

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

SUMBAWANGA SUB-REGISTRY

AT SUMBAWANGA

CRIMINAL SESSION CASE NO.20 OF 2022

THE REPUBLIC

VERSUS

ERICK s/o THOMAS @ MREMI

Last order: February 20, 2024

Judgment: April 17, 2024

JUDGMENT

NANGELA, J.:

Things spoken in the past seem to be happening and getting fulfilled in our days in a speed we have never imagined. It was once spoken in the Gospels (see Mk.13: 12) that: "**... na watoto watawashambulia wazazi wao, na kuwafisha**", (which may freely be translated to mean: "**...and children shall arise and attack their parents to death**"). Sadly, the accused Eric s/o Thomas Mremi chose to fulfil such a prophetic word in his lifetime.

Born to Mr. Thomas Mremi, the accused Erick Thomas Mremi stands charged before this court with the offence of murder contrary to section 196 and 197 of the Penal Code, Cap.16 R.E 2019. According to the particulars in the charge

sheet (Information), the offence took place on a date unknown, but in the month of July 2021, at Kantalamba Mazoezi Area within Sumbawanga Municipality, in Rukwa Region. Sad as it may be, the person whom the accused is alleged to have murdered is his own biological father one, Thomas Mremi.

To clarify the matter further, I will narrate the facts, albeit in brief. The accused and his father, who was at an advanced age of above 80years, used to live together at Kantalamba Mazoezi Area, a suburb within Sumbawanga Municipality. In late December 2020, the deceased and the accused had received two visitors in their house, one Richard Mremi and John Mremi, siblings of the deceased.

The two visitors stayed for three days, and they left, headed to Moshi with their bother Thomas (the deceased) where the latter stayed for a short vacation. While at Moshi, Thomas Mremi (the deceased) told his siblings that his son, Erick (the accused) used to beat and mistreat him. It is said that the deceased's siblings called and admonished the accused of such an unbecoming behaviour.

Mr. Thomas's stay in Moshi came to an end and he returned to Sumbawanga. Since he had no mobile phone, and

there being a need to know whether he had travelled safely to Sumbawanga, his siblings inquired from one Kyandwike Mwaipopo @Ngojo, the Street Chairperson of the Kantalamba Mazoezi where Thomas resided.

Although Mr. Kyandwike was away on safari when Mr. Thomas's siblings inquired from him, upon Mr. Kyandwike's return, he immediately visited the deceased house where he met the accused alone. Upon inquiring from the accused, the latter informed him that the deceased was yet to return from Moshi. Mr. Kyandwike relayed back the information to the deceased's siblings that the deceased was not found at his home, as the accused claims that he had travelled to Moshi.

Worried about the fate of their brother (now deceased), Mr. Richard Mremi, a sibling of the deceased, travelled to Sumbawanga on the 27th of July 2021 to establish the whereabouts of the deceased. After reaching at Sumbawanga, Mr. Richard Mremi reported to the Police about his missing brother and returned to his brother's house where the accused was also staying. When he asked the accused as to the whereabouts of the accused's father, the accused told him that he had travelled to Moshi.

Relentless but perplexed for not knowing what had befallen on his brother Thomas Mremi, Mr Richard's attention was drawn to a knife that was at the compound, as it looked as if it was blood stained. Worried as he was, he decided to curiously scrutinize the surroundings.

In his inquisitiveness, therefore, Mr. Richard spotted a place behind the house that seemed to have been dug and its topsoil looked a bit elevated like a ridge (tuta). With a worrisome state of mind, he noted that on top of it were some ashes as if someone had burnt rubbishes thereon. Since there were also some flies flying around, his curiosity increased and found a hoe to remove the topsoil at the spot he had earmarked.

As he continued to remove the topsoil thereon, he was met with an unusual smell and found that something like a human had buried therein. Without much ado, Mr. Richard relayed information to Mr. Kyandwike Mwaipopo@Ngojo, the Mtaa Chairperson. When he arrived at the scene and witnessed what Richard had noticed, a report was sent to Sumbawanga Police Station and Police officers arrived at the scene of the crime.

They carried out an exhumation and confirmed that, indeed, there was a human body that had been interred at the place. Having fully exhumed it, the body exhumed turned out to be that of the late Thomas Mremi, the accused's father. To establish the cause of Mr. Thomas Mremi's death, the body was taken to Mazwi Health Centre and was examined by Medical Doctor (MD) Mussa Mbalamwezi. In his postmortem report, Dr. Mbalamwezi opined that Mr. Thomas Mremi's death resulted from internal and external bleeding due to wounds that had been inflicted on his chest and abdomen by a sharp object.

The accused was arrested by the Police, interrogated, and sent to a Justice of the Peace where he recorded a statement. He was later charged, and this court sat to hear his case. When the matter came for hearing, the accused pleaded not guilty to the charge of murder, thus outrightly denying the charges. His plea of not guilty having been entered prompted the prosecution to open its arsenal in a full blaze summoning six witnesses to establish its case.

Those summoned by prosecution to testify were: Mr. Richard Mremi, who testified as Pw-1; Mr. Kyandwike Mwaipopo @ Ngojo, testifying as Pw-2; Mr. Davis Mremi (Pw-3), MD,

Mussa Mbalamwezi (Pw-4), Mr. Yusuf Daud Sakala (Pw-5), and H.6126-DC William (Pw-6).

Furthermore, the prosecution tendered in court two exhibits - a Postmortem Report received and marked **Exh.P1** and, an Extra-Judicial Statement, admitted in court as **Exh.P-2**. On the other hand, having been informed about his rights, as per section 293 (2) of the Criminal Procedure Code, R.E 2022, the accused chose to defend himself, testifying under oath and calling no other witness.

I will summarize the testimonies offered before this court before deliberating on whether the prosecution was able to establish and prove the case against the accused person to the required standards.

In his testimony Pw-1 testified stating how, in the month of July 2021, he called on Pw-2 requesting him to check on his brother and find out if he had arrived at Sumbawanga safely, having travelled from Moshi where he had earlier gone from December 2020 to July 2021. Pw-1 told this court how Pw-2 later inquired from the accused as to the whereabouts of the deceased and was told by the accused that the deceased had gone to Moshi.

Pw-1 further told this court how the family sent him to Sumbawanga to follow-up on the matter since the deceased had returned to Sumbawanga from Moshi that same month of July. Pw-1 did also tell this court how upon arrival in Sumbawanga in late July 2021 he contacted Pw-2 (the Street Chairperson) and was advised to report the issue of his missing brother to the Police, a fact which he did on the 29th day of July 2021.

Pw-1 narrated further how, on that same day, he was assigned to a Police Officer and, together, went to the deceased's house where they found nobody. He told this court that, although the police officer who had accompanied him left, he gave him his phone number in case there will be a need to call him. Pw-1 testified how, later, while at the house of the deceased, he noticed a knife which seemed to be blood-stained and how afterwards he discovered a place where the deceased body had been buried.

He also testified to have informed the Police and Pw-2 who, later upon arrival, they exhumed the body and confirmed that it was of the late Thomas Mremi whom he had reported missing. He also told the court that he was able to recognise the body as being that of the deceased Thomas Mremi and,

that, the body was later taken to the morgue for further examination.

In his testimony, Pw-1 told this court how, on the 31st of July 2021, he was able to identify the body at the hospital during its post-mortem examination and how, afterwards, he was handed over the body for its interment, which took place in Moshi. Pw-1 testified as well that, the accused Eric Thomas Mremi had, at that time, been arrested.

During his cross-examination, Pw-1 maintained that the deceased had indeed once told him that the accused used to beat and mistreat him. He told this court that he (Pw-1) also saw the knife which seemed to be stained with blood.

On being re-examined Pw-1 stated that, while being interrogated by the Police and in his very presence, the accused Eric Thomas Mremi confessed to have killed his father because he had wanted to inherit the house where they were living. He stated that, the accused also confessed to have taken from his father the Title Deed for their house and Deceased's Bank card, things which he surrendered to the Police in the presence of Pw-1.

As for Pw-2, his testimony was also straight forward. He narrated to the court how he received a request from Pw-1 to inquire about the welfare of the deceased who had travelled from Moshi to Sumbawanga on that month of July 2021. He also told the court how he managed to go the deceased's and was told by the accused that the deceased had gone to Moshi.

According to Pw-2, when he came to Sumbawanga in 2003 till the time the deceased went missing, the accused and the deceased were living in the same home. Pw-2 did reiterate what Pw-1 had stated, i.e., that, on the 29th of July 2021, while at home, Pw-1 came to his house inquiring about the deceased's whereabouts and, that, he advised him to report the matter to the Police, which fact Pw-1 did.

Pw-2 confirmed that, after reporting, Pw-1 came with an officer of the Police and, together with Pw-2, went to inspect the house of the deceased and nobody was found therein. He also testified that upon the arrest of the accused and being put under the custody of the Police, Pw-1 discovered a body buried at the deceased' compound and he summoned him (Pw-2) who, subsequently, reported to the Police. He did tell the court how the arrival of the Police led to a full exhumation of the body

which turned out to be that of Thomas s/o Mremi who had been reported missing.

Pw-2 further testified that, on the 30th of July 2021, after the accused had been arrested and while under Police interrogation at the deceased's premises, he (Pw-2) was called to listen to what the accused was narrating to the Police. According to Pw-2, the accused confessed to be the person who killed the deceased by first, striking him with an iron bar and then, stabbing him to death, before burying him at the back yard of their house.

Pw-2 told this court that, the accused said he had killed his father Thomas Mremi because he (the accused) wanted to be given the Title Deed of the deceased' house. Pw-2 further stated that the deceased had once told him how the accused used to beat and mistreat him, and that, on the day the deceased's body was exhumed, he (Pw-2) recognised it to be that of the late Thomas Mremi.

The third prosecution witness (Pw-3) testified to be a grandson of the deceased. According to him, on the 29th of July 2021, a date when he was informed by Pw-1 that his grandfather was no more, he travelled from Mbeya to

Sumbawanga arriving there on the 30th of July 2021. He testified that, on the 31st of July 2021, while in Sumbawanga, he was able to identify the deceased's body which was lying at the Morgue.

It was Pw-3's testimony that, later, the body was sent for burial in Moshi where the deceased had his other residence. When asked by the court, Pw-3 stated that he had no quarrels with the accused person whom he had known for 15 years.

The fourth witness was Pw-4, the Medical Doctor who carried out the deceased's postmortem. He told this court that he was assigned the duty to examine the deceased's body on the 31st of July 2021. The body had been laid in a morgue at Mazwi Health Centre, Sumbawanga. He described how he carried out the autopsy and how the physical (externally) and internal appearance of the deceased's body was at the time.

According to Pw-4, externally, the clothes of the deceased were smeared with mud on it and, that, upon removal of the coverings, he noticed five wounds inflicted to the deceased's body. One was on the right side of the chest below the 2nd rib while the second was on the right side of the chest below the 4th rib. The third was on the left of the chest below

the 4th rib while the fourth was at the centre of the chest and the fifth was on the left-upper-side of the stomach (at the left hypochondriac region).

It was the testimony of Pw-4 that, all these wounds, were wounds inflicted on the body by a sharp instrument. He reasoned so stating that a wound inflicted by a sharp instrument will show a straight wall lining. According to Pw-4, the wound at the hypochondriac region had gone deep and had affected the internal organs of the deceased, lending to further evidence that a sharp instrument had been used and went deep to the internal organs, particularly the spleen, the pericardium, and the large intestine, which, according to Pw-4, were ruptured.

Pw-4 told this court as well that, afterwards, he prepared a Postmortem Report indicating the cause of death of the deceased to be excessive bleeding externally and internally having been attacked several times by a sharp instrument. The Postmortem Report was tendered and admitted into evidence as **Exh.P-1**.

The fifth witness to testify was Pw-5, a Primary Court Magistrate from Sumbawanga Primary Court, who also doubles as a Justice of the Peace. His testimony was to the effect that

the accused person who was brought before him for the purpose of registering a confession, did register a confession before Pw-5 and, that, he did so while only with Pw-5 who had initially duly informed him of his rights as per the law.

Pw-5 tendered in court the extra-judicial statement of the accused recorded on the 2nd of August 2021 at Sumbawanga Primary Court. The same was admitted as **Exh.P-2**. Pw-5 told this court as well that, when the accused was brought before him, he (the accused) was in good health and told Pw-5 that he was not being forced to register a statement before Pw-5 but, that, he was doing it voluntarily.

The final prosecution witness was **H.6126-DC William**, who testified as Pw-6. He told this court that as a criminal detective police at Sumbawanga Police Station, he received information that there was a person's body found buried at his house in Kantalamba area under circumstances calling for investigation. He testified how, having been assigned to investigate the matter, he went to the scene of crime and, together with Pw-2, Pw-1, and another Police officer, ably exhumed and recovered the deceased's body interred at the back yard of his compound.

Pw-6 told this court how, on the 30th of July 2021, he interrogated the accused at the deceased's home and, that, the accused confessed and narrated to him, in the presence of Pw-1, and Pw-2, how he killed the deceased and buried his body after tying its hands and legs. Pw-6 testified to have been present when Pw-4 was carrying out the postmortem of the deceased's body on the 31st day of July 2021 in the presence also of Pw-1 and, that, he was informed by Pw-4 that the cause of death of the deceased was due to the stabbing by a sharp instrument on the chest and abdomen.

Finally, Pw-6 told this court how on the 2nd of August 2021, he took the accused to a Justice of the Peace for purposes of recording a statement. That was the prosecution's case in a nutshell.

There being made a finding that the **accused had a case to answer** and having addressed the accused in terms of **section 293(2) of the CPA**, the accused person decided to defend himself under oath and called no other witness.

In his defence, and testifying as Dw-1, he told this court that, he, indeed, used to live with his father. He stated that he had a cordial relationship with his father all along and was the

one looking after him. He also told the court that he was trusted by his father.

Dw-1 told the court that he was arrested by the Police on the 29th of July 2021, sent to a lockup and later taken to record a statement. He told the court that his arrest was because his father was nowhere to be found, neither in Moshi nor at home in Sumbawanga. Dw-1 told this court that later he was accused and charged with an offence of murder of Thomas Mremi, his father, an offence which he denies.

Dw-1 told this court that he did listen to the testimony of Mr. Richard Mremi (Pw-1) who is also his uncle (baba mdogo). According to Dw-1, Pw-1 did not speak the truth but was only accusing him while he did not kill the deceased. He told the court that he refutes such accusations. As regards the testimony of Pw-2, Dw-1 stated that much as he had heard and understood what Pw-2 told this court, what Pw-2 had narrated was what the Police had said.

Likewise, Dw-1 told the court that he listened to the testimony of P-5, the Justice of the Peace and that, what he told Pw-5 was said while he was under duress to speak by two Police officers and so, he totally denied the alleged offence.

During cross-examination Dw-1 admitted that he used to live with his father, and they were only the two in the house with no tenants. He said he had a big dispute with Pw-1 and Pw-3. He denied having killed and buried his father, the deceased. He also denied that when the Police took him to the deceased' home, Pw-1 was there. He admitted, however, that, since he used to stay with his father, it was proper that he was arrested and questioned about the whereabouts of his father.

Dw-1 admitted having communicated with Pw-1 who had asked him about the whereabouts of the deceased. He also admitted that when he was sent to the Justice of the Peace, he was left free to talk with the Justice of the Peace (Pw-5). So far that was the end of his testimony.

Before I delve into the heart of this matter, it is worth remembering that the accused herein is facing a charge of murder contrary to section 196 of the Penal Code, Cap.16 R.E 2019 (as it was by then). The current version of the law is Revised Edition 2022. Section 196 of the Penal Code provides that:

"Any person who, with malice aforethought, causes the death of another person by unlawful

act or omission is guilty of murder."

(Emphasis added).

From the above provision, if the offence which the accused is facing is to be fully established, the prosecution evidence must prove the following: (a) that a person died, and, (b) that his death was as a result of an unlawful act (unnatural cause), (c) that the accused person was the one responsible for the murder; and (d) that, before executing the act of murder he had an evil intent or malice aforethought.

It is an established principle of law that he who alleges must prove. That principle is at the heart of our jurisprudence and section 110 of the law of Evidence Act, Cap.6 R.E 2022 does embrace it. In that regard, and this being a criminal case, in law it is the duty of the prosecution to establish and prove their case against the accused person beyond a reasonable doubt. See the case **Said Hemed vs. Republic** [1987] TLR 117.

Furthermore, it is a cardinal principle of law that an accused person does not assume any burden to prove his innocence. Neither can the accused be convicted based on the weakness of his defence or inability to defend himself, or because of lies. See the case of **Selemani Makumba vs.**

Republic (Criminal Appeal 94 of 1999) [2006] TZCA 96 (21 August 2006).

The law, therefore, is that the burden of proof in criminal cases will rest on the prosecution and such a burden will never shift to the accused save for a very limited exception. See the case of **Gabriel Simon Mnyele vs. Republic**, Criminal Appeal No.437 of 2007 (CAT) (unreported) and **Mohamed Matula vs. Republic** [1995] TLR. 3. And the accused should only be convicted based on the strength of the evidence adduced by the credible and reliable witness (es) of the prosecution. See **The Republic vs. Shalu Luwayi Kasema & 2 Others** (Criminal Session Case No. 35 of 2022) [2023] TZHC 17730 (18 May 2023).

To guide my discussion and analysis in this case two issues need to be responded to. These are:

- (1) whether Thomas Mremi was dead and if so, whether he died because of a natural or unnatural cause and,
- (2) if his death resulted from unnatural cause, whether it was the accused, Eric s/o Mremi, who killed him and

that he killed him with malice
aforethought.

I will therefore premise my discussion from such a framework. Starting with the **first issue**, it is clear, as it may be noted from the testimony of Pw-1, Pw-2, and Pw-3, that the body they had found interred at the back yard of Thomas Mremi's house, was that of Thomas Mremi who had been missing. Pw-1 and Pw-3 are related to the deceased and were able to fully recognise the body when it was exhumed by the police.

In his testimony, Pw-4 did testify as to the state of the body and the stage at which it was found, and that it was yet to decompose beyond recognition. As such it was an established fact that Thomas Mremi was dead. But what killed him? Did he die of a natural cause or was his death unnatural? Pw-4, who established his credentials as a professional medical doctor, is the one who carried out the deceased's autopsy and prepared the Postmortem Report received by this court as **Exh.P-1**. In his testimony, Pw-4 told this court that, upon examining the deceased's body, he found it with five major wounds.

According to Pw-4, the first wound was inflicted on the right side of the deceased's chest below the 2nd rib; the second

was on the right side of the chest below the 4th rib, the third was on the left of the chest below the 4th rib, the fourth was at the centre of the chest and the fifth wound was on the left-upper side of the stomach (the left hypochondriac region).

Pw-4 opined, therefore, that; all those wounds were had been inflicted on the deceased by a sharp instrument, the reasons for such opinion being that the wounds had exhibited a straight wall lining. According to his testimony, the wound at the hypochondriac region of the deceased's body had gone deep to the extent of affecting the internal organs of the deceased. For him, that was a further proof that the deceased was attacked by a sharp instrument which went deep to the internal organs, particularly the spleen, the pericardium, and the large intestine which Pw-4 noticed that were all ruptured.

At the culmination of his testimony, Pw-4 told this court that, the cause of the death of Thomas Mremi, whom Pw-1, Pw-2 and Pw-3 had identified first when the body was exhumed and second before Pw-4 carried out the autopsy, was due excessive bleeding, externally and internally, having been wounded several times on the chest and the stomach by a sharp instrument / object.

The above finding and testimony of Pw-4, coupled with the identification of the deceased's body which was done by Pw-1 and Pw-3, respond to first issue, meaning that, Mr. Thomas Mremi was dead, and his death was unnatural. But who killed Thomas Mremi? Is it the accused? And for what motive and intent?

Essentially, Pw-4's testimony and examination were not meant to respond to such questions. However, his testimony could, at some point, have corroborative effects to the testimony of Pw-1, as I shall point out later hereunder. In my view, the witnesses who could respond to the question I posed and, thus, the second issue raised herein, are Pw-1, Pw-2, Pw-5, and Pw-6. Their testimonies are crucial to the prosecution case and respond to the second issue which I raised herein to guide my discussion.

Pw-1 and Pw-2 are for instance, the two initial persons who, following the disappearance of Mzee Thomas Mremi (the deceased) they started to make follow-ups which led to the crucial discovery of his body which was found buried at the back yard of his house where he used to live with the accused.

Pw-1 was also the key person who had been with the deceased in Moshi until when the latter returned to Sumbawanga when he met his untimely brutal and agonizing death. The testimony of Pw-1, Pw-2, and Pw-5 who witnessed the exhumation of the body at the deceased's compound is further strengthened by the fact that, when the accused was interrogated by Pw-6 in the presence of Pw-1 and Pw-2, he confessed to have killed the deceased.

According to section 27 of the Evidence Act, Cap.6 R.E 2022, a confession of that kind is admissible in law. But the accused's confession did not end up there. I was also reiterated before Pw-5, a Justice of the Peace.

Considering the testimony of Pw-1, whose curiosity was awakened by a somewhat "blood-stained knife" that he had seen at the deceased's compound, and his further discovery of the deceased's body, which had been interred at the deceased's compound and, taking into account the testimony of Pw-4 that the deceased died due to excessive loss of blood, internally and externally, having been wounded by a sharp object, one will find that Pw-4's testimony further corroborates that of Pw-1,

notwithstanding the fact that the knife which Pw-1 referred to was not produced in court as Exhibit.

In my view, that non-production of the alleged knife by Pw-1 does not materially affect the prosecution case which in my view stands proved to its requisite standard. In essence, it is a basic rule of criminal law and evidence that the prosecution must prove that the accused committed the **actus reus** of the offence charged with the necessary **mens rea**. See the case of **Isidori Patrice vs. Republic** (Criminal Appeal 224 of 2007) [2007] TZCA 2 (30 October 2007).

In place, in this case, is the testimony of Pw-6, Pw-1, and Pw-2. They all testified that, when the accused Erick Thomas Mremi was asked by Pw-6 to narrate what has transpired, he did confess to have killed the late Thomas Mremi, his own father. That confession of his was later voluntarily reiterated before the Justice of the Peace (Pw-5), thereby confirming and responding to the question regarding who killed the deceased.

I do say that his confession before Pw-6 was voluntary and, that, he also voluntarily reiterated it to Pw-5 because, even though in his defence he stated that he was forced to confess,

Pw-1 and Pw-2 did not hesitate to state that, when Pw-6 asked or interrogated him, they were present.

Had Pw-1 and Pw-2 seen the accused being tortured or forced to speak they would have told this court. Moreover, the accused did not even cross-examine them to that effect. In the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha** (Civil Appeal 45 of 2017) [2019] TZCA 453 (11 December 2019) the Court of Appeal OF Tanzania held that:

“[m]ore often than not, the Court has held that failure to cross-examine a witness on a particular important point may lead the court to infer that the cross-examining party accepts the witness' evidence and it will be difficult to suggest that the evidence should be rejected. ... We would, therefore, agree with the learned judge's inference that the appellant's failure to cross-examine the first respondent amounted to acceptance of the truthfulness of the appellant's account”.

It is my finding, therefore, that, the accused's failure to cross-examine Pw-1, Pw-2, and Pw-6 on that point, meant that he accepted the version of their story as correct and truthful. Moreover, Pw-5, before whom the accused reiterated what he had confessed also to Pw-6, Pw-1, and Pw-2, testified how he recorded the accused's statement which was admitted as **Exh.P-2**.

In his testimony, Pw-5 told this court that, at the time of recording it, the accused Eric s/o Thomas Mremi was free and had neither complaints that he was either coerced to take a statement before him nor indication that he had prior been torture or threatened.

In fact, when the accused was being cross-examined, he did tell this court that he was free when he recorded his statement before Pw-5 (the Justice of the Peace). Moreover, when **Exh.P-2** was tendered, the accused raised no objection to its admissibility. As such, no one can doubt the truthfulness of his own confession.

The answer to the question I earlier posed, therefore, which is also a response to the second issue, is that it was the

accused **Erick Thomas Mremi** who killed the deceased. But did he commit such a heinous act with malice aforethought?

In a charge of murder, its necessary **mensrea** is the existence of "*malice aforethought*". Malice aforethought is the conscious intent to cause death or grievous bodily harm to another person before a person commits the crime. The issue of establishing malice aforethought has grappled the minds of many for some time as the **Hyam v. Director of Public Prosecutions** [1974] 2 All E.R. 41 may be illustrative.

In that case, Pearl Kathleen Hyam was convicted of murdering two children by setting fire to their home out of jealousy towards their mother, Mrs. Booth. The primary question was whether Hyam had the intent necessary for murder. The House of Lords deliberated on the matter and pointed out emphatically that establishing intent does not solely rely on foresight or knowledge; rather, it encompasses whether the perpetrator wilfully exposed another to the risk of death or grievous bodily harm.

It follows, therefore, that where a person is charged with the offence of murder, malice aforethought in that context is established when such a person, knowingly commits an act with

the intention of causing death or serious injury, or if he does have the awareness that his acts carry a serious risk that death or serious bodily harm will result therefrom, he still indulge in such deliberate actions without lawful excuse.

In the case before me, the prosecution evidence must demonstrate that the accused Erick s/o Mremi had such a mental state which would under the law, constitute malice aforethought for murder. A person's state of mind is, however, an intrinsic thing. To say that it can be fathomed easily as one seeks to establish the culpability of an accused is to provoke the and echo from the fifteenth century proverbial scepticism uttered by Brain, C. J., that "**the devil himself knoweth not the mind of men**", just to acknowledge how vast a darkness that envelopes a man's understanding of another man's mind.

In fact, in the case **Enock Kipela vs. Republic**, Criminal Appeal No. 150 of 1994 (unreported), the Court of Appeal of Tanzania made it plain that, usually no attacker will want to plainly declare his intention to cause death or grievous bodily harm to his victim. It is for such a reason that Section 200 of the Penal Code, Cap. 16 R.E 2022 provided courts with some indicators of malice aforethought which, *inter alia*, include

an intent to cause death or grievous harm, or knowledge that the act or omission causing death will probably cause the death of the person or others.

Moreover, in the in the case of **Obadia Kijalo vs. Republic**, Criminal Appeal No. 95/2007 CAT (unreported), the Court of Appeal of Tanzania was of the authoritative view that:

“malice aforethought may be demonstrated by looking at the motive for the offence and the conduct of the suspect immediately before and after the act or omission...”

In its earlier case cited hereabove, the case of **Enock Kipela vs. Republic** (supra) the Court of Appeal stated that in ascertaining whether or not an accused person harboured an intention to murder a deceased such may be inferred from various factors including the following:

“(i) The type and size of weapon which was used in the attack leading to the death of the deceased; (ii) The amount of force which was used by the attacker in assaulting the deceased; (iii) The part or parts of the

body of the deceased where the blow of the attacker was directed at or inflicted; (iv) The number of blows which were made by the attacker, although one blow may be enough depending of the nature and circumstances of each particular case; (v) The kind of injuries inflicted on the deceased's body; (vi) The utterances made by the attacker if any, during, before or after the incident of the attack."

Based on the case of **Obadia Kijalo vs. Republic** (supra), and the factors enumerated in the case **Enock Kipela** (supra) there is no doubt that the accused herein formed the necessary **mensrea** to kill. I hold that view because, in the first place, it was the accused who made it evident in his confession before Pw-6, which was made in the presence of Pw-1 and Pw-2, that, the reason or motive behind what he did was the fact that he had wanted a title Deed of the deceased's property.

According to Pw-1, Pw-2 and Pw-6, the accused narrated that on the fateful day of the deceased's demise, he had demanded the title deed from the deceased by first hitting him

with an iron bar and, later, stabbing him to death, and that, afterwards, he tied his hands and legs and buried him at the back yard of the deceased's house. All such incidents, in my view, not only manifested the accused's intention to eliminate the deceased, but also the motive behind all that.

While I am fully aware of the fact that motive is not an ingredient for murder, as stated earlier in **Obadia Kijalo vs. Republic** (supra), **Stanley Anthony Mrema vs. Republic**, Criminal Appeal No. 180/2005 CAT (unreported), and **Crospery Ntagalinda @ Koro vs. Republic**, Criminal Appeal No. 312 of 2015 CAT, (unreported), its presence, as clearly pointed out in those binding authorities, does potentially strengthen the prosecution case, and its absence will weaken it. In the present case at hand, however, such a factor has potentially strengthened the prosecution's case.

In view of all that, it is my considered and firm findings that, the accused committed the "**actus reus**" with the necessary "**mensrea**". These two ingredients in the offence which the accused is charged with were, therefore, fully established by the prosecution beyond reasonable doubt.

Perhaps one needs to respond to one last point regarding whether the accused act of killing the deceased was an unlawful act. The answer is an obvious one. The law does not sanction killing of any person except where there is an execution of a lawful order lawfully procured from a lawful court of law vested with jurisdiction to pass a death sentence and after a due process of the law has been strictly followed. The accused does not constitute a court of law and had no authority to kill the deceased. As such, he acted illegally and in contravention of the law, hence, acted unlawfully.

I have considered the accused's defence. In my view, the accused defence which, in my view, constitute a mere denial that he did not commit the offence. In principle while it is not the duty of the accused to prove his innocence, what he is to do in defence is to raise reasonable doubts to the prosecution's case and evidence as tabled before the court.

In this case before me, however, the accused's mere denial does not in any manner possible raise no reasonable doubt in the mind of this court. Much as he has maintained to be innocent, and he is entitled to do so, I find the prosecution case to be proved against his innocence as he committed the

offence and committed it intentionally. He therefore knows well and deep in his innermost being, how heinously he executed his own biological father with no scintilla of mercy and that he acted or did so unlawfully.

In view of the evidence on record, I find that the prosecution has proved the case against the accused person beyond all reasonable doubts and I therefore find the accused guilty and convict the accused ERIC s/o MREMI of the unlawful murder of THOMAS MREMI contrary to section 196 of the Penal Code, R.E 2019.

SENTENCE

In a case of murder, once the accused is proved to have killed another with malice aforethought and gets convicted thereby, Section 197 of the Penal Code, Cap.16 R.E 2022 provides only one sentence, which is death penalty to that person so convicted and, that sentence is to be passed, without any excuse recognized by law. Having convicted the accused Erick Thomas Mremi, I hereby sentence him to death by hanging as provided by section 197 of the Penal Code, Cap. 16 [RE 2022].

Any party, hereto, who feels aggrieved by this judgement of this court has right to appeal to the Court of Appeal as provided for under the laws of this country.

It is so ordered,

**DATED AT SUMBAWANGA ON THIS 17TH DAY OF APRIL
2024**



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DEO JOHN NANGELA
JUDGE

Right of Appealing to the Court of Appeal is fully explained and guaranteed.



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DEO JOHN NANGELA
JUDGE
17TH OF APRIL 2024