

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CORAM: MUSTAFA, J.A.; KISANGA, J.A. And OMAR, J.A.

CRIMINAL APPEAL NO. 105 OF 1985

ANTHONY JOSEPH MBINGA. APPELLANT

VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the High
Court of Tanzania at Mtwara) (Msumi, J.)
dated the 2nd day of July, 1985

in

Criminal Sessions Case No. 6 of 1984

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was convicted of murder at the High Court and he is now appealing against his conviction.

The appellant and the deceased had lived together, either as husband and wife or man and mistress. However some considerable time before the incident which gave rise to this charge, they had either divorced or separated.

On or about 10th October, 1981, at Namilema village in the District of Lindi, there was a festival celebration at night. The appellant met the deceased at that function. According to an extra judicial statement made by the appellant to P.W.8, a Justice of the Peace, the appellant had asked the deceased to join him and the deceased refused saying "what are you calling me for when your time is gone". The appellant stated that he was so provoked and angry by that statement that he decided to stab her. He did so and later tried to stab and kill himself. His attempt at suicide was unsuccessful.

...../2.

Apart from this extra judicial statement which amounted to a confession, there was the evidence of a dying declaration by the deceased to P.W.1, P.W.2 and P.W.3 to the effect that it was the appellant who had stabbed her.

There was also the evidence of P.W.7, who was a militiaman and who had arrested the appellant after the incident. He stated that on being arrested, the appellant had told P.W.7 that he, the appellant, had killed the deceased.

The deceased, according to the post mortem examination suffered 11 stab wounds, inflicted by a sharp instrument, her liver was cut and death was due to haemorrhage as a result of multiple puncture wounds.

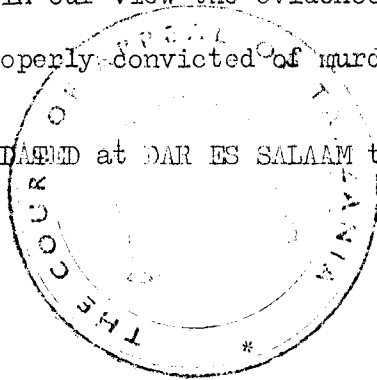
The appellant gave evidence and called no witnesses. In court he denied that he had made a statement to the Justice of the Peace in the terms as it was produced in court. We may mention at this stage that when the extra judicial statement was produced by P.W.8, no objection at all was made as to its correctness or admissibility. In court the appellant also denied the signature which appeared on the extra judicial statement was his. The trial judge rejected this testimony and held that the extra judicial statement was a true account of what the appellant had told P.W.8, and was prepared to act on it. The trial judge also found that there was no provocation. He inferred malice from the nature of the weapon used, the number of stab wounds inflicted and the force used in the stabbing. The assessors also found that the appellant was guilty of murder.

...../3.

Mr. Rweyemamu for the appellant has submitted before us that the appellant was provoked by the deceased when she told the appellant that "your time is gone". That issue was put to the assessors by the trial judge. We do not agree that such a statement could possibly amount to a legal provocation assuming it was in fact made. Such a submission did not find favour with the trial court and we think it is completely without merit.

In our view the evidence established clearly that the appellant was properly convicted of murder as charged. The appeal is dismissed.

MADE at DAR ES SALAAM this 8th day of October, 1986



A. MUSTAFA

JUSTICE OF APPEAL

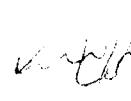
R. H. KISANGA

JUSTICE OF APPEAL

A. M. A. OMAR

JUSTICE OF APPEAL

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


(J. H. MSOPPE)

DEPUTY REGISTRAR