

IN THE COURT OF APPEAL OF TANZANIA
AT BUKOBA
(CORAM: KILEO, J.A., MJASIRI, J.A. And MMILLA, J.A.)
CRIMINAL APPEAL NO. 314 OF 2015
KACHUKURA NSHEKANABO @ KAKOBEKA.....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT
(Appeal from the decision of the High Court of Tanzania at Bukoba)
(Khaday, J.)

dated the 26th June, 2015
in
Criminal Session Case No. 56 of 2008

JUDGMENT OF KILEO, J. A. (Dissenting on Sentencing)

19th & 24th February, 2016

KILEO, J.A.:

I have had the occasion to read the judgment of my sister judge Mjasiri, J. A. I am in complete agreement to the decision reached with regard to conviction. There was overwhelming evidence that the appellant was responsible for the bizarre killing of Bashemera Mbaruhohi and Jonasia Obadia.

What I do not endorse is the death penalty.

On a number of dissenting judgments on sentence I have explained why I have taken that stand. One such decision is **Abdi Adam @ Chakuu**

vs. Republic – Criminal Appeal No. 157 of 2009. I have not changed my position. What follows below is also what I stated in a recent dissenting judgment on sentence (**Chrizant John v. R.**, Criminal Appeal No. 313 of 2015) and I do mind repeating it.

“This Court, in **Mbushuu alias Dominic Mnyange and Another v R**, [1995] TLR 97, held that **the death penalty is inherently an inhuman, and degrading punishment and it is also so in its execution and it offends Article 13 (6) (d) and(c) of the Constitution of the United Republic of Tanzania.**

In my opinion the death penalty not only violates article 13 (6) (d) and (c) of the Constitution of the United Republic but it also violates the right to life which is enshrined in the Universal Declaration of Human Rights to which Tanzania is a signatory. The right to life is provided for in article 14 of our Constitution.

The death penalty is one sentence that is irreversible once it has been executed. US District Judge Michael Adrian Ponsor once said:

"A legal system relying on the death penalty will inevitably execute innocent people, not too often, one hopes, but undoubtedly sometimes. Mistakes will be made because it is simply not possible to do something that perfectly, all the time. Any honest proponent of

capital punishment must face this fact.” (Quoted from Pierre Pradervand’s: Messages of Life from Death Row)

Our criminal justice system cannot boast of being without flaws just as there are flaws even in more advanced jurisdictions. Former Missouri Supreme Court Chief Justice Charles B. Blackmar had this to say:

"The thought of executing an innocent person is repulsive. This is so even though the accused person may be a habitual criminal guilty of numerous crimes against persons and property. Yet few have the benefit of diligent service...the process is so fatally flawed that the only solution lies in abolishing capital punishment. Most nations with which we share a common heritage have already taken this step. The relatives of the victim have the right to demand swift and sure punishment, but they do not have the right to demand death when the process is so severely flawed".(Pierre Pradrvand, supra).

As I pointed out also in my previous dissenting judgments the death penalty which is obviously the gravest of the penalties as of now in our jurisdiction is the only sentence that has just one level of appeal. If simple cases like theft may sometimes have up to three levels of

our jurisdiction is the only sentence that has just one level of appeal.

If simple cases like theft may sometimes have up to three levels of appeal it is even more imperative to refrain from imposing the death penalty bearing in mind the possibility of error which may result in the taking of an innocent life.

In view of the above considerations and the other considerations I expressed in **Abdi Adam @ Chakuu vs. Republic,** supra, I would not uphold the death penalty and I would substitute therewith a life sentence."

The above remains to be my stand with regard to this case

Dated at Bukoba this 23rd day of February 2016.

E. A. KILEO
JUSTICE OF APPEAL

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


E.F. FUSSE
DEPUTY REGISTRAR
COURT OF APPEAL