

TANZANIA / JUDGMENT

CRIMINAL SESSIONS NO

COURT
TANZLIIDECIDED
1 January 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY
OF ARUSHA AT ARUSHA CRIMINAL SESSION NO. 000040746 OF 2023
REPUBLIC..... COMPLAINANT VERSUS LUDOVICK
MULDAA..... ACCUSED PERSON

JUDGMENT

26/09/2024 & 10/ 10/2024 NDUMBARO, J LUDOVICK MULDAA, herein the accused person, stands charged with the offence of murder contrary to section 196 of the Penal Code, Cap 16 R.E 2022. It was alleged that on 1st June 2023 at Oldeani village within Karatu District in Arusha Region, with malice aforethought, did cause the death of one CHRISTOPHER S/O JOSEPH TANGO @ AKO S/O QWIFI. When the information was read to the accused, he pleaded not guilty to the charge. Throughout the hearing of this case, the republic was represented by Ms. Belinda Lwakatare, and assisted by Ms Hellen Sanga, both learned State Attorneys. The accused person, on the other hand, was represented by Mr. Victor Bernard, learned counsel. In proving the charge laid against the accused person, the prosecution paraded a total of seven (7) witnesses namely; Dr Hillary Placid (PW1), Shauri Tango (PW2) Simon Mendari Silas (PW3) G 4130 Coplo Mwita (PW4), Nicholous Christopher James (PW5), Shaban Mohamed Jumbe (PW6) and PF 21100 Assistant Inspector Malokola (PW7). The prosecution also tendered the following exhibits; Post Mortem Report (PI), a Sketch Map (P2) and a statement of one Bayo Lala (PE3). On the other hand, the defence had only one witness, the accused, who appeared as DW1 and did not have any exhibit to support his case. Brief facts of the case are as follows; On the date of the incident, PW5 the son of the deceased received information from one Bayo that there was a fight between his father (the deceased) and the accused person. Upon reaching the scene of the crime, he found the accused person on top of his father holding a bush knife. As he wanted to interrupt the fight, he was chased away by the accused person. This evidence was supported by that of PW2 the brother of the deceased, who stated that he was informed of the fight between the deceased and the accused person. Upon reaching the scene, he found the deceased unconscious. The deceased was first taken to the Police Station where PW7 ordered PW4 to issue a PF3 to the deceased. Unfortunately, it was stated by PW5 that, the deceased died on the way to the hospital. PW1 the doctor, testified in support of the prosecution case whereby he confirmed the death of the deceased. He also stated that he conducted a post-mortem and it was revealed that the cause of the death of the deceased was excessive bleeding. He also tendered the Post Mortem Report and the same was

admitted in court as exhibit "P1". Another exhibit that was tendered by the prosecution witness PW3 was a Sketch Map which was admitted in court and marked as exhibit "P2" and also the statement of one Bayo Lala was tendered by PW7 and it was admitted as exhibit "P3". On the part of the defence, the accused defended himself. Essentially, the accused contended that it was the deceased who started the fight. According to his testimony, he stated that the deceased was the first one to hit the accused person and he lost his teeth. He went on to state that, the deceased had a bush knife and he used it to cut the accused person on the shoulder as he wanted to cut him on his head, the accused pushed the deceased and he fell down. The accused raised the defence of self-defence and denied to have killed the deceased. The accused also showed the court old scars on both the right and left shoulders. Considering the prosecution evidence in particular the statement of BAYO LALA (Exhibit PE3) whose statements established that he was an eye witness during the commission of the crime and he saw them fighting and the accused was holding a bush knife. I have also taken into consideration the evidence of PW2, PW3 and PW5 who basically did not witness the commission of the crime but according to their testimonies, they received information that there was a fight between the deceased and the accused person and each one went to the scene of the crime and found the deceased had already been cut. PW5 in particular stated that as he arrived at the scene of the crime, he found the accused person on top of his father holding a bush knife and as he wanted to interrupt he was chased by the accused person. It should be remembered that even after the commission of the offence the accused person remained at the scene of the crime until when he was apprehended. Therefore, I am of the firm view that the question of the mistaken identity of the accused person cannot arise in the circumstances of this case. I have also examined the evidence of the accused person who tried to establish self-defence, stating that it was the deceased person who had started the fight although he denied having killed the deceased he stated that he was defending himself when he pushed the deceased and he fell down. This court also observed two old scars on his right and left shoulders which he stated that he was cut by the deceased in the course of the fight. In that regard, I have no reason to fault that in the absence of any plausible evidence establishing that the deceased may have been killed by another person other than the accused person. Indeed, it is trite law that every witness is entitled to credence and must be believed and his/her testimony accepted unless there are good and cogent reasons for not believing. See the case of Goodluck Kyando vs Republic

[2003] T.L.R 363. From the evidence of the prosecution above together with the defence of the accused person, this court is satisfied that it is the accused person who caused the death of the deceased. In proving a case of murder, the prosecution must prove (beyond reasonable doubt) that the person mentioned (deceased) is truly dead and that the accused person is the one who killed the deceased and he did so with malice aforethought. Therefore, since it is already established that it is the accused person who killed the deceased, the remaining essential question to be determined by this court is whether the accused person killed the deceased with malice aforethought. Prosecution side addressed the matter in their final submission that, accused intentionally killed the diseased as per testimony of PW5 Bayo Lala who saw accused on top of deceased.

However, it is undisputed fact that none was the eyewitness what inspired from the beginning. Bayo Lala found them fighting, who initiated the fight no one knows. If the deceased would be a live, would be the one to tell. However the accused testified they exchanged words which ended into fighting. Section 200 of the Penal Code defines malice aforethought and the same was judicially emphasized by the Court of Appeal of Tanzania in the case of Enock Kipela vs The Republic (Criminal Appeal 150 of

1994) [1999] TZCA 7 (10 June 1999) where it was stated that; "Usually, an attacker will not declare his intention to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various factors, including the following; 6

- i. The type and size of the weapon, if any used in the attack; ii. The amount of force applied in assault; iii. The part or parts of the body the blow was directed at or inflicted on; iv. The number of blows although one blow may, depending upon the facts of the particular case, be sufficient for this purpose;
- v. The kind of injuries inflicted; vi. The attacker's utterances, if any, made before, during or after the killing; and vii. The conduct of the attacker before, or after the killing." The above considered, the question that follows is; did the accused person kill the deceased with malice aforethought? After having carefully perused through the records, my answer is not in the affirmative. Considering the evidence of PW2, PW3 and PW5 it is established that the accused person and the deceased were in a fight. Even the statement of Bayo Lala who is the only eye witness in this case, established that he heard noise and when he followed where the noise was coming from, he found a fracas between the accused person and the deceased. It has been the position of the law that where death occurs as a result of a fight or on account of provocation the killing is manslaughter and not murder. See the case of Aloyce Kitosi vs Republic (Criminal Appeal 284 of 2009) [2012] TZCA 242 (6 December 2012). Manslaughter is distinguished from murder by lack of intention to kill. It is available where defences like provocation, intoxication, insanity and diminished responsibility are put forward by the defence side in a trial involving a murder charge. From the accused's evidence, he established that it was the deceased who started the fight and that he was defending himself when he pushed the deceased person and fell down. It has been held in a number of cases that death emanating from a fight reduces the seriousness of the killing with intent. See decisions in the cases of Moses Mungasian Laizer @ Chichi v. Republic [1994] T.L.R. 220 and Minani John & 2 Others vs The Republic, Criminal Appeal No. 435 of 2018 (Unreported). In the latter case the Court of Appeal of Tanzania held as follows; "There are a range of cases in which we had the occasion to underscore that where death occurs as a result of a fight, one cannot infer malice aforethought, with the effect that a charge of murder may be reduced to a lesser offence of manslaughter." The above being said, it is the finding of this court that in the absence of malice aforethought, a conviction for murder cannot stand. Therefore, the prosecution is found to have satisfactorily established the accused's guilt of the offence of manslaughter, unlike the offence of murder. I consequently convict the accused person of the offence of Manslaughter c/s 195 of the Penal Code, Cap 16

R.E 2022. It is so ordered. D. D. NDUMBARO JUDGE 10/10/2024 SENTENCE This court having convicted the accused person of the offence of manslaughter, it is now the duty of the court to assess appropriate sentence by considering both aggravating and mitigating factors. Ms. Hellena for the Republic though did not have any record in relation to the accused's previous conviction yet she prayed for imposition of unmerciful sentence against the accused so as to teach those who have a tendency of taking justice into their hands instead of reporting to the appropriate authorities. The accused through the learned counsel, Mr. Victor Bernard advanced the following mitigating factors; First, the accused person is the first offender and there are no any other previous records, this demonstrate good character to the accused person. Second, the learned counsel stated that the cause of the death of the deceased was a fracas that was initiated by the deceased and that the accused person was defending himself, therefore there was no any intention formulated by the accused person to kill the deceased. Third, that the accused person was also taken to the hospital for treatment of the injuries he sustained due to the fracas, the accused also showed the court the scars arising from the cut by the deceased and that he also lost his teeth. Lastly, the counsel stated that, had the accused person defended himself perhaps he would have been killed by the deceased. Mr. Bernard proposed for a sentence of low level since the accused person was fighting with the deceased and he was defending herself. Gathering from the sequence of events in the killing of the deceased, this court is wholly convinced that the accused's commission of the offence was facilitated by the fracas that occurred at the scene of the crime. More so, it was also the observation of this court that the accused person did not have any intention to kill the deceased as he was defending himself and that it was the deceased who initiated the fracas. I have also taken into consideration that the accused person also sustained injuries from the fracas and that he also lost his teeth. 10 I have also considered the accused person's mitigating factors that, he is the first offender, the factor which entitles a merciful sentence to the accused person. Similarly, that he was defending himself from a fracas that was initiated by the deceased and perhaps if he had not defended himself he would have been killed by the deceased. I have also in mind the aggravating facts that the deceased had left a widow and children who depended on him. It is therefore my opinion that the level of seriousness of the offence is low level and the actual sentence that may meet ends of justice in this unlawful killing is the term of FOUR (4) years imprisonment. The imposed sentence to start running from when the accused person was placed in custody that is on 06/02/2024 Order Accordingly. D. D. NDUMBARO JUDGE 10/10/2024 Court: The right of appeal to the Court of Appeal of Tanzania was fully explained to the parties. ii 12

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/321676/source_file/68d8c3f0a4559ebf/CRIMINAL_SESSIONS_NO_40746_OF_2023_THE_REPUBLIC_VS_LUDOVICK_MULDA.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/Murder-tanzlii-2023--6a3ea52c3b1caa9129825863>

Prepared on 12 October 2026 · Esheria