

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM.

CRIMINAL SESSION CASE NO. 63 OF 1993

THE REPUBLIC.....

VERSUS

SIMBA OMARI NYENGO MATIMBWA.....

PROCEEDING

DUBESHI, J.

Date: 3/5/95

Coram: Dubeshi, J

For the Republic - Mr. Mwengela c/a

For the defence - Mr. Ngatunga, T.L.C.

Issue: It is true.

CC: Swabin.

FACTS: In February, 1992 the accused was employed as a woodcutter by someone living in Dar es Salaam. He acted as a foreman in Misogoso Kisarawe as well as in Bagamoyo. He married one Mwajabu d/o Othman and had other wives too rose residing in Kongowo Kibaha. In January, 1993, the, accused went to Bagamoyo. The accused wife Mwajabu started having an adulterous affair with deceased Ezekiel. On 2/2/93 around midnight the accused came back home and started looking for his wife at various places within the village, Mwajuma could not be traced at Nguvumali's place - Nguvumali being her grandfather. Somewhat suspiciously the accused went again to one of the huts belonging to Nguvumali and forced his way inside. It was total dark but his hands managed to touch two naked bodies together. A male voice (deceased) asked 'who is it'? The accused identified himself. His wife Mwajabu then rushed out naked and behind her the two men then grappled together. In the ensuing fight the accused stabbed the deceased. The deceased also managed to get outside where he fell down. He died shortly thereafter. The body of the deceased was taken to Kisarawe Hospital and a postmortem conducted. The cause of death was due to stab wound on various parts of the body. I tender the postmortem report before the court. (Defence no objection). The accused went to report the incident to the relevant authorities and subsequently a charge of murder was filed against him. That's all.

DEFENCE:

All that has been stated before this court is correct.

REPUBLIC:

Accused has no previous offence record. We leave it to the court to determine the sentence as it would deem fit.

DEFENCE: - MITIGATION.

No previous conviction and has been in remand since 2/2/93 and this is sufficient punishment. He is 70yrs old and has dependants including young children. We also ask court to take into account circumstances of the case. The deceased committed adultery with accused wife - hence there was grave provocation and offence committed in the heat of passion. There was no time to cool off. Accused does not deserve a stiff penalty. We pray he gets a lenient sentence That's all.

SENTENCE:

After considering the circumstances of this particular case and all that has been stated by the defence in mitigation, this court sentences the accused to three (3) years imprisonment.

Right of appeal explained.

A. G. Bubeshi
A. G. BUBESHI

JUDGE

3/5/1995