

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. 26 OF 1980

B E T W E E N

EMANUEL EDWARD APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the Conviction and Sentence
of the High Court of Tanzania at Morogoro)
(Makame, J.) dated the 22nd day of August, 1978,

in

Criminal Sessions Case No. 45 of 1977

JUDGMENT OF THE COURT

KISANGA, J.A.:

The appellant and five others were jointly charged with murder contrary to section 196 of the Penal Code. His co-accused were acquitted on that charge but he was convicted and sentenced to death. He is now appealing against both conviction and sentence.

The facts leading to the killing of the deceased were quite simple. On the day of the incident there was pombe for sale at the home of one Kangambili Mwansewe (P.W.1). The appellant and his co-accused were among the people who went there to drink. While the drinking sessions was in progress a misunderstanding arose over the payment of pombe worth shs. 2/- which a member of the appellant's group had ordered. Eventually, however, the pombe was paid for apparently after Kangambili had intervened to press for the payment. After the appellant's group had made the payment, they finished up their pombe and went away. But shortly afterwards they returned to the scene and started to create trouble. Inter alia, they demanded from Kangambili the payment of a shirt

belonging to one of their group which he had allegedly torn earlier on during the incident. The scuffle was put down and the group went away. But soon they came back again in a more aggressive mood this time; they were armed with belts and sticks. Kangambili took a bill-hook and tried to scare the group away with it. The group succeeded to overcome Kangambili. The appellant disarmed him and using the bill-hook he cut the deceased with it. The deceased was the wife of Kangambili who had come to the scene during the fracas. The deceased died in hospital following the cut wound inflicted by the appellant. In his defence the appellant denied assaulting the deceased.

There was overwhelming evidence connecting the appellant with the cut wound which caused the death. But equally there was that a lot of evidence showing the killing took place in circumstances of a brawl and drunkenness. Maria Kangambili in her evidence, for example, said that Edward and the others which included the appellant were all drunk. The learned trial judge did not consider the issue of drunkenness in his judgment. We think that had he done so, and considering the circumstances of commotion which surrounded the killing, the learned judge would have found that the necessary malice aforethought could not be proved sufficiently or at all. We are satisfied that the circumstances of the case would warrant a conviction for the lesser offence of manslaughter.

Accordingly, we set aside the conviction of murder and the sentence of death and substitute therefor a conviction for manslaughter and a sentence of six (6) years' imprisonment.

DATED at DAR ES SALAAM this 26th day of February, 1981.

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. RWELENGERA)

DEPUTY REGISTRAR