

TANZANIA / JUDGMENT

JUMA MASANJA JUDGMENT

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA CRIMINAL
SESSIONS CASE NO. 107 OF 2022 REPUBLIC VERSUS JUMA S/O MASANJA

JUDGMENT

23rd October, 2024 & 11th March, 2025 KAMANA, J. The accused Juma Masanja was arraigned before this court charged with an offence of murder contrary to sections 196 and 197 of the Penal Code, Cap. 16 [RE.2019]. The particulars of the offence were that on 2nd October, 2021 at Gulumungu Village, Misungwi District in Mwanza Region, the accused murdered Deleli Kuneta @William. The accused denied the charge. To prove the offence, the prosecution paraded six witnesses who were D6814 S/Sgt. Someke (PW1); X 2885 Sgt. Vicent (PW2); Tecla Anthony (PW3); Dr. Paschal Gerald Kalinga (PW4); Kuneta William (PW5); and F1647 Det. Cpl. Jumanne. In defence, only the accused testified. 1 The prosecution was led by Messrs. Adam Murusuri and Benedicto Ruguge, learned State Attorneys. The accused had the services of Mr. Godfrey Martin. It is trite law that in criminal proceedings, the onus to prove the alleged facts lies with the prosecution. The prosecution is placed under the duty to satisfy the court that the alleged facts are proven beyond a reasonable doubt. According to section 3(2) (a) of the Tanzania Evidence Act, Cap. 6 [RE.2019], a fact is considered to have been proved if the prosecution satisfies the court beyond reasonable doubt that the alleged fact exists. This position has been accentuated in multitudinous cases, including the case of Mohamed Haruna @ Mtupeni and Another v. Republic, Criminal Appeal No. 25 of 2007-CAT (Unreported), in which it was stated thus: ‘Of course, in cases of this nature, the burden of proof is always on the prosecution. The standard has always been proof beyond reasonable doubt.’ See: Woodmington v. DPP [1935] AC 462; Jonas Boniphas Massawe v. Republic, Criminal Appeal No. 52 of 2020-CAT (Unreported); Pascal Yoya Maganga v. Republic, Criminal Appeal No. 248 of 2017-CAT (Unreported); and Julius Mbwilo v. Republic, Criminal Appeal No. 351 of 2009-CAT (Unreported). 2 At this point, I think it is apposite to state that in murder cases, the prosecution is bound to prove beyond reasonable doubt four ingredients. First, whether there is a person who is dead; second, whether the cause of death is unlawful; third, whether the death was caused by malice aforethought; and fourth, whether the accused is responsible for causing death. See: Anthony Kinanila and Another

- v. Republic, Criminal Appeal No. 83 of 2021-CAT (Unreported). It is not in dispute that Kuneta is no more. His death was medically proved by Dr. Kalinga (PW4) from Misasi Health Centre who performed an autopsy at Sekou Toure Hospital. In his evidence, Dr. Kalinga testified that the cause of Kuneta's death was septic shock caused by being stabbed in his stomach. He amplified that due to the infection, other organs failed which led to Kuneta's death. The witness tendered a post-mortem examination report which was admitted as Exh. PE1. The Defence did not dispute this fact. In that case, I am convinced that the prosecution has proved beyond reasonable doubt that Kuneta is no more. As to whether Kuneta's death was unnatural, the autopsy report (Exh.PE1) reveals that Kuneta's death was precipitated by septic shock, a laparotomy wound and a stab wound. Further, PW4 testified that he found the deceased's body with two wounds. He explained that one 3 wound was caused by being stabbed with a sharp object and the other one was caused by a surgical operation, which was performed as a way to treat the septic shock. He testified that the wound that was caused by being stabbed was the one that led to Kuneta's death as it caused septic shock. The witness added that the laparotomy wound was infected by a stab wound which caused septic shock. Mr. Martin learned Counsel for the accused dwelled on this aspect by grilling PW4 with a view that there was a possibility that Kuneta's death was caused by the wound occasioned by surgical operation. However, PW4 maintained his position that the death was caused by septic shock due to a stab wound. I have given a thorough thought to this aspect and I am satisfied that the cause of death was both septic shock caused by a stab wound as testified by PW4 and laparotomy wound as reflected in the Exh.PE1. Assuming what was probed by Mr. Martin is true that the cause of death was a laparotomy wound only, I still hold that the cause of death was a septic shock caused by a stab wound that led Kuneta to undergo a laparotomy. My holding is premised on the provisions of section 203 of the Code. According to that section, a person is deemed to have caused the death of another person even though his act is not the immediate or 4 sole cause of death if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which cause death as long as the treatment was employed in good faith and with common knowledge and skill. Given that, the prosecution proved beyond a reasonable doubt that Kuneta's death was unnatural. Concerning the existence of malice aforethought so far as Kuneta's death is concerned, I wish to reproduce the contents of section 200 of the Code as follows: 'Malice aforethought shall be deemed to be established by evidence proving any one nor more of the following circumstances—
- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
 - (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether 5 death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

- (c) an intent to commit an offence punishable with a penalty which is graver than imprisonment for three years;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit an offence.' The then East African Court of Appeal had the opportunity to consider what constitutes malice aforethought in the case of Republic
- v. Tubere s/o Ochen [1945] 12 EACA 63 where it stated: 'That it is the duty of the court in determining whether malice aforethought has been established to consider the weapon used, the manner in which it was used and the part of the body injured, and the conduct of the Accused before, during, and after the attack.' Similarly, the Court of Appeal of Tanzania in the case of Mark Kisimiri v. Republic, Criminal Appeal No.39 of 2017-CAT (Unreported) quoted with approval its observation in the case of Enock Kipera v. Republic, Criminal Appeal No. 150 of 1994-CAT (Unreported) by stating: 6 '...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 by various factors including the following: The type and size of the weapon used, the amount of force applied, part or parts of the body or blow or blows are directed at or inflicted on, the number of blows although one blow may be sufficient for this purpose, the kind of injuries inflicted, the attacker's utterances if any made before or after killing, and the conduct of the attackers before and after killing.' According to Tecla Anthony (PW3), Kuneta told her that he was stabbed in his stomach with a knife. In my view, a knife in itself is a dangerous substance when it is used to stab a stomach, which is a sensitive organ. In that case, whoever stabbed the deceased in his stomach with a knife intended to cause grievous bodily harm or death. Further, I am of the view that the injury was severe to the extent that the deceased had to be attended to in three different health facilities. This was evidenced by PW3 and PW5 who testified that after the assault, the deceased was taken to Misasi Health Centre before being referred to Misungwi District Hospital and later to Sekou Toure Hospital. 7 Because of this, I hold that the prosecution proved beyond a reasonable doubt that Kuneta's death was premeditated. As to whether there is cogent evidence that the accused was the one who perpetrated the killing, PW3 who was the deceased's wife testified that on the material date around 0600 Hrs, they heard a knock on their door. She testified that she and the deceased opened the door and found the accused outside their house. The witness entered their house after exchanging greetings and offering her husband and the accused chairs. She evidenced that after a short while, she heard a voice screaming "Jamani nimeuawa". When she went outside, she found that the one screaming was Kuneta who was running after the accused. PW3 went on to testify that she followed them and found Kuneta lying down. According to this witness, Kuneta told him that he had been stabbed with a knife by Juma Masanja. From there, Kuneta was taken to Misasi Health Centre for medical care. Kuneta William (PW5) testified that upon receiving the information that his son had been stabbed with a knife, he went to see him at Sekou Toure Hospital. According to the witness, Kuneta told him that he had been stabbed with a knife by Juma. F1647 Det.Cpl. Jumanne (PW6), who was assigned to investigate the assault

committed by the accused against the deceased, testified 8 that in the course of the said investigation, he collected evidence, including the statement made by the late G7476 Cpl. Johnson who recorded the statement of the late Kuneta. According to the witness, the late G7476 Cpl. Johnson made a statement that he recorded Kuneta's statement in which he mentioned the accused as a person who assaulted him on 2nd October, 2021. The two statements made by G7476 Cpl. Johnson and Kuneta were admitted as Exh. PE2 and PE3 respectively. D6814 Det.Sgt. Someke (PW1) testified that on 4th October, 2021, he recorded the accused's cautioned statement for an offence of assault. According to this witness, the accused told him that on 2nd October, 2021, he went to Kuneta's house armed with a knife with a view to killing Kuneta whom he suspected to have a relationship with his wife. PW1's testimony was that after arriving at Kuneta's compound, he met with Kuneta's wife and when Kuneta came outside they sat together. Shortly thereafter, Kuneta went to the kitchen and when he came out of the kitchen, the accused told PW1 that he stabbed Kuneta's stomach with a knife before running away. PW1 evidenced that the accused told him that after stabbing Kuneta, he went to Ishokera which is a nearby village for hideout. The accused stayed in that village until 3rd October, 2021 when he decided to go back to his village to commit suicide. PW1 testified that the accused told him that he poisoned himself and was found by passersby who took him to Misasi Police Station and later to Misasi Health Centre where he was hospitalized before being discharged on 4th October, 2021 when he was interrogated. In defence, the accused (DW1) denied the charge. He testified that he had never known Kuneta. He evidenced that on 3rd October, 2021 while at his home he was arrested by three police officers in plain clothes. He testified that the police officers told him that he was mentioned by Kuneta as a person who stabbed him. He went on to testify that he was taken to Misasi Police Station where he was subjected to torture to force him to confess that he was the one who stabbed Kuneta. DW1 testified that the police officers told him that Kuneta told them that he had stabbed him as he suspected him of having an affair with his wife. Upon his refusal to confess, DW1 testified that he was put in a cell for some days before being taken to Misungwi Police Station where he was charged with an offence of murder. At this point, I wish to weigh the evidence adduced by the prosecution and the defence with a view to determining whether there is cogent evidence that the accused was responsible for killing Kuneta. In this, I wish to start with Kuneta's statement which amounts to a dying 10 declaration. When the same was about to be tendered, Mr. Martin objected that its tendering contravened section 34B(2)(e) of the Evidence Act, Cap. 6 [RE.2022]. He amplified that for such a statement to be considered by the court, the prosecution was required to file a notice ten days before the hearing. This was unwaveringly opposed by Mr. Murusuri who held the view that the ten days are for the other party to object. Upon reflection, I agree with Mr. Martin that for a dying declaration to be considered, the accused had ten days to think about it with a view to either objecting to its admissibility or otherwise. See: Six Ilanga Msaka, Criminal Appeal No. 484 of 2020-CAT (Unreported). Since that was not done, I hesitate to consider Kuneta's statement and related evidence as testified by PW1. This left me with the evidence of PW3 and PW5 who testified that Kuneta told them that the accused was the one who stabbed him with a knife. So far as the evidence of PW3 is concerned, I find her

evidence credible so far as to who caused Kuneta's death. This is because all along during her evidence, she testified that she was told by Kuneta that he was stabbed with a knife by Juma Masanja who was also known as Juma Mhunde. Worthy to note is that the witness testified to have known the accused since 2006 when she was married to Kuneta. This means that the accused was familiar to the witness. Her evidence was materially supported by Kuneta William (PW5) who testified that Kuneta told him that he was stabbed by Juma. During cross-examination, Mr. Martin challenged PW3's evidence by using her previous statement made to the police which was admitted as Exh.DE1. According to the statement, PW1 stated that he was told by Kuneta that he was stabbed by Juma Mhunde and that Juma Mhunde was the one who came to their home. In this regard, it should be noted that the purpose of using the previous statement made by the witness is to contradict the witness as far as the previous statement and the evidence before the court is concerned. The contradiction aims at shaking the credibility of the witness and not to disprove what was testified in evidence. That being the case, it is my considered view that PW3's credibility was not shaken by merely stating in her previous statement that she was told by Kuneta that he was stabbed by Juma Mhunde and not Juma Masanja as per her evidence. I take that position while in mind that PW3 in evidence in chief and cross-examination evidenced that Juma Masanja was also known as Juma Mhunde. 12 Apart from the dying declaration made by Kuneta, I have considered PW3's evidence in other aspects and am satisfied that PW3 by welcoming the accused at their compound and offering him a chair had the time to recognize him as Juma Masanja. Mr. Martin tried to discredit PW3's credibility by pointing at the contradictions as to who was the first to come out of the house to meet the accused between Kuneta and PW3. In my view that is a minor contradiction that does not go to the root of the case and might have been occasioned by memory lapse. It is an established principle that an accused should not be convicted on his weak defence but on the strength of the prosecution's case. See: Mohamed Haruna @Mtupeni (Supra). Further, it is an established principle that though the accused is not obliged to prove his innocence, he is duty-bound to raise doubts in the prosecution's case. I have considered the accused's evidence which is a general denial. He denied knowing the deceased. Based on that, he denied having a hand in killing him. This evidence suggests that on 2nd October, 2021, the accused did not go to Kuneta's home. It also suggests further that he was not responsible for stabbing Kuneta. When I consider this evidence and the one adduced by PW3, I find that the accused defence does not hold water. This is because if he did not go to Kuneta's home and ultimately stabbed him, surely, he was somewhere. That being the case, the defence of an alibi would serve the purpose of defending him against the accusation. However, in his evidence, the accused did not dent the prosecution's case by raising the defence of alibi, at least by evidencing where he was at the particular time when Kuneta was stabbed. As a matter of principle, the general denial is a self-serving defence and a weak one especially when the court believes the prosecution's witnesses. Given that, I am satisfied that the prosecution proved beyond a reasonable doubt that the accused was responsible for killing Kuneta. In the event, I convict Juma Masanja of the offence of murder contrary to sections 196 and 197 of the Code. AGGRAVATING FACTORS We have no previous record. However, it

is my submission that the accused be punished according to the law considering the fact that the accused stabbed the deceased in the stomach which is a sensitive part of the body. Further, the accused used the knife which is a dangerous substance to stab the deceased. Likewise, although the deceased was depended on by his wife and children, the accused decided to kill the deceased maliciously. The deceased's family is suffering. The deceased was depended by the nation as manpower. The acts of killing persons 14 are rampant. There is no place in which one's life can be purchased. That being the case, I urge your court to punish the accused according to the law so as to deter him and the society at large.

MITIGATING FACTORS Since the accused has been convicted, we have no mitigating factors as the penalty cannot be reduced. SENTENCE The murder offence attracts only one sentence. My hands are tied to my oath to safeguard the law in accordance with the Constitution and the laws of Tanzania. I do sentence you the accused JUMA MASANJA to death. I direct that you shall suffer death by hanging. Order accordingly. Right to Appeal DATED at MWANZA this 11th March, 2025. KS KAMANA JUDGE 15

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