

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: OMAR, J.A., MUKULU, J.A., And MAPIGIRI, Ag. J.A.)

CRIMINAL APPEAL NO. 44 OF 1986

1. ZOA HASSANI }
2. ALI RASHIDI } APPELLANTS
VERSUS

THE REPUBLIC. RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Dar es Salaam)
(Singh, J.) dated the 10th day of
March, 1986

in

Criminal Sessions Case No. 11 of 1984

JUDGMENT OF THE COURT

OMAR, J.A.:

The two appellants were charged with and convicted of murder of one Katakwa Noel @ Mombasa. They are now appealing.

P.W.1 Robert Noel the brother of the deceased stated that he was at Usagara Village Mheza area on the night of 11th September, 1982 at 11 p.m. watching traditional dances when he saw his brother Katakwa and one Abdallah struggling over a knife. There was a pressure lamp burning. Then there came the first appellant Zoa and second appellant Ali who intervened and all attempted to get at the knife. In the course of the struggle the knife cut Zoa on the finger, deceased succeeded to get possession of the knife bent it and cut it to pieces and threw it away.

Zoa then shouted that he had been cut and he would not accept that and he must kill. Zoa approached Ali the second appellant and said, "Ali give me a knife." Ali was seen taking a knife from his loin and gave it to Zoa. Then Zoa was heard saying "I am looking for my enemy, I must kill him". The deceased who was standing aside could not have heard what Zoa said and he was suddenly struck on the chest. The impact of the stabbing made a noise as if the deceased had been hit with a fist, P.W.1 explained. The same night deceased was taken to hospital and P.W.1 never saw him alive again.

P.W.2 Esau Aman stated that on 11th September, 1982 at 2 p.m. while asleep in his house at Chumbageni he heard a knock at his door and saw the first appellant and one Abdallah, they entered his house and he noticed they were panting and Zoa had a cut wound on his palm and on the shoulder, Abdallah had no injury at all, they told him that

they had gone to Chumbageni to avoid being followed by trouble makers. The following day he went to work and never saw Zoa again till in the court room two years later.

The first appellant Zoa in his defence denied to have stabbed the deceased. He said he left immediately after he was cut during the struggle for a knife when he intervened in a fight to separate Abdalla and the deceased. Zoa said he went and rested in the house of Abdalla till the following morning when he left for home, on the way he met Abdalla and the latter advised him against going to his home and so they decided to go to the house of P.W.2 Esau at Chumbageni where they spent a day, and on the following day on Sunday he went ashore to buy fish and he was arrested and charged with this murder. Zoa denied stabbing deceased he denied taking a knife from Ally, the second appellant. Ally the second appellant in his defence said he was never at the traditional dances at Usagara on the material evening, and could not have given his knife to Zoa; he denied ever carrying a knife when he went walking.

The learned defence counsel Mr. Mramba argued that P.W.1 was the brother of the deceased; he would therefore have an interest to serve. Further the noise at the place made it unlikely that P.W.1 could have heard the ^{threat} / which he said was uttered by Zoa and even very unlikely that he Zoa could be seen by P.W.1 asking for a knife from the second appellant Ally. This aspect of the matter has been adequately dealt with by the learned trial judge and we see no reason to disagree with him. The defence of the appellants does not raise any doubt on the truthfulness of the prosecution story. In fact the conduct of Zoa bespeaks of culpability in going in the early hours of the morning to the house of a friend at Chumbageni to sleep in order to keep away from trouble makers. Or what Zoa himself said that Abdalla told him not to go to his home and that he should go elsewhere to remain for a while and so Zoa chose the house of P.W.2 to go and hide.

As we have pointed out, that aspect of credibility of witnesses had been satisfactorily dealt with by the learned trial judge and we have no reason to differ. We accordingly find that Zoa and Ally had been adequately identified to have jointly committed this offence.

We accordingly uphold conviction against both appellants and dismiss their appeal.

DATED at TANZANIA this 12th day of October, 1967.

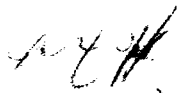
A. H. . . . JUDGE
JUSTICE OF APPEAL

...../3.

L. M. MFALILA
AG. JUSTICE OF APPEAL

D. P. MAPIGANO
AG. JUSTICE OF APPEAL

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


(J. H. BESOFFE)
SENIOR DEPUTY REGISTERAR.