

IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: NYALALI, C.J., MUSTAFA, J.A. and KISANGA J.A.)

CRIMINAL APPEAL NO.47 OF 1983

B E T W E E N

PYUZA KIZURI APPELLANT

a n d

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at SINGIDA)
(K.S.K.Lugakingira, J.) dated the
23rd day of September, 1983,
i n

Criminal Sessions Case No.34 of 1982

REASONS FOR JUDGEMENT

KISANGA, J.A.

The appellant appealed against his conviction of murder and the sentence of ~~death~~ passed on him by the High Court sitting at Singida. At the hearing of his appeal we dismissed it, reserving our reasons for doing so which reasons we now proceed to give.

The appellant is a member of the Wanyiramba tribe

and the deceased was a member of the Barbaig tribe. The two tribes lived in hostility with each other. On the day of the incident both the appellant and the deceased had been to a pombe party at the home of a co-villager. At the end of the party they went away at different times. Apparently the deceased left later at about sunset or 6 p.m. He was in a group of fellow Barbaig tribesmen and they were singing gayly as they headed for home. Somewhere on the way before reaching home the deceased was suddenly shot with an arrow in the upper chest by the appellant who waylaid the group. The deceased died only shortly afterwards from the arrow shot. The appellant's defence was a flat denial.

In convicting the appellant, the learned trial judge relied on the evidence of Moshi (P.W.9) and Msua (P.W.11) which was to the effect that as they were returning from the well where they had gone to fetch water, they met a group of Barbaig tribesmen and shortly afterwards they met the appellant who was armed with a bow and arrows and stalking the Barbaigs. He also relied on the evidence of Jumanne (P.W.6) who said, in effect, that on the

morning following the incident he went out with the appellant in search of "uyoga" in the course of which the appellant showed him a place where he said he had shot a Barbaig with an arrow on the previous evening, and the witness saw blood at the spot. Again he relied on the evidence of the appellant's own daughter, Moshi (P.W.12) who said that on the morning following the incident the appellant hid away some arrows by sticking them between the bricks and plastering them inside the wall of his house.

Mr. D.C.Mbezi who had argued the appeal before us submitted that P.W.9 and P.W.11 might have mistaken the appellant's identity, but we could see no possibility of such a mistake because the appellant was a fellow villager who was well known ^{to} the witnesses, and also because at the time of the identification the visibility was good.

Mr. Mbezi further submitted that P.W.6 was an unreliable witness because it was shown that he reported the alleged confession to him by the appellant some two days after it was allegedly made to him. The learned trial judge considered this aspect and found that there was a good reason for P.W.6 not reporting the confession promptly. It was clear from the evidence that following the killing of the deceased there was much tension between the deceased's tribesmen and the Wanyiramba. P.W.6 feared that a war might easily have broken out between the two groups if he disclosed the confession, and he did so only after the authorities, including the police, had managed to diffuse the tension and put the situation in the village under control. That explanation cannot be said to be unreasonable. Furthermore, the confession cannot but be true because it is consistent with some other evidence on the record.

We were satisfied that the appellant's confession together with his identification by P.W.9 and P.W.11 and his conduct of hiding away the arrows by burying and plastering them in the wall, provided ample evidence to justify his conviction. It was for these reasons that we dismissed his appeal as being without merit.

DATED at DODOMA this 23rd day of March, 1985.

(F. L. NYALALI)
CHIEF JUSTICE

(A. MUSTAFA)
JUSTICE OF APPEAL

(R. H. KISANGA)
JUSTICE OF APPEAL

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

(B. P. MOSHI)
SENIOR DEPUTY REGISTRAR