

**IN THE COURT OF APPEAL OF TANZANIA  
AT BUKOBA**

**(CORAM: KILEO, J.A., MJASIRI, J.A. And MMILLA, J.A.)**

**CRIMINAL APPEAL NO. 315 OF 2015**

**ROMWALD WILLIAM.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania at Bukoba)**

**(Mwangesi, J.)**

**dated the 26<sup>th</sup> June, 2015**

**in**

**Criminal Session Case No. 37 of 2014**

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**JUDGMENT OF KILEO, J. A. (Dissenting on Sentence)**

**24<sup>th</sup> & 26<sup>th</sup> February, 2016**

**KILEO, J.A.:**

I have had opportunity to read the draft judgment prepared by my sister justice, Mjasiri JA. I entirely agree with her on the conclusion reached with regard to conviction. Evidence tendered at the trial overwhelmingly established that the appellant was the one who killed the deceased who happened to be his father in law. The crime was committed in day light. The appellant was very well known to the eye witnesses including his estranged wife. The appellant admitted the killing but claimed

that it was not intended but rather that he had seen something moving in his farm at around 21.30 hours and killed it only to discover later that it was his father in law. The trial High Court rightly found the defence to have failed to cast doubt on the case for the prosecution.

What I do not endorse is the death penalty.

I have, in the past given a number of dissenting judgments on the death sentence. Among them are: **Abdi Adam @ Chakuu vs. Republic** – Criminal Appeal No. 157 of 2009, **Ezra Makota and Majuto Ismail v. Republic**, Criminal Appeal No 115 of 2015, **Keneth Jonas @ Kasase v. Republic**, Criminal Appeal no. 156 of 2014 (all unreported), to mention just a few.

My considered view is as was held in **Mbushuu alias Dominic Mnyange and Another v.R** [1997] TLR 97 that **“the death penalty is inherently inhuman, cruel and degrading punishment and it is also so in its execution and it offends art 13(6)(d) and (e) of the Constitution of the United Republic of Tanzania.”**

I also hold the view that the death penalty violates the right to life which is enshrined in the Universal Declaration of Human rights to which

Tanzania is a signatory. It violates article 14 of our Constitution which caters for the right to life.

The death penalty is irreversible. Flaws cannot be ruled out completely in the justice system. Witnesses (where they are part of the process), prosecutors, and judges can all make mistakes. When this is coupled with flaws in the system it is inevitable that innocent people may be convicted of crimes they never committed. When death penalty is imposed and executed such mistakes cannot be put right. Amnesty International holds the view that:-

*The death penalty legitimizes an irreversible act of violence by the state and will inevitably claim innocent victims. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated*

An article posted on CBC news by Neil Macdonald on 13 February 2012 underscores the above conviction. He had this to say in his article on

**'The death penalty debate America isn't having':**

*'Add to that the fact that, according to the Death Penalty Information Centre, Texas has released 12 men from death row since 1973,*

*usually after prisoners' advocates discovered new evidence of their innocence, much of it resulting from DNA testing.*

*To be clear: Texas intended to put 12 innocent men to death.*

*Nationwide, over the same period, the number is 140'.*

Death penalty dehumanizes the convict as well as the entire society.

Renny Cushing, (Director of Murder Victims' families for Human Rights) once said:

*"If we let murderers turn us to murder, we become what we say we abhor".*

The death penalty is an outmoded system based on retribution: that he or she who takes another person's life should suffer the same fate. This does not however apply to other crimes. It is only in murder where the maxim *an eye for an eye* applies.

Considering that we do not have a perfect criminal justice system, considering that judges being human beings are not foolproof of error, considering that the death penalty is irreversible once executed and bearing in mind that the death penalty violates both articles 13 (6) (d) and (e) and 14 of the Constitution of the United Republic of Tanzania, I would

refrain from upholding the sentence of death by hanging imposed. I would  
~~in its place impose life imprisonment.~~

**DATED** at **BUKOBA** this    day of February 2016

E. A. KILEO  
**JUSTICE OF APPEAL**

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

  
E.F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**