

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 24 OF 1980

ALLY KUACHANAAPPELLANT

and

THE REPUBLICRESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Morogoro

(Kimicha, J) date the 9th day of April, 1979

in Criminal Sessions Case No. 28 of 1978

Between

THE REPUBLICPROSECUTOR

and

ALLY KUACHANAACCUSED

CORAM: NYALALI, C.J; MAKAME, J.A and KISANGA, J.A

JUDGEMENT OF THE COURT

NYALALI, C.J.

The appellant was charged and convicted in the High Court at Dar es Salaam for the offence of murder c/s 196 of the Penal Code and was sentenced to suffer death by hanging. He is now appealing to this court against conviction and sentence. There is no merit whatsoever in the appeal as all the material facts defence
the common ground between the parties and the only probable/and which was raised by the appellant was that he killed his grandfather through provocation by witchcraft.

The appellant had two children, that is, a daughter aged 5 years and a son aged slightly over a year. Both contracted a feverish disease and the appellant consulted witch-doctors who told him that his grandfather had bewitched them. The son died on the 6th March, 1979 and the daughter on the 12th March, 1979. When the deceased came to the house of the appellant soon after the death of the daughter, the appellant suddenly picked up a knife and stabbed the deceased with in the stomach. The deceased died from his wounds soon afterwards.

The only point for consideration and decision in this case is whether the defence of provocation by witchcraft can stand on the facts of this case. The learned trial judge specifically considered the point in the light of the authorities and came to the conclusion that the facts of the case did not support such a defence. The learned trial judge specifically directed his mind to the principles laid down in the case of ERIA GALIKUWA v. REX 18 E.A.C.A. p. 175. We agree with the trial judge that the facts of this case cannot support the defence of provocation by witchcraft, and we dismiss the appeal in its entirety.

DATED at DAR ES SALAAM this...19th.....of...August.....1982.

(F. L. NYALALI)

CHIEF JUSTICE

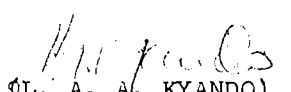
(L. M. MAKAME)

JUSTICE OF APPEAL

(R. H. KISANGA)

JUSTICE OF APPEAL

I certify that this is a true copy
of the original


(L. A. A. KYANDO)

DEPUTY REGISTRAR