IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

CORAM: LILA, J.A., KITUSI, J.A. And KAIRO J.A.

CRIMINAL APPEAL NO. 597 OF 2017

CHAMURIHO KIRENGE @ CHAMURIHO JULIAS........................ APPELLANT

VERSUS

THE REPUBLIC .... RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Musoma)

(Ebrahim, J.)

dated the 17th day of November, 2017
in
Criminal Session No. 82 of 2015

....

JUDGMENT OF THE COURT

23rd November & 7th March, 2022

KAIRO, J.A.:

The appellant, Chamuriho Kirenge @ Chamuriho Julias was arraigned before the High Court of Tanzania Mwanza facing a charge contrary to section 196 of the Tanzania Penal Code Cap 16 R.E. 2002 (now 2019). It was alleged that on 5th day of March, 2014 at about 18.00hrs at Mihale Village within Bunda District in Mara Region, the appellant murdered his grandmother, one Nyanzara d/o Mahonya. He pleaded not guilty to the charge.

To prove the case, six witnesses were paraded by the prosecution and two exhibits were tendered; which were extra judicial statement

and a cautioned statement of the accused admitted as exhibits PE1 and PE2 respectively. The names of the witnesses were Maria Maganga; the deceased's daughter (PW1), Emmanuel Marwa (PW2), Majura William Nyalure; The Village Executive Officer (VEO) (PW3), James Masolwa Manota; Justice of Peace (PW4), Dr. Nichidemus Masosota (PW5), and No. D. 8973 D/Sgt Warobi; an investigator of the case (PW6). The appellant who testified as DW1, was the only defence witness and did not tender any exhibit.

Briefly, the material evidence was that on 5th March, 2014 around 18.00hrs, PW2 testified to be coming from grazing cattle. On his way, he found a woman dead. Her body had injuries on the head, chin, neck and her last three fingers were chopped off and dropped on the ground. PW2 noted that, the dead person was his grandmother; Nyanzara d/o Mahonya. He was shocked and rushed to the village while raising alarm. The villagers gathered and among them was PW3; VEO who testified that the gathered villagers had to spend the night at the scene guarding the deceased body while waiting for the police to arrive. It was further stated by PW1 that on the day she met her death, the deceased had gone to Byote Hill to crush gravel. According to PW1 and PW3, the appellant who was also the deceased's grandson was not among the villagers who responded to the alarm though he was at the village.

On the next day, PW6 who investigated the incident went with other police officers at the scene in the company of PW5, the Doctor who conducted a post-mortem examination on the deceased's body. In his finding, PW5 stated that the deceased had died due to severe haemorrhage caused by cut wounds. According to his examination, the wounds were caused by a sharp object.

PW3 went on to testify that, the appellant and his brother one Burugo Makoye were named suspects of the murder. Prior to that the duo were allegedly accusing the deceased of witchcraft and threatened to kill her. PW3 informed the police about the said suspicion which led to their apprehension. In his further testimony PW3 stated that the appellant was thereafter interviewed at the presence of PW6 and himself. The appellant is alleged to have admitted to have killed the deceased when interviewed and further exonerated his brother Burugo Makoye from the commission of the offence and Burugo Makoye was therefore released.

PW3 further testified that the appellant explained the reason of the murder to be that the deceased had killed seven children by witchcraft and had promised to kill him as well, so he decided to kill her first. He also testified that the appellant went ahead and explained where he kept an axe he used in the killing. Thereafter the appellant

was alleged to take PW3 and PW6 to the house of Kulwa Athumani where the axe was alleged to have been hidden under the bed. PW3 went on that it was Kulwa Athumani's wife who produced it and the same was found with some blood stains.

PW3 further testified that the appellant was later taken to the police station where his cautioned statement was recorded by PW6. According to PW6, the appellant again confessed to have killed the deceased. The cautioned statement was admitted as exhibit PE2 after the conduct of a trial within trial.

The appellant was later taken to the Justice of Peace; PW4 where he allegedly to have confessed as well. The statement was initially objected but latter was admitted as exhibit PE1 after the conduct of the trial within a trial.

In his defence, the appellant denied to have committed the offence. He raised a defence of alibi claiming that he went to visit his sick aunt the night before the incident date and returned on the next morning when he was arrested and beaten up so that he could admit committing the alleged offence. The appellant added that he was pressurized by the villagers and tortured at the police to confess. He however admitted that he had a family misunderstanding and quarrels

with the deceased for a long time. He further admitted that he had no quarrels with PW3. At the end of the trial, the appellant was found guilty, convicted and sentenced to suffer death by hanging.

Aggrieved, he lodged a memorandum of appeal consisting of four grounds of appeal. Later, on 15th November, 2021, the learned counsel who represented him in this appeal, Mr. Cosmas Kisute Tuthuru, lodged a supplementary memorandum of appeal comprised of four grounds of appeal as well.

At the hearing, Mr. Tuthuru informed us that he had agreed with the appellant to abandon the appellant's memorandum of appeal and thus, he will proceed to argue the one he had lodged. The same has the following grounds: -

1. *That, the learned trial Judge grossly misdirected herself in relying on the extra-judicial statement (Exh. "PE1") and cautioned statement (Exh. "PE2") which were wrongly taken, tendered and received as evidence contrary to the law.*

2. *That, the learned trial judge wrongly convicted and sentenced the accused with the offence charged basing on circumstantial evidence against the appellant while facts establishing the same were broken and thus not proved.*

3. *That, coupled with a weak prosecution case, the learned trial judge erred in not according any weight to the defence of alibi raised by the appellant during trial.*

4. *That, the appellant was only implicated and convicted to the offence charged basing on strong suspicious doubts of prosecution witnesses.*

In this appeal, Mr. Tuthuru represented the appellant as earlier intimated while the respondent Republic was represented by Ms. Monica Hokororo, learned Senior State Attorney assisted by Mr. Frank Nchanila, learned State Attorney. Mr Tuthuru also decided to abandon the 3rd ground of appeal and further informed us that he will address the 2nd and 4th grounds collectively.

In the first ground of appeal, the appellant's complaint is centered on the validity of Exhibits PE1 and PE2, which he argued to have been illegally obtained and wrongly admitted as evidence.

Starting with Exhibit PE1, Mr. Tuthuru listed several shortcomings in that regard. He elaborated that, there was no letter from the Police Officer In-charge to the Justice of Peace (PW4) informing him that the appellant was being sent to make the statement out of his own free will, which omission he contended to be contrary to regulation 6 of the Chief Justice Guide for Justices of the Peace (the Guide). He went on to point out that nowhere in Exhibit PE1 was it indicated to whom was the

appellant handed over after PW4 completed recording his statement, which again he argued to be improper. He cited the case of **Joseph Mwita @ Chacha vs The Republic**, Criminal Appeal No. 294 of 2012 (unreported) to bolster his argument. Submitting on another shortcoming, Mr. Tuthuru argued that, Exhibit PE1 does not also indicate that the same was read over to the appellant by PW4 after completing recording it. Thus, it falls short of the Guide in regulation nine found on page 6. He also added that, Dt/Cpl Mwita who took the appellant to PW4 was supposed to testify on the willingness of the appellant to give his extra judicial statement but did not. On those accounts, he implored us to expunge exhibit PE1 from the record.

With regards to exhibit PE2, Mr. Tuthuru contended that, the statement was not read over to the appellant after being recorded so as to afford him a chance to make correction if any. Thus, it contravened the mandatory requirement under the provision of section 57 (4) of the Criminal Procedure Act, Cap 20 R.E. 2002 (now 2019) (the CPA) and referred us to the case of **Bulabo Kabelele and Another vs Republic,** Criminal Appeal No. 224 of 2011 (unreported) to support his contention. He insisted that, since the appellant stated that he did not know how to read but only knows to write his name, then compliance with section 57 (4) of the CPA could not be dispensed with and cited to

us the case of **Rashid Kazimoto and Another vs Republic**, Criminal Appeal No. 458 2016 to cement his argument. He again implored us to expunge exhibit PE2 from the record as well.

Addressing the 2nd and 4th grounds of appeal, Mr. Tuthuru submitted that, after expunging exhibit PE1 and PE2, the only basis left for conviction of the appellant is the circumstantial evidence which he argued does not irresistibly link the appellant to the charged offence.

Elaborating, Mr. Tuthuru stated that, after the killing incidence, there were rumours from the family members that, it was the appellant who was involved in the killing. He went on to argue that neither PW1 nor PW2 implicated the appellant with the killing, but they only testified that there was misunderstanding in the family between the appellant and the deceased. He further stated that the appellant was apprehended in connection with the offence after some rumours and suspicion from the family members incriminating him. He vehemently denied the presence of any link of the circumstantial evidence established by the prosecution that drew an inference of guilt to the appellant. He added that, even reliance to PW3 and PW6's testimony by the trial court did not connect the chain which already had various missing links as far as the guilt of the appellant is concerned. He thus prayed the Court to allow this appeal and set the appellant free.

In response, Mr. Nchanila started by opposing the appeal. He refuted the argument by Mr. Tuthuru that Exhibit PE1 was illegally procured and admitted. In elaboration, he submitted that the appellant was taken to PW4 by the police officer. He referred us to page 24 line 22-23 of the record of appeal for verification. He went on to clarify that the purpose of the letter under regulation 6 of the Guide is to give the Justice of Peace information concerning the accused. He argued that, since the appellant was sent by the police, the Justice of Peace was given the required information all the same by the police officer who handed over the appellant to him. In the circumstances, he argued, the omission did not occasion any failure of justice and the argument is devoid of merit.

Reacting to the argument that exhibit PE1 did not show to whom the Justice of Peace had handed over the appellant after recording his statement, Mr. Nchanila submitted that, it is on record that the appellant was taken to the Justice of the Peace by the police officer and sent back to custody by the police officer as well. He added that even the appellant has so confirmed when he testified in chief during trial within a trial at page 29 line 6 of the record of appeal. He also stated that the referred part in the cited case of **Joseph Mwita @ Chacha** (supra) in this aspect was not the finding of the case, rather it was one of the

various explained scenarios therein. Thus, the cited case is distinguishable.

On further responding to Mr. Tuhuru's arguments, Mr. Nchanila conceded that exhibit PE1 does not indicate that it was read over to the appellant as required by law. He however stated that PW4 has testified to have read it over to the appellant at page 25 line 9 of the record of appeal. Besides, the appellant signed the statement which supports what has been stated by PW4 and that the appellant gave the statement freely. Nevertheless, he conceded that exhibit PE1 did not abide with the Guide, but argued that no failure of justice has been occasioned to the appellant, insisting that he willingly gave the statement.

Responding in respect of exhibit PE2, Mr. Nchanila conceded that, the recording of the document did not comply with the requirement under section 57 (4) of the CPA. He however argued that, not every contravention of the provision of the CPA leads to the exclusion of the evidence in question, rather the accused's interest and that of the Republic has to be looked at and balanced. He cited the case of **Nyerere Nyague vs Republic**, Criminal Appeal No. 67 of 2010 (unreported) to support his argument. He further argued that the shortcoming can be cured under section 169 (2) and (4) of the CPA. He

invited the Court to take similar position since no prejudice has been occasioned to the appellant.

Responding to the 2nd and 4th grounds, Mr. Nchanila argued that the circumstantial evidence in the case at hand is sufficient to ground the conviction against the appellant. He elaborated that, PW1 and PW2 explained the conduct of the appellant before the incident which hinged on the threats he uttered against the deceased before the incident. But further, the appellant's failure to turn up to the scene despite the close relationship between the deceased and the appellant augmented to the suspicion. He went on that there was also an oral admission which amounted to confession made by the appellant in the presence of PW3 and PW6 in which he also exonerated his brother Burugo Makoye and explained the motive for the killing. The oral confession also led to the discovery of the weapon used in the killing which could not be tendered due to technicality though an attempt was made to tender it. He also submitted that PW6's testimony echoed what was testified by PW3 on the aspect of oral confession leading to the discovery of the weapon used in the commission of the offence. Mr. Nchanila concluded that the above narrated pieces of evidence when linked together form an unbroken chain which incriminated the appellant. He cited the case of **Michael Mgowole and Another vs. The Republic**, Criminal Appeal

No. 205 of 2017 and **Mathias Bundala vs The Republic**, Criminal Appeal No. 62 of 2004 (both unreported) to back up his argument. He eventually beseeched the Court to find this appeal devoid of merit and dismiss it.

In rejoinder, Mr. Tuthuru repeated what he had submitted in Chief reiterating his prayer to have the appeal allowed.

Having heard the rival submissions from both learned counsel and going through the record of appeal, we now turn to determine the merit or otherwise of the appeal.

It is not in dispute that none of the prosecution witnesses saw the appellant killing the deceased and thus, there is no direct evidence in that aspect.

In his arguments when submitting on the 2nd and 4th grounds of appeal in particular, Mr. Tuthuru is blaming the trial court for convicting and sentencing the appellant with the offence on the basis of what he argued to be a broken and unproven circumstantial evidence. However, we wish to put it clear that the trial court hinged its decision on the confession made by the appellant and the credibility of witnesses particularly PW3 and PW6. For verification we let this excerpt in the judgment speak itself: -

> *"I therefore find that the retracted cautioned statement and repudiated extra judicial statement have evidential value in the circumstances of this case..."* page 120, line 4 – 6 of the record of appeal.

The trial court went on at page 121 lines 9 – 18 of the record of appeal;

> *"on the other hand, the extra judicial statement, going through the contents of it is so detailed on how the accused followed the deceased at Byote Hill to execute his plan of killing her. He explained at lengthy how he injured her and ensured that she was dead.*
>
> *More importantly, the statements of the accused are corroborated by the independent evidences of PW3 and PW6 when the accused admitted the commission of the offence and took them to where he had hidden the murder weapon. I am aware that the murder weapon could not be tendered as exhibit, but still it does not vitiate the fact that the accused admitted to have killed the deceased by an axe...."*

Regarding the credibility of the witnesses, the trial court observed at page 117;

> *"coming to our instant case, I find no reason to doubt the testimonies of PW3 and PW6 as they were both coherent and cogent, I therefore find*

them to be credible witnesses, moreover, as correctly pointed out by Mr. Mafuru, in terms of section 31 of the Evidence Act, Cap 6, the oral confession of the accused before PW3 and PW6 is relevant in proving facts of the case...."

Basing on the passage quoted above, we are of the view that discussion and arguments on circumstantial evidence in this appeal is irrelevant. We will thus confine our analysis on the confession evidence which formed the basis of the trial court's decision.

Regarding the credibility of the witnesses, we wish to state that we agree with the finding of the trial court that PW3 and PW6 were credible witnesses as their testimonies were coherent and cogent, thus reliable. See: **Shabani Daudi vs Republic**, Criminal Appeal No. 28 of 2001 followed in **Athumani Hassani vs Republic**, Criminal Appeal No. 292 of 2017 (both unreported)

As earlier stated, the basis of the appellant's conviction was on the admission he made and credibility of witnesses. According to the record, the appellant made his admission at three levels:

(a) Oral admission before PW3 and PW6 when apprehended at the village and interrogated in connection with the incidence.

(b) At the police station before PW6 who recorded his caution statement which was later admitted as exhibit PE2.

(c) At the Justice of Peace before PW4 who recorded the appellant's extra judicial statement admitted as Exhibit PE1.

The main issue for determination before us therefore is whether reliance of the trial judge on the appellant's confessions was proper or in other words, whether the confessions by the appellant was sufficient to ground conviction in this case.

In the first ground, Mr. Tuthuru's concern is centered on what he stated to be procedural irregularities in the process of taking the extra judicial and the cautioned statements of the appellant (exhibits PE1 and PE2 respectively). The main issue is whether or not the exhibits PE1 and PE2 were legally procured and properly admitted. For Exhibit PE1 which is the extra judicial statement, the Court is being called upon to determine whether or not the statement was recorded according to the Guide. The complaint being that the appellant was sent to the Justice of Peace without a letter from the officer in charge of the police station where the appellant was held under custody, which letter would have contained information of the appellant. Besides, exhibit PE1 did not indicate to whom the appellant was handed over to after the Justice of Peace finished recording his statement. Lastly the appellant complains that Exhibit PE1 shows that it was not read over to the appellant before he signed therein it.

In reply, Mr. Nchanila did not dispute that Exhibit PE1 falls short of the requirements stipulated in the Guide as pointed out by Mr. Tuthuru. He however argued that, the shortcomings notwithstanding, did not prejudice the appellant in any way as the statement was recorded freely.

There is no gainsaying that the requirements as stipulated in the Guide, being part of our law imported by section 62(2) of the Magistrate Court's Act Cap 11 R.E. 2019 have to be followed by the Justice of Peace when recording the accused's statement. The importance of the instructions or guidelines contained in the Guide was restated in **Peter Charles Makupila @ Askofu,** Criminal Appeal No. 21 of 2019 quoting the case of **Japhet Thadei Msigwa v. Republic**, Criminal Appeal No. 367 of 2008 wherein the Court stated: -

> *"So, when Justices of the Peace are recording confessions of persons in custody of the police, they must follow the Chief Justice's Instructions to the letter. The section is couched in mandatory terms."*

The Court went on to state: -

> *"We think the need to observe the Chief Justices instructions are two-fold. One, if the suspect decided to give such statement, he should be aware of the implications involved. Two, it will*

enable the trial court to know the surrounding circumstances under which the statement was taken and decide whether or not it was given voluntarily."

Going through the record of appeal, we have observed that there were some contraventions in abiding with the regulations in the process of recording of the extra judicial statement by the appellant as pointed out by Mr. Tuthuru. Basing on the above stated general significance of the Guide, it is our firm conviction that the importance of abiding with the requirements as per the Guide cannot be overemphasized. Among the stated omission in the case at hand is failure to indicate that the document was read over to the appellant, which is fatal. It renders the statement highly suspicious as we cannot ascertain if the same was correct and it contains a full and true record of the appellant's statement. Thus, Mr. Nchanila's argument that the appellant was not prejudiced is not correct and further, his insistence that the appellant has made the statement out of his own free will is, with due respect questionable for lack of the said verification. Consequently, we expunge exhibit PE1 from the record as prayed by Mr. Tuthuru. Having expunged exhibit PE1, we find no need to discuss other complained shortcomings regarding the said exhibit.

Turning to exhibit PE2, the appellant complains that the document was taken in contravention of section 57 (4) of the CPA which among others, requires the statement be read over to the appellant after it has been recorded and afford him a chance to make correction if any. He added that, the fact that the appellant does not know how to read and write except writing his name, made compliance with section 57 (4) of the CPA even more important.

Mr. Nchanila on his part did not dispute the pointed-out flaw but argued that the same can be cured under section 169 (2) and (4) of the CPA. He further argued that, the Court had also observed that, not every contravention of the CPA automatically renders the document in question inadmissible, but the Court before exercising its discretion would take into consideration the interest of the appellant and that of the public for the purpose of balancing them and cited the case of **Nyerere Nyague vs Republic** (supra) to back up his argument.

For easy of reference, we find it apt to reproduce the provision of section 57 (4) which is claimed to have been contravened: -

> *"(4) Where the person who is interviewed by a police officer is unable to read the record of the interview or refuses to read, or appears to the police officer not to read the record when it is*

shown to him in accordance with subsection (3) the police officer shall-

(a) read the record to him, or cause the record to be read to him;

(b) ask him whether he would like to correct or add anything to the record;

(c) permit him to correct, alter or add to the record, or make any corrections, alterations or additions to the record that he requests the police officer to make;

(d) ask him to sign the certificate at the end of the record; and

(e) certify under his hand, at the end of the record, what he has done in pursuance of this subsection".

There is no dispute that nowhere in the document at issue was it indicted that the document was read over to the appellant after PW6 had finished recording the statement. It is crystal clear from the quoted provision that reading over the document is mandatory. It seeks to verify the correctness of the recorded statement lest some words might be imputed on the appellant's mouth and incriminate him. Looking at the essence of the rights the provision seeks to protect, it cannot be said in our view, that the omission is among those which are curable under section 169 of CPA as submitted by Mr. Nchanila. We are fortified in this

position by the case of **Musa Mustapha Kusa and Another vs Republic**, Criminal Appeal No. 51 of 2010 (unreported) quoted in **Bulabo Kabelele and Mashaka Felician vs Republic** (supra) referred to us by Mr. Tuthuru wherein it was stated: -

> *"We should quickly point out that these elaborate provisions were not superfluously added to the Act. They had specific purpose.* ***Having been enacted after the inclusion of the basic right of equality before the law, in our Constitution, they were purposely added as procedural guarantees to this right. For this reason, therefore, police officers recording such interviews or recording suspects cautioned statements under both section 57 and 58 of the Act, have an unavoidable statutory duty to comply fully with these provisions.*** *They cannot, at the risk of rendering the statement invalid, pick and choose which requirement to comply with and which ones to disregard. The conditions stipulated in these two sections are cumulative and the duty is mandatory"* [Emphasis added]

Regarding the cited case of **Nyerere Nyague** (supra) we have observed that, the cautioned statement therein was not objected when tendered. Besides, the appellant therein had again confessed in Court

when testifying. As such the testimony corroborated his statement which he sought to question its admission. However, in the case at hand the statement was objected when tendered and no further confession was made by the appellant, thus the case at hand is distinguishable. Being a first appellate court hence with power to re-evaluate the evidence on record as the trial court, we are of the firm view that the omission rendered the statement's admission in court improper. The consequence is to expunge it from the Court record as we hereby do.

Having expunged the cautioned statement and the extra judicial statement, we are remained with the oral admission.

It is settled that an oral confession of guilt made by a suspect before or in the presence of reliable witnesses, be they civilian or not, maybe sufficient by itself to ground conviction against the suspect. See: **The Director of Public Prosecutions vs Nuru Mohamed Gulamrasul**, [1988] T.L.R. 82. In **Mohamed Manguku vs Republic**, Criminal Appeal No. 194 of 2004, quoted in **Posoho Wilson @ Mwalyego vs Republic,** Criminal Appeal No. 613 of 2015 and **Tumaini Daudi Ikera vs Republic,** Criminal Appeal No. 158 of 2009 (all unreported). The Court insisted that such an oral confession would be valid as long as the suspect was a free agent when he said the words imputed to him. It means therefore that even where the court is

satisfied that an accused person made an oral confession, still the trial court should go an extra mile to determine whether the oral confession is voluntary or not. What amounts to an involuntary confession is provided for under subsection (3) of section 27 of the Evidence Act, Cap 6 which states:

> *"(3) A confession shall be held to be involuntary if the court believes that it was induced by any threat; promise or other prejudice held out by the police officer to whom it was made or by any member of the Police Force or by any other person in authority."*

It is was testified that the appellant confessed before the VEO and the investigator; (PW3 and PW6 respectively) to be the one who killed the deceased. The interlocutory question therefore is whether the appellant was a free agent when giving his statement before PW3 and PW6. When testifying, PW3 stated that, after apprehending the appellant, they interviewed him in connection with the killing and the appellant admitted to have killed the deceased using an axe, alleging that she had killed seven children by witchcraft and she had further promised to kill him, thus he decided to kill her first. In his admission, the appellant also exonerated his brother Burugo Makoye who was also apprehended as a suspect. A similar testimony was echoed by PW6.

The appellant also told them that, he used an axe to kill the deceased and told them that he had hidden the said axe in the house of Kulwa Athuman under the bed. When they went there, they retrieved it. In our view, it would not have been easy to discover the weapon used in the killing from where it was hidden if not told by the appellant. We are aware that the weapon was not admitted as evidence, but it does not displace the fact that the appellant had admitted to use an axe in the killing of the deceased. According to PW5, the deceased cut wounds were caused by a sharp object, and the axe is one of the sharp object as well. Thus, the information given by the appellant was relevant to determine the person involved in the killing and the murder weapon in this case under section 31 of the Evidence Act, Cap 6 R.E. 2019 which states: -

> 31." *When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is relevant".*

But further to that, it is the stance of the law that, a confession leading to discovery is reliable. In the instant case, the appellant's confession led to the discovery of the murder weapon. In **John Peter**

Shayo and 2 others vs Republic (1998) TLR 198 quoted in **Tumaini Daudi Ikera vs Republic,** Criminal Appeal No. 158 of 2009 (unreported) the Court observed as follows:

> "*(i) Confessions that are otherwise inadmissible are allowed to be given in evidence under section 31 of the Evidence Act 1967 if, and* ***only if, they lead to the discovery of material objects connected with the crime, the rationale being that such discovery supplies a guarantee of the truth of that portion on the confession which led to it***
>
> *(ii) As a general rule, oral confessions of guilt are admissible though they are to be received with great caution, and section 27 (1) and 31 of the Evidence Act 1967 contemplates such confessions..."*

See also **John Shini vs Republic**, Criminal Appeal No. 573 of 2016 and **Melkiad Christopher Manumbu and 2 Others,** Criminal Appeal No. 355 pf 2015 (both unreported).

We are aware that the appellant in his defence has alleged to have been beaten by *wananchi* when arrested so as to force him to admit to the killing but his allegation is negated by PW3's testimony who testified that the apprehension was peaceful and no one wanted to beat him. The said testimony is further confirmed by PW4 who received him just

the next day when the appellant was sent to give his extra judicial statement. PW4 stated that, after receiving him he inspected him and found him to be normal with no injuries nor bruises. It is our firm conviction that, if he was beaten as he alleges, the injuries or bruises would have been noted by PW4 having in mind that he was arrested on 6th March, 2014 and taken to the Justice of Peace on 7th March, 2014, a difference of hours.

The appellant has further admitted to have no quarrel or any misunderstanding with PW3 which means PW3 had no reason to lie against him. As such the allegation that he was beaten up by wananchi is not true and basing on the credence of PW3 and PW6, it is the finding of this Court that the appellant's oral confession was nothing but the true account of what transpired as correctly found by the trial court.

We further feel obliged to discuss albeit briefly the issue of alibi which was not canvassed by Mr. Tuthuru as he decided to abandone it. According to the record, the trial court considered the defence properly before rejecting it after finding that it had no merit. In fact, his alibi defence was eroded by his confession thus, it does not hold water nor raise any doubt on the prosecution case. No wonder Mr. Tuthuru decided not to argue on it.

The above said, we find that the appellant's admission to the commission of the offence to PW3 and PW6 was for all purposes and intend, a valid confession in terms of section 31 of the Evidence Act, Cap 6 R.E.2019 and that it was sufficient by itself to ground a conviction against him for the offence charged. We therefore find nothing to fault the decision of the High Court in this regard.

Appeal dismissed in its entirety.

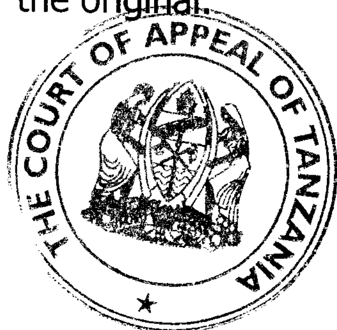
DATED at **DAR ES SALAAM** this 3rd day of January, 2022.

S. A. LILA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

The Judgment delivered this 7th day of March, 2022 via video conference from Butimba Prison in the presence of appellant in person and in the absent of the respondent, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL