

**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. 209 OF 2022

REPUBLIC

VERSUS

**1. ADAM EMMANUEL MILINGA
2. BEATHA LWANDA NGOE**

JUDGMENT

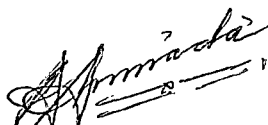
Date of last hearing: 08/03/2024

Date of judgment: 21/03/2024

A.A. MBAGWA J

The accused **Adam Emmanuel Milinga** and **Beatha Lwanda Ngoe** stand jointly charged with an offence of murder contrary to sections 196 and 197 of the Penal Code. It is alleged that on the 20th day of March 2021 at Mlanzi Village within Kibiti District in Coast Region murdered one Gladness Adam Milinga. The accused denied the allegations hence the case proceeded to a full trial.

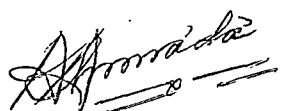
During the hearing, the prosecution was led by Ms Elizabeth Olomi assisted by Mr. Clarence Muhoja, learned State Attorneys. On the adversary, the 1st accused was represented by Mr. Said Hassan Kivuyo, learned advocate



whereas the 2nd accused had the services of Ms Mainda Omary, learned advocate.

In a bid to establish its case, the prosecution called eleven (11) witnesses; PW1 Ester Aidan Silimbu, PW2 Zulfa Ally Mwangi, PW3 Mariam Mundela Elias, PW4 Mussa Said Sobo, PW5 Augustino Hans Hongoli, PW6 G4938 CPL Samwel Boniface Mguji, PW7 SSP Paul Timothy Mashimbi, PW8 G7298 D/CPL Emmanuel, PW9 Isabela John Mahemba, PW10 PF24451 A/INSP Erick Richard Hunja and PW11 Anna John Chuwa. They also produced three documentary exhibits namely, a report on the post-mortem examination of the deceased body (exhibit P1), an extra-judicial statement of the 1st accused Adam Emmanuel Milinga (exhibit P2), and a Government Chemist Report in respect of the DNA test (exhibit P3).

In brief, the prosecution case was as follows; The accused were living together as husband and wife. Their conjugal relationship started way back in 2019 when they were working with Dolin Investment Company at Kisumvile within Mkuranga District. The duo fell in love and in the consequence thereof, the 2nd accused Beatha Lwanga Ngoe fell pregnant. Having conceived, Beatha shifted from her residence and went to stay with her lover. On account of pregnancy, she frequently fell ill as a result she



decided to leave the job and went back home to Mlanzi village. After a short while, the 1st accused followed her and they both started living together at Mlanzi village. They stayed in the house that they were given by the 1st accused's mother. In addition, the 1st accused's mother gave them a piece of land (a farm) for the cultivation of cassava.

By the grace of God, on the 13th day of August 2020, Beatha safely gave birth to a baby girl who came to be called Gladness. However, the 1st accused was always not happy with Gladness as he believed that she was not his biological child. As such, regular misunderstandings and disharmony ensued between the two because of Gladness existence.

It was the prosecution evidence in particular the extra-judicial statement (exhibit P2), that the duo conspired to exterminate the poor child in order to salvage their conjugal relationship. Thus, on the 20th day of March 2021 when Gladness was only seven month old, Adam Emmanuel Milinga (1st accused) took the little child and abandoned her in Amani Forest. After two days, Adam went back to Amani Forest and found Gladness already dead. He thus took the deceased body and went to bury it on the farm which they were using for cultivation. To conceal the truth, the 2nd accused went to

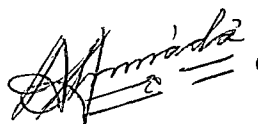


Bungu Police Station and made a false report that Gladness was abducted by unknown people when she was with her on her way to a nearby place.

Thereafter, the information on the disappearance of the deceased was, on the fateful day, disseminated to various people including the 2nd accused's relatives in particular PW1 Ester Aidan Silimbu. As such, on the following day i.e., the 21st day of March 2021, Ester Aidan Silimbu (PW1) traveled from Kimanzichana to Mlanzi to join forces in tracing the disappeared girl.

In the endeavours to trace Gladness, the accused relatives engaged a witch doctor who came to the accused's home. The witch doctor told them that the whereabouts of Gladness were known by some family members. He thus gave them time before he could do something detrimental to them.

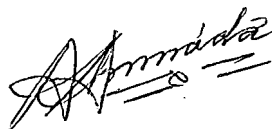
Worried about the possible consequences, the 2nd accused decided to reveal the truth. She told her aunt PW1 that Gladness was taken by 1st accused but he never returned her. PW1 conveyed this information to the Hamlet Chairperson PW2 Zulfa Ally Mwangi. In response, PW2 called the militiaman PW4 Mussa Said Sobo to assist her in apprehending the accused. Soon thereafter Musa Said Sobo arrived at the accused's home and in collaboration with PW2 and PW1 hired bodaboda (motorcycle transport) and surrendered

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the accused to Bungu Police Station. Subsequently, the accused were transferred to Kibiti Police Station.

It was the testimony of PW7 SSP Paul Timoth Mashimbi and PW8 G7298 D/CPL Emmanuel that upon interrogation, the 1st accused confessed that he took the deceased and abandoned her in Amani Forest. Thus, on the 8th day of April, 2021, i.e., one day after his arrest, the 1st accused led the investigation team up to Amani Forest but did not uncover anything hence they decided to go back. However, while on the way back to Kibiti Police Station, the 1st accused volunteered to tell the truth. He told the police officers that he buried the deceased Gladness in the farm which they were using for cultivation.

1st accused thus led the investigation team along with Mlanzi village leaders up to the farm where he had buried the deceased. He dug into the ground and exhumed the skull and some bone remains. PW3 Dr. Mariam Mundela Elias, a medical doctor at Kibiti District Hospital, had accompanied the investigation team. She therefore examined the recovered substances, put them into a bag, and handed them to PW8 G7298 D/CPL Emmanuel for custody and further investigative measures.



The skull and bone remains along with the accused blood sample and swabs were later submitted to the Government Chemist Laboratory for DNA test. According to PW11 Anna John Chuwa, the Government Chemist, the DNA test revealed that the bone remains had a relationship with both accused persons. Thus, according to PW11, the DNA test confirmed that the skull and remains of bones were of the accused's biological child. PW11 tendered the Government Chemist Report (exhibit P3) which contained her expert findings.

In addition, the prosecution tendered the 1st accused's confession to wit, an extra-judicial statement (exhibit P2). It is worth noting that the said extra-judicial statement was admitted without objection from the opposite side. Based on the evidence produced, the accused were arraigned and prosecuted.

In defence, the accused gave evidence under oath. They did not tender any exhibit nor did they call witnesses to support their defence. They thus stood the solo defence witnesses.

The 1st accused denied his involvement in the killing of the deceased. It was his testimony that on the 20th day of March 2021, he was away from home at Kimbendo when the 2nd accused called and informed him about the

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disappearance of the deceased. He stated that 2nd accused decided to mention him after she was pressurized by her relatives. DW1 further denied confessing to the offence. He stated that he was tortured by the police officers and hence decided to implicate himself to save his life. With regard to the extra-judicial statement (exhibit P2), DW1 testified that he made it out of the threat from the police as he was warned to state the same before the peace of justice. DW1 admitted that he led the investigation team to the discovery of the skull and remains of bone on the farm but clarified that the recovered substances were not the body remains of Gladness but of a monkey (kima) that he had buried a few days ago. He thus implored the court to find him not guilty and consequently acquit him.

Equally, the 2nd accused, on her part, denied the allegations. She shifted the blame to the 1st accused. She testified that, on the 20th day of March, 2021, the 1st accused left home with Gladness saying that he was going to the nearby shop. Nonetheless, after about two hours, the 1st accused returned home without Gladness. When Beatha asked the 1st accused about the whereabouts of Gladness, the 1st accused became furious and never answered. Instead, he directed the 2nd accused to report the incident to Bungu Police Station. According to DW2, the 1st accused coached her to say

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that Gladness was abducted from her by unknown persons when she was going to a nearby place. She admitted that she was the one who told her aunt Ester (PW1) that Gladness was taken by the 1st accused. In essence, she exonerated herself from the liabilities and beseeched the court to acquit her.

Upon closure of both prosecution and defence case, the learned counsel filed final written submissions. I am grateful to them for their industrious submissions. Suffice it to say that I have considered them in my decision and where necessary I will specifically refer to them.

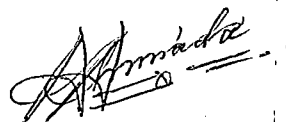
Having summarized the evidence as presented, It now behooves me to determine whether, on the evidence presented by both sides, the prosecution has proved the charge against the accused to the hilt. In resolving this question, I found it apt to direct myself on the following issues?

1. Whether the alleged deceased Gladness Emanuel Milinga is dead.
2. Whether the said Gladness died an unnatural death.
3. Whether the accused are the authors of the deceased's death.

To begin with the 1st issue, the learned defence counsel assaulted the prosecution evidence stating that the prosecution failed to produce evidence such as a birth certificate or a clinical card to prove whether the said Gladness ever existed. I have dispassionately considered both pieces of



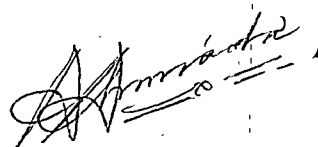
evidence and submissions by the counsel. There is sufficient circumstantial evidence that Gladness existed and now is dead. Both accused admitted, during their defences, that as from the 20th day of March 2021 to date, Gladness has not been seen alive. In addition, it is the prosecution evidence in particular the 1st accused's extra-judicial statement that he took and abandoned Gladness in Amani Forest and after two days he went back and found the poor Gladness dead. He then took the dead body and went to bury it on the farm. It has to be noted that the said extra-judicial statement was admitted in evidence without objection. This, in law, amounts to the admission of its contents by the 2nd accused. During his defence, the 1st accused disowned the contents of the extra-judicial statement (exhibit P2) on the ground that he was threatened and forced by the police to admit the offence before the justice of the peace. It is unfortunate that the defence complaint can not be entertained at this juncture. The law is very clear in this area that where the accused alleges involuntariness in making the confession, the objection should be raised during admissibility. To challenge the voluntariness of the confession at the defence stage is an afterthought which cannot be entertained. In the case of **Emmanuel Lohay and**

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Another vs the Republic, Criminal Appeal No. 278 of 2020, CAT at Arusha, the Court had the following to say;

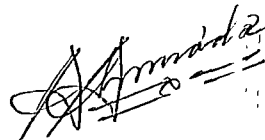
'It is trite law that if an accused person intends to object to the admissibility of a statement/confession he must do so before it is admitted and not during cross-examination or during defence – Shihoze Semi and Another v. Republic (1992) TLR 330. In this case, the appellants "*missed the boat*" by trying to disown the statements at the defence stage. That was already too late. Objections, if any, ought to have been taken before they were admitted in evidence'.

In view thereof, it is my considered findings that the extra-judicial statement (exhibit P1) was voluntarily made and the same sufficiently corroborated the evidence of PW7 SSP Paul Timoth Mashimbi and PW8 G7298 D/CPL Emmanuel. The confessional evidence is further augmented by the discovery of the skull and some remains of bones that were exhumed from the farm. It is the law that confession leading to the discovery of material objects connected to the crime is reliable because it guarantees some truth that led to the discovery. See the case of **Chamuriho Kirenge @ Chamuriho Julias vs the Republic**, Criminal Appeal No. 597 of 2017, CAT at Mwanza.

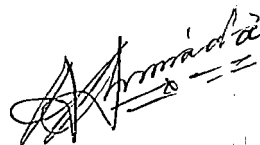
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Besides, the alleged bones were proved by the Government Chemist (PW11) to have a parental relationship with both accused.

The defence challenged the expert evidence on DNA. The learned defence counsel had it that the alleged skull and bones were not produced in evidence. They further lamented that the prosecution failed to produce the covering letters that were used to dispatch the bones, blood samples, and swabs to the Government Chemist Laboratory. The defence counsel therefore invited to Court not to rely on the expert evidence. It is true as rightly argued by the defence counsel that the prosecution did not tender any document to prove the chronological documentation of the bones, blood samples, and swabs nor did they produce the alleged skull and bones. However, through oral account of PW3 Dr. Mariam Mundela Elias, PW5 Augustino Hans Hongoli, PW8 G7298 D/CPL Emmanuel, PW10 PF24451 A/INSP Erick Richard Hunja, and PW11 Anna John Chuwa, the prosecution sufficiently established the chain of custody from the discovery of the alleged human bones, taking of blood samples and swabs to the examination by the Government Chemist. PW5 explained the way he took blood samples from the accused and handed them to PW8. Equally, PW8 testified that he kept the said samples along with the bones for some time and later on submitted



them to Police Headquarters and handed them to PW10 A/INSP Erick Richard Hunja who finally submitted them to PW11. It was further the evidence of PW11 that she received the bones, blood samples, and swabs from PW10. PW11 further told the Court that the recovered bones were ground and used all for testing (examination) hence nothing remained. It is now settled that chain of custody may be established through oral account of the witnesses. See the cases **Anania Clavery Betela vs the Republic**, Criminal Appeal No. 355 of 2017, CAT at Dar es Salaam and **Yusuph Masalu @ Jiduvi and 3 Others vs the Republic**, Criminal Appeal No. 167 of 2017 CAT at Dodoma. Therefore, having considered the prosecution evidence as a whole and specifically the cohesion and coherence of the prosecution evidence, I am settled in my mind that the chain of custody was sufficiently observed hence there was no tampering with samples which were ultimately submitted to, examined and found to have a biological relationship with the accused by the Government Chemist (PW11). It was also the testimonies of DW1 and DW2 that they did not have a child other than Gladness. Also, DW1 and DW2 admitted to having been taken blood samples and swabs. In the meantime, PW11 told the court that as per the DNA findings, the bones were of the accused's child.

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All the foregoing considered, I answer the 1st issue in the affirmative.

Regarding whether Gladness died an unnatural death, the evidence of this is found in the 1st accused's extra-judicial statement (exhibit P2) and the testimony of the 2nd accused. As hinted above, the confession is to the effect the 1st accused took the deceased and dumped her in the forest and after two days went back and found Gladness dead. He thus took the dead body and buried it on the farm. The 2nd accused testified that Adam Emmanuel left with Gladness on 20th March 2021 but did not return with her. There is also evidence that Adam Emmanuel Milinga did not love Gladness as he suspected that she was not his biological child. It is therefore not difficult to infer that the intention of abandoning a seven month old baby in the forest for two days was to kill her by hunger. When all this is considered cumulatively, it leads to an irresistible inference that Gladness' life deliberately was exterminated.

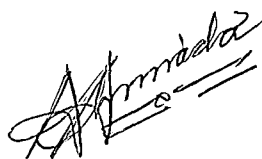
The 3rd issue is whether the two accused are responsible for the demise of the deceased. I should point out, at the outset, that the prosecution evidence has two versions about the involvement of the 2nd accused. The first version came from the evidence of PW1 Ester Aidan Silimbu and PW6 G4938 CPL Samwel Boniface Mguji. Their evidence was that on the material day, Adam

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locked the 2nd accused inside and left with the deceased. Thereafter, he came back without Gladness and did not want to be asked about her whereabouts. The 1st accused thus instructed Beatha to report to the police that the baby was kidnapped. The 2nd accused heeded the instructions and consequently made a false report to the police. From this piece of prosecution evidence, it is clear that the 2nd accused was not initially involved in the plot to kill Gladness but joined hands with the 1st accused after the fact. This version also found support from the testimony of DW2, Beatha Lwanda Ngoe.

The second version is found in the extra-judicial statement (exhibit P2) where the 1st accused stated that they conspired to terminate Gladness with the view to bring harmony and happiness into their marital relationship.

The prosecution banked on the 2nd accused's conduct of making a false report to the police and concluded that the two had a common intention to kill Gladness. The prosecution stressed that common intention may be inferred from the actions or omissions of any of them to dissociate himself from the prosecutions of the unlawful purpose. On this, the prosecution referred this Court to the case of **Kileo Bakari Kileo and 4 Others vs the**

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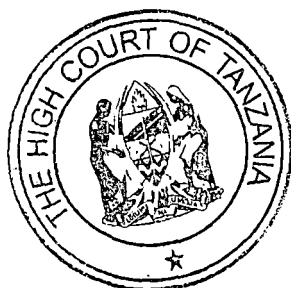
the fact, she cannot be convicted of that offence. In view thereof, I find the 2nd accused Beata Lwanda Ngoe not guilty of murder, and consequently, I acquit her from charges of murder.

The 1st accused is implicated by his own confession which led to the discovery of the deceased decomposed body and the evidence of DW2. Further, the circumstantial evidence irresistibly leads to an inference that the 1st accused killed the deceased. The evidence offered by the 1st accused in defence did not, in my view, dent the prosecution evidence.

The evidence against the 1st accused Adam Emmanuel Milinga is overwhelming as herein above analysed. Thus, it is my considered findings that the prosecution evidence established the guilt of Adam Emmanuel Milinga beyond reasonable doubt. As such, I find the 1st accused **Adam Emmanuel Milinga** guilty and accordingly convict him of murder contrary to sections 196 and 197 of the Penal Code.

It is so ordered.

The right of appeal is explained.



A.A. Mbagwa
A.A. Mbagwa

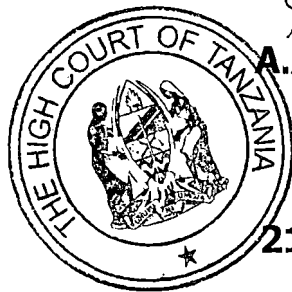
JUDGE

21/03/2024

SENTENCE

Since there is only one statutory sentence for a convict of murder, I hereby sentence the 1st accused Adam Emmanuel Milinga, in terms of sections 196, 197, and 26 of the Penal Code, to suffer death by hanging.

The right of appeal is explained.



A.A. Mbagwa

A.A. Mbagwa

JUDGE

21/03/2024