

TANZANIA / JUDGMENT

CRIMINAL APPEAL NO

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IN THE COURT OF APPEAL OF TANZANIA AT SUMBAWANGA f CO RAM: MWARI3A. J.A., MASHAKA. J.A. AND FELESHI, 3.A1 CRIMINAL APPEAL NO. 282 OF 2023 SEVERINO BRUNO CHOM A..... APPELLANT VERSUS THE REPUBLIC RESPONDENT (Appeal from the Judgment of the Court of Resident Magistrate of Sumbawanga at Sumbawanga) fSumave, PRM- Ext. Jur/1 dated the 30th day of Decern berr 2022 in RM Criminal Session No. 25 of 2019 JUDGMENT OF THE COURT 14th & 28th March, 2025 FELESHI, J.A.: The appellant, Severino Bruno Choma, is challenging the conviction of murder and death sentence meted on him on 30/12/2022 by the Court of Resident Magistrate of Sumbawanga sitting at Sumbawanga, presided over by G.K. Sumaye, Principal Resident Magistrate with Extended Jurisdiction (the trial Court) in RM Criminal Sessions Case No. 25 of 2019. Before its transfer to the trial court, the case was initially filed in the High Court of Tanzania at Sumbawanga as Criminal Sessions Case No. 35 of 2021. The appellant was charged with the offence of murder contrary to sections 196 and 197 of the Penal Code, Chapter 16 (the Penal Code) for allegedly murdering one Hishim s/o Zuberi Muyinga (the deceased) on 22nd day of December 2017 at Ulinji Village within Sumbawanga Municipality in Rukwa Region. The appellant pleaded not guilty to the charged offence. To prove it, the prosecution called eight witnesses and tendered seven exhibits: a sketch map; postmortem report; a guest register book; extrajudicial statement; certificate of seizure; seized physical exhibits and a cautioned statement. All exhibits were admitted and marked as Exh. PI, P2, P3, P4, P5, P6, and P7, respectively. On his part, the appellant defended himself as DW1 and relied on his own defence. The antecedent facts giving rise to this appeal are that: the appellant, a traditional herbalist living at Malangali area within Sumbawanga Municipality and the deceased, a land officer working in Mpanda Municipality, had their first encounter in July 2017 over traditional herb-based medication service. Since then, the deceased regularly visited the appellant and sometime spent his night at his home. In early December 2017, the deceased asked the appellant to look for him an old Germany currency known as "Rupia" (Rupia). He got it but it was a fake one. Then, the two met on 15/12/2017 at the appellant's home at about 23:00 hrs where the appellant showed it and offered to sell it at the consideration of Tshs. 20,000,000/=. However, the deceased did not have that amount and returned to Mpanda on that same night before he came again on 22/12/2017. On that day, he paid the purchase price and was given the 'Rupia'. Thereafter, the deceased's body was found at Ulinji mountain, and following the police investigation, the appellant was charged as intimated above. The prosecution case begins with the report made by certain boys to the

Village Chairman, one Gaspar Musa (PW1) that, while grazing cattle around Ulinji mountain, they saw a dead body. PW1 related the information to the Ward Executive Officer, one Godfrey Sanka (PW2) who further informed the Police who went to the scene and the investigation ensued. The deceased body was taken to the hospital for postmortem examination which established that, the deceased died due to "severe head injury due to trauma on the head". The police arrested the appellant on 30/12/2017. After his arrest, on being interrogated the appellant admitted that he was involved in killing the deceased. While No. F.4960 D/SGT Philbert (PW7) recorded his cautioned statement (Exh.P7), Rosta Emmanuel Mofuga (PW5), from the Sumbawanga Urban Primary Court recorded his "extra-judicial statement" (Exh.P4). In his defence evidence, the appellant exculpated himself from authoring the deceased's dreadful murder. He instead, inculpated one of his associates, that he authored it in his presence on 22/12/2017. He said, before his incarceration he lived at Malangali where he had a restaurant, motorcycles welding machine and was a traditional herbalist. He deposed that, the deceased was killed to conceal anonymity behind the fake 'Rupia' deal from which, while Tshs. 10,000,000/= was paid to the owner, both his associate and him got Tshs 5,000,000/= each, being their shares from the sale proceeds. Additionally, he said that, after recording his cautioned statement and attending a search in his house, he decided to be taken to the justice of peace to have his "extra-judicial statement" recorded. Having heard and weighed the parties' evidence, the trial court was contented that, the prosecution case was proved beyond reasonable doubt against the appellant. It thus convicted and sentenced him as we alluded to earlier. Discontented, he appealed to this Court. The appellant had previously, on 3/6/2024 filed a memorandum of appeal containing six grounds but subsequently on 10/3/2025 filed a supplementary memorandum of appeal and abandoned his original memorandum of appeal in terms of rule 73(2) of the Tanzania Court of Appeal Rules, 2009. The two new grounds read as follows:

1. The prosecution failed to prove the case beyond reasonable doubt
2. The trial court erroneously convicted the appellant basing on cautioned statement Exh. P / which was wrongly admitted contrary to the law. At the hearing, which was conducted virtually, Mr. Deogratious Phailod Sanga, learned advocate represented the appellant while Mr. Calistus Kapunga, learned Senior State Attorney assisted by Mr. Joseph Mwakasege, learned State Attorney teamed up representing the respondent, the DPP. The appellant was as well virtually linked to the proceedings. Amplifying the second ground of appeal, Mr. Sanga referred us to page 95 of the record of appeal arguing that the contents of Exh. P7 were stated before it was tendered for admission. According to him, the testimony by PW7 containing a sentence that "During the interrogation, accused person admitted having killed the deceased" was detrimental to the appellant and in effect influenced the trial court's decision. To buttress his argument, Mr. Sanga cited our previous decision in the case of Hussein Hassan @ Antiti v. Republic (Criminal Appeal No. 541 of 2021) [2024] TZCA 1070 (7 November 2024), TANZLII. Further, Mr. Sanga contended that Exh. P7 violated sections 57 (4)

- (b) and (c) and 58 (4) (b) of the Criminal Procedure Act, Chapter 20 (the CPA) as its certification did not indicate if it was read over to the appellant. Additionally, he argued that, though the appellant acknowledges having affixed his thumbprint signature in the certificate, a failure to indicate which word between "nlm eyasom a" and "nimesomewa" is applicable in the certificate renders Exh. P7 violative of the law. He thus implored the Court to expunge it from the record. On the first ground of appeal, Mr. Sanga forcefully argued that, apart from the impugned Exh. P7, nothing remains to sustain the appellant's conviction. That is because, the contents of Exh. P4, the appellant's "extra-judicial statement" does not implicate him but, rather, it offers a narration of circumstances inculcating his herbalist assistant a murderer. He argued, Exh. P4 does not vividly establish who owned the motorcycle used by the trio going to the mountain where the murder occurred. He added that the appellant was afraid of what happened to the deceased that is why he ran into the bush and could not report it to the police. In sum therefore, he implored the Court to allow the appeal and release the appellant. In turn, Mr. Kapinga resisted the appeal and submitted for the second ground of appeal that, the impugned averment in PW7's evidence is unfounded. He argued that, the assertion was a significant legal step towards tendering Exh. P7. About Mr. Sanga's contention that it violated sections 57 (4) (b), (c) and 58 (4) (b) of the CPA, Mr. Kapinga referred us to page 109 of the record of appeal and argued that, PW7 clarification on the non "cancellation of one of the two words in the certificate was clear that, it was a mere typing error. That, the same did not dent the contents of Exh. P7 which was voluntarily recorded and endorsed by the appellant as shown at page 170 of the record of appeal. He therefore begged the Court to dismiss this ground of appeal. As to the first ground of appeal, Mr. Kapinga submitted arguing that the charged offence was proved beyond reasonable doubt. Amplifying his stance, he recounted that the full schemed "Rupia business" that resulted into the death of the deceased was engineered by the appellant. It was him who managed the fake 'Rupia' deal in exchange of genuine payment. Referring us to page 116 to 117 of the record of appeal, Mr. Kapinga went on arguing that the appellant voluntarily conceded having authored Exh. P4 and that he administered the traditional ritual. According to him, the conduct of the appellant before and after the death of the deceased including, his failure to report the incident that had led to the loss of life of the deceased inferred nothing but, his malice aforethought. He argued, that was incompatible with the conduct of an innocent person. Mr. Kapinga also beseeched us to consider the evidence as a whole and find that the appellant's defence corroborated the prosecution case. In the end, he urged the Court to dismiss the appeal. In rejoinder, Mr. Sanga substantially just urged us to consider his submission in chief and strongly underlined that, the appellant did not report the deceased's death due to horror and shock. We have considered the grounds of appeal, the submissions by the parties, the law and the record of appeal. It is clear to us that, the learned counsel are in consensus regarding the appellant's presence at the scene of crime when the deceased was hit on his head and succumbed to his dreadful death. We will thus, at an appropriate stage, determine whether his guilty to the charged offence was proved. Starting with the second ground of appeal, the complaint by Mr. Sanga that, Exh. P7 ought to be expunged because its content was improperly disclosed by PW7

before its admission in evidence, was vehemently resisted by Mr. Kapinga. To Mr. Kapinga, the impugned PW7's statement that, during the interrogation, accused person admitted having killed the deceased, was a necessary introduction for identification purpose of the intended exhibit, In *Hussein Hassan @ Antiti v. Republic* (supra), the case referred to us by Mr. Sanga, the Court expunged cautioned statement (Exh.P3) and extra judicial statement (Exh.P2) because their contents were narrated by PW5 and PW4 before their admission in evidence. To appreciate their contents the same read: Exh. P2: "In h is statem ent he said he had been struck by the deceased and the accused b it him with a brick. In the roomr he h it the deceased to h is death. He went to sleep in Makanyagio M osque,..." Exh. P3: "In h is statem ent he confessed that it is true that on 07/06/2017 a t OO'IO am when he was from waik near h is home near Katavi Resort, he m et a man who was carrying a blue large bucket (jaba). That person beat him up on the leg. He took a brick and beat the th ie f with the b rick on the head. The bandit fe ll down. He questioned the bandit where he took it The bandit took him to where the accuse d was residing..." Before expunging the two exhibits, the Court held at page 14 thus: 'We fin d it dear that, both PW4 and PW 5 made narrations o f the contents o f the appeiiant's confessions in the cautioned and extrajudicial statem ents before they were able to tender them as exh ib its/' We had addressed a somewhat similar situation in other cases including, *Denis Geraz v. Republic* (Criminal Appeal No. 10 of 2023)

[2025] TZCA 196 (13 March 2025), TANZLII, where we held, amongst other things, that: "Since it is settled /aw that, a docum ent m ust be cleared fo r adm ission before it is read out a t the tria l, doing otherw ise as it transpired in th is case, was tantam ount to introducing the confessional statem ents o f the appellant through the backdoor which cannot be condoned. In the prem ises and in order to rem edy the om ission, we expunge the confessionalstatem ents o f the appellant together with the evidence o f PW 5 and PW 6" Principally, exhibits in court proceedings must pass through four stages for their impeccable admission: one, identification where a witness must state before the court if, and how he identifies the intended exhibit.; two, clearance by looking at the legal requirements of its admissibility which involves objection from the opposite side, then admission; three, marking it to form part of evidence; and four, having it read out. See- *Ronbinson Mwanjisi and Three Others v. The Republic* [2003] TLR. 218 and *Mwita Marwa Taroge v. Republic* (Criminal Appeal No. 267 of 2021) [2025] TZCA 89 (25 February 2025), TANZLII It must be appreciated that, each of the four stages has its own procedural and evidential significance and are engaged by a tenderer in hierarchical order. In the matter at hand, the complained part of the evidence is found on page 95 of the record of appeal. We find it apt to let the pertinent part speak by itself: "The accused signed, and I signed I recorded the accused cautioned statem ent I then read and expiained the statem ent and found it correct he signed to the cautioned statem ent using fingerprint I also signed. On the cautioned statem ent D u rin g th e in te rro g a tio n , a ccu sed p erso n a d m itte d h a vin g k iie d th e deceased. I remember the cautioned statem ent as it has m y nam es force number, accused name and tim e..." [Emphasis added] It is the bold part of PW7's evidence above the counsel for the parties differ. Having considered Mr. Sanga's

submission, the impugned assertion and the case law above, we have found ourselves unable to go by Mr. Sanga's submission that the impugned sentence in the quoted excerpt above violated the law. That brief narration, in our view, was within the ambit of the first stage without which, as alluded to above, PW7 would not have legitimately moved to stage two. It is for that reason that PW7 did not go on to disclose the what, when, where and how aspects of Exh.P7 which could most appropriately be made known at the fourth stage after successfully gone through stages two and three. We thus find no merit in this complaint. On the second limb of the ground of appeal, Mr. Sanga, faulted Exh. P7 for want of proper certification. To him, a failure by PW7 to cancel one of the words "nim eyasom a/nim esom ewa" violated sections 57 (4) (b) (c) and 58 (4) (b) of the CPA. Mr. Kapinga maintained that, a failure to cancel one of the words was clarified by PW7 and did not occasion any harm to the contents of Exh.P7 against which the appellant endorsed. On our part, we hasten to observe that, this complaint has recourse from the record of appeal especially at page 170. While it is true that the two words co-exists in the impugned certificate, it is also clear to us that, apart from the impugned certification, the appellant does not have any other complaint on the remaining parts of Exh.P7 including, the last part of his statement which reads "hayo ndiyo m aelezo yangu ambayo nimesomewa n i 53/7/7?/"which is endorsed by his thumbprint signature. With that glaring reality, we do not agree with Mr. Sanga that the failure to cancel one of the words could prejudice the appellant. That is because: one, the certificate was endorsed by the appellant's thumbprint signature; and two, under the circumstance obtained in this case, we tend to agree with Mr. Kalinga that, the clarification given by PW7 at page 117 line 10 of the record of appeal, cured the complained of error. PW7 deposed that, the correct word that ought to apply for the appellant's case which was inadvertently not indicated through cancellation on the co-existed words was "nimesomewd". That we find is justifiable since the author of Exh.P7 did not know how to write and read. That is why, as we alluded to above, he appended his thumbprint signature at the end of his statement as well as in the impugned certificate. This complaint thus flops. In sum, we find the second ground of appeal is devoid of merit and we dismiss it. With regards to the first ground of appeal, as observed earlier, the learned counsel are at one regarding the appellant's presence when the deceased succumbed to his dreadful death. Obviously, the consensus is founded in the appellant's extra judicial statement (Exh.P4) which he owned in his defence evidence (D1) as shown at pages 116 and 117 of the record of appeal. Now, while quite aware of this Court's mandate to evaluate the evidence amassed before the trial court, we will determine whether the prosecution proved the appellant's guilt to the charged offence beyond reasonable doubt in terms of sections 110 and 114 of the Evidence Act, Chapter 6. It is common ground per pages 135 and 138 of the record of appeal that, during the trial, while the trial court expunged the certificate of seizure (Exh.P5) and goods seized from the appellant (Exh.P6) from the record for contravening sections 246 (2) and 289 (1) and (2) of the CPA, it also expunged the guest house register (Exh.P3) for want of evidence proving its chain of custody. Further, it was satisfied that, as shown at pages 137 and 138 of the record of appeal, both the appellant's extra-judicial statement (Exh.P4) and cautioned

statement (Exh.P7) were voluntarily and freely made and hence properly admitted in evidence. It thus considered the circumstantial evidence amassed before it. At the end as shown at pages 139 and 140 of the record of appeal, it dismissed the appellant's defence that the deceased's murder was committed by his assistant. As aforesaid, it convicted the appellant as charged and condemned him to death. On our part, we concur with the trial court (Sumaye, PRM Ext. Jur.) that, in sum, the testimonies of PW1, PW2, PW3, PW5, PW6 and PW7 and the attendant exhibits PI (sketch map), P2 (postmortem report), P4 (extra-judicial statement) and P7 (cautioned statement) present circumstantial evidence for us to determine if it established the appellant's criminal culpability in the charged offence. For purposes of clear understanding, we wish to observe that, having resolved that Exh.P7, which was one of the pieces of evidence relied upon by the trial court to convict and sentence, is flawless, it means, we will evaluate it along with other pieces of circumstantial evidence including, the appellant's extra-judicial statement (Exh.P4), in resolving the first ground of appeal. However, it is of great significance to underline that, the law about circumstantial evidence to be relied upon in convicting an accused, the chain of facts and circumstances must be incompatible with the innocence of the accused, and he should be incapable of giving an explanation or any reasonable hypothesis other than that of guilt. This position was illustrated in the number of decisions including, *Abdul Muganyizi v. R* (1980) TLR 262, *Abel Mathias @Gunza @ Bahati Mayani v. The Republic*, Criminal Appeal No. 267 of 2020 [2023] TZCA 25 (20 MRepub lie (TANZLII, Magendo Paul & Another v. R

- (1993) TLR 219, *Hamidu M. Timotheo v. Republic* (1993) TLR 125 and *Hassan Fadhili v. R* (1994) TLR 89. In *Abdul Muganyizi v. R* (supra), the Court held that: "...the exculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any reasonable hypothesis other than that of guilt." Furthermore, in *Denis Geraz v. Republic* (supra) we expounded the principles governing reliability of the circumstantial evidence to convict in the following terms: 11 I. That the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established, and that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused, and that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non-else (See *JU S T I N E J U L I U S A N D O T H E R S V S R E P U B L I C*, Criminal Appeal No. 155 of 2005 (unreported)). ii. That the inculpatory facts are inconsistent with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of guilt; and that before drawing inference of guilt from circumstantial evidence, it is necessary to be sure that there are no existing circumstances which would weaken or destroy the inference [See, *S I M O N M S O K E V S R E P U B L I C*, (1958) EA 715A and *J O H N M A G U L A N D O N G O V S R E P U B L I C*, Criminal Appeal No. 18 of 2004 (unreported)]. Hi. That the accused person is alleged to have been the last person to be seen with the deceased in absence of a plausible explanation to explain away the circumstances leading to death,

he or she will be presumed to be the killer. [See - MATHAYO M W ALIM U AND M ASAIR EN G W A VS R EPU B LIC (supra)] iv That each link in the chain must be carefully tested and, if in the end, it does not lead to irresistible conclusion of the accused's guilt, the whole chain must be rejected, [see SAM SON D AN IEL VS R EPU B LIC , (1934) E.,AC.A. 154]

- v. That the evidence must irresistibly point to the guilt of the accused to the exclusion of any other person. [See SHABAN M PUNZU @ ELISHA M PUNZU VS R EPU B LIC, Criminal Appeal No 12 of 2002 (unreported)]. vi. That the facts from which an adverse inference to accused is sought must be proved beyond reasonable doubt and must be connected with the facts which inference is to be inferred. (See ALLYBAKARI VS R EPU B LIC (1992) TLR, 10 and ANETH KAPAZYA VS R EPU B LIC, Criminal Appeal No. 69 of 2012 (unreported)). So guided, in the matter at hand, we will at this juncture, prudently let parts of the evidence amassed from the appellant in Exhs. P7, P4 and his defence evidence (DW1) speak for themselves: Exh. P7 (Appellant's cautioned statement) at pages 163 to 170: "... mwaka 2016 nikiwa naendelea na shughutt zangu hizo za uganga niifahamiana na ... alianza. kujifunza shughuli za uganga na kuwa m saidizi wangu... aliweza kum patia namba ya simu HISIM S/O ZUBERI ambaye n i afisa ardhi Mpanda ambaye baada ya kupewa namba yangu alinielea kuwa akipata nafasi muda wowote anaweza kufika Sumbawanga na twn e zi wa 07/2017 a tffika nyumbani kwangu na kunieleza kuwa ana matatizo ya miguu na mcho... nifiw eza kum patia dawa... na afinipatia fedha TSH5. 200,000 na kuondoka ambapo alila la sikum oja... tu/iende/ea kuwasi/iana... mw ezi wa 09/2017 HISIM S/O ZUBERI alikuja tena nyumbani... Uimwongezea dawa hizo na kuondoka... na aipokuwa Mpanda tulikuwa tunaendetea kuwasi/iana naye... na mw ezi wa 12/2017 mwanzoni akiwa Mpanda a/inipigia simu na kunieleza kuwa ana tafta RUPIA... niHendelea kutafuta ... nikiwa nim em shirikisha... kutafuta RUPIA hivyo aiiw eza kuipata... ambayo iikuwa tarehe 15/12/2017 na tarehe hiyo ni i/iw eza kum pigia simu HISIM S/O ZUBERI na kum w eleza... ambapo tarehe hiyo alia nza safari... na alifika ... saa 23:00 hrs ambapo a iifika nyumbani kwangu na i iweza kum uonyesha RUPIA hiyo na baaada ya kuiona aiiridhika na ndipo aiiposema ana fedha Tsh.15,000,000/= ambazo niim kaitia kuwa fedha hiyo ni ndogo aongeze iwe Tsh. 20,000,000/= na siku hiyo aiiondoka hadi tarehe 22/12/2017 saa 17:00 hrs kab/a ya kuanza safari toka Mpanda aiinipigia simu na kunitaarifu anakuja akiwa njiani tuiendeiea kuwasi/iana naye hadi saa 23:00 hrs a tifika nyumbani kwangu... na aliweza kum poka na ku ingia nyumbani ndani kwangu tukiwa na na baada ya kuingia ndani tu iim u onyesha RUPIA hiyo na i iio na i yenyewe na ndipo aiipotoa fedha Tsh. 20,000,000/= ambayo iikuwa ndani ya kibegi cha m gongoni chekundu zikiwa zimwekwa kwenye bahasha na tu iih e sabu hiyo tu kiwa na m w enzangu ambapo pesa hiyo iitim ia kwa idadi ya Tsh. 20,000,000/= na kwa hapo tayari tulikuwa tum eku baiiana na m w enzangu ... kuwa RUPIA tu iyo m patia siyo yenyewe na kwa kuwa sisi tuta fedha na fedha tayari tum eisha ipata hivyo tum danganye kuwa i i i RUPIA hiyo aweza ku ichu ku kwenda nayo hadi Mpanda inabid i Kwenda ku fan ya matambiko porini na tu iifa nyahivyo tu kitambu siyo RUPIA

na kw a kuw a ta y a ri w a k a ti huo ta y a ri tu lik u w a tu m eko d i p ik ip ik i kw a SIZA S /O am baye...na n iik o d i kw a Tsh. 30 ,000 /= ... iip o fik a sa a 2 3 :4 5 h rs tu lip a n d a p ik ip ik i h iy o tu kiw a w ote w atatu m im i n ik iw a naendesha... na w akati huo ta y a ri m w enzangu a iiku w a am echukua kip a n d e cha nondo na ku kiw eka kw enye s a /fe ti am bapo s a ife ti h iy o tu iifu n g a nyum a ya p ik ip ik i n a tu iio n d o ka kw enda K ijiji cha U iin ji m iim an i...akiw a amemwaga unga wa m ahindi huku akiwa am eshika RUPIA hiyo ambayo n i feki akiwa anaongea maneno yake na kw a kuw a tu lik u w a tu m e ja d iia n a na m w enzangu kuw a m im i na H IS IM S /O Z U B E R I w a k a ti tum epiga m a g o ti yeye asim am e na am pige nondo k ich w a n i na k w e ii m w enzangu aiisim am a na kum piga nondo H IS IM S /O Z U B E R I kite n d o k iich o p e ie k e a kuanguka k ifu d ifu d i am bapo m im i n itik im b ia kue/eketa tu iip o a ch a p ik ip ik i n iim s u b iri m w enzangu am bapo a iifik a baada ya ro b o saa a kiw a hana nondo na a iin ie ie za kuw a m w iti w a m arehem u huyo am euvuta kw enye kich a ka na baada ya hapo tuiipanda p ik ip ik i na kurudi nyum bani na baada ya kufika nyum bani tuligaw arta fedha hizo...hayo n id iy o m aelezo yan g u am bayo nim esom ew a n i s a h ih i" [Em phasis added] Exh. P4 (Extra-judicial statement) at pages 152 to 155: "M w ezi w a 1 2 /2 0 1 7 m w anzon i m arehem u a iin ip ig ia s im u na k u n ie ie za kuw a a n a ta fu ta R u p ia h ivyo a lin ita k a n im ta fu tieta re h e 1 8 /1 2 /2 0 1 7 n iip a ta R u p ia ambayo siyo yangu...hivyo n iim p ig ia sim u marehemu naye a iik u ja tareh e 2 2 /1 2 /2 0 1 7 na k u fik a nyu m ban i kw angu kisha n illm to le a hiyo Rupia naye aiiiona na hakugundua k/tu choch ote h ivyo a iin ik a b id h i Tsh. 20,00Q ,00Q /= n am i n i/ im k a b id h i He R u p ia kisha mwenzangu ... aiiin g ia na kueleza kuwa tukatam bike hivyo tu lich u k u a p ik ip ik i na kw enda U lin ji na m uda huo iik u w a ni saa 5 :0 0 u siku ...tu iiacha p ik ip ik i ha kupanda miima mpaka ju u ya m iim a...tu kiw a tum epiga m a g o ti m w enzangu a iito a k itu k iz ito na ku m piga m arehem u sehem u za k ich w a n i ambapo marehemu aiianguka kifudifudi...yeye aiiendesha p ik ip ik i mpaka nyum bani kwangu am bako n iim p a p esa Tsh. 10,000,000 ,/ - ... n a m i n i iich u k u a T sh.10,0 0 0 ,0 0 0 / [Em phasis supplied] DW1 (Appellant's defence evidence) at pages 116 and 117: "...the custom er (deceased) cam e on 22.12.2017. The custom er was shown Rupia... the custom er was given Rupia..., th e cu sto m er a n d m e w en t to th e m ountain. ...aiisem a tupige m agoti m im i na marehemu tulipiga m agoti, ...aiikuw a amesimama, ghafia n ilisik ia marehemu amepigwa, nikakim biiia kwenye kichaka. I stayed in the bush. I Show (s ic) to rch to him , I found he did not have anything w e a ii re tu rn e d b a ck hom e w h ile... driving m otorcycle.... A t the police, my sta te m e n t w as re co rd e d ...! d e cid e d to be taken to th e ju s tic e o f p e a ce ... I e xp la in e d a s it w as sta te d ..." [Em phasis supplied] In the foregoing excerpts, it is clearly established that, the appellant and the deceased knew each other and between July and December 2017 had regular communication and visitations over traditional herb-based medication as well as the Rupia business. That, the appellant masterminded the procurement of the fake Rupia and called the deceased from Mpanda on 22/12/2017. Upon his arrival on that day, he led him to Ulinji mountain where he administered his murder. Thereafter, as planned, he divided the sale proceeds of fake Rupia amongst himself and his acquaintance, Under the circumstances, with all due respect to Mr. Sanga's submission on this ground of appeal, we are inclined to the findings made by the

trial court after evaluating the circumstantial evidence. The trial court in dismissing the appellant's exculpation defence held at page 139 of the record of appeal, that: "The accused defence that the murder was committed by his friend [...] who was not yet arrested to date cannot hold water because he organized the plan from the beginning to the deceased death." We too, as aforesaid, are unable to buy the appellant's self-exculpation from the deceased's murder on the reason that, contrary to Mr. Sanga's submission that the appellant was not the one who hired the motorcycle they used to go to the scene of crime on the fateful night of 22/12/2017, the evidence above is clear that, he was the one who hired it at Tshs.30,000/= from one SIZA. All that, we find, were incompatible with his self-proclaimed innocence. Thus, as rightly argued by Mr. Kapinga, we find the appellant's conducts before and after the commission of the charged offence sufficiently infer his malice aforethought. That included, his remaining mute until he was arrested after the investigation. We agree with Mr. Kapinga that, the defence evidence, particularly on the chain of events and the appellant's conduct corroborated the prosecution case. See for instance, *Elias Paul v. Republic*, Criminal Appeal No. 7 of 2004 (unreported) and *James Kapyela v. Republic* (Criminal Appeal No. 527 of 2022) [2025J T2CA 252 (20 March 2025), TANZLII. In the latter case, this Court held that: "The evidence of the prosecution witnesses was supported by the appellants conduct which was inconsistent with his innocence. Although he was present at his place of business on the material date...he did neither go home when he was informed of discovery of the deceased children's bodies and the commotion which ensued at his home nor did he report the matter to the police. It was not until his friend (PW 4) advised and offered to transport him that he reported at Sumbawanga Central Police Station. That conduct showed that, he was avoiding to be arrested for the offence which he had committed." [Emphasis added] The account by Mr. Sanga that he was in horror and shock, in our firm view, does not hold water. In the end, we are satisfied that, the chained events drawn from the pieces of evidence detailed in Exhs.P4, 25 P.7 and DW1 plus the cause of death stated in Exh.P2 irresistibly established the charged offence against the appellant beyond any reasonable doubt. The first ground is also found devoid of merit. In sum therefore, we find the appellant's appeal lacks merit and we hereby dismiss it. DATED at SUMBAWANGA this 28th March, 2025. A. G. MWARLJA JUSTICE OF APPEAL L. L. MASHAKA JUSTICE OF APPEAL E. M. FELESHI JUSTICE OF APPEAL Judgment delivered this 28th day of March, 2025 in presence of appellant in person - unrepresented and Mr. David Mwakibolwa, learned State Attorney for the Respondent/Republic is hereby certified as a true copy of the original. J. J. KAMALA DEPUTY REGISTRAR COURT OF APPEAL

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