

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mustafa, AG.C.J., Mwakissendo, J.A. and Kisanga, J.A.)

CRIMINAL APPEAL NO. 20 OF 1980

B E T W E E N

ATHUMANI MUNGA APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the High
Court of Tanzania at Dar es Salaam)
(Makame, J.) dated the 22nd day of
November, 1978,

in

CRIMINAL SESSIONS CASE NO. 41 OF 1977

JUDGMENT OF THE COURT

MUSTAFA, AG.C.J.:

The appellant was convicted of murder and he is appealing.

P.W.2 Said heard an alarm at about 4 o'clock in the afternoon.

He ran out of his hut and saw two persons, both of whom he knew,
running away from a nearby hut in his village. He gave chase, and
in the course of the chase, kept the two persons under his observation.
He managed to catch one of the two. This other one was charged
together with the appellant with the offence of murder, but was
acquitted, P.W.2 was positive that the person who managed to run
away uncaught was the appellant.

P.W.3, Muhode, another villager, also heard the alarm
and saw two persons running away, being chased by P.W.2. He also
knew the two persons, and said they were the appellant and the
other person who was caught by P.W.2. P.W.4 Ismail, the village
Chairman, also heard the alarm. He however went towards the hut
from which the alarm emanated. He went in and saw the deceased,
who had three panga wounds, and was in a bad state. He asked the
deceased who had slashed him, and the deceased replied saying he had
been slashed by Pangu, another name for Athumani, the appellant.

The appellant's co accused, who was acquitted had stated in evidence that he saw the appellant running out of the deceased's hut with a panga immediately after an alarm was raised, and he therefore gave chase, but was mistakenly thought by P.W.2 to have been the deceased's attacker, and was caught by P.W.2. P.W.2 confirmed that when he was chasing the appellant, the appellant was carrying a panga, but that the appellant's co-accused was empty handed.

In view of this array of witnesses who had known the appellant before the incident, we are satisfied that the appellant was properly identified. The dying declaration by the deceased that he was slashed by the appellant was corroborated by the evidence of P.W.2 and P.W.3.

The appellant pleaded an alibi and denied knowing any of the prosecution witnesses. The trial judge stated that the plea of alibi raised no doubt at all in his mind. We also are of the view that the alibi was false.

We can find no merit in the appeal which is dismissed.

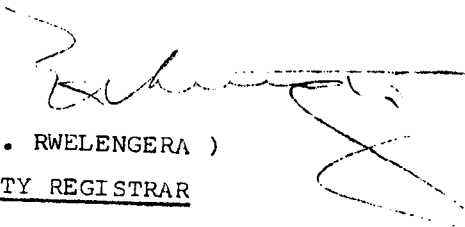
DATED at DAR ES SALAAM this 11th day of June, 1980.

A. MUSTAFA
AG. CHIEF JUSTICE

Y. M. M. MWAKASENDU
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

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


(G. A. RWELENGERA)
DEPUTY REGISTRAR