

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MWANZA
AT MWANZA**

CRIMINAL SESSIONS CASE NO.213 OF 2014

REPUBLIC

VERSUS

- 1. CHACHA S/O JEREMIA MURIMI**
- 2. MATHEW S/O JEREMIA DAUD**
- 3. PASCHAL S/O LUGOYE MASHIKU**
- 4. ALEX JOSEPH @BUGWEMA S/O SILOLA LYANGALO**

JUDGMENT

MAKARAMBA, J.

This is judgment in a murder trial involving four accused persons who are alleged to have carried out a common intention of killing the deceased **Aron s/o Nongo**, who according to the testimony of his wife, **PW1, Maria d/o Mazuli Kafula**, was a person with albinism. The deceased **Aron s/o Nongo** died on the night of **26th June, 2009** at Ibanda Village, within Nyamagana District in the City and Region of Mwanza. The four accused persons who now stand before this Court being charged jointly and together with the murder of the deceased, Aron s/o Nongo, on the close of the prosecution case, this Court found them to have a case to answer and they were accordingly called to enter upon their defence.

The evidence on record has revealed that there are certain undisputed facts in this case. That, **Aron s/o Nongo**, is dead and that, he

was killed at his home at Ibanda Village, within Nyamagana District in the City and Region of Mwanza on the night of **26th June 2009** and that, the deceased as per the testimony of his wife, **PW1, Maria d/o Mazuli Kafula**, was a person with albinism (light skinned). Furthermore, as per the Sketch Map of the crime scene, which was drawn by **C. 8016 D/SSgt. Makole** on **27/6/2009** and admitted in evidence without contest as **Exhibit P1** at the Preliminary Hearing conducted before Sumari, J. on **04/11/2014**, the body of the deceased Aron s/o Nongo was found outside his house. As per the evidence of the post mortem examination report, **Exhibit P3**, and the testimony **Dr. Kalima Jackson Kaluti, PW5**, the medical doctor who conducted the post mortem examination of the body of the deceased, **Aron s/o Nongo**, the body of the deceased was found with multiple injuries involving "*total/complete cut/loss of both lower extremities from the lower $\frac{1}{3}$ of the femurs.*" The testimony of **PW5** confirmed that of **PW1**, the wife of the deceased, and **PW4**, the person who responded to the call for assistance by PW1 that, both legs of the deceased Aron s/o Nongo were severed from his body. The big bone of one of the two legs of the deceased and some two small pieces of bones were tendered in evidence. As at the time of writing this Judgment, the second leg bone and the other bones of the deceased, Aron s/on Nongo, which were also severed from his body by the persons who invaded his house on the night of 26th June 2009 were yet to be found.

The events in this case as they unfolded, the police carried out an investigation which led to the arrest and initial charging of some eight

persons with the murder of the deceased, Aron s/o Nongo on the night of 26th June 2009 at Ibanda Village. These eight accused persons were **Mathew Jeremiah Murimi**, the 1st accused, **Alex Joseph @ Bugwema Silola Lyangalo**, the 2nd accused, **Chacha Jeremiah**, the 3rd accused, **Pascal Lugoye Mashiku**, the 4th accused person, **Paulo Lumaliya Genji**, the 5th accused, **Alfred Paulo Komanya**, the 6th accused, **Gervas Lufufu Komanya**, the 7th accused, and **Charles Masakilija Nghábi**, the 8th accused. The eight (8) accused persons were arraigned before the District/Resident Magistrate's Court of Nyamagana at Mwanza [before Hon. A.K. Rumisha (RM)] on **28/07/2009** and charged jointly and together with the murder of **Aron s/o Nongo**.

On **14/07/2011**, the prosecution per Mr. Karumuna, learned State Attorney, prayed to withdraw the charge against the **6th, 7th and 8th accused persons**, which prayer was duly granted and accordingly by order of the Court (Hon. G.A. Mwambapa, RM) the charge against the 6th, 7th and 8th accused person was marked withdrawn under section 91(1) of the Criminal Procedure Act, Cap.20 R.E. 2002. On **21/10/2011** by order of the committal court (Hon. G. Mwambapa, RM) the five remaining accused persons, namely, **Mathew Jeremiah Murimi**, the 1st accused, **Alex Joseph @ Bugwema Silola Lyangalo**, the 2nd accused, **Chacha Jeremiah**, 3rd accused, **Pascal Lugoye Mashiku**, 4th accused person, **Paulo Lumaliya Genji**, the 5th accused, were committed to this Court for trial.

In the Information the Prosecution filed in this Court the order of appearance of the five remaining accused persons now changed as follows:

Chacha s/o Jeremia Murimi, appeared as the 1st accused, **Mathew s/o Jeremia Daud**, as the 2nd accused, **Paschal s/o Lugoye Mashiku**, as the 3rd accused, **Paulo s/o Budeba Genji @ Lumanija**, as the 4th accused and **Bugwema s/o Silola Lyangalo**, as the 5th accused.

The Preliminary Hearing in this matter was successfully conducted before Sumari, J. of this Court on **04/11/2014**. Upon the Information being read over to the five accused persons, they all pleaded "**Not Guilty**" to the charge of murder and accordingly a "**Plea of Not Guilty**" was entered and recorded against all of them. At the Preliminary Hearing, the Republic was represented by **Mr. Kiria, Mr. R. Kidando** and **M/s Stella** learned State Attorneys. **Mr. Mutalemwa**, learned Counsel appeared for the 1st accused person, **Mr. Kabonde** learned Counsel appeared for the 2nd accused person, **Mr. Makwega**, learned Counsel appeared for the 3rd accused person, **Mr. Gallati** learned Counsel appeared for the 4th accused person and **Mr. Outa**, learned Counsel appeared for the 5th accused person.

At the Preliminary Hearing conducted before Hon. Madame Judge A.N.M. Sumari on 04/11/2014 the fact that, **Aron s/o Nongo** was dead and that he died an unnatural death; the names and personal details of the accused persons and that they were being charged with murder; the contents of the sketch map (**Exhibit P1**); and the place where the body of the deceased found as shown in Exhibit P1, were not disputed. These facts were accordingly entered so in the Memorandum of Undisputed Facts, which was duly signed by all the five accused persons, the prosecution and the defence counsels. However, in the course of conducting this trial, the

Prison Authorities by a letter informed this Court that, one of the accused persons, **PAULO s/o BUDEBA GENJI @ LUMANIJA**, the 4th accused person had passed away on **22/11/2014** while in remand prison. Accordingly, this Court, upon prayer by the lead prosecuting Principal State Attorney, Mr. Kiria, made on **11/05/2015**, ordered that, the criminal charge against **PAULO s/o BUDEBA GENJI @ LUMANIJA**, the 4th accused person, be marked to have abated in terms of section 284A of the ***Criminal Procedure Act***, [Cap.20 R.E. 2002]. Therefore only four accused persons, namely, **Chacha s/o Jeremia Murimi**, the 1st accused person, **Mathew s/o Jeremia Daud**, the 2nd accused person, **Pascal s/o Lugoye Mashiku**, the 3rd accused person and **Alex Joseph @ Bugwema Silola Lyangalo**, the 4th accused person, remained facing the charge of murder of the deceased, Aron s/o Nongo.

In the Information filed in this Court by the prosecution, it is alleged that, the four accused persons, namely, **Chacha s/o Jeremia Murimi**, the 1st accused person, **Mathew s/o Jeremia Daud**, the 2nd accused person, **Pascal s/o Lugoye Mashiku**, the 3rd accused person and **Alex Joseph @ Bugwema Silola Lyangalo**, the 4th accused person did jointly and together on the **26th June, 2009** at Ibanda Village, within Nyamagana District in the City and Region of Mwanza murder one **Aron s/o Nongo**, the deceased. All the four accused persons pleaded "*not guilty*" to the charge of murder contrary to section 196 and section 197 of the Penal Code, Cap.16 R.E. 2002.

The Preliminary Hearing in this case was completed on 04/11/2014 and the trial commenced in earnest on the same day before Hon. Sumari,

J. with the aid of three (3) Honourable Court assessors; **Vedasto Bruno**, **Laurencia Buruba**, and **Leonard Somi**. In establishing its case against the four accused persons the prosecution was represented by **Mr. Kiria**, learned Principal State Attorney assisted by **Mr. Robert Kidando** and **M/s Stella**, learned State Attorneys. The prosecution presented fifteen (15) witnesses to build its case. On the defence side, **Mr. Mutalemwa**, Advocate represented the 1st accused person; **Mr. Kabonde**, Advocate represented the 2nd accused person; **Mr. Makwega**, Advocate represented the 3rd accused person; **Mr. Galati**, Advocate who initially had been representing the 4th accused person **PAULO s/o BUDEBA GENJI @ LUMANIJA** whose case as I stated earlier in this Judgment abated by reason of his death; and **Mr. Outa**, Advocate who initially represented the 5th accused person who now stands charged as the 4th accused person. At the close of the prosecution case, this Court found all the four accused persons to have a case to answer. They were called to enter upon their defence. All the four accused persons took the witness stand and testified under oath. And save for the 1st accused person, **Chacha s/o Jeremia Murimi**, who in his defence tendered in evidence a **PF3, Exhibit D1**, claiming that he was tortured by the Police in signing his cautioned statement, the remaining three accused persons did not have any documentary evidence to tender at the trial. At the close of the defence case, each of the four learned Counsels representing the four accused persons made closing submissions orally. Then this Court summed up the case for the Court Assessors, each of whom in their respective individual

opinions on the evidence and the case as a whole returned a verdict of guilty in respect of each of the four accused persons.

This is a trial of a murder case of four accused persons, namely, **Chacha s/o Jeremia Murimi**, the 1st accused person, **Mathew s/o Jeremia Daud**, the 2nd accused person, **Pascal s/o Lugoye Mashiku**, the 3rd accused person and **Alex Joseph @ Bugwema Silola Lyangalo**, the 4th accused person. They are being accused of jointly and together murdering Aron s/o Nongo at his home at Ibanda Village on the night of 26th June 2009.

In a trial of a murder case, the offence is said to be committed where any person who, ***with malice aforethought***, causes the death of another person by ***an unlawful act or omission***. This comes out very clearly in section 196 of the Penal Code, which stipulates thus:

*"196. Any person who, with **malice aforethought**, causes the death of another person by an **unlawful act or omission** commits an offence of murder." (the emphasis is of this Court).*

An unlawful act or omission is defined under sub-section (2) of section 195 of the same Act to mean the following:

"195 (2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether the omission is or is not accompanied by an intention to cause death or bodily harm."

Clearly where by malice aforethought, a person kills another person by unlawful act or omission, this amounts to murder, that is, in case of murder the act or the omission has to be "*accompanied by an intention to cause death or bodily harm.*" It is therefore the intentional killing of a person by another person which defines the killing of another person as being murder, absence of which the killing becomes manslaughter. In a murder charge, the prosecution is therefore required to establish the fact of the ***unlawful act or omission*** (*actus reus*) and that of ***malice aforethought*** (*mens rea or intention*). This burden of proving the guilt of the accused person is placed squarely on the shoulders of the prosecution side. This onus is in respect of every element of the offence. As such there is no onus of proof on the accused at all. It is not therefore the duty of the accused to prove his innocence but of the prosecution to do so and this has to be beyond any reasonable doubt, failure of which any doubt is to be resolved in favour of the accused.

In the present case, the evidence on record as per the postmortem examination report (PMER), **Exhibit P3**, shows that, the cause of the death of the deceased, **Aron Nongo**, who met his death on the night of **26th June, 2009** at Ibanda Village, within Nyamagana District in the City and Region of Mwanza was ***severe blood bleeding which caused hemorrhagic shock resulting from the multiple wounds involving total/complete cut/loss of both lower extremities from the lower 1/3 of the femurs.*** In terms of **Exhibit P3**, the deceased **Aron Nongo** died an unnatural. The evidence of the cause of death of the deceased is

based on the post mortem examination on the body of the deceased which was conducted by a Medical Doctor based at the Bugando Medical Center, Dr. Kalima Jackson Kaluti, **PW5**, who prepared the Post Mortem Examination Report, Exhibit P3. Both in his testimony **PW5**, and as is evident in **Exhibit P3**, the cause of the death of **Aron s/o Nongo** was ***severe blood bleeding which caused haemorrhagic shock resulting from multiple wounds involving total/complete cut/loss of both lower extremities from the lower $\frac{1}{3}$ of the femurs***, which the deceased had sustained in the hands of his assailants who invaded his house on the night of 26/06/2009. The evidence on record therefore establishes conclusively that, the deceased **Aron Nongo** died an unnatural death. Now the pertinent question for determination by this Court is this: ***who is/was responsible for the death of Aron s/o Nongo?***

In unraveling the mystery surrounding the death of Aron s/o Nongo on the night of **26th June, 2009** at Ibanda Village, within Nyamagana District in the City and Region of Mwanza, and the persons who are responsible for his death, the beginning point is analysis of the events as they unfolded following the arrest of the accused persons who are now being charged jointly and together with the murder of the deceased, Aron s/o Nongo. The evidence on record does not show that the four accused persons were arrested at the scene of crime but at a different place. Three of the accused persons, namely, the 1st accused person, **Chacha s/o Jeremia Murimi**, the 2nd accused person, **Mathew s/o Jeremia Daud**, and the 4th accused person, **Alex Joseph @ Bugwema Silola Lyangalo**,

as per the testimony of PW6, were arrested by the police at Kijereshi Machinjioni on **19/07/2009**. Furthermore, according to the testimony of PW6, the 3rd accused person, **Paschal s/o Lugoye Mashiku**, was arrested on **20/07/2009** at the home of the traditional witch doctor one, **Kishosha Lutambi**, since deceased. According to PW6, the arrest of the accused persons followed a police trap which was laid on the basis of information previously the police had obtained from an unnamed "police informer." The prosecution allege that the plans how to kill Aron s/o Nongo for the purpose of obtaining his body parts for sale were hatched at the house of a traditional witch doctor, Kishosha Lutambi, since deceased.

Let me now start with an analysis of the evidence relating to the police trap, which led to the arrest of the 1st, 2nd and 4th accused persons at Kijereshi Machinjioni on 19/07/2009. According to the testimony of **PW6**, D/Sgt David, on **17/07/2009**, the Police had received a tip from their "Informer" that, there were some people involved in the business of selling human body parts of a person with albinism. **PW6** testified further that, following this information, on **18/07/2009**, he (PW6) booked himself into Room 8 at the **Hangaya Guest House** in Igoma, Mwanza posing as a potential client of human body parts. PW6 testified further that while at the Hangaya Guest House, the 1st accused person, **Chacha s/o Jeremia Murimi**, who later on was joined by the 2nd accused person, **Mathew s/o Jeremia Daud**, came to the Hangaya Guest House and met with PW6 for negotiations on selling human body parts. PW6 stated further that they (the 1st and 2nd accused persons) offered to sell to PW6 some

human body parts of a person with albinism at a price of Tanzania shillings Nine Hundred Million (Tshs.900,000,000/=). PW6 testified further that he managed to talk with them into selling the human body parts at a price of Tshs.200,000,000=.

PW6 stated further that, the 1st and the 2nd accused persons agreed with him (PW6) to conclude the human body parts selling deal on **19th July, 2009** and agreed that the place should be at a place called **Kijereshi Machinjioni** within **Mwanza**. PW6 stated further that, he (PW6) arranged for a number of Police Officers who positioned themselves at strategic positions around the Kijereshi Machinjioni area on **19/07/2009**, which was the agreed human body parts selling day. PW6 stated further that on 19/07/2009, himself (PW6) assisted by some of the strategically positioned police officers managed to arrest the 1st, 2nd and 4th accused at Kijereshi Machinjioni in Mwanza while attempting to sell human body parts and with them they arrested some exhibits, one big leg bone, a small blue-black UNI-BEST bag in which the bone was wrapped and a bicycle with which the 4th accused person came riding to the Kijereshi Machinjioni area carrying with him on its back seat the small blue-black UNI-BEST bag. As per the results of the DNA analysis which later was carried out in the Laboratory of the Chief Government Chemist on the big leg bone, which the police arrested the 1st, 2nd and 4th accused persons having in their possession at the Kijereshi Machinjioni on 19/07/2009, was from the body of the deceased, Aron s/o Nongo who was killed on the night of 26th June 2009 at Ibanda Village. I shall revert later to the DNA analysis of the exhibits which were found in the possession of the 1st, 2nd and 4th accused persons as per **Exhibit P7**, the Certificate of Seizure,

when they were arrested by the police at the Kijereshi Machinjioni on 19/07/2009. It is worth noting here that only the 1st and 2nd accused persons and some two other persons signed on the Certificate of Seizure, **Exhibit P7**. The signature of the 4th accused person does not appear on Exhibit P7.

According to the testimony of PW6 at the arresting area, at Kijereshi-Machinjioni on 19/07/2009, the 1st, 2nd and 4th accused persons were found in possession of one **big leg bone**, which was admitted in evidence as **Exhibit P6**. According to **PW6**, this big leg bone, **Exhibit P6**, was found wrapped and statched inside a small blue-black UNI-BEST bag, which was also received in evidence as **Exhibit P4**. **PW6** testified further that, the small blue-back UNI-BEST bag (**Exhibit P4**) was placed underneath the cover of the back seat of the bicycle, which was also admitted in evidence as **Exhibit P5**, which PW6 stated that the 4th accused person came riding on to the place where the 1st, 2nd and 4th accused persons were arrested at Kijereshi Machinjioni area on 19/07/2009.

In their defence, both the 1st and 2nd accused persons, who apparently as per their own testimony they are blood brothers, while testifying as **DW1** and **DW4** respectively, did not dispute the fact of them being arrested at the Kijereshi Machinjioni-Mwanza on 19/07/2009. However, they attempted to offer a different version of their story to explain their presence at Kijereshi Machinjioni on 19/07/2009, which apparently was a Sunday. In their testimonies, both DW1 and DW4 stated that, on 19/07/2009 when they were arrested by the Police at Kijereshi

Machinjioni, they were coming from a nearby steel rolling mill factory where they claim that, they were engaged as casual labourers loading steel rolls into customer vehicles. In his testimony, PW6 stated that as per the negotiations at the Hangaya Guest House on 18/07/2009 between PW6 and the 1st (DW1) and 2nd (DW4) accused persons, the Kijereshi Machinjioni was the place they had agreed to meet to conclude the human body parts selling business.

According to the testimony of PW6, he had placed some police officers strategically around that area and had instructed them that upon hearing a gun shot fired they should spring into action and arrest the accused persons. In their testimonies in defence, the 1st (**DW1**), 2nd (**DW4**) and 4th (**DW6**) accused persons stated that while at Kijereshi Machinjioni on 19/07/2009 they heard a gun-shot fired and that, upon seeing other people running away they also took off only to find themselves in the hands of the police. It is a matter of judicial notice that on 19/07/2009, the day the 1st and 2nd accused persons claim that they were engaged as casual labourers at the nearby steel rolling mill factory at Kijereshi Machinjioni was a Sunday. Assuming that on that specific Sunday, the steel roll mill factory was operating, the testimony of the 1st and 2nd accused as to their presence at Kijereshi Machinjioni on 19/07/2009 and their explanation why they decided to take off upon hearing a gun shot fired and falling into the hands of the police is not worth of believe.

The 4th accused person on his part while testifying as **DW6**, did not dispute the fact of having been arrested at the Kijereshi Machinjioni on

19/07/2009, and the fact of hearing a gun-shot fired. However, the 4th accused person tried to explain his presence at Kijereshi Machinjioni on 19/07/2009 as being that he had gone to a nearby market in search of *"mboga/kitoweo cha nyama."* On his part the 4th accused person explained that upon hearing the gunshot fired and seeing some other people running away he also decided to take off only to find himself in the hands of the police. This explanation if anything, in my view, lacks any kind of logic, that, an innocent citizen going about his business of fending for *"mboga/kitoweo cha nyama"* would decide just to take off after hearing a gunshot fired and seeing everybody else running away. I am totally convinced on the evidence on record and the circumstances surrounding the arrest of the 1st, 2nd and 4th accused persons at the Kijereshi Machinjioni area on 19/07/2009, that it corroborates the testimony of PW6 about what the 1st and 2nd accused persons had agreed with PW6 at the Hangaya Guest House on 18/07/2009 that, they will meet at Kijereshi Machinjioni to conclude the human body selling business. The conduct of the 1st, 2nd and 4th accused person of running away upon hearing a gunshot fired and their failure to adequately and convincingly to explain their presence at Kijereshi Machinjioni area on 19/09/2007 leads me to the next pertinent question, which is whether upon being arrested the 1st, 2nd and 4th accused persons indeed had in their possession the human body parts which the prosecution claims that they were offering for sale to PW6 who had posed as a potential client.

It is the testimony of PW6 that he (PW6) asked the 1st, 2nd and 4th accused persons after their arrest whose bone it was and wherefrom they got it, and they (the 1st, 2nd and 4th accused persons) told PW6 that, it belonged to a person with Albinism called **Aron Nongo**, the deceased. The prosecution tendered in evidence one big leg bone, **Exhibit P6**, a small blue-black UNI-BEST bag, **Exhibit P4**, and a bicycle, **Exhibit P5**, which it is claimed that they were seized from the 1st, 2nd and 4th accused persons on the 19/07/2009 as per **Exhibit P7**, the ***Certificate of Seizure***. As I pointed out earlier in this judgment, Exhibit P7 does not bear the name or signature of the 4th accused person, but only the names and signatures of the 1st and 2nd accused persons.

Let me now turn to consider the evidence linking the 1st, 2nd and 4th accused persons with **Exhibit P6**, the big leg bone, **Exhibit P4**, the small blue-black UNI-BEST bag and **Exhibit P5**, the army greenish-colour bicycle, which as per **Exhibit P7** were seized at the place of the arrest of the 1st, 2nd, and 4th accused persons on 19/07/2009 at Kijereshi Machinjioni area.

Since in this case, the main contested issue is the killing of Aron s/o Nongo for purpose of obtaining his human body parts for sale, the first task of the prosecution was to establish by evidence the link between the big leg bone and the deceased Aron s/o Nongo by showing first that, the big leg bone was that of a human being and secondly, that it was from the body of the deceased, Aron s/o Nongo and thirdly that, the persons who were found in possession of the said big bone, are the ones who are

responsible for the death of the deceased Aron s/o Nongo. In order for the prosecution to accomplish this arduous task, the exhibits that were seized at the place of arrest of the 1st, 2nd and 4th accused persons, at Kijereshi Machinjioni on 19/07/2009, namely, the big leg bone, the small blue-black UNI BEST bag and swabs from the bicycle were all subjected to ***Deoxyribonucleic acid*** (DNA) test. The DNA analysis of the samples was carried out at the Laboratory of the Chief Government Chemist in Dar es Salaam. The analysis of the samples required the use of forensic evidence by an expert in DNA analysis technology for the purpose of establishing the connection between the persons in whose possession the samples were found and the death of Aron s/o Nongo and also with the samples obtained from the crime scene, the body of the deceased.

The law in this country permits the carrying out of DNA analysis of samples submitted to the Government analysts and its use in evidence in a criminal trial. This is allowed in criminal trial under section 203 of the Criminal Procedure Act, [Cap.20 R.E 2002] read together with section 47 of the Evidence Act [Cap.6 R.E. 2002]. In terms of section 203 of the Criminal Procedure Act, Cap.20, any report by a Government analyst on a matter duly submitted to him for examination or analysis may be used as evidence in trial. Section 203 of the Criminal Procedure Act, Cap.20 R.E. 2002 stipulates as follows:

*“203.-(1) Any document purporting to be a **report** under the hand of any **Government analyst** upon **any matter** or thing duly submitted to him for examination or **analysis** and report in the*

course of any proceeding under this Act, **may be used as evidence** in any inquiry, trial or other proceeding under this Act.

(2) The court may presume that the signature to any such document is genuine and that the person signing it held the office which he professed to hold at the time when he signed it.

(3) When any report is so used in any proceeding other than an inquiry the court may, if it thinks fit, **summon and examine the analyst as to the subject matter of that report.**

(4) In this section "Government analyst" includes a senior pathologist, a pathologist and **any person appointed by the Minister responsible for health to perform the duties of a Government analyst** under this section." (the emphasis is of this Court).

Considering that DNA analysis is a science, therefore in order for this Court to form an informed opinion on the report of the Government analyst who prepared the DNA analysis of the samples, in terms of section 47, the expert who carried out the DNA analysis was summoned and came to testify at the trial. This was in terms of section 47 of the Evidence Act, Cap.6 R.E. 2002, which provides that:

"47. When a court has to form an opinion upon a point of foreign law, or of **science** or art, or as to identity of handwriting or finger or other impressions, the opinion, upon that point of **persons (generally called experts) possessing special knowledge, skill, experience or training in such** foreign law, **science** or art or question as to identity of handwriting or finger or other impressions are relevant facts." (the emphasis is of this Court).

It is worth noting here that, DNA evidence is vital for purposes of ensuring accuracy and fairness in criminal justice delivery and particularly where, as it is in the present case, the circumstances surrounding the death of a person seems to be shrouded in mysterious interconnection of events. In the present case, DNA analysis of various samples of items obtained at the place of the arrest of the 1st, 2nd and 4th accused persons and from the body of the deceased and also from some of his close relatives was carried out by the Chief Government Chemist. The samples on which DNA analysis was carried out were of the seized big leg bone, the small blue-black UNI-BEST bag, abuccal swabs from the bicycle, the saliva of the accused persons as well as blood samples from the deceased and from some of his close relatives as well as from a piece of his clothing (shirt). This analysis was conducted by a highly qualified Government analyst from the Chief Government Chemist Laboratory in Dar es Salaam, M/s Gloria T. Machuwe who testified at the trial as **PW9**. In her lengthy and in-depth and highly technical testimony, PW9, who in my considered fitted very well within the legal parameters of a "**person (expert)**

possessing special knowledge, skill, experience or training in DNA science", under section 47 of the Evidence Act, Cap.6 R.E. 2002, explained in greater details the various techniques used for DNA analysis of samples and how in the particular circumstances of this case she analyzed and compared the various samples she received from the police in connection with the case at hand, and how she prepared fairly detailed reports containing the results of the DNA analysis carried out on the samples in connection with this case.

In the course of her testimony PW9 tendered in evidence the DNA analysis reports of "*Ripoti ya Uhusiano wa Chembechembe Asili za Urithi (Vinasaba) za Makosa ya Jinai [Forensic DNA Profiling Test Report] I*" which was admitted as **Exhibit 13**; *Ripoti ya Uhusiano wa Chembechembe Asili za Urithi (Vinasaba) za Makosa ya Jinai [Forensic DNA Profiling Test Report] III*" which was admitted as **Exhibit P14** and "*Ripoti ya Uhusiano wa Chembechembe Asili za Urithi (Vinasaba) za Makosa ya Jinai [Forensic DNA Profiling Test Report] II*" which was admitted as **Exhibit P15**. I shall dwell albeit very briefly on the results of the DNA analysis as contained in these three reports, namely, **Exhibit P13**, **Exhibit P14** and **Exhibit P15** and how they link up with the 1st, 2nd, and 4th accused persons and with the crime of murder which they now stand charged jointly and together.

In her testimony, PW9 explained briefly that, forensic DNA profiling (also called DNA testing or DNA typing) is a technique employed by forensic scientists to identify individuals by characteristics of their DNA. PW9 went to explain in detail the whole process of conducting DNA analysis or profiling, that, it begins with obtaining the sample of an

individual's DNA (typically called a "**reference sample**"). According to PW9, the most desirable method of collecting a reference sample is the use of **abuccal swab**, from an item of crime, which reduces the possibility of contamination. According to PW9, other methods may need to be used to collect a sample of blood, saliva, semen, or other appropriate body fluid or tissue from personal items (e.g. a toothbrush, razor etc.). PW9 also explained that samples obtained from blood relatives (related by birth, not marriage) can provide an indication of an individual's DNA profile, as could human remains that had been previously profiled. PW9 explained further that a "**reference sample**" is then analyzed to create the individual's DNA profile using one of a number of techniques, which PW9 also explained in detail. I will not, for fear of distortion, attempt to explain it here. The DNA profile is then compared against another sample to determine whether there is a genetic match. PW9 having explained how the DNA analysis technique works, started analyzing the three Reports. **Exhibit P13**, **Exhibit P14** and **Exhibit P15**, containing the results of the DNA analysis of the various samples the Police had submitted to the Chief Government Chemist Laboratory in connection with this murder trial.

The "*Ripoti ya Uhusiano wa Chembechembe Asili za Urithi (Vinasaba) za Makosa ya Jinai [Forensic DNA Profiling Test Report] I*", **Exhibit P13**, related to analysis of blood samples drawn from the body of the deceased and of abuccal swabs from the relatives of the deceased, piece of the shirt of the deceased and DNA from the blood of the deceased found on the small blue-black UNI BEST bag and the sulfate bag where some of the remains of the body parts of the deceased were kept. This Report, Exhibit

P13, revealed and matched the DNA of the blood sample of the deceased. According to this Report, **Exhibit P13**, the probability of the blood sample not being that of the deceased Aron s/o Nongo was one in a billion. This meant that the blood sample was that of the deceased, Aron s/o Nongo.

The "*Ripoti ya Uhusiano wa Chembechembe Asili za Urithi (Vinasaba) za Makosa ya Jinai [Forensic DNA Profiling Test Report] III*", **Exhibit P14** was the results of DNA analysis of abuccal swabs from the "**Lubango**" (*shanga*) and from the Bicycle, Exhibit P5. The Report, Exhibit P14 revealed the following, that:

- a) *Tegemeo la nafasi ya Mtuhumiwa **Mathew Jeremiah** [Kielekezo namba C-2 – Mpanguso wenye mate ndani ya shavu (buccal swab)] **kutohusishwa** na Vielelezo A-2 – **Lubango Shanga**, A-4 –Mpanguso wa **baiskeli**, B-1 **Mfuko wa Unibest** na B-2 Mfuko wa Sulfate ni moja kati ya bilioni.*
- b) *Tegemeo la nafasi ya Watuhumiwa **Alex Joseph**, Paulo Lumanija [kielelezo namba C-3 na C-5 – Mpanguso wenye mate ndani ya shavu (buccal swab) **kutohusishwa** na Vielezo A-4 – Mpanguso wa **baiskeli**, B-1 – **Mfuko wa Unibest** na B-2 Mfuko wa Sulfate ni moja kati ya bilioni.*
- c) *Tegemeo la nafasi ya Mtuhumiwa **Pascal Lugoye** [Kilelezo namba C-4 – Mpanguso wenye mate ndani ya shavu (buccal*

swab) **kutohusishwa** na Vielelezo B-2 – Mfuko wa Sulfate ni moja kati ya bilioni.

d) Tegemeo la nafasi za watuhumiwa **Chacha Jeremiah**, Alfred Paulo na Gervas Lufutu – Vielelezo C-1, C-6, C-7- Mpanguso wenye mate toka ndani ya shavu (buccal swab **kuhusishwa** na vielezo vilivyowasilishwa Maabara ya Mkemia Mkuu wa Serekali katika jalada la mauaji ni moja kati ya bilioni.”

The “Ripoti ya Uhusiano wa Chembechembe Asili za Urithi (Vinasaba) za Makosa ya Jinai [Forensic DNA Profiling Test Report] II”, **Exhibit P15**, was the results of DNA analysis of the big leg bone (**Exhibit P6**) and the two small pieces of bones. The Report, Exhibit P15 showed that the probability of the big bone and the two small bones not being that of the deceased Aron s/o Nongo was one in a billion. The Report states in Kiswahili as follows:

*“Tegemeo la nafasi ya vielelezo namba 'A'- mfupa (1) mkubwa na namba "B"- vipande (2) vya mfupa **kutokuwa** vya mhusika mmoja, Marehemu Aron s/o Nongo ni moja kati ya bilioni.”*

In summary according to the testimony of **PW9**, the results of the DNA analysis of the big bone as contained in the Report, **Exhibit P15**, showed that there was very small probability that the big leg bone and the

small bones were not that of Aron s/o Nongo. In other words, it meant that, both the big bone and the two small pieces of bones belonged to one person and that person was the deceased, Aron s/o Nongo. Furthermore, according to the testimony of PW9, the results of the DNA analysis of the blood sample of the deceased and that of his close relatives (the blood sample collected from his son) as contained in the Report, **Exhibit P13** and that of the big bone matched as contained in the Report in **Exhibit P15**.

In the whole, the results of the DNA analysis of the various samples which were submitted to the Chief Government Chemist by the Police established that indeed the big leg bone, which was found in the possession of the 1st, 2nd and 4th accused person when they were arrested at Kijereshi Machinjioni on 19/07/2009 was that of a human being and that they were that of the deceased, Aron s/o Nongo, who was killed on 26th June 2009. Furthermore, the DNA analysis of the abuccal swab obtained from the saliva of the 4th accused person and from the bicycle he was found riding on the day of his arrest at Kijereshi Machinjioni on 19/07/2009 matched as well as the abuccal swab from the small blue-black UNI BEST bag in which the big leg bone was wrapped.

In their respective defences, the accused persons through their learned advocates strenuously attempted to discredit the manner in which the reference samples for DNA analysis were collected, handled and put in the custody of the police as well as their transmittal to the office of the Chief Government Chemist Agency in Mwanza. However, with due respect, the defence advocates failed to establish any missing link in the chain of

custody of the various samples, which could be said to have occasioned a miscarriage of justice. I am therefore satisfied that, the DNA evidence was credible and it managed to establish a very clear link between the big leg bone and the deceased, and link it with the 1st, 2nd and 4th accused persons together with the blue black small UNI-BEST bag and the bicycle all of which were found in their possession on the date they were arrested at Kijereshi-Machinjioni on 19/07/2009. The DNA analysis evidence as submitted through PW9 in my considered opinion has established a very clear link between the 1st, 2nd and 4th accused persons and the death of the deceased, Aron s/o Nongo, who was murdered on the night of 26th June 2009 at Ibanda Village.

As I intimated to earlier in this judgment, as of the date of preparing this Judgment the second leg bone of the deceased and some other parts of his body are yet to be found. In his testimony, PW6 told this Court that, in the course of interrogating the accused persons he (PW6) asked them about the second leg bone, whereupon they informed him (PW6) that, it was in the possession of their traditional witch doctor, one **KISHOSHA LUTAMBI**, since deceased. It is rather unfortunate that on the **21/07/2009**, the said **KISHOSHA LUTAMBI** fell sick while in police custody and when being taken to the Bugando Hospital for medical attention he passed away. He never recoded any statement with the police concerning his involvement in the plans to have Aron s/o Nongo killed for purposes of obtaining his human body parts for sale.

As for the involvement of the 3rd accused person **PASCHAL KISHIKU LUGOE (DW5)** in this case, according to PW6, the 3rd accused

person was arrested on the **19/07/2009** at the home of the traditional witch doctor, **KISHOSHA LUTAMBI**, since deceased. In his testimony, PW6 told this Court that, after the arrest of the 1st, 2nd, and 4th accused persons they took them to the Central Police Station in Mwanza and left the 4th accused person, ALEX BUGWEMA at the Police Station office and left with the other two accused persons, **CHACHA JEREMIAH and MATHEW JEREMIAH** at around **5.00 p.m.** in the evening on the 19/07/2009 to the home of the traditional doctor, KISHOSHA LUTAMBI who was residing in MAHINA VILLAGE, NYANGURUKURU. However, the 3rd accused person while testifying as DW5, stated that he was arrested on **18/07/2009** at his home at Buhongwa, Mwanza, accused of selling bhang (marijuana). According to PW6, the 3rd accused person had gone to the house of the traditional witchdoctor **KISHOSHA LUTAMBI**, apparently for what PW6 said that, the 3rd accused person had told PW6 that he (the third accused person) was to get from his partners his share in the sale of the human body parts of the deceased Aron s/o Nongo. PW6 stated further that, upon seeing the police officers who were present at the home of the traditional witch doctor, Lutambi Kishosha, the 3rd accused person took off but the police with the assistance of some people who were present around the place gave a chase and managed to arrest the 3rd accused person.

As I stated earlier in this Judgment, in his defence, the 3rd accused person while testifying as DW5 stated that he was arrested on **18/07/2009** at his home at Buhongwa in Mwanza for the offence of being found in possession of *bhang* (marijuana) but he was surprised that the police have framed him with a murder charge. The story by the 3rd

accused person of being arrested at his home **18/07/2009** for being found in possession of bhang in my view is not worth of any grain of truth in it considering the evidence in this case connecting him with the offence he stands charged jointly and together with the other three accused persons. The 3rd accused person has been implicated in the crime for which he stands charged by the other three accused persons in connection with the killing of the deceased, Aron s/o Nongo. Furthermore, the 3rd accused person in his Cautioned Statement, which was admitted as **Exhibit P8**, has confessed to the commission of the crime with which he is being charged.

According to the testimony of PW6, it is the 1st accused person, **CHACHA JEREMIAH** and the 2nd accused person, **MATHEW JEREMIAH** who mentioned to the police about the involvement of the 3rd accused person, **PASCHAL KISHIKU LUGOE**, in the plan to have Aron s/o Nongo killed for purposes of obtaining his human body parts for sale. According to PW6, it is the 1st accused person **CHACHA JEREMIAH** and the 2nd accused person, **MATHEW JEREMIAH** who led the police to the home of the traditional witch doctor, **KISHOSHA LUTMAMBI** who was residing in **MAHINA VILLAGE, NYANGURUKURU**. According to PW6, the 3rd accused person was arrested at the home of the traditional witch doctor, **KISHOSHA LUTAMBI**, while trying to run away from the police and on being asked by PW6 as to why he was running away from the police, the 3rd accused person told PW6 that, upon seeing different faces from those he was used to meet at the home of the traditional witch doctor, he decided to take off. It was also the testimony of PW6 that, upon being

interviewed by the Police, the 3rd accused person told them (police) that, he went to the home of the traditional witch doctor to get from his partners, **CHACHA JEREMIA**, the 1st accused person, **MATHEW JEREMIA**, the 2nd accused person, and **ALEX JOSEPH @ BUGWEMA S/O SILOLA LYANGALO**, the 4th accused person, his share from the sale of the human body parts of the deceased, Aron s/o Nongo. It was the further testimony of PW6 that, it was the 3rd accused person who also mentioned to the police another person going by the name of **PAULO LUMANIJA GENJI**, (now deceased and who initially had been jointly and together charged with the four accused persons), as having also participated in the incident of killing ARON s/o NONGO for purposes of obtaining his human body parts for sale.

Clearly as it will be noted, the accused persons in this case in their respective cautioned statements, that is, **Exhibit P8** the cautioned statement of the 3rd accused person, **Paschal s/o Lugoye Mashiku**, **Exhibit P16**, the cautioned statement of the 1st accused person, **Chacha s/o Jeremiah Murimi** and **Exhibit P17**, the cautioned statement of the 4th accused person, **Alex Joseph @ Bugwema Silola Lyangalo**, have implicated each other in the commission of the offence with which they stand charged jointly and together, that of the murder of the deceased Aron /so Nongo to obtain his body parts for sale. The 3rd accused person, **PASCHAL KISHIKU LUGOE**, and the 4th accused person, **ALEX JOSEPH @ BUGWEMA S/O SILOLA LYANGALO**, were implicated in the crime by the 1st accused person, **CHACHA JEREMIA**, in his Cautioned Statement, **Exhibit P16**, and also the 2nd accused person **MATHEW JEREMIA**, as

having been involved in the killing of the deceased, **Aron s/o Nongo**. The 4th accused person, **ALEX JOSEPH @ BUGWEMA SILOLA LYANGALO**, however in his defence attempted to distance himself not only from his Cautioned Statement, **Exhibit P17**, but also from the 1st and 2nd accused persons, and similarly the 1st and 2nd accused persons who are blood brothers, in their defence (DW1 and DW4) they completely denied ever knowing the 3rd and 4th accused persons. On the evidence on record however, it has sufficiently been established that, all the four accused persons are connected with the murder of ARON s/o NONGO. In his bid to distance himself from his Cautioned Statement, **Exhibit P17**, the 4th accused person attempted albeit unsuccessfully to establish that he was tortured by the police into signing it.

The four accused persons in this case, **CHACHA JEREMIA**, the 1st accused person, **MATHEW JEREMIA**, the 2nd accused person, **PASCHAL KISHIKU LUGOE**, the 3rd accused person, and **ALEX JOSEPH@ BUGWEMA SILOLA LYANGALO**, the 4th accused person, clearly formed a common intention of killing the deceased, ARON s/o NONGO for purposes of obtaining his body parts for sale. The business deal between the 1st and 2nd accused persons and PW6 at the Hangaya Guest House on **18/07/2009**, and the arrest of the 1st, 2nd and 4th accused persons at the Kijereshi Machinjioni area on **19/07/2009**, having in their possession the one big leg bone, which as per DNA analysis turned out to be part of the body of ARON s/o NONGO who was killed on **26/06/2009**, when his two legs were cut off, establishes a clear connection between the 1st, 2nd and 4th accused persons with the death of Aron s/o Nongo. The 3rd accused

person, **Paschal s/o Lugoye Mashiku**, in his Cautioned Statement, **Exhibit P8**, has confessed to the killing of **Aron s/o Nongo** and has also been implicated in the crime by the 1st accused person, **CHACHA JEREMIA**, in his Cautioned Statement, **Exhibit P16**, who also implicated the 2nd accused person as well as the 4th accused person as having been involved in the killing of the deceased, Aron s/o Nongo. This evidence is corroborated by the testimony of PW1, the wife of the deceased, who identified the 2nd accused person at the crime scene as well as in the Police Identification Parade and also at the dock during the trial as being the person who was among the persons who invaded their house on the night of 26/06/2009 and killed her husband, Aron s/o Nongo, the deceased.

It is a matter of the law as per section 23 of the Penal Code [Cap.16 R.E 2002] that, when two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence. The 1st, 2nd, 3rd and 4th accused persons having formed a common intention of killing Aron s/o Nongo for purposes of obtaining his body parts for sale, and Aron s/o Nongo having been killed and his two legs cut off, one of which was found in possession of the 1st, 2nd and 4th accused persons, clearly the killing of Aron s/o Nongo was a probable consequence of the prosecution of their purpose of obtaining his body parts for sale, which sale deal was concluded at the Hangaya Guest House on **18/07/2009** between the 1st and 2nd accused persons with PW6, and which sale was to

have been conducted at the Kijereshi Machinjioni on the **19/07/2009**, where the 1st, 2nd and 4th accused persons were arrested by the police and found in their possession one big leg bone wrapped in a small blue-black UNI BEST bag which was being carried at the back of the army green colour bicycle, the 4th accused person came riding on to the place of arrest. The results of the DNA analysis of the samples of the items which were found in possession of the 1st, 2nd and 4th accused persons on the day of their arrest at the Kijereshi Machinjioni on 19/07/2009 and which were submitted to the Chief Government Chemist and the Report of the analysis presented and tendered in this Court through PW9 and marked as ***Exhibit P13, Exhibit P14*** and ***Exhibit P15*** respectively, has established a clear link between the big leg bone, the small blue-black UNI BEST bag and the bicycle with the accused persons. Each of the four accused persons is therefore deemed to have killed the deceased, Aron s/o Aron in prosecution of their common intention of obtaining his body parts for sale. The death of Aron s/o Nongo is therefore the probable consequence of the prosecution of their common evil intention of obtaining his body parts for sale.

According to the testimony of PW6, in their investigation, the police could not manage to get the other two persons who had been implicated in the crime by the four accused persons, namely, **LUMELEJA MPEMBA** and **SHABAN KISUSI**, who the accused persons claim that they also participated in the planning and killing of Aron s/o Nongo. In my considered view, since there are already four persons before this Court who stand charged with the murder of Aron s/o Nongo, those other

accused persons out there and who have not been arrested and charged, it is the duty of the Police if they manage to get them to bring charges against them in connection with the death of **Aron s/o Nongo**.

In this case, the evidence of visual identification also played a very critical role in linking the 2nd accused person with the crime. In her testimony **PW1**, the wife of the deceased, stated that, on the fateful night of **26/06/2009** having had their dinner, her and her husband (the deceased) retired inside their house, locked the door, prayed, but heard the dogs barking outside. She stated further that her husband took a stick and went to the sitting room and suddenly the door to their house was forced opened by some people using a big stone commonly known as "**Fatuma**." It was the further testimony of PW1 that the persons who invaded their house, five (5) men, entered their sitting room, and dragged her husband outside. She stated further that she remained inside the house, watching the events as they were unfolding outside through a wire meshed window. She also stated that, the night was of full bright moonlight a fact also supported by PW4, and that one of the assailants was holding a torch beaming its light at the other assailants, who did not cover their faces or heads, so she could see their faces. According to the testimony of PW1, she witnessed the assailants when killing her husband, that two (2) of them were holding torches beaming it at the others, and three (3) were cutting off her husband's legs, that two (2) of them had *pangas* and one (1) had an axe. PW1 stated further that they cut her husband on his head, whereupon he fell down and that, they cut off both

of his legs and put them in a bag (*limfuko*) and that from where she was standing it was about seven (7) and that the whole incident lasted for about 30 minutes (half an hour).

PW1 also testified on the fact of having known the 2nd accused person, **MATHEW JEREMIA**, before the fateful night as the one who had come to her home asking for a hoe with which to dig some traditional medicine from the nearby hills. In my considered view, all of these facts go to show that PW1 could not have mistaken the 2nd accused person for anyone else as the person she saw at the crime scene on the fateful night of 26/06/2009. In my considered view, the fact of PW1 knowing the 2nd accused person before the fateful day, the fact of that night being of full moonlight, the fact of the time the wife of the deceased spent witnessing what was happening outside, about thirty minutes, all of these constitute a very strong evidence of visual identification thus leaving no doubt at all that indeed PW1 managed to identify the 2nd accused person at the crime scene on the fateful night of 26/06/2009 when her husband was killed.

Furthermore, PW1 also managed to identify the 2nd accused person at the Police Identification Parade, which was conducted about a month after the incidence thus her memory of the person she saw on the night of 26/06/2009 was still fresh. On the rationale for the conduct of Police Identification Parade, PW1 having stated that she identified the 2nd accused person at the crime scene, I am enthused by the wise words from the decision of the Court of Appeal of Tanzania in the case of ***Juma Nyamakinana and George Mwita Msama Machange v. The***

Republic, Criminal Appeal No. 133 of 2011 (CAT) (unreported) wherein it was stated at page 5 of the typed judgment thus:

"...it is vital to conduct the identification parade as it removes possibilities of mistaken identity before grounding a conviction."

In his testimony, PW3, ASP George Wilbard, previously Inspector of Police at RCO's Mwanza, who conducted the Police Identification Parade where PW1 identified the 2nd accused person, stated that, PW1 managed to identify the 2nd accused person without leaving any doubts that he was among the persons who attacked and killed her husband on the fateful night of 26th June, 2009 at their home at Ibanda Village. The defence attempted without any success to discredit the manner in which the Identification Parade was conducted. This Court having overruled the defence objection, admitted in evidence the Police Identification Register (PIR) as **Exhibit P2**. I am at one with the submissions of Mr. Kiria, learned Principal State Attorney in his closing submissions that, as per the evidence on record, there is no doubt that, the 2nd accused person was among those persons who attacked **Aron s/o Nongo** on the night of 26/06/2009 leading to his death. I am also of the firm view, and on the basis of the evidence on record that, the evidence of identification of the 2nd accused person by PW1 at the crime scene on the fateful night of 26/06/2009, in the Police Identification Parade and at the dock during the trial is water tight and has established without leaving any doubt whatsoever, the

participation of the 2nd accused person in the killing of Aron s/o Nongo on 26/06/2009 at Ibanda Village.

The other type of evidence linking the accused persons with the killing of Aron s/o Nongo is the cautioned statements of the 1st accused person, **Chacha s/o Jeremiah Murimi, Exhibit P16**, the cautioned statement of the 3rd accused person, **Paschal s/o Lugoye Mashiku, Exhibit P8**, and the cautioned statement of the 4th accused person, **Alex Joseph @ Bugwema Silola Lyangalo, Exhibit P17**.

The defence tried without much success to impugn the Cautioned Statements of the 1st, 3rd and 4th accused persons from being admitted in evidence, which objections this Court having conducted a "trial within a trial" and listening to the submissions in support and rival, as well as the evidence adduced, finally overruled them and admitted in evidence the Cautioned Statements of the 1st, accused person as **Exhibit P16**, that of the 3rd accused person as **Exhibit P8**, and that of the 4th accused person as **Exhibit P17** respectively.

In sum, the fact of the confession voluntarily made by the 1st, 3rd and 4th accused persons in their respective Cautioned Statements on record their involvement in the killing of Aron s/o Nongo leaves no doubt of their guilty. In their respective confessions, the 1st, 3rd and 4th accused persons give details of their plans how to they accomplished their joint mission of killing Aron s/o Nongo to obtain his body parts for sale. According to the Cautioned Statements, it is the 4th accused person who cut off the legs of the deceased using an axe, being assisted by the 2nd accused person who finished of using his panga. Furthermore, in their respective Cautioned

Statements, the 1st, 3rd and 4th accused persons also confirm that, the human body parts they were trying to offer for sale to PW6 on **19/07/2009** were from the body of the deceased, Aron s/o Nongo. In their respective Cautioned Statements the 1st, 3rd, and 4th accused persons, have also implicated the 2nd accused person as having participated in the planning and the killing of the deceased **Aron s/o Nongo** on **26/07/2009**.

In his defence, the 1st accused person, **Chacha s/o Jeremiah Murimi**, while testifying as **DW1** stated that, the Police forced him to sign his Cautioned Statement, **Exhibit P16** (which he referred to as a bunch of some pieces of papers whose content he did not know) that, he refused to sign whereupon the police started beating him up in his joints, hands and legs using police batons, which has rendered him permanently disabled in his right leg, which he claims that the police broke in the course of torturing him into signing the statement. In his bid to prove that he was tortured by the Police into making and signing his Cautioned Statement, the 1st Accused tendered in evidence a **PF.3**, which this Court admitted as **Exhibit D1**. The **PF3, Exhibit D1** of the 1st accused person on its face it appears that it was obtained on **26/07/2009**. According to the PF3, (Exhibit D1), the 1st accused person was taken to the Sekou Toure Hospital for treatment and released on the same day. In the course of the trial, Mr. Kiria, the learned Principal State Attorney for the prosecution doubted the genuineness of the PF3 (Exhibit D1) and requested this Court to summon the Police Officer who is alleged to have issued it and the Medical Officer who is alleged to have treated the 1st accused person to come to Court to

testify under oath and to be cross-examined by the prosecution on the authenticity of the PF3, Exhibit D1. This Court in exercise of its powers under the provisions of section 264 of the Criminal Procedure Act, Cap.20 R.E. 2002 "*to regulate its own procedure in criminal matters,*" summoned a Police Officer, one Dt. Ssgt. **Christopher Ngasala, F. 2153**, who is alleged to have issued the impugned PF3, who testified as **DW2**, and the Medical Doctor, one **Mr. Rweyendera Onesmo**, from Sekou Toure Hospital who is alleged to have treated the 1st accused person, who testified as **DW3**.

In his testimony, Christopher Ngasala, F. 2153, Dt. Ssgt. the Police Officer, DW2, who purportedly issued the impugned PF.3, stated that, he does not recognize the **PF.3 (Exh.D1)** the 1st accused person tendered in Court. According to DW2, the Number of the Police Officer appearing on the PF3 as C.F. 2153 does not exist in the whole of the Tanzania Police Force, which reckons Police Force Numbers preceded by only one Alphabet, and currently it has reached the "F" Alphabet. DW2 stated further that although his Police Force No is F.2153 Dt. Stg. Christopher, the Alphabetical nomenclature CF preceding the Arabic Numerals 2153 appearing on the PF.3 (**Exh.D1**) does not exist in the whole of the Police Force of Tanzania. It was the further testimony of DW2 that, given that, the Tanzania Police Force uses only one Alphabet running from A and now it has reached "F", and the PF3 (Exhibit D1) which bears No. CF.1253 and also the signature appearing on it which is not his, clearly it shows that the PF3 (Exhibit D1) is a forged document.

On his part, the Medical Doctor one Mr. Rweyendera Onesmo, from Sekou Toure Hospital who is purported to have indorsed on the **PF.3 (Exhibit D1)** who testified as **DW3**, stated that, normally a person who has a broken knee cap as the 1st accused person alleges, would first be subjected to X-ray in order for the hospital in which he is seeking medical attention to be satisfied that indeed the knee cap is broken. According to DW3 a broken knee cap is treated as a serious medical case and a person so suffering will be sent to theatre immediately for a minor operation where normally a piece of metal wire will be inserted to hold the broken knee cap in position and the healing normally takes anything from 3 to 6 months. It was the further testimony of DW3, that what is inscribed on the impugned PF3 (Exh.D1) as being a medical report of the injury the 1st accused person claims to have sustained in the course of being beaten up by the police does not sound medically phrased at all and even himself could not figure out what is it that the inscription was attempting to explain thus raising some serious doubts as to whether the person who wrote it was indeed a qualified medical doctor.

On the evidence of DW2 and DW3, clearly the genuineness of the PF3 (Exhibit D1) as a piece of evidence has seriously been shaken, thus its evidential weight has seriously been watered down. Surprisingly, the 2nd accused person who also had intimated during the Preliminary Hearing that in the course of the trial he will also tender in evidence a PF3 to show how he was tortured by the Police in making his cautioned statement, decided to abandon his intention on the pretext that the said PF3 had mysteriously

disappeared in the course of the Prison Authorities carrying out routine prison inspection.

Emanating from what befell the PF3 of the 1st accused person, this Court has no doubt whatsoever that the Cautioned Statement of the 1st accused person remains unshaken. The 1st accused person has failed to establish involuntariness on his part in making his cautioned statement thus evincing his participation in the offence of murder he is being charge with. In his closing submissions Mr. Mutalemwa learned Counsel for the 1st accused person stated that, the Extra Judicial Statement of the 1st accused person which was taken before a Justice of the Peace was not tendered in evidence at the trial and that even the Justice of the Peace before whom it was recorded was not called to testify at the trial and therefore the Cautioned Statement of the 1st Accused person was not corroborated as to whether it was voluntarily made.

The Cautioned Statement of the 1st accused person was admitted in evidence and marked as Exhibit P16 after this Court had conducted a trial within trial. In his defence, the 1st accused person has attempted to discredit the Cautioned Statement by tendering a PF3, which through the testimony of DW2 and DW2, has been determined not to be genuine. This effectively renders the allegation of the 1st accused person that he was beaten up and forced to sign his Cautioned Statement ineffective. This Court therefore will not, at this stage, engage itself in determining whether the Cautioned Statement of 1st Accused was voluntarily and properly made. The genuineness of the **PF3 (Exh.D1)** of the 1st accused person having

been successfully challenged by the prosecution through DW2, the Police Officer alleged to have issued it and DW3, the Medical Doctor who alleged treated the 1st accused person and prepared the report, clearly the **PF.3 (Exh.D1)** tendered in evidence by the 1st accused fails to establish the allegation by the 1st accused person that he was beaten and forced into signing his Cautioned Statement, thus leaving this Court with only conclusion in so far as the Cautioned Statement of the 1st accused person is concerned, that, it was voluntarily made.

On the allegation by Mr. Mutalemwa that the prosecution did not produce at the trial the extra judicial statement of the 1st accused person and did not call the Justice of the Peace before whom I was recorded to come, this argument with due respect is neither here nor there. This Court having made a finding and determination that, the Cautioned Statement of the 1st accused was voluntarily made effectively renders such argument moot. This being the case therefore, this Court is not to draw an adverse inference on the failure by the prosecution to bring the Justice of the Peace before whom the 1st accused person recorded his extrajudicial statement to court to testify. It is worth noting here that, under our adversarial system of adjudication it is not the number of witnesses or documentary evidence but the weight of the evidence which matters. In any event a cautioned statement being independent evidence from extra judicial statement, this Court is enjoined in determining the case to look only at the evidence on record and no more nor less lest it may be seen as trying to fish for evidence. With due respect in determining whether the cautioned

statement of the 1st accused person was voluntarily made, this Court does not need to look at the extra judicial statement as Mr. Mutalemwa would seem to suggest and make this Court believe. This Court having determined that the cautioned statement of the 1st accused person was voluntarily made, it suffices to stand alone and for the prosecution to establish whether it was voluntarily signed by the 1st Accused. If its contents were disputed, it could be corroborated by any other evidence including the extra judicial statement. This Court has been satisfied that the Cautioned Statement of the 1st accused person was voluntarily made and there are no apparent and obvious irregularities on the face of it. The signature of the 1st accused person on the cautioned statement is consistent in each and every page. This militates against any allegation by the 1st accused person having been beaten by the Police into signing it. The 1st accused person never denied making and signing the cautioned statement but his only contention is that, he was forced and beaten by the Police into signing it, which allegations have not been established. It is for these reasons that, this Court finds and holds that, the non-tendering in evidence by the prosecution of the extra judicial statement of the 1st accused person and failure by the prosecution to procure the attendance of the Justice of the Peace before whom it was made is not that fatal and it does discredit the validity of the Cautioned Statement.

I should point out here that the law on the burden of establishing the voluntariness of a confession by an accused person is found in section 27(2) of the Evidence Act [Cap.6 R.E 2002]. This particular section places

the onus of establishing the voluntariness of a confession directly on the prosecution. It is trite legal principle that a confession is to be held to be involuntary if the court believes that, it was induced by any threat, promise or other prejudice held out by the police officer to whom it was made or by any member of the Police Force or by any other person in authority.

In the present case, the Prosecution tendered in evidence the Cautioned Statement of the 1st accused person, which shows that he voluntarily confessed on his guiltiness. The 1st accused person has failed to establish before this Court even with an iota of evidence any mark or sign that he was beaten into making his confession or that he was beaten or tortured by the Police at the time of recording his cautioned statement. I am of the firm view that, even if the Cautioned Statement by the 1st accused person could have been found to have been signed by force, the evidence on record shows that, in accomplishing their mission, the 1st accused person is the one who has implicated the 2nd accused person, who are blood brothers, and that the 2nd accused person was the leader of his partners in crime. In his defence while testifying as DW4, the 2nd accused person also claimed to have been tortured by the police. The evidence on record however shows that, it is the 2nd accused person who led the police to the pit where it was alleged that the skinned flesh and two small pieces of bones from the body of the deceased were deposited. In any event, there is nothing on the record to suggest even remotely the allegation by the 1st accused person that, he was beaten and he never signed anything,

which makes his allegations remain mere allegation not supported by any evidence.

On his part the 3rd accused person, **Paschal Lugoye Mashiku** who testified as **DW5** stated that, he was also forced to sign his Cautioned Statement, **Exhibit P8**, and that he was arrested on **18/07/2009** at his home in Buhongwa and not at the house of the traditional witch doctor, Kishosha Lutambi in the evening of **19/07/2009** as alleged by PW6. In the Court record, there is nothing by way of evidence to suggest even remotely that the 3rd accused person was forced into signing his Cautioned Statement, which is signed on each and every page thus showing that the 3rd accused person voluntarily signed it.

The 4th accused person, **Alex Joseph @ Bugwema Silola Lyangalo**, while testifying as **DW6** stated that, following his arrest he was arraigned before the police station and forced to sign his Cautioned Statement, **Exhibit P17**. In his defence, the 4th accused person denied ever making the Cautioned Statement (Exhibit P17) and that his name is **Alex Joseph** and not **Bugwema Silola Lyangalo**, and that it is Esther (**PW10**) who took down the statement but he did not give it.

The Cautioned Statement of the 4th accused person, which has been admitted in evidence as **Exhibit P17**, shows that it was voluntarily signed by the 4th accused person **Alex Joseph**. There is no evidence on record to suggest even remotely that, the 4th accused person was forced to sign his Cautioned Statement. Throughout the trial, the 4th accused person has consistently denied being known by the name of **Bugwema s/o Silola**

Lyangalo and insisted that his name is **Alex Joseph**. In my considered view, even if the 4th accused person denies to be also known by the name of **Bugwema Silola Lyangalo**, the proceedings both of this Court and of the lower court which conducted the committal proceedings refer to one and the same person. This appears on the charge brought before the District Court which conducted the committal proceedings and in the Information filed in this Court during the Preliminary Hearing. The 4th accused person cannot therefore at this stage be heard to claim that his name is Alex Joseph and not Bugwema s/o Silola Lyangalo and thus to escape culpability simply by denying what appears both on the Information before this Court and in the Charge Sheet in the District Court. This Court has been satisfied that the name of the 4th accused person is Alex Joseph @ Bugwema Silola Lyangalo and that Alex Joseph and Bugwema Silola Lyangalo are the names of one and the same person, Alex Joseph @ Bugwema Silola Lyangalo, who is the 4th accused person in this case. Besides, at the Preliminary Hearing on the 04/11/2014, the 4th accused did not dispute his name and accordingly it was entered in the Memorandum of Matters Not in Dispute, which the 4th accused also signed.

In this case, the 1st and 2nd accused persons, who are blood related brothers, in their unison have raised the defence of *alibi*. They both allege that on the material day of **26/06/2009**, which is claimed by the prosecution that they participated in the killing of Aron s/o Nongo, the deceased, were both in **Tarime at Kilotambe Village** where they had gone to attend the burial ceremony of their grandmother, one they named as Sophia, and that they came back to Mwanza on **10/07/2009** and that,

they went to Musoma in the company of their uncle who was driving a car he had borrowed from his friend. In the course of the trial, the prosecution raised an objection to the manner in which the 1st and 2nd accused persons had raised their defence of *alibi* in that, they had failed to comply with the mandatory requirements under section 194(4) of the Criminal Procedure Act, Cap.20 R.E. 2002 for raising the defence of *alibi*.

In so far as the defence of alibi is concerned, subsections (4), (5) and (6) of section 194 of the Criminal Procedure Act, 1985 stipulate as follows:

*"194(4) Where an accused person intends to rely upon an alibi in his defence, he **shall** give to the court and the prosecution **notice** of his intention to rely on such defence **before the hearing of the case.***

*(5) Where an accused person does not give notice of his intention to rely on the defence of alibi before the hearing of the case, he **shall** furnish the prosecution with the **particulars of the alibi** at any time **before the case for the prosecution is closed.***

*(6) If the accused raises a defence of alibi without having first furnished the prosecution pursuant to this section, the court **may** in its discretion, **accord no weight of any kind to the defence.**"*
(the emphasis is of this Court).

Essentially when an accused person in a criminal trial raises the defence of *alibi*, as is the case presently, he or she is trying to say that he

or she was not at the crime scene on the material day the crime with which he or she is being charged is alleged to have occurred but elsewhere. It is a matter of law however that, the accused by raising the defence of *alibi*, does not thereby assume the burden of proving it. As Mr. Kiria learned Principal State Attorney rightly submitted in his closing submissions, the 1st and the 2nd accused person did not bring for example their uncle who they claim that he conveyed them to Musoma to attend the burial ceremony of their departed grandmother or any other relative or even a neighbor or any person from Kilotambe Village in Tarime to testify in their favor. The 1st and 2nd accused persons have failed even to bring proof to establish their allegation of having travelled to Tarime during the period in question. Worse still, the 1st and 2nd accused persons failed completely to comply with the requirements for raising the defence of *alibi* stipulated in section 194(4) and (5) of the Criminal Procedure Act, Cap.20 R.E. 2002. In terms of subsection (4) of section 194 of the Criminal Procedure Act, Cap.20 R.E. 2002, an accused person intending to raise the defence of alibi is required to give notice of his intention to the prosecution and the court before the hearing of the case. In terms of subsection (5) of section 194 of the Criminal Procedure Act, Cap.20 R.E. 2002, where an accused person does not give such notice before the hearing of the case, he shall furnish the prosecution with the particulars of the alibi at any time before the case for the prosecution is closed.

In the present case the 1st and 2nd accused persons have raised their defence of alibi during the hearing of the defence case, contrary to the mandatory requirements stipulated under subsections (4) and (5) of the

Criminal Procedure Act, Cap.20 R.E. 2002. In terms of subsection (6) of section 194 of the Criminal Procedure Act, Cap.20 R.E. 2002 where an accused fails to give notice to the prosecution and the court of his intention to rely on the defence of *alibi* before the hearing of the case or fails to furnish particulars of the defence of *alibi* to the prosecution before the close of the case for the prosecution, as it was in this case, the Court has discretion not to *accord weight of any kind to the defence*. The 1st and 2nd accused person having failed to comply with the mandatory requirements of giving notice and furnishing particulars of their defence of alibi as clearly stipulated in section 194(4) and (5) of the Criminal Procedure Act, Cap.20 R.E. 2002, this Court in exercise its discretion under subsection (6) of section 194 of the Criminal Procedure Act, Cap.20 R.E. 2002 accords no weight of any kind to the defence of alibi raised by the 1st and 2nd accused persons.

In his closing submissions, Mr. Kabonde learned Counsel for the 2nd accused person stated that, there is a contradiction in the testimony of PW1 on the stature of the 2nd accused person, which in his opinion creates doubts against the case of the 2nd accused person. With due respect to the learned Counsel, this Court having considered the evidence in this case as a whole it does find any contradiction in the testimony of PW1 in so far as explaining the stature of the 2nd accused person as Mr. Kabonde would suggest. In her testimony PW1 never testified on the stature (physical appearance) of the 2nd accused person in terms of any unit of measurement. What is on record in so far as the testimony of PW1 is concerned is that the 2nd accused person was tall or short, depending on

whom she was comparing the 2nd accused person with. In my considered opinion, the most crucial thing in this case is whether the 2nd accused person was properly identified by PW1 at the scene of the crime on the fateful night of 26 June 2009 and whether the 2nd accused person was properly identified by PW1 in the Police Identification Parade. In his cautioned statement, the 2nd accused person has confessed to have killed Aron s/o Nongo. This particular piece of evidence clears all the contradictions, if any, in the testimony of PW1 in so far as the identification of the 2nd accused person by PW1 is concerned both at the crime scene and at the Police Identification Parade.

In his closing submissions, Mr. Makwega learned Counsel for the 3rd accused person also pointed to a contradiction in respect of the place of his arrest in that it was uncertain as to where the police arrested the 3rd accused person. According to Mr. Makwega, it is the evidence of DW3 that, the 3rd accused person was arrested at his home place in Buhongwa on **18/07/2009**. However, according to the testimony of PW6, PW10 and PW14, the 3rd accused person was arrested on **19/07/2009** at the home of the traditional doctor, Kishosha Lutambi, thus creating a contradiction as to the real place of the arrest of the 3rd accused person, Mr. Makwega surmised. In my considered view, and with due respect to the learned Counsel, the argument concerning the contradiction between the testimony of DW3, the 3rd accused person and PW6, PW10 and PW14 with respect to the place of arrest of the 3rd accused person is without any merits. In their respective testimonies **PW6, PW10 and PW14**, stated without any contradiction that the 3rd accused person was arrested on 19/07/2009 at

the home of the traditional witch doctor, Kishosha Lutambi while trying to escape from being apprehended by the police. Even in his Cautioned Statement (**Exhibit P8**), the 3rd accused person confessed to have been arrested at the home of Kishosha Lutambi. If there is any contradiction then it is between the testimony of the 3rd accused person in Court as to where he was arrested and what he stated in his Cautioned Statement, **Exhibit P8**. In any event what the 3rd accused person stated in his Cautioned Statement would tend to be more reliable given that his memory of the events was still fresh in his mind than what he stated in Court some seven years after the event. What the prosecution witnesses stated in Court in so far as the place and date of arrest of the 3rd accused is concerned seems to me to be more credible and reflects what the 3rd accused person stated in his Cautioned Statement than what he stated in Court during his defence. These are the reasons for this Court finding the argument by Mr. Makwega on the contradiction between the testimony of the 3rd accused person and the testimonies of the prosecution witnesses as to the place and date of arrest of the 3rd accused person without any merits.

In the whole and having considered the particular circumstances of this case and the evidence on record, this Court finds that there is sufficient evidence upon which to found a conviction for the charge of murder against all the four accused persons as jointly and together charged. There is sufficient evidence on record to corroborate the confession in Cautioned Statements of the 1st, 3rd and 4th accused persons. As a matter of law where, as is in this case, a court finds that, there is

corroboration it can enter conviction against an accused person. Even if this Court would have found that there is no corroboration, which is not, still it could enter conviction based on the confessions of the accused persons in the event it determines that what is contained in the Cautioned Statements is nothing but the truth. This trite legal principle finds support in the decision of Justice Massati, J.A. of the Court of Appeal of Tanzania in the case of ***Ndalahwa Shilanga and Another v. The Republic, Criminal Appeal No.247 of 2008*** dated 11th November, 2011 (CAT)(Mwanza)(unreported).

On the evidence on record, the role of each one of the four accused persons in carrying out their common evil intention of obtaining human body parts of a person with albinism and their role and participation in committing the crime of murder by killing Aron s/o Nongo, a person with albinism, on the night of **26/06/2009** and obtaining his body parts for sale as could be gathered from the respective confessions contained in the Cautioned Statements of the 1st, 3rd and 4th accused persons wherein they implicated each other, is crystal clear. In terms of section 33(1) of the Evidence Act, Cap.6 R.E. 2002, when two or more persons are being tried jointly for the same offence and a confession of the offence charged made by one of those persons affecting himself and some other of those persons is proved, the court may take that confession into consideration against that other person. As it was also succinctly stated by Bukuku, J. in her decision dated 15th June 2015 in the case of ***Republic v. Melkiad s/o Christopher Manumbu & 2 Others***, (High Court)(Mwanza Registry)(unreported) at page 109 (unreported) quoting with approval from

the decision in the case of ***Mathias Mhyeni & Another v. R [1980] T.L.R. 290***, thus;

"Where a person is killed in the prosecution of a common unlawful purpose and the death was a probable consequence of that common purpose each party to the killing is guilty of the murder."

The evidence on record has established without leaving any doubt that all the four accused persons engaged themselves in a deal to sale human body parts of a person with albinism. The forensic evidence from the DNA analysis has conclusively established that the big leg bone the 1st, 2nd and 4th accused persons were found with at the place where they were arrested at Kijereshi Machjinjioni on **19/07/2007** was that of a human being and belonged to the deceased Aron s/o Nongo who was killed on the night of 26th of June 2009 at Ibanda Village. In their respective confessions in their respective Cautioned Statements, the 1st, 3rd and 4th accused persons have confessed to have killed the deceased, Aron s/o Nongo and have implicated each other as well as the 2nd accused person in the crime. The 2nd accused person has been identified by PW1 at the crime scene, at the Police Identification Parade and at the dock as being among the persons who invaded the house of the deceased Aron s/o Nongo on the night of 26th June 2009 when he was killed. This being the case therefore, it is without any doubt that, the four accused persons prepared themselves before and after the murder of Aron s/o Nongo and accomplished their illegal intention of obtaining the human body parts of the deceased, Aron s/o Nongo for sale. In their respective Cautioned Statements, the 1st, 3rd

and 4th accused persons have explained in greater details how they planned to accomplish their mission of killing Aron s/o Nongo for the purpose of obtaining his body parts for sale, which mission they accomplished by killing the deceased on the night of 26th June 2009. Undoubtedly all the four accused persons are fully involved in the commission of the crime with which they now stand charged in this Court, which is murder contrary to sections 196 and 197 of the Penal Code, Cap.16 R.E. 2002. The evidence on record has established without leaving any doubts whatsoever that the four accused persons appearing in this Court jointly and together killed Aron s/o Nongo, the deceased, on the night of 26th June, 2009. The three Court assessors each returned a verdict of guilty in respect of each of the four accused persons. In their defence the four accused persons have not been able to raise any reasonable doubt on the prosecution case but the prosecution has proved its case against all the four accused persons beyond any reasonable doubt.

It is on the basis of the evidence on record that, I find that, it is the four accused persons standing before this Court, namely, the 1st accused person, **CHACHA S/O JEREMIA MURIMI**, the 2nd accused person, **MATHEW S/O JEREMIA DAUD**, the 3rd accused person, **PASCHAL S/O LUGOYE MASHIKU** and the 4th accused person, **ALEX JOSEPH @BUGWEMA S/O SILOLA LYANGALO** and nobody else who jointly and together on the night of 26th June 2009, killed Aron s/o Nongo, the deceased.

I therefore hereby enter conviction against the 1st accused person, **CHACHA S/O JEREMIA MURIMI**, the 2nd accused person, **MATHEW S/O JEREMIA DAUD**, the 3rd accused person **PASCHAL S/O LUGOYE MASHIKU** and the 4th accused person **ALEX JOSEPH @BUGWEMA S/O SILOLA LYANGALO** accused person, for the offence of murder contrary to section 196 and 197 of the Penal Code, Cap.16 R.E. 2002 as charged.

.....

R.V. MAKARAMBA

JUDGE

16.10.2015

As far as this case is concerned, my hands are tied by my oath of office to uphold the Constitution and to respect the laws of the land. In our law on criminal offences, there is only one penalty for the offence of murder, and that is, death by hanging. In the premise, this Court having entered conviction against all the four accused persons, I hereby sentence the 1st accused person, **CHACHA S/O JEREMIA MURIMI**, the 2nd accused person, **MATHEW S/O JEREMIA DAUD**, the 3rd accused person, **PASCHAL S/O LUGOYE MASHIKU** and the 4th accused person **ALEX JOSEPH @BUGWEMA S/O SILOLA LYANGALO**, each to suffer death by hanging until they die.

.....
R.V. MAKARAMBA

JUDGE

16.10.2015

Right of appeal explained to all the four accused persons.

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R.V. MAKARAMBA

JUDGE

16.10.2015

Lady and Gentlemen Assessors are hereby thanked and discharged.

.....
R.V. MAKARAMBA

JUDGE

At Mwanza on 16.10.2015