

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

(ORIGINAL JURISDICTION)

CRIMINAL SESSIONS CASE NO. 113 OF 2011

REPUBLIC

VERSUS

- 1. CHACHA S/O JEREMIA MURIMI**
- 2. MATHEW S/O JEREMIA DAUDI**
- 3. PASCHAL S/O LUGOYE MASHIKU**
- 4. PAULO S/O BUDEBA GENJI @ LUMANIJA**
- 5. BUGWEMA S/O SILOLA LYANGALO**

High Court Sessions at Mwanza

Date: - 18th June, 2012

Coram: - Hon. A.N.M. Sumari, J.

Miss Ng'ariba, State Attorney for the Republic – Present

Mr. NgasaMaduhu, Counsel for the accused persons

Accused: - Present

1. Chacha s/o JeremiaMurimi
2. Mathew s/o JeremiaDaudi
3. Paschal s/o LugoyeMashiku
4. Paulo s/o BudebaGenji @ Lumanija
5. Bugwema s/o SilolaLyangalo

All present under custody and represented by Mr. NgasaMaduhu, Advocate.

Interpreter:-:- FikiriSuluba – English into Kiswahili and vice versa.

Notice of information for murder contrary to section 196 of the Penal Code was duly served on the accused persons, now before the court on 18th June, 2012.

Information is read over and explained to the accused in their own language and they are required to plead thereto:-

Miss Ng'ariba, State Attorney: - The matter is coming for preliminary hearing. However, we pray for a short adjournment to make corrections in the charge sheet in respect of names.

Mr. Maduhu, Advocate: - I have no objection.

Order: - Preliminary hearing to proceed at 2.00p.m.

Sgd: A.N.M. Sumari

Judge

18th June, 2012

At 2.00pm

Date: - 18th June, 2012

Coram: - Hon. A.N.M. Sumari, J.

Miss Ng'ariba, State Attorney for the Republic – Present

Mr. NgasaMaduhu, Counsel for the accused persons

Accused: - Present

1. Chacha s/o JeremiaMurimi
2. Mathew s/o JeremiaDaudi
3. Paschal s/o LugoyeMashiku
4. Paulo s/o BudebaGenji @ Lumanija
5. Bugwema s/o SilolaLyangalo

All present under custody and represented by Mr. NgasaMaduhu, Advocate.

Interpreter:-:- FikiriSuluba – English into Kiswahili and vice versa.

M/S Ng'ariba, State Attorney: - The matter is coming for preliminary hearing. In the morning I prayed for time to correct and file a substituted charge. In so doing I came across some other anomalies which I think I

have to deal with deeply before we proceed so as to see that justice is done in this case.

For the reasons I pray for an adjournment till next sessions so as to rectify the anomalies.

Mr. Maduhu, Advocate: - We have no objection. However, if any anomalies then we are entitled to know the same.

Secondly, Madam Judge, from the facts of this case, its obvious that there are conflict of interest in this case. I would advise and pray that, in the interest of justice, let each accused person be defended by own advocate as far as question of legal representation is concerned.

Order: - Preliminary hearing adjourned to another date to be fixed by the DR.

In the meantime the prosecution are availed time to solve and rectify any anomalies discovered as stated.

The District Registrar is directed to assign each accused own advocate to represent them.

AFRIC.

A.N.M. Sumari

Judge

18th June, 2012

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
ORIGINAL JURISDICTION
(Mwanza Registry)
CRIMINAL SESSIONS CASE NO. 113 OF 2011
THE REPUBLIC
VERSUS
1. CHACHA S/O JEREMIA MURIMI
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PROCEEDINGS

Date:- 03/11/2014

Coram:- Hon. Sumari, J.

Mr. Kiria, State Attorney for the Republic – Present

Mr. Mutalemwa, Advocate for 1st accused – Present

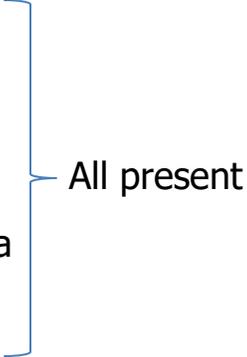
Mr. Kabonde, Advocate for 2nd accused – Present

Mr. Makwega, Advocate for 3rd accused – Present

Mr. Galati, Advocate for 4th accused – Present

Mr. Outa, Advocate for 5th accused – Present

Accused name:-

1. Chacha s/o JeremiaMurimi
 2. Mathew s/o JeremiaDaud
 3. Paschal s/o LugoyeMashiku
 4. Paulo s/o BudebaGenji @ Lumanija
 5. Bugwema s/o SilolaLyangalo
- 
- All present

Interpreter:- Mr. Ihuya

Mr. Kiria, Principal State Attorney:- The case is coming for hearing and we have six witnesses present.

However, when preparing for the case we discovered that the case is involved of a legal irregularity. That during committal the lower court erred in law because the documentary exhibits intended to be relied upon were not read and explained to accused as required under Section 246 (2) of CPA as it can be seen at pg. 44 of the committal proceedings. So we have a considered opinion that the omission may cause injustice.

In the result to rectify the omission and the error, we are entering a NolleProsequi under Section 91 of CPA to pave way for us to rectify the error.

That is all.

Order:- All the accused persons are discharged under Section 91 of CPA
(R.E. 2002).

A.N.M. SUMARI

JUDGE

AT MWANZA

03/11/2014

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
ORIGINAL JURISDICTION
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5. BUGWEMA S/O SILOLA LYANGALO
PROCEEDINGS

High Court Sessions at Mwanza.

Date:- 04/11/2014

Coram:- Hon. Sumari, J.

Mr. Kiria, Principal State Attorney for the Republic – Present

Mr. Mutalemwa, Advocate for 1st accused – Present

Mr. Kabonde, Advocate for 2nd accused – Present

Mr. Makwega, Advocate for 3rd accused – Present

Mr. Galati, Advocate for 4th accused – Present

Mr. Outa, Advocate for 5th accused – Present

All present

Accused name:-

1. Chacha s/o JeremiaMurimi

2. Mathew s/o JeremiaDaud

3. Paschal s/o LugoyeMashiku

4. Paulo s/o BudebaGenji @ Lumanija

5. Bugwema s/o SilolaLyangalo

All present

Interpreter:- L. Mtaki – English into Kiswahili and vice versa

Notice of trial on information for murder contrary to Section 196 of the Penal Code was duly served on the accused persons now before the court on 04/11/2014

Information is read over and explained to the accused persons in their own language and they are required to plead thereto:-

Accused's pleas:-

1st accused:-Siokweli

2nd accused:-Siokweli

3rd accused:-Siokweli

4th accused:-Siokweli

5th accused:-Siokweli

Entered as pleas of not guilty.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

PRELIMINARY HEARING:

Mr. Kiria, Principal State Attorney:- Mr. Kidando, State Attorney is going to read the facts.

Mr. Kidando, State Attorney:- All accused persons are facing a charge of murder. On 26/06/2009 at Ibanda, NyamaganaMwanza they committed the offence. They killed one AronNongo an albinism man and a resident of Ibanda, Nyamagana.

In the incident the accused cut both legs of the deceased with an intention to sale the body parts.

The incident was reported to police Igogo, who visited the scene of crime and investigation commenced. On 29/6/2009 the Dr. conducted a postmortem report and cause of death was due to fatal cuts.

We pray to tender it as exhibit.

Mr. Mutalemwa, Advocate:- We object because we intend to cross examine the Dr. who conducted the postmortem.

Mr. Kabonde, Advocate:- No objection.

Mr. Makwega, Advocate:- No objection.

Mr. Galati, Advocate:- No objection.

Mr. Outa, Advocate:- No objection.

Court:- Since the 1st accused's counsel objects to the postmortem report, let it be tendered during trial to avail opportunity for 1st and to cross examine the doctor who conducted the postmortem examination.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

While the investigation was taking place on 17/7/2009 police got informed that there were people selling human body parts from albino. The trap was arranged and on the following day i.e. 18/7/2009, the 1st and 2nd accused met with a police who posed as a buyer one D/Ssgt David. The 1st and 2nd accused entered into purchase with this police and agreed to sell for him the human body parts for 900 million shillings. After their agreement they agreed that the business be performed on the following day. Meanwhile police prepared for the trap. The following day i.e. 19/7/2009 the said police went to Igoma where they had agreed to meet and he met the 1st and 2nd accused and agreed on how to perform the business. The two accused persons brought to him the said human body parts. At that juncture the police who had accompanied D/Ssgt David arrested the two accused persons.

After the two accused persons arrested, they confessed to have killed AronNongo and that the human body parts they were selling were from the deceased AronNongo. The two accused persons were taken to police and upon interrogation they confessed and mentioned the rest of the accused persons.

After they confessed in the cautioned statement, the rest of the accused persons were arrested.

The 1st and 2nd accused persons also confessed before the justice of peace in their extra judicial statements. The human beings body parts were sent to Government Chemist and found to be the human beings body parts. As there were reports that 2nd accused was involved and identified

an identification report was conducted and he was identified. In the cause of investigation at home the deceased a sketch map was drawn by C. 8016 D/SsgtMakole on 27/6/2009.

I pray to tender it as exhibit.

Mr. Mutalemwa, Advocate:- No objection.

Mr. Kabonde, Advocate:- No objection.

Mr. Makwega, Advocate:- No objection.

Mr. Galati, Advocate:- No objection.

Mr. Outa, Advocate:- No objection.

Court:- Sketch map exhibit P.1.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

After investigation all accused persons were charged.

That is all.

MEMORANDUM OF UNDISPUTED:

FACTS:

Mr. Mutalemwa, Advocate:- On behalf of the 1st accused person:-

1. His names i.e. personal particulars.
2. The contents of sketch map.
3. That on 29/6/2009 he was charged of murdering one AronNongo.

Mr. Kabonde, Advocate:- On behalf of 2nd accused:-

1. The names as appears at the charge sheet.
2. That AronNongo is dead and he died unnatural death
3. That the deceased body was found at a place shown in the sketh map Exh. P.1.
4. That he is being charged of murder.

The rest of the facts are disputed.

Mr. Makwega, Advocate:- On behalf of 3rd accused:-

1. The names as appears in the charge sheet.
2. That AronNongo is dead ad died unnatural death as stated in the postmortem report.
3. The place where the body found as shown in Exh. P.1.
4. That he is facing the charge of murder.

Mr. Galati, Advocate:- On behalf of 4th accused:-

1. That AronNongo is dead and he died unnatural death on 26/6/2009.
2. The cause of death is as shown in the postmortem.
3. The sketch map Exh. P.1 and its contents.
4. The accused is charged of murder and
5. His names are as appears in the charge sheet.

The rest are disputed.

Mr. Outa, Advocate:- On behalf of 5th accused.

1. His names as appears on the charge sheet.
2. That AronNongo died unnatural death.
3. The sketch map Exh. P.1 and its contents.
4. That he was arrested and charged of murder.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

Court:- Explained the memo of undisputed facts to accused persons who states:-

1st accused:- I accept the two as undisputed facts but I was arrested on 20/7/2009.

2nd accused:- I admit those are facts which I do not dispute.

3rd accused:- I admit that those are facts not disputed.

4th accused:- Those are facts I have no dispute with.

5th accused:- I understand those are undisputed facts.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

All accused persons are endorsing hereunder the memorandum of undisputed facts:-

1st accused's signature:-Sgd

2nd accused's signature:-Sgd

3rd accused's signature:-Sgd

4th accused's signature:-Sgd

5th accused's signature:-Sgd

Defence counsel:-

1. Sgd
2. Sgd
3. Sgd
4. Sgd
5. Sgd

State Attorney:-

1. Sgd
2. Sgd
3. Sgd

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

LIST OF WITNESSES OF PROSECUTION SIDE:

Mr. Kidando, State Attorney:- We intend to call witnesses, namely:-

1. Maria MazuriMafura of Ibandarelini, Nyamagana.
2. Vita Mchele @ Sato of Ibandarelini.
3. JumaMagushi of Ibandarelini
4. Victor Sungai @ Nkalahe of Ibandarelini.

5. Emanuel MsalabaManyesha of MahinaNyangulugulu, Mwanza
6. Kanjiwa Vita of Ibandarelini
7. Michael Genji of Kishiri – Igoma
8. KulwaAronNongo of Ibandarelini.
9. D. 2402 D/Ssgt Boniface – RCO, Mwanza
10. E. 8673 D/Ssgt Henry – RCO, Mwanza
11. C. 8016 D/SsgtMakore – RCO, Mwanza
12. Insp. George Wilbard – RCO, Mwanza
13. NestorySolileManyesha of MahinaNyangulugulu, Mwanza
14. Joseph KalebuChacha of GedeliNyakato, Mwanza
15. Leah JumaMahushi of Ibandarelini.
16. D. 8669 D/ssgt David Paulo of Kilwa Road DSM
17. WP. 1955 D/Ssgt Esther from DSM Head Quarter
18. Danstan Daniel Kabandwa of Isamilo “A”, Mwanza
19. Vilet M. Mahizi of Pr. Court Mwanza.
20. Ajara K. Mtani, PCM – Mwanza
21. Leonard Ndolezi, PCM – Mwanza
22. E. 6489 D/Ssgt Julius – RCO, Mwanza
23. Mariam Charles Bugororoka of MahinaNyangulugulu–Mwanza
24. CosmasMasanyiwaKaponda of IbandaMkolani, Mwanza
25. ManenoMasanyiwaKaponda of Ibandarelini, Mwanza
26. Joyce Jeremia of MahinaNyangulugulu, Mwanza

27. MisalabaManyenjaMjika of MahinaNyangulugulu, Mwanza
28. Dr. Kaima from BugandoHospital, Mwanza
29. Gloria Machuve of Chief Government Chemist DSM
30. D/SsgtLupeto of RCO, Mwanza.
31. D/Cpl. Maiko of RCO, Mwanza.

That is all.

LIST OF EXHIBITS:

1. Cautioned statement of all accused persons.
2. Extra judicial statement of 1st, 3rd and 5th accused persons.
3. Postmortem report of AronNongo
4. Record of search of 20/7/2009
5. Record of search of 19/7/2009
6. Certificate of seizure of 19/7/2009
7. ID parade register of 26/7/2009
8. Sketch map of 20/7/2009
9. Sketch map of 19/7/2009
10. Three reports from the Chief Government Chemist.
 - (1) Lab. No. 635/2009 A
 - (2) Lab. No. 635/2009 B
 - (3) Lab. No. 672/2009

11. Physical Exhibits namely:-

- beads, 1 bicycle, 1 beg written, UNIBEST, one nylon bag, 3pieces of human being bones and one shirt of AronNongo.

That is all.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

LIST OF DEFENCE WITNESSES

Mr. Mutalemwa, Advocate:- 1st accused will give evidence himself. We have one Exh., PF.3.

Mr. Kabonde, Advocate:- No witness for 2nd accused. He will produce one Exh. PF.3.

Mr. Makwega, Advocate:- 3rd accused will call no witness. He will produce PF.3 dated 24/7/2009.

Mr. Galati, Advocate:- 4th accused will call no witness. No exhibit too.

Mr. Outa, Advocate:- 5th accused will not call witnesses. He will produce PF. 3 of 25/7/2009.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

Order:- Hearing on 04/11/2014 at 2.00p.m.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

At 2.00p.m.

Coram as before:-

Mr. Kiria, Principal State Attorney:- The case is coming for hearing and we are ready to proceed.

Court:- Selected Assessors:-

1. Vedasto Bruno
2. LaurenciaBuruba
3. Leonard Somi

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

Accused's pleas:-

1st accused:-Siokweli

2nd accused:-Siokweli

3rd accused:-Siokweli

4th accused:-Siokweli

5th accused:-Siokweli

Entered as pleas of not guilty.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

Court:- Accused persons asked if they have any objection to any of the assessors and replied:-

1st accused:- I have no objection.

2nd accused:- I have no objection.

3rd accused:- I have no objection.

4th accused:- I have no objection.

5th accused:- I have no objection.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

Assessors reminded of their duties.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

PROSECUTION CASE OPENS:

Mr. Kiria, Principal State Attorney:- We have two witnesses today and we are ready to proceed.

Pw1 Maria MansuriKafura, 63 years, Christian, sworn and states:-

XD by Majaliwa, State Attorney:- I am living at KigongoFeri, at Misungwi, Mwanza. Prior I was living at IbandaRelini, Mkolani, Nyamagana. At Ibandarelini I lived with my husband AronNongoBunini. I was living with my five children. I delivered eight children. At our compound we had three houses i.e. an old kitchen, a new kitchen and a living house with corrugated iron sheets. It had two sleeping rooms. One bed room was used by myself and my husband. The other room was for

children. My husband was killed on 26/6/2009. On that day in the afternoon he went to the funeral. In the afternoon he came for lunch complaining of pains over his body. After lunch he went back to the funeral.

In the evening my children prepared for dinner at around 20.00hrs. We eat our dinner outside our house. There was moonlight on that date and the light was bright (ulikuwawakatiwakiangazihivyombalamweziulikuwamkali).

After we ate dinner I asked my husband to take the radio and enter inside. I then went inside and he followed me. He closed the door and we then prayed ready to go to sleep. We then heard dog backing along our outer door. My husband took a stick and went to the sitting room. While at the sitting room the door was banged and got opened. People entered, were men. They used a big stone to open the door. These men were five of them. I saw them by outside. After they entered in the sitting room they took out my husband and I stood by the window, the left side window. It was a net window (dirisha la wavu). I could see through that window. It was not higher when I stood it was half of my height. I then saw these people killing my husband. Two of them were lighting the torch and the other three were cutting him. Two had pangas one had an axe. The ones who were cutting him were seven paces from the window I stood and the one with torch were about three paces from the window I stood.

I identified one youth whom was three paces from me; the one with torch. I don't remember the attire he wore but I know his face. While I

was pregnant sometimes, may, he came to ask for a hoe to dig herble medicine. I watched these people for about five minutes. I could identify him because he stood near the window by his side (kiubavu). This man is a black one, short with moderate body (mwiliwakiasi). I see this person at the dock.

Witness pointed to the 2nd accused at the dock and states, huyuhapa.

After a period of a month after death of my husband I was summoned by police to the police station. I went there and they put me in a certain room alone. Police came for me later and took me outside police station. I found many people more than 10. They were lined up. I was asked to go around twice and see if I can see a person invaded my house. I pass at the front and at the back. In so doing I identified the man I have just pointed at the dock, (2nd accused). He was at the line No. 8. I passed through No. 1 to 8 and find him at the 8th number.

Witness went to the dock and pointed to 2nd accused, saying this is the one.

That is all.

XD by Mr. Kiria, Principal State Attorney:- My husband was albino (mlemavuwangozi). This person came to my home once. It was around 10.00a.m. He was seeking for a hoe to dig medicine. I gave him the hoe. He went to dig and return my hoe after half an hour. He was speaking

Kiswahili when requested for a hoe. I was not familiar with this person and I did not ask him his particulars. His tarnation was like kurya (Kiswahili chakenikamamkurya).

XD by Mr. Kidando, State Attorney:- They cut my husband on the head, he fell down. They cut him both legs and put in a bag (limfuko). They chopped him at the upper knees while cutting his legs he was already silent (alishatuliakabisa). The incident took about half an hour. I was watching by inside and my child was crying, wanted to go outside, I resisted her and keep her on the bed. When they finished they came at the window, cut it and said "mama utulie" I answered them "nimetulia baba".

After they left, I heard dogs backing, I then struggled to hold the door because it broke and the placed it on, so it was hard to open it. I managed to open it and I found my husband is dead with no legs. I shouted for help. People did not respond soon. So I went to my neighbor Vita Mchele to seek for help. I found them. It was around 22.00hrs. I told them my husband has been killed and later left back home.

That is all.

XXD by Mr. Mutalemwa, Advocate:- Yes I went to police to identify the culprits. The people lined were about 11. They were in one line. I passed at the front and back. I was told if I identify one I torch him on the back (mgongoni). I identified him once. There was only one parade.

1st accused stood and witness stated, I don't know him. I did not identify him at the scene of crime. I identified the one who had a torch. Also I did not identify him at the identification parade.

That is all.

XXD by Mr. Kabonde, Advocate:- I had an infant so we entered inside early because of this infant and we wanted to listen to the radio that why I asked him to go inside to listen the radio. The one identified stood at No. 8. 2nd accused is sitted as No. 2 from the right at the dock.

He asked for a hoe to dig medicine. I don't know what kind of medicine. I was living near a hill/mountain (mlima). So many people used to ask for hoe to dig medicine, and I was giving them.

When he came he greeted and ask for hoe and I gave it to him when he asked for hoe my hart got scared (moyowanguulishituka) while its not usual for me to be scared. I know Kuryatornation. At home Kigongoferi, before married we had a Kurya neighbor.

In the morning after he was killed I was taken to police to give my statement. The moonlight was full bright. He stood at the light and was lighting torch for others (alikuwaanawamulikiawenzake). It is possible to forget colour of cloth but not colour of somebody. He was dressed. I identified his face. I never identify clothes he won.

I don't remember the attire he won at the ID parade. I did not identify any one untidy than others. I was after the facial (sura). The

moonlight was bright. They used torch when cutting my husband (walikuwawakijimulikia) but the moonlight was bright. My daughter was called KulwaAronNongo. She was in STD V. She is no longer going to school. If she gets money she will go to school.

That is all.

XXD by Mr. Makwega, Advocate:- I went to Vita Mchele, my neighbor. He did not ask me. I did not told him that I identified the 2nd accused. I went to Vita Mchele at 22.00hrs. I went to police on the next morning. I mentioned to police that I identified 2nd accused in the said night. I said to police I identified the one who had a torch. My neighbor Vita Mchele did not ask me. Police came on 26/7/2009 and asked me to go to police they said "keshouje".

In May, 2009 it is this accused only came to ask for a hoe. Prior that people used to come for hoe, so I was used. He came in May. I don't remember the date. I saw his face and when he came my heart got scared "moyowanguulishtuka". It was dry season and moonlight was bright. There was no "Kibatari" the moonlight was enough. I mentioned to police not to the village leader.

That is all.

XXD by Mr. Galati, Advocate:- I knew Paulo LumalijaGenji by his name, the 4th accused.

Witness pointed to 4th accused. I know him prior the incident. I did not identify him at the scene. I came to know he was involved when arrested. I did not know he was involved prior his arrest. He was not at the ID parade.

The moonlight was bright than that of torch the torch was directed to my husband.

Witness asked to turn back and 2nd accused changed the position from No. 2 to No. 5 and when asked to turn back and identify 2nd accused, she stated:- 2nd accused is now at No. 5, he is the one I identified at the ID parade. I could tell police because they were the ones doing investigation. They took away my husband's legs. Police covered the deceased with bed sheets. When killed the deceased was necked because he was used to sleep necked. When he went to the sitting room he covered with a bed sheet but when these men dragged him outside the bed sheet remained at the sitting room. The police put him on the bed sheet and took him. The people at ID parade lined up and 2nd accused was in No. 8. They lined up once. After I identified him once I left and that was the end of the exercise. 4th accused was not in this line. Kulwa Aron Nongo was inside but did not watch by the window with me. She was crying.

That is all.

XXD by Mr. Outa, Advocate:- They did not cover their faces or heads. I did not see their faces. They wore nothing on the head. We had radio so I

could know the time. When they broke the door by Fatuma (big stone) it was 21.00hrs. it took half an hour. I am estimating.

XXD by 1st assessor:- No child watched the incident. The dog went on backing.

XXD by 2nd assessor:- When they broke the door they found my husband at the sitting room and took him, pull him out.

XXD by 3rd assessor:- After he asked for the hoe, I delivered after two weeks, then after a month they came to kill my husand. No one sought for a hoe after him. I was followed two days after were arrested. My neighbours were Vita Mchele and JumaMahushi. From my home to JumaMahushi is about 30 metres. I never got out until they left. I did not shaut until they left.

That is all.

REXD by Mr. Kiria, Principal State Attorney:- Nil

We have no further question to her.

That is all.

R.O.F.C.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

Order:- It is now let evening. Let the case be adjourned to 05/11/2014.

AFRICA.

Sgd: A.N.M. Sumari

JUDGE

04/11/2014

Date:- 05/11/2014

Coram:- Hon. Sumari, J.

Mr. Kiria, Principal State Attorney for the Republic – Present

Mr. Mr. Kiria, Kidando & MS Stella, State Attorney for the Republic -
Present

Mr. Mutalemwa, Advocate for 1st accused – Present

Mr. Kabonde, Advocate for 2nd accused – Present

Mr. Makwega, Advocate for 3rd accused – Present

Mr. Galati, Advocate for 4th accused – Present

Mr. Outa, Advocate for 5th accused – Present

Accused name:-

- 1. Chacha s/o JeremiaMurimi
 - 2. Mathew s/o JeremiaDaud
 - 3. Paschal s/o LugoyeMashiku
 - 4. Paulo s/o BudebaGenji @ Lumanija
 - 5. Bugwema s/o SilolaLyangalo
- } All present

Interpreter:- L. Mtaki – English into Kiswahili and vise versa

Court assessors:-

- 1. VedastoBuruno – Present
- 2. LaurenciaBuruba – Present
- 3. Leonard Somi – Present

Mr. Kiria, Principal State Attorney:- We are ready to proceed.

Pw2 – Vita Mchele, 74 years, X-tian, sworn and states:-

XD by Kidando, State Attorney:- I am living at Ibanda, Mkolani, Nyamagana, Mwanza; since 1981. I am with my family. I know AronNogo, he was my neighbor. He is now a deceased. He died on 26/6/2009. On that day in the morning I went to a funeral of Masanja Kosovo at Mapangine, Ibanda. I stayed there till evening, then I went home. I reached my home at around 19.00hrs. I waited for dinner till 20.00hrs. After my dinner I left to sleep because I was too tired. We sited

outside while having our dinner and that is our Sukuma culture. It was a moonlight night. The light was full one could see somebody coming and if you know him you could very well identify him. It was around 20.00hrs plus few minutes I went to sleep. While asleep I opened my radio to hear the music of Franco. I later fell asleep completely. I then wake up by my neighbor, wife of AronNongo. She was crying with her family. She told me her husband has been killed with panga and axe. I took my spear and whistle and went out. Then we went to her home while whistling with my family members too. It is near by about 140 metres, from mine to AronNongo.

At AronNongo's house we found his dead body outside with no legs. He had a cut wound on the thigh also. He was dead. We then raise alarm and people responded and the Village Chairman called police. Police came immediately from Buhongwa. This wife of AronNongo is Maria Mansuri and I got so scared so I asked her nothing. I looked at the deceased's body and see very well through moonlight that he was cut his legs and tight.

The police covered the dead body with bed sheets and took him to police.

That is all.

XD by Mr. Kiria, Principal State Attorney:-Nil.

XD by Majaliwa:- Nil.

XXD by Mr. Mutalemwa, Advocate:- Nil.

XXD by Mr. Kabonde, Advocate:- I went close to him and identified moonlight night. This Nongo was Albino. Yes you could identify somebody by attire and its colour because the moonlight was bright (mwangaulikuwamweupe). The wife of deceased covered herself with dotted bed sheet. I can't tell the colour. I did not take trouble to investigate the colours.

That is all.

Mr. Makwega, Advocate:- Aron Nongo was necked. I did not ask his wife anything as to who killed him because I was so scared (nilibabaikasana).

XXD by Galati, Advocate:- Nil.

XXD by Outa, Advocate:- The dead body was near his house, just about five paces. If one wanted to use torch that night could do so but the light that night was bright from the moon. One could properly see and identify.

XXD by 1st assessor:- The deceased lied by his back. Those cut him had gone. No weapon found there.

XXD by 2nd assessor:- The deceased lived with his family only.

XXD by 3rd assessor:- I never saw the killers. We whistled for help and people came.

That is all.

REXD by Mr. Kidando, State Attorney:- Nil.

R.O.F.C.

Sgd: A.N.M. Sumari

JUDGE

05/11/2014

Pw3 ASP George Wilbard, 38 years, X-tian, sworn and states:-

XD by Mr. Kiria, Principal State Attorney:- I am a police officer with the rank of Assistant Superintendent of police. I am the OCCID of Kahama District, Shinyanga Region.

Prior I was working as police officer at the RCO's office Mwanza, since 2006 to 2012. At the RCO's office Mwanza I was an Inspector of Police. My duties were to investigate cases.

On 26/6/2009 I remember I was in the office. I received a telephone call from the D/Sgt Julius who was investigating murder case with reference MW/IR/5397/2009 in respect of deceased called AronNongo. In his call D/Sgt Julius instructed me to conduct an identification parade. Because I was not an investigator of the case, I wanted to satisfy myself if

truly there was a need for ID parade so I went to the office of D/sgt Julius where the identifying person was. This person was a woman. She was called Maria MazuriKafula. I talked to this Maria. First I needed to know her names. Secondly; to know her relationship, with the deceased. Thirdly; whether she was at the scene and she said she was there.

4th whether she can identify those killed the deceased them, especially the one pulled the deceased from inside to outside. She told me she identified a person who was tall, thing (mwembamba) and black in colour. I knew where was this person, he was in police cell, Nyamagana police station. In preparation of the ID parade I searched for other policemen to help me in the conduct of this parade. I then find three policemen namely, D/SsgtRupeto, D/Cpl. Michael and DC Zafarani to do it. I then assigned each what to do. I told D/C Zafarani to take the woman Maria MazuriKafula to lock her in my office. I then went to police lock up in company of the other two Rupeto and Michael. At the lock up I used the reference number to call the accused. There was only one accused person in that reference called Mathew Jeremia and was at Nyamagana lock up. So I instructed the CRO officers to take him out of the lockup. He was brought in the room where I was. I asked him his name and told me he is called Mathew Jeremia. I told him the purposes of calling him that I was taking him to an identification parade because there is somebody claiming that can identify you because she saw you at the scene of crime where AronNongo was killed. He denied to kill and that he was not at the scene so he was ready for the identification.

I then told him that he has a right to call a lawyer or any relative in the parade. He said since he did not commit the offence there was no need for him to call a lawyer or relative, he could stand alone and was ready for parade.

Court:- Short adjournment for tea break. Court to resume at 2.00p.m.

Sgd: A.N.M. Sumari

JUDGE

05/11/2014

At 2.00 pm

Coram as before:

Court:- Pw3 is reminded of his Oath and states:-

XD by Mr. Kiria, Principal State Attorney:- Because I had seen the person to be identified and according to explanation given by Maria Mazuri, I had to look for the persons to participate in the ID parade who resemble the said person's shape or figure. I looked for people from the lake shores where people travelling to Ukerewe and Bukoba stationed. I found 10 people. I took these people at the police station front yard. I arranged them in a single line. At the front yard of the office of the RPC's office is a cool place which no movements around.

Prior calling the said Mathew Jeremia I informed these 10 people the intention to line them up. That it was for purposes of identification parade

and that I was to bring a suspect to stand between them for ID purposes. I also introduced myself to them.

I then send D/Cpl. Michael to bring the suspect from the lock up which was around 90 to 100 metres. D/Cpl. Michael brought him and I narrated to him his rights and procedures ID parade, in front of other parade participants. I told him of his right to call a lawyer or relative but he similarly said no as he did not commit the offence and was ready for ID parade.

Secondly, I told him he has a right to exchange his attire either at home or to any of the participants. He chose to exchange his shirt. He exchanged with the participant no. 4 from the left known as KalebChachaMarwa. He also exchanged his open shoes with participant no. 10 from the right of the participants and left of where I stood. I also ask him to choose the position to stand. He lined up between participant no. 3 and 4. After that I instructed D/Cpl. DC Zafarani to go for the identifying person she came and I instructed her to go around the people lined up front and back and in case she identified one of them to touch on the back shoulder and the one touched will move a step forward. The identifying person passed once at the front and at the back. While at the back she touched Mathew Jeremia by her back shoulder. Yes, if I see the one identified at the ID parade I can also identify him. He stood in the front of me at the dock and is the 2nd person from my right (the 2nd person). The identifying person did not identify any other person on the line.

After that I instructed the woman identified Mathew Jeremia to give her statement to police.

As for the participants in the ID parade I instructed the participants no. 3 and 4 to be recorded his statement. These were Joseph KalebChacha and KalebChachaMarwa. I also filed in the ID parade. I then asked the suspect about the ID parade. He said the ID parade was fairly done but though identified he did not commit the offence. He was satisfied. I then discharged all the participants and thanked him.

Witness show a document and states:- This is ID parade register PF. 186 and this is the one I filled. It contains my signature. It contains name of suspect Mathew Jeremia. It contains names of those assisted me i.e. D/SsgtyRupeto and D/Cpl. Michael. It is dated 26/7/2009. This form also contains 10 names of ID parade participants. I pray to tender it.

Mr. Mutalemwa, Advocate:- No objection.

Mr. Kabonde, Advocate:- No objection.

Mr. Makwega, Advocate:- No objection.

Mr. Galati, Advocate:- No objection.

Mr. Outa, Advocate:- No objection.

Court:- The ID parade register PF 186 dated 26/7/2009 admitted as Exh. P.2.

Sgd: A.N.M. Sumari

JUDGE

05/11/2014

In this case I was involved in this exercise of ID parade only.

That is all.

XD by Mr. Kidando, State Attorney:- In this form PF 186, the names of those instructed to give their statements as ID parade participants appears as no. 3 Joseph KalebChacha and no. 4 KalebChachaMarwa. In this register I stated also that the suspect stood between participants no. 3 and no. 4 and also that the suspect was identified.

That is all.

XXD by Miss Majaliwa, State Attorney:- Nil.

XXD by Mr. Mutalemwa, Advocate:- I am trained to conduct the ID parade from Moshi Police Academy, DSM Police Academy and Mubarak Police Academy Egypt. It is not true. In this report it is not indicated how

the identifying person identified the suspect. That is why participants no. 3 and 4 gave their statements. 10 people were listed at the ID parade form. The form shows that the parade was composed of 11 persons inclusive the suspect. In the list at back the suspect is not listed.

There is no that requirement or portion in this form to show whether the suspect was satisfied with the ID parade conducted. It is not must according to this form to right that the suspect was justified that parade was fairly conducted. That is why the participants no. 3 and 4's statements were recorded. Yes, it is the officer conducting ID parade looks for the participants to participate in the parade and that I am the one did so. What I did is what I stated earlier that I am the one went for participants in company of D/SgtLupeto. The custom area where I collected the participants and the police station is very near so I don't find it strange if one says he came to bail out his relative.

I don't remember when I recorded my statement.

Witness reminded that it was on 9/10/2009 two months later is when he wrote or recorded his statement and states:- After a day I went to DSM for a seminar on terrorist, financing and money laundering held at US Embassy. The investigator of this case was D/Sgt Julius.

This form no PF. 186 is conformity to the GPO requirements.

That is all.

XXD by Mr. Kabonde, Advocate:- I did not record my statement on the same day. I don't agree with you. The suspect chose to change his shirt with KalebChachaMarwa, participant no. 4. I am not the one arrested him. I saw him on the ID parade day only. No facilities for washing clothes at the lock up. He had no untied cloths. I chose those people resembled the suspect a normal person. They resembled. He chose to exchange clothes so that justice is done. That was the requirement by the law. I had seen him prior the ID parade the same day. I choose those stood nearest him to record their statements. It is not forbidden. I told them to give their statement in respect of what transpired. I am lying against the 2nd accused.

That is all.

XXD by Mr. Makwega, Advocate:- Maria Mazuli told me she identified well the one pulled the deceased from the house. I am telling what I did and told, I am not telling what Maria testified. By then I was Inspector of Police and Julius was Sargent. I am Senior to Julius. I am not allowed to receive instructions from the junior officer.

That is all.

XXD by Mr. Galati, Advocate:- Witness shown Exh. P.2 and states:- This form composed of one part to fill. **Witness reads aloud** a part requiring list of participants and part requiring suspects positions. Maria Mazuli was the identifying person. It speaks of a witness. I filled it

properly. Nowhere in this form is indicated to right the list of participants. This form has no part for suspect to sign that he was satisfied or not.

Witness shown his statement and states:- Nowhere in this statement I wrote the suspect was satisfied with the parade.

Suspect participate in the ID parade and I indicated that he stood in between no. 3 and 4. Nowhere in this form I am required to list the list of participants. I filled this form in front of all the participants and the accused.

I did not know that there were other suspects in this case.

That is all.

XXD by Mr. Outa, Advocate:- Nowhere the suspect signed the form PF. 186. The witnesses are no. 3 and 4 I told him either to send cloth from home or to exchange. So he chose to exchange with others. The exchanged at the place were standing. Had it being he wanted to exchange trousers I could take him in a private place. The suspect chose not to have a lawyer or relative. It is true this form need to be (iboreshwe) because it leaves much questions unanswered. I am a holder of masters degree of Business Adm. in Finance and Human Resources Management.

That is all.

XXD by 1st assessor:- Nil.

XXD by 2nd assessor:- Nil

XXD by 3rd assessor:- Nil.

REXD by Mr. Kiria, Principal State Attorney:- What I stated is what I explained in this form and what I did on 26/7/2009. Form PF 186 is a form provided in the PGO.

That is all.

REXD by Mr. Kidando, State Attorney:- According to this form the following are required to appear in i.e.:-

1. The suspect
2. The identifying person (witness)
3. Participants.

Maria MazuriKafula was the identifying (witness) person. She was a witness for that purpose. Other participants listed at the back were not identifying witnesses but the participants and all what I did was in conformity to PGO.

There is part (a) which shows that suspect stood between no. 3 and no. 4 right of the parade participants.

Suspect identified there is in this form a place where the name of the suspect is to be filled.

That is all.

R.O.F.C.

Sgd: A.N.M. Sumari

JUDGE

05/11/2014

Order:- Hearing on 06/11/2014.

AFRIC.

Sgd: A.N.M. Sumari

JUDGE

05/11/2014

Date:- 06/11/2014

Coram:- Hon. Sumari, J.

Mr. Kiria, Principal State Attorney for the Republic – Present

Mr. Kidando, State Attorney for the Republic – Present

M/S Stella, State Attorney for the Republic - Present

Mr. Mutalemwa, Advocate for 1st accused
Mr. Kabonde, Advocate for 2nd accused
Mr. Makwega, Advocate for 3rd accused
Mr. Galati, Advocate for 4th accused
Mr. Outa, Advocate for 5th accused

All present

Accused name:-

1. Chacha s/o JeremiaMurimi
 2. Mathew s/o JeremiaDaud
 3. Paschal s/o LugoyeMashiku
 4. Paulo s/o BudebaGenji @ Lumanija
 5. Bugwema s/o SilolaLyangalo
- All present

Interpreter:- L. Mtaki – English into Kiswahili and vise versa

Court Assessors:-

1. Vedasto Bruno
 2. LaurenciaBuruba
 3. Leonard Somi
- All present

Mr. Kiria, Principal State Attorney:- Madam Judge the case is coming for hearing and today we have two justices of peace to testify. We are ready to proceed.

Mr. Outa, Advocate:- Myself I have a problem. At home my brother has been bereaved with his daughter, an elder person, so I am not in a position to proceed with the case. I therefore pray for the matter to be adjourned so that I can leave today to Tarime for funeral services. I humbly pray.

Order:- The reasons given by Mr. Outa, the 5th accused's counsel is beyond our control, it's an act of the God, so we have no way we can proceed otherwise. The matter is therefore adjourned for the reasons stated.

Hearing on 02/02/2015.

AFRIC.

Sgd: A.N.M. Sumari

JUDGE

06/11/2014

Date:- 02/02/2015

Coram:- Hon. Mrangu, DR

Mr. Marungu for the Republic

Accused:- Present

B/C:- Ihuya

Order:- The matter is adjourned to next session as will be fixed by District Registrar.

E.G. MRANGU

DISTRICT REGISTRAR

02/02/2015