

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: Mustafa, J.A., Mwakasendo, J.A. and Kisanga, J.A.)

CRIMINAL APPEAL NO. 40 OF 1979

B E T W E E N

MAULIDI s/o ALLY . . . . . APPELLANT

A N D

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the conviction and sentence of the High Court of Tanzania at Kondo) (Jonathan, J.) dated the 22nd day of July, 1979,

IN

Criminal Sessions Case No. 136 of 1977

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was convicted of murder and sentenced to death.

He is now appealing.

The appellant had a quarrel and fight with P.W.2 over a beaded cap a day before the incident, and the deceased separated P.W.2 from the appellant. The following morning the appellant met the deceased and P.W.2, and the appellant was alleged to have renewed the quarrel. He was alleged to have a blanket over his body. When the fight began he threw off the blanket and was holding a panga in his hands. The deceased caught hold of the appellant from the back and urged P.W.2 to run away. P.W.2 did so, but not before he had received a couple of cuts from the appellant. Later an alarm was heard, and the deceased was found fatally injured with a number of cuts which resulted in loss of blood which caused his death. P.W.3, P.W.4 and P.W.5 answered the deceased's alarm, and all of them heard from the deceased that it was the appellant who had killed him. It was the prosecution case that at the time of the attack that morning neither P.W.2 nor the deceased was armed. The crucial witness was P.W.2 who was there when the appellant began the fight and the trial judge accepted his version as substantially true although

he thought he exaggerated what subsequently happened to him after the appellant had disposed of the deceased and caught up with him. He also relied on the dying declaration of the deceased. He considered and rejected the account given by the appellant which was to the effect that it was he who was attacked and that he fought back more or less in self-defence. However the appellant had made two different versions, one of which, made before a Justice of the Peace, was inconsistent with what he stated in Court.

There was evidence that the panga belonged to the appellant. We also, on an evaluation of the evidence, have come to the conclusion that P.W.2's account is substantially correct, and also that the dying declaration is to be believed. The account given by the appellant is clearly untrue. He was the aggressor, was armed with a panga when he attacked P.W.2 and the deceased while they were unarmed, and fatally injured the deceased with the panga. There is no merit in the appeal which is dismissed.

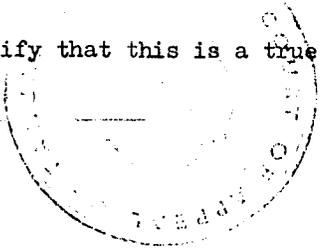
Dated at Mbeya this 13th day of December, 1979.

A. MUSTAFA  
JUSTICE OF APPEAL

Y.M.M. MWAKASENDO  
JUSTICE OF APPEAL

R.H. KISANGA  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



*A. M. Mwakasendo*  
DEPUTY REGISTRAR