

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA . AT TARIME. . ORIGINAL JURISDICTION (Mwanza Registry) CRIMINAL SESSIONS CASE NO. 77 OF 2011 THE REPUBLIC VERSUS 1.. SIA S/O, MGOSI@ WAMBURA

2. ROBERT S/O JONES KIGOSI@ NYAMACHO
3. JUMA S/O MUHENDE NYAHITA@ MUGENDI MOMBASA
4. MWITA S/O CHACHA @KIBITI

JUDGMENT

SUMARI, J. The deceased Maguriati Ntaruke Marandu, the then District Security Officer of Tarime District (DSO) was travelling from Dar es Salaam to Tarime. He boarded a motor vehicle of Rorya District Council with Registration No. SM 3226. He was not the only passenger in the said motor vehicles. He was accompanied by some of the District Council employees namely, Samson Nyakikura Tuoro; Fatuma Mushi Shilinde; Godliver Simon . Peter, Michael John Gwi!im@ and Jumanne Lukio Otieno who had gone to Dar es salaam to make budget preparations. , ~ - p~~ pas?engers started their journey from Dar es Salaam to Arusha; from Arusha they drove to T.arime via Serengeti District. On 11/05/2008 when Maguriati Ntaruke Mararrdu and others were on" their way at .Nyarero/ f Kimakorere village's border they found the road blocked with stones. The driver tried to turn back the car but he was ordered to stop by the bandits. In trying to escape from the hands of the bandits one of the bandits fired. and the gunshot hit the Maguriati Ntaruke Marandu, the DSO who died instantly. That the police started to investigate the matter and the four· accused persons in the dock were apprehended. Having been apprehended the accused persons, SIA S/O MGOSI @WAMBURA; ROBERT S/O JONES KIGOSI@ NYAMACHO; JUMA S/O MUHENDE NYAHITA@ MUGENDI MOMBASA and MWITA S/O CHACHA@ KIBITT, before this court stands charged with the offence of murdering one Maguriati Ntaruke Marandu contrary to Section 196 of the Penal Code, Cap 16 (R.E.2002). Proving their case the prosecution side summoned a total of 13 witnesses, the first one was (Pw1) SP Constantino Bandola, who was a - former OCD of Tarime at the time of the incident. His testimony was that prior the incidentt he had received a call from the deceased who was also his friend. The deceased informed him that he was on safari to Tarime. That around 12.30 -1.00 am he received a call from C.R.O. informing him that some people had been robbed. He rushed to the scene of the crime with his patrol team

where he found that the road was blocked with stones, a vehicle which was in a ditch had a wind screen broken at the left ~ 1,,1 ;;;-A. •. ~ : ~' / f ~. -,~ •C~v~r •~ •:~7:";;Jn:r;-; •:~ ~,~;;, ..•.. •_ -?<>; C -. ;, . - , . . - ' - - , _ ... , -• ~ ~ ~ . ~ ~ ;, s_ide. Pw1 saw a body o~ the deceased person inside the vehicle. Around , the area he managed to see a group of six people hidden under the banana trees. At the scene he picked two empty cartridges of short gun which he took them to Dar es salaam for investigations. Pw2, Issa Abas Arabi a police officer and investigator who works at police Headquarters in DSM, testified that on 14/5/2008 and 15/5/2008 he received robbery information. Being part of task force PW2 together with ASP Mayala were ordered to travel to Tarime to investigate the matter. After he reported to Tarime he got information that the robbers had absconded and some of them were seen in Dar es salaam, they returned back to Dar es salaam and on 23/06/2008 they (task force team) got information that one of the suspect was seen at Kinondoni mkwajuni in Dar es Salaam. In company of ASP Mayala Pw2 went to Kinondoni Hananasifu whereby he and his fellow police officers arrested the third accused person Juma Mhenda Nyaita@Mombasa who was found walking by. That they easily identified and arrested him as Pw2 had a picture of Mombasa. • • Pw2 stated that the 3rd accused mentioned Robert Johanes Kigosa and Mkami Mvita as his accomplices in committing the murder in question before this Court. That Mombasa told them that his accomplices were at Musoma in Buhemba Gold Mines. Having received such crucial information the following day the task force team travelled with the 3rd accused person to-Musoma. They reached at Musoma on 30/06/2008 where they were also lfl-- ,,, .) . tipped by their informer that the suspects they were looking fof were drinking in a certain bar. . . . f . That Pw2 and other police officers reached at Buhemba and their informer showed them Robert Johanes Kigosa and Mkami Mwita. That Robert Kigosa wanted to escape but he was arrested. Sia and Mkami managed to escape and Mkami Mwita wanted to grab the gun of a police officer but was shot to death by police. It was his testimony that after the team arrested the 2nd accused persor1 he was interrogated and told them that he had a gun hidden at the Gold Mines. Th.at the 2nd accused took them to a maize farm and they dug the gun from the maize farm. That their supervisor ASP Mayala was the one who uprooted the said gun after it was shown to them by the 2nd accused person. That the 2nd accused person told them that Sia Mgosi was living at Nyamongo. Sia Mgosi was arrested by Nyamango police officers and handled over to the task force team. That both Robert Johanes and Sia Mgosi admitted to have murdered the deceased person. Testifying further Pw2 told this Court how• he managed to arrest the forth accused pers9n on _27 /07 /2008. That the 4th accused person was told to report to the police post to bail out his relative Juma Nyahita. That on his way to report at the police post he was arrested and led the poifice • officers to a place where he was hiding a gun in cassava farm. When cross ; examined Pw2 stuck on his guns that it was the informers tipped and assisted the police officers to arrest the accused persons. lk- 4 PW3, ACP Ro-bert Mayala testified that on 13/05/2008 he was I informed of . the murder incident by the "then DCI, Robert Manumba. The '• , DCI instructed him to go• to Mara Region to•supervise t~e inspection. That / on 15/05/2008 he was accompanied with Cpl. Issa, Sgt Valence (deceased by now) and Constable Enock of Tarime to look for the persons who committed the offence. That the police officers got information from their informer that Juma Nyahita (3 rd accused) was one of the killers. They started looking for Juma and discovered that he had escaped to DSM. Having heard the same they decided to go back to DSM on 18/6/2008

and arrived on 19/6/2008 at Dar es salaam. On 23/6/2008 they arrested Juma at Kinondoni, DSM. They took him to CID Head Quarter. When Juma was interrogated he admitted to kill the deceased, the DSO. He mentioned his co-culprits namely; Robert Kigosi, Sia Mgosi, Masero Mwita, John Mkisi and Mkami Mwita. Juma told PW3 that his alias are at Buhemba Mining save for Sia Mgosi and John Mkisii. Pursuant to the instructions the task force team drove. to Musoma with Juma Nyahita (3 rd accused). They arrived at Musoma on 27/6/2008 . • Pw3 stated further that on 30/6/2008 in morning hours • they got information that the alias of the 3rd accused person where at Magunga Village Buhemba. Pw3 and his company of policemen went to Buhemba and started tracking them. At around 12 noon they got informed that they were at Itembe bar. They went to the said bar surround it and attacked the place. He explained what occurred at Itembe bar, that Mkami wanted to grab the gun so one of the polic~t his leg, Robert (2nd accused) 5 . ; . I attempted •to escape and in the cause he was fired at his hand. That they . . arrested Mkami • Mwita and Robert Kigosa. That many peopl~ had f - surrounded the area aqd wanted to attack the people they had arresteg. Pw3 and his company rushed to Buhemba Police station. Pw3, intensified that Robert Kigosi told the policemen that there was a gun hidden in the maize farm of one Magesa. That several village leaders volunteered to take them to the place. These were Odero from Magungu, Rubare of Magunga and Jumapili of Magunga too. They left the accused persons i.e. Robert Kigosi aQd Mkami f.v1wita at Buhemba police post. • At Robert Kigosa's house, the group went to the shamba and succeeded to retrieve a shotgun with serial No. P. 50188 and 5 cartridges buried in the ground. That in same hole they found different shop items which were taken to Buhemba Police Station. He thereafter filled a seizure certificate and took both arrested persons to Musoma for hospital treatment because they had wounds. On the way Pw3 interrogated Mkami Mwita who confessed to have

- • involved in the killing of DSO and stole many items inclusive a Laptop. Mkami Mwita said he sold the said Laptop to OQe Paulo resident of Serengeti. Robert was treated and allowed to stay in the police cell but Mkami was admitted in the hospital. That in the cause of investigation they • got informed on 26/7/2008 that there were stolen items in ohe of the accused's wives i.e. Juma Nyakiha's wife who was in the process of hiding. them. They came to one Paskazia, wife of Juma, 3rd accused for a search but leaving behind the accused at th: l~ecause people wanted to kill him (Juma) as they were tired of ~im due to freque~ncy stealing incidents That at Ta rime they looked for people to/ witness and then went to - . . , Paskazia's house. At Paskazia's house they..-found- a Black Hand bag, white electric white extension cable, black extension cable, two telephone
- charges at Paskazia's house after that he filled in a _certificate of seizure which was signed by himself; the witness too and Paskazia also signed, he then recorded their statements. The seizure certificate No. 422451 dated 26/7/2008 was adm\tted exhibit P.1. Pw3 also got information that Juma (3 rd aq:used) ha~ a gun in his house but after they arrested him he had instructed his brother Mwita Chacha, 4th accused to hide it. Thus, Pw3 sent some of •police officers to look for him on the same day i.e. on 26/7/2008 but he was not found. That the -said policemen left_ information to his relatives for him to come and bail out his brother. On 27/7/2008 the 4th accused pe~son came to Musoma and he was arrested. Upon

interrogation 4th accused person admitted that he was instructed by Juma to go to his home at the rear hill and took that gun and hide it somewhere/else. That Mwita Chacha took the police officers to his cassava farm and he dug out the gun from a hole and retrieved it in a plastic bag. This shotgun No. C. 139475, a pair of black shoes and black belt seized were admitted as exhibit P.4 collectively. That he recorded the witness statement and later he sent the guns and cartridges to DSM for ballistic expert examination so that they could know which among the two guns was used to kill the deceased. That since there other items recovered -- 7 during investigation, he took Juma Nyahita to identify them because some were found in his house and some in the house of his brother, the 4th

- accused. After Juma -Nyahita saw them he admitted that these were among the things he robbed at the scene of crime. He particularly identified the black pair of shoes, black belt which he gave to his brother for his use and the black handbag he gave to his wife. He also identified the extension cable. Juma Nyahita agreed to be the owner of the shotgun No. C 139475. Pw4, Shad rack Masija testified that on 17/07/2008 he received a call from R.C.O. who told him to wait for a call of a police informer, Pw4 was told by R.C.O. that the informer had crucial information to tip him. Subsequent thereafter a police informer called and told him the whereabouts of a bandit who was wanted by the Task force team. That having received the information Pw4 together with other police officers went to meet the informer who took them to a place where the wanted person was. The informer took them to particular house where the wanted person was and Sia Mgosi was found in the house renovating his bar. That • they arrested Sia Mgosi in_ the premises and Pw4 reported to the R.C.O. who told PW4 to handover Sia Mgosi to the Crisis Rescue Team. (C.R.T.). PwS, Fatuma Mushi Shillinde affirmed that she is an employee working as a Personal Secretary at Rorya District Council. That on the fateful day, 11/05/2008 she was travelling from Dar es sallam via Arusha to Tarime with the District Council motor vehicle with -Reg. No. • SM 3226 together with the deceased and other passengers were Goldliver Simon, EJ 8~ Ibrahim Yusuph, Michael John, •samson Tuoro ! Nyakiku-ra and one person . Jumanne. That around 23.00hrs when tney reached Nyareco/ Ki-mamorere f village in Tarime District.in a far distance of 109 meters she saw big stones blocking the road. That she saw people wearing big coats and combats surrounding the area. That the driver attempted to turn back but he failed as the vehicle stuck at the ditch side of the road. She stated that the moment the driver was trying to turn back the car; she heard the gun shot fired from the left side of the motor vehicle and the bullet hit the D.S.O. who died on the spot. PwS intensified that she heard a person speak_ing with Kurya tone demanding money, cell phones, that she gave 50,000/= she had but hidden her cellphone from the back of the car seat. That the bandits ordered them to lay down, she was searched by the bandits on her private parts. The said bandits were searching for money, she beaten up and assaulted using a side of a machete "upaba wa sime'~ She contended that ' after . the search exercise was done, one of the bandits climbed on the • 1 carrier of their metor vehicle and took down the luggage s and took away with their items. That PwS luggage's which included ladies handbags about seven of them, ladies suits of different colours, Laptop Make LG with metallic grey colour and black cable were

among the items stolen by bandits. That with the aid of motor vehicle lights which were on, she managed to identify two persons; one person was Mombasa (3 rd accused) . . as she knew him before from his Kiosk(Mgahawa) named Mombasa where ~ 9 ' _ , ' • <~' ..

- ~'~;--:~;~ ~~ , • ,~ ,~ ~I. - _ _ ,;~..~' ! ' she used to eat and the other person was the (2 nd accused) persoi: as the person who searched her at her Private parts . • f It was her testimony that Mombasa wore "Kombati la Jeshi la Wananchi la Tanzania" but he had no cap in his head whereas the 2nd accused also had a combat without covering his head. Having being robbed, the robbers ordered them to get into the motor vehicle, after that the robbers flee away. That using the phone she had hidden, she called O.C.D. of Serengeti who called his fellow OCD of Tarime. That after they stayed in their motor vehicle for sometimes they got out and hidden themselves in the banana plants until when the pLolice officers came and took the body of the deceased person in a mortuary and later to the police station to record her statement. That she did not mention the name of the accused person in her cawtion statement but managed to identify the two accused persons and mention them on 7/7/2008 when identification parade was done. That later on 24/07/2008 PWS was .called at Musoma Police Station to identify some items. She identified a laptop, shoes which were property of Ibrahim Yusuph, a black bag as one of the bag she bought, the exJ:ension cable which she was using in her daily activities in Dar es salaam and a black cable which were collectively admitted and '< marked as "Exhibit P.2." save for the laptop. When cross examined, PwS stuck on her guns that she managed to see the two accused persons she alleged to identify with the aid of car lights which were on. That when the incident occurred she didn't tell anyone to have identified the accusrons but she told the police that 10 in case the bandits would be arrested she will be able to identify them. She . however, insisted· tliat the handbag thcJt was recovered belonged to her as . she had bought the same in Kariakoo for business purposes. As for the f shoes, it was her testimony that they belong to Ibrahim Yusuph because she used to see him wearing them throughout the time they spent together in Dar es Salaam. Unfortunately, the laptop that was allegedly stolen '!Vas put in the police custody and it was no where two be seen. I summoned up the police officers but none of them gave us satisfactory answers on its whereabouts, each of the four officials threw ball to another. Buttering the prosecution case, Pw6 Mahamooda Banda, a police officer who at the time of the incident was working as an assistant Inspector testified that he was the one who conducted and supervised an identification parade after being instructed to do so by the R.C.O. That he did not know the accused persons prior; he got the names of Juma Mhenda Nyahita and Robert Kigosi from the detention register. He also - found 12 other persons from the police station and pedestrian's passing · near the road thU6 making a total of 14 witnesses. That PwS was the one who identified Juma Mhenda Nyahita and Robert Kigosi in the said parade. The identification parade register was admitted as "Exh. P.5". Pw7 Godliver Simon, testified that she was among the victims who were invaded by the robbers on 11/05/2008. Her evidence was quite similar with that of PwS Fatuma save that she stated that robbers took 1f--- 11 J#c:::::ft:===?!:::(=!!#!-!!i:::.....===== 5 ::!l:IC.-!~~~*~-.bte:_il!L ~o;;c;s;;; · .UJ.l.i...!L..~~t,,•,,, , .. _y .),... ' - - - - - . about

100,000/- Tshs from her and the suits she brought. Unlike Pw5; Pw7 did not testify to have identified the people who robbed them. PWS, Augustina Nyambia, testified that the deceased Maguriati Ntaruke Marandu was his boss. That when they were making burial arrangements it was discovered the deceased phone make Nokia and his belt were missing. That on 29/07/2008 he received a call from R.C.O. of Musoma instructing him to go to Musoma police station. On his arrival he was told there were items recovered. These were women bag, laptop and men's belt. That after he was shown the items he managed to identify the belt. He alleged that it belonged to the deceased person because before the deceased travelled to Dar es salaam he accompanied the deceased for shopping and the belt was amongst the items the deceased had bought. He intensified that he is the one who helped the deceased to choose the belt which had embroils. When cross examined whether there is a difference of the belt "Exh. P.4" and other belts Pw8 conceded that the belts of that nature are many. PW9 Jum Kijungu, testified that on 7/7/2008 he was arrested for count of theft. That his relatives went to the police station of Musoma to bail him out. That while he was at the CRO waiting for the bail processes to be accomplished PW9 was called by the police officer at the back yard of police and lined up together with other people. That they were about twelve of them in the said lineup but later two people were brought to lineup. That he was the third person from the left. The police told the people who were in the said line to exchange cloths if they wish and PW9 exchanged the same with Jum Muhend (the 3rd accused person whom he knew before as they were in the same cell. His testimony was, to the

- effect that after they have paraded a woman showed up and touched the 3rd accused person. After that PW9 was taken back to the CRO. That at the parade there was another person who was identified but Pw9 didn't manage to identify him as that person was very far from where Pw9 stood. PW10 Johanes Odero, a chairman of Sungusungu or traditional army as he called it at Mahuga Village, Buhemba in Musoma testified that, on 30/06/2008 he heard gunshot at Itembe bar. That he left with Jumapili Didiga, the secretary of traditional army among others to Itembe bar. On their way they met Sia Mgosi, Magesa and many others running while shouting, "Majambazi Majambazi". That he advanced to that area while hiding and met with the policemen who told them that they were looking for a bandit who was injured. That he and the group went in a distance of 200 meters and found one person named Kigocha in the bushes. People wanted to kill him but he defended him. and took him to the Policemen. That together with the policemen they went to Magesa's house where search was conducted and they dug in a certain place where they retrieved shop items and a plastic bag which had shot gun in it, handbags and belt. That these items were taken up in the police station. That police told them they were looking for one Sia Mgosi and Magesa. Pw11, Assistant Inspector Makole, a police officer who currently works in Dar es salaam drugs section testified that prior that he was working in Tarime as an investigator. On 7/7/2008 at around 16.00hrs he was in his office at Tarime police station. Afande Mayala ordered him: to record a caution statement of one of the suspects who was in the lock up.

- • . @ . That Mayala was the In,charge of the Task Force which was investigating - •oso's murder case. He ordered him to record the statement of one Juma Muhenda Nyahita Mugendi @ Mombasa. He was in the police cell (lock up) Tarime. He went to the lock up and took him to the room, informing him • of his rights and that he is free to give his statement if he wishes, in presence of his relative or a lawyer or a friend. That he was free to give his statement alone. That he started recording his statement from 16. lShrs to 17.00hrs, having completed writing the same he read it to him and he signed in every page. That Mombasa wrote his n•ame Juma• in capital letters and put a finger print too. When the caution statement was about to be tendered, Mr. Sayi, learned defence counsel objected the same. on the basis that it was procured out of torture. Trial" within trial was conducted and the caution statement Juma Mhenda Nyahita @ Mugendi was admitted as "Exh.P.5". Pw12 Leonard Mayala Korosso, a fisherman and resident of Kerongwe Village, Rq_rya District testified that, on 7/7/2008 he was at Musoma Police Central facing a charge of stealing a gun. That he reported to the police as a condition of bail for him to report every after two weeks. That on that day one policeman called him and told him that there was an • ID parade which Pw12 was needed to attend. That he went to the back yard of police building where he found some people about 11 of them on a . dtil_• . •nneup. ~ 14 •;;c;•. , ",_• , Later on, two men were brought by a police. Th~y lined up too. One of them stood near him. It was his testimony that before those two men • f lined up they stood at the front of them and they were told to choose position to stand. That one of them stood by his left making a number of 14 people. Pw12, stated further evidence was of the effect that later one lady came for identification purpose and managed to identify by touching a person who was standing on his left C 2nd accused person) on his shoulder. That later the police took his statement and he was allowed to go. Pw13 - Asst. Inspector John Mayunga Sangija, a police officer working at the Police Head Quarters - DSM at the Forensic • Science Investigation Department, testified that he is the in-charge of ballistic section. That he is an investigator in weapons i.e. bullets and firearms, cartridges; investigates serial number's restoration (bunduki zilizofutwa namba); that he also conduc-ts investigations on explosives. That on 22/8/2008 while in his office DSM Police Head Quarters, he received Ii Exhibits from CID - Mara Region brought by one Robert Mayala. These were, one shotgun make Remington with Serial No. C 139475 caliber 12 bore; one shotgun make Mossberg with Serial No. P 50188 caliber 12 bore; cartridge caliber 12 bore. That together with those exhibits there was a letter requiring him to investigate the following:- Type, serial number, make for both shotguns; Cartridge found at the scene. What type of this cartridge? Whether the said cartridge was fired from which of the two shotguns. ~ 15 f/-_• ~ ~----- 1•_1
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- ---'••---" - ••- T ~ • !"- .._~•. • l ... • 'J •••' • !') That in doing his investigation he was assisted by Insp. Saulo Daniel <. Nditu and• Augustina GodfreY. Luhamba. That in the said exercis~ Insp. • ~ Saulo Daniel Nditu wa-s the in-charge of this section by then. On their f physical examination of 'the three exhibits he mentioned, two guns and cartridge was done and physical• examination on Exhibit "A" - the shotgun make Remington revealed that it was

shotgun make Remington with Serial No. C 139475 caliber 12 bore made in Brazil. Exhibit "B" - The shotgun make Mossberg Serial No. P 5088 caliber 12 bore made in USA. Exhibit "C"

- The cartridge used was caliber 12 bore. That apart from physical examination they made deep analysis examination to know whether Exhibit "A" - Shotgun Remington and "B" Mossberg were mechanically working (i.e. to determine the working . mechanical condition). In order to determine the mechanical working condition he took 4 bullets from his laboratory, two bullets in each gun i.e. by firing. After the test he was satisfied that both guns were . mechanically working because both fired properly. Pw13 then made labeling of the each empty cartridge and identified the • number of the gun which fired each. After that he made a comparison using cartridge comparison microscope. The microscope is of two sides. In the left side he inserted the empty cartridge and marked it Exhibit "C". On the right side he inserted the tested cartridges one after another. After doing so he compared them and found that Exhibit "C" that was found from the crime scene had sufficient marching impression with • testified ~ 16 ' ' rl ,f cartridges. Ther_e were two impressions namely; firing pin• impression and ., bridge c;haracteristic mark. f After he did the comparison he discovered that Exhibit "C", the cartridge was fired from the gun make Remington Serial No. C 139475 marked Exhibit "A". As for Exhibit "B" gun make Mossberg, he made comparison and discovered that there was no marching impressions with Exhibit "C", cartridge. That its firing impression and bridge characteristic did not march. The empty cartridge marked Exhibit "C", T1 and T2 are admitted and markea Exhibit P.6 collectively. The Examination Report on Exhibits Ref. TAR/IR/1583/2008 concerning murder, dated on 08/09/2008 was admitted and marked "exhibit P.7". , Pw13 shown Exhibit P.4 and identified it very well. -4 Defending themselves the 1 st accused, Sia Mgosi@ Wambura, defended by Mr. Malimi, Advocate testified that before his arrest he was living at Buhemba Magunga, Musoma Vijijini, Mara. At Buhemba he was .doing business and p,ining. That he had a bar and electricity generator and mining crusher. On 11/5/2008 he wake up in the morning at Buhemba with family i.e. wife and children. After breakfast he went to his business until 1.00 p.m. he• went back home for lunch. That at around 20.00hrs, he came back home and found his wife preparing dinner, he ate, kept on watching TV till 21.00hrs he went to sleep. That he was born at Nyamongo but shifted to Buhemba where he started gold .mining. As he grew up successfully in• k-- 17 business he then opened a bar and bought ~ generator ., to generate f electricity power. That it was a big generator so he generated electricity power for sale to other -neighbours. Dwl, thoroughly explained how his cheap prices of beer, soda and generators sparked complaints from his fellow business men meetings were convened but he did not see the need to attend them. Grudges against him ensued after he ignored the meetings. That one day at around 19.00hrs the generator went off .(ilizima). Dwl then went to see what was going on. As he entered he found three people inside the tank room and these people ran away after he put on the generator to operate. These people left rungu, sime and panga at the place. Dwl took these weapons • to police Buhemba and reported the matter. It was his defense that other businessmen and l~aders like Singe Rubare Johanes Odero, Jumapili Didiga, convened and called villagers and one of the villagers informed him

that the meeting was for identifying criminals in that area and he was among the criminals identified together with Kibulu Ryoba, Kichinka, Samwel (deceased). That this meeting was also attended by OCD, RCO of Musoma and OCCID, Peter Mvura. So Dwl went to OCS and informed him. OCS Magunga told him they have such report but the higher authority knew all the information. Dwl then went to RCO who informed him that he is among the suspected thieves. RCO told him he had all information and the minutes of the meeting. Dwl saw his name in the list and the papers are at his home. The RCO gave him the minutes and asked him go to Mwanza for an advocate to read it and see ~ 18 . = . \f . ,_ f ~ Ii- . . t . . ' ' what to do. He obliged, and engaged Mr. Muna, learned Advocate where

- : they filed a Civil Case No. 6/2008 between Sia Mgosi Warnbua and 16 . - others, among 16 he rer, number few as, Singe Rubare, Johanes Odera, and f Jumapili Dingiga. That the said case was before, me Judge Surnari at High Court Mwanza. That he remember to have appeared only once and the Judge ordered for service to defendants. Just after he reached home before effecting the summonses, he was arrested on 7/7/2008 while renovating his bar. OCS Nyamongo is the one arrested him in the afternoon. They took him in a motor vehicle, while his eye blind folded. He was taken to Musoma and locked in a room and slept there. In the morning when they came to take him out he discovered he was iocked in a security office rooms near the court. They took him in a motor vehicle to RCO's office. He was interrogated by one Robert Mayala (Pw3) whom he tame to know later and Pw2 too was there; together with others. They ~ interrogated him about the arrest of Robert Johanes Kigosi of Buhemba but he refused to know anything about the incident. There was rungu called "shemeji mkanye mkeo and shemeji mkanye mwanao". That he was . beaten by t_hat run~u. This Robert Mayala was writing on a writing pad book, the policemen came inside his room with papers asking him his names and family members. After they recorded down, he was forced to sign. After he signed they took him to Musoma police lockup. Inside the lockup he was vomiting blood, he felt unconscious. That Pw2 Isa, was there and Mayala too. They said 3rd accused was the one mentioned. /ik:--' 19 That he re.members Pwl0's evidence. He c0mplained that Pw10 is
- . ,s3mong his rivals and he had sued him in the High Court so whatever he f testified is out of grudges between them. When cross examined, Owl maintained that it is the people grudges had led him to be charged. He denied to have known his co_accused prior this case. DW2 Robert Johanes Kigosi, testified that on 28/6/2008 he went to Buhemba for mining as he was called by Mwita Sikt that gold was seen. On 11/5/2008 he was in his village, Magoma. He went to shamba in the morning and came home in the evening. That on 30/6/2008 when he was at Itembe bar drinking beer around 1.00 p.m. police entered and started firing in air. One of the bullets fired went through his left hand and severely injured. He was hit by bat gun (kitako cha bunduki) on his head, of which he got the scar on the head. That he was later taken to Buhemba police station, he was unconscious and found himself at Musoma Government Hospital and he was issued a PF.3. He testified that on 1/7/2008 he was tc1ken outside and . blind folded. He found himself in a room which had carpet. Thereafter three policemen he didn't know their names came and interrogated him about the Tarime

incident. That on 7/7/2008 a policeman called him in the lock up. He was with two women, he didn't know them. After that he return him to lock up. Later on after two hours those policeman came and took him to OB. There ~ . 20 were paper he was given and wrote.i He. took him outside and went through the . . back yard where he found about 12

- people and he lined up
- there. He did not know his fellow on the line. He then noticed that it was the ID parade. That he had a bandage on his head and on his hand so he could easily be identified as he looked different to others. He stated that a women passed by and touched him on the shoulder. ' He further testified that on 9/7/2008 he was taken to his home Tarime for a search which was witnessed by the wife of Karuma Marwa and wife of Nyangi Matiku. Nothing was discovered. They took him back to Musoma lock up. On 15/7/2008 he was brought to court and charged with murder of one Guriati. That when he was brought to Court, it is when he came to know his fellow accused persons. Dw2 totally denied to have involved in the murder in question. Dw3 - Juma Muhenda Nyahita @ Mugendi Mombasa, testified that he is a businessman who had been conduction butcher business and restaurant business both bears the name of Mombasa as a business name. It was his testimony that on the material day he was not at the scene of the crime, he was in Dar es Salaam since 5/5/2008 for business purposes. That he came to know about the death of D.S.O. after afande Mayalla called him on 23/06/2008. When Dw3 prayed to tender a bus ticket to prove this the prosecution side objected as it had not safeguard the requirements of the law. I summoned a court witness to prove the authenticity of the said sus Ticket with Serial No. 473580 dated 5/5/2008 . ~ 21 .~ ~ ~ ~;~%".it;itStittfS!5::~;1 iia::",___ _ \J'I',,,,,--=-m-- 1 *-...,,,-.~....., _ _ _ _ , , _ , _ , _ , ~ : : ~ - - . is" , 1tio,...,:_ ; ___ ;:, issued in -the nam~ of JUMA MUHENDA and later it was admitted and marked Exhibit D2. f That on 23/6/2008 he was phoned by Robert Mayala who called him to meet with him at Kinondoni CCM and he went to meet him there. When he reached at CCM Kinondoni he saw people surrounding him. That he wanted to resist but Robert told him "sisi ni maaskari". He was interrogated . at the police station near the sea while being beaten. He stated further that, he left DSM on 24/6/2008 with Police Officers, Robert Mayala and Issa where they slept at Dodoma. On 26/6/2008 they left Dodoma to Mwanza. On 27/6/2008 they left Mwanza to Musoma At Musoma they locked him in a building and they went on beating him heavily (walinipiga vibaya sana). On 4/7/2008 he was at Musoma police station he was called from the lock up by a police called Makoye. He was taken at a certain room while his health condition got worse. He was forced to sign some papers. He totally denied Afande Makoye to have recored his caution Statement at Tarime~, It was his testimony that on 09/07/2008 he was taken to Nkende village where his grandfather leaves, the policemen searched but found nothing. He explained how the identification parade was done and how a certain woman touched him. His version of the story was that he wore the cloths stained of blood. He totally denied to have been identified by Fatuma at the scene of the crime. That he knew his co-accused on 15/07/2008 when they were brought but prior to that date he did not know them. He also denied to have mentioned to Robert Mayala . - . (Pw3) and. Issa (Pw2) his co-accused

persons. When cross examined Dw3 insisted he went to DSM on 5/5/200. That he left Tarime at 6.00 a.m. and reached DSM around 24.00hrs in the night. That he went to see his uncle (baba yangu mdogo) who was sick and blind. That was living at his uncle's premises in Tegeta at DSM. He had also went there to look for a place to run business. That prior his arrest he did not know Robert Mayala. That's where he was living too. He met Robert Mayala at CCM Kinondoni. When he was asked to mention a person send to buy for the ticket, it was his wife Paskaria Juma but later changed and stated that it was Marura Nyahita. In their final submissions Mr. Kainunura and Marungu, learned State Attorney for the Republic has urged the court find that, on the totality of the evidence, which is direct; the prosecution had proved its case beyond reasonable doubts. On the other hand, Mr. Malimi, Tuthuru, Sayi and Kisigiro the learned counsel for the accused person have urged the court to hold that the prosecution's witnesses were not reliable and credible, so the charge has not been established against the accused persons beyond reasonable doubt. Having heard the prodigious submissions of learned counsel the ball now- is turned to this Court to ascertain whether or not the prosecution side has proved their case to the required standard. In this case therefore, the prosecution has to prove to the required standard that Maguariati Ntaruke Marandll" was killed by the accused persons and the killing was done with malice aforethought. It is not disputed here that the death of Maguariati Ntaruke Marandu was not a natural one; it was a violent and brutal one as he was fired to death. But the question which considerably revolves of in my mind is who killed Maguariati Ntaruke Marandu? Is it the accused persons or is it someone else? Indeed, it is apparent that, this case at hand is based on pieces of evidence, namely:- visual identification; the identification parade; caution statement and doctrine of recent possession and circumstantial evidence. On the question of visual identification, Mr. Kainunura and Murungu learned counsel testified that the accused persons were identified properly by PWS, that PWS gave description on how she managed to identify the 3rd accused person and the 2nd accused person. That the 3rd accused person was in front of the motor vehicle 3 to 4 paces and demanded the driver to switch off the motor vehicle lights. That the 3rd accused person had wore a combat. That Mombasa was prior known to him but she did not mention him after the incident as he feared that if she disclosed her name it would be difficult for him to be arrested. Mr. Tuthuru, learned counsel defending the 2nd - accused: submitted that pws evidence that tend to implicate the 2nd accused person is full of contradictory. He submitted that PWS testified that at the scene of the crime M/V lights were on throughout so she managed to identify the 2nd accused person. He stressed that this is contrary to what was submitted on Exh. D1 where she stated that the motor vehicle were off. He fortified his arguments with the case of Kibwana. Salehe versus Republic {1968} H.C.D. 391. That PW5 failed to mention the people he saw at the scene of the crime. Mr. Sayi, learned defence counsel for the 3rd accused person submission was of the same angles with that of Mr. Tuthuru, learned counsel. That the evidence-of PWS is unreliable evidence as properly stated in the case of Waziri Amani on visual identification. ... In the case of Abdulla Wendo and Another v R {1953} 20 EACA 166

the then Eastern Africa Court of Appeal stated that there is always the need for testing with the greatest care the evidence of a single witness respecting identification. In the same vein, in the case of *Kulwa Athumani v. Mpunguti and three others* Versus Republic Criminal Appeal No. 29 of 2005, CAT (unreported), the Court of Appeal insisted that the key identifying witness must advert to the guidelines enunciated by this Court in *Waziri Amani v. R* [1980] TLR 250 at page 252. It may not be repetitive if I say that, these salient features, or guidelines were also provided in a number of Court of Appeal decisions, which includes *Raymond Francis v. R* [1994] TLR 100, *August Mahiyo* 25~

- v. R [1993] TLR 117, ~lex Kapinga & 3 Oth~rs v. R., Criminal Appeal -No. 252 of 2005 (tJnreported) among many others. These guidelines or f salient features may be summarized as follows:
- How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? What interval had elapsed between the original observation and the subsequent identification to the police?
- W~s there any material discrepancy between the description of the accused given to the police by the witnesses when first seen by them and his actual appearance?
- Admittedly, the prosecution key identifying witness, PW5 who was also a vic'tim of the incident, during the trial, failed t0r advert to the guidelines enunciated Waziri Amani v R [1980] TLR 250.
- I say so because of the fact that, PW5 when testifying during trial stated that the motor vehicle lights were on, whereas her version was different when she recorded her police statement, Exh. D1, in the said exhibit she stated the lights were off.
- With such inconsistence it will be danger to rely on her evidence of visual identification against the 2nd and 3rd accused person.
- Again, this Court asks itself if PWS properly identified the 2nd accused person at the scene of the crime, why did she fail to name the assailants at the earliest opportunity to his fellow victims or police officers?
- I agree with the proposition that unjustifiable delay by a witness who claims to have identified an offender to name the offender to people who respond to an
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- The Swalehe Kalonga @ Sale v. Republic, CA Criminal Appeal No. 16 of 2001 {unreported} case relied on that kind of f reasoning and in an earlier case, Marwa Wangiti Mwita and Another v. Republic, Criminal Appeal No. 6 of 1995 CAT (unreported), it was succinctly stated as follows:- "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 un-explained delay or complete failure to do so should put a prudent court to inquiry/~ The prosecution side, has urged this Court to agree with them on the reasons advanced by PWS that her delay to name the 2nd accused person_ ... was due to the fact that he was afraid to name the 2nd accused as she would flee away.
- With great respect, I don't agree with that supposition because, first, she cou-l'd have

told his fellow passengers who were also the victims of the incident and second, if she found it was unsafe to • disclose the name of the 2nd accused person and secondly, she was already a free agent when she arrived at police post as such she could name the person she alleged to have seen. With such inconsistently evidence from PWS, on the part of 3rd accuSed I find that PWS did not i d x e 2nd accused person at the 27 scene of the crime. I. however, hold that PwS identified the 2nd accused • person at the scene of crime. •

- ., f Apart from that th-e prosecution case is also based on Identification parade. Mr. Murungu learned state Attorney submitted that the Identification Parade was conducted on 07/07.2008 at Musoma Police Station as supported by PWS, PW6, PW9 and PW12. H.e was of the firm view that the procedure required to• undertake ID parade was well adhered. That as a result of the said parade PWS identified the 2 nd and 3 rd accused persons. Replying on this issue, Mr, Tut~uru !earned Counsel submitted that since the evidence of visual identification is doubtful it will be the same with the evidence on identification parade. He pointed out that the identification parade was wrongly conducted as it violated Rule 2(L) of the PGO No. 231 as the mode of identifying the accused was wrong. He fortified his arguments with the case of Francis Majaliwa Deus and 2 others Versus Republic, Criminal Appeal No. 139 of 2005 (CAT) (Unreported). • In addition to that PWS was not informed the reasons for identification as per Rule 2(q). He finalized his arguments by submitting • that Rule 2(t) was not complied with as no picture was tendered to prove • the same as provided in the case of Republic Verus XC-7535 PC Venance Mbuta (2002) TLR 48. . ~ 28 ,, / ~\ Mr. Sayi, learned counsel for the 3rd accused person fully subscribed ., with what Mr. Tuthuru learned counsel submitted on the question of f identification parade. Indeed, the Police General Order No. 232 explains in detail how the identification parade is supposed to be conducted; the first outcry of Mr. Tuthuru is that Rule 2(L), 2 (q) and (t) were not complied with. As for Rule
- (2) (L), which provides that the persons selected for the parade must not be known to the complainant or identifying witnes~ as identification would have little• value. It's my considered opinion that the learned counsel has missed a point, as there was no scintilla of evidence from the record that shows that the person selected for the parade were known to the .complainant or identifying witness . Another complaint of Mr. Tuthuru is that Rule 2(q) of PGO No. 232 was not complied with, the said rule provides as under:-
- (q) " The first witness will be called to the parade by the officer conducting il who will explain the purpose of the parade in the hearing of those on the parade and invite him or her to point out by touching any persons he or she identifies'~ _ With great respect, I differ with what was submitted by Mr. Tuthuru, learned counsel as PW6, ASP. Mahamood H. Banda stated that he 29 •t"o"~•PV ' _ _ _ _ _ ,,, , _ _ _ _ _ ~•. _ _ . •" -" ,--.,,, , .. ~•r... ---.---.i. ~.... ~•- >,"•~..J,.,,;.-/..... _qn,O--.,.-~_.,.,.,~---..... explained the purpo~e of identification parade as the law instructs, this is what he said, - . f ".... .I arranged the parade at the back yard of the police station where there is a fence and nobody could see what was going on. I took these people at the back yard. I then introduced to them my names and rank and the purposes of

being their i.e. it was an ID parade because there were two suspects of murder.

(Emphasis supplied) /r It is apparent that though I see nothing to fault in the identification parade, I will accord no weight on Pws- evidence on the identification parade as I have already pointed out herein above that PWS did not satisfactorily prove, without shade of doubt, to have seen the 2nd and 3rd accused in the locus criminis. She however, as I earlier stated very well identified the 2nd accused who in a way humiliated her. The fourth point for determination is the question of the caution statement which the prosecution has zealously relied as one of the basis of founding the accused person guilty. The learned State Attorneys submitted that, the caution statement, Exh P.5 in respect of the 3rd accused person should be taken into consideration. That PW11 Inspector Makole testified that on 04/07/2008 he warned the 3rd accused of the murder of Maguriati and after that he recorded his statement. That the 3rd accused admitted to have involved in 30~ . . . -~" !.~!:.~.,_~. - t,;~.~/M(:~..c.~.~;;~Y ,~<.~.-!_~~" ...t:~~i~t_~.~_~; . ~~~~.~--~.~.}~ _~.~_~: .~. ~_ 4 ; ;_>, ~1"~; .. ,'; ~; ~ .. ~ ~ ~ ;i~~,~; ~~~~ ...;;, . : ' . ; ~:~ ; , ~:~ 1; ~::~ ~...~ 1~ \ ~,~' . . ~- . ~ ~ - j • . . . ~ J • . ; . . ,;_ . /:~!.. 4:~;~;~r.,_~: ! :2.~rt,;~;<~!~ .. ~~I:~::t.~-~.,~!;~;>:~ ;t1, :t-c:-7. •z1:7!)!~,_~4~~~t:ff' ~Ht..~d Al --~ ... f . committing the said murder. The prosecution invited this court to the, pre-cedence iof the Tuwamoi's case and the case of Mukami w / o-- • Wa~kyo v Republic 1990 (TLR) 46 (CA), where it was held that mihor f errors or irregularities sho'uld not affect the whole case in murder cases. , Reverting to the question of the caution statement, Mr. Malimi learned defence counsel for the 1st accused person submitted that the caution statement which was admitted as Exh P.S requires corroboration, which in the absence of corroboration the Court must caution itself before relying upon it to convict the accused persons. He braced his arguments ,, with the case of Fanuel Joseph Mbedule Versus Republic, (1989)TLR 221(CA) and Paschal Kitigwa versus Republic, (1994) TLR 65. Joining hands to what was submitted by the fellow defence counsel, Mr. Tuthuru was of the view that, though in the caution statement the the ~ 2nd accused person is incriminated he did not get an opportunity to deny the contents of Exh. PS. He challenged it to be taken into account as the Court did in Sebastian Sway and others versus Republic, (1973) LRT 75 and that of Ezra Kyanamaigo versus Republic,(1962) EA 309 . • It was Mr. Sayi's learned counsel submission that the caution statement was recorded more than ten days from when the 3rd appellant was arrested. He asked himself why such long time. That according to PW3 all the accused persons were already arrested and as such there was no need for that delay .. That PW3 denied the 3rd accused person to have brought in Tarime where the caution statement was recorded but PW11 though insisted that the caution statement was recorded in Tarime, he 31/lfl>-- denied to have ~nown a person who took the 3 rd accused person to Tari me • from Musoma. That the accused . person should benefit from such

- discrepancies of evidence, as it was in Jeremiah Shemeta Versus Republic, (1985) TLR 228. Indeed, looking at the caution statement, Exh. P.5, the third accused person confessed to take part in the murder in questiof). He incriminated his fellow accused persons save for 4th accused person. It is undisputed fact that the caution statement which the prosecution

heavily rely on, was recorded after 10 days from the day the 3rd accused person was arrested on 23rd July, 2008 and recorded on 4th June, 2008 as amply stated by Mr. Sayi, learned counsel. Nevertheless, it is my considered opinion that there is an explanation for such delay. PW3, told this Court that when they arrested the 3rd accused person at Dar es Salaam on 23rd July, 2008 they transported him from DSM to Musoma and they reached to Musoma on 27th July, 2008. Thereafter they were conducting operations to arrest other culprits mentioned by the third accused person to have committed the offence charged. I am aware of the list of authorities the defence counsel have made in reference in support of their submissions but I am satisfied that, despite minor irregularities, pointed by the defence side, the caution statement of the 3rd accused person is such a good evidence to be considered by this Court. I will resort to discuss this in the due course in my conclusion. Tackling the question of the doctrine of recent possession and circumstantial evidence, the prosecuting learned State Attorney ~ 32 - t submittea, there is unbroken chain that shows that the accused person are involved in the murder in question and that the evidence of DW3 who f... mentioned his fellow culprits. That there is also evidence of PW1 who picked cartridges and the gun used is that which was found in 4th accused person's house. And on the question of recent possession there was recovery of items in the accused person, like belt, shoes which were stolen at the scene of the crime. Mr. Malimi, pointed out in these two issues that, the only evidence incriminating the 1st accused person is from PW2 and PW3, Issa Arabi Abasi who testified that he received an information from an informer that Sia Mgosi was one of the people who were involved in the killing of DSO. Mr. Tuthuru, learned counsel briefly stated that there is no strong evidence to warrant the conviction of the accused persons. He prayed for their acquittal. On his side Mr. Sayi, learned counsel submitted on the issue of recent possession that the items found and listed in the search order and allegedly found in the house of the third accused person are common commodities and no peculiar marks were prior stated by the prosecution witness. As for Exhibit P.4. the gun, he challenged PW2 and PW3 to be relied upon as they went themselves to take the said gun and not the third accused person who showed it to them. With Mr. Kisigiro, learned counsel for the 4 accused persons, submitted that the fourth accused person was not at the scene of the crime. That the 4th accused person was merely implicated by the evidence of PW2 and PW3 which speaks on the information that the 3rd accused person had given the fourth accused person a gun to hide. That such information is not stated in the caution statement so the 4th accused is not proved to have killed. In his lengthy submission, Mr. Kisigiro challenged how the gun, Exh. P4 was allegedly procured on the 4th accused person's house or premises. As for the belt which was found with the fourth accused person it was his contention that there was no evidence from the prosecution to prove that the same belonged to the deceased person. He further challenged the ballistic expert report, that PW1 told this Court that he sent two empty cartridges but only one was tested. That there were two guns which were found and that PW13 was doing the examination as a trainee as his Superior one Saulo was the one who signed the same. He prayed Exh. P6 to be looked by this Court in a suspicious eyes as it was in the case of Jumanne Rajabu Versus Republic(1999) TLR 69. It was his submission that the

search conducted on 26/07/2008 and 27/07/2008 are ,doubtful as they were conducted contrary to the requirement of the law. I should first resolve the question of the doctrine of recent possession. In the case of Joseph Mkumbwa and Samson Mwakagenda v. R, Criminal Appeal No. 94 of 2007 (unreported), the Court stated the position of the law thus:- 34 ' r ; . I . "where a person is found in possession of a f property re~ntly stol~n or unlawfully obtaine~ he is presumed to have committed the offence connected with the person or place where- from the property was obtained. For the doctrine to apply as a _basis of conviction/ it must be prove~ first/ that the property was found with the suspect secon~ that the property is positively proved to be the property of the complainant ·thir~ that the property was recently stolen form the complainant and lastly/ that the stolen thing constitutes the subject of the charge against the accused. The fact that the accused does not claim to be the owner of the property does not relieve the· prosecution of their obligation to prove the above elements // See also the Court's decision in the case of Ackley Paul 2.Rumul Paul vs R. Criminal appeal No. 110 of 2008 (unreported).There is a chain of decisions of the Court of Appeal on when the doctrine of recent possession can be properly applied. For example, in Alhaj Ayub @ Msumari and Others vs R, Criminal Appeal No. 136 of 2009 (unreported) the Court held:- 11 ... before· a court of law can rely on the doctrine of recent possession as a basis of conviction in a criminal case/it must positively be prove~ first/ &---- 35 that the pro{?erty was found with the suspect,: secondlr/ . that the property is positively the f property of the complainant,: thirdly, that the property was stolen . from the complainant and .-.: lastly, that the property was recently stolen from the complainant. " From their testimony PWS and PW7 they explained to the police that of the items which were stolen included suits, handbags, _laptop, white extension cable and a black cable and cell phones among others. That few of the stolen items were recovered and were identified and admitted and marked as Exh. P.2. Indeed, the record at hand shows that some of the reported recovered items were found in Juma Nyahita's (3 rd accused) wife. This was clearly pointed out by PW2 and PW3 in their testimony. With such evidence, I am satisfied that some of the stolen items Wflere those found in the presence of the third accused person's wife. The case law referred by

- the defence counsel cannot led this Court to hold otherwise or to the contrary. There is also Exh. P4, a pair of shoes and a belt which PWS testified that throughout her stay in Dar es salaam, they used to see Ibrahim Yusuph wearing the said pair of shoes~ 36 As for the question of a shotgun, exhibit_ P.4 and cartridges that were found ,at the scene of the crime, there.- is· evidence of· PW1 who . testified that th.ey picked two cartridges at the scene and took th_em to to f . :-~ Dar es Salaam for investigation. Pw3 testified that a shotgun No. C 139475, Exh:~ P4 were found in the cassava farm of 4th accused person, who testified that he was instructed to hide them by the 3rd accused: person. The evidence of PW3 was corroborated with that of PW13 who testified that the shotgun No. C 139475 marched with one of the cartridges which were before them for investigation. Though the defence side has argued this Court not to take into account Exh. P.2, P.4 and P.6, respectively I do not see sufficient reasons of not according weight to the said documents. Since it is a trite and

remarkable law that a confession of the co-accused must be taken into consideration if corroborated unless the Court warns the danger of ... convicting the accused person. I am very much satisfied that the accused persons at hand save for the fourth accused person, involved in killing the deceased D.S.O. Maguriati Ntaruke Marandu. As I demonstrated herein above, the caution statement of the 3rd accused person is collaborated with the ballistic expert report and that of the stolen items reported by the complainants to have been stolen on the fateful day (Exh. P.4 collectively). The four accused person, came up with the defence of Alibi, DW1 defended himself that he was at home at that night. DW2 also had a same version of the story, DW3 defended himself that he was at Dar es Sallam he tendered a bus ticket, Exh. D2 which the Court witness acknowledged 37 ~ . : ~ = 1 " . . " that it was issued by ., Mohamed Trans. Despite the fact that DW3 tendered ' ! the bus receipt, it carries less weight in helping him in his defence. There is no gainsaying that, since the appellants' defences of alibi did not raise any reasonable doubt on the prosecution case so I found it proper to reject them (see Anangiswe Masendo Ng'wang'wa v. Republic(1993) TLR 202 (CA). As amply stated above, the prosecution evidence is watertight enough and the discrepancies if any, are minor ones. The prosecution have proved their case beyond reasonable doubt that the 1st, 2nd and 3rd accused persons are the ones who murdered the deceased person. Since there is no any sustainable evidence incriminating the fourth accused person save for the evidence that he was given a shotgun to hide, he is exonerated from murder charges. I therefore agree with the unanimous opinions of 1st, 2nd and 3rd assessors that the accused persons save for the fourth one were involved in the murder in question. Consequently, I acquit the 4th accused Mwita Chacha @ Kibiti. The 1st accused Sia s/'1 Mgosi @ Wambura, 2nd accused Robert s/o Jones Kigosi @ Nyamacho and 3rd accused Juma s/o Mahende Nyahita @ Mugendi Mombasa are all found guilty and convicted of murder contrary to Section 196 of the Penal Code Cap. 16 (R.E. 2002). ~ i A.N.M. SUMARI JUDGE ('_i!T~ARIME \~;;7::~1/~}.4- : .. , . : . . . : - ~ ~ ~ . 38 -

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