

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: Nyalali, C.J., Mwakasando, J.A. and Kisanqa, J.A.)

CRIMINAL APPEAL NO. 54 OF 1979

B E T W E E N

OKONG OKUE APPELLANT

and

THE REPUBLIC RESPONDENT

(Appeal from the conviction and
sentence of the High Court of
Tanzania at Arusha) (Mnzavas J.)
dated the 27th day of August, 1979,

IN

Criminal Sessions Case No. 104 of 1977

JUDGEMENT OF THE COURT

KISANGA, J.A.

The appellant Okong Okue was convicted of murder and sentenced to death by the High Court sitting at Moshi. He now appeals to this Court against both conviction and sentence.

Most of the facts in this case were not in dispute and may briefly be stated as follows:-

On 24.10.74 at about 3 p.m. the appellant went to the house of the deceased, his neighbour, and asked him to accompany him to his (appellant's) house. The deceased obliged and went away with the appellant leaving his wife at home. After sometime the deceased was heard raising an alarm from the appellant's home saying, "Anna, Anna I am dying." Anna was his wife. His wife answered the alarm and on arriving at the appellant's home she found the deceased being held to the ground by the appellant and one Nyangweso who has not been traced since. The appellant was at the time armed with an axe and a stick while Nyangweso held a panga. The deceased had sustained cut wounds on both legs and was bleeding profusely. When the deceased's wife asked the appellant and Nyangweso why they were killing the deceased, the appellant answered by hitting her on the head with a stick. The deceased's wife ran into the bush but returned to the scene soon after the appellant and Nyangweso had gone away. Neighbours were called to the scene and the

deceased informed them that he had been wounded by the appellant and Nyangweso. On the following morning the appellant returned to the scene and on being asked by his fellow villagers why he had wounded the deceased he answered rudely saying, "remove your rubbish from here" and after that he went away again leaving the deceased and his fellow villagers there. The deceased was carried to hospital but he died only shortly afterwards due to haemorrhage and shock resulting from multiple cut wounds.

In his defence the appellant denied the offence and in effect claimed that the deceased was killed by Nyangweso on the material night because of a debt of Shs. 50/- which the deceased failed to pay back to Nyangweso.

The learned trial judge found that the dying declaration of the deceased corroborated as it was by the evidence of the deceased's wife left him in no doubt that the deceased died from wounds inflicted jointly by both the appellant and the said Nyangweso. At the hearing of this appeal counsel for both sides stated in effect that they had nothing to say in favour of the appellant. We are satisfied that the appellant's conviction was well founded both on the facts and in law and there can be no ground for interfering. We accordingly dismiss the appeal.

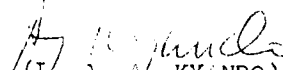
Dated at Arusha this day of 1960.

F. L. NYALALI
CHIEF JUSTICE

Y. M. M. MWAKASENDO
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

I certify that this is a true copy of the original


(L. A. A. KYANDO)
DEPUTY REGISTRAR

