

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CRIMINAL APPEAL NO. 4 OF 1981

B E T W E E N

AMANI SHABANI . . . . . APPELLANT

A N D

THE REPUBLIC . . . . . RESPONDENT

(Appeal from the conviction of the High  
Court of Tanzania at Nzega - Tabora)  
(Mushi, J.) dated the 13th day of  
October, 1980,

in

Criminal Sessions Case No. 42 of 1980

JUDGEMENT OF THE COURT

MWAKASENDO, J.A.:

The appellant, AMANI SHABANI, appeals from his conviction for murder and sentence of death imposed on him by the High Court sitting at Nzega. In this appeal Messrs El-Mamry and Kisusi appeared for the appellant and the Republic, respectively.

The facts accepted by the trial High Court are briefly as follow:  
The deceased, PASCAL NTANYA, was the village Chairman of Igoweko Village in Igunga District. He disappeared from the village on 24th September, 1977, and has never been heard of since. On 5th October, 1977, police investigations started and in the course of these investigations the police discovered the decapitated skeleton of a human being at a place called Tongi near Chabutwa Village in Nzega District. Near these human remains the police found a bicycle. One of the witnesses for the prosecutions, TAUSI d/o RASHIDI (P.W.2) who is the wife of the appellant gave an account to the court which indicates that PASCAL NTANYA was last seen alive being chased by the appellant. TAUSI told the court that one day in September 1977 while on her way to Ndala to collect some medicine she met PASCAL NTANYA. He was riding a bicycle and was coming from Ndala. On seeing

her, PASCALA dismounted and as they were conversing beside the road, the appellant, her husband, appeared on the scene. He was on a bicycle and was armed with a panga. Immediately, the appellant got to where they were he started to abuse PASCAL and then brandishing the panga began to chase PASCAL into the bush. Further, TAUSI testified to seeing her husband, the appellant, cut PASCAL on the back with the panga. She ran away in fright and eventually went to her relatives in Tabora. At Tabora she told her brother what had happened between her husband and PASCAL. She told the same story to the Police at Simbo. It was upon this information that the accused was arrested on suspicion on 5th October, 1977. Another witness for the prosecution who testified to seeing the appellant and PASCAL on the material day is RASHIDI MAPOLU (P.W.3). RASHIDI deposed that when he met the appellant, the appellant told him, apparently in confidence, that he wanted to catch his wife committing adultery with someone. At the time the appellant was on a bicycle and was armed with a panga. RASHIDI said after confiding in him what he was planning to do, the appellant rode away on his bicycle going along the road to Ndala, the same road his wife had taken earlier.

At the trial the appellant raised an alibi. He said that after TAUSI had left home saying she was going to Ndala, he never left his homestead. He said he never went anywhere near the places that P.W.2 and P.W.3 alleged he was seen. He alleged that he was arrested for no good reason and that the evidence adduced against him by the prosecution was manufactured. He called his sister-in-law in support of his alibi.

The learned trial judge after a meticulous and careful analysis of the evidence adduced at the trial came to the firm view that PASCAL NTANYA was dead and that he was murdered by the appellant. The two assessors were also of the same view. Mr. El-Maamry, on behalf of the appellant, conceded that this was a case which rested on circumstantial evidence.

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Mr. El-Maamry however, went on to argue that the learned trial judge erred in convicting the appellant of murder as, in his view, the circumstantial evidence found established in the case did not point inevitably and, as it is sometimes said, irresistibly, to the appellant as the murderer of PASCAL NEMNYA.

With respect, we do not think there is any substance in Mr. El-Maamry's forceful contentions in this case. Although, as it is plain from the evidence accepted by the learned trial Judge, in this case only a decapitated skeleton of a human being was found near the area where the appellant is alleged to have been seen viciously attacking and chasing PASCAL, we think that the finding of the human remains near the scene of the attack is one strong circumstance which the learned trial Judge was entitled to consider, together with other circumstances, in deciding whether the appellant was involved in the unexplained disappearance of PASCAL or not. Further, we are of the view that once one accepts the evidence of P.W.2 and P.W.3 and accepts the fact of finding a bicycle near the scene where it is alleged PASCAL left his bicycle, there can be no doubt that these are cogent and compelling facts upon which the trial court could properly infer that PASCAL was dead and that the appellant murdered him.

Accordingly, we are satisfied that the appellant was properly convicted of murdering PASCAL NEMNYA and we dismiss this appeal.

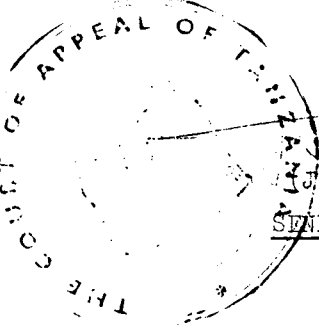
DATED at DAR ES SALAAM this 6th day of November, 1981.

(Y. M. M. MWAKASENDO)  
JUSTICE OF APPEAL

(J. M. MAKAME)  
JUSTICE OF APPEAL

(R. H. KISANGA)  
JUSTICE OF APPEAL

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

A circular stamp with the text "THE COURT OF APPEAL OF TANZANIA" around the perimeter. A horizontal line is drawn across the stamp, and a signature is written over it.  
(J. L. MWALUSANYA)  
SENIOR DEPUTY REGISTRAR.