

IN THE COURT OF APPEAL OF TANZANIA

AT MDEYA

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

CRIMINAL APPEAL NO. 61 OF 1979

B E T W E E N

STEFILANO PETRO @ KOMBA APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the Conviction of the
High Court of Tanzania at Iringa)
(Mwakibete, J.) dated the 25th day
of May, 1979,

in

CRIMINAL SESSIONS CASE NO. 132 OF 1977

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant lived in a village in which the deceased was an Assistant Chairman. The deceased was involved in village development projects and there is evidence that he used to issue instructions to villagers in respect of such development projects. It is also in evidence that the appellant reacted strongly to such instructions and shortly before the fateful night he had more than once threatened the people in authority of the village, including the deceased, that he would kill them if they continue to harass him about the development projects.

On the night in question the deceased was passing near the house of the appellant. There were instructions issued to the villagers to tie up their dogs, as dogs were alleged to be eating maize. As he was passing the appellant's house, the deceased heard the appellant and another person discussing about this tying up of dogs and the deceased was alleged to have said "It is correct you should tie up your dogs because they eat other people's maize." Thereupon, the appellant was heard to abuse the deceased saying 'Kumanyoko, Kumanyo, sinama hapo'.

These words were heard by P.W.2, who is the deceased's daughter, and also by P.W.3 whose house was nearby. Immediately after the appellant had uttered these words, there was a silence and P.W.2 went to where the voice came from and there she saw the appellant running away. P.W.3 also had heard these words and saw somebody running whom he could not recognize. The body of the deceased was on the ground, with his head nearly severed from his neck. An alarm was raised and many people responded to it, but the appellant was not one of them. He was arrested the following day, hiding in an abandoned village nearby. When he was arrested he admitted before a number of people that he had killed the deceased. However, in court he made an unsworn statement and for the first time he raised the point that he had killed the deceased during a struggle.

The appellant was examined after he was arrested and he was found to have suffered no injury. The trial judge believed P.W.2 and P.W.3 and according to the evidence there could not have been any struggle. The trial judge was of the view that the defence of a struggle was an afterthought and he rejected it.

We are satisfied, on the evidence, that the trial judge came to the right conclusion. There is no merit in the appeal which is dismissed.

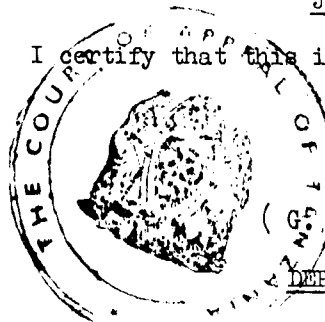
DATED at MBEYA this 3rd day of September, 1980.

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.



(G. A. RVELENGERA)
DEPUTY REGISTRAR