

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KISANGA, Ag. C.J., OMAR, J.A., And LUBUVA, J.A.)

CRIMINAL APPEAL NO. 130 OF 1994

BETWEEN

SAIDI ABDALLAH. APPELLANT

AND

THE REPUBLIC. RESPONDENT

(Appeal from the conviction and sentence
of the High Court of Tanzania at Mtwara)

(Mkwawa, J.)

dated the 4th day of February, 1993

in

Criminal Sessions Case No. 4 of 1992

JUDGEMENT OF THE COURT

OMAR, J.A.:

The appellant Saidi Abdallah was charged with the murder of his fellow worker Saidi Hassan Mnanila and was convicted. He is now appealing.

The prosecution led evidence to the effect that on 16th April 1991 at Pungutini Village in Kilwa District the appellant and the deceased took their meal together in the house of PW.1 where they were employed as shamba boys. PW.2 the brother of PW.1 was present too during meal time. Both PW.1 and PW.2 heard the appellant entreating the deceased to go with him to the shamba to collect building poles. At first deceased refused but the appellant insisted, so the deceased turned to PW.1 and PW.1 permitted the deceased to go. The two then departed for the country side; the appellant borrowed a bill-hook from PW.1 and took it along. Shortly afterwards a loud sound was heard by PW.1 and PW.3 and the cries from the deceased screaming that Saidi was killing him.

PW.4 Sikujua d/o Pengere who was passing by at the time, saw the appellant running very fast to the bush and wielding a bill-hook, and a distance ahead she saw the deceased lying on the ground, he was already dead.

In the cautioned statement before ASP Matho in the C.I.D. Office at Kilwa Masoko the appellant confessed to killing the deceased by cutting his neck on the right side with a bill-hook. But he did so because he suspected that the deceased and his colleagues had hatched a plan to kill him.

In his defence the appellant agreed that he and deceased went out together that fateful day but on the way the deceased tried to throw him to the ground but he the appellant managed to escape from him and ran away he was not carrying a bill-hook and PW.4 who said she saw him running armed with a bill-hook was lying. The appellant then said that he did not know who killed the deceased.

Mr. Mkongwa the learned Counsel for the appellant submitted that the learned trial judge erred in law and in fact by finding the appellant guilty of murder instead of manslaughter. He added that the appellant was acting in self defence following what he perceived was a serious threat to his life, he the appellant did not deny attacking the deceased.

Mr. Matupa, the learned State Attorney, on the other hand supported the conviction of murder and he added that it was well founded because it is clear that he was vengeful from the way he persuaded his victim to follow him to the forest ostensibly to help him (the appellant) cut building poles but actually to afford him (the appellant) the opportunity to kill, which he did at the first available

opportunity.

We agree with the Counsel for the Republic that the defence of provocation is not available to him. If the appellant perceived any threat to his life he should have quietly disappeared from his place of work instead of doing what he did. If people were talking in riddless which made him understand that they were saying that they had him in their grip then that conception is not provocative enough to lead him to choose one unsuspecting person and lure him to his death.

We find on this account that the appeal is devoid of merit and so dismiss it in its entirety.


DATED at DAR ES SALAAM this 7th day of October, 1994.

R.H. KISANGA
Aq. CHIEF JUSTICE

A.M.A. OMAR
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

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


(M.S. SHANGALI)
DEPUTY REGISTRAR

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: RAMADHANI, J.A., SAMATTA, J.A., And LUGAKINGIRA, J.A.

CRIMINAL APPEAL NO. 131 OF 1994

BETWEEN

KILLIAN MDENDEMI APPELLANT

AND

THE REPUBLIC. RESPONDENT

(Appeal from the conviction and sentence
of the High Court of Tanzania at Songea)

(Kileo-PRM/Ext. Jur.)

dated the 17th day of May, 1994

in

Criminal Sessions Case No. 1 of 1994

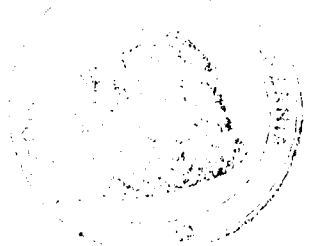
O R D E R

RAMADHANI, J.A.:

There is information from the Lindi Prison vide Telegram No. 516 of 18/5/99 to the effect that the Appellant died at the Central Prison, Dar es Salaam on 18/8/97. In that case this appeal abates under Rule 71 as properly submitted by Mr. Mkumbe, learned advocate for the appellant, and agreed upon by Mr. Mulokozi, Senior State Attorney for the Respondent/Republic.

It is so ordered.

DATED at MBEYA this 25th day of May, 1999.



A.S.L. RAMADHANI
JUSTICE OF APPEAL

B.A. SAMATTA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

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

(*Marija*)
A.G. MARIJA
DEPUTY REGISTRAR