

TANZANIA / JUDGMENT

CRIMINAL SESSIONS NO

COURT
TANZLIIDECIDED
11 October 2024

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

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA ARUSHA SUB REGISTRY AT
ARUSHA CRIMINAL SESSION NO. 50 OF 2018 THE
REPUBLIC.....COMPLAINANT VERSUS KANAEL EMMANUEL
PALANGYO..... ACCUSED

JUDGMENT

09/ 09/2024 & 11/ 10/2024 NDUMBARO, 3 This is the second trial, following an appeal by the accused challenging this court's judgment dated 06th March 2020 to the Court of Appeal of Tanzania. The Court of Appeal vide Criminal Appeal No. 19 of 2021 whose judgment was delivered on the 18/07/2024 directed that the case be re-tried before another judge in accordance with the law. I am aware that pursuant to Written Laws (Miscellaneous Amendments) Act, No. 1 of 2022, it is no longer a legal requirement for trials before the High Court to be conducted with the aid of assessors. However, for the interest of justice I find it apposite to sit with court assessors in the course of hearing of this case considering the nature of the offence and that at the time of the commission of the offence assessors were mandatorily required by the law to sit with the trial judge. The above said, I now proceed with determination of this case here under; The accused, Kanael Emanuel @ Palangyo is charged with the offence of Murder contrary to section 196 of the Penal Code, Chapter 16 Revision Edition, 2002. He is alleged to have murdered one Emmanuel s/o Elia @ Pallangyo (1st deceased) and Ndeshukurwa Emmanuel @ Pallangyo (2nd deceased). It is further alleged by the Prosecution that on the 14th August 2015 at Kilinga Village within Arumeru District in Arusha Region, the accused person did murder the above-mentioned deceased on the same date and on the same place. When the charge was read over to him, the accused person patently pleaded not guilty to the charge. In compliance with the order of the Court of Appeal of Tanzania, the case was fixed and called on before the court for re-trial and throughout its hearing the Republic was duly represented by Mr. Filbert Msuya assisted by Mr. Stanslaus Alawi learned State Attorneys whilst the accused was represented by Mr. Simon Mbwambo learned counsel. In proving their charge against the accused person, the Republic summoned a total of five (5) witnesses namely; Junior Elias (PW1), Elisha Emmanuel Pallangyo (PW2), Elirehema Emmanuel Mwenda (PW3), D.3876 SSGT George Mhumbe (Rtd) (PW4) and F. 2467 D/CPL Henry (PW5). Equally, the prosecution side was able to tender the following documentary exhibits in support of their charge notably; One Caution Statement (PI) and Two Post Mortem Reports collectively (P2). Brief evidence for the prosecution is as follows; that, on

the material date (14/08/2015), the accused person went to the house of his deceased parents. Upon reaching there, he asked PW1 and PW2 the grandson and the son of the deceased persons respectively whether they were going to school, at that time PW1 and PW2 saw the accused with a bush knife. He first assaulted his mother with the said bush knife on the head and she fell. After hitting his mother, the accused went to hit his father with the same bush knife and at that time his father was still asleep. At that time PW1 and PW2 went to sit outside at the foundation of the house about 20 steps from the house of the deceased and they were able to see the accused coming out of his parents' house with a bush knife covered with blood and he went to his wooden flat house. PW1 and PW2 went on to testify that after the accused has got out of the deceased's house they saw PW3 Elirehema Emmanuel going to the house of the deceased house and after he went in and found the dead bodies of his parents and raised an alarm to call the neighbors. PW1 and PW2 informed the court that, at the time of the commission of the offence they were 6 and 7 years old respectively. Another prosecution evidence is that of PW3 Elirehema Mollel Mwenda, the brother of the accused. His evidence established that on the material day, he went to his parents' house to greet them but upon entering the house, he found his parents dead and they were cut by a bush knife on the head and there was blood in the room. He there after raised an alarm and his uncle (Baba Mdogo) came together with other villagers and later on the Police Officer was called. PW5 also informed the court that at the time he was entering into his father's house, the accused person was outside his wooden flat house saying that there is still one person remaining and he was still having the bush knife. PW1 and PW2 at that time were outside nearby the deceased's house and they informed him that they were chased away by the accused. Prosecution case was further proved by the caution statement of the accused person which was tendered and admitted without objection from the defence as exhibit PI. This exhibit was tendered by PW4 D.3876 SSGT George Mhumbe (Rtd). According to the exhibit, the accused person admitted that, on the material day he killed both his mother and father using a bush knife. This evidence was also supported by that of PW5 F. 2467 D/CPL Henry, an investigator who tendered two postmortem reports of the deceased persons which were admitted and marked as exhibit P2 collectively. Exhibit P2 indicated that there were multiple scars and wounds penetrating to the skull of the deceased bodies. After the accused being found to have a case to answer, he was availed an opportunity to prepare for his defence. On the part of the defence, the version of his story is as follows; the accused denied to have killed his parents. To justify his defence, the accused raised the defence of alibi stating that on the material date (14/08/2015) he went to the farm and when he came back to take his hoe he was surrounded by people accusing him of killing his parents. He admitted to have been arrested on the same date but alleged to have been beaten by the Police and he was required to sign some documents. He therefore prayed this court to set him free as he is not associated with the killing of his parents. On cross examination, the accused admitted to be familiar with PW1 and PW2 as they are his relatives and that they were able to identify him. He also stated that he had any quarrels with the PW1 and PW2 respectively. From the evidence adduced by both sides, it is undisputed that the deceased persons were the parents of the accused person and that they were killed on 14th August 2015 and it is the same date which the accused person was also arrested on allegation to kill the deceased persons. It is now time for this court to determine whether the accused person is guilty

or innocent of the offence of murder in question, in doing so, the following issues will have to be addressed;

1. Whether the previous and subsequent conducts of the accused person sufficiently proved the guilt of the accused person.
2. Whether the defence of Alibi was properly raised by the accused person and whether it carries weight.
3. Whether the prosecution case was proved beyond reasonable doubt. On the first issue as to whether the previous and subsequent conducts of the accused person sufficiently prove the guilty of the accused person. In the case at hand it is the evidence of PW1 and PW2 who are the key witnesses who witnessed the commission of the offence. In their testimonies PW1 and PW2 informed this court that on the material date, they were at the house of the deceased persons when the accused person came in the house with a bush knife. He first assaulted PW2 asking him why he was late to go to school. They also stated that, the accused person started to cut the grandmother of PW1 who is the mother of PW2 first. He used the bush knife he was holding to cut the back of her neck. There after they saw him going to where the grandfather/father was sleeping, before he woke up, the accused person did cut him using the same bush knife. After that incident, PW1 and PW2 ran away and went to stay in a house foundation that was nearby and they saw the accused person coming out of the house with a bush knife covered with blood. To my considered view, PW1 and PW2 are credible witnesses and their evidence is direct taking into consideration that at the time of the commission of the offence PW1 was 6 years while PW2 was seven years old. Although they were of tender age but it is my view that at that age they were able to understand everything that was happening taking into account that they were leaving together with the deceased persons in the same house and the accused person was also well known to them as he used to live nearby his parent's house. Therefore, there is no way this court is convinced that in the circumstances of this case there can arise a question as to mistake of identity of the accused person. It should also be noted that while testifying, PW1 and PW2 stated that the accused person came before they went to school, this implies that the commission of the offence occurred at day time and therefore PW1 and PW2 were able to properly identify the accused person and they were also able to see the whole incident as it occurred inside the house where they were staying. It was further testified that after the commission of the offence, the accused person went to stay into his wooden flat house, even when the alarm was raised at his parents' house he did not respond. One may ask how is it possible for a child to just stay without responding to an alarm that was raised in his parents' house without bothering to inquire what was happening. It should be remembered that the accused person when cross-examined by Mr Alawi State Attorney stated that the police officers arrested him while at his wooden flat house. It was further testified by PW3 the brother of the accused person that as he was going into the house of his parents he found the accused person out of his wooden flat house having his bush knife saying that "there is one more person remaining". Prosecution evidence further established that after the

accused person was arrested, he recorded his caution statement by PW4. The caution statement of the accused person was admitted in court as exhibit PI. I have thoroughly gone through the caution statement of the accused person, it is well-detailed and explanatory, despite the family back ground, the accused gave a piece of very detailed information pertaining to the alleged crime which any common person would not expect to be given by any person other than the person who committed. In the said caution statement, the accused person admitted to having committed the said offence to his biological parents and therefore his defence that he did not know the document that was tendered in this court and that he did not know what he signed. To me, this is an afterthought, as the records are also clear that while the prosecution was tendering the accused person's caution statement the defence did not object to its admissibility. The above said, this court is satisfied that the previous and subsequent conducts of the accused person have proved the guilt of the accused person. I now turn to the second issue, whether the defence of Alibi was properly raised by the accused and whether it carries weight. It is the requirement of the law under section 194 (4) of the Criminal Procedure Act Cap 20 R.E 2022 that an accused person who intends to rely on the defence of alibi must furnish the notice to the court and the prosecution before hearing of the case. For easy of clarity the said provision of the law is reproduced hereunder; "(4) Where an accused person intends to rely upon an alibi in his defence, he shall give to the court and the prosecution notice of his intention to rely on such defence before the hearing of the case." In his defence, the accused person raised a defence of alibi in the sense that he went to his farm and as he was coming back home he was arrested on the allegation that he killed his parents. Reading between the lines on the requirement of the above-cited provision of the law, it is my firm stand that, the accused person did not issue the notice of his intention to rely on the defence of alibi to the court and the prosecution and therefore the defence was improperly raised. Nevertheless, in the case of *Mwita Mhere and Ibrahim Mhere vs Republic* [2005] T L R 107 the Court of Appeal of Tanzania stated that the court may take into recognition of the said defence to whether it carries weight. For easy of clarity the holding is reproduced hereunder; "That the trial court is not authorised by the provision to treat the defence of alibi like it was never made, the trial court has to take cognizance of that defence and it may exercise its discretion to accord no weight to the defence." I have extensively considered the defence of alibi raised by the accused person that on the material date he was not at home and that he went to his farm and when he was coming back he was surrounded by the community accusing him of having killed his parents. With due respect, I find this evidence wanting as it was not corroborated by any other tangible evidence to support his assertion that can exclude the possibility of him being at the scene of the crime. In the premises, it is my view that the said defence of alibi has not shaken the prosecution evidence and therefore I disregard the said defence. The last issue, is whether the prosecution case was proved beyond reasonable doubt. It is the opinion of the court assessors who sat with me Rogathe Marcus, Julius Saruni and Mwanaidi Hassani opined that the prosecution case was proved beyond reasonable doubt that the accused 11 person has committed the offence of murder. The basis of their opinion is that; First, PW1 and PW2 are credible witnesses who are familiar to the accused

person and they properly identified him. More so, they witnessed the killing of the deceased persons by the accused on the material date. Second, it was their opinion that the prosecution case was proved beyond reasonable doubt basing on the caution statement of the accused person which was received in court without objection. It was their opinion that the said caution statement gave an account of how the offence was committed and in fact, the accused person admitted in the said caution statement to have killed the deceased persons. Third, it was their opinion that, the defence evidence did not shake the credibility of the prosecution case. I have considered the evidence of the prosecution in particular on the evidence of PW1 and PW2 who are the direct/eye witnesses in this case, together with the evidence of PW3 the brother of the accused person who went into his parents' house to greet them and found the lifeless bodies of his parents. Before he entered into the house of his parents, PW3 stated that he found the accused person outside his wooden flat house holding a bush knife altering words that there is still one remaining. I have also considered the accused person's caution 12 statement where he admitted to have committed the offence before PW4 who was recording his statement. I have also examined the post-mortem report of the deceased persons which were tendered in this court by PW5 and the same were collectively marked as exhibit P2. The said exhibit shows that the deceased had multiple cut wounds on the skull and chest. To my view the accused person inflicted wounds to the deceased persons on very sensitive parts of the bodies and even the weapon that was used to cut the deceased is a very dangerous weapon. It is further observed from the records that the accused person had no any grudges either to from the deceased or his relatives who came to testify in court. All the above facts clearly prove that the killing of the deceased persons was with malice aforethought. It is cardinal principle in criminal law that the burden of proof in criminal cases is beyond reasonable doubt, and the duty lies with the prosecution to prove its case beyond all reasonable doubts. There is no duty casted in the accused to prove his innocence. This position was reiterated by the Court of Appeal in a number of decisions including Nchangwa Marwa Wambura vs Republic, Criminal Appeal No. 44 of 2017 (unreported) where it held: 13 "It is trite law that the burden of proof against the accused always ties on the prosecution and no conviction shall be entered on account of weak defence but upon proof of the case beyond reasonable doubt. " See also: John Makolebela Kulwa Makolobela and Eric Juma alias Tanganyika, [2002] T.L.R. 296 and Joseph John Makune vs Republic [1986] TLR 44. In the case at hand, the Prosecution has discharged its duty. They have proved the case beyond all reasonable doubts. The above said, the accused person is hereby found guilty of the offence of murder in both counts. I therefore proceed to convict him of the offence of murder c/s 196 of the Penal Code Cap 16 R.E 2002 in both counts. It is so ordered. D. D. NDUMBARO JUDGE 11/10/2024 ORDER: The law under section 197 of the Penal Code Cap 16 R.E 2002 is quite clear that the offence of murder that the accused stands charged is a serious one and it carries a serious punishment of death by 14 hanging. Accordingly, the accused person KANAEL EMMANUEL @ PALLANGYO is hereby sentenced to DEATH BY HANGING in each count. Sentence to run concurrently. D. D. NDUMBARO JUDGE 11/10/2024 Right af^ppgjaj-<o the Court of Appeal of Tanzania is fully explained / ■.*' / t \ D. D. NDUMBARO JUDGE 11/10/2024 15

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/321664/source_file/dbfc45686716f44a/CRIMINAL_SESSIONS_NO_50_OF_2028_THE_REPUBLIC_VS_KANAEL_PALLANGYO.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/Murder-tanzlii-2028--6a3ea52e3b1caa91298271b3>

Prepared on 12 October 2026 · Esheria