

TANZANIA / JUDGMENT

JUMA TURUKA JUDGEMENT 0001

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB-REGISTRY AT TARIME) ORIGINAL JURISDICTION CRIMINAL SESSION CASE No. 51 OF 2023 (Referenced: 20230809000518867) THE REPUBLIC Versus

1. JUMA TURUKA @ TURUKA
2. TANO CHRISTOPHER SYLVESTER

JUDGMENT

29.11.2024 & 02.12.2024 Mtulya, J.: This is one of cases which demonstrates one of the Swahili Adages Ujana Maji ya Moto. The Saying is associated with dramas such as wrangles, squabbles, quarrel, arguments and fights to display Swahili practices of usela, undava, ubabe, umwamba and currently in sports arena baptized as ubaya ubwela. The practices may start as gags connected with smiles and affections, but their consequences may be grave. The brutality of the fallouts depends on species of jokes and weapons available in the vicinity of the scene of the witticisms. The incident which occurred on 11th day March 2023 at night hours within the vicinity of Kwa Mstaafu Bar (the Bar) within Remagwe Village of Tarime District in Mara Region is of incidents which displays the cited adage. A tale in the instant case starts with the i narrations of Helen Erasto (PW4), a lady of twenty-three (23) years of age, who on the 11th day of March 2023 had witnessed a total of seven (7) young men entering into a joke which a bit later had changed its course and produced a rumble of quarrels, arguments and fight which finally resulted a death of one of the young men called Mr. Lucas Petro Juma (the accused). The seven (7) men were cited by PW4 were: the accused, Mr. Juma Turuka @ Turuka (first accused), Mr. Tano Christopher Sylvester (second accused), Emmanuel Chacha John @ Ema Mchungu Ng'ombe (Mr. Emmanuel), Mr. Wansinyo Turuka (Mr. Wansinyo) and two (2) other unknown boys (the boys), who could not be identified or traced in their descriptions, identities, names and residence. The tale goes that Mr. Wansinyo was outside the Bar and had thirst of beer on the day hence he grabbed a Radio belonged to Mr. Emmanuel requesting him to buy a beer for him to clear the thirst. He joked before Mr. Emmanuel that if he does not buy one beer for him, the Radio will be confiscated forever. Initially, it started as a normal request and joke, but as time went on, the request had slowly transformed its course to an instruction commanding Mr. Emmanuel to either buy the beer or let the Radio be seized by Mr. Wansinyo. Mr. Emmanuel and the boys had noted the jokes had changed its course hence started quarreling with Mr. Wansinyo for want of the Radio back to

Mr. Emmanuel. 2 The voices of the roars and quarrels were of high intensity to be heard by individual customers in the Bar and vicinity of the quarrels. The deceased and PW4 were at the Bar's counter and within the vicinity of the quarrels and were interested and wanted to learn the incidents which were taking their courses at the scene of the quarrels. Upon arrival and inquiry on the quarrels, they were told of the story by the quarreling parties that Mr. Wansinyo had seized the Radio of Mr. Emmanuel for want of alcohol beers to clear his thirst, without any justifiable reasons. The narrations irritated the deceased, who was giant with heavy muscles, and started assisting Mr. Emmanuel to get back his property Radio. The intervention and assistance of the deceased had shifted the quarrels' course from Mr. Emmanuel and Mr. Wansinyo to the deceased and Mr. Wansinyo which led to a serious fight of exchanging fits where Mr. Wansinyo was scored. The exchange of hands was spotted by the first accused, who is also a friend to Mr. Wansinyo hence rushed to the quarrels' scene and attempted to separate the dual for want of peaceful settlement of their differences, but was also joined in the fight by the deceased and was attacked on the head by the accused by use of a stick taken from a nearby bushes and was pulled down to the land. The moves also attracted the second accused who had intervened the fight intending to rescue his friend, the first accused, from the blows 3 which were landed to him by the deceased. However, according to PW4, when the second accused had joined the rumbles, it gave an opportunity to the first accused to remove a knife from his trouser and stabbed the deceased at the ribs areas of the body to cause bleeding which made the accused to leave the crime scene towards the bushes where he could not be seen until the next morning when he was found dead in the bushes. PW4 had testified further that the incident was reported to Bar owner, Mr. Boniphace Singira Chacha (Mr. Singira), who had communicated the information to the deceased's relative called Mr. Laurent Marwa (Mr. Laurent). According to PW4, the first and second accused were having drinks containing alcohol since their arrival at the Bar in evening hours of 16:00 and the quarrels had exploded sometimes around 21:00 hours. In her testimony, PW4 stated that the accused was drinking Balimi species of beer whereas the dual accused persons were tanking in beers mixed with Konyagi type of drink, which is one of the toughest species of alcoholic drinks. Regarding identification of the deceased, Mr. Wansinyo, the first and second accused, PW4 testified: to have been seeing them for a year or so at the Bar as were frequent customers of alcoholic drinks; she witnessed the fights in a distance of three (3) human steps; 4 there were bulbs outside the Bar powered by electricity with high intensity of light to gleam a distance of seven (7) human steps; the fighting incident took between twenty (20) and thirty (30) minutes; and on the day, the accused, Wansinyo, the first and second accused persons had stayed in the Bar for alcoholic drinks for more the four

- (4) hours. Mr. Laurent (PW1) who had received the information of the attacks against the deceased from Mr. Singira, was marshalled in the case to testify his role after the information on the attacks against the deceased at the crime scene. According to him, on 11th March 2023, at night of 22:00 hours, he was informed by Mr. Singira on the incidents of fights and stabbing of the deceased and had rushed to the crime scene and areas around crimes scene to search the deceased unsuccessfully. Following missing of the deceased in night hours of the day and morning hours of the next day of 12th March 2023, PW1 had

reported the incidents of fights to Sirari Police Station (police station) before police officer, G. 71 CpI. Kassimu (CpI. Kassimu). However, according to PW1, the villagers in the same morning had spotted the deceased already expired in matoratora flowers with two

- (2) stab wounds on the ribs and stomach, and the accused persons were aware of the death. 5 PW1 testified further that the accused persons were arrested and locked-up at Sirari Police Station when they appeared to report the incident of attacking the deceased in the morning hours of 12th March 2023. In ending his testimony, PW1 stated to have witnessed postmortem examination of the deceased conducted by medical doctor Josephat Kerambo Mwita (Mr. Kerambo) at Sirari Health Centre (the health centre) and were informed the immediate cause of death was excessive bleeding emanated from the two (2) spotted stab-wounds. CpI. Kassimu and Mr. Kerambo were marshalled by the prosecution side to testify their involvement in the series of events on the complained murder case against the accused persons. According to CpI. Kassim (PW2), in morning hours of 12th March 2023, he was on duty in the Charge Room of the police station and had welcomed PW1 to register a murder complaint recorded SIR/IR/563/2023 concerning the attacks incident of the deceased which took place at night hours of 11th March 2023. PW2 testified further that PW1 had stated in the police station that the accused was stabbed by knife at night hours and could not be found at the crime scene and cited the attackers as the first accused, second accused and Mr. Wansinyo. However, according to PW1, before the departure of PW1, the accused persons appeared in the police station and were arrested, 6 locked-up and interrogated for murder case of the deceased. According to PW2, during interrogation, the accused persons had admitted attacking the deceased and it was the first accused who had stabbed the deceased with a knife and was planning to escape the village for Nyamongo area or Musoma Town by using the second accused's motorcycle. Regarding the source of all the incidents, PW2 cited two (2) issues, namely: first, alcohol and second, Radio of Mr. Emmanuel. Mr. Kerambo (PW3) on the other hand testified to have been consulted by his boss and directed to conduct post-mortem examination of the deceased on 13th March 2023 at around 17:00 hours in the presence of relatives of the deceased, PW1, Marwa Chacha Makowe and police officer called Anthony. According to PW3, he with all necessary procedures and directives on conducting post-mortem examination of the deceased's body and had found two (2) stab-wounds at the chest left lateral which estimated at two (2) centimeters width and penetrated inside the deceased's body to the fifth and sixth ribs of the body by approximately ten (10) centimeters and touched the deceased's heart. The second wound according to PW3, it was located down to the stomach between large intestine and lumber area to cause the large intestine hanging outside the stomach, and it was estimated at two (2) centimeters in width and penetrated inside the body by 7 twelve (12) centimeters to touch a femoral artery blood vessel. In support of his testimony, PW4 had tendered exhibit P.1 which shows that the deceased's death was caused by: excessive bleeding due to severe chest injury of two stab wounds to the heart and left groin region of femoral artery. The police cited by PW1, G. 7362 D/Cpl. Anthony (PW5) testified to have investigated the incidents which occurred on 11th March 2023 at night hours at the Bar within Remagwe Village in Tarime District. In his testimony,

he stated that on 13th March 2024, he visited the crime scene, sketched a map of crime scene, visited the health center and witnessed PW4 conducting post-mortem examination. According to PW5, the investigation had revealed: that there was a fight at the crime scene between the accused persons, the deceased and Mr. Wansinyo; the source of fights was a Radio belonged to Mr. Emmanuel; the deceased was stabbed twice at the ribs and stomach by the first accused; the cause of death of the deceased was excessive bleedings; the parties in the fight were drunk; the first and second accused persons were arrested and recorded cautioned statement; and in their statement have confessed to have attacked the deceased. In ending his testimony, PW5 prayed to tender and it was admitted, the sketch map of the crime scene as exhibit P.2. The exhibit shows that the incident of fights and attacks had occurred outside the Bar next to small 8 drinking huts within the vicinity of the Bar. In replying the prosecution case, the defence side had marshalled two (2) witnesses without any exhibits. According to the first accused (DW1), on the 11th of March 2023, at evening hours around 16:00 hours, he went at the Bar to enjoy Balimi species of beer and Konyagi hard drink with his colleagues second accused and Mr. Wansinyo. However, according to DW1, at around 21:00 hours, they heard quarrels between the deceased and Mr. Wansinyo originated from the Radio owned by Mr. Emmanuel. According to DW1, the quarrels were initially between Mr. Emmanuel and Mr. Wansinyo, and the deceased had just joined in to assist Mr. Emmanuel to get back the Radio which was then grabbed by Mr. Wansinyo for want of monies of beer. DW1 testified further that it was the deceased who had started beating Mr. Wansinyo and suppressed him down to the land, an incident which moved him to intervene and separate the dual from the fight. According to DW1 the intervention had intensified the deceased's anger and started to attack him by a fire wood accompanied with vernacular language that he will attack him to death, which invited the second accused to intervene to rescue him from the attacks. Finally, DW1 testified to have been arrested at the police station on 12th March 2023 when he went to report the incident after noting the deceased was missing from the crime 9 scene. On his part the second accused (DW2) testified that on 11th March 2023, he was at the Bar with the first accused, the deceased and Mr. Wansinyo drinking alcohol and watching football match from 16:00 hours to 21:00 hours. DW2 testified to have mixed Balimi beer and Konyagi hard alcohol and shared the same with the first accused and Mr. Wansinyo whereas the deceased was enjoying Balimi beer only. According to DW1, initially all the four (4) persons sat together enjoying alcohol and football at Bar's Hall, but a bit later the first accused, the second accused and Mr. Wansinyo had left the Hall for pleasing their drinks and scenery outside the Bar's huts. DW2 had testified that, when they left the Hall in favor of the huts, the deceased had remained inside the Bar enjoying his drinks. At around, 21:00 hours, according to DW2, all the four (4) young persons were well tanked with liquors to the extent that they could not well appreciate some of the issues and had witnessed Mr. Wansinyo going out for a short call, where he found Mr. Emmanuel and started joking each other and Mr. Wansinyo had grabbed Mr. Emmanuel's Radio asking him to buy a bear for him. DW2 testified further that while Mr. Wansinyo was busy joking with Mr. Emmanuel, the deceased had left his area of drinks in the Bar for Mr. Wansinyo and forced Mr. Wansinyo to let the Radio to Mr. Emmanuel. 10 It is

from this request, according to DW2, a quarrel started and fight ensued to let Mr. Wansinyo beaten and pulled down to the land, the incident which attracted the attention of the first accused. DW2 testified that the first accused then approached the dual and attempted to separate them, but he was also attacked by the deceased at his hands by use of fire-wood sized five (5) centimeters and three (3) feet long. It is from the attacks of the deceased, who was tough and muscled man. According to DW2, he intervened the fight to separate the first accused from the deceased, and no more. The indicated materials had produced two (2) schools of feelings with divergence reasoning. The prosecution side thinks that the accused persons have killed the deceased with specific intention called malice aforethought. Reading from their cross-examination questions, the reasons in support of the move are obvious, that: first, they attacked the deceased to death in a mob of three (3) persons; second, they landed several blows to the deceased; third, they used grave weapon knife to puncture sensitive parts of the body ribs and stomach to cause excessive bleeding; fourth, they left their huts for the scene of the quarrels; took laws into their own hands; fifth, they were drunk but able to distinguish decent and evil deeds; and finally, they escaped the crime scene. The defence side is of the view shows that the whole incident shows that the accused persons and deceased were drunk and ii exchanging muscles to gauge their supremacies. Reading the questions of defence side during hearing of the case in cross- examination and materials produced by DW1 and DW2, it is obvious that it was assessing whether there were fights and accused persons were in a state of drunkenness, in their opinion, the deceased had caused his own death by letting his drinks at the Bar for the quarrels of Mr. Emmanuel and Mr. Wansinyo. I have scanned the concerns of the defence side via questions posed to the prosecution witnesses, and the reasons are certain, that: first, the deceased was in the state of drunk as he started enjoying Balimi beers from 16:00 to 21:00 hours without any break; second, the deceased had left his counter desk of drinking for the quarrels between Mr. Emmanuel and Mr. Wansinyo; third, the deceased had grabbed the Radio from Mr. Wansinyo by using force; fourth, the deceased initially attacked Mr. Wansinyo separate from the first accused as well as the second accused; fifth, the first accused had stabbed the deceased in bad luck by use of weapon knife at the ribs and stomach; sixth, the accused persons did not escape the crime scene and assisted in searching the deceased; seventh, the accused persons went and reported the incident at the police station; the accused persons admitted commission of the offence at the police station; and finally, they admitted commission of the crime without malice aforethought in this court. 12 In criminal cases of the instant species, the Republic is required to prove its case beyond reasonable doubt (see: section 3 (2) (a) of the Evidence Act [Cap. 6 R.E. 2022] (the Evidence Act) and Said Hemed v. Republic [1987] TLR 117). Beyond reasonable doubt is a legal standard that requires the prosecution to provide materials in evidence to convince the court that the accused persons have committed the offence alleged. Meaning that, by perusing the materials available on record, any reasonable person would believe that the accused are guilty of the offence. This is important because reasonable doubt is a fair, logical, and actual doubt based on common sense and reason of human person. What is necessary is the materials evidence must overcome any reasonable doubt in the case. In doing so, the prosecution must prove each

element of the alleged crime (see: *Magendo Paul v. Republic* [1993] TLR 219 and *Christina Kale v. Republic* [1992] TLR 302). Therefore, for a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused to leave a remote possibility in his favour. In brief, it is not enough for the prosecution to show that the accused is probably guilty. The law regulating suspicions on accused persons is certain and settled, that suspicion alone, however grave, cannot be invoked to convict accused persons (see: *Richard Mtangule & Another v. Republic* [1992] TLR 9). It is generally accepted principle of criminal law that accused persons cannot be convicted for reasons of testifying lies in courts. Their role is to dispute and raise doubts in the prosecution materials (see: *Mushi Rajab v. Republic* (1967) HC 384 and *Republic v. Samwel Seronga Mwita*, Criminal Sessions No. 509498 of 2023). I am aware in the instant case, the accused are prosecuted for the crime of murder, enacted under section 196 of the Penal Code [Cap. 16 R.E. 2022] (the Penal Code). In murder cases the Republic is required to prove, beyond reasonable doubt three (3) important elements of the indicated offence, viz. first, death of the deceased; second, the death was caused by the accused persons; and the accused persons have caused the death of the deceased with malice aforethought. In the instant case, the materials registered by both parties and exhibit 1 show that there is no contest on the first two (2) cited elements, that: first, accused had actually expired at the crime scene in the bushes next to the Bar and was examined and confirmed by PW4 at the health centre; and second, it is the accused persons who had attacked and caused the death of deceased at the Bar by use of the knife. The contest, which justified by the two indicated views of the parties, and this court is asked to reply is: whether the accused persons have caused death of the deceased with malice aforethought. 14 Malice aforethought is the conscious intent or premeditation to cause death or grave bodily harm to another person. This is the highest standard of intent in criminal liability, distinct from the general appreciation of mens rea in criminal justice system. Malice aforethought is a special intent which requires something more than a mere foresight or knowledge that death will occur. There must be direct materials displaying clear intention of the accused to kill or cause grave harm to the deceased. That is the practice in England, where section 196 of the Penal Code originated via India to this country, and other commonwealth jurisdictions (see: *R v. Moloney* [1985] AC 906; *R v. Woollin* [1999] 1 AC 82; and *Mohamed Jahangeer v. The State of Andhra Pradesh*, SC No. 268 of 2009). The practice in England and other commonwealth jurisdictions was brought in our country via section 196 and 200 of the Penal Code. The sections have already received the directives of our apex court, the Court of Appeal in the decision of *Enock Kipela v. Republic*, Criminal Appeal No. 150 of 1994. The precedent in *Enock Kipela v. Republic* (supra) has been highly cited and cherished by the same Court and this court, when it comes to issues of resolving contests of malice aforethought (see: *Jacob Asegelile Kakune v. D.P.P*, Criminal Appeal No. 178 of 2017; *Charles Bode v. Republic*, Criminal Appeal No. 46 of 2016; and *Republic v. Wangoko Matienyi @ Njiwa*, Criminal Sessions Case No. 15 518893 of 2023). In the opinion of the Court of Appeal, usually an attacker will not declare his intention to cause death or grievous bodily harm. The Court thinks that the intention of accused must be ascertained from various factors, including: ...the type and size of the weapon used in the attack; the amount of force

applied in assaulting; the part of the body where the blow was directed; the number of blows; and the kind of injuries inflicted; and conduct of the accused before, during and after the attack. The facts of the instant case as extracted from eye witness PW4, DW1, DW2 and exhibits P.1 show that the first accused used lethal weapon knife to attack the deceased at sensitive parts of the body ribs and stomach twice with large amount of force to cause double stab wounds to let the ileum out of the human body. The first accused did so from a company of the second accused. I am aware facts of the case are at divergence as whether the accused persons had escaped the crime scene for their residence or not, as the prosecution side insist that they left the crime scene whereas the defence stated that the accused persons had remained at the crime scene and assisted the Bar Maids in searching of the deceased in the nearby bushes. The law regulating credibility and reliability of witnesses is certain and settled that every witness, including accused persons, are entitled to credence, 16 unless there are good reasons to decline their reliability and credibility (see: Goodluck Kyando v. Republic [2006] TLR 363). Taking consideration of all the circumstances in the instant case, I am persuaded to believe that the accused persons are credible and reliable in their evidences as they produced consistencies in their statement at the police station and this court hence their evidences have merit. In such situation, I hold a view that the accused persons have participated in searching of the deceased in the bushes after incident of fighting at the crime scene. There are dual reasons to the effect: first, they testified so in this court and any doubt on the facts may be resolved in their favor; and second, they reported to the police station in morning hours of the next day of the incident of fight at the crime scene. It seems they had time and space to escape from Remagwe Village to Tarime District or elsewhere for hiding purposes before the second day of the incident, but they declined in favor of police station in their own volition. Even PW1 who is relative to the deceased had briefly searched the deceased on night hours of the first day and gave it up. In the next morning, DW1 went for reporting at the police station and at the same morning, the accused persons appeared at the police station. The conducts of the accused persons is what exactly qualified in the celebrated precedent of Enock Kipela v. 17 Republic (supra), at pages 5 and 6 of the judgment, where after stating the indicated necessary factors, the Court had moved further to place two (2) important qualification clauses: first, each case must be decided on its own peculiar facts, and second, in the totality of the evidence on record, there must be no room for more than one view as to the accused's intent (malice aforethought). Finally, the Court had resolved that: if there is doubt on the intention (malice aforethought) of the accused, the doubt is to be resolved in favor of the accused. In the present case, although the first accused used knife to stab the deceased, in association of the second accused, but there are circumstances which leave several doubts to the accused persons special intention to cause death to the deceased. I will explain: first, undisputed facts of the case show that the accused persons and deceased were enjoying alcohol and football matches; second, the species of alcoholic drinks were cited and certain, but extent of drunkenness was not gauged by sciences; third, after the football match in the television, the accused persons had left the Bar for huts outside the Bar and deceased had remained inside the Bar; fourth, the accused persons and deceased had joined in a fight between Mr.

Wansinyo and Mr. Emmanuel, without reporting the quarrels to appropriate authorities of the village chairman or nearest police post; fifth, there are no signs of common intention on part of 18 the accused persons to attack the deceased with a knife; and sixth, evidences show that the fights between the deceased and accused persons was in series of events of one against one from the start to the end, and not the species of incident of one mob attack for once and all. It was Mr. Wansinyo who was attacked first by the accused and had fallen down. Second, it was the first accused against the deceased. The first accused was also overpowered and attacked by the deceased and had fallen down and could not raise up. He finally decided to use the knife after intervention of the second accused to hold and separate the deceased. There is also no proof on record to show that Mr. Emmanuel, Mr. Wasinyo, the two boys and accused persons had a prior meeting or plan to initiate quarrels that will attract intervention of the deceased. Reading the evidence as whole in record there is no any display or premeditated murder. Each event was independent on itself from taking the alcoholic drinks, watching football match in the television, moving outside the Bar for the huts, quarrels, fights and attacks. In my opinion, the whole incident shows a group of young persons attempting to display their reigns. Finally, the conduct of the accused persons before, during and after the incident. Before the fight and attack incidents, the accused persons and deceased were colleagues enjoying football match displayed in the television. During 19 incident, it was one against one and the accused persons appeared in attempt to separate the fight. After the incident, the accused persons were spotted assisting Bar Maids in searching the deceased in the bushes, and on the next day they appeared before the police station. I do not think, for a person who has premeditated killing of human being and accomplishes his mission, may remain in his home village of the incident. The circumstance of the present case is distinct from the contest in Republic v. Wangoko Matienyi @ Njiwa, Criminal Session Case No. 518893 of 2023, where the accused was holding a knife rushing after Nyasurati Chacha intending to attack her, but was obstructed by Mr. Fred William Ramadhan @ Obunga to enter into Kibuyi Police Station, where Nyasurati Chacha had entered seeking for safety. In retaliation, the accused had attacked Mr. Fred William Ramadhan @ Obunga by using a knife at sensitive part of the neck to cause his death. The accused in the case had finally escaped his home village in favour of Musoma District in Mara Region. Similarly, the instant case is distinct from the precedent in Republic v. Zakaria Magea @ Mrefu, Criminal Session Case No. 529025 of 2023, where the accused went at the deceased's residence with a club and used the same to attack the deceased on the fore-head to cause death and escaped his home village for Ukerewe District in Mwanza Region. 20 In the instant case, there is also special circumstances, which the Republic has declined to explain in insisting the case in their favor. Both parties in this case admitted that the accused had confessed before police officers PW2, PW5 and D/Cpl. Cyril G. 5081 and before ordinary citizen PW1. The record shows further that the first witness was recorded confession statement by PW5 and second accused by police officer D/Cpl. Cyril G. 5081. However, the Republic had declined to bring the statements in the case for scrutiny purposes. The statements were recorded a day just after the incident hence they remain good fresh in human memories and first-hand information of what exactly transpired on the

day. The statements are important in two (2) levels: first, the best evidence is that given freely by the accused immediately after the incident (see: Mabala Masasi Mongwe v. Republic, Criminal Appeal No. 161 of 2010; and second, when accused persons confess commission of offences, the safest course is to have him repeat his statement before a justice of peace and bring the same in courts for scrutiny reasons (see: Bushiri Mashaka & Three Others v. Republic, Criminal Appeal No.45 of 1991). This court has been following the views of the Court of Appeal without any hesitation (see: Republic v. Mokiri Wambura @ Makuru, Criminal Session Case No. 70 of 2022 and Republic v. Massanja Karume @ Mohamed & Another, Criminal Session Case 21 No. 13 of 2018). In brief, the Republic has escaped the safest course as directed by our superior court. In such circumstances, it cannot insist on malice aforethought's the instant case. In any case, the position of the law has been that: where death * occurs as a result of a fight, the court should convict accused for a lesser offence of manslaughter, not murder. There is a bunch of decisions on the subject both at this court and the apex court (see: Jacob Asegelile Kakune v. Republic, Criminal Appeal No. 178 of 2017; Aloyce Kitosi v. Republic, Criminal Appeal No. 284 of 2009; Stanley Anthony Mrema v. Republic, Criminal Appeal No. 180 of 2005; Moses Mungasiani Laizer @ Chichi v. Republic [1994] TLR 222; Republic v. Chacha Mwita Mohere, Criminal Sessions Case No. 141 of 2022). Taking consideration of the principle of totality of materials brought by the parties in disputes, it is obvious that the cited seven

- (7) young persons in this case were in a fight. In such circumstance, one cannot say the last element, malice aforethought's the offence of murder was established in this case as per established standards in section 3 (2) (a) of the Evidence Act and precedents in Said Hemed v. Republic (supra) and Enock Kipela v. Republic (supra). Having said so, and in the end, I hereby hold the accused persons, Mr. Juma Turuka @ Turuka and Mr. Tano Christopher Sylvester, responsible for a lesser offence to murder, manslaughter 22 of the deceased, Mr. Lucas Petro Juma contrary to sections 195 and 198 of the Penal Code. Ordered accordingly. Right of appeal explained to the parties. F.H.Wuly^ Judge 02.12.2024 This Judgment was pronounced in open court in the presence of the accused persons, Mr. Juma Turuka @ Turuka and Mr. Tano Christopher Sylvester and their learned Defence Attorneys, Ms. Mary Samson and Mr. Samson Sarno and in the presence Ms. Damary Nyange, learned State Attorney for the Republic. Judge 02.12.2024 ANTECEDENTS Nyange: My Lord, the Republic does not possess previous criminal record of the accused persons. However, My Lord, we pray this court to issue serious sentences against the accused persons. My Lord, we have reasons to justify our prayer: First, the accused used sharp weapon to attack the deceased. It was a knife My Lord; second, they directed the knife at sensitive parts of the body ribs and stomach to touch ileum and heart of the deceased; third, My Lord, they attacked heart which is the source 23 of blood and life of human beings. My Lord, this shows the force used was very grave to touch the heart which is located inside the body; fourth, My Lord, the deceased also had wounds in the ileum and arteries. The organs were punctured by the knife. My Lord, the force used was so high; fifth, My Lord, the Tanzania Sentencing Guidelines of 2023 shows that this species of killing is placed at the high level of manslaughter. My Lord, at

page 37 of the Guidelines, the indicated sentence starts at ten (10) years to life imprisonment. My Lord, this court may use the Guidelines to sentence the accused persons; and sixth, My Lord, the deceased was alone and had no lethal weapon in comparison with weapon knife used by the accused persons. My Lord, the first accused had no reasons to use knife. My Lord, in brief we pray for serious sentences to be imposed against the accused persons in order to send lessons to persons who use sharp weapons to attack their fellow human beings. My Lord, that is all from the Republic. F. H. Mtulya Judge 02.11.2024

MITIGATIONS Samson: My Lord, we thank you. My Lord, for the first accused, we pray for a lenient sentence. We have good reasons to say so My 24 Lord. My Lord, I pray to register the reasons: first, the first accused is first offender. My Lord, it is the Republic which said so in antecedents hence there is no dispute on his good behavior; second, the first accused has already spent one (1) year and nine

- (9) months in custody. He was arrested on 12th March 2023 My Lord; third, My Lord, the Tanzania Sentencing Guidelines of 2023 allows reduction of time spent in custody; fourth, My Lord, the first accused had confessed lesser offence since 20th October 2023 at Preliminary Hearing in this court. He did so at the Police Station and this court during hearing of the case. My Lord, it is the Republic which spent time and monies of this court insisting on hearing of this criminal session case. If they had accepted our prayer from the beginning, we could not have long proceedings; and fifth, the first accused has a wife and two (2) children who depend on him. My Lord, we pray this court to issue lenient sentence for the accused to go back to his family. He is a bread winner of the family; sixth, My Lord, the Tanzania Sentencing Guidelines of 2023 shows that self defence is allowed and placed the attacks caused by self defence or excessive force at lower level of manslaughter. My Lord, it is the deceased who had caused his own death. He wanted to kill the first accused by use of sticks and firewood. My Lord, he left his premises to the crime scene to quarrel with the accused persons; seventh, My Lord, the accused cooperated in searching 25 the deceased unsuccessfully. My Lord, the conduct of the accused persons after the incident shows good behaviors. My Lord, finally the first accused is a young person aged twenty
- (22) years and can work to raise the economy of this State, if he is given an opportunity to participate in economic activities. My Lord, he may do so if this court issues a lenient sentence against him. My Lord that is all for the first accused person. F. H. Mtulya Judge 02.12.2024 Samo: My Lord, for the second accused, we also pray for a lenient sentence. Our reasons, My Lord, are as follows: first, the second accused has no any previous criminal record. This incident was a bad luck for him. My Lord, the second accused had intended to separate the dual from the fight, but it was unfortunate that the deceased started to attack him; second, My Lord, the second accused is a young person aged twenty-five (25) years and his family depends on him. He has one wife and three (3) children. My Lord, there is no any other person who can take care of his family; third, the second accused is suffering from chest pains and disabled at his right hand, as you can learn from him My Lord; fourth, the second accused has been in custody for one (1) year and nine (9) months. In his sentence, the period spent in custody may be 26 considered My Lord; fifth, the second accused and

Bar Maids had searched the deceased unsuccessfully at the nearest bushes. My Lord, on the second day the second accused went at the police station by using his own Bodaboda. My Lord, that displays good behavior of the second accused; and sixth, the second accused had confessed manslaughter at the Police Station, during Preliminary Hearing and during this Trial. My Lord, the second accused had asked me to write a letter to National Prosecutions Services in order to admit the offence of manslaughter, but the services had declined his request. My Lord, this shows repentance on part of the second accused. My Lord, if the services could have accepted his deal, we would not have spent all the costs in these proceedings. My Lord, that is all for the second accused person. F. H. Mtulya Judge

02.12.2024 SENTENCING ORDER Mr. Juma Turuka @ Turuka and Mr. Tano Christopher Sylvester were jointly prosecuted for murder of Mr. Lucas Petro Juma contrary to sections 196 and 197 of the Penal Code [Cap. 16 R.E. 2022] (the Penal Code). The incident had occurred on 11th March 2023 at Remagwe Village within Tarime District in Mara Region. After registration of all relevant materials in 27 witnessed and exhibits, the accused persons were found guilty of the lesser offence of manslaughter Contrary to Section 195 and 198 of Penal Code. During production of relevant antecedents and mitigations, the two (2) parties were contesting on appropriate penalties to be imposed against the accused persons. According to the Republic the accused must receive serious sentence as per nature of the offence and Tanzania Sentencing Guidelines of 2023, whereas the defence thinks that the accused persons have no previous criminal record and it was unfortunate for the incident to occur and in any case the dual have been admitting lesser offence of manslaughter since their arrest at the Police Station, during Plea Taking and Preliminary Hearing at this court. I have considered the materials brought by the parties and the law regulating sentencing of persons found guilty with the offence of manslaughter. The law in section 197 provides that any person convicted of manslaughter may be sentenced to life imprisonment. However, this court and Court of Appeal decide each case according to its own peculiar circumstances (see: Juma Mniko Muhere v. Republic, Criminal Appeal No. 211 of 2014; Republic v. Chacha Magabe @ Maganya, Criminal Session Case No. 69 of 2023; and Republic v. Modesta Chacha Marwa, Criminal Session Case No. 21489 of 2024). 28 In order to assist courts in resolving sentences depending on each peculiar circumstances, Judges and Magistrates were introduced with the Tanzania Sentencing Guideline of 2023 in attempt to have similar sentences in cases of the similar nature. The Guidelines places any to un-intention killing by use of sharp weapons at high level of manslaughter attracting up to life imprisonment. In the present case, the first accused used knife to stab the deceased on sensitive parts of body ribs and stomach whereas the second accused was holding and attacking the deceased in distinct series of events. As I indicated in this case, there was no specific intention or premeditation of the killing of the deceased hence each individual shall receive his appropriate sentence in accordance to his distinct role played during the attacks launched against the deceased. Having said so, I sentence the first accused to eight (8) years imprisonment from the date of this order and second accused to six

- (6) years imprisonment from the date of this order. It is so decided. This Sentencing Order was pronounced in open court in the presence of the accused persons, Mr. Juma Turuka @ Turuka and Mr. Tano Christopher Sylvester and their learned Defence Attorneys, Ms. Mary Samson and Mr. Samson Sarno and in the presence Ms. Damary Nyange, learned State Attorney for the Judge 02.12.2024 30
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