

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

CRIMINAL JURISDICTION

CRIMINAL SESSION NO. 13 OF 2021

REPUBLIC

VERSUS

- 1. WEDA ^{S/O} MASHILIMU @ BABA SIHA**
- 2. IGNAS ^{S/O} SUNGURA**
- 3. JAMES ^{S/O} PASCHALE**
- 4. NICKSON ^{S/O} NGALAMIKA @ KADOGOO**
- 5. IBRAHIM ^{S/O} TELLA**
- 6. FARAJA ^{S/O} JAIROS @ MWEZIMPYA**

15/11/2022 & 08/12/2022

JUDGMENT

MWENEMPAZI, J.

The accused persons, WEDA S/O MASHILIMU @ BABA SIHA, IGNAS S/O SUNGURA, JAMES S/O PASCHALE, NICKSON S/O NGALAMIKA @ KADOGOO, IBRAHIM S/O TELLA and FARAJA S/O JAIROS @ MWEZIMPYA are jointly charged of two counts, that is Conspiracy to Murder contrary to section 215 of the Penal Code, Cap 16 R.E 2019 and Attempt to Murder contrary to section 211(a) of the Penal Code, Cap 16 R.E 2019. It is alleged in the first count that on the unknown date, time and place within

Sumbawanga District in Rukwa Region the accused persons jointly and together did Conspire to murder one MWIGULU S/O MATONANGE; and in the second count, the prosecution alleged that on the 15th day of February, 2013 at Msia Village within Sumbawanga District, Rukwa Region, the accused persons jointly and together did attempt to murder MWIGULU S/O MATONANGE by chopping off his left hand using a machete.

The accused persons denied to have committed the offences leveled against them. They also denied the facts constituting the offences which were read over and explained to them that they were false and incorrect. The prosecution therefore had to call witnesses in order to prove the charges facing the accused persons.

The questions for determination are whether the accused did conspire to murder the victim; Whether the accused persons did commit the offence of attempt to murder the victim in this case and whether the case has been proved beyond reasonable doubt.

According to the facts the accused persons on unspecified date and place did agree to murder the victim Mwigulu s/o Matonange who is a person with Albinism. To execute their agreement, on the 15th day of February, 2013 during day hours, the accused invaded the victim Mwigulu s/o

Matonange who was grazing cattle and took him to the hill where they cut his left hand using the machete. Once they had done that they ran away with the said hand. Relatives and parents of the victim received the news of the apprehension of the victim and started looking for him, whereby they found the victim at the hill without the left hand which had been chopped off slightly above the elbow on the upper hand.

The victim was taken to hospital at Mtowisa Health Centre where he was treated and issued with a PF3. That was tendered as exhibit P4 by Dafel Spinat Kyando, PW9. This is a doctor who attended the victim for the first time after he had been brought from his village.

Information about the event was sent to the police and investigation commenced. As the police team of Tabora was continuing with the investigation on events which occurred at Tabora, Information was brought to them that there are some people at Tabora who are looking for customers to buy human body parts. A trap was set and it has been testified by the Inspector Alex Exupper Kataya (PW3) that they were able to arrest WEDA S/O MASHILIMU, IBRAHIM S/O TELLA and JAMES PASCHALE. These are the 1st, 5th and 3rd accused person in the charge sheet.

Through interrogation of the suspects they had apprehended, they mentioned Nickson s/o Ngalamika as the one who had the bone at Mpanda. The apprehended suspects had a fake bone which was suspected to be of the chicken. They wanted first to meet genuine businessmen then their colleague will bring the real albino bone for business. Thus, Nikson S/O Ngalamika was retrieved from the hiding and he was apprehended at Mpanda bus station; and upon interrogation, he admitted to have committed the offence. In fact, he was found with the bone suspected to be human bone, which was later confirmed it originated from the victim. That is according to PW8 Leticia Nchangwa Waitara, Senior Government Chemist, who conducted DNA profiling of the bone, the victim and relatives. In her testimony, she stated that on the 6/5/2013 she received a package from RCO Rukwa Region itemizing samples included in the package. The letter requested for DNA profiling in order to find the relationship between the samples. The letter had reference No. RKW/CID/B.1/39/51 dated 30/04/2013. The samples had buckle swabs, clothes and a bone which was suspected to be of human being. The package was brought to her by a police officer known by the name Seleman. It was registered and assigned laboratory No. 354/2013. She narrated the process that it involves three

staged, which for the purpose of this judgment, I have an opinion it is not necessary to reproduce. However, the results are as follows:

"...I was required to find relationship of DNA particles in the victim's blood together with the bone which was brought. Also to know that the victim, their samples were taken to determine whether the parents are of the victim. Also whether the clothes which were found with the suspect if had any remnants of the victim's DNA:

The findings were that the victim and the bone had relationship of DNA. Also, I was able to find the relationship between the victim and the parents. Also the clothes found with the suspect had relationship with saliva of the accused/suspect. I was able to find the DNA profiling at another area of the cloth of the suspect to have relationship with the victim".

The Chief Government Chemist report on DNA profiling with No. Lab. No. 354/2013 in respect of SUM/IR/681/2013 was admitted as exhibit P3. With the result and the evidence so far summarized, I find the accused are linked with commission of the offence.

In the testimony of PW7, after the 1st, 3rd, 4th and 5th accused had been arrested, upon further interrogation they were able to arrest an Faraja Jailos and later Ignas Sungura.

PW10 Moudy Jafari Mkinga, a Magistrate at Laela, testified that he recorded an Extra Judicial Statement of James Pascal, the third accused person. That was admitted as exhibit P5. His Extra Judicial Statement clearly show the accused James Paschale was involved. In the said Exhibit P5 it is recorded: -

"Mimi naitwa James s/o Pascal, nilizaliwa Ilemba naishi Maji Moto na Miaka 22, ilikuwa tarehe 15/2/2013 Bw. WEDA MASHILIMU alinifuata nyumbani mida ya saa nne wakiwa na rafiki yake anayeitwa IGNUS SUNGURA baada ya kufika pale akaniambia JAMES kuna dili, aliyekuwa anatamka ni WEDA nikamuuliza dili gani hilo akaniambia mwenzangu atakwambia hapo baadaye ni IGNUS nikamuuliza IGNUS ni dili gani akasema usiogope ni dili zuri tu lenye fedha nyingi.

Nikamuuliza ni dili gani linaela nzuri si uniambie? Akanijibu usijali ntakwambia tutakopofika maeneo . Sikumkatalia nilipanda gari na aliyetoa fedha za nauli Kwenda kule ni BW. WEDA s/o

MASHILIMU baada ya kufika Msia tukashuka porini tukiwa wawili mimi na IGNUS SUNGURA akiwa na mfuko tukaanza kutembea tulipokaribia nyumba tukafika sehemu yenye Daraja. Akaniambia unaiziona hizi nyumba. Sikutaka kukwambia kuna mtoto anaishi hapo ni Albino hivyo tumemjia huyu mtoto ili tumkate mkono. Mimi nikamwambia kazi hiyo siwezi na toka utoto sijawahi fanya kazi hiyo na sijazoea akasema usiogope nikasema kwa kweli mimi siwezi , akasema basi kaa hapo darajani ngoja mimi nije akaingia porini akafuata mto kuelekea mlimani kuacha Barabara, baada ya kutoka nikamuuliza unatoka wapi akasema nimetoka kumchunguza kama kale katoto kapo. Bahati nzuri nimekuta kule mlimani anachunga mbuzi, ndipo akaniambia twende, nikamwambia siwezi Kwenda mimi sijazoea hivyo siwezi kukufuata, akaniambia basi twende ukasimame sehemu wewe halafu mimi nitaenda nilikuwa sijui wanapochunga yeye ndio anajua, baada ya kufika akaondoka na mkoba akiwa na panga kwenye suruali kuwafuata anapojua yeye mimi nikabaki nimesimama pale, alikaa kama saa moja , akawa amerudi akaniambia tayari akiwa amebeba rasketi Pamoja sikulliona tena basi tukawa tusharudi tulitembea kwa mguu toka Msia mpaka

Ilemba tulipofika saa nane usiku, baada ya kufika Bw. IGNUS alimpigia Bw. WEDA MASHILIMU simu kwama njoo uchukue mzigo wako Bw. WEDA akamuuliza tayari. Bw. IGNUS akajibu tayari. Bw. WEDA akasema wewe Bw. JAMES huusiki tena mimi ndio ntajua pakuuza mzigo huu kwa Tajiri namjua mimi anaishi Ulambo. Baada ya hapo waliongozana na Bw. IGNUS SUNGURA mimi nikaenda kulala...”

Though he seems to be on and off, with no tight grip, it is clear he knew the mission and was in a good position to inform the police. He decided to mute. The attempt to dissociate himself is futile as the omission brings him in the commission of the offence as a principal offender as well.

PW11 Rosta Emmanuel Mofuga, a Magistrate also recorded an Extra Judicial Statement of Nickson Ngalamika in the offence charged. He testified that Nickson told him his involvement in the commission of the offence and mentioned other people in the process of obtaining the body part of an albino. In the extra judicial Statement, the accused Nikson Ngalamika said he took assisted other accused persons, to show them where an albino person lives and borrowed money from a lender which money were given to Weda Mashilimu. As he was demanding payment of the money, he was

assigned a duty by Weda Mashilimu to take the bone to Mpanda where he was arrested. That confession statement was admitted as exhibit P6.

PW12 E. 5071 Staff SGT. Mrisho Mrunga, He recorded a caution station of Faraja Jailos. It was objected to but upon hearing a trial within trial, the prayer to admit the same was withdrawn.

PW13 Inspector Godson Juakali also testified that he recorded the statement of Weda Mashilimu. The statement was received as exhibit P7. Although the defendant raised a defence of torture during recording but the same was not substantiated. The accused admitted to have been involved in the commission of the offence and also Ignas Sungura and his caution statement was admitted as exhibit P8.

This is the witness who took samples which were taken to the CGC and results were testified by PW8.

At the defence he denied to have been involved in the commission of the offence and that the statement tendered were forced on him and that he knew other accused persons at the Court on 3/5/2013.

Ignas Sungura alleged torture over and above and that the statement he made has never been tendered in Court. James Paschale also denied to

have been involved. Nickson Ngalamika also denied. Ibrahim Telaa also denied and that he was just joined by the accused at the police. He denied to have recorded any statement regarding this case. Faraja Jailos Mwezimpya as well denied to be involved.

Generally speaking, an offence is proved by evidence of prosecution and the defence has only a duty to raise doubt. In this case we have two counts. The involvement of the parties started with conspiracy to murder and was executed by acts which did not actually cause death, hence an attempt to murder.

In the case of **John Paulo @ Shida and Paulo Joachim Vs. The Republic**, Criminal Appeal No. 335 of 2009, Court of Appeal of Tanzania (CAT) at Tanga the Court of Appeal held that: -

"The crime of conspiracy is completely committed, the moment two or more have agreed that they will do at once or at some future time certain things. It is complete when they agreed; Republic Vs. Aspinall [1876] 2QB 48.

The accused herein as we can discern from the testimony of PW3; exhibit P2, PW7 they agreed and effected by chopping off the hand of albino PW4. It has been confirmed the born found with Nickson Ngalamika is

related to the victim. Thus for the first count the accused did agree and it happened.

As to the second count of attempt to murder, we need to see what was done. The evidence tendered which has been summarized shows the accused had various meetings which culminating to the hunt for the victim and cutting a hand of an albino. There is no doubt that the hand of the albino was chopped off and the assailant left with the hand. Again, the bone alleged to be that of the human being was found with Nickson Ngalamika @ Kadogoo. A DNA profiling was conducted and it was found that the bone belongs to the victim. In my finding, I have concluded that the accused persons are responsible. The act of chopping off the hand had the effect of causing severe bleeding and actually it caused grievous bodily harm. Under section 200(a) of the Penal Code, Cap 16 R.E 2019 malice aforethought may be inferred in the conduct of the accused person from agreement to executing the terms of the said agreement, namely the chopping off the hand of the albino.

Whether the offence has been proved beyond reasonable doubt. I would lastly answer in the affirmative. Some of the accused were arrested at Tabora. Upon interrogation Nickson Ngalamika surfaced with the bone

suspected to be human being. The same has been subjected to the DNA profiling it is linked to the victim and those whose clothes and saliva samples were taken. They are related.

For the 2nd accused and James Paschale he even went to the scene and admitted to have committed the offence. The test of the CGC confirm the link. I have the opinion that the charge has been proved beyond reasonable doubt in relation to all accused persons that they were involved at various scenario and events which culminated to the cutting of the hand of the victim the albino.

I therefore find the accused persons are guilty to the charges and convict them to the charges of conspiracy to murder contrary to section 215 of the Penal Code, Cap 16 R.E 2002 and Attempt to Murder contrary to section 211(a) of the Penal Code, Cap 16 R.E 2002.


T.M. Mwenempazi

Judge

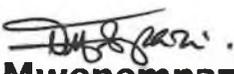
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SENTENCE

In consideration of the mitigation and the period the accused were in remand and after imprisonment for the first time before the matter was ordered for retrial, I sentence each of the accused to serve a term of twelve (12) years imprisonment.

It is so ordered.




T.M. Mwenempazi

Judge

08/12/2022