

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 12 OF 1979

B E T W E E N

TIKWA MAJUGA . . . . . APPELLANT

A N D

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the conviction of  
The High Court of Tanzania  
at Tanga ) (Kimicha, J.)  
dated the 3rd day of August, 1978

IN

Criminal Sessions Case No. 37 of 1977

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was convicted of murder and sentenced to death. He is now appealing.

A herdsman minding cattle and goats was killed, apparently by a spear and his animals stolen. A search was mounted a day following the theft and discovery of the body of the dead herdsman. Among the search party were two persons who knew the appellant well. They saw certain cattle being driven to a watering place, and recognised them as some of the stolen cattle. The appellant was seen with the said cattle. On seeing the search party however the appellant turned tail and ran off, and the search party failed to catch him. However, since he was clearly recognised, he was eventually arrested and brought to trial. It appears that there was one or possibly two others with the appellant at the time he ran off, but they also managed to escape.

When arrested and held in custody he made an extrajudicial statement to a Justice of the Peace. In brief

he admitted taking part with another person in cattle rustling. He and his colleague beat up the herdsman. He hit the herdsman with a stick and drove off the cattle and goats, leaving his colleague behind fighting with the herdsman, whom he heard later had been killed by his colleague. His counsel at the trial took objection to the admissibility of this extra-judicial statement on the ground that it was not voluntarily made. There was a trial within a trial and the trial judge found that the extra-judicial statement was made voluntarily and was admissible. The trial judge took note of the allegations by the appellant that he was beaten and ill-treated by the police, but on the basis of what a police witness said, the medical certificate and the evidence of the Justice of the Peace, he rejected the allegation that the extra-judicial statement was made under duress and was not voluntary. Indeed the extra-judicial statement contains facts and matters known only to the appellant, and in many respects agrees with his sworn evidence in court, in which he however dissociated himself from stealing the cattle, and beating the deceased, and gave a naive explanation of his being found with the stolen cattle. We have duly considered the circumstances under which the extra-judicial statement was made and taken note of what it contains, and we are satisfied that the trial judge was right in admitting it and we also believe that the contents therein are true.

Since however the appellant in his evidence has repudiated or retracted his extra-judicial statement, we think we should seek corroboration of it. We find such corroboration in the fact that the appellant was found with the cattle of the dead herdsman a day after they were stolen, and that the appellant immediately took to his heels when he saw a group of people

searching for those stolen cattle. This recent possession of stolen cattle is sufficient corroboration of what the appellant has admitted in his extra-judicial statement. If what he said in his extra-judicial statement is true, and we believe it is, then in terms of section 23 of the Penal Code, he is deemed to have killed the herdsman even if the fatal blows and stabs were made by the appellant's colleague.

The appeal is dismissed.

Dated at Dar es Salaam this 7th day of November, 1979.

A. MUSTAFA  
JUSTICE OF APPEAL

Y. M. M. Mwakasendo  
JUSTICE OF APPEAL

R. H. KISANGA  
~~S. P. KISANGA~~  
JUSTICE OF APPEAL