

TANZANIA / JUDGMENT

shukrani richard maselo

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IN THE HIGH COURT OF TANZANIA DODOMA SUB - REGISTRY AT DODOMA CRIMINAL
SESSION CASE NO. 106 OF 2023 REPUBLIC VERSUS SHUKRANI RICHARD MASELO

JUDGMENT

11th February & 2nd March, 2025 MUSOKWA, J. The accused person herein was arraigned before this court on 10th February 2025, being charged with the offence of murder contrary to sections 196 and 197 of the Penal Code, Cap. 16, R.E. 2022 (Penal Code). According to the particulars of the offence, on 4th February, 2022 at Kisokwe Village within Mpwapwa District in the region of Dodoma, the accused person murdered one Albert Jackson Kaguli (hereinafter referred to as the deceased). Briefly, the facts provide that the accused person, is a resident of Dodoma. On the material date, the accused person paid a visit to his wife and his children who lived with their mother at Kisokwe Village in Mpwapwa District. Notably, the accused and his wife had separated. It is alleged further that i during night hours, the accused and the deceased had an encounter which resulted in a fight between the duo, ultimately leading to the demise of the deceased. Thereafter, the accused person allegedly ran away and was at large until the police finally managed to trace him. The police arrested the accused at Mkinga District in Tanga region on 25th April, 2023. Upon his arrest, the accused was transferred to Mpwapwa Police Station on 29th April, 2023. When the information was read against him before this court, the accused entered a plea of not guilty. In a bid to prove their case, the prosecution paraded a total of six witnesses and a number of exhibits. At the hearing of this matter, the Republic was represented by senior state attorney Ms. Patricia Mkina, assisted by learned state attorneys Ms. Namsifu Lukio and Mr. Ahmed Hatibu. The accused person had the service of Mr. Elisha Jones, learned counsel. Starting with the gist of the evidence adduced by the prosecution, the same is summarized hereinafter: - The testimony of PW1, a relative of the accused's wife, was to the effect that the accused and his wife had marital conflicts, resulting in a separation between them. PW1 stated further that in 2021, the wife of the accused 2 initiated divorce proceedings however, the proceedings were not finalized as the accused failed to cooperate. Further that the accused was mainly based in Dodoma where he conducted his business activities. The accused's wife remained in the village where she lived close to her relatives. Proceeding with his testimony, PW1 stated that the squabbles between the accused and his wife continued, resulting in accusations by the accused against his wife, that she was having an affair with the deceased. The deceased was a teacher in one of the schools in Kisokwe Village, in Mpwapwa District, the locality where the wife of the

accused resided. According to PW1, prior to the commission of the unlawful act, the accused had issued threats that he would murder the deceased. PW1 further testified that the accused had told him, that he would murder the deceased and thereafter, would dispose the head of the deceased at PW1's house. PW1 continued to testify that on 4th February 2022, at around 18:00hours, the accused arrived in their neighborhood and went to the house where his wife lived with their children. PW1 stated that he saw the accused sitting outside the said house and was talking to his children. However, PW1 returned to his house. Later, between 22:00 and 23:00hours, PW1 heard noises outside his house which woke him up, and it appeared that the noises were coming from the direction of the road. PW1 testified that he could see some light coming from the direction of the noise and he opened the window and began peeking outside. PW1 asserted that his house has electricity so there are lights inside and outside his house. Further that the neighbours' houses also have lights, therefore there was sufficient light to enable him to see what was happening outside. PW1 testified that he witnessed through his window, the accused beating the deceased. According to PW1, the accused and the deceased were initially fighting near a neighbour's house but they continued fighting while moving towards the road. PW1 stated further that the accused was beating the deceased on the head, and around the waist area targeting the ribs. Grippled by fear, PW1 remained in his house until he saw other villagers coming out of their houses. It is then that he mustered the courage to come out of his house. PW1 stated that the accused had also previously threatened him, hence his apprehension to leave his house under the circumstances. PW1 asserted that at a prior date, he had taken measures to report the threats that had been issued by the accused, to the Village Executive Officer (VEO). However, no action thereto was taken by the VEO. 4 Proceeding to testify on the events that transpired on the night of the fateful incident, PW1 stated that the villagers reported the matter to the VEO, who further informed the police. The police arrived at the crime scene the following morning, therefore on 5th February, 2022. According to PW1, the wife of the accused who also witnessed the fight, ran away during the fight between the accused and the deceased. During cross-examination, PW1 admitted that he had not produced any evidence before this court as proof of the alleged threats issued by the accused against the deceased. PW1 further stated that he went to sleep at around 20:30 hours while the accused, his wife and their children were outside their house talking. PW1 stated that the accused upon arrival at the village, went to his house to greet him, this was around 19:45 hours. However, PW1 was not certain whether or not after the said greeting, the accused went inside his wife's house, or whether he remained outside the house. According to PW1, the fight between the accused and the deceased began outside and not inside the house of the accused's wife. The second prosecution witness, PW2, is the medical doctor who conducted the autopsy of the deceased's body. This witness stated that he is currently stationed at Mpwapwa District Hospital in Dodoma region. PW2 testified that on 5th February 2022, he was assigned to conduct an autopsy of the corpse of the deceased, at Kisokwe Village. The police arrived at the hospital, and together with PW2, they headed to the crime scene at Kisokwe Village. PW2 testified that Police Officers George and John together with Teacher Robert, showed him the corpse of the deceased. The corpse was lying on the ground, near the road and surrounded by a pool of blood. According to PW2, there was an injury on the deceased's head. In conducting the post mortem examination, PW2 observed the presence of several severe injuries on the corpse. One injury was

located on the right side of the head, another on the face and another injury was located at the centre of the deceased's back, and extended to the lower back. PW2 further observed that there was blood around the mouth and throat areas of the corpse. In light of the aforementioned observations, the autopsy revealed that the cause of death was hemorrhagic shock secondary to multiple trauma. Further that the injuries were caused by a blunt object. After conducting the post mortem examination, PW2 retrieved blood samples from the mouth and blood veins of the corpse which he handed over to the police. PW2 further stated that the blunt object which allegedly was used in the commission of the crime, was seized by the police. 6 Thereafter, PW2 completed the post-mortem examination report which he also handed over to the police. The post-mortem examination report dated 5th February, 2022 was admitted and marked as "Exhibit PE1" without objection from the defence counsel. The testimony of the magistrate who recorded the extra-judicial statement was also procured. This witness, testifying as PW3, stated that her duty station is Mpwapwa Primary Court. Further that on 8th May 2023, at around 10:51hours, the accused person was brought before her by Sgt. George E.9168, of Mpwapwa Police station for the recording of his confession. PW3 duly complied with all the statutory requirements before proceeding to record the accused's confession. The accused in his confession stated that he was arrested in Tanga and was later taken to Mpwapwa Police Station. Narrating the confession of the accused, PW3 testified that on the material date, the accused was asleep with his wife when someone came at the door and began knocking while calling out his wife's name. Thereafter, the door was opened by the stranger. The accused shone his torch towards the direction of the intruder, the deceased. The deceased exclaimed "kumbe kuna mwanaume ndani" The accused then grabbed a pestle and hit the 7 deceased on the head whereby the deceased fell down and seeing what had happened, the accused fled. Upon the prayer of PW3, the extra-judicial statement dated 8th May, 2023 was admitted and marked as Exhibit "PE2". In cross-examination, PW3 stated that according to the confession, it was the deceased who first attacked the accused. On the other hand, the accused did not state which part of his body was hit. Accordingly, the accused claimed that his reaction was an act of self-defence. Further that the same pestle was used by the deceased to hit the accused, and vice versa. PW3 further stated that in the confession of the accused, he stated that the incident occurred in February, 2022. Therefore, almost one year and two months had lapsed by the time the accused was brought before PW3. In addition to the foregoing, PW3 admitted that while conducting the mandatory inspection of the accused as per the requirements of the law, she did not examine the accused's head. In re-examination, PW3 testified that after obtaining the consent of the accused, she examined his body and observed that there were some old scars located on the accused's back, palms, shoulders and left leg. 8 The prosecution also paraded as a witness, a police officer, with Police Force No. G. 4916 D/CPL Ramia who testified as PW4. This witness stated that he works in the investigation department at the Mpwapwa District Police Station. PW4 testified that on 5th February, 2022 during morning hours he was instructed by his supervisor, Superintendent Maulid Manu to undertake the investigation of the reported killing at Kisokwe Village. Together with his colleagues, PW4 headed to the crime scene where they found the body of the deceased lying on the ground. It appeared that the deceased had sustained injuries on the head, face and the back. It was around 9:30 hours when PW4 drew a sketch map of the crime scene, being guided by one Jamali Ibrahimu Athumani,

assistant chairman of the village, who informed PW4 that the incident had occurred the previous night, therefore on 4th February, 2022 at 22:00 hours. PW4 further observed that the houses located near the crime scene had electricity though he did not include electricity posts in the sketch map. After drawing the sketch map, PW4 witnessed the post mortem examination of the corpse, at the crime scene, conducted by PW2. Thereafter, the police transported the corpse to the mortuary at Mpwapwa District Hospital. The uncontested prayer of PW4 on the admission of the sketch map to form part 9 of the evidence was granted and the sketch map dated 5th February, 2025 was admitted and marked as Exhibit "PE3". In cross-examination, PW4 stated that the house of the accused's wife had no electricity. Another witness, namely F. 1739 D/Sgt John, a police officer in the investigation department who is also stationed at Mpwapwa Police Station, testified as PW5. In the morning hours of 5th February 2022, PW5 was assigned the task of recording the statement of the VEO of Kisokwe Village, one Patrick William, as the complainant in this matter. In the statement, Patrick William stated that a male person, a teacher by profession, and named Kaguli had been found dead. Thereafter, at around 11:00hours, PW5 together with Police Officer George headed to the hospital to witness the autopsy of the deceased's body being conducted. PW5 further informed the court that the said Patrick whose statement he recorded, is currently also deceased. Being cross-examined, PW5 stated that Patrick was not an eye witness to the incident. PW6 was E.9168 D/SGT George, another Police Officer in the investigation department, also stationed at Mpwapwa Police Station. This witness testified that on 5th February 2022, at around 7:00 hours, together with his colleagues, namely D/CPL Ramia and D/SGT John, they were instructed to pay a visit to the crime scene of the murder that had taken place at Kisokwe Village, in order to conduct an investigation. D/CPL Ramia drew the sketch map of the crime scene while the other police officers were involved in recording the statements of the witnesses. PW6 testified that the team of police officers also conducted a search of the area and further witnessed the post-mortem examination. The search resulted in locating the murder weapon in one of the houses nearby the crime scene. The said weapon was a pestle (mchi) which was stained with blood. Testifying further, PW6 stated that the pestle was seized. PW6 handled the murder weapon while wearing gloves and wrapped it with paper. Thereafter, he took the murder weapon to Mpwapwa Police Station for further investigation. Before leaving the crime scene, PW6 also took samples from the ground where the corpse had been found. Upon arrival at the Mpwapwa District Hospital, the team of investigators instructed PW2 to take another blood sample from the deceased's body. Subsequently, upon conclusion of the autopsy and preparation of the postmortem examination report by PW2, the body of the deceased was handed over to the relatives to prepare for burial arrangements. PW6 stated further that he was appointed the lead investigation officer of the instant case, whereby he was handed the Mpwapwa Investigation Register No. 153/2022 containing details of the case. Afterwards, PW6 consulted the cybercrimes department, seeking their assistance in locating the accused person who was at large. Finally, on 12th April 2023, PW6 was informed that an arrest of the accused had been made at Mtandikeni Police Post, in Mkinga District, Tanga region. Apparently, at the time, the accused was using an alias of Jackson Richard. On 28th April 2023, PW6 travelled to Tanga and upon arrival at Mtandikeni Police Station, was handed over the accused, who admitted that he had been using an alias of Jackson Richard. PW6 transported the accused back to Mpwapwa Police

Station where his cautioned statement was recorded by A/Insp. Lusekelo. On 6th May 2023, PW6 escorted the accused to Mpwapwa Primary Court, for the recording of the extra-judicial statement. Before leaving the court, the 12 justice of peace handed to PW6 an envelope containing the extra-judicial statement that had been signed by the accused. Further, it was admitted by PW6 that the accused, in the cautioned statement, stated that it was the deceased who first hit him, and that the incident occurred at Egra's house. In further response to the cross-examination, PW6 stated that he was not in possession of the murder weapon, the pestle, and therefore was not planning to tender the same as an exhibit to form part of his evidence. Additionally, PW6 stated that some blood samples that were retrieved from the crime scene were submitted to the government chemist for testing and a report thereto was issued. Upon closure of the prosecution case, this court ruled that a prima facie case had been established against the accused, who was invited by the court to enter his defence. In his defence, the accused was the sole witness and he gave his testimony under oath. In short, for the defense case, the accused DW1, started by completely denying the charges against him. To rebut the charges thereof, DW1 adduced evidence as follows; according to DW1, on 4th February, 2022 at 13 around 22:00 to 23:00hours, he was at home asleep with his wife. This was at Mpwapwa, Kisokwe village where he was born. The name of his wife is Egra Edson Makassy. While sleeping that night at around 22:00 hours, he heard someone knocking the door several times. He inquired from his wife if she knew the person knocking. His wife was not aware of the person knocking the door. At the time, he was whispering with his wife. The person who was knocking at the door began calling the name of his wife (Egra) who did not respond. Thereafter, the person pushed the door and opened it. DW1 woke up holding his phone, while shining the torch at the intruder who uttered the words "there is a man inside". Testifying further, DW1 stated that the intruder took the pestle and began to beat DW1 with it, whereby DW1 was beaten with the pestle once. The intruder tried to beat DW1 for the second time but DW1 caught the pestle, resulting in a struggle between the duo. DW1, unable to identify the intruder, also hit back the intruder as a means of self-defense. However, since it was dark, DW1 was unsure of which part of the intruder's body was hit. Thereafter, DW1 chased the intruder and both were headed towards the 14 road whereby as they reached the road, DW1 attacked the intruder again and as a result, the intruder fell down. After the fall thereof, DW1 stopped the beating and leaving the intruder on the ground, he went to his mother's house. The following day, rumors began spreading that there was someone who had been beaten up. When DW1 heard the rumors, he suspected that they were in relation to the incident that had transpired the previous night between him and the intruder. DW1 was afraid so he relocated to Dodoma Town and later to Tanga region where he was involved in agricultural activities before his arrest. After his arrest in Tanga on 6th April 2023, he was then taken back to Mpwapwa police post. While at Mpwapwa Police Post, DW1 was interrogated but denied the murder charges against him. Thereafter, DW1 was taken to the justice of peace and an extra judicial statement was recorded. He also showed a mark on his head resulting from the beating he had been subjected to from the intruder on the fateful day. DW1 testified further that Edson Makassy (PW1) is his father-in-law. However, DW1 refuted the testimony given by PW1 that DW1's marriage had challenges. DW1 stated that there are no divorce proceedings that were 15 instituted by either spouse in any court. In addition, DW1 denied allegations that he threatened the life of PW1. The

testimony of Sgt George (PW6) that DW1 was arrested in Tanga due to charges of causing grievous harm was also denied by DW1. However, DW1 admitted that he was arrested on the charges of killing a person at Mpwapwa. DW1 insisted that the incident at Mpwapwa occurred as he was merely defending himself. In his own words, DW1 stated that "NHifanya vile kwa kutokukusudia nilikuwa najitetea". Having considered the information and the evidence adduced by both parties, this court will now proceed to determine whether or not the case against the accused has been proven beyond reasonable doubt. Notably, in order to prove the offence of murder, there are several necessary elements that need to be established by the prosecution. In the recent case of Baruani Magoko @ Chacha vs Republic, Criminal Appeal No. 2 of 2022,

[2025] TZCA 162, (3rd March, 2025: TanzLII), the Court of Appeal of Tanzania (CAT) mentioned the said elements and held as follows: - 16 "...in proving the offence of murder under section 196 of the Penal Code, it must be established that the death of a human being occurred, that the death was unnatural and was caused by an unlawful act or omission, that it was the accused person who did the unlawful act or omission leading to the death of the deceased and finally that the death was caused with malice aforethought". [Emphasis added] In general, the evidence on record is clear, that the accused assaulted the deceased, and that the assault cumulatively caused the death of the deceased. This is established by the evidence of PW1 and PW2. Moreover, DW1 is also in agreement that on the fateful day, he had a fight with an intruder at the scene of the crime and that later he came to find out that it was teacher Albert Jackson, the deceased. In that regard, the death of the deceased was unnatural and it was caused by the assault of the accused. For clarity, the accused partly narrated in Exhibit "PE2" as follows: - "Uikuwa kama tarehe 4/02/2022 saa 6 kasoro hivi mimi nikuwa nimelala ndani na mke wangu nikasikia hodi kama mtu anabisha hodi lakini hakujibiwa. Akawa anaita Egra, Egra fungua mbona hutaki kufungua ndani kuna nani. Egra ambaye ni mke wangu, ndipo nikamwambia mke wangu amjibu anayebisha hodi. Akanijibu mimi mbona sina ahadi na mtu. Wakati tuna bishana lakini taratibu, miango u/ikuwa haujafungwa na komeo ndipo akasema anasukuma aingie ndani, akaingia ndani moja kwa moja hadi chumbani. Ndiyo nikammuiika na tochi ya simu na kuumuliza wewe ni nani ndipo akashituka kuwa ndani kuna mtu ndipo akachukua mchi akanipiga nao kichwani akanipasua kichwa na damu zikatoka na kuanza kujiu/iza ni nani na mimi nipo 17 na mke wangu mbona sieiewi, mara akatupia mara ya pili, ndipo nikadaka uie mchi tukaanza kunyang'anyana huo mchi nikampoia huo mchi kutokana na vile ahvyonipiga na mimi nikamrudishia nikampiga kitu kama kichwani kwani Hikuwa ni usiku ndiyo akaanguka chini nikamwacha na kurudi kwa mke wangu na kuumuiiza kwamba kuna mwanaume anayekujaga hapa. Ndipo uieue usiku nikaondoka na kumwacha yule mtu yupo chini nikakimbilia, nikakimbilia nyumbani kwa wazazi wangu. Asubuhi ndiyo nikasikia kuwa kuna watu wanasema kuna mtu kapigwa nikashituka nikajiuiiza atakuwa ndiye yule niiyempiga, akiii yangu Hikuwa Hishavurugika ikabidi niondoke nikaenda Dodoma baadaye nikaenda Tanga. Ndiyo nikakaa ndiyo tena nikakamatwa ndiyo baadaye nikagundua niiyempiga a/ikuwa Mwalimu Albert Jackson na nikapata taarifa kuwa aiifariki lakini kwa usiku wa tukio

sikumtambua na waia sikujua kama aiifariki. Ndiyo hayo maeiezo yangu"[Emphasis added] The next question is whether or not the death of the deceased was caused with malice aforethought. Regarding this point, the CAT case of Kigumbe Magechi @ Kigumbe vs Republic, Criminal Appeal No. 363 of 2021,

[2025] TZCA 88, (25th February, 2025: TanzLII) held as follows: - "The legal stance expressed by this Court in a string of cases including Minani John and Others v. Republic (supra)... is that, where death occurs as a result of a fight, unless there are exceptional circumstances to the contrary, one cannot infer malice aforethought, with the effect that a charge of murder may be reduced to a lesser offence of manslaughter." [Emphasis added] It is also important to make reference to the evidence on record adduced by both parties. According to PW1, it was testified that the accused and the 18 deceased were initially fighting near a neighbour's house but they continued fighting while moving towards the road. The testimony of PW3 was also procured. When cross examined, PW3 stated that according to the confession of the accused, it was the deceased who first attacked the accused on his head using the same pestle. Accordingly, the accused claimed that he reacted merely as self-defense. Moreover, as indicated above, the accused stated in Exhibit "PE2" that kutokana na vile a/ivyonipiga na mimi nikamrudishia nikampiga kitu kama kichwani kwani Hikuwa ni usiku" In its totality, the evidence and circumstances in this matter, clearly indicate as follows: - First, there is no evidence that was brought up by the prosecution in an attempt to establish if at all the accused uttered any words in the course of assaulting the deceased. Second, the beating or assault was not directed to a specific part of the deceased's body, rather it was random beating. According to the testimony of DW1, the beating was random because it was dark or night hours. Third, the deceased was the first to attack the accused using the alleged pestle. Fourth, the source of assault was the act of the deceased intruding the residence of the accused at around 22:00 to 23:00 hours while calling the wife of the accused. Fifth, the prosecution failed to produce and tender the pestle which was used to inflict injuries to the deceased. Sixth, the testimony of PW1 regarding prior threats uttered by the accused against the deceased were not established. Indeed, when cross examined, PW1 admitted that he had not submitted any evidence before this court as proof of the alleged threats issued by the accused against the deceased. From the cumulative reasons above, it is my considered view that the accused lacked malice aforethought in the incident that led to the death of the deceased. In light of the above, the offence of murder cannot be established against the accused. In lieu thereof, I convict the accused with a lesser and cognate offence of manslaughter contrary to sections 195 and 198 of the Penal Code. SENTENCE The submissions by the prosecution and those of the defence counsel on the aggravating and mitigating factors have carefully been taken into consideration. Notably, the unlawful act of the offender has resulted in loss of human life. Equally important, PW2 being the medical doctor, testified that one injury was located on the right side of the head, another on the face and another injury was located at the centre of the deceased's back, and extended to the lower back. It was further observed by PW2 that there was blood around the mouth and throat areas of the

corpse. Thus, the autopsy revealed that the cause of death was severe bleeding as a result of the deep wounds. In the instant matter, the records further provide that the offender used a pestle in the assault, resulting in the deep wounds. Therefore, the killing was brutal and violent, to say the least. The sentence upon a conviction of manslaughter is provided under section 198 of the Penal Code to the maximum punishment of life imprisonment. However, I have considered the fact that the offender, is a first- time offender. The prevailing circumstances surrounding the commission of the offence have also been taken into account. The aforementioned factors provide sufficient grounds for lenience of sentence. Consequently, the offender, namely Shukrani Richard Maselo is hereby sentenced to serve ten (10) years imprisonment counting from the date of 21 his arrest, that is, on 6th April, 2023; see the CAT case of Kigumbe Magechi @ Kigumbe (supra). Right of appeal is fully explained. DATED at DODOMA this 28th day of March, 2025. 22

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