

TANZANIA / JUDGMENT

republic vs moshi khamis 2021

tzhc 6202 21 september 2021

COURT
TZHCDECIDED
21 September 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (SUMBAWANGA DISTRICT REGISTRY) AT MPANDA CRIMINAL SESSION CASE NO. 1 OF 2019 (PI No. 4/2018 Mpanda District Court) THE REPUBLIC VERSUS MOSHI S/O KHAMIS

RULING

21 & 21/09/2021 Nkwabi, J.: This is a ruling as to whether the accused person has a case to answer or not. The accused person was arraigned before this court for murder contrary to section 196 and 197 of the Penal Code Cap 16 R.E 2002. It was alleged that he killed one Evelada Lukuma on 31st day of May, 2018. The deceased was the mother-in-law of the accused person. In the trial, the prosecution was able to bring three witnesses in an attempt to prove the charge against the accused person. They are PW1 the medical doctor who examined the body of the deceased, PW2 the investigator of the case and PW3 who allegedly recorded the allegedly caution statement of the accused person which however, was held inadmissible in evidence. PW1 JAFARI Assistant Medical Doctor conducted the post mortem examination on the body of the deceased Evelada Lukuma and found that there were injuries on the head of the deceased and the clothing were stained with blood. The injuries were caused by a sharp aged object. The post mortem examination report was admitted as exhibit P1 without objection. Hence it is proved that the deceased died an unnatural death. The investigator of this case is PW2 CONRAD Assistant Inspector who inspected the scene of offence which was stained with blood. He drew up the sketch map of the scene of offence which was admitted as exhibit P.

2. He completed the investigation and handed over the case file to the OC-CID for further action. He testified that by 1st June 2018 there was only one suspect arrested. PW3 DC Adelinus recorded the caution statement of the accused person. However, its admission was objected and it was ruled by this court that it is difficult in the circumstances of the case that the accused person was a free agent when he is allegedly made the alleged caution statement hence it was held inadmissible. 2 The above is the in essence the gist of the prosecution case. If the accused person is called upon to and enters his defence, which Ms. Amulike has intimated at the close of the prosecution case, and the accused person denies he committed the offence in his defence or keeps quiet, the issues would be:

- i. Whether the accused person is responsible for killing of the deceased. ii. If the first issue is answered in the affirmative, then whether the accused person had malice aforethought for killing the deceased. I have carefully considered the evidence of the prosecution in this case and I am of the firm view that the prosecution has failed to establish a prima facie case against the accused person sufficiently to require him to enter his defence. There is neither evidence on the record to prove that the accused person killed, or conspired to kill the deceased nor that he killed the deceased with malice aforethought. In the circumstances I am constrained to hold that the prosecution has failed to establish a prima facie case sufficiently to require the accused person to enter his defence. The available evidence on the prosecution side cannot make this court to hold that the above issues be answered in the affirmative. As such, I find that the accused person is not guilty of the offence and proceed to acquit him of murder under section 293(1) of the Criminal Procedure Act Cap. 20 R.E. 2019. It is so ordered. DATED and SIGNED at Mpanda this 21st Day of September, 2021 J. F. Nkwabi
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