

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB - REGISTRY)
AT DAR ES SALAAM**

ORIGINAL JURISDICTION

CRIMINAL SESSION CASE NO. 103 OF 2018

REPUBLIC

VERSUS

1. MIRIAM D/O STEVEN MRITA

2. REVOCATUS S/O EVARIST MUYELLA @ REVOO @ RAY

JUDGMENT

Date of last Order: 11th December, 2023.

Date of Judgment: 23th February, 2024.

E.E. KAKOLAKI, J.

On the dawn of 26th day of May, 2016 the then Officer Commanding Criminal Investigation Department for Kigamboni District (OC-CID) Richard Mwaisemba who was on duty at Kigamboni Police Station received from the OCS for Kibada Police Post's one S/Sgt. Mwanzalima, a report concerning a cold blood murder that had occurred at Kibada block 17. This was murder incident of one Aneth Elisaria Msuya who had her neck mercilessly cut with a sharp object. The said information was relayed to the OCD for Kigamboni as well as the RCO for Temeke designated Police Region one ACP Richard

Thadei Mchomvu, who together with a team of forensic experts led by E. 5334 F. S/SGT John Benard Mwambusye called at the scene of crime. The investigation was immediately mounted by collecting different samples and exhibits for evidential purpose as well as interviewing and recording statements of different persons who volunteered information. Among the samples collected were a knife, underwear/underpant and whistle both found at the scene of crime in the room where the deceased body was found lying in a pool of blood.

Among the persons who recorded their statements after the incident was Getrude Peniel Mfuru, the deceased house girl who clued the investigators of the suspects of murder the result of which two suspects were arrested on different dates at Arusha town, interviewed and transferred to Dar es salaam for further investigation, before the same were booked with the charge of Murder contrary to sections 196 and 197 of the Penal Code, [Cap. 16 R.E 2002] now R.E 2022. These are **Miriam Steven Mrita** and **Revocatus Evarist Muyela @ Revoo @ Ray**.

It was prosecution case that, on 25th day of May, 2016, both accused persons at Kibada area within Kigamboni District in Dar es salaam Region, did jointly

and together murder one **Aneth Elisaria Msuya**, the charge which when put to them both returned the plea of not guilty.

Following that plea hearing of the case had to start with the aid of assessors. However, one of the three assessors **Ms. Experancia Foy** could not make it to the end as she travelled far up country when the case was called on for continuation of hearing on 21/02/2022 and her presence could not be secured without causing due delay, the result of which hearing had to proceed with aid of two gentlemen assessors who at the end aired out their opinion on the guiltiness or otherwise of the accused persons in terms of the provisions of section 298 of the Criminal Procedure Act, [Cap. 20 R.E 2022] (the CPA). During trial the prosecution to a large part was piloted by Mr. Paul Kimweri and Ms. Yasinta Peter both Senior State Attorneys assisted by Ms. Generoza Montano and Ms. Marietha Maguta, learned State Attorneys respectively while the 1st and 2nd accused persons enjoying the services of Mr. Peter Kibatala and Mr. Nehemiah Nkoko, both learned counsel.

In a bid to substantiate its accusation against the accused persons the prosecution summoned a total number of twenty five (25) witnesses and relied on eighteen (18) exhibits both documentary and physical. The witnesses who managed to adduce their evidence in court are Sgt. Mwajuma

(PW1), Leonida Kagemulo Mutta (PW2), Mwanaisha Kassim (PW3), SSP Richard Mwaisemba (PW4), SP Latifa Mohamed (PW5), Insp. Alistides Eustalius Kasigwa (PW6), Ahlam K. Malingo (PW7), Insp. Fedrick Nyudike (PW8), Lutengano William Mwanginde (PW9), ACP Richard Thadei Mchomvu (PW10), ACP. George Aloyce Katabazi (PW11), Henry Kambalile (PW12), Modest Kallam Malya (PW13), Insp. Mahita Omary Mahita (PW14), Fidelis Segumba (PW15), WP 2928 D/Sgt Elentruda PW16), E.5334 D/S/Sgt. John Benard Mwambusye (PW17), Sophia Amir Shemzigo (PW18), Aziza Mohamed Hassan (PW19), Nasib Adriano (PW20), Dr. Hassan Mwichande Chande (PW21), SSP. David Paul Mhanaya (PW22), WP 5412 Sgt. Mwaka (PW23), Sgt. Obadia Joseph Mwalukuta (PW24) and Getruda Peniel Mfuru (PW25).

The eighteen (18) prosecution exhibits relied on by the prosecution were the Report on Post mortem Examination Exh. PE1-A, Caution Statement of Miriam Steven Mrita Exh. PE1-B, Extra Judicial Statement of Miriam Steven Mrita Exh. PE2, One sealed envelope titled "Mkuu wa Upelelezi wa Makosa ya Jinai, Makao Makuu ya Police Dar es salaam Exh. PE3, Sketch map of the scene of crime Exh. PE4, Rights and Assurance Form of the 2nd accused Exh. PE 5, Certificate of Seizure on search conducted in the Car of 1st accused

Exh. PE6, A motor vehicle make Range Rover, silver in colour with Reg. No. T 429 BYY Exh. PE7, Identification parade register concerning 2nd accused Exh. PE8, Identification parade register concerning 1st accused Exh. PE9, Knife with black handle and its wrapper (envelope) Exh. PE10 collectively, Underpant/underwear (chupi) purple in colour and its envelope/wrapper Exh. PE11 collectively, Whistle (Filimbi) metal and silver in colour and its envelope/wrapper Exh. PE 12 collectively, A4 sized envelope with seal marked GCLA Exh. PE 13, DNA report in connection with the 2nd accused Exh. PE14, Certificate of seizure on search conducted in the house of 1st accused Exh. PE15, Certificate of seizure on search conducted in the 2nd accused house Exh. PE16, First Crime Report Exh. PE17 and a letter to DPP by CMC dated 07/11/2023 in response to the request for history of motor vehicle Ford Ranger with Reg. T 307 CBH (Exh. PE18).

After closure of prosecution case on 15/09/2023 the accused persons were addressed in terms of section 293(2) and (3) of the CPA, in which both accused persons chose to defend themselves under oath, call witnesses and tender exhibits.

Contesting their innocence, both accused persons during their defence paraded a total number of five (5) witnesses including themselves and

tendered a total number of thirteen (13) documentary exhibits. The defence witnesses included Miriam Steven Mrita, 1st accused as (DW1), Karim Issa Mruma (DW2) and 1st accused's driver, Kelvin Erasto Msuya (DW3) and 1st accused's son, Ernest Said Msuya (DW4) from CMC Motors Ltd and Revocatus Evarist Patrick Muyela (2nd accused persons as DW5) who did not call any witness to support his testimony. The exhibits relied on were the witness statement of Leonia Kagemulo Mutta - Justice of Peace Exh. DE1, A copy of statement of Mwanaisha Kassim Exh. DE2, A Copy of First Crime Report in respect of case with Ref. No. KGD/IR/2849/2016 Exh. DE3, witness statement of SP Richard Dauson Mwaisemba Exh. DE4, witness statement of Insp. Latifa Mohamed Exh. DE5, MEMARTS of SG Northern Adventure Limited Exh. DE6, MEMARTS of Unique Mining Company Limited Exh. DE7, Ruling of the High Court in Misc. Civil Application No. 66 of 2019 between **Ndeshukurwa Eliasaria Msuya and Miriam Steven Mrita** Exh. PE 8, Inventory and Accounts of Estate of the late Erasto Elisaria Msuya Exh. DE9 collectively, Identity Card of Ernest Said Msuya Exh. DE10, Register of Service for Car in respect of motor vehicle with Reg. No. T 307 CBH Exh. DE11, Birth Certificate of 2nd accused Revocatus Evarist Muyela in the names of Revocatus Evarest Patrick Muyela Exh. DE12 and Passport of the 2nd

accused in the names Revocatus Evarest Patrick Muyela Exh. DE13. After full trial both parties sought from the Court and cordially granted with leave to file their written closing submissions before the gentlemen assessors were addressed to the summary of evidence for their opinion which was rendered on 11/12/2023, the day in which the judgment date was also set.

In their submission a number of issues were raised and addressed by both sides on the guiltiness or otherwise of the accused persons, each side trying to impress upon the Court to find them in its favour. Having seized an ample time to travel through the said submissions, cited cases as well as the evidence as adduced in Court by both parties and before venturing into determination of the case on merit, I find it pleasing to recite albeit so briefly the evidence adduced in Court by both sides.

The first witness to stage in the witness box was **PW1: WP 4707 Sgt. Mwajuma**, who on 07th August 2016, from 9:30 am to 1:25 pm recorded a caution statement of the 1st accused person, Miriam Steven Mrita at Temeke Special Police Regional office. She recounted on how the accused was brought before her in the investigation room and how they introduced to each other before explaining to her all of her rights. And that, having understood her rights and out of free will the accused person who was in

good condition health-wise chose to give her statement without presence of any other person as both of them signed the statement to signify such consent. She informed the Court that, after the exercise was complete she handed the said caution statement to the RCO (PW10). And that later on, on the same date at 4:00 pm she once again recorded accused additional statement after the identification parade exercise was completed with her in which both signed it. It is this witness who identified 1st accused as the suspect whom she recorded her caution statement, after which the said statement was tendered and admitted in Court as exhibit PE1B.

When called for cross examination PW1 maintained that, she recorded 1st accused's statement at Tememe Regional Police Station office. As to why the accused did not record the statement on her own, while acknowledging the requirements of section 58 of the CPA PW1 explained that, the accused can record the statement in her own hands but in this case the 1st accused requested PW1 to do it for her as at the end she recorded the certificate with her own handwriting, owning the statement. On further cross examination she admitted not to have recorded the finishing time of additional statement. When questioned as to why names of parties mentioned in the said statement are not written in full she replied that, the 1st accused did not

mention complete or full names of the parties she participated with in commission of the alleged killings including the deceased's house girl whom they met.

Next in testimony was **Leonia Kagemulo Mutta** (PW2), a retired Primary Court magistrate, who served at Ilala Primary Court between 2011 to 2020 and who in this case on 10/8/2016 while at Ilala Primary Court as a justice of peace recorded extra judicial statement of the 1st accused Miriam Steven Mrita on accusation of murder offence. She testified that, the same was recorded after examining the suspect's body before her and satisfy herself that she was physically fit and without any physical body injuries. She testified further that, during that exercise, the accused confessed to have committed the offence as she stated how the same was perpetrated. PW2 identified the 1st accused in court as the person whom she recorded her statement which was tendered in court and admitted as exhibit PE2.

On cross examination as to whether it was proper to record the statement of the suspect from a different district to that of Ilala in which she was presiding over she replied that, a suspect could be brought from another district for recording extra – judicial statement depending on the circumstances prevailing at that particular time and that, in this case she was

aware that the suspect came from Temeke police station. She insisted that, what she recorded in the said extra judicial statement is what the accused person told her. She admitted not to have asked the accused the time she was arrested and where was she locked before appearing to her for not being aware of the need to do so. PW2 also recounted that, five minutes after recording the 1st accused's statement she recorded her statement before SSP David Paul Mhanaya (PW22), the statement which was admitted as exhibit DE1. As to whom did the 1st accused co-operated with in the commission of an offence, PW2 said as per Exh. PE2 it was one Ray and not Revocatus Evarist Muyella. In re-examination PW2 said that, when recording her statement (Exh. DE2) she was at Ilala Primary Court and that, she recorded Exh. PE2 using names which the suspect introduced herself with to her.

Mwanaasha Kassim, a resident of Kibada Kigamboni, Block 17 and neighbour to the late Aneth Msuya featured as **PW3**. It is this witness who testified to the effect that, on 26/05/2016 at about 8:00 am while at home, came one Allan who is the late Aneth Msuya's son and informed her of the missing of his mother. That, she went with him back to their house only to find the late Aneth Msuya's body laid down on her back with her face covered

with a cloth in pool of blood. That in a shock she collected the said child and went out to inform one mama ntilie who also went inside to witness the deceased before the matter was reported to the police.

During cross examination PW3 said that, she was with Swaum Ramadhani at home when Allan conveyed the information to her, but she was the only one who entered the deceased's room. In trying to contradict PW3's testimony her statement was tendered by defence and admitted as exhibit DE2 and on further cross examination stated that, she recorded her statement while at home at about 8:00 am after Allan had come but the recorder did not read it to her. And when queried as to whether the deceased body was found in the children's room this witness responded that, there was no mark in the house indicating that it was children's room.

When responding to the assessor's question PW3 disclosed that, Allan informed her of not seeing his mother at home and that, the pool of blood she saw was coming from the deceased's cut neck.

PW4 was **SSP Richard Mwaisemba**, who worked as OC-CID for Kigamboni since 2014 up to December, 2016 and told the Court that, as OC-CID was responsible for investigation of all crimes within

Kigamboni. That, on 26/05/2016 while on duty at the Police station of Kigamboni and at about 07:30 am received a phone call of murder incident that had occurred at Kibada block 17 from the Kibada Police Post's OCS one S/Sgt. Mwanzalima. He said, upon such information he notified his OCD as well as the RCO before he took some police officers and attended the scene of crime.

At the scene of crime he recounted, they found a crowd of people and being led by the area chairman accessed the room where the deceased body was laid down aside the bed while undressed in a pool of blood. The witness explained that, he saw the underpant/underwear and knife close to the deceased body and noted some marks of violent entry in the deceased room as the door was hit with the brick and its lock loosened. According him, he called the RCO and explained to him of the situation found at the crime scene before he asked him to come with forensic experts for further investigation of the scene of crime. And that, the RCO's response was positive as he came with his forensic experts team and investigated the scene, while the deceased body taken to Muhimbili National Hospital mortuary.

PW4 testified that, thereafter he returned to Kigamboni Police Station where the investigation file was already opened and recorded his statement. He

also disclosed to have participated in the post-mortem examination procedure of the deceased body at Muhimbili National Hospital.

During cross examination PW4 stated that, the then RCO for Temeke was SSP Richard Mchomvu and that, at first he was the chief investigator of the file and responsible for keeping exhibits and records before the file was moved to the RCO's office. He averred not to remember the exact time he arrived at the scene of crime. On handling of exhibits he affirmed that, it is the PGO which directs for procedure on handling of exhibits for the purposes of making sure that chain of custody and integrity of the scene of crime is kept and maintained. He admitted not to have touched the underpant and knife found at the scene of crime and noted that, that is why he asked for forensic investigation team to come with the RCO for collection and handling of the said exhibits. And that, he was unaware whether DNA sample in this case were collected from the knife and underpant. As to the accuracy of DNA results he said, it is true the results would depend on the integrity of the collected samples. On the relevancy of exhibit register, he admitted also to know its function disclosing that the same is for registration of all exhibits. This witness also said, he doesn't remember to have seen the exhibits knife and underpant handed to OCD for Kigamboni Police Station or registered in

the exhibit register. Regarding labelling of exhibits, PW4 admitted that, there is a label that was to be attached to the deceased body for identification purposes, however, he did not attach it to Aneth's body for not being the exhibit handler. On Post Mortem Examination procedure he said, was conducted by Dr. Chande and that, he is the one who kept the internal organs and samples collected therefrom. PW4 admitted to have known Getrude Peniel Mfuru as deceased's housemaid but he didn't know whether she was the first suspect in this murder case or not. He further admitted to have attended the first interview with Getrude but could not remember the dates. Further, he could not tell how long was she kept under arrest before she was released, and whether she was released after transfer of the file to the RCO's office.

On further cross examination on the First Crime Report (FCR-PF4), PW4 informed the Court that, it is a correspondence between the OC-CID and the RCO. It is also during this stage when the defence tendered through him a copy of the first crime report with case file Reference No. KGD/IR/2849/2016 as exhibit DE3, duly signed by Insp. Fredrick Nyudike (PW8) bearing the stamp of OC-CID for Kigamboni. And when put to further cross examination PW4 said, according to Exh. DE3, discovery of deceased death was made at

06:00 am and the knife, underpant/underwear and whistle are not mentioned therein save for explanations that, there was use of lethal weapon. It was also at this stage when the defence had PW4's witness statement recorded on 26/05/2018 tendered as exhibit DE4.

On re-examination **PW4** explained that, labeling of exhibits was done by the team of experts from the RCO's office and not himself. He expounded that, the main purpose of Exh. DE3 (FCR) is to communicate or report the crime to the senior officer. According to him the information therein does not contain full information concerning investigation of the committed crime but rather a brief report of what happened.

SP. Latifa Mohamed (PW5), a police woman of the rank of Inspector by then and working with the RCO's office Ilala Special Police Region within Dar es Salaam Special Zone was the next prosecution witness. She explicated to the effect that, on 04/08/2016 she travelled from Dar es Salaam to Arusha in company of her seniors Afande David Mhanaya and Jumanne for the purposes of conducting investigation concerning murder incident that had occurred at Kigamboni, within Dar es Salaam region. That, in that course on 05/08/2016 evening they managed to arrest the 1st accused at Tembo Club – Arusha after complying with all arrest procedures and took her to the

RCO's office. PW5 identified the lady they arrested to be the 1st accused person. She also informed the Court of the search they conducted at the 1st accused's residence, Sakina area Arusha before mjumbe (ten cell leader) where some items were seized before the search warrant and seizure certificate were filled in by her superiors and then went back to RCO's office whereby they later on left Arusha for Dar es salaam with the accused up to Chang'ombe Police Station for her safe custody.

On 08/08/2016, she disclosed, was asked to interview the 1st accused one Miriam in which after introduction she informed her of the need to conduct an oral interview with her that would be video recorded by inspector Kasigwa (video record). It was her further testimony that, the accused agreed and the video recording took place at the RCO's office, Temeke. According to her, during the interview the accused told her the whole story about murder plan and how it was executed, as she also admitted to have known the scene of crime and took them to Kibada- Kigamboni area. After that PW5 notified, they returned to Police Station at Chang'ombe and left the accused person in the lock up.

During cross examination PW5 admitted personally to have had no arrest warrant from the RCO when effecting the arrest while explaining that,

despite of prior knowledge of the person they were going to arrest at Arusha, the offence itself was arrestable without warrant. She however claimed that, the arrest warrant must have been collected from the RCO's office at Arusha by her superiors though the same was not shown to her for signature. On the seized clothes during search she testified, there were two pairs of female suits and shoes, but she doesn't remember anything concerning gold materials as article seized was only suspected to be gold materials. To contradict her testimony PW5's witness statement was also tendered, admitted and marked as exhibit DE5.

When questioned as to the contents of the said statement she averred that, there is no details of removal and incarceration of the accused as well as time for handing over the accused back to the lock up or as to when they recorded the statement.

On re-examination **PW5** stated that, her main duty was to effect arrest since the arrested person was a woman. As for the interview she had with Miriam, she explained that, the same was conducted orally and it was Insp. Kasigwa who took the video during that oral interview.

The other prosecution witness was **Insp. Alistides Eustalius Kasigwa** (PW6) who testified that, as a police officer working with the Forensic Bureau (Commission) his duties were to take photographs of criminal and non-criminal incidents, to examine pictures both still and moving (video), to compare and analyse different pictures taken by CCTV and other devices, to examine or investigate motor vehicles chassis numbers, to prepare different investigation reports and to testify on them as well as to supervise all officers under him. He said, on 08/08/2016 was assigned a duty of record an interview of a suspect whom he identified to the court as the 1st accused person. He explained that, the interview was between PW5 and the 1st accused at Airport Police Station of which he recorded it and managed to hear the accused explaining on what had transpired at Kigamboni – Kibada area. PW6 added that, later on they extended the interview up to Kigamboni area where he continued recording it. He said, during that interview the accused told the whole story on how murder was executed, and that, he later on prepared the video tape and store it in an envelope titled "Mkuu wa Upelelezi wa Makosa ya jinai, Makao makuu ya upelelezi Dar es salaam" which was admitted in court as exhibit PE3. However, the mini video tape

which was inside that envelope was not received in court as it was found inadmissible for want of competence.

During cross examination PW6 stated that on 08/08/2016 he found the accused with Insp. Latifa (PW5) at the Airport Police Station which is within Ilala District.

Ahlam Kilsweni Malingo, a resident of Kibada Block No. 17 **(PW7)** testified to the effect that, on 25th May 2016, she received keys from his neighbour one Aziza (PW19) who said that she got them from a sister without mentioning her name, the keys which she handed to his sister Jasmin and later on the late Aneth collected them from her.

On cross examination PW7 stated that, she did not witness the handing over of the keys to Aneth by his sister. On re-examination this witness clarified that, he saw Aneth coming with her car so she knew she had come to collect the keys.

PW8, Rtd. Insp. Fedrick Nyudike, testified that, in 2016 was working at Kigamboni Police Station as deputy OC – CID charged with duties to conduct investigation of different crimes and discharge other duties as assigned by his seniors. That on 26th May 2016 while in company of PW4 and other police

officers they went to the scene of the crime and witnessed a body of a naked woman laid down in a pool of blood while her neck cut with a sharp object and that, beside her body there was a knife. It is this witness who drew a sketch map of the scene of crime under guidance of PW3 which was admitted in court as exhibit PE4 and assisted the forensic experts from the RCO's office to collect samples for forensic investigation.

During cross examination PW8 explained that, he drew the map reflecting what was found at the crime scene. He admitted that, the deceased underwear, the piece of clothes and the whistle (filimbi) were not indicated in the map. On re-examination PW8 explicated that, in examination in chief he mentioned clothes in which underpant are part of them. He stated further that, in drawing the sketch map only main features are to be indicated as small things like bags, whistle and underpant if indicated the map would not be readable.

Another prosecution witness was **PW9** one **Lutengano William Mwanginde**, a chemist within the Police Force Forensic Bureau who informed the Court to the effect that, his duties were to work on DNA samples collection, transportation, preservation and analysis of samples. He averred that, on 28th August 2016, while in office at the Police Head

Quarters, then Dar es salaam was required to take sample of buccal swab from a sample source one Revocatus who was brought to him by **Cpl. Hassan** in company of the RCO for Temeke designated Police region. And that, after the said Revocatus had signed the consent form upon his rights and assurance read to him, he collected the said buccal swab and stored it in an envelope before he handed the same to the RCO. He identified the sample source by closely pointing at the 2nd accused person in open court.

On cross examination PW9 hinted that, it is the duty of sample collection officer to inform the sample source of his rights. According to him, the provisions of Act No. 8 of 2009 do not provide that samples should be handed to the requesting officer or authority. On storage of sample he admitted that, it is true the sample collected must be kept strictly under lock and key by sampling officer. And that, it is true that under Regulation 32(3) of Act No. 8 of 2009 every movement of sample must be documented.

On re-examination PW9 explained that, the Rights and Assurances form requires presence of the requesting officer to fill it in, so in the present case it was necessary for the RCO to be present to fill in the form. On the chain of custody of the collected sample, he explained the chain of custody on his side ended where RCO one Mchomvu collected the sample.

Next in testimony was **ACP Richard Thadei Mchomvu (PW10)**, RCO for Temeke designated Police Region between 2015 and 2018 who informed the Court that, he was responsible for coordination of all criminal investigation and inspection of serious crimes in all Special/designated Police Districts within Temeke designated police region. That, on 26th May 2016, as the RCO after being notified of a homicide incident which had happened at Kibada, he went there with forensic experts. And that, at the scene of crime was informed by the OC-CID that, in that house Aneth Msuya (deceased) was living with his son and a maid. He said, he saw the entrance door (wooden door) broken and upon entering the house, he found a room where the naked body of female person was laid on her back in a pool of blood while her neck slaughtered with a sharp object. He narrated to have seen a knife and other items such as whistle and underpant/underwear beside the deceased body which were collected by Sgt. John (PW17) a forensic expert and kept as exhibits. He averred that, thereafter he ordered the deceased body to be transferred to Muhimbili national hospital for post mortem examination as the maid and deceased son were not found at home. This witness went on to tell the Court that, thereafter investigation of the matter continued and later on 20th July 2016 with the aid of deceased's mother

managed to trace the maid by the name Getrude (PW25), whom he interrogated upon accessing her and satisfied himself that, she had enough information hence ordered for her interview officially. He testified further that, it is during that interview the said maid (PW25) mentioned a woman who was later traced at Arusha and arrested on 05th August, 2016, the woman whom when interviewed, also mentioned the man who was in her company in the execution of murder plot, who was also later on arrested too at Arusha on 21st August 2016. He said, identification parades of the two arrested suspects were conducted whereby PW25 identified the said woman and man whom she saw at Kibada area within Kigamboni.

On 28th August 2016 PW10 said, they took sample for DNA test from the male accused one Revocatus after he had consented to and signed the rights and assurance form. The sample he mentioned, was buccal swab taken by the sampling officer PW9 and that, as requesting officer present he was handed with the collected sample in a sealed envelope so that together with the physical exhibits collected from the scene of crime which were knife, whistle and underpant (chupi) and stored in the exhibit room at the RCO's office could be forwarded to the Government Chemist Laboratory Authority (GCLA) for forensic examination. At his office as per his recollection, the said

sample and other exhibits were wrapped in a single package containing four different small packages of a knife labeled/marked as sample "A", under-pants/underwear "B", whistle "C" and buccal swab marked as "D", the samples which were later taken to GCLA. He tendered the rights and assurance form issued in respect of the accused person **Revocatus Evarist Muyella @ Revoo @Ray** executed on 28/8/2016 which was admitted as exhibit PE5. He also identified the woman whom she interrogated after arrival from Arusha as the 1st accused as well as the man he interrogated and took him for sample/buccal swab collection to be the 2nd accused.

On cross examination he admitted to have received the information of murder on 26th May 2016 and recorded his statement on 25th October 2016, but he was not ready to have it tendered as exhibit in court. As to whether the reported crime is recorded in the Police Post he said, it is done in the information register and not occurrence book and added that, it is not true that every person is treated as a suspect since there is key issues to guide a police officer to suspect the person. On identification of exhibits he said, the same must be labelled for easy of identification but in this matter he doesn't remember whether the knife, whistle and underpant were labelled. He acknowledged the fact that, movement of exhibit from one hand to another

must be recorded. And that, he did not see PF. No. 145 (Exhibit Register Form) accompanying the exhibits when brought to him by Sgt John (PW17) from Kigamboni. This witness was not aware whether finger print were collected from the doors, wardrobe's doors and bags in the deceased house. He was also not aware whether the exhibit collected from the scene were registered in the exhibit register at Kigamboni. As to whether exhibit registers are maintained in the RCO's office he said, RCOs do not maintain exhibit registers as the same are maintained in the Police Stations. He said, as per PGO 229 (18), custodian of exhibit at the Police Station is the OCS but that depends on the nature of the exhibit. He explained that, Chango'mbe Police Station has its OCS who keeps exhibits brought to his possession but not all exhibits are kept there. As to whether the maid Getrude (PW25) was once accused of murder of the late **Aneth**, he said to his knowledge she had never. He also averred that, the Chango'mbe Police Station is not under the RCO but rather the OCS who reports to RCO for Temeke. He stated to know nothing about the file DSM/TEMEKE/CID/SCR/2062/216 as indicated in the copy of first crime report of 26th May 2016 (Exh. DE3) and that, Richard D. Mwaitemba SP (PW4) has never reported to him of the mentioned first crime report. He

maintained that, not every murder report is made or reported direct to the RCO as others are dealt by the OC – CIDs at their levels. He denied to have instructed WP Mwajuma (PW1) to record the statement of the 1st accused person. Regarding the identification parade of accused persons, he explained that he did not attend the sessions physically rather instructed for the same to be conducted.

When further cross examined on how the buccal swab (DNA sample) was collected from the 2nd accused he recounted, the Police Laboratory does not conduct DNA analysis instead deals with collection of samples only. He explained on how the same was collected from the suspect **Revocatus** by the sampling officer after the rights and assurances were explained to him and his consent obtained by signing the rights and assurance form and how the sample was drawn from the suspect, before it was handed over to him from **Lutengano** (PW9) without handing over note. He also noted that, the purpose of handing over note is to give assurance of the integrity of the sample itself before it is tendered in Court. He explicated that, it is WP **Elentruda** (PW16) who physically received the said sample from **Lutengano** on his behalf and did not see them putting in writing that handing over exercise of sample as the whole handing over exercise of all

exhibits in this case (chain of custody) was done orally. He added that, there is no any other document that kept record of receipt of sample by the RCO's officers through WP **Elentruda**. As to the use of PF 180 he stated, the same was filled on 28/8/2016, the day when they received 1st accused's sample/buccal swab from the Headquarters and it also included the underpant purple in colour found aside the deceased body, metal silver coloured whistle and the knife with blue handle. As to whether the knife had blood stains he said, he doesn't remember and he also admitted that no finger prints were taken in all those physical exhibits. He also averred that, as requesting authority he sent Sgt. John (PW17) and WP Elentruda (PW16) to take the exhibits to the Police Head Quarters for transfer to the GCLA. As to where the 1st accused was kept after arriving from Arusha PW10 said, she was kept at Kilwa Road Police Station and not Chang'ombe police station as the detention register could prove so. And further that, while at Kilwa Road Police Station he seized an opportunity of interviewing her.

PW11 one **ACP George Aloyce Katabazi**, who in 2016 was working as RCO for Arusha Region testified that, on the morning of 5/8/2016 while in his office at Arusha received a phone call from the DCI, Diwani Athuman (by then) instructing him to seize two motor vehicles that were connected to

murder case file No. IR/2849 originating from Kigamboni – Dar es Salaam. According to him, the two vehicles that belonged to the accused/suspect Miriam Steven were one with Reg. No. T. 429 BYY make Range Rover silver in colour and the other with Reg. No. T. 307 CBH make Ford Range Blue in colour. This witness informed the Court on how on 10/8/2016 at Sakina area within SG Hotel compound belonging to the 1st accused and under assistance of the Hotel manager one Omary, managed to seize one vehicle make Range Rover in which he conducted search therein in the presence of Omary as independent witness together with Kareem And Wiston present. In that search he averred, they retrieved different documents including certificate of titles of lands, and plots, shamba sale agreement, letters related to probate cause of the late **Erasto Msuya** and other documents. That, after the said exercise they filled in the certificate of seizure in respect of those documents and motor vehicle and the same was signed, before they were taken to his office and continued to trace another vehicle make Ford Range with Reg. No. T. 307 CBH, blue in colour that was parked at CMS Motors garage at Arusha as it was not in moving state to be driven to his office. He said, following that position, he instructed his two officers D/C Abel and D/C Lucas to transfer the seized documents and the moving motor vehicle make Range

Rover to Dar es Salaam, Chang'ombe police station for further investigation. He tendered the seizure certificate prepared and signed by him which was admitted as exhibit PE6. The vehicle with Reg. No. T. 429 BYY, Range Rover silver in colour which was parked at Chang'ombe police station was also admitted as exhibit PE7 after its identification by PW11 vide the registration numbers written on its side mirrors.

When cross examined on the seizure of exhibit PE7 he said that, he doesn't remember whether the OCS for Arusha police station was aware of it. And when referred to the contents of exhibit PE6 he said that, he doesn't remember whether he is the one who filled all the particulars therein but he signed it. He explained that, names and signature of the suspect are missing in that exhibit as it is Omary the hotel manager who was present when seizure was done. When asked as to whether the motor vehicle Range Rover Evoque had no plate numbers he said, when handing it to the two police officers D/C Abdel and D/C Lucas to transfer the same to Dar es salaam it had them.

Next in testimony was **PW12, Henry Kambalile**, who in August 2016 was stationed at Kilwa road Police station as Assistant Inspector of Police. He informed the Court that, on 21/8/2016 while at Kilwa road police station

received directives from the RCO for Temeke designated Police Region afande Mchomvu to prepare and conduct Identification parade in respect of suspects of murder case file KGD/IR/2849/2016. He averred, after that instruction he prepared the said identification parade by securing eight (8) participants as the suspect was only one and that he selected the participants after seeing the suspect's physique, face, appearance and age. The suspect he said, was **Revocatus Evarist** and that, after obtaining those 8 participants he took them to the area that was used to conduct the said identification parade, not accessed by many people after which the accused was brought before he introduced himself to him and notified him of his basic rights concerning identification parade exercise such as the right to choose the position to stand on amongst those eight (8) participants, right to change clothes or exchange attire with the participants and to have his relatives or lawyer around to witness the exercise. In all those rights he hinted, the suspect chose to change the attire as he exchanged the shirt with one of the participant. In respect of other rights, he chose not to exercise any as he was ready for the exercise and chose to stand the second position from right, the witness narrated. Thereafter he stated, the identifying witness one **Getrude Paniel Mfuru** was brought whom he informed of her duties in

that exercise and asked her to look at all participants by passing in front them and from the rear side, in which she did and managed to identify the suspect **Revocatus** by touching him on the shoulder. PW12 went on testifying that, after the identification exercise was complete, he filled in the identification parade register with the names of all participants who signed against their names together with their phone numbers and also filled in the names of the participants who had stood on the right and left hand sides of the identified suspect who were Nasib Abdriano and Mshamu Ally as well as suspect's name. After completion of the exercise he averred, the form was filled and signed by him, participants and suspect, before the suspect was returned in the police cell and handed the Identification Parade Register Form to afande RCO Mchomvu. In his evidence PW12 was able to identify the 2nd accused person one Revocatus Evarist Muyela @ Revoo@ Ray as the suspect who was identified in identification parade conducted by him on 21/8/2016. He also tendered the Identification Parade Register which was admitted and marked as exhibit PE. 8.

When subjected to cross examination on whether he had complied with the PGO 323 PW12 said, though not a gazetted officer nor in-charge of the case for him to inform the accused of his rights before the start of identification

exercise, he discharged his role of conducting the parade as per the requirement of the PGO. While acknowledging that, the RCO who directed him to conduct the said parade was in-charge of the case he explicated, he does not know as to why he chose him to conduct the parade. He admitted that, the PGO provides that if the suspect has any objection the same must be communicated to the officer in-charge of the case but added, in this case none was raised by the suspect. As to who was in care of the identifying witness (Gertude PW25) he said, it was WP Zakati who was not from Kigamboni nor connected with the case anyhow. He said, was not aware whether Gentrude (PW25) was in the vehicle make Prado on that day and that Revocatus (suspect) complained of that fact. He denied to have forced the suspect to sign the form and the fact that, such complaint was forwarded to the RCO. In re-examination he recapitulated that, there are preliminaries that were done by the RCO Mchomvu as in-charge of the case before conducting the parade. And that, in the form (exhibit PE8) there was no need for appending the stamp of police station showing where the parade was conducted as that was a standard form.

Modest Kallam Malya testified as **PW13** to the effect that he worked as a police officer at Kilwa Road Police Station between 2016 up 2018 before

his retirement and that, he held the rank of Inspector of Police as in-charge of investigation of different criminal cases. He narrated to the Court that, on 7/8/2016, while at Kilwa road Police Station received instruction from the officer in-charge of the case, RCO **Mchomvu** to arrange for identification parade of the murder case suspect. That, at about 16:00 hours came one ASP **David** as the officer in charge of the case and whose role was to prepare for arrangements of the identification parade so as to make sure that the instructions PW13 got from the RCO are complied with. He averred that, as officer in-charge of the parade, he received the suspect from the officer who was instructed to bring her before they introduced to each other as the suspect identified herself to him as **Miriam**. He said, the suspect was also introduced to her rights and raised no any objection as she was ready to participate in the parade in the absence of her lawyer or relatives. According to him, she chose the fourth position in the line amongst the eight other participants who were in attendance and later on the identifying witness one **Getrude Paniel Mfuru** (PW25) was brought and introduced to the identification procedures and rights before she proceeded with the identification exercise by touching one Miriam Steven Mrita (1st accused) on her shoulder. According to PW13, after that exercise the officer in-charge of

the case ASP David was notified and filled in the identification parade register names of participants, identifying person and suspect (identified person) whom all signed against their names in the said register. He explained that, the place where the identification parade took place was so calm and without movements and there was enough light for proper identification as it was conducted around 16:00 hours. PW13 identified in Court the 1st accused person **Miriam Steven Mrita** as the suspect identified during the parade and tendered the identification parade register which was admitted as exhibit PE9.

When cross- examined on the names of Sophia Amri and Sina Manzi appearing in exhibit PE. 9, PW13 clarified that, those were the participants close to the suspect as they could not enter all participants' names given the fact that, form is a standard one and the space for filling them is not enough. As to what happened to the corrections made in the number of participants in the form he said, it is ASP Mhanaya who filled in the form and therefore not aware as to who made the said correction entries. Regarding to whether the parade was conducted and the form filled in accordance with the law PW13 admitted that, it is ASP Mhanaya who was the investigator and officer in-charge of the case during the parade exercise therefore, responsible to

respond to that question. He admitted that, more details on how the 1st accused was identified were not recorded in PF 186. He also admitted that, suspect's name and the police station where the parade was conducted were not filled in item No. 6 in the form.

In re-examination PW13 explained as to why all participants could not be filled in the remaining three blank spaces stating that, the form is a standard one and therefore all eight names of participants could not fit and that is why only two names of participants close to suspect were filled in. He also mentioned not to have told the court that, ASP David Mhanaya informed the suspect of her rights that is why he took efforts of introducing them to her before conducting the parade as the object is to make sure that the suspect understands her/his rights before going to the identification exercise. As to why did he not state the reason for inserting closed brackets in the form he said, since the same are indicating errors or corrections he knew that is understood to everybody known and therefore no need of explanations.

The **14th** prosecution witness **Insp. Mahita Omary Mahita**, testified to the effect that, on 19/8/2016 during morning time while working under OC-CID for Arusha District was instructed by the then RCO, SSP Katabazi to arrest one suspect of murder incident allegedly committed at Dar es Salaam going

by the names of Revocatus @ Ray a resident of Arusha, so that he could be handed to the investigator coming from Dar es salam. According to the information received, he was hinted that the killings had occurred at Kigamboni – Dar es Salaam and the deceased was **Aneth Msuya**. This witness testified on how he managed to arrest the suspect and inform him of his accusation of committing murder at Dar es Salaam before the accused was incarcerated at central police station while waiting for his transfer to Dar es salaam by the investigation officers from there. PW14 was able to identify 2nd accused person as the person he arrested after requesting him to put off the mouth and nose mask (Barakoa).

When cross-examined by the counsel for the 1st accused person, this witness confirmed to be amongst the officers who participated in conducting search done by ASP Mhanaya at the 2nd accused's home and did so as witness who signed the seizure certificate since he did not conduct any physical search to him. He denied to have seized accused personal properties such as phones and pistol as alleged, though admitted the possibility of having witnessed them seized if indicated in the seizure certificate. He also denied the assertion that, search was conducted at 1.00 am on 20/06/2016 while

claiming that, the one who filled in the seizure certificate is better placed to explain of the time it was conducted.

PW15 was one **Fidelis Segumba**, the government chemist working with the Government Chemistry Laboratory Authority (GCLA), with 15 years working experience and currently located in the Forensic Chemistry Laboratory, dealing with examination of drugs as manager. He said, before that was located in the Forensic, Biology and Human DNA Laboratory and his main duties there were to receive different samples/exhibits, conduct laboratory tests and prepare report of the test or examination done. On 30/8/2016 he averred, was at his working place and among other duties he performed that day included receiving of samples from the Police Force Commission for Forensic Science Examination submitted by one woman police (WP). The samples he testified, were accompanied with the letter from the Commission requesting for examination/analysis. According to him, the said samples were in four different envelopes marked evidence and sealed in one big envelope. Each of those samples he explained, were assigned its mark, a knife marked as sample "A", underpant/underwear in purple colour sample "B" , whistle in metal materials as sample "C" and buccal swab was sample "D". After receiving them he said, he conducted physical verification

while putting on personal protective equipment (PPE) to avoid contamination of samples. As per the said letter he testified, the underpant (chupi) and whistle (filimbi) were suspected to be used by the late ANETH MSUYA while sample "A" (knife) suspected to be used to cut the late **Aneth Msuya** on the neck. Buccal swabs in sample "D" were from the suspect **Revocatus Evarist Muyela**. In his physical verification of the said buccal swabs he intimated, the same was in a good condition/state for examination and he assigned them all exhibit Laboratory No. 894/2016. And that, after satisfying himself of the soundness of samples, he filled in the Rights and Assurances Form (Exh. PE5) that came with the said police officer which he also identified in Court. He then stated that, after verification exercise the analysis of exhibits was done following the procedures which included DNA extraction, amplification of samples and then detection stage, before the report on the results was prepared. He said, after completion of examination process the results were to the effect that, sample "A" had DNA profiles matching with sample "D" the buccal swabs from the 2nd accused person. Likewise DNA profiles found in sample "C" whistle (filimbi) were matching with the ones found in sample "D" while sample "A" (knife) had its DNA profiles matching with that of sample "B" the underpant (chupi). According

to him there was no matching of DNA profiles between sample "B" and sample "D". He said, after completion of the exercise he packed back the exhibits and sealed them with GCLA seal, dated and signed against each exhibits which were knife exhibit "A", underpant/underwear (chupi) exhibit "B" and whistle (filimbi) exhibit "C", as exhibit "D" buccal swab (mpanguso wa kinywani) was total consumed during examination. And that, thereafter he informed the Police Forensic Bureau who sent **Sgt. John** (PW17) to collect the exhibits and was handed with them together with the prepared DNA report. This witness identified and tendered the said exhibits with their wrappers as the knife was admitted as exhibit PE10, purple coloured underpant/underwear as exhibit PE11, metal material whistle exhibit PE12 and A4 sized envelope with GCLA seal as exhibit PE13. And finally the Forensic DNA profiles Test Report which was admitted as exhibit **PE14**.

Expounding on the DNA report exhibit PE14 the witness PW15 stated that, the alphabets and numbers in column one represent the fifteen (15) areas used to pair the DNA samples. He said, the DNA profile carries the profiles from both mother and father of the sample donor which are normally used to pair the samples in order to identify the gender and relationship between the samples. He exemplified that, sample "A" contained X4 chromosomes

carrying DNA profiles of a female gender, in sample "B" he said no relationship between the female and male gender was found and that the whistle (filimbi) sample "C" had two genders of male and female, while sample "D" the buccal swab was dominated by male gender. In his conclusion in the report, he stated that, chances of DNA profiles in sample "B" (underpant) in purple colour suspected to be worn by the late **Aneth Msuya** to have relationship with sample "D", buccal swabs from the suspect **Revocatus Evarist Muyela**, is one out of a billion. Meaning that the chances that there was DNA relationship between the underpant (blue purple in colour) and buccal swabs of the suspect **Revocatus Evarist Muyela** is next to impossible or is not there. That, chances of DNA profile of the sample "C", whistle (silver in colour) not to match or not to have relationship with sample "D", buccal swab of **Revocatus Evarist Muyela** is one out of a billion. Meaning the chances that sample "C" cannot have relationship with sample "D" is so minimal or not there. Lastly that, the chances of DNA profiles in sample "A" not to have relationship or not to match with buccal swabs in sample "D" is one out a billion. Meaning that, there is a relationship between DNA profiles found in sample "A" with those found in sample "D". Or in other words the chances that DNA profiles in sample "A" and those

found buccal swab sample "D" to match is very high or the same do completely match or have relationship.

When subjected to cross examination on the procedures adopted during examination of samples and the correctness of results obtained and whether all submitted documents were shown to him for identification PW15 admitted that, the requesting letter and Form No. 180 were not shown to him for identification during examination in chief but recounted that, he followed the procedure for registration of samples received and assigned them Inumber before examining or analyzing them. And that, he performed both roles of receiving officer and analyst. As to why he did not narrate the whole procedures during examination in chief he said, the process is too long to explain each and everything and that is why he testified on the procedures generally. When asked as to whether contamination of samples could occur in the process before receipt of samples by him he said, yes could do and added that, in this case he had no clues as to whether the same were contaminated before reaching the laboratory or not since he was not aware of the time and day when the same were collected. He said some information indicated in the report were coming from the requesting letter.

When referred to exhibit PE14 and asked as to how he drew the DNA profiles from the samples he said, he used extraction procedure though he did not give detailed account on whether the profiles were found on the knife handle or its sharp part (upande wa makali). He said in the result shown in the report it is indicated that samples were in contact with human being as genetic markers in sample A2 are more than one person. These are the samples which their profile matched with sample D the buccal swab. He added that, when he said sample B (underpant) contained blood of human being, it was after extraction process of DNA from it. And therefore the blood extracted from sample B is of the person who is believed to have worn it going by the name of Aneth Msuya. And when asked whether he knows the owners of the female gender found in sample B, PW15 admitted that he does not know them.

And when queried as to why some short tandem repeats (STR) were missing in some matched samples said, it is because the contributory profiles in the DNA are not necessarily found in each and every sample depending on the genetic makeup of the sample source as the same can differ depending on contribution of profiles of the concerned sample. The witness was also referred to different locus and gave explanations on the differences found in

STR's therein and explained further that, he was not asked to give description of those differences. On who should sign the report he said, the same must be counter signed by the seniors to authenticate the work done by the analyst.

In re-examination PW15 explicated that, normally when preparing the forensic report the requesting letter and other documents are not attached to it nor is the extract from the office register for registration of samples. So it was not expected of them to be produced in court. As regard to the mismatching of some STR's in the sample profiles while making reference to different samples he explained how some of the numbers therein are matching in which contributory genetic profiles are found in each sample. For example in sample A (i) (handle part of the knife) amplified, STR's are No. 15 and 21, A (ii) are No. 15 and 19, sample C (whistle) STR's are No. 15, 18 and 16 and in sample D (buccal swab) the STRs are No. 15 and 21. So by comparative analysis, the contributory genetic profiles from sample D to sample C in STR is No. 15 while in sample D to sample A (ii) sharp part of knife the STR's are in No. 15 which matches in the two samples. Further to that, sample D contributes fully in STR No. 15 and 21 to the genetic profiles found in sample A (i) the handle part of the knife, the witness recapitulated.

Responding to the question by the assessor seeking explanation as to how the DNA results are interpreted PW15 explained that, in DNA analysis the comparative analysis is done against the number or statistics in terms of population. He said when they interpret by referring to the chances that certain samples are not related is one out of a billion, they mean that the certainty or possibility of being related is there and is very high and when they state otherwise, they mean the samples are not related.

WP 2928 D/SGT ELENTRUDA, a police officer in the investigation department at the RCO's office – Temeke designated Police Region with working experience of 24 years in the field testified as **PW16**. She told this Court that, on 28/8/2016 the RCO Richard Mchomvu asked her to accompany him to the Police Head Quarters (Forensic Bureau Office) to send the suspect/accused one **Revocatus** for collection of buccal swabs (mpanguso was mdomo) for criminal investigation purposes. That, at the headquarters together with (afande) Mchomvu and suspect Revocatus were received by one **Lutengano William** (PW9) before the RCO, **Revocatus** (suspect) and **Lutengano** entered in a special room for collection of buccal swabs. She averred, later on was called by RCO in that room for the purposes of receiving the exhibit/sample (buccal swabs) that was handed to his senior

afande **MCHOMVU** as procedurally the junior officer had to receive it of his behalf. After it was handed to her she sealed it with a seal marked evidence in an envelope before they returned to Temeke with the 2nd accused. When reached at the RCO's office Temeke with the said buccal swabs she stated, **Sgt. John** (PW17) from Kigamboni also came with three exhibits which were in separate khaki envelopes sealed with the reddish coloured seals marked "Evidence" on each envelope and marked with case number IR/2849/2016. And that, the said exhibits were labeled "A" written (kisu) knife, "B" (Chupi) underwear/underpant, written purple in colour and "C" (filimbi) a whistle written silver colour. She averred that, after receiving the said exhibits she filled in their particulars in PF. 180 ready for sending them to the Government Chemist Laboratory Authority (GCLA). PW16 identified the 2nd accused) as the person whom the sample (buccal swab) was collected from. This witness went on narrating that, on 29/08/2016 the RCO Mchomvu prepared a requesting letter accompanied with PF180 before she packed the exhibits and forwarded them to the Forensic Bureau at the Police Headquarters Dar es salaam which was responsible for forwarding them to the GCLA. That, she went to the Forensic Bureau in company of Sgt. John (PW19) whom she left outside when entering the Bureau office to hand over the said exhibits and

the requesting letter from the RCO. According to her evidence, she had to wait for issuance of the forwarding letter to the GCLA thus, she stored the said exhibit there in the storage facility until 30/08/2016 when the letter was out and managed to transfer the exhibits to the GCLA and handed them to one chemist by the name of **Segumba** (PW15). She testified to have handed him the two letters, PF180 and four exhibits/samples in an envelope with small envelopes inside as the first one was marked "A" with a sharp edge knife with black handle, envelope "B" had underpant/underwear purple in colour, envelope "C" a whistle with silver colour and envelope "D" contained buccal swabs. She also handed the Rights and Assurances form which was signed by the said Segumba (PW15). After handing them there she said, the same were opened by PW15 for verification before she left the place. This witness managed to identify the rights and assurance form exhibit PE5 and knife, underpant/underwear and whistle as exhibits PE10, PE11 and PE12 respectively, with their wrappings.

When called to cross examination on the chain of custody, she responded that, chain of custody aims at maintaining integrity of the exhibit i.e. proving that the same was not interfered in between. She denied the assertion that, the exhibits were handled without proper procedure for want of chain of

custody form and exhibit labels as the same were labeled with mark A, B and C and when received from Kigamboni the same were registered in the diary maintained at the RCO' office but remained under her custody as exhibit room officer. She also said, though physically the said exhibits were under her possession, officially it was under the RCO. She explained that, there was no paper/written hand over note of the buccal swab on 28/08/2016 between her and Lutengano (PW9) but she stored the exhibit in the exhibit store at Temeke until 29/08/2016 when she joined it with other three exhibits from Kigamboni, ready for dispatching them to GCLA through Police Forensic Bureau. At the Forensic Bureau she said, before sending the samples to the GCLA used the dispatch book to submit the letter from the RCO and kept the exhibits in the safe box while retaining the keys until 30/08/2016 when she was issued with the forwarding letter and submitted the exhibits to GCLA.

In re-examination PW16 detailed that, when said she stored the exhibits in the exhibit room meant that, the same were under her custody as nobody would be allowed to access them. And that when stated that, she did not record anywhere receipt of exhibits she meant that, normally when receiving exhibits the same are listed in the paper which is presented to the RCO for

recording them in his diary. She added that, she did not witness the signing of the said Rights and Assurance form but after that exercise the document was handed to her by Lutengano. The RCO she insisted, never opened the said exhibits as at all times they were under her custody and it was the one who sent them to GCLA and handed them to one **Segumba** (PW15).

PW17 E.5334 F/S/SGT JOHN BENARD MWAMBUSYE, informed the Court that, he is an employee of Police Force and expert in Forensic Science Investigation after being published in the gazette through GN No. 416 of 2014 in the names of **John Benard**. He said, he normally inspects the scenes of crime to identify and collect samples or exhibits that might have been used in connection with the crime. That, the nature of sample collected depends on the crime committed such as use of firearms, murder or use of different documents. And that, when receiving any crime information and before going to the scene of crime he normally prepares the kit box (sanduku maalum la kubebea vifaa). According to him, this kit box contains gloves, face masks, sanitizer and disposable coat. Others are containers, envelopes, whitening powder with its kit box etc. When reaching the crime scene he said, normally he condones the scene by tapes and puts on mask and gloves before perform his duties. On 26/5/2016 at about 7:00 hours he said, while

at Chang'ombe Police Station was asked by afande Mchomvu (RCO) to go with him to Kibada area at Kigamboni so as to inspect the crime scene there, in which he complied with by carrying with him a kit box. That, at Kibada Kigamboni he said together with the RCO Mchomvu, they found a crowd of people and the area condoned with police tapes at the entry gate of the house fence. And that, inside the fence the two found the then OC – CID Richard Mwaisemba (PW4) together with another police officer Fredrick Nyudike (PW8) who briefed them about the murder incident. It was his evidence that, straight away he started to inspect the scene starting with the front door (mlango wa sebuleni) which was broken and then to one room after another where he noted there were some pieces of cement bricks. In the course of inspection he testified, managed to enter a room where he found naked deceased body laid in a pool of blood on the floor with cut wound of sharp object on the throat. He also found some clothes and documents scattered. Beside the deceased body he explained, there was a knife and beside the bed there was a whistle (filimbi) wrapped in the underpant/underwear (chupi). He said, the knife had blood stains and it had sharp edge with black handle. The whistle (filimbi) he noted, was in metal form with silver colour while the underpant/underwear (chupi) was purple

coloured. PW17 told the Court that, he had to change the gloves which he had put on earlier and put on new ones each times when dealing with separate exhibit. That, he picked the knife and put in Khaki envelope and sealed it with evidence seal, reddish in colour. The envelope had Forensic Service prints which he marked with mark "A". Thereafter he said, removed the gloves and put on others before he sanitized his hands. He also picked the underpant (chupi) and put it into khaki envelope sealed and labeled it with mark "B" and wrote "chupi". He then changed the gloves and sanitized his hands before picking the whistle (filimbi) and put it into the khaki envelope and sealed it with evidence seal which was marked as sampe "C". He explained that, the reasons as to why those samples/exhibits were collected were, one, he hinted the deceased neck had sharp cut wound, so he thought the knife could assist in Forensic Investigation, secondly, was the underpant/chupi, as he wanted to know whether the deceased was raped or sodomised. And thirdly, the whistle which he wanted to know whether the deceased had used it to call for help. After that he recounted, took all the samples to Kigamboni Police Station where he met WP MWAKA in the exhibit room and handed them to her. Later on 28/08/2016 he recollected, was directed to collect those exhibits from Kigamboni to the RCO's Temeke

whereby he collected them from WP Mwaka and handed them to WP Elintruda (PW16) at Temeke RCO's office who after receiving recorded them in PF180.

This witness continued to tell the court on how on 29/08/2016 was directed by the RCO to escort WP Elintruda to the Forensic Bureau Police Head Quarters to transfer the exhibits he handed to her, where the later handed them there. On 15/3/2017 he said, he went to the Government Chemist Laboratory Authority (GCLA) and collected the said exhibits/samples Knife, underpant/underwear and whistle and kept them in safe box under his custody up to 15/8/2023 when he handed them to the prosecution. This witness was able to identify the envelopes that contained exhibits PE 10, PE11, PE12 and PE13 when showed to him as the envelopes that bore case No. 2849/2016.

When cross- examined he said that, in handling the exhibits from GCLA he did not record anywhere at Chang'ombe Police Station, but kept them under his custody, and further that he also handed them to the prosecution without any writings. As to the proof of chain of custody he said, the same can be established either orally or in written form. On the use of exhibit label as per PGO 229 (12) he said, the same is meant to be attached to the exhibit itself

and not the wrappings in which he marked on. This witness also admitted to have taken pictures of the scene of crime though did not tender them in Court. Whether blood samples were collected from the deceased persons he responded that, he neither collected it nor took finger prints on the exhibits collected from the scene. He also affirmed that, when collecting the said exhibits from GCLA the handing over exercise was not put in writing.

When PW17 was re-examined expounded that, at Kigamboni he signed when collecting the exhibits but handed them to WP Elintruda orally as he believed she was the right person to be handed with them for storage. As to the issue of labelling the exhibits collected at the scene his response was that, the same were labelled with alphabets A, B and C intending to differentiate them and making sure that are not mixed with other exhibits during transfer especially when exchanging hands until the final destination. He also stated the reason for not collecting swabs from deceased vagina stating that, it is the doctor who is allowed to so do.

Next in testimony was **Sophia Amir Shemzigo** as PW18 who testified on oath that, in August, 2016 she was a resident of Kurasini area at Dar es Salaam living with her husband and earning her bread through mama ntilie business (food vendor) at JKT Mgulani area. On 7/8/2016 she testified, while

on the way to collect her money from the food clients at Kilwa Road Police office, was called and requested by the police officer to participate in an identification parade, which took place at the rear area of the police station (Kilwa road) where she found other seven (7) women and became the eighth one. That, all participants were lined up and informed by the inspector of police of their purpose of coming there, and that they were to participate in the identification parade. And that, the parade was for identification of the murder incident suspect. Later on she averred, the said suspect of female gender was brought by a woman police and asked to choose the position she would wish to stand on that line. According to this witness' testimony, the suspect chose the 5th position from the right side and PW18 took the 4th position from left and 6th position from right hand. So the suspected was close to her. In that parade she said, participants were nine (9) of the same look or physique as they were brown, fat and a bit short though not too short. It was her evidence that, after that, a girl/woman was brought and asked to pass in front of them and at the rear of the said line they had stood on. She passed as directed and touched the said suspect on the left shoulder and said, "it is this who came to our home at Kigamboni to my boss and threatened me with a pistol while asking me to leave the home" (Ni huyu

aliyekuja nyumbani kwa bosi wangu na kunitishia kwa bastola akiniambia niondoke), this witness affirmed. Thereafter she testified, the inspector of police took down their names in a paper and they signed against their names. She added that, the identification parade officer also signed and later on they were asked to leave the place. The witness was able to identify the suspect who was identified on the date during the identification parade as the 1st accused person **Miriam Steven Mrita**. She was also able to identify exhibit PE9 which is the identification parade register for the 1st accused. On cross examination she stated that, she has no any relationship with the deceased or any other close relative nor was she had any grudges with the suspect.

Aziza Mohamed Hassan (PW19), testified to the effect that, she is a resident of Kibada – Kigamboni Block No. 17 and that, in 2016, was schooling at Belhania primary School in standard III. She informed the Court that, on 25/5/2016 at around 4:00 pm while coming from school met a woman/lady who gave her a key and asked her to send it to Ahlam's home in which she agreed and took it to Ahlam Maungo who is closely related to Ilham before she proceeded home. When cross examined as to what was the said keys

for she responded that, was not aware and that she was not even known to Aneth Msuya.

NASIB ADRIANO, a resident of Njiro in Arusha, working as a small entrepreneur selling chips (muuza chips) testified as **PW 20**. He said, back in 2016 was living at Keko area Dar es Salaam conducting the same business of selling chips. He recalled that, on 21/8/2016 at 11:00 hours (am) while at Kilwa Road Police Station to make a follow up his niece who had been arrested and incarcerated there, was asked to participate in the identification parade. He consented and went to the parade ground where he met four men before other men were added, hence eight (8) participants who were of same gender, tall and resembled in colour (black). After being told the purpose of being there he averred, they agreed and lined up before later on the suspect was brought by the police and asked to be free to choose the position to stand on and/or even exchange clothes with them. He said, the suspect exchanged with him a T-shirt and he chose to stand on the eighth (8th) position from right, and the witness was the last one in the line. From left he was the first in line and the said suspect was second. He testified that, later on came one lady who after having been informed of what was to be done, she passed around and touched the said suspect who had stood in

the 2nd position from his left side. PW20 was able to identify the 2nd accused as a suspect who was identified on the date when the identification parade was conducted and added that, on that day he had lost his weight. PW20 was able also to identify exhibit PE8 which is the identification parade register for the 2nd accused. When cross examined as to whether he informed the Court if they signed the form he replied that, he did not but was quick to add that they signed it all after the parade. On further examination and when referred to Exh. PE8 as to the time in which the parade was conducted he said, he was at the police station around 11.00 hour though exhibit PE8 reads 12.49 hours.

Dr. Hassan Mwichande Chande, who fashioned himself as a pathologist and medical officer dealing with investigation of different human conditions testified as **PW21** to the effect that, on 26/5/2016 while on duty at Muhimbili National hospital, in the post mortem examination room (chumba cha upasuaji maiti), conducted autopsy of different dead bodies one of which was that of **Aneth Msuya** identified to him by Ester Elisaria Msuya and Ninaclara Mbura before two police officers, D/Sgt Zabron and WP D/C Luuna. He said, the examination was conducted within 24 hours of the deceased death and that the established cause of death was **Hemorrhagic Shock**

which means that, the deceased bled profusely leading to failure of cardiovascular system due to insufficient oxygen. He explained **Respiratory Insufficiency** as failure of respiratory system to work properly as the deceased lost her blood due to neck blood vessels cut with big wound measuring 10 centimeter separating the neck into two parts particularly the esophagus part, hence insufficient oxygen in the blood passing in the lungs and her ultimate death. PW21 also said, he collected some specimen from the deceased body including vaginal swabs for spermatozoa test which was negative and biopsy samples (vipimo vya uke havikuonesha mbegu za kiume) as its result took time to come out hence affected preparation of Post Mortem Report (PMR) in time. He averred, after examination of her body he handed it to the relatives and police officer and then later on prepared a report on 14/6/2016, signed and stamped it with MNH stamp before it was recorded it in the register book. According to him, delay in preparation of the post mortem report resulted from delayed results of the collected specimen for vaginal swab and biopsy investigation. The biopsy sample he explained, were collected in order to confirm whether the wounds occurred before she met her demise or after. It was established through biopsy that when cut the deceased was still alive, this witness confirmed.

In cross examination the witness stated that, he could not conclude that the deceased was raped due to absence of spermatozoa, as the specimen were taken to prove whether she was not penetrated by a man who might have released spermatozoa before meeting her demise. As to why the chemical test result part was not filled in PMR exhibit PE1-A, PW21 explained it was so as he was yet to receive the report from GCLA concerning the samples taken there for examination. He denied the assertion that, he was not certain of the cause of death when decided to conduct or check for presence of spermatozoa. As to whether he could know whose blood was found in the deceased fingers he said was not aware of that.

PW22 in court was **SSP DAVID PAUL MHANAYA**, who testified to the effect that, as a police officer, in between 1998 to 2019 worked as an investigator at the Police Head Quarters in the DCI Department at Dar es Salaam. The witness explained on how on 12th July 2016 was assigned by the then DCI- CP Diwani to render support in the investigation of a murder case KGR/IR/4839/2016 that was under the RCO for Temeke Special Police region occurred between 25th and 26th May, 2016 in which the deceased was **Aneth Eliaseria Msuya**. According to him, by that time there was no any suspect, so with his team which included ASP Jumanne, Insp. Latifa

Mohamed Chico, D/Cpl Hassan, D/Cpl Mwajuma (PW1), Cpl. Ester and DC Mohamed, driver of their vehicle Land Cruiser LX, called at the RCO's office Temeke and after briefing visited the scene of crime and saw a fenced house with single entry gate. When entered therein he stated, they noted the front door of the house was broken by using blunt object and on getting inside, they could not find the real scene of crime as time had passed except the door of the room which they were told the late Aneth Msuya's body was found therein which had been broken. After internal observation, they gathered information from witnesses surrounding that scene of crime whereby were informed that, the deceased was living with his son by the name **Allan** who was four years old and a maid by the name **Getrude Peniel Mfuru** (PW25) from Massama Kilimanjaro. And that, the said maid **Getrude** (PW25) disappeared from that area a day before **Aneth** was executed. He said, upon that piece of information they started to trace the said **Getrude** and later succeeded to find her as on 25th July 2016, he conducted interrogation with her and she explained to him what happened the information which assisted them to get the first suspect one **Miriam**, who was arrested at Arusha on 05th August 2016 where they also conducted a search at her home and seized women garments (women suits), gold

chains, blue cards of different motor vehicles including the motor vehicle with Reg. T429 BYY Range Rover Ivoke, silver in colour mentioned by PW25. As per this witness on 06th August 2016 they came back to Dar es salaam with the suspect (1st accused) and on 7th August 2016, she was interrogated and recorded her caution statement by **Cpl Mwajuma** where she admitted to have financed the killing by paying Tshs. 20,000,000/= to one RAY who was living in Arusha, who executed it. That, on 10/08/2016 the 1st accused was taken by D/Cpl. Mwajuma to Pangani Primary Court Ilala before justice of peace Hon. Leonia Kajumulo where she recorded her extra-judicial statement.

PW22 gave a detailed account on the information he received from PW25 on how the two people whom she came to identify later during identification parade as 1st and 2nd accused who had put on glasses on top of his head (aliyeweka miwani yake kichwani) visited Kibada area – Kigamboni using a car make Ford Ranger, dark blue, met her on 15/05/2016 and asked her whether the late Aneth was in his house before they informed her that, they had a deal to engage with her though did not disclose it to PW25. And that, it is the same persons who also came back on 18/05/2016, in company of three other men covered their faces with masks, this time using Range Rover

vehicle, silver coloured driven by the male person before they asked her to enter in the said car and threatened her with pistol while that woman saying “Mali nitafute mimi alafu wengine watumie” and at the same time promising to give her money when shown Tshs. 50,000,000/ that was in a briefcase in their possession before they promised to return back to her on the other day. And that, it was on that day when she was also given a small mobile phone by that woman for communication purpose with them when she recalled to have seen her at Mama Msuya’s house at Mererani area. He testified further that, on 23/5/2016 at about 2:00 pm and 4:00 pm she received a call from that woman asking her to meet them outside their home where she did. That, on that day was asked by the two accused who visited her to move from their house on 25/08/2016, otherwise they would also deal with her (wangempitia) before she was given Tshs. 20,000/ to facilitate her movement. PW22 went on to inform the Court on how the said Getrude (PW25) left the house on 25/05/2016 and how she left the keys to the neighbourhood after sending them through a pupil after she had met his friend Sabri Kombo (her friend) whom she stayed at his house Chanika until 26/05/2016 morning when she received information that Aneth was killed and later on facilitated bus fare with that friend Sabri and left for Moshi until

when she was traced and found. That aside PW22 also said, it is from the information divulged to them by the 1st suspect **Miriam**, they managed to get the information concerning the male suspect mentioned by her to be one RAY who was also arrested on 19th August 2016 at Arusha and had a search conducted at his house on 20th August 2016 by him, together with other investigators before the independent witness one Mathew Boniphace and retrieved different items such as pistol make "CANICK", brief case/suit case, mobile phones and different documents. PW22 added that, thereafter the suspect (2nd accused) **Revoo** or **Ray** or **Revocatus Muyela** was brought to Dar es saalam whereby identification parade was conducted against him on 21/08/2016 and identified by Getrude (PW25) as the man whom he saw at Kigamboni before. As the male suspect denied involvement in the murder incident of Aneth, they decided to collect his buccal swab for DNA test in which the results of the DNA profiles of the suspect matched with some of the samples/exhibit collected from the scene of crime, PW22 informed the Court.

PW22 identified the search order at **Miriam Mrita's** house PF 91 titled **Record of Search Order by Police Officer** and dated 6/8/2016 and at page two written Certificate of Seizure which was admitted as exhibit **PE15**.

He also identified the emergency search order and Certificate of Seizure titled Certificate of Seizure in respect of search conducted to **Revocatus S/o Evarist Muyella @ Ray** at his residence Olasiti, Burka ward on 20/8/2016 by himself, which was admitted as exhibit **PE 16**. He further identified the 1st accused by touching her in court as the woman she arrested earlier on at Arusha and closely pointed at 2nd accused as the one he searched at Arusha.

During cross examination PW22 denied to have knowledge whether Getrude was arrested on 27/5/2016 as suspect of this murder or his boyfriend SABRI KOMBO HAJI of Chanika. And that, what he knows is that she was interrogated as witness. When referred to a copy of First Crime Report (exh. DE3) he responded, it is not part of committal proceedings for being internal correspondence within the Force. He said, as per exhibit DE3 the accused's name is written Getrude Peniel Mfuru, arrested on 27/5/2016 and other accused are Sabri Kombo Haji, Wilbert Mathew Kimaro, Anaha Almas and Amir Almas. As to when Aneth Msuya was killed he said, it is not true that she was killed at the time when GETRUDE and his boyfriend returned at the scene of crime on the 25/5/2016 for handing back the keys. He insisted **Getrude** left for Moshi on 26/5/2016. As to when the accused persons went to Kibada Kigamboni he said at first, the 1st and 2nd accused on board of Ford

Ranger vehicle went at the late ANETH MSUYA's house on 15/5/2016. He also averred, the motor vehicle RANGE ROVER was seized by Afande **Katabazi** (RCO – for ARUSHA) and that RANGE ROVER Evoque is registered as T. 429 BYY in the names of Erasto Elisaria Msuya on 2/3/2012, who is the owner to date. It is the same vehicle according to Getrude (PW25) which was used by 1st accused person to facilitate commission of an offence. He said, he doesn't know whether the 2nd accused was a broker/dalali as it was not his duty to establish that nor does he know whether the 1st accused and the late Aneth Msuya were exchanging sms over phones. He confirmed that, the seized gold chains were kept at the Police Station where other exhibits were kept (Chang'ombe Police Station). Regarding the search conducted to the 2nd accused person he stated that, according to his introduction is Revocatus Evarist Muyela and that, during search he also seized the pistol ownership book in the names of Revocatus Evarist Mollel, the name which is obtained also in the certificate of **Mafunzo ya Mgambo**; so a conclusion that he was using both names of MUYELA and MOLLEL interchangeably. As to whether car description were given by Gertude he explained that, **Getrude** did not give them the motor vehicle registration numbers but disclosed the make and colour.

When explanation was sought by the assessors from PW22 he stated, that as per Getrude's statement she saw the accused person three times at Kibada on different dates. These were on 15/5/2016, 18/5/2016 and 23/5/2016. And that, it is the same 2nd accused who was driving the motor vehicles at all times as per Getrude's statement who identified him after his arrest.

WP. 5412 Sgt Mwaka (PW23) testified to the effect that in 2016, she was working at Kigamboni Police Station charged with a main duty of keeping exhibits. On 26/5/2016 in the afternoon hours she testified, while at her working station, one Sgt. **John Benard** (PW17) came to her with exhibits in small envelopes sealed with forensic seal marked "Evidence" and handed them to her. She said, the envelopes were marked with letter "A" a knife (kisu), "B" with underpant (chupi) and "C" with a whistle (filimbi). After receiving them she recollected, she recorded them in the exhibit register book and assigned them with No. 70 of 2016. She also marked them with IR number (case number) on top of each envelope which was KGD/IR/2849/2016, for identification purposes. Added that, on 28/8/2016 Sgt. **John Benard** came to collect the said exhibits for the purpose of sending them to the DNA experts in which she handed them to him after he

had signed in the exhibit register. After that she noted, the said exhibits never came back to her to date.

When cross examined by Adv. Kibatala, concerning the manner in which the said exhibits were kept she stated that, she kept them in accordance with the approved procedures. And concerning the chain of custody she said that, it is not necessary to be in writing as it can be established orally. However on the importance of paper trail she confessed, it is important to hand over in writing as in case she dies there remains the evidence of handing over.

The 24th Prosecution Witness (PW24) was one **Obadia Joseph Mwalukuta**, who testified that, as sergeant of police in between 2006 – 2021, he worked at Dossier section at the Police Head Quarters, which is under the Director of Criminal Investigation (DCI). That on 30/5/2016, while on duty received documents from Temeke designated Police Region related to different crimes, one of them being First Crime Report (FCR) on murder cases/incidents. One of the incident he remembered concerned murder incident of **Aneth Elisaria Msuya** which had occurred at Kigamboni area as the same had captured attention of media and the public in general. That, he filed them in the Murder Cases File within DCI's office the file which remains under his custody until when DCI or any other officer in the office

calls for the record/report. The IR number in that FCR he mentioned was 2849 of 2016 from Kigamboni KGD/IR/2849/2016. And that, the RCO's Serious Crime Report was DSM/TMK/SCR/262/2016. The report with PF. No. 4 First Crime Report to DCI issued at Kigamboni in relation to murder incident of Aneth Elisaria Msuya was admitted as Exhibit PE17. Concerning exhibit DE3 from the defence side he testified that, it is a copy while PE17 is an original document. And that, those two documents are different as in exhibit PE17 the word Temeke is in abbreviation TMK while in exhibit DE3 is in full word "TEMEKE". Also in exhibit DE3 in front of the word "To DCI" it is written 'BADO SIJAPATA KUMB YAKO' while in exhibit PE17 in the same part "To DCI and copied to" is blank. He said that, PE17 is an original document which is confidential and for internal police force consumption. In cross examination concerning the procedure governing the serious crime reports he answered that, he doesn't remember the procedure under the PGO of dealing with serious crime reports.

The last prosecution witness was one **Getruda Peniel Mfuru, PW25** who testified to the effect that, she was born at Masama Sonu, in Hai District, in Kilimanjaro Region and that, way back in 2015, while seeking for house maid job, she met one mama Manka who connected her to bibi Msuya (the late

Aneth's mother), where she started working there and later on in December, 2015, connected to her daughter one Aneth who was looking for a house maid. PW25 said, she went to work as a house maid to Aneth who was leaving in Kibada area- Kigamboni- Dar es salaam in January, 2016. She testified further that, at Aneth's home they were three people, herself, her sister Aneth and Aneth's son and that, all-time she stayed there had never seen any ANETH's boyfriend or husband coming at their home. She went on testifying that, on 15/5/2016 at noon time on her way to the nearby shop to buy toilet paper, she met a motor vehicle dark blue in colour in which a woman who had put on blue suit with "singlendi" blouse blue in colour, gold earrings and braided her hair in kitimutimu style and round face (na sura ya round) in company of male person seated on the driver's seat called her and asked her if she knew Aneth Msuya's house, whereby she pointed at it before informing them that she is leaving there with her as her sister. That, that woman informed her that she was her relative whom they had not met for quite sometimes before she told her they will meet on 17/5/2016. She added that, on 18/5/2016 at about 10:00 am while going to fetch water outside the gate she met the same woman she had met earlier on 15/5/2016 in company of the same man with a motor vehicle as on that day she had put on cream

suit and purple shoes, two big neck chains, one thick while the other one was less thick (nyembamba), earrings and braided hair. She averred that, the man who had accompanied her was taller, a bit fat and black in colour, in black suit with red shirt and white shoes also put on glasses. She said, was asked to get inside the car Range Rover, Silver in colour where she found three other people inside, so seated between that woman and the other man. On that day she testified, that woman gave her a small mobile phone, Nokia make while warning her not to communicate with any other person using it except her and that, was heard telling the driver "mali nimetafuta mimi na mume wangu wengine wanazihangaikia za nini". While PW25 was still inside the car she explained, that man who had sat beside her pulled out a pistol and aimed on her neck as she got afraid and very seriously shocked. They told her that, they had a business with her sister "Aneth". It is at this time PW25 elaborated she recalled were she had met with that woman. That, it was at bibi Msuya's home (Aneth's mother) at Mererani Arusha. This witness went on to narrate that, after that she went back home whereby decided to switch off the mobile phone and hide it to the small sofa outside in the verandah. She recounted that, on 23/5/2016 while the said phone Nokia was on, she received a call from that woman again who told her to

meet her outside the house where she found her in a car Range Rover make, silver in colour together with the driver and four other youths seated in the back seat put on face black masks and black jackets in which one of them opened a briefcase whereby she saw a lot of money in bundles and that woman told her that it was 50 billion which could be hers if she leaves Aneth's home and let them execute their business. She explained that, the said people never disclosed to her the business they had with her sister. One man she stated, pointed her with a pistol while that woman giving her Tshs 20,000/= as movement fare before she was asked her to throw far away the said phone after leaving home.

It is this witness who told the Court that, on 25/05/2016 at around 11:30, is when she left home and went direct to Kigamboni ferry area whereby she met her friend Sabri and managed to throw the said phone (Nokia) in the ocean when crossing the other side as she was told by that woman to throw it in a place where it could not be easily seen by anyone. That, before leaving with Sabri she noticed that she forgotten to leave the keys at home so asked Sabri to escort her whereby she returned back and handed them to one student nearby home whom she asked to take them to the place where they used to fetch water so that it could be easy for her sister to collect it. After

that averred, she went to Sabri's home and she never told him anything until on 26/5/2016 at about 10:00 am, when she received a phone call from her young sister Neema informing her of the killing of Aneth, and that, that is when she divulged the information to her friend SABRI who advised her to report it to the police station in which she was afraid to act on the advice while asking him for bus fare to Moshi. According to her, on 28/5/2016 she left Dar es salaam to Masana Sonu where she stayed there up to 23/7/2016, when she received a phone call from the police officer asking about her location before she was taken to Dar es salaam by police officers and interviewed on 25/07/2016 where she narrated the whole story concerning suspects of the killing of her sister. She said, after that interview on 07/8/2016, a police woman went to pick her at her sister's home at Gongo la mboto where she participated in the identification parade and managed to identify that woman (1st accused) whom she saw at her sister's (Aneth) home at Kigamboni among nine women who had lined up together. And that, later on 21/08/2016 she was also recalled for identification purpose whereby she managed to identify the 2nd accused person amongst the nine men who had lined up, as the person who used to come with the 1st accused

to her sister's home at Kigamboni. PW25 was also able to identify the 1st and 2nd accused person in Court by pointing at them.

When cross-examined by Advocate kibatala on whether she was able to tender pictures or identify the said cars allegedly seen used by accused persons at kibada area - Kigamboni she said, the same were not shown to him. PW25 was unable to mention the police station where she was taken for identification parade of the accused persons as she never knew it. She also said that, couldn't remember the house her friend Sabri was leaving at Chanika nor could she know name of the student whom she handed keys for her sister Aneth as Kibada. Concerning the uniforms of one Allen, Aneth's son she said that, she doesn't remember the uniforms he used to wear though she was preparing him every morning nor was she remembering number of rooms present in the said house or the room which exactly she was sleeping in. Concerning the advocate's allegation that she is a police officer and not real Getruda, PW25 retorted, she is not a police officer and she has never been one before. On further cross as to who killed her sister Aneth, she said, was not sure who killed her. When questioned by the assessors, she explained that it was bibi Msuya (Aneth's mother) who introduced the 1st accused person to her as the wife of her late son one

Erasto Msuya and that, at all the times she encountered the accused persons at her sister's home (kigamboni) they never hide their faces. That was the end of prosecution case in brief.

For the defence side it is **Miriam Steven Mrita** who featured as **DW1** and informed the Court that, she was arrested on 05/08/2016 at Tembo club Arusha town by David Mhanaya (PW22) who was in company of Jumanne Malangai and Insp. Latifa Chico (PW5), without being informed of her accusations and had her two phones and handbag seized without being issued with seizure certificate as her handbag contained her passport, Tshs. 600,000/- and USD 500. That, from there she was taken to Arusha Police Central Station and met the OCS who queried her whether she was known to one Claude miner from Mererani and other relatives to her late husband in which she responded positively. That, the OCS asked her to cooperate with the investigation team so they started a journey with the team to Mererani to meet Claude but made a U-turn at Usa River Police Station and returned back to Arusha. She denied to have been given her rights at any time as she was even restricted to attend phone calls or communicate with her relatives who wanted to see her during search exercise of her house. She also negated the fact that, she was taken to SG Hotel after her arrest

and that was present when Katabazi (PW11) seized the Range Rover as claimed by the prosecution. DW1 went on to tell the Court that, on the same date search was conducted at her house Sakina with David Mhanaya's team whereby she was asked to surrender gold materials that she had in which she handed them though the same were never tendered in Court. She said, they also seized motor vehicle cards which were also not tendered. And that, it was at this time of conducting search when she was informed of her accusations. After completion of search exercise DW1 testified, they returned at Arusha central police station before the journey to Dar es salaam started on 06/08/2016 morning in company of David Mhanaya's team using two vehicles. That, when reached at Tegeta area she was blindfolded by Latifa (PW5), taken and incarcerated into a police station cell which she could not identify, before she was brought in one room where David Mhanaya interviewed her as to why she had killed Aneth Msuya in the presence of Jumanne and Latifa while squeezed by Latifa to admit the accusations. She said, was denied food and access to her relatives on that day before she was taken back to the grilled material cell and that, at all that time she denied the accusations of killing Aneth and stayed in the cell handcuffed until 07/08/2016, when David and Latifa came and provided her with tea and

burns (maandazi) in another room, before she was returned back to the lock up. That, later on they returned covered her with clothes on the face and taken her in a room where she was subjected to torture and forced to confess that she had killed Aneth but maintained her position before she was later on given chips which she could not take due to pains she was feeling. She went on stating that, on 08/08/2016 was once again blindfolded and taken back to the room she used to serve the tea while bare footed. And when complained that she had not taken bath was given slippers (ndala) and water for bath. And further that after that, while covered on her face took a vehicle to the direction unknown to her until when they unfolded her only to see the word 'Airport' after which they diverted to the left hand side and parked the vehicle where they alighted and entered the police station. That, she stayed in that police station until 23/08/20216 when she was taken to Kisutu (court) and accessed legal services as her lawyer Mr. Kibatata informed the Court of the torture she had undergone while seeking for an order for her treatment before Hon. Bankika (RM) and later on before Hon. Mwambapa (RM). DW1 said, Latifa gave a false testimony when said she was not taken to the Airport Police station as her testimony contradicted that of Kasigwa who said they were together with Latifa at the Airport police

station as Chang'ombe and Airport police stations are in two different districts.

As regard to the motor vehicle Range Rover Evoque tendered in Court as exh. PE7 she told the Court that, when tendered as exhibit by PW11 ACP Katabazi it had no plate numbers and no explanation was given to that effect and that, PW11 did not identify it either by its chassis number or through registration card (blue card). DW1 wondered as to how David Mhanaya got its registration number which allegedly was disclosed to him by PW25 while the later denied to have even remembered the said number during her testimony. She also noted that, in the seizure certificate of Range Rover exhibit PE6 the word 'Evoque' is missing and her names are not appearing anywhere in that exhibit. As to Ford Ranger vehicle mentioned by David (PW22) she contended, the same was never tendered in Court nor its photos and that Getrude PW25 never identified the two cars as to DW1's knowledge the said Ford Ranger is grounded at CMC garage – Arusha branch since February 2016, when it was taken there for mechanical defects by CMC staff who pulled it in. That fact she said, was supported by PW11 ACP Katabazi.

DW1 denied to have killed Aneth stating that, she raised her with his late husband until the time when she got married as she also took part in

receiving part of her dowry. And that, it was not true that they exchanged unpleasant phone messages with Aneth as if it is so the police could have retrieved them from her phone which is in their possession. She also repudiated the assertions that, there was dispute or misunderstanding over family property between her and the late Aneth or any other family members as administratrix of the estate of the late Erasto Msuya and that no evidence was tendered by the prosecution to prove it. Further to that, she denied the assertion that she converted the probate properties into her possession as she is also a shareholder in the SG Northern Adventure Company and Unique Mining Company Ltd which its MEMARTS were admitted as exhibits DE6 and DE7 respectively, the company which she owned with her late husband Erasto Msuya as the late Aneth Msuya is not one of the shareholders.

According to her, though some of the family members are not heirs or beneficiaries of the estate of her late husband before facing these charges as administratrix of the estate of the late Erasto Msuya, divided some money to family members of Mzee Elisaria Elia Msuya including the late Aneth Msuya and that, there was no any complaint so far. She recollected that, while in remand prison her mother in law Ndeshukurwa Elisaria Msuya petitioned for her revocation and removal from the office of administration of the estate

but the High Court Arusha appointed Moreen Erasto Msuya and Kelvin Erasto Msuya to take over the office as she could not render proper administration of the estate while in prison. The High Court ruling to that effect was admitted as exhibit DE8.

DW1 also told the Court on how on 09/08/2016 was taken from Airport Police station by David Mhanaya, Jumanne and Latifa while blindfolded to the midst of the forest she could not recognize and threatened to be killed if not confessing to have killed Aneth, before she was subjected to serious torture and later on returned back. And that, again on 10/08/2026 before David Mhanaya (PW22), Latifa (PW5) and Kasigwa (PW6) was also subjected to torture when had a wooden pole pressed on her neck, forced to confess murder, before they returned her back to the lock up until 11/08/2016 when David Mhanaya, Jumanne and Latifa drove off the police station to unknown place while blindfolded until when the car stopped and subjected to another torture including threat of being inserted with a piece of wood in her buttocks. That, on the way back they stopped at Chalinze where her face was uncovered before they came back straight to Airport police station.

DW1 denied the contention by David Mhanaya that, WP Mwajuma was instructed by RCO Mchomvu to record her caution statement as Mchomvu

denied that fact and further the fact that, she communicated with Getrude (PW25) on 20/08/2016 since the said PW25 did not mention that date in her testimony. And further that, PW25 never mentioned Tshs. 10 million to be amongst the money they solicited her with as claimed by David Mhanaya. She added that, PW25 told the court lies as she failed to identify the car which allegedly was used when met her on 15/05/2023 and that as per exhibit DE3 and testimony of Mwaisemba (PW4) she was arrested and interrogated at police soon after the murder incident as suspect contrary to her testimony when said at that period was at her friend Sabri and that, was never arrested. According to DW1, this was contrary to Exh. PE17 (FCR) which purported to indicate that, PW25 was never arrested. She also stated to have not been aware of the name Ray mentioned in the caution statement (Exh.PE1-B) as during preliminary hearing the 2nd accused denounced it, though she admitted to have known the 2nd accused before the incident of murder. She prayed the Court to find her not guilty of the charge laid before her door.

When called to cross examination, DW1 said she doesn't remember whether together with her late husband owned a motor vehicle make Range Rover Evoque with Reg. No. T 429 BYY, as what they owned is Ford Ranger with

Reg. No. 307 CBH registered in her names and not any other cars mentioned including Range Rover with Reg. No. T800 CKF. When referred to the TRA records concerning the vehicle with Reg. No. T800 CKF she admitted to be the last owner and that the transfer was done on 12/12/2013, five months after death of her husband who passed away on 07/08/2013. She also admitted to have not filed the inventory and accounts of estate as administratrix of the estate of the late Erasto Msuya, before she was arrested on 05/08/2016. On the caution statement Exh. PE1-B DW1 said she objected its tendering because was assaulted. On being referred to the Court proceedings she admitted that, the complaint of being forced to sign it is not among the reasons for objection of its admission. Regarding assertions of torture she said, was tortured lastly on 10/08/2016 and remained in the same conditions until when she was taken to Court on 23/08/2016 but admitted not to have tendered any evidence regarding her treatments in proof of the said claims. When referred to her caution statement exh. PE1-B, DW1 admitted that, the fact of ownership of Range Rover with Reg. No. T800 featured therein.

In re-examination DW1 stated that, the motor vehicle with Reg. T800 CKF as per registration documents was transferred from Godlisten Mwinga to

Miriam Steven. As to the evidence of torture she said there is oral account only.

Next in defence evidence was **Karim Issa Mruma** DW2 who is the driver at SG Northern Adventure Co. Ltd, the company which is running a tourist hotel located at Sakina area Arusha. He said formerly was an employee and driver of the 1st accused's father in law one Simon Elia Msuya, but later on was hired/employed by the late Erasto Msuya and became a family and official driver. He testified to the effect that, he knows the motor vehicle make Ford Ranger with Reg. No. T. 307 CBH which had engine mechanical defects that occurred when coming from Nairobi trip by another driver one Holii. He went on testifying that, it is him who took the said vehicle to CMC garage for repair and returned it on 09/05/2016, where it is grounded to date as the original job card is left there. He said, in February 2016 when escorting 1st accused child to Dar es salaam Airport for his trip to Australia they used a motor vehicle Suzuki TANAPA, make.

When subjected to cross examination DW2 said, the said Ford Ranger was purchased between 2012 and 2013. He admitted not to have tendered any documentary exhibit proving that, he sent the said vehicle to CMC garage.

As to the number of vehicles owned by his bosses, he said they were Range Rover Evoque, Range Rover Autobiography and Suzuki TANAPA.

Kelvin Erasto Msuya the son of the 1st accused testified as DW3. His evidence was to the effect that, he was appointed by the High Court of Tanzania at Arusha (Exh. DE8) as administrator of the estate of his late father Erasto Msuya on 27/10/2021 together with Moreen Msuya to succeed her mother in the office. He said, after coming into office he collected the estate and divided it to the beneficiaries and later on 01/08/2022 filed inventory and accounts of estate which were admitted in court as exhibit DE9 collectively. On cross examination he admitted to have listed Range Rover Evoque and Ford Ranger only as part of the estate in exclusion of other cars such as Noah and Land Cruiser TID used by the hotel and added that, Range Rover was divided to the beneficiary of the estate. He said, the Range Rover Evoque he listed does not bear silver colour nor is the one with Reg. No. T429 BYY, though he had forgotten its registration number. When referred to the document titled Taarifa ya Uchunguzi wa Magari Mamlaka ya Mapato Tanzania, this witness admitted the fact that, the owner of motor vehicle with Reg. No. T429 BYY is Erasto Elisaria Msuaya. And when further referred to exhibit PE6 a certificate of seizure he admitted that one of the

listed items was that vehicle with Reg. No. T429 BYY and that he did not go to the police to search for the details of that car. When referred to the ruling of the High Court Exh. DE8, he also admitted the fact that names of **Miriam Erasto Msuya** appearing in the MEMARTS are not the ones referred or mentioned in the ruling. In re-examination he elaborated that, he discovered the names of Miriam Erasto Msuya against Miriam Steven Mrita during the search at BRELA but both were his mother's names.

DW4 was **Ernest Said Msuya** an administration officer from CMC headquarters Dar es saam who also tendered his identity card in proof of his title as exhibit DE10. This witness told the Court about the procedure for repair or servicing of vehicles sold by their company and any other vehicles in their branches including Arusha branch. He said, once the vehicle is received for repair/service and registered in the register book its driver will be issued with a copy of job card which discloses all mechanical defects after inspection, date the vehicle was received, kilometers obtained on the receipt date and the repair done. He averred that, the vehicle Ford Ranger make with Reg. No. 307 CBH was bought in 2012 from their company and it has all along been serviced in their garage Arusha branch. To prove that he tendered in Court a copy of Roster for service of the car Reg. T307 CBH Ford

Ranger as exhibit DE11, showing that it was received in their garage on 09/05/2016 and released on 10/05/2016 with 30,569 Km. And that, on 15/05/2016, 18/05/2016, 20/05/2016, 23/05/2016 as well as 25/05/2016 and 26/05/2016 the vehicle was grounded in their garage Arusha. That, on 10/08/2016 he insisted the police force Arusha wanted to collect it but it was returned at 30,573 Km due to mechanical defects and that is why there is variance of 4 kilometers. According to him the ink repetitions on entries of 10/08/2016 in exhibit DE11 is the problem of the recorder.

When subjected to cross examination he admitted not to have assigned any reason for absence of an employee from Arusha branch to testify on the repair of the said vehicle. When referred to the letter from CMC to the DPP concerning the said Ford Ranger vehicle which was admitted through him (Exhibit PE18-repair record sheet) DW4 admitted that, it is coming from their office as it was signed by his boss. He also admitted that, the next date the said car was repaired after 09/05/2016 was 19/10/2016 at the same garage as per exhibit PE18 contrary to what is indicated in exhibit DE11 that, it was repaired next on 10/08/2016 after 09/05/2016. So the dates of next service differed, he stressed. He also admitted the fact that, exhibit PE18 does not show that the car was repaired on 14/05/2016, 15/05/2016, 18/05/2016,

23/05/2016 and 25/05/2016. And that, both exhibits DE11 and PE18 show that the vehicle on 19/10/2016 had 30,569 Km while on 10/08/2016 as per exh. DE11 the kilometers were 30,573.

The last defence witness was the 2nd accused **Revocatus Evarist Muyela @ Revoo @ Ray** who testified as **DW5**. In his evidence, he denied the names as appearing in the charge sheet stating that his were **Revocatus Evarest Patrick Muyela** and not **Revocatus Evarist Muyela**. To support his version he tendered in court i a birth certificate issued on 19/03/2009 and passport with No. AB 525274 issued on 8/06/2012 in the names of **Revocatus Everest Patrick Muyela** which were admitted as exhibits DE12 and DE13 respectively. He also denounced the nick names of **Ray** and **Revoo** as no prosecution witness testified to the effect that he was using those names. And further that, he has never colluded and/or collaborated with the 1st accused to kill Aneth Msuya. He said, was arrested on 19/08/2016 at Arusha by one Omary Mahita at Arusha Central police station who did not inform him the offence he was accused with as he had to waiting for an officer from Dar es saam to do so. As he had his car during the arrest, he surrendered the key to the said Mahita and one Cpl. Dulla, his three mobile phones make HTC, TECNO Phantom and small Nokia plus Tshs.

60,000/- and USD 450 which were seized when searched, DW5 told the Court. He added that, he stayed in custody until when ASP David Mhanaya arrived from Dar es salaam where he was interviewed and informed of the offence facing him to be co-operation with Miriam Steven Mrita to kill one Aneth Msuya, the accusation which he denied. He averred that, on 15/05/2016 was in Arusha nursing his wife who had given birth to triplets (girls) and when requested by Mhanaya to so prove such alibi, he showed him his phones and communications made during that period. After that interview he said, was returned to the cell until 20/08/2016 when ASP David Mhanaya and Cpl. Hassan transferred him to Dar es salaam by a motor vehicle. It is this witness who when making reference to exhibit PE8 (Certificate of seizure) testified that, his residence is located at Burka street and not Olasiti as indicated in that exhibit and that, he has never been searched before two witnesses as alleged. DW5 added further that, he does not know owner of the pistol and its book alleged seized from him. He said, what exhibit PE8 is showing is that search was conducted to one Revocatus Evarist P. Mollel and not him. As to the referred seized phones in certificate of seizure he explained that the listed Imei numbers therein reflects his

phones seized at police but none of them had defects as indicated in exhibit PE8.

He went on testifying that, at Dar es salaam they arrived on the same date but it was already dark and went straight up to Buguruni police station. And that from then nothing took place there as he was never taken out of the station until when he was arraigned in court on 02/09/2016, so never participated nor identified in any identification parade as he saw the alleged Getrude (PW25) for the first time in court when testifying. And that, the person referred in exhibit PE8 as Revocatus Evarist is not him as his names are Revocatus Evarest Partick Muyela. DW5 compared his purported signature in the identification parade register exhibit PE8 and the one in the passport exhibit DE13 and said, they differ materially as his signature is that obtained in the passport and not otherwise. This witness denied the accusation in the evidence of David Mhanaya (PW22) and Getrude Mfuru (PW25) that, he travelled to Dar es salaam on 15/05/2016 and that, was seen at Kibada Kigamboni in company of Miriam Steven Mrita whom together they offered Tshs. 50 billion to PW25 in execution of the plot killing Aneth Msuya as it is a total lie. And that, on 25/05/2016 he was not in Dar es salaam as he was still in Arusha proceeding with his daily activities the alibi

which is supported by his Notice of alibi filed in court. And further that, since his arrest on 19/08/2016 and transfer to Dar es salaam up to 02/09/2016 when indicted in court for murder charges, he never moved outside Buguruni Police for identification parade exercise as alleged.

DW5 went on to attack prosecution evidence that, on 28/08/2016 he donated buccal swab since the person appearing in exhibit PE5 (Rights and Assurance form) is not him and that, Richard Mchomvu (PW10) and Segumba (PW15) never witnessed him providing that sample as even the names referred in the form as Revocatus Evarist Muyela/Ray are not his and therefore he does not know that man. That, Segumba (PW15) confirmed that the DNA profiles in the underwear/underpant (chupi) had no connection with him as were not matching with the buccal swab. He also said, PW15 testified that the exhibits he worked on passed through different hands and therefore could not tell whether they were contaminated or not as the possibility of contamination was there. DW5 further informed the Court that, he requested to be availed with his 3 phones and his caution statement from the prosecution to prove to the Court that, he never confessed to have participated in the killings of Aneth Msuya as alleged but was denied with

the same and that throughout this case none of the 25 prosecution witness stated to have witnessed him executing the alleged murder.

When cross examined by Mr. Kibatala for the 1st accused stated that, it is true the prosecution never tendered the motor vehicle make Ford Ranger Reg. No. T307 CBH or pistol for Gertude (PW25) to identify it nor the briefcase and clothes allegedly worn by them and seized during search. He said, he speaks Ha and Swahili only and he does not know Pare language. It was his response that, PW25 was telling lies as she could not have been threatened to that extent and still failed to disclose the threats to her sister Aneth hence the police should not have believed her, in which similarly this court should not do so as well. And that, if 1st accused truly mentioned him she would be expected to identify him to the investigators. As to the sketch map of the scene of crime he said, Mwanaisha Kasim (PW3) denied to have led Nyudike (PW4) in drawing the same. And that, it is true Segumba (PW15) said there is no evidence to prove that, the knife was contaminated with Aneth's blood and therefore this court does not know deceased blood group to date nor toxicological results.

On cross examination by the prosecution he said, his names are Revocatus Evarest Patrick Muyela and that the ones appearing in the charge sheet are

Revocatus Evarist Muyela @ Ray @ Revoo but he denounced the three names of Revocatus Evarist Muyela on 18/03/2018 before justice Kulita. And further that, he denounced the names of Ray and Revoo. He admitted to have mentioned his names during the interview with David Mhanaya (PW22) and that, he did not show them his passport nor his birth certificate to prove his correct names. He also admitted to have known the 1st accused since 2010 as a broker (dalali). He further admitted to have recorded caution statement and that was arrested in connection of this case. And agreed also that, the phones types as listed in exhibit PE16 (Certificate of seizure) are his. When referred to exhibit PE16 which according to him its admission was not contested he said, the name of the person searched as indicated on top is Revocatus Evarist Muyela/Ray. As to the money allegedly seized from him he admitted that PW22 was not cross examined on the same when testified in court nor did he informed him before that, he had that money when arrested. As to his absence in Dar es salaam on the dates between 15/05/2016 and 26/05/2016 for nursing his wife he admitted that, on those dates his wife had already given birth on 12/05/2016. And that, it was possible for his wife to give birth while he was away on safari. As to whether it is Revocatus Evarist and not himself who participated in the identification

parade he admitted that, the police officer in charge of the parade (PW12) and participant (PW20) identified him as the person who attended the parade and duly identified by the identifying witness. And that, it is true no objection was raised concerning names when tendering exhibit PE8. Regarding collection of buccal swab he also admitted that, he was identified by PW10 and PW15 to have been the person whose buccal swab was collected from and that, PW15 did not know him before and further that, the two had no grudges. On the chain of custody of exhibits/samples he said, he remember to have heard WP Mwaka (PW23) testifying on the exhibits she handled but could not remember evidence of Sgt. John (PW17) and Segumba (PW15). He also admitted, not to have requested return of his mobile phones in writing and that, on the cars used by them it is only Ford Ranger which is contested before the Court. As to the identification of Range Rover exhibit PE7 by its registration number when referred by the prosecution to the court proceedings admitted that, it was identified through numbers written on its side mirrors. And lastly on the knife exhibit PE10 he said it is true the examination by PW15 revealed that, the exhibit matched with samples collected from Evarist Muyela.

In re-examination DW5 stated that, exh. PE7 had no plate number. And that, he did not object admission of exhibit PE5 as signature and names cannot bar its admission. He also explained on the evidence of PW25 that, she did not state which work/deal was going to be done between the persons she met and the late Aneth. On the statement he was demanding from the prosecution he explained that, it was oral one where he had denied the accusations. He maintained that, the three names in the charge sheet were not separated from the alias names and that he never donated buccal swab as alleged. That marks the end of evidence of both sides.

As alluded to above the two gentlemen assessors having orally heard the closing submissions from both parties on 04/11/2023, on 11/12/2023 were advantaged to have a summary of evidence explained to them by the Court as per the requirement of the law. And when called to render their valued opinions on the verdict of guilty or otherwise against the accused persons on the charge facing them, both anonymously returned the verdict of not guilty in favour of both accused persons. They opined that, the prosecution case was wanting in evidence and advised me to acquit both accused persons of the charge of Murder and set them free. This Court has taken

into consideration their valued opinions as well as both parties closing submission on the verdict to be entered against both accused persons.

It is a principle of law that, in proving any criminal offence, murder inclusive the prosecution bears the burden of establishing that, it is the accused person(s) who committed the offence charged with as the burden never shifts unless otherwise provided by the law. See the cases of **Mohamed Said Matula Vs. R** [1995] T.L.R. 3 (CA) and **Aburaham Daniel Vs. R**, Criminal Appeal No. 6 of 2007, (CAT-unreported). It is so as the law is settled under sections 110(1) and (2) and 112 of Evidence Act, [Cap. 6 R.E 2022] that, the burden of proving existence of fact lies on the person who wishes the court to believe its existence. And the standard of proof is that of beyond reasonable doubt as exhibited under section 3(2) of the Evidence Act, [Cap. 06 R.E 2022]. The standard and burden of proof beyond reasonable doubts were also given consideration by the Court of Appeal in the case of **Nathaniel Alphonse Mapunda and Benjamin Mapunda Vs. R** [2006] TLR 395, when the Court observed thus:

- (i) *As is well known, in a criminal trial the burden of proof always lies on the prosecution. Indeed, in the case of **Mohamed Said Vs. R** this Court reiterated the principle by stating that in a murder charge the burden*

of proof is always on the prosecution, and the proof has to be beyond reasonable doubt.

(ii) *Where circumstantial evidence is relied on, the principle has always been that facts which an inference of guilt is drawn must be proved beyond reasonable doubt.*

(iii) *In criminal charge, suspicion alone, however grave it may be is not enough to sustain a conviction, all the more so, in a serious charge of murder. "*

In an earlier case of **Miller Vs. Minister of Pensions** (1947) ALLER 372 - 373, Lord Denning expounded on the degree of proof in criminal cases and stated in the following words:

"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof of beyond reasonable doubt does not mean beyond the shadow of doubt.... ?"

With the above principles of the law in mind it is therefore expected of the prosecution in this case to lead evidence carrying weight in proving that it is the accused persons who committed the offence they are faced with and not otherwise as suspicion alone cannot carry the day.

It is also a principle of law that, the accused persons shall not be convicted on the basis of weakness of their evidence/defence but rather on the strength of prosecution evidence or case. See the case of **Mohamed**

Haruna @ Mtupeni and Another Vs. R, Criminal Appeal No. 259 of 2007 (CAT-unreported) at page 7 and **Mohamed Said Vs. R**, Criminal Appeal No. 145 of 2017 CAT-Tanzlii when quoted with approval the decision of Supreme Court of Philippines in the case of **People of the Philippines Vs. Benjamin A. Elmancil**, G. R. No. 234951, dated March, 2019.

In law any criminal offence murder inclusive is constituted of two elements which must be proved before the accused person is found guilty and convicted, one, *actus reus* and secondly, *mens rea*. *Actus reus* is the action or conduct of the accused person which constitutes element of a crime and *mens rea* is the mental state or intention of the accused person in commission of an offence. In short it is the guilty mind of the accused in commission of a crime.

In this case the accused persons are charged of Murder under section 196 and 197 of the Penal Code, [Cap. 16 R.E 2002] now R.E 2022. Section 196 of the Act reads:

196. Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder.

For the prosecution to establish their guiltiness it is duty bound to prove three elements of the offence namely:

- (1) The deceased was killed or died of natural death.
- (2) The accused person(s) is/are responsible for the alleged killings (if unnatural death is established).
- (3) The accused person(s) had malice aforethought at the time of killing, if it is proved that is/are responsible for killing the deceased.

Now, the issue for determination is whether the prosecution in this case discharged its burden of proving beyond reasonable doubt that the three ingredients exist against both accused persons. In this judgment as alluded to above, I am intending to address each and every element of the offence basing on the evidence adduced and in consideration of the closing submission from both parties. However, before I venture into that endeavour, it is incumbent that I address first the issue of defectiveness of the charge as raised by Mr. Nkoko counsel for the 2nd accused given the uncontroverted fact that, charge or information is the foundation of any given criminal trial. It is his submission premised on two limbs that, the information placed before the Court against the accused persons is incurably defective hence leaving it unproved beyond reasonable doubt. On the first limb he submitted that, there is variance between the evidence adduced in court and particulars of the information on the date and place of occurrence of the alleged murder

incident. On the date he argued, while it is alleged by the prosecution that, the death of **Aneth Elisaria Msuya** allegedly caused by the accused persons occurred on 25th May, 2016, the evidence adduced in Court does not support it as PW21 Dr. Hassan Mwichande Chande (PW21) who conducted the deceased autopsy on 26/05/2016 stated that, death occurred within 24 hours prior to his examination while, in the two First Crime Reports (FCR) exhibits DE3 and PE17 tendered by PW4 and PW24 respectively it is stated, the same occurred on 26/05/2016. That aside he argued, the place in which the incident allegedly occurred as per the information is Kibada area while the evidence led by most of prosecution witness described it as Kibada Block 17 Kigamboni District, Dar es salaam City. According to him variance of evidence against the information laid at the accused's door goes against the provision of section 276(2) of the CPA which is similar to section 234 of the CPA applicable in the lower court, demanding for amendment of the charge under such circumstances. It was his views therefore that, prosecution's failure to amend the said information under such circumstances rendered it fatally defective hence prejudiced the accused persons. The case of **Abel Masikiti Vs. R**, Criminal Appeal No. 24 of 2015 (CAT)–Tanzlii was cited to support his stance.

In the second limb he contended, the names appearing in the information differ materially with the names found in the submitted evidence by the prosecution evidence. Relying on the evidence of PW1 and PW2 and the tendered caution and extra judicial statements of the 1st accused as exhibits PE1-B and PE2 respectively, he argued the same are referring to the 2nd accused person by the name of **Rey** contrary to what is obtained in the information which is Revocatus Evarist Muyela and that, the Certificate of seizure exhibit PE16 referred him as Revocatus Evarist Mollele leave alone the correct names as seen in the passport and birth certificate of the 2nd accused exhibits DE12 and DE13 respectively which are Revocatus Evarest Muyella. According to him, much as the prosecution having noted those variances was duty bound to amend the information to support the tendered evidence in Court the duty which they failed to discharge, thus rendering it incurably defective since it cannot support the charge against the accused persons. As such he added, the omission cannot be cured under the provisions 388 of the CPA. Citing to the Court the cases of **Mhole Saguda Nyamagu Vs. R**, Criminal Appeal No. 337 of 2016 CAT-Mwanza, Tanzania, **David Athans @ Makasi and Another Vs. R**, Criminal Appeal No. 168 of 2017, CAT-Dodoma (Unreported) and **R Vs. Michael Samson and Another**, Criminal Session

case No. 15 of 2019 (HC-Tabora unreported) where accused persons' names in the Consent and Certificate conferring jurisdiction to the trial court as well as in the charge sheet were incorrectly referred or cited and the two Courts found the charge laid against them to be defective hence vitiating the proceedings, the learned counsel invited this Court to follow suit and dismiss the charge against the accused persons and proceed to acquit them as the omission is prejudicial to them and the charge remains unproved.

Having considered the submission by the learned counsel and thoroughly revisited the evidence adduced in court in support of the information laid against both accused persons, there is no dispute as correctly stated in the case of **Abel Masikiti** (supra) that, the settled law is that, when there is variance or uncertainty on the dates in the charge sheet, then the charge has to be amended, failure of which, the preferred charge will remain unproved and the accused shall be entitled to an acquittal. See also the cases of **Ryoba Mariba @ Mungare Vs. R**, Criminal Appeal No. 74 of 2003, **Christopher Rafael Maingu Vs. R**, Criminal Appeal No. 222 of 2004, **Anania Turian Vs. R**, Criminal Appeal No. 195 of 2009 (CAT-all unreported). The rationale behind such amendment no doubt is to make sure that the accused person is aware of the date in which he is accused to

have committed the offence since his defence is prepared and built on the specified date as it was correctly stated in the case of **Anania Turian** (supra) where the Court of Appeal had this to say:

“The rationale for this is not far to find. When a specific date of the commission of the offence is mentioned in the charge sheet, the defence case is prepared and built on the basis of that specified date. This defence invariably includes the defence of alibi. If there is a variation in the dates, then the charge must be amended forthwith and the accused explained his right to require the witnesses who have already testified recalled. If this is not done the preferred charge will remain unproved and the accused shall be entitled to an acquittal as a matter of right. Short of that, a failure of justice will occur.” (Emphasis supplied)

In this case it is uncontroverted fact as per the charge sheet that, the offence with which the accused persons are facing is alleged to have been committed on 25/05/2016 and that, some of the prosecution witnesses including Mwanaisha Kassim (PW3), SSP Richard Mwaisemba (PW4), Rtd. Insp. Fredrick Nyudike (PW8), ACP Richard Mchomvu (PW10), Sgt. John (PW17) and Getrude Peniel Mfuru mentioned to have been notified of the death of the Aneth Elisaria Msuya in the morning of 26/05/2016 . That, fact is also supported by the original FCR exhibit PE17 indicating that the said death was

discovered on 26/05/2016 morning around 6.00 hours. However none of the above witnesses is mentioning 26/05/2016 as the date in which the said Aneth Eliaria Msuya was killed as Mr. Nkoko would want this Court to believe but rather the date when they noted that she was killed as prosecution's evidence on that fact is purely circumstantial. Since nobody witnessed the killing of deceased so as to tell with certainty the exact date and time when the same occurred between the night of 25/05/2016 falling in the morning of 26/05/2016, when the deceased body was discovered, I am far from agreeing with Mr. Nkoko that there is variance on date of the incident between the information and adduced evidence as the glaring issue now is not on the date but rather time within which the killing happened. In this findings I find solace in the evidence of the Doctor (PW21) who examined the deceased body when remarked on the estimated time within which death had occurred to be within 24 hours prior to commencement of his examination. In other word from the evidence of PW21 it can be concluded that death occurred on the night of 25/05/2016 falling 26/05/2016 which is well within 24 hours of the time in which he performed post mortem examination of the deceased body. In the case of **Said Majaliwa Vs. R**, Criminal Appeal No. 2 of 2020 (CAT) Tanzlii in which there was variance of

dates between the charge sheet and evidence adduced by prosecutrix having considered the circumstances obtained in that case, her age and the time passed the Court held that, the possibility of variance of evidence on the dates under the circumstances could not be overruled, thus dismissed the complaint. Applying similar principle in this case in a situation where the deceased death occurred on the night of 25/05/2016 falling 26/05/2016 and given the fact that, prosecution witnesses who never witnessed the killing could not have specified the time of death/killing apart from the date and time when the body was discovered which is the morning of 26/05/2016, the possibility of variance of dates between 25/05/2016 and 26/05/2016 cannot be overruled as it was the situation in the case of **Said Majaliwa** (supra). It is in my firm view therefore that such variance is not fatal and did not in any way prejudice the accused persons as in their defence both understood the nature of their accusations and led evidence in negation thereto more particularly on their absence at Kibada area within Kigamboni District before, on 25/05/2016 or the date thereafter 26/05/2016. This limb is devoid of merit and bound to fail and I so find.

As regard to the contention of variation of particulars of the place allegedly complained murder took place at Kibada area within Kigamboni District as

referred in the information contrary to the evidence adduced by the prosecution witnesses who mentioned Kibada Block 17 within Kigamboni District, I also condemn it to be unmerited, basing on the principle obtained in **Said Majaliwa** (supra). I so do as there is no evidence exhibiting that accused were prejudiced with such none mentioning of Block 17 and therefore failed to prepare and enter their defence properly. From their defence it is without any shadow of doubt that, they understood the said place and were able to properly prepare and marshal their defence when denied to have been at Kibada – Kigamboni on the alleged dates of 15/05/2016, 18/05/2016, 20/05/2016 and 25/05/2016.

Lastly is on the issue of reference of the name '**Rey**' in connection with the 2nd accused person as appearing in both caution and extra judicial statements exhibits PE-1B and PE2, respectively and the evidence of PW1, PW2 and PW22 while the name referred in the information is Revocatus Evarist Muyela leave alone different names of Evarist S/O Evarist Mollel as appearing in the certificate of seizure exh.PE16. Having glance an eye to the documents referred, I disagree with Mr. Nkoko's assertion that there is variance between the 2nd accused names as appearing in the information and the evidence of prosecution witnesses mentioned since the name **Rey**

is not referred anywhere in the extra judicial statement exhibit PE2 rather used or mentioned interchangeably with the name '**Ray**' in the caution statement referring him as the person who cooperated with the 1st accused person in execution of murder plot of the late Aneth Msuya. Since the name 'Ray' is referred in the information as alias name, I find there is no variance between evidence and information as alleged by Mr. Nkoko and if any I hold is not fatal. As to the names referred in exh.PE16 the same are even not Evarist S/O Evarist Mollel as complained by Mr. Nkoko rather Revocatus Evarist Muyella @ Ray appearing in the information, hence the complaint wanting in merit. In summing up, this Court is of the finding that, there is no notable variance of date and names between the prosecution witnesses' evidence and the information laid against the accused person calling for its amendment under section 276(2) of the CPA as Mr. Nkoko would want this Court to believe. It therefore discount the contention and proceed to deal with the issue raised above for determination as to whether the prosecution has discharged its burden of proving beyond reasonable doubt that, the three elements of Murder offence do exist in this case and whether there is evidence to connect both accused persons beyond reasonable doubt.

To start with the first element the issue is whether Aneth Elisaria Msuya (deceased) was killed or died of natural death? There is evidence of PW25 Getrude Peniel Mfuru that on the 25/05/2016 when leaving home to her friend Sabri, her sister (the late Aneth) had gone to the work and that she left the house keys to one Aziza Mohamed Hassan (PW19) to deliver them to their neighbour and the same were received by Ahram Kilsweni Malingo (PW7) when coming back from school who handed it to her sister. It is this PW7 who testified that the late Aneth Msuya collected the said keys from her sister. With such evidence it is to this Court's satisfaction that up to the evening time of 25/05/2016 and after PW25 had left the place, the deceased was still alive and she so remained until when her body was discovered on the next day 26/05/2016 morning as per the testimonies of Mwanaisha Kassim (PW3), SSP Richard Mwaisemba (PW4), Rtd. Insp. Fredrick Nyudike (PW8), ACP Richard Mchomvu (PW10) and Sgt. John (PW17). According to their evidence, these witnesses witnessed the deceased body laying down on her back in a pool of blood, with a big cut wound on the neck before the same was taken to Muhimbili National Hospital for Post Mortem examination conducted by Dr. Hassan Mwichande Chande (PW21), after the body was identified to him by relatives Ester Elisaria Msuya and Ninaclara Mbura before

two police officers. In his report PW21 established the cause of death to be due to **Hemorrhagic shock** leading to blood loss following a big cut wound of approximately 10 centimeters separating the neck into two parts particularly the esophagus. According to him, it is that separation of esophagus that led to insufficient oxygen in the blood passing in the lungs hence her ultimate death. And when cross-examined by the defence on the possibility of death resulting from poison or rape, PW21 maintained that he prepared the autopsy report after the results of vaginal swabs and biopsy had proved negative, hence negation of the possibility that death might have resulted from other cause. It was held in the case of **Bombo Tomola Vs. R**, (1980) TLR 254, among others that, the proof of death in homicide cases is through medical evidence and/or circumstantial evidence. In view of the above strong evidence of violent death as opined by PW21 whom I have no reason to doubt his testimony, I undoubtedly make the findings in respect of the above issue that, it is proved beyond reasonable doubt that Aneth Elisaria Msuya is dead and died of violent death hence unnatural one as the same must have been caused by someone else.

Next issue for determination is who killed her and/or whether the accused persons are responsible for the killing of Aneth Elisaria Msuya? In response

to this issue and from both parties submission it is undisputed fact that, prosecution case rests on circumstantial evidence which depends heavily on three sets of evidence as there is no eye witness who witnessed the accused persons killing the deceased. **One**, circumstantial evidence supported by evidence of PW25 as eye witness who also identified both accused persons during identification parade through exhibits PE8 and PE9, corroborated with the evidence of PW7, PW10, PW19 and PW22. **Second**, Forensic or expert opinion evidence (DNA) basing on the report exhibit PE 14 tendered by PW15, incriminating the 2nd accused persons and strengthened with the evidence of PW8, PW9, PW10, PW16, PW17 and PW23. **Third**, confession of the 1st accused person through caution statement exhibit PE1-B and Extra judicial statement exh. PE2 tendered by PW1 and PW2, respectively.

To start with, the first set of evidence on circumstantial evidence, it is contended by the prosecution in their submission that, circumstantial evidence in its nature is sufficient to prove offence of murder even without eye witness evidence in as long as there is cumulative circumstances which if summed up irresistibly point to the guilty of the accused person as it was held in the case of **Mark Kasimiri Vs. R**, Criminal Appeal No. 39 of 2017 (CAT-unreported). According to their submission in this case all the

circumstances from which an inference of guilty of accused persons is sought to be drawn are cogently and firmly pointing towards the accused persons' guilty even though no one saw them committing murder act to the deceased. The defence counsel on the other hand strenuously attacked this type of evidence terming it as weak, unreliable and tainted with contradictions. The issue therefore is whether the said circumstantial evidence by the prosecution is irresistibly pointing guilty fingers to the accused persons beyond reasonable doubt.

It was prosecution case through PW10 the RPC for Temeke and PW22, SSP David Mhanaya that, after incident of murder of Aneth Elisaria Msuya was reported on 26/05/2016 coupled with disappearance of PW25 her house maid, in the course of investigation an information came to their attention through Aneth's mother that PW25 was found at Kilimanjaro Region and they managed to bring her to Dar es salaam where she was interviewed. According to these witnesses, PW25 disclosed to them the whole story on who were responsible for the said aneth's death by mentioning the 1st accused who was later on arrested at Arusha on 05/08/2016, interrogated and confessed to have been involved in the said murder plot, in both caution and extra judicial statements while mentioning the 2nd accused by the name

of Ray as her conspirator. According to them, it is through that naming of the 2nd accused by the 1st accused in her confession they were able to arrest him at Arusha on 19/08/2016, his buccal swab collected from him and sent to the GCLA together other with the knife, underpant/underwear and whistle for testing and matching of DNA in all samples.

When testifying in Court PW25 as the then house maid of the late Aneth Elisaria Msuya in support of the evidence of PW10 and PW22, disclosed on how was faced and met by the accused persons at her home place Kibada area - Kigamboni when heading to the shop, who were using two different motor vehicles on different dates of 15/05/2017, 18/05/2016 and 23/05/2016 one being in dark blue colour and the other one Range Rover make, silver in colour. This witness described the persons whom she met on 15/05/2016 to be a woman with round shaped face who had braided her hair in kitimutimu style, put on blue suit and gold earrings who also asked the whereabouts of Aneth Msuya, before PW25 responded that they were living together there. And added that, that woman promised to come again on 17/05/2016 though she returned on 18/05/2016 this time using Range Rover, silver in colour. PW25 recalled to have seen that woman at Mererani when introduced to her as in law to Mama Msuya, who is the late Aneth's

mother. She proved to the Court that, at all-times this woman came there at Kibada area was in company of a man who was driving cars and that, on 18/05/2016 when they came the two were also in company of other three youths seated in the rear seat and PW25 was asked to enter into the car before she was given a mobile phone, Nokia make, by the 1st accused with restrictive instructions to communicate with her only. And that, at the same time she had the said youths pointed a pistol towards her with instruction to leave her home on 25/05/2016 while that woman saying "mali nitafute mimi na mme wangu wengine wanazihangaikia za nini". And further that, while occupied with shock and fearful she returned home until 23/05/2016 when the 1st and 2nd accused resurfaced again, this time in a motor vehicle carried with them face masked youths who opened a briefcase with money for her, in which PW25 was told was 50 billion while that woman promising it to be hers if she leaves Aneth's home on 25/5/2016 and let them finish their business with her. And when asked what was that business the 1st accused rebuked at her that, it was none of her business.

In furtherance to her evidence, PW25 informed the Court on how she left home on 25/05/2016 as instructed by the accused and left the keys to PW19, who handed them to PW7 before she was informed while at her friends'

home one Sabri at Chanika that, her sister was killed and left for Masama Sonu Moshi on the 28/05/2016, as was afraid to report the incident due to the threats to harm her extended by the accused persons, if she discloses anything. PW25 added that, was warned before not to disclose anything to any person or else, otherwise they could follow her anywhere (Niliambiwa nisiseme chochote kwa mtu yeyote maana wangenifuatilia). Two witnesses confirmed her testimony as it is PW7 who certified to the Court truthfulness of PW25's testimony that, upon receiving the said keys she gave it to her sister whereby the late Aneth came to collect them later on.

It is this PW25 who when called to identify the accused persons she saw at Kibada area, during the identification parade of 07/08/2016 conducted by Insp. Modest PW13 and participated by PW18 at Kilwa Road Police Station and another on 21/08/2016 conducted by A/Insp. Henry PW12 and attended by PW20, was able to identify the 1st and 2nd accused persons as evidenced in exhibits PE9 and PE8, respectively, being the persons whom she met at Kibada Block 17 area and who subjected her to threat so that she could leave the home on 25/05/2016, while at the same time promising to offer her a good sum of money.

Discounting PW25's evidence in his submission Mr. Nkoko for the 1st accused contended that, she was the last person to be with the deceased on 25/05/2016, thus duty bound to justify during her testimony on how she parted ways with the deceased, but no plausible explanation was ever rendered by her. On the other hand Mr. Kibatala attacked PW25's evidence more particularly on identification of 1st accused, allegedly made at Kilwa Road Police station accusing it to be tainted with anomalies hence unworthy of being accorded with any credence, weight or acted upon by this court. Giving reasons for discrediting her evidence he said, one, PW13 did not show that he availed the 1st accused with opportunity to raise her dissatisfaction which defect negate PW25 evidence for being in line with the dicta in **R Vs. Abdallah Athuman Labia @ Brother Mohamed and 8 Others**, Criminal Session case No. 63 of 2022 (HC-unreported). Secondly, PW22 was not lead to identify her signature in exhibit PE9. Thirdly, it is uncertain from exhibit PE9 whether participants in the parade were 8 or 9 and PW13 never cleared such discrepancy. Fourthly, the accused signature was appended onto witness space without explanation. Fifthly, neither names of suspect nor the police station is mentioned in exhibit PE9 as reflected in the proceedings. Sixth, during cross examination PW13 admitted contradictions as to who

prepared the parade between him and the RCO (PW10). Seventh that, PW13 admitted that PW25 communicated with RCO and the officer in-charge of the case before coming to the court contrary to the requirement of PGO 232(1)(h) which strictly prohibit any prior communication and eighth, PW25 did not remember in her testimony what police station was the identification parade conducted. Ninth that, the earliest identification of the 1st accused was done 26/07/2016, 2 months after the fact hence cannot be corroborated by exhibit PE9 and lastly that, PW13 failed to lead evidence dispelling a notion that, he was connected to this case which omission contravenes PGO 232(2)(c) requiring the officer conducting the parade not to be connected to the case. It is from all those deficiencies, Mr. Kibatata urged this Court to disregard that piece of evidence on identification of the 1st accused.

I have accorded deserving attention to both defence counsel's arguments concerning deficiency of PW25's evidence, generally including identification of the 1st and 2nd accused persons as persons who visited her at Kibada area Block 17 – Kigamboni on 15/05/2016, 18/05/2016 and 23/05/2026 and asked her to leave the home on 25/05/2016 under threats coupled with a promise to give her huge amount of money if she manage to do so. The

issue is whether both accused persons were identified by PW25 and her evidence should be accorded weight in determination of this case.

It is a principle of law that, every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for disbelieving such witness. See the case of **Goodluck Kyando vs. R**, [2006] TLR 363. Witness' testimony will always be discredited where veracity of his/her testimony is assailed, motive to misrepresent facts is established, his or her biasness or prejudice is disclosed and when he or she has given fundamentally contradictory, or improbable evidence or has been irreconcilably contradicted by another witness or witnesses as it was rightly stated by the superior court of this land in the case of **Mathias Bundala vs. R**, 12 Criminal Appeal No. 62 of 2004,(CAT-unreported).

With the above principles in mind, I am now set to address the anomalies raised by both Mr. Nkoko and Mr. Kibatala, learned counsel for the 1st and 2nd accused persons. Having revisited the evidence in record, I disagree with Mr. Nkoko on the contention that, PW25 did not make any disclosure on how he parted ways with the late Aneth Msuya on 25/05/2016 as when cross examined with Adv. Kibatala stated that, she left home at about 11.00 am and came back to return keys she had gone with at 04.00 Pm while in

company of her friend Sabri. This witness was categorical that, at that time her sister had not come back from the office since her car was not parked at home. In my view, the above explanation is sufficient and proves to the Court's satisfaction that, by the time she left home until the time she returned the keys at 04.00 Pm the late Aneth had gone to job and was yet to return home.

In regard to the first assertion by Mr. Kibatala, it is not true that, PW13 did not avail the 1st accused with an opportunity to air out her dissatisfaction with the identification procedure as that goes against his testimony when intimated to the Court that, the suspect was introduced to her rights as explained including the right to reject participation of any person and to stand anywhere in the line whereby she chose not to have around any of his relative or lawyer and to stand in the 5th position. And further that she had no any compliant. This piece of evidence is corroborated with evidence of PW18 the participant, who confirmed to the Court that, the suspect/1st accused exercised her right which no doubt included the right to voice her dissatisfaction on the parade procedure if any. The contention therefore is without merit and I disregard it.

Next is the second assertion that, PW22 never identified his signature in exhibit PE9. I think Mr. Kibatala when referring to PW22 meant PW25 in which it is true as per the record she admitted not have been shown the said document in order to identify her signature. The reason as to why PW25 could not be led to identify her signature in exhibit PE9 is not far-fetched as PF186 is a standard form which does not provide the provision for signature of the identifying witness. Thus, to me, there no way PW25 could have been led to identify her signature. This complaint is therefore unmerited.

I discount also the third contention that, it is uncertain as per PW13 evidence, whether the participants in the parade were 8 or 9 given the brackets appearing in exhibit PE9, since when re-examined, PW13 gave reasonable explanation to the effect that, when there is closing brackets, it is known that the word therein is written in error or it is a correction just as it appeared also to the name of Miriam when was confused with Getrude. To me that was enough to account for the error in numbers.

As to the forth grumble that, the accused signature was appended onto witness space without explanation, I also do not find any merit on this claim as my scrutiny of the contents of exhibit PE9 unearthed the fact that, the

signature appearing on item 6 of the certification part is of the suspect contrary to what is claim. The complaint therefore fails.

Next is the fifth allegation that, PW13 admitted contradictions regarding to who prepared parade participants between him and PW10 RCO. It is true as per the proceedings in page 210, PW13 when cross examined by Mr. Nkoko for the 2nd accused, was recorded to have stated that, in his statement said he was the one who prepared the participants while in fact it was Afande Mchomvu the RCO (PW10). However his statement was never referred to him by the defence counsel nor tendered in Court for contradiction purpose, hence denied this Court with an opportunity to appreciate Mr. Kibatala's complaint that there was such contradictions affecting exhibit PE9 regarding to who prepared the participants. In view of that omission, I dismiss this complaint.

Next is the seventh contention that, PW13 never ascertained whether the RCO (PW10) and the officer in-charge of the case had contact with the identifying witness in compliance with PGO 232(2)(h) which strictly prohibit such communication. Reliance was made to the case of **Abdallah Athuman Labia @ Brothers** (supra) where it was noted that for identification parade to be of any value the same must have been conducted in compliance with

the applicable procedures as set out in **Rex Vs. Mwango Manaa** (1936) 3 EACA 29 9OR GPO 2310, otherwise it will be of little value against the accused person. Having revisited the testimony of PW13 when cross examined, it is evident to this Court that the witness affirmed that, the RCO – Mchomvu (PW10) prepared the participants. And when re-examined, he was emphatic that participants were prepared already as his duty was to conduct the parade which he discharged. It is in the view of this Court that, if anything it was PW10 who was responsible to tell the Court whether he was in contact with the identifying witness or not and not PW13. Much as PW10 was not cross examined on this fact, I find the complaint wanting in merit as the settled law is that failure to cross examine amounts admission of the facts stated by the opposite part, the position which was stated in the case of **Jaspini s/o Daniel @Sizakwe Vs. DPP**, Criminal Appeal No. 519 of 2019, (CAT-unreported) where the Court of Appeal held that:

"....it is settled law that failure to cross examine a witness on an important matter implies acceptance of the truth of the witness evidence in that respect..."

See also the cases of **Nyerere Nyague Vs. R**, Criminal Appeal No. 67 of 2010 and **Sebastian Michael & Another Vs. The Director of Public**

Prosecutions, Criminal Appeal No. 145 of 2018 (both CAT-unreported) and **Hatari Masharubu @Babu Ayubu Vs. R**, Criminal appeal No. 590 of 2017[2021]TZCA 41 www.tanzlii.org/tz/judgment.

Moving to the eighth assertion, again I do not find how does failure of PW25 to remember the police station where the identification parade was conducted affects credence of her evidence. This witness was explicit in her evidence during cross examination that she did not mention the police station in which identification parade took place because was not told its name when taken there for identification purpose. Under such circumstances in my considered view she would not have been expected to have mentioned it even during her examination in chief testimony as Mr. Kibatala would convincingly press this Court to believe. I so conclude as witness's evidence can be extracted at any stage of his/her testimony be it during examination in chief, cross examination and/or re-examination. So it was not offensive for her to clarify on such omission. This complaint crumbles too.

As regard to the ninth contention that, PW25 ought to have corroborated her identification by earliest identification of 1st accused but it took her 2 months to do so. Again I think this complaint should not detain this Court since in her evidence PW25 explicitly declared herself clear that, she did not

report the matter at police as was still occupied with shock and fear from the threats imposed to her by the accused persons at Kibada area Kigamboni. This Court is satisfied with such explanation and find it justifiable hence disregard the complaint.

Lastly is on the assertion that, PW13 never led any evidence to dispel the notion that was connected to the case as per the dictates of PGO 232(2)(C). My reference to his evidence proves wrong the assertion as raised by Mr. Kibatala since in his evidence during re-examination expounded on that aspect to the effect that, presence of 1st accused at Kilwa Road Police station lock up could not in any way connect him to the case as investigator since he never recorded her statement before conducting the parade. In my humble view that piece of evidence tells it all that, PW13 led evidence to dispel the notion that he was connected to the case before discharging his duty of conducting that identification parade. Similar evidence was led by PW12 who conducted the identification parade to the 2nd accused which was attended by PW20 whose evidence was to the effect that having followed the necessary procedures the 2nd accused was identified by PW25.

Regarding credibility of PW25's evidence, I had an ample time to observe her demeanor when testifying in court and fully satisfied that, she was a

truthful witness having appreciated her composure while in witness box, her act of giving direct, certain and relevant answers to the questions put to her and above all speaking her mind. Her evidence therefore, I am convinced is patently plausible and reliable to be acted upon by this court without even any demur in arriving at its decision. That aside, even her evidence in respect of identification of 1st and 2nd accused persons meets the tests of evidence of a credible witness as adumbrated in case of **Abdallah Teje @ Malima Mabula Vs. The Republic**, Criminal Appeal No. 195 of 2005(CAT) (unreported), for being legally obtained, credible and accurate, relevant to the case and competent for admission hence worth of being believed and accorded weight in this case.

It is the law that, an identification parade, is in itself not substantive evidence, since it is only admitted for collateral purposes and derives its corroborative value from section 166 of the Tanzania Evidence Act. So, if well conducted, its value is to corroborate the evidence of the identifying witness only. See the cases of **Moses Deo Vs. R** [1 987] TLR 134 (CAT), **Dennis Nyakonda Vs. R** , Criminal Appeal No. 155 of 1990 and **Ahmad Hassan Marwa Vs. R**, Criminal Appeal No. 264 of 200 (Both CAT-unreported). In totality in this case having weighed PW25'S evidence on

identification of 1st and 2nd accused generally and having noted that the same is corroborated with two identification parades well conducted as exhibited in exhibits PE9 and PE8 this Court is satisfied that, the 1st and 2nd accused person were correctly identified by PW25 as the persons whom she encountered when visited at Kibada area on 15/05/2016, 18/05/2016 and 23/05/2016 using two different motor vehicles and threatened her to forcefully leave her home on 25/05/2016 and not to disclose any information to anybody or else could suffer the consequences at any time. Her evidence on identification is further corroborated by evidence of PW13 and PW18 as well as PW12 and PW20 who testified in confirmation on how she properly and procedurally identified both accused persons during identification parade.

Apart from PW25's evidence on identification of both accused persons before the commissions of an offence, the second piece or set of evidence relied on by the prosecution as per their submission is the expert or DNA evidence connecting the 2nd accused person with the alleged killing of the late Aneth Erisalia Msuya. This Court in the case of **R Vs. Chacha Jeremiah Murimi and Others**, Criminal Sessions Case No. 213 of 2014 (HC-unreported) held that, DNA evidence is vital for the purposes of ensuring accuracy and fairness in criminal justice. It is so in my view, particularly when the analysis is

properly done after following all the necessary procedures from collection of samples stage, storage, transfer up to the GCLA for testing/analysis and method(s) of analysis employed before the results are out and the samples or exhibits are tendered in court. In this case Sgt. John PW17 is on record explaining on how he attended the scene of crime at Kibada area within Kigamboni on 26/05/2016 with his tool kits and collected therefrom three exhibits/samples which he kept in separate forensic evidence envelopes and sealed them while assigning each of them its own mark/label for easy of identification. These were, a knife with black handle marked 'A', one female underpant/underwear purple in colour marked 'B' and whistle with metal materials marked 'C', the exhibits which he handed to Sgt. Mwaka (PW23) at Kigamboni police station who registered them in the exhibits register there. PW17 elaborated to the Court on how he exchanged gloves after collection of each sample to avoid contamination of samples and how later on 28/08/2016 he collected the same from PW23 and sent them to the RCO's office Temeke where he handed them to WP Elentruda (PW16) orally before the same were taken to the GCLA. PW23 and PW16 corroborated PW17's evidence on how they handed each other the said exhibits/sample.

In her evidence PW16 stated on how she filled in PF180 after receiving the said three exhibits from PW17 ready for sending them to the GCLA. And further, on how before that she moved to the Forensic Bureau offices at the then Police Head Quarters Dar es salaam, accompanying the RCO (PW10) who was with the 2nd accused as sample source for buccal swabs collection, the exercise which was performed by PW15. It is also in the evidence of both PW10 (RCO) for Temeke and PW9 as police chemist that, while at headquarters the 2nd accused was introduced to his rights and had the Rights and Assurance Form (exhibit PE5) filled in and signed by both 2nd accused and PW10 as requesting officer, before the collected buccal swabs from the 2nd accused was handed to the RCO through PW16 who thereafter packed and sealed it together with three other exhibits and sent them to the Police Head Quarters with the requesting letter from the RCO for Temeke PW10 for analysis of samples prepared on 29/08/2016. PW16 went further to state on how while at the headquarters she waited for forwarding letter from there to the GCLA, the letter which was issued to her on 30/08/2016 and managed to submit the samples to GCLA for DNA analysis as the buccal swab was assigned mark 'D'. And that, it is PW15 Fidelis Segumba who received them there at GCLA before PW17 went to collect them with a DNA report, who

finally kept them until when the same were tendered in Court. The tendered exhibits were a knife as exh. PE10, underpant/underwear as exh. PE11 and whistle as exh. PE12 since buccal swab was all consumed during DNA analysis as per PW15.

In his evidence, PW15 corroborated the evidence of PW16 on receipt of samples submitted for DNA analysis at GCLA and PW17 on their collection from GCLA after examination and analysis, thus an assurance to this Court that it is the same samples or exhibits collected from the scene of crime and 2nd accused which were worked on and tendered in Court. I arrive to that conclusion as it is settled law now as rightly submitted by the prosecution that, oral account in absence of paper trail can establish chain of custody of exhibits. What is important is for the court to follow carefully the handling exercise of what is seized from the suspect or collected from the scene of crime and how was it handled up to the time of laboratory analysis, until when finally the seized exhibit is received in court as evidence the position which was articulated in the case of **Marceline Koivogui Vs. R**, Criminal Appeal No. 469 of 2017 (CAT-unreported) where the Court observed thus:

*"In the present case we cannot fault the trial court in having relied on the credible oral account of the prosecution witnesses which was not impeached considering that: **one,***

documentation is not the only requirement in dealing with exhibit and it will not fail the test merely because there was no documentation.” (Emphasis supplied)

See also the cases of **Chacha Jeremiah Murimi and 3 others vs. The R**, Criminal Appeal No.551 of 2015 (unreported). It is worth noting however that, chain of custody is established through oral evidence only where the exhibit is not likely to change hands easily like what money would do. See the case of **Paul Maduka and 4 Others Vs. R**, Criminal Appeal No. 110 of 2007 and **Joseph Leonard Manyota Vs. R**, Criminal Appeal No. 485 of 2015 (Both CAT-unreported). In this case, having considered oral evidence of PW23, PW16, PW17, PW9, PW10 and PW15 and the fact that the exhibits/samples involved could not change hands or mixed up easily this court is satisfied that, chain of custody of the said samples remained unbroken until when the same were tendered in court.

As to the DNA analysis, in his evidence PW15 explained on how he processed the samples received by using the analysis procedure from the stage of DNA extraction, amplification of samples and then detection stage before the report on the results is prepared. Testifying on the results of the said samples as deduced from the DNA analysis report exhibit PE14, PW15 made himself clear to this Court that, there were DNA profiles in sample “A” the knife

matching with that of sample "D" the buccal swabs, from the 2nd accused person. Likewise he assured the Court that, DNA profiles from sample "C" whistle (filimbi) were also matching with the ones found in sample "D" while sample "A" (knife) had some DNA profiles matching with that of sample "B" the underpant (chupi). Elaborating on gender analysis of samples PW15 evidenced that, sample 'B' exhibited to have profiles of female gender, though there was no matching of DNA profiles between sample "B" and sample "D" meaning that the two never came into contact.

It is prosecutions' contention in their submission that, the matching of DNA profiles between the knife sample 'A' (exhibit PE10) collected at the scene of crime aside of the deceased body allegedly used to cut the deceased with the buccal swab mark 'D' and the whistle sample 'C' (exhibit PE 12) also found at the scene with the buccal swab is sufficient evidence to justify conviction of the 2nd accused. The submission is vehemently contested by Mr. Kibatala in his submission when contended that, since no deceased blood group or type analysis was done to identify deceased blood and later on compare with the blood group found on the knife, it is debatable whether a conclusion can be drawn that the knife had 2nd accused's DNA profiles hence

gaping holes and doubts on whether it has been proven beyond reasonable doubt that, the knife has deceased's DNA.

To start with whether the knife had 2nd accused DNA Profiles, it is undeniably fact found in evidence of PW4, PW8, PW10 and PW17 that, the underwear/underpant sample 'B' with purple colour which proved to have female gender was retrieved near the deceased body and believed to be worn by her or once came into contact with a woman. And it is the same sample which had the matching DNA profiles with sample 'A' a knife found also aside the deceased body believed to have been used to cut her neck. It is established further through evidence of PW15 and the DNA report exhibit PE14 that, it is the same knife exhibit PE10 pairing some DNA profiles with underwear/underpant exhibit PE11 of female gender which also matched with buccal swab collected from the 2nd accused. By necessary implication there is no possibility that DNA profiles of the 2nd accused person would have been found on the knife exhibit PE10 possessing also profiles of female gender without coming into contact with the same. In other words the 2nd accused person must have come into contact with the said exhibit PE10 found at the scene of crime which has nexus with underwear/underpant exhibit PE11. That aside, there was also a whistle retrieved from the scene

of crime exhibit PE12 which its DNA profile matched with the 2nd accused buccal swab, implying that he was at the scene of crime or caused the knife and whistle to reach there before the same were retrieved therefrom. With such cogent evidence this Court is satisfied that, the 2nd accused must have either been present at the scene of crime before retrieval of exhibits PE10 and PE12 therefrom or caused them to find their way there. It was held in the case of **Magendo Paul and Another Vs. R** (1993) TLR 219 that, a case can be taken to be proved beyond reasonable doubt against the accused where there is strong evidence against him leaving a remote possibility in his favour which can easily be dismissed. In so doing the Court had this to say:

"For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed."

In this case having subjected to thoughtful consideration the above evidence on the availability of 2nd accused person's DNA profiles on the knife exhibit PE10 and whistle exh. PE12 retrieved from the scene of crime, it is to the satisfaction of this Court that, the same leaves a remote possibility that DW5 was not present at the scene of crime before or during the killing of the

deceased hence dismissal of the possibility that he might not have been there or caused exhibit PE10 and PE12 to reach there.

Next issue for consideration thereafter is whether with such evidence it can be conclusively said that, it is the very knife exhibit PE10 which was used to cut the deceased, in absence of any comparison sample collected from the deceased body as Mr. Kibatala has invited this Court to consider. It is true as submitted by Mr. Kibatala that there was no blood sample collected from the deceased to compare her DNA profiles in order to establish beyond reasonable doubt that, the knife alleged used to cut the deceased had in fact possessed her DNA hence a drawn conclusion that it was the 2nd accused who used it to kill her. When testifying and subjected to cross examination PW15 confessed that, he could not establish in his analysis who was the possessor of the alleged female gender found on the underwear/underpant. With such response and in absence of any blood or sample collected from the deceased or relatives to compare her DNA profiles with the samples/exhibits found at the scene of crime this Court is left in doubt as to whether the knife with pairing DNA profiles of buccal swabs of the 2nd accused person is the one used to cut the deceased on the neck hence claimed her life. With such doubt I endorse Mr. Kibatala contention that, the

prosecution failed to prove beyond reasonable doubt that the said knife exhibit PE10 had deceased DNA, hence a negative response to the raised issue above. To sum up there is no proof by the prosecution at least on the high degree of probability as it was held in the case of **Miller Vs. Minister of Pensions** (supra) to conclude that it is the same knife that was used to cut short deceased life.

The above conclusion notwithstanding, there is also a submission by Mr. Nkoko that, the 2nd accused denied to have donated buccal swab as alleged by PW16, PW10 and PW9 and that, there is no proof as per DNA analysis report exhibit PE14 that it is the 2nd accused who killed the deceased. With due respect to the learned counsel, I do not find in favour of that submission for one good reason that, there is no any disclosed evidence by the 2nd accused that, he had any grudges with PW9, PW10 and PW16 for them to testify lies that he donated buccal swabs freely for DNA analysis. The fact that he signed the Rights and Assurance Form exhibit PE5 is the last nail on the 2nd accused head which corroborates the above mentioned prosecution witnesses on such evidence that, it is the 2nd accused who donated buccal swab which when sent for analysis proved to have connection with the knife

and whistle found at the scene of crime, the knife which is doubtful whether it is the same which was used to kill the late Aneth Elisaria Msuya.

In totality it is to the satisfaction of this Court after being proved beyond reasonable doubt that, the 2nd accused was either at the scene of crime on the night of 25/06/2016 falling 26/05/2016 or caused exhibits PE10 and PE12 to find their way there, though there is missing link to prove to this court's satisfaction and beyond reasonable doubt that, it is the very knife exhibit PE10 that was used in killing the deceased person.

The third set of evidence relied on by the prosecution to prove its case is confession of the 1st accused person, as obtained in both caution and extra judicial statement tendered by PW1 and PW2 as exhibits PE1-B and PE2, respectively, which according to their submission also incriminates the 2nd accused person.

Confession is defined under section 2 of the Evidence Act, [Cap. 6 R.E 2022], to mean either words or recorded statement or conduct or combination of both, when or if taken conjunctively with other admitted facts an inference may be drawn that, an offence has been committed or word or recorded statement containing admission by the accused person of the commission of an offence, or statements containing affirmative admission or

declaration of incriminating facts, if when taken alone or conjunctively with other proven facts, an inference of commission of an offence may reasonably be drawn. Confession, when is in words can be inferred from the evidence adduced by witnesses who heard the accused person confessing before them. It is in a recorded statement when the accused person reduces it down in writing either in a caution statement before the police officer, or extra judicial statement before justice of peace as it is the case in this matter where the prosecution submits the 1st accused's confession as obtained in the cautioned and extra statements exhibits PE1-B and PE2, respectively corroborated with evidence of PW25 and other prosecution witnesses proves her involvement in the murder of the deceased. The said caution and extra judicial statements were assailed by Mr. Kibatala in his submission when raised a number of deficiencies allegedly painting a negative picture on them hence unworthy of being believed and acted upon to draw conviction. I will soon hereunder consider them on each and every statement.

To start with the cautioned statement exhibit PE1-B as recorded by PW1, Sgt. Mwajuma (PW1). It is Mr. Kibatala's submission that a caution statement must disclose all the ingredients of the offence in terms of type, material time and date of commission of an offence, in which exhibit PE1-B on record

utterly suffers deficiency of. According to him one, it refers to 2nd accused as 'Rey' and 'Ray' without disclosing full names, secondly, its author does not state or admit that the 1st accused participated in or knew of the time and date of 25/05/2016 or who exactly committed the actual killing, thirdly, it is not corroborated by any confession of 2nd accused as per the requirement of law spelt out in **Abdallah Athuman Labia @ Brothers** (supra) when quoting the case of **Tuwamoi Vs. Uganda** [1967] E.A 84, insisting on the importance of confession statement to be corroborated by independent evidence, fourthly, it contradicts the testimony of PW25 on the date of 20/05/2016 allegedly 1st accused visited Kibada area while PW25 did not mention such date in her evidence. In the fifth attack the learned counsel complained that, the statement does not explain who were the other youths alleged to be in company of accused persons when allegedly threatened PW25 with a pistol and does not make any reference to the said pistol. And further that, it contradicts PW22's evidence against that of 1st accused (DW1) and Kelvin Erasto Msuya (DW3) on the fact that not even a single motor vehicle belonging to the late Erasto Elisaria Msuya changed its ownership from him to the 1st accused and that, there was no litigation between the deceased and 1st accused over the estate of the late Erasto E. Msuya as

division of the estate was legally conducted by DW3. And further that, the prosecution failed to bring evidence to corroborate PW22 mere assertion that, there was dispute over ownership of properties in the estate of the late Erasto Elisaria Msuya. Reliance was placed on the cases of **Ahmad Salum Hassan @ Chinga Vs. R**, Criminal Appeal No. 386 of 2021 and **Shilanga Bunzali Vs. R**, Criminal Appeal No. 600 of 2020 (reported in Tanzlii, on the need to call witnesses whom from their connection or involvement in the transaction in question, are able to testify on material facts.

On further submission as to why the cautioned statement should not be accorded weight by this Court Mr. Kibatata argued, it is contradicted by the statement of DW4 vide exhibit DE12 and Karim Mruma DW2 to the effect that motor vehicle Ford Ranger T 327 CBH was grounded at CMC Automobiles garage Arusha and never moved from the garage thus could not have been used in Kibada on 15/05/2016 and/or 18/05/2016. And lastly that, there was contradiction as to where was the said caution statement recorded and under whose auspices as PW22 and PW1 claim it was written by PW1 under PW10's instruction while PW10 refuted that fact. And further as to where was it recorded in that, while PW1 claims so it was PW6's evidence during trial within trial, as officer instructed to record 1st accused's

oral statement through video that, the exercise of recording that oral statement took place at Airport Police Station contrary to what PW5 Insp. Latifa persistently claimed that, it was held at Temeke in the RCO's office. With all those highlighted anomalies Mr. Kibatata urged this Court to find the statement unreliable, thus accord it with no weight. On their side the prosecution took the view that, there was no contradiction or discrepancies in their case and that, if any is found urged this Court to find it is minor not going to the root of the case and proceed to rely on exhibit PE1-B to ground conviction on the 1st accused as well as the 2nd accused.

I have given considerable thought all the grievances raised by Mr. Kibatata and the response accorded to them by the prosecution concerning propriety and the probative value or weight to be attached to the cautioned statement of the 1st accused. I have also taken considerable time to revisit prosecution witnesses' evidence adduced in Court concerning the impugned caution statement exhibit PE1-B. It is the accepted position of the law that, the very best witness in any criminal trial is an accused person who confesses his guilt. See the case of **Paul Maduka and 4 Others Vs. R**, Criminal Appeal No. 110 of 2007 (CAT-unreported). In this case the 1st accused retracted her confession during the defence hearing of both trial within trial and main case.

She contended some papers were brought before her and forceful made to append her signature after undergoing serious torture the contentions which were considered by the Court and a ruling made to the effect that the statement was obtained voluntarily. Generally repudiated/retracted confession of accused can ground conviction, even without being corroborated by any other independent evidence but only when the Court believes it to be nothing but the truth as the confession worth of consideration is the one which is voluntarily obtained. See the cases of **Tuwamoi Vs. Uganda**, [1967] E.A 84 and **Dickson Elia Nshambwa Shapwata and Another Vs. R**, Criminal Appeal No. 92 of 2007 (CAT-unreported). However, as a matter of practice, before conviction is entered relying on confession such confession has to be corroborated with any other evidence be it direct or circumstantial. Now before going into the details of truthfulness or otherwise of the said statement, this Court has a duty of examining the raised grievances and satisfy itself of its legality and reliability regardless of its admissibility as evidence in Court. The issue for determination therefore is whether the same is worthy of belief and reliance by the Court to ground conviction against both accused persons given the raised alleged anomalies or deficiencies.

In determination of the above raised issue, I am proposing to start with the last concern as raised by Mr. Kibatala on where exactly was the alleged statement recorded and under whose auspices? In this case it is in record that, the issue of voluntariness of exhibit PE1-B was established before its admission. In the course of doing so during trial with trial this Court considered among other evidence, testimonies of PW1 and PW22. As to where exactly was the said caution statement recorded and under whose order or instruction PW1 was categorical in her evidence that, it was recorded under PW10/RCO's order as by then 1st accused person was incarcerated at Temeke - Chang'ombe Police Station and that, the recording exercise took place in the RCO's office. Her evidence is corroborated by SSP David Mhanaya (PW22) who was also as an investigator in this case while RCO for Temeke - PW10 remaining the chief investigator. His evidence was to the effect that, he got information that Sgt. Mwajuma (PW1) was instructed by the RCO – Mchomvu (PW10) to record 1st accused's cautioned statement. Contrary to both evidence of PW1 and PW22, when testifying in Court as to where the 1st accused was kept after her arrest and transfer to Dar es salaam from Arusha, PW10 explicated that, was informed by PW22 and ASP Jumanne that, she was kept at Kilwa Road Police Station lock up.

PW10 added that, acting on such information he went there at Kilwa Police Station and managed to conduct an interview with her before he ordered for her identification parade to be conducted on 07/08/2016, at same place, meaning Kilwa Road Police Station. When cross examined as to whether the 1st accused was at any time kept at Temeke Police Station and whether he ordered PW1 to record her caution statement, PW10 disown all those alleged facts by PW1 and PW22 against him stating that, he never instructed PW1 to record 1st accused's statement nor was she kept at Temeke Police Station when arrived from Arusha.

It is settled principle of law that, where witnesses' evidence contains discrepancies, omission and contradiction, the court has the duty to address the inconsistencies and try to resolve them where possible and decide whether the inconsistencies are only minor, or they go to the root of the matter, as not every discrepancy might flop prosecutions' case. See the cases of **Mohamed Said Matula Vs. R** [1995] TLR 3, **Dickson Elia Nsamba Shapwata and Another Vs. R**, criminal Appeal No. 92 of 2007, **Armand Guehi Vs. R**, Criminal Appeal No. 242 of 2010, **Jack Vuyo Vs. DPP**, Criminal Appeal No. 334 of 2016 and **Mohamed Mstafa Rajabu and 2 Others Vs. R**, Criminal Appeal No. 25 of 2017 (Both CAT-unreported). In

the case of **Armand Guehi** (supra) on how contradictions and inconsistencies by the witness should be treated by the Court, the Court of Appeal had the following observations:

*"...the general view is that contradictions by any particular witness or among witnesses cannot be escaped or avoided in any particular case. The justification for this was given by this Court in **Dickson Elia Nsamba Shapwata & Another v. Republic**, Criminal Appeal No. 92 of 2007, Court of Appeal (T) Mbeya Registry (unreported) where it was stated that in all trials, **normal contradiction and discrepancies are bound to occur in the testimonies of the witnesses due to normal errors of observation, or errors in memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence.** The Court went on to say that:-*

***"In evaluating discrepancies, contradictions and omissions, it is undesirable for a court to pick out sentences and consider them in isolation from the rest of the statements. The court has to decide whether the discrepancies and contradictions are only minor or whether they go to the root of the matter".** (Emphasis added)*

It was elaborated in the case of **Dickson Elia Nsamba Shapwata and Another** (supra) that, material contradictions are those which are not normal and not expected of a normal person, while adding that, courts have to label the category to which a contradiction, discrepancy or inconsistency may be categorized. Minor contradictions, inconsistencies, or discrepancies which do not affect the case of the prosecution, in the Court's observation, should not be considered as ground upon which the evidence can be rejected in its entirety.

Applying the above cited principles to the fact of this case, it is evident to this Court that, evidence of PW1 and PW22 was irreconcilably contradicted by PW10. It is common knowledge that, human recollection is not infallible as a witness is not expected to be right at all times when telling his story. See the case of **Alex Ndendya Vs. R**, Criminal Appeal No. 207 of 2018 (CAT-unreported) when cited the case of **Evarist Kechembeho and Others Vs. R** [1978] LRT 70. In this case one would wonder as to how the three witnesses from the same investigative agency, who were also working closely on investigation of the case would lose memory on such vital facts to the extent of rendering such contradictory evidence as to where the accused was kept after her arrest and arrival in Dar es salaam from Arusha and where

was her cautioned statement recorded and under whose auspices. In my considered view, such contradiction would not be expected to come from them being investigators who dealt with the accused person in person at different times. Under normal circumstances, PW10 being the chief investigator of the case, this Court believes was better positioned to know exactly where the suspect was kept after her arrival from Arusha. The Court has therefore no reason to disbelieve his testimony. The fact that PW10 who was the RCO for Temeke and chief investigator of the case, on the date of arrival of the 1st accused from Arusha which is also the date allegedly the caution statement was recorded by PW1 under his order, went to interview her at Kilwa Road Police station before he had ordered for her identification parade to be conducted on 07/08/2016, coupled with his denial on issuance of orders to PW1 for recording 1st accused's caution statement undoubtedly erodes credibility of PW1's evidence in respect of that recorded cautioned statement as the contradiction goes to the root of the matter as to when, where and under whose directives was the alleged cautioned statement exhibit PE1-B recorded, hence doubtful if really the same was recorded at Temeke alleged on 06/08/2016. Similarly such doubt dents its authenticity as well as its probative value to the extent that it cannot not be relied upon

by any Court to ground conviction, the doubt which I hold is resolved in favour of the 1st accused person. Given the above findings that, the statement is unreliable and of no value, it will be wastage of this Court's precious time to address other raised deficiencies in respect of exh. PE1-B touching its contents and further, whether or not the same should be corroborated.

Second in consideration is the 1st accused's extra-judicial statement exhibit PE2 duly tendered by PW2, which statement as per Mr. Kibatala's submission must strictly comply with Chief Justice's Instruction to Justice of the Peace on Extra Judicial Statements. (CJ instructions to JP on recording of Extra Judicial statement). Reference was made to the case of **Janeth Thadei Msigwa Vs. R**, Criminal Appeal No. 367 of 2008 (CAT-unreported). He enumerated the said instructions as reduced down in the cited case above to be, the time and date of accused's arrest, the place he/she was arrested, the place he/she slept before the date he/she was brought to him/her, whether any person by the threat or promise or violence has persuaded him/her to give the statement, whether he/she wishes to make the statement on his/her own free will and that, if he/she makes a statement, the same may be used as evidence against her.

In the present matter Mr. Kibatala contended, when PW2 was cross examined admitted not to be aware of the CJ Instructions for JP in recording extra judicial statement. According to him, it was not possible for PW2 as Justice of Peace to comply with the mandatory instructions in which she was not aware of their existence. Assailing further on the truthfulness of the said extra-judicial statement the learned counsel echoed that, the names appearing therein are Mariam Steven as opposed to Miriam Steven Mrita in the charge sheet and that, deceased names are not disclosed therein instead it refers to one name as 'Aneth' while at the same time referring the co-participant as 'Rey' instead of 'Ray'. And lastly that, it is doubtful whether Justice of Peace at Ilala Primary Court would have jurisdiction to record statement of the suspect from Temeke District without any justifying circumstances. It was his argument and prayer to this Court therefore that, all these shortcomings be resolved in the 1st accused's favour.

I have taken considerable time to internalise Mr. Kibatala's submission, revisit PW2's evidence and the impugned extra-judicial statement (PE2) and consult the law and the cited authorities in a bid to respond to the raised complaints. Remarkably, it is settled principle of law now that, when justices of peace are recording confessions of persons in custody of the police, must

make sure that all enumerated steps in the cited case of **Janeth Thadei Msigwa** (supra) are observed to the letters. With that principle in mind this court has a duty therefore to review the statement conscientiously with view of establishing its evidential value regardless of whether its admission was contested or not as it was also correctly held by my learned brother Rwizile, J in the case of **Abdallah Athuman Labia @ Brother Mohamed and 8 Others** (supra). Now the glaring issue is whether PW2 when recording the exhibit PE2 adhered strictly to the CJ directives for JP in recording extra judicial statements. It was in her evidence that, when the 1st accused was brought before her, having discharged the police officer who brought her (PW1) physically, inspected the said suspect while informing her of the rights that she was free to record her statement before her as justice of peace in which the suspect consented before she started recording down the said statement. When subjected to cross examination by Mr. Kibatala, this witness confessed to have not been aware of the CJ Instructions to the JP for recording extra-judicial statement. Further to that, she admitted not to have asked the suspect the time when she was put under arrest and where was she taken after arrest as she did not know the importance of eliciting those information. She also admitted not to be aware if was required to ask

the suspect the place she spent her night before appearing to her. Much as the witness confessed to have not been aware of the CJ Instructions to JP on recording of extra-judicial statements coupled with the fact that she was unaware of the importance of eliciting the mandatory information from the suspect before recording her statement, it is unlikely that, she complied with the instruction as exhibit PE2 also reflects so. As rightly submitted by Mr. Kibatala such obvious non-compliance raises doubt, the doubt which I have no reason not to entertain, after asking myself one important question as to how could PW2 have complied with the instructions which she was not aware of? In my humble view, PW2's admission on the lack of knowledge of CJ instructions to JP in recording of extra judicial statements and non-compliance of some of the mandatory instructions of CJ, do not only dent her credibility, but also diminishes value of the recorded statement (exh.PE2) for being unreliable one and I so find. I so do as the object of compliance with CJ instruction is in two fold. **One**, to make the suspect aware of consequences if decides to make the statement. And **second**, to enable the Court to understand the circumstances under which the statement was recorded whether it was voluntarily made or not, as none observance of all steps renders witness evidence inadmissible and untrustworthy. In the case

of **Japhet Thadei Msigwa** (supra) the Court of Appeal when confronted with akin situation where all the steps were not complied with save for one, held the witness evidence inadmissible and expunged the extra-judicial statement from the record. The statement under discussion regardless of whether the ground of non-compliance of CJ's guidelines was not raised during its admission or not, I hold, also suffers the same consequences for want of adherence to all steps of the CJ instructions to JP in recording extra-judicial statement. The statement therefore cannot be relied on by the Court to ground conviction against the accused persons herein.

Having so concluded, I wish also to address the complaint by Mr. Kibatala regarding mentioning of names of Mariam Steven and 'Rey' instead of 'Ray' as appearing in the charge sheet, which find to be wanting in merit as in my considered view could not have affected in any way the probative value of the statement. I so hold as the witness PW2 in this case managed to identify the person whom she allegedly recorded her statement to be the 1st accused and further that, having glanced an eye on exhibit PE2, it is conspicuously noted that, there is no such mixing up of names of **Ray** to **Rey** in the statement as alleged by Mr. Kibatala. As regard to the doubt, whether PW2 could have recorded statement of the suspect coming from Temeke district

while presiding in a different district of Ilala as thrown of the Court's table by Mr. Kibatala, I think the same need not exercise this Court's mind. I so view as no single violated provision of the law was cited by the learned counsel to justify his complaint. I therefore discount it.

Next for determination is the issue as to whether in absence of cautioned and extra-judicial statement already held to be unreliable there is sufficient circumstantial evidence proving beyond reasonable doubt that, the two accused persons are responsible for the killing of the late Aneth Elisaria Msuya.

As alluded to above circumstantial evidence is all about indirect evidence or rather evidence based on inference and not on personal knowledge or observation. In other words, it is the necessity for inference, and not the obviousness of the conclusion that determines whether or not evidence is circumstantial. By its nature therefore circumstantial evidence allows more than one explanation hence a need for consideration of different pieces of evidence which corroborates each other before any conclusion is drawn. It follows therefore that, all the circumstances taken cumulatively should form a complete chain so that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else

as it was well explained in the case of **Armand Guehi Vs. R**, Criminal Appeal No. 242 of 2010 (CAT-unreported). The prosecution is therefore under the circumstances duty bound to adduce inculpatory facts which are inconsistent with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of guilt of the accused person. It is also incumbent for the Court before drawing an inference of guilt from circumstantial evidence to be sure that there are no any other co-existing circumstances which would weaken or destroy the inference. The Court of appeal in the case of **Shilanga Bunzali Vs. R**, Criminal Appeal No. 600 of 2020 (CAT-unreported) had an opportunity of deliberating on the principles guiding the Court before a conviction is grounded relying on circumstantial evidence. In so doing the Court observed thus:

*"...the settled position of the law that, **one**, the circumstantial evidence under consideration must be that of surrounding circumstances which, by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. See: **Lucia Anthony @ Bishengwe Vs The Republic**, Criminal Appeal No. 96 of 2016 (unreported); **two**, 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; **Samson Daniel Vs Republic**,*

*(1934) EAC.A. 154]; **three**, that the evidence must irresistibly point to the guilt of the accused to the exclusion of any other person. See: **Shaban Mpunzu @ Elisha Mpunzu Vs Republic**, Criminal Appeal No 12 of 2002(unreported); **four**, that the facts from which an inference adverse to accused is sought must be proved beyond reasonable doubt and must be connected with the facts which inference is to be inferred. See **Ally Bakari Vs Republic** (1992) TLR, 10 and **Aneth Kapazya Vs Republic**, Criminal Appeal No. 69 of 2012 (both unreported); and **five**, the circumstances must be such as to provide moral certainty to the exclusion of every reasonable doubt- see **Simon Msoke Vs Republic** (1958) EA 715.”*

In this matter as seen above the prosecution case is premised on circumstantial evidence derived mainly from evidence of PW25, the evidence which both accused persons tried hard to disprove during their defence by raising defence of alibi. When the notice of alibi is issued under section 194(4) of the CPA, the clear position of the law is that, Court must consider it and see whether it should be accorded with any weight or not. Notably, under the circumstances the accused person has no duty of proving his alibi as it is enough for him to raise the defence and create doubts on the prosecution case in which the prosecution bears the onus of discrediting it. See the case of **Bahati Makenja Vs. R**, Criminal Appeal No. 118 of 2006

and **Jumanne Juma Bosco and Another Vs.R**, Criminal Appeal No. 206 of 2012 (both CAT-unreported).

In this matter while the 1st accused person herein (DW1) through DW2 claimed to be in Arusha during murder of the deceased in May, 2016 and that, he never left the place and further that, she never used Ford Ranger T. 307 CBH or Range Rover, Evoque silver in colour to travel with to Dar es salaam as the former was grounded at CMC garage Arusha branch for mechanical defects while the later never owned by her in her names, the 2nd accused asserted to be in Arusha during that period, nursing his wife who had given birth to triplets on 12/05/2016 hence could not have moved out of the area on the three alleged dates of May, 2016 including 25/05/2016. In response the prosecution urged this Court not to consider DW1's alibi as she never raised it herself when testifying in her defence nor filed a Notice of Alibi as required by the law under section 194(4) of the CPA. As to the 2nd accused they also submitted he could have been in a different place on the dates when his wife allegedly gave birth to the triplets (girls), despite the fact that, there was no proof whatsoever to that fact. They therefore urged the Court to disregard that alibi and find the accused persons guilt of the offence charged.

Having considered both accused persons' evidence on alibi visa viz the undoubted prosecution evidence of PW25 as already found herein above, it is to the satisfaction of this Court beyond reasonable doubt that, on 15/05/2016, 18/05/2016 and 23/05/2016 both accused persons visited and met PW25 at Kibada Block 17- Kigamboni area with view of establishing whether the late Aneth Elisaria Msuya was living there or not. I so find as it is during that unsolicited tour when they engaged PW25 to leave the deceased home on 25/05/2016 under threat using a pistol while extending a promise of money to her if she heeds to their will. It is also in one of those three encounters above mentioned, when the 1st accused was heard by PW25 telling the 2nd accused that, "mali nimetafuta mimi na mume wangu wengine wanazihangaikia za nini" literary meaning that why should other people not concerned benefit from the properties jointly acquired with her husband, the words suggesting, that they wanted to revenge against those who were interfering with 1st accused's properties. The mere assertion by the 1st accused through DW2 that, she was not in Dar es salaam but rather in Arusha without further particulars and that of 2nd accused that, he was nursing his wife who had given birth to triples, in my humble view, did not shake or dent cogent evidence of PW25 on their presence at Kibada Block

17 Kigamboni area, on the three above mentioned dates. Now, the remaining issue for determination is, does the mere presence of 1st and 2nd accused persons at Kibada Block 17- Kiagmboni area on those dates prior to 25/05/2016 conclusively bring home an irresistible inference that they participated in the killing of Aneth? With due respect to the prosecution side's stance the response to this issue is in negative as there must be another piece of evidence proving their participation in the execution of the deceased on the night of 25/05/2016, either actively or constructively. I take that stance as it is a principle of law in criminal matter that, it is participation which is punishable and not mere presence at the scene of crime as suspicion, however grave cannot ground conviction of the suspect. See the cases of **Damiano Petro and Jackson Abraham Vs. R** [1980], 260, Mt. 60330 **PTE Nassoro Mohamed Ally Vs. R**, Criminal Appeal No. 73 of 2002 and **Lidumula Luhusa @ Kasuka Vs. R**, Criminal Appeal No. 352 of 2020 (Both CAT-unreported). In this case to start with the 1st accused person the prosecution adduced no evidence proving her direct participation in the commission of crime, apart from the cautioned and extra-judicial statements whose value is already discredited by the Court. In absence of any other evidence connecting her this Court is satisfied that, the prosecution has failed

to prove the case against her beyond reasonable doubt for want of evidence proving her direct or indirect participation in the commission of the alleged murder of the late Aneth Elisaria Msuya on 25/05/2016 and I so find.

As to the 2nd accused the only evidence connecting him with the killing of the deceased is the DNA report and evidence of PW15 to the extent that, there is a linking forensic evidence suggesting that, he was either present at the scene of crime on the night of 25/05/2016 or caused the exhibits PE10 (knife) and PE12 (whistle) found at the scene of crime to find their way there as the DNA profiles obtained on those exhibits matched with his from the buccal swabs. However, as already intimated above there is no evidence in the DNA report (exh.PE14), PW15's evidence or any other prosecution witness proving beyond reasonable doubt that, it is the said knife exhibit PE10 possessing DNA profiles of unknown female gender and 2nd accused, which was used to kill the deceased. It is so as the prosecution failed to bring forth forensic evidence showing that, as some point comparison samples were collected from the deceased or her relatives for pairing with other samples collected from both scene of crime and the 1st accused (buccal swab) for the purpose of establishing whether the DNA profiles of female gender found on the sharp part of the knife were on none else than the

deceased person hence proof of DW5's participation in the commission of murder of Aneth Elisaria Msuya as charged. In other words, in absence of such sample collected from the deceased it cannot be concluded that, the female gender DNA profiles found on the knife were of the deceased person so as to link her death with the presence of 2nd accused at the scene of crime, and it is not clear whether it is the same knife which was used to cut the deceased. It is from that omission by the prosecution side, I am inclined to hold that, they have failed to prove beyond reasonable doubt to this Court that, it is the 1st accused who participated in the killing of the deceased Aneth Elisaria Msuya, as mere presence of suspect at the scene of crime is not a conclusive evidence that he participated in the commission of an offence as held in **Damiano Petro and Jackson Abraham** (supra) and **Lidumula Luhusa @ Kasuka** (supra).

In view of the above findings, the 2nd issue as to whether both accused persons are responsible for the killing of the deceased is answered in negative. I thus refrain from considering the third issue or element of murder as determination of the 2nd issue has disposed of the matter.

In the result and for the afore stated reasons, I find both accused persons not guilty of the offence of Murder contrary to sections 196 and 197 of the

Penal Code, [Cap 16, R.E. 2002] now [R.E 2022] as charged and proceed to
acquit them as I hereby do.

Eventually, I hereby order their immediate release from prison unless
otherwise lawfully held.

It is so ordered.

Dated at Dar es salaam this 23th February, 2024.



E.E. KAKOLAKI

JUDGE

23/02/2024

COURT: The judgment has been delivered at Dar es salaam in open court
this 23rd day of February, 2024, the presence of both accused persons in
person, Mr. Paul Kimweri (SSA) and Ms. Generoza Montana (SA) for the
Republic, Mr. Peter Kibatala, advocate for the 1st accused, Mr. Nehemiah
Nkoko, advocate for the 2nd accused, both assessors and Ms. Imakulata
Konala, Court clerk.



E. E. KAKOLAKI

JUDGE

23/02/2024.

ORDER: The Motor Vehicle Range Rover, Evoque, silver in colour with Reg. No. T 429 (Exh.PE7) which its ownership was denounced by the 1st accused and DW3, is hereby ordered to be forfeited to the Government. It is so ordered.

Right of Appeal explained.



E. E. KAKOLAKI
JUGDE
23/02/2024.

