

TANZANIA / JUDGMENT

republic vs mwapulise mfikwa and another 2021 tzhc 9224 17 november 2021

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA AT NJOMBE (IRINGA REGISTRY) CRIMINAL SESSION CASE NO. 02 OF 2018 THE REPUBLIC VERSUS MWAPULISE MFIKWA..... 1st ACCUSED MANASE MHADA..... 2nd ACCUSED Date of last Order 17/11/2021 Date of Judgment 26/11/2021

JUDGMENT

MATOGOLO, J. The accused persons in this case namely Mwapulise s/o Mfikwa and Manase s/o Mhada 1st and 2nd accused respectively are charged with the offence of murder contrary to Section 196 of the Penal Code Cap. 16 R.E.

2002. It is alleged in the particulars of offence that on 08th day of May, 2015 at Ihanga village within the District and Region of Njombe the two accused persons did murder one Eva D/O Merikion Mgaya. When the charge was read to them, both accused persons pleaded not guilty. 1 | Page At the hearing, Mr. Matiku Nyangero learned State Attorney appeared for the Republic. The 1st accused was represented by Mr. Octavian Mbungani learned advocate and the 2nd accused was represented by Mr. Jerome Njiwa learned advocate. In order to prove their case, the prosecution side fielded a total of seven witnesses namely, Dr. Kiondo Solomon Kiondo, (PW1), F. 3845 CPL Bedon (PW2), H. 4088 D/C Zakayo (PW3), WP 2012 D/ Sgt Mwanaidi Joseph (PW4), E. 4186 D/Sgt. Salehe (PW5), Pascal Mwakiliche (PW6) and Winfredy Ng'olo (PW7). The prosecution also tendered in court the following exhibits:- Report on postmortem examination (exhibit P1), Sketch Map of the scene of crime (exhibit P2), Ballistic Laboratory examination report (exhibit P.3), Caution statement of second accused (exhibit P4) Short gun, one round of ammunition and one spent cartridge (exhibit P.5), two mobile phones Tecno and saccoo (exhibit P6) and cautioned statement of the 1st accused (exhibit P7). In his evidence Dr. Kiondo Solomon Kiondo (PW1), told this court that in 2015 he was working with Njombe town council hospital popularly known as Kibena Hospital. On 09/05/2015 he conducted postmortem examination to the deceased body of Eva d/o Merikion Mgaya at Ihanga village where he went in the company of police officers. PW1 tendered in court the report he prepared after postmortem examination. The same was admitted in court as exhibit P1. In that report he indicated that the deceased body had penetrative wound of approximately 4cm x3cm size on the anterior chest. PW1 opined 2 |

Page that the cause of death was due to haemorrhage from anterior chest wound. F. 3845 CPL Bedon told this court that on 09/05/2015 he was among the police officers who went at the scene of crime at Ihanga village. He was assigned to draw sketch map of the scene of crime. He tendered in court that sketch map which was admitted as exhibit P2. H. 4088 D/ Constable Zakayo (PW3) told this court that is the fire arms examiner in the police headquarter Forensic Bureau Ballistic Laboratory. On 5th June, 2017 they received exhibits from D/CPL Salehe from Njombe District Crime office with a letter reference No. NJ/CID/ C.10/A/278 dated 2nd June, 2017. PW3 was assigned to examine those exhibits which were one gun and two live ammunitions for purpose of determining their types functioning test and effects. PW3 said he examined those exhibits. The gun was homemade which was functioning designed to fire ammunitions of caliber 12 bore and two live ammunitions of 12 caliber bore which he said were functioning properly PW3 tendered in court examination report of the exhibits in NJ/IR/917/2015 concerning murder. The same was admitted as exhibit P3. Another prosecution witness is WP. 2012 D/Sgt Mwanaidi Joseph, a retired police officer who told this court that in 2015 she was stationed at Njombe police station in criminal investigations. On 09/05/2015 she interviewed the 2nd accused Manase s/o Mhada and recorded his cautioned statement as she was suspected for the murder of Eva Merikion Mgaya which happened at Ihanga village. PW4 tendered in court the said 3 | Page cautioned statement which was admitted as exhibit P4. In that statement 2nd accused explained the way he went to Heyege s/o Ng'olo on 05/05/2015, who told him that there was a deal to do at the house of Winfredy Ng'olo for invading him on 06/05/2015. At 2:00 pm himself and Heyege Ng'olo went to Kifanya village using his motorcycle with reg No. T. 954 SHN Star. He was introduced to Mwapulise s/o Mfikwa. They planned and agreed to invade one Winfredy Ng'olo on 08/05/2015 at 08:00pm. On that date second accused followed the 1st accused at Kifanya, at about 08:00pm they were already to Heyege while Mwapulise had a gun. Three of them proceeded to the house of Winfredy Ng'olo while Mwapulisa Mfikwa armed with a gun. They found Winfredy Ng'olo and his wife have not returned. They went to the rear part of the house and wait them. At 09:00 pm they returned on the motorcycle. After he has parked the motorcycle Winfredy returned at the gate for purpose of closing the same, it is when they put him under their control forcing him to go inside his house at gun point. Mwapulisa Mfikwa and Heyege Ng'olo went with him up to the bed room while the second accused Manase Mhada remained outside to make sure that the area is safe. Shortly thereafter the deceased left from the kitchen to the main house. After a short time he heard a gun shot. He heard Winfredy Ng'olo crying and shouting. They all ran away each taking his own direction. In that cautioned statement, the second accused admitted to have committed the offence while together with Heyege Ng'olo and Mwapulisa Mfikwa. On his part PW5 D/Sgt. Salehe told this court that the role he took in this case, firstly, he said on 08/05/2015 he was the CRO incharge at the 4 | Page police station Njombe. At about 11:00pm a murder incident which happened at Ihanga village was reported. He was among the police officers who left with other police officers to Kifanya village where the 1st accused was said to be present. Upon arrival they were informed that the suspect had a mobile phone who was appearing at the mobile phone tower of Kifanya. They traced him

in collaboration with villagers and militia. They saw him hiding in the shrubs. They arrested him after one Pascal has jumped to him. They found him possessing a gun and two rounds of ammunition one in the chamber of the gun and one was in the 1st accused pocket. But he had also two mobile phones one Tecno which was identified by Winfredy Ng'olo to belong to him after he has shown them special mark he put inside under the battery by writing initials of his name Win. But the other phone belonged to him. On 09/05/2015 at 03:00pm PW5 was assigned to interview and record the 1st accused statement. He tendered in court that statement which was admitted as exhibit P7. On 05/06/2015 PW5 sent the gun and 2 round of ammunition to the police headquarters Forensic Bureau which he handed them to D/C Zakayo on 08/06/2015. Later he received a phone call from D/C Zakayo informing him to go to collect the exhibits. He went there where D/C Zakayo handed to him a gun one live ammunition and one spent cartridge. PW5 described the gun (shortgun) locally made which is short as its barrel is cut. It was labelled KI FBBA/LL/LAB/51/2017 and reference No. NJ/IR/917/2015. PW5 tendered in court the gun, one live ammunition and one spent cartridge. The same were admitted as exhibit P6 collectively. 5 | Pa ge In his cautioned statement 1st accused Mwapulise Mfikwa basically admitted to have committed the offence being assisted by Heyege Ng'olo and Manase Mhada. He explained the way he was approached by Heyege Ng'olo to eliminate one person whom he said treated unjustly his father (alimdhurumu) on the promise of payment of Tshs. 2,000,000/=. After that mission has aborted it is when they resorted to go to rob Winfredy Ng'olo at his residence. Like 2nd accused, 1st accused explained the way they met and plan to rob Winfridy Ng'olo and the way they executed their plan which resulted to the death of Eva Merikion Mgaya who was shot with a gun by them. Pascal Esmundi Mwakiliche (PW6) told this court that is a resident of Ihanga village. On 08/05/2015 during the night time at 10:00pm he received a phone call from the councilor one Kagola as the chairman of the village security committee informing him that there was murder incident at the house of Winfredy Ng'olo. He went there and found the wife of Winfridy Killed. He was told by Winfridy that his wife was shot with a gun and named Mwapulise Mfikwa to be the one who shot her with a gun. He said he informed militiamen to arrest all young men in the village who were doing bodaboda business as they suspected that they might have transported the killer that night as he was not seen in the village during the day time. Among the bodaboda riders is the second accused, then they started to trace Mwapulise Mfikwa. They also reported at the police station. They managed to arrest Mwapulise Mfikwa the following date on 09/05/2015 at Kifanya village. PW6 said is the one who arrested him after jump to him after they have seen him hiding. He was together with the 6 | Pag e police officers including D/Sgt. Salehe. He was handcuffed. They found him possessing a gun with two round of ammunicions one in the gun chamber and another in his pocket. He said he was also found possessing two mobile phones, one Tecno which PW6 identified to be the property of Winfrid as at a certain period he was using it. He described it to have a special mark written inside below the battery where there is a name Win. PW6 said the first accused Mwapulise Mfikwa was known to him before as he also lived at Ihanga village to his paternal uncle whom he mentioned as Joseph Mfikwa.

But even at the time PW6 was living at Dodoma they were living with Mwapulise adjacent. Winfridy Vitus Ng'olo (PW7) in his evidence stated that he is living at Ihanga village. On 08/05/2015 at about 9:00pm while closing the door of his fence he was invaded by some people who told him that he was under their arrest. They ordered him to go with them to his bedroom. They ordered him to give them money. He told them that he had no money. They were quarreling. They took his mobile phone type Tecno. While so quarrelling his wife who was in the kitchen heard the quarrels and went to the bedroom to see what was happening. Just while entering the room she met with the person who hijacked PW7 who shot her with a gun on her chest. PW7 said he managed to identify the person they were exchanging words to be Mwapulise Mfikwa. He said he quarreled with him for a period of not less than ten minutes, and inside the bed room there was bright light of solar which he described to be capable of even enabling him to see the dropped sewing niddle. 7 | Pa ge After people has gathered he mentioned to them the person who hijacked him and shot the deceased to be Mwapulise Mfikwa whom he said it was not the first time to see him. At a certain period he was living at Ihanga village for a period of three months at his paternal uncle one Joseph Mfikwa. He knew him from 2013. After the prosecution has closed its case I ruled that the accused persons have a case to answer. In their defence the accused persons gave sworn evidence. The first accused Mwapulise Mfikwa in his defence told this court that he is living at Ihanga village and in Dodoma but his real residence is at Ihanga village Mtambalala Street. He said on 09/05/2015, he was at his farm at Kifanya village where he was pruning his trees. He was ambushed by a big mob of people including police officers. They told him that he was suspected for rape but they did not tell him the one who was raped. While at the police station they changed and said he was suspected for murder, they told him so at the time Salehe was recording his statement. They took a gun and round of ammunition and planted them to him. He could not even remember the name of the person they said he killed as many years have passed. 1st accused said he know Ihanga village and went there for the last time two months before he was arrested. He had visited his paternal uncle one Joseph Mfikwa and stayed there for one week. 1st accused denied to have been arrested at Kifanya village having a gun and round of ammunition. He said the gun is the property of the police as on the date they arrested him they were many and each had a gun. 1st said he know 8 | Pa ge Winfredy Ng'olo. Even himself knew him. He saw him at Ihanga village. He has no grudges with him. He has never quarreled with him nor his relatives. But he denied to invade him for purpose of robbing him money as there is no any witness gave evidence to prove that. He said D/Sgt. Salehe recorded his statement while beating up him. He beaten up him severely until he was injured and sent to Kibena hospital for treatment after being given PF3 by the police themselves. As he was severely beaten and injured he decided to sign the statement which D/Sgt. Salehe had recorded. 1st accused tendered in court the PF3 which he said he was given at the police station after being injured. The same was admitted as exhibit DI. He said from the date he was arrested he has been under the police custody. He denied to have confessed to D/Sgt. Salehe to have committed the offence and to have confessed in the presence of Francis Fute. He said Francis Fute is unknown to him. 1st accused denied to know Heyege. He also said Manase

Mhada was not known to him before. He first met with him at the police station. 1st accused denied to have killed Eva Mgaya being assisted by Manase Mhada. He said the accusations against him are not true and prayed to this court to acquit him. During cross-examination 1st accused denied to know the wife of Winfred Ng'olo. After been shown his signature in his cautioned statement (exhibit P7) he said it belongs to him. He admitted that, while testifying D/Sgt. Salehe was not cross-examined in relation to allegations of beating him. The second accused Manase s/o Mhada in his defence stated that he has been living at Ihanga village since he was born. He said his age now is 19 9 | P a g e years. He said on 07/05/2015 he received a phone call from Heyege requiring him to go to his residence. He went there and was told that on 08/05/2015 there would be a passenger whom he wanted to go to collect him at Kifanya village. On 08/05/2015 the said Heyege gave him Tshs. 15,000/= as fare for that person. 2nd accused went to Kifanya and found him at Kibao cha shule ya Msingi Muungano. He said he collected that passenger whose name he was told to be Mwapu. He sent him to Heyege Ng'olo at Ihanga and arrived there at 7:00pm. He said there after he went back home and went to Kijiweni, while there Heyege Ng'olo appeared and called him. He told him to look for young men to pull logs at Liwengi while so telling him they were walking along the road. They met with another person to whom Heyege was talking. Then he told him that they have to go to his paternal uncle Winfridy to take money. He asked him if he had any claim against him. But Heyege told him that he was not supposed to ask that question. 2nd accused refused to go there as he had a passenger to send at Mkalati Street. But Heyege did not permit him to go saying as he has told him the secret they must go together to Winfridy, short of that they would kill him (watanimwaga ubongo). He said he feared and was trembling because he was of tender age. Second accused said he was hijacked by the two whom he mentioned to be Heyege Ng'olo and Mwapulise Mfikwa and went to the house of Winfridy Ng'olo. They found them not returned. They took a cover at the rear part of his house. After come and parked his motorcycle, while going to close the door of the fence they ambushed him and put him under arrest. He said Mwapulise Mfikwa had a gun and Heyege Ng'olo forced him to go with 10 1 P a g e them to his room where they demanded to be given money, suddenly he heard a bhang which he did not identify. He ran away and went back home. Basically the second accused admitted to have been at the scene of crime where they went together with Heyege Ng'olo and Mwapulise Mfikwa but only that he was just hijacked. This being a murder case like any other criminal offences the burden of proof lies on the prosecution throughout. The same cannot shift to the accused persons. The standard of proof is high, that is beyond reasonable doubt (See the case of Mohamed Said Matula vs. Rep. [1995] TLR3). It is trite law that the accused can only be convicted on the strength of the prosecution case but not on the weakness of his defence, what the accused is required to do is just to raise doubt on the prosecution case. Even where it happens that the accused has lie in his defence, that alone is not the reason for him to be convicted. But lies of the accused person if proved strengthen /corroborate the prosecution case as it was held in the case of Felix Kisinyia vs. The Republic, Criminal Appeal No. 129/2002, CAT and Nkanga Daudi Nkanga v. R., Criminal Sessions No.316 of

2013. In order for the offence of murder to be proved, the prosecution must prove both the act of killing (actus reus) and malice aforethought. In this case there is no dispute that Eva d/o Melkion Mgaya is dead. She did not die a natural death but she was killed. PW1 Dr. Kiondo Solomon Kiondo the medical doctor who conducted postmortem examination on the deceased body was of the opinion that the deceased died due to haemorrhage from anterior chest wound. He observed that the deceased body had penetrative wound on the posterior chest. The questions which need to be resolved are two. One, who killed the deceased, and two, whether he killed with malice aforethought. Apart from prosecution witness PW7 who said saw while deceased being killed, there are cautioned statements of the accused persons which were recorded at the police station upon their arrest. PW4 D/Sgt. Mwanaidi and PW5 D/Sgt. Salehe recorded cautioned statements of the 2nd and 1st accused respectively. PW4 stated in his evidence that after being hijacked by the accused persons, they forced him to go with them into his house to the bed room. Although it was during the night time at 9:00 pm but PW7 said inside the bed room there was ample light of solar which enabled him to see the 1st accused with whom they were exchanging words. The act of PW7 mentioning the 1st accused immediately after the incident shows that he properly identified him. It is trite law that ability of a witness to name the suspect at an earliest opportune time is an all assurance of reliability of that witness. See the case of Marwa Wangiti Mwita & Another v. Republic [2003] TLR39, in which it was held:- "It should be borne in mind that the ability of a witness to name a suspect at the earliest opportunity is an all important assurance of his reliability, in the same way as unexplained delay or complete failure to do so should put a prudent court to inquiry". 12 | Page However, as pointed out above that, the arrest of the 1st accused resulted from the act of PW.7 mentioning his name to a group of persons who arrived early at the scene of crime. But what is the strength of the evidence PW.7 who said he saw him at the scene of crime. The evidence of PW7 as far as the arrest of 1st accused is concerned is visual identification. The law on visual identification was set in the case of Waziri Amani v. The Republic [1980] TLR 250, in which it was held evidence of visual identification is most unreliable unless the possibility of mistaken identity is eliminated. What guarantee that PW.7 clearly identified 1st accused. As he himself stated, the accused was not strange to him. He has been living at Ihanga village where he lived for more than four months. But he also said he know the 1st accused since 2013. But it should be remembered that the incident occurred during the night time at 9:00pm. However in his evidence PW.7 explained that after the culprits have forced him to go with them into his bed room, that room was illuminated by solar light which PW.7 described it to be bright to enable him even to see a niddle which was dropped on the ground, thus dispelling the possibility of mistaken identity. See the case of Issa Mgara @ Shuka v. R, Criminal Appeal No. 37 of 2005 (unreported). In this case, the evidence of PW.7 is not the sole evidence connecting the accused persons with the committed offence. In their caution statements, the accused persons have implicated them to have committed the offence. It is trite law that the best witnesses in a criminal trial, is the accused person who confesses his guilty as it was held by the Court of Appeal in the case of Amani Justine @ Mpare vs. The Republic, Criminal Appeal No. 131 of 2018 (unreported).

There is no 13 | Page suit what 1st accused intended to say in his defence. But this court cannot accord any weight to it. With such evidence there is no doubt that the act of killing was proved and that the accused persons are those who killed the deceased. The next question is whether they did so with malice aforethought. Both accused persons stated in their cautioned statements to have planned to invade the deceased fore hand, thus they had intended to rob him money but in the execution of their plan, they killed the deceased.

Under normal circumstance, a person cannot say that he/she killed with malice aforethought. But malice aforethought can be inferred from various factors. These include the conduct of the attacker before, during and after the killing. Utterances if any before or after the incident, the type of weapon used, parts of the body the blows were directed and the number of blows inflicted although sometimes one blow is sufficient to cause death. That was held in the case of Enock Kipela k Republic, Criminal Appeal No. 150 of 1994, CAT at Mbeya (unreported). Malice aforethought can also be found in any of circumstances explained in section 200 of the penal code, which include:- a) An intention to cause the death of or to do grievous harm to any person, whether that person is 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 death or grievous bodily harm is caused or not or by a wish that it may not be caused; 15 | Page

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". Looking at the evidence received, circumstances (a) to (c) were met which may lead to the conclusion that murder was committed. However, as it was pointed out above, who led to the arrest of the accused person is PW.7 to mention the 1st accused at the scene of crime immediately after people have gathered. PW.7 stated that he identified him properly. They killed her using a gun, a very lethal weapon. In the case of Eiia Sefu vs. Republic[1984] TLR 244, it was held "Existence of malice aforethought could also be found from the nature of the weapon used and the location of the injury sustained". In this case, there was planning by the accused persons including that other person who was not charged, which was established, but the weapon used is a gun which is a lethal weapon. All these establish malice afore thought. In this case the two accused persons are jointly charged with murder, their common intention to murder must be established. But this is simple, as their common intention can be deduced from their plan. Although 16 | Page according to their confessional statement they did not state that they planned to kill the victim, but they planned to rob them, that is PW.7 and his wife (deceased). In execution of the plan a person was killed. It does not matter that the accused persons did not plan to kill but to rob PW.7. As there are two persons jointly charged the prosecution has also to prove common intention. This doctrine is formulated in section 23 of the penal code as follows:- " 23 when two or more persons form a common

intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence". In the case of Mathias Mhyeni & Another vs. The Republic [1980] TLR 290, it was held:- "Where a person is killed in the prosecution of a common unlawful purpose and the death was a probable consequence of that common purpose, each party to the killing is guilty of that murder". See also the case of James Ihuya v. R. [1980] TLR 197. By looking at the accused persons cautioned statements the way they planned to go to rob PW7, there is no doubt that they had common intention. The second accused in his defence tried to disassociate himself 17 | Page from the common intention by saying that he was hijacked by the two, Heyege Ng'olo and Mwampulisye Mfikwa. But that appears to be an afterthought as that was not even mentioned in his cautioned statement. Such a defence cannot be accepted. Basically in their cautioned statement each implicated himself and also implicated the other accused person. That kind of evidence is admissible and can be acted upon by the court to convict. Section 33(1) of the Evidence Act, [Cap.6 R.E. 2019], provides:- "When two or more persons are being tried jointly for the same offence or for different offences arising out of the same transaction a confession of the offence or offences charged made by one of those persons affecting himself and some other of those persons is proved, the court may take that confession into consideration against that other person". In this case both accused persons confessed to have planned to rob PW7 and in the process his wife was killed. In their cautioned statements taken by two different police officers each implicated himself but also implicated the other each is guilty of the charged offence as it was held in the case of Mohamed Haruna Mtupeni and Another vs. Rep. Criminal Appeal No. 259 of 2007 CAT (unreported). Having gone through the prosecution evidence through PW.1, PW.2, PW.3, PW.6 and PW.7, and upon carefully reading the accused persons' caution statements recorded by PW.4 and PW.7 and their evidence regarding the manner they interviewed the accused persons and answers 18 | Page made, I am satisfied that prosecution has discharged their burden of proving the case against both accused persons beyond reasonable doubt. The Ladies assessors who have participated in the trial of this case were of an unanimous opinion, and conclusion that both accused persons are guilty of the charged offence. I entirely agree with them. It follows therefore that, the accused persons are guilty of murder and are hereby convicted as charged. DATED at IRINGA this 26th day of November, 2021. JUDGE. 26/11/2021 Date : 26/11/2021 Coram : Hon. F. N. Matogolo- Judge For Republic : Mr. Andrew Mandwa - State Attorney For 1st Accused : Mr. Octavian Mbugani - Advocate For 2nd Accused : Ms. Jerome Njiwa - Advocate L/A : Ms. Blandina Mwenda Accused persons : Present under custody Interpreter : Mr. Charles Mwasumbi, English into Swahili and Vice Versa. 19 | Page Assessors : 1. Jenifa Mwanzalila : 2. Frida Ngwale : 3. Rose Kitomo Mr. Andrew Mandwa - State Attorney: My Lord I am appearing for the Republic. The accused persons are present. The 1st accused is represented by Mr. Octavian Mbugani and 2nd accused is represented by Ms. Jerome Njiwa both learned advocates. My Lord the case is for judgment on my part I am ready. Mr. Octavian Mbugani — Advocate: My Lord even on the defence we are ready. PREVIOUS

RECORDS: Mr, Andrew Mandwa - State Attorney; My Lord the accused persons are convicted of murder. The offence which has only one punishment. Basing on Section 322(1) of the Criminal Procedure Act Cap. 20 R.E. 2019 your honourable should pronounce the sentence prescribed by law. 20 | Page My Lord using Section 357 of the Criminal Procedure Act I pray to your honourable court to order exhibit P1 the mobile phone be returned to the owner (PW7). But also order Section 353(3) of the Criminal Procedure Act I pray that your honourable court should order for exhibit P6, the gun one round of ammunition and spent cartridge be handed to the police force. That is all. MITIGATIONS Mr. Mbunqani Advocate: My Lord as your honourable court has convicted the accused persons for murder. Your honourable court is bound to pronounce the sentence provided by law. But also I have no objection to the prayers made by the prosecution regarding mobile phones and gun round of ammunition and spent cartridge. That is all. Mr, Jerome Niiwa - Advocate: My Lord as my colleague and the learned statement Attorney, the offence of murder renounce mitigations. Even your honourable court's hands are tied up cannot pronounce another punishment other than that provided by the law. 21 | Page Regarding the orders prayed I have no objection. The mobile phone should be returned to the owner and the gun, round of ammunition and spent cartridge be return to the police for safe custody. That is all. SENTENCE The accused persons were convicted of murder contrary to Section 196 of the Penal Code there is only one punishment for murder as provided under Section 322(1) of the Criminal Procedure Act. This court has no any option than pronouncing the sentence prescribed by the law above mentioned. I therefore pronounced that the accused persons shall be hanged to death. JUDGE 26/11/2021 Right of appeal is duly explained to the accused persons. ORDER The mobile phone Tecno (exhibit P6) is to be restored to the owner (PW7). The gun, one round of ammunition and one spent cartridge be returned to the prosecution to be kept at the police station for safe custody. F. N. MATOGOLO JUDGE 26/11/2021 23 | Page

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