidence of PW2 stood isolated with no support of any other in the records. In her defence, DW2 denied to have killed or involved in the killing of the deceased who she admitted that the deceased was her husband and narrated how they were invaded and the deceased killed.



It is the principle of law that suspicion however grave can not be used as a ground to convict an accused person, the requirement is that the case be proved to the standard required. The act of PW2 to commence a criminal accusation against DW2 based on suspicion which lacks proof is unjustifiable. The Court of Appeal in the case of **Lidumula S/O Luhusa @ Kasuga Vs The Republic**, Criminal Appeal No. 352 Of 2020 it stated that:-

"suspicion, however grave, is not a basis for a conviction in a criminal trial"

(See **MT. 60330 PTE Nassoro Mohamed Ally vs Republic**, Criminal Appeal No. 73 of 2002 CAT (unreported), **Aidan Mwalulenga Vs. The Republic** Criminal Appeal No. 207 Of 2006, CAT.

Again, PW2 evidence was to the extent that, DW1 implicated DW2 to the crime that she hired her brother who then hired DW1 to commit the offence. This version of evidence by PW2 did not match any in the records but rather contradicts with the confessions made by DW1 both in the caution statement (exhibit P5) and the extra-judicial statement (exhibit P3). In that end, the prosecution did not link its evidence on record with DW2.

The prosecution tendered physical exhibits to include exhibit P4 a mobile phone tendered by PW5 who testified to have arrested the first accused and a laptop exhibit P2 tendered by PW2. The physical exhibits

were linked by the evidence of PW2, PW4, PW5 and PW8. The evidence by PW5 was to the extent that he arrested DW1 after tracking the stolen mobile phone from PW8 when it was alleged that the 1st accused committed the offence of armed robbery. The computer laptop recovered from PW4 which was also tendered by PW2 as exhibit P2 was linked to the offence of armed robbery. I did not take much time on exhibits P2 and P4 for the reason that the chain of custody was questioned for the reason that the same exhibits are alleged to be used in the armed robbery case against the 1st accused and others. Also, exhibits P2 and P4 did not prove the case at hand therefore its weight saves no purpose in this case. It is for this reasons that though Exhibit P2, P1 and P4 were duly admitted by this court, but they are accorded zero weight and the same can not be used in this court in determining the case at hand.

On exhibit P3 and P6 respectively, which are the 1st accused person caution statement and the extra-judicial statement are among of the prosecution evidence that implicates the 1st accused person. As it stands that the accused confession can be relied upon solely in convicting the accused. But I am also aware of the danger of relying on the confession of the accused person especially when such confession was repudiated or retracted by the accused person in the cause of his defence. In the case



of **Kashindye Meli v. Republic** [2002] TLR 374, the Court of Appeal of Tanzania stated that: -

"..it is now settled law that although it is dangerous to act upon a repudiated or retracted confession unless such confession is corroborated, the court may still act upon such a confession if it is satisfied that the confession could not but be true".

(see also **Mabala Masasi Mongwe vs The Republic**, Criminal Appeal No. 161 Of 2010, **Michael Luhiye v Republic** (1994) TLR 181.

Based on the principle of the law stated above, to base a conviction on such a retracted or repudiated confession, first, the confession must be corroborated by other independent witnesses and second, the confession should present clear truth about the murder and not otherwise. In records, PW6 tendered 1st accused caution statement and after it was cleared for admission, it was admitted as (Exhibit P5).

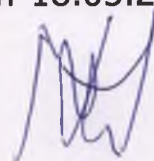
From the caution statement, reading through, the 1st accused person narrated that Elisha introduced the matter to him and his friends, Doma and Macheeni that he intended to revenge to his in law who refused to pay him his money worth Tsh 300,000/= . He narrated how they prepared to execute their evil plan by taking torches and machete and travelled to the deceased home. The 1st accused denied to have killed the deceased stating that when they reached the home of the deceased, Elisha and



Macheni entered inside the house of the deceased and Elisha killed the deceased for his machete had a blood as he saw it when he came out for the 1st accused remained outside with Doma.

Going through the defence of the accused persons, DW1 testified that he was beaten severely and admitted everything on the caution statement. When cross-examined, the 1st accused person testified that he did not say that he was threatened or beaten when the caution statement was tendered in court. Based on DW1 defence, it is evident that he wanted this court to believe that his confession was procured through threat and torture. However, upon perusal of the caution statement of the 1st accused person, the statement does not suggest that such a 26 pages consistent narration of the story of the murder was not true. The accused story was relevant to the incident of murder and torture could not have brought this truth about the murder if the accused person did not participate in the killing. I am convinced that a narration of the story relevant to the matter depends on the knowledge of the matter and torture in absence of the knowledge of the matter however serious may be, it can not make a person make a coherent, correct and consistent analysis of the incident that he did not participate in it.

Apart from the caution statements, PW3 tendered the 1st accused extra-judicial statement (Exhibit P3) which was taken on 18.05.2016 at



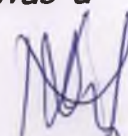
around 12:00 pm which contained the same information about the murder of the deceased which were recorded by PW3, the Primary Court Magistrate. DW1 confessed to the justice of peace PW3 on the plan, perpetrators and execution of the murder of the deceased. DW1 on his extra judicial statement maintained that, he went to the scene of the crime with his friends, whereas Elisha and Macheni entered the house of the deceased and executed the killing while the 1st accused and Doma stayed outside.

Again, 1st accused person admitted to have made his statement before the justice of peace and was not beaten or threatened. This connotes that, what was stated in the exhibit P3 and P5 were voluntarily stated by the 1st accused person and there is no possibility that PW6 when recording the caution statement or PW3 when recording the extra judicial statement invented the story of the murder that they never knew about.

Consequently, I am moved to consider Section 23 of the Penal Code Cap. 16 RE 2019 which provides on common intention that: -

Section 23.

"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a

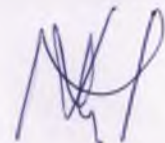


probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence”.

Reverting to our case at hand, it is verified that the caution statement and extrajudicial statement of the 1st accused person showed clearly that the 1st accused person was among the gang of murderers who killed the deceased. The fact that the 1st accused person remained outside the house while other accomplices entered the house and butchered the deceased, does not exclude him from criminal liability. The act of planning and accompanying the murderers to the scene of crime showed a common intention between the 1st accused person and the actual persons who killed the deceased. The Court of appeal in **Diamon S/O Malekela @Maunganya vs The Republic** Criminal Appeal No. 205 Of 2005 stated that: -

“Suffice it to say here that the doctrine of common intention, as distinguished from similar intention, can only be successfully invoked where two or more persons form a common intention to prosecute an unlawful purpose and they commit an offence and are eventually jointly charged and tried together”.

Much guidance on this may be obtained from the decision of the Eastern Africa Court of Appeal in the case of **Wanjiro Wamiero & Others V. R.** (1955) 22 EACA at page 523, the Court, in relation to



section 21 of the Kenya Penal Code which was identical with our section 23 of the Penal Code said: -

"... in order to make the section applicable, it must be shown that the accused had shared with the actual perpetrators of the crime, a common intention to pursue a specific unlawful purpose which led to the commission of the offence charged ..."

(see also **Godfrey James Ihuya V.R** (1980) TRL 197 (CAT) **Shija Luyeko V R** [2004] TLR 254)

As stated above, in establishing common intention it must be shown that the accused has shared with the actual perpetrators to pursue a specific unlawful purpose which led to the commission of the crime. As it stands, none of the accomplices stated by the 1st accused person was arraigned before this court to face the charge of murder, it stands that DW1 is charged with DW2 who DW1 did not mention that she was among the perpetrators of the crime. In the presence of the 1st accused person confessions that narrated the incidence and implicates his participation, the principle stated in **Wanjiro Wamiero** (supra) applies to establish a common intention. At this point, I am settled, that the 1st accused person confessions both in the caution statement and the extrajudicial statement contained true information about the murder of the deceased BENGWE



ERASTO, therefore relevant in this case and can be acted upon solely in the conviction of the 1st accused person.

In the result, I have reached the following conclusions. The law is settled that the accused ought to be only convicted on the strength of the prosecution, and not on the weakness of the defence. Again, as above stated, prosecution evidence against the 2nd accused person YUNIS PHILIMON was not credible therefore entitled the accused an acquittal on a benefit of doubt. Consequently, I proceed to find that DW2, YUNISI PHILIMON not guilty of the offence of murder, therefore I hereby acquit and set her free. In line I order that the accused YUNIS PHILIMON be released from custody forthwith unless lawful held.

As to the 1st accused EMMANUEL SOSPIETER, I am satisfied that the prosecution's evidence is credible and reliable. I do not think that the positive evidence of PW3 and PW6 and the content of exhibit P3 and PW5 is shakeable. I am in accord with all assessors that the prosecution has proved their case beyond reasonable doubt against EMMANUEL SOSPIETER the 1st accused person. In the event, I find that EMMANUEL SOSPIETER is guilty as charged. I, therefore, convict him for murder contrary to section 196 of the Penal Code Cap. 16 [RE: 2019]

DATED at MWANZA this 24th August 2022.



A handwritten signature in blue ink, appearing to be the initials "MK".

M.MNYUKWA

JUDGE

24/08/2022

SENTENCE

Since EMMANUEL SOSPETER, the accused has been convicted of murder, I hereby sentence him to death by hanging in terms of section 197 of the Penal Code, Cap 16 R.E 2002, now R.E 2022.



M.MNYUKWA

JUDGE

24/08/2022

Court: The right to appeal against this Judgement is fully explained and guaranteed.

M.MNYUKWA

JUDGE