

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 6 OF 1981

B E T W E E N

KAMULO MATEGE APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the conviction and sentence
of the High Court of Tanzania at Bukoba)
(Rubama, J.) dated the 17th day of December, 1980,

in

Criminal Sessions Case No. 24 of 1980

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

P.W.1 was an eyewitness to the killing of the deceased by the appellant. P.W.1 was the wife of the deceased. The appellant is the half-brother of the deceased. P.W.1 stated that on the material night she was sleeping with her deceased husband on the same bed when she was awakened by the sound of a blow. She heard a second sound of a blow and awake and then saw a person attacking her husband with a panga. There was a log fire burning in the room about three paces away. She said she recognised the attacker as the appellant whom she knew very well. P.W.1 rushed towards a wall to escape, but the appellant caught hold of her and threw her down. P.W.1 somehow managed to escape out of the room and raised an alarm and some co-villagers came in response.

P.W.2 and P.W.4 co-villagers of the deceased came in response to P.W.1's alarm. P.W.1 told them that her husband was cut by the appellant. P.W.4 went to the appellant's house which was nearby but the appellant was not there. The appellant did not attend the funeral of the deceased and was discovered

hiding in a bush about 11 days after the incident and was arrested.

There is evidence that the deceased had expelled the appellant from the deceased's house some time ago and that the parties were not on good terms. The deceased died as a result of the panga wounds which damaged his brain tissues. There were six cut wounds on the skull, according to the post mortem report.

The appellant raised the defence of alibi. He said he was not at the village on the material night. He said he returned to the village a number of days later, learnt that he was suspected of killing the deceased and went into hiding. However P.W.3, the appellant's wife gave evidence, after due warning. She stated that the appellant had come home on a day and was given lunch by her. The appellant left at about 4 p.m. without informing her where he was going, and that same night she heard an alarm and discovered that the deceased had been cut.

We are satisfied that P.W.1 could not have been mistaken in her identification of the attacker of her husband. We also, like the trial judge, accept P.W.1 as a witness of truth. She had had ample good opportunity of identifying the attacker. The fact that immediately thereafter the appellant was found absent in his house, the fact that he did not attend the deceased's funeral and the fact that about eleven days later he was discovered hiding in the bush were all factors which tended to corroborate P.W.1's identification. P.W.3's evidence which the trial judge rightly accepted further supported P.W.1's identification and contradicted the appellant's allegation that he was not in the village at all on the material day.

We are satisfied that the appellant was correctly identified as the attacker of the deceased, and that his alibi could not raise any doubt. The judge convicted the appellant of murder.

We find no merit in the appeal which is dismissed.

DATED at DAR ES SALAAM this 22nd day of May, 1981.

A. MUSTAFA

JUSTICE OF APPEAL

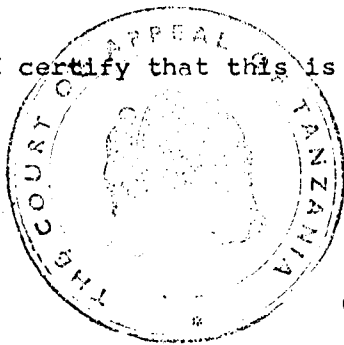
Y.M.M. MWAKASENDO

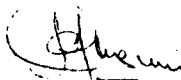
JUSTICE OF APPEAL

L. M. MAKAME

JUSTICE OF APPEAL

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




(H. A. MSUMI)

SENIOR DEPUTY REGISTRAR