

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mustafa, Aq.C.J., Mwakasendo, J.A. and Kisanga, J.A.)

CRIMINAL APPEAL NO. 12 OF 1980

B E T W E E N

MNYAWANGA s/o MWIYOHA APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the High Court
of Tanzania at Morogoro) (Makame, J.) dated
the 14th day of August, 1978,

in

CRIMINAL SESSIONS CASE NO. 5 OF 1978

JUDGMENT OF THE COURT

MUSTAFA, Aq.C.J.:

There is no dispute that the appellant killed the deceased, with whom he was living at the time. The only issues before this Court are (1) whether the appellant was insane and (2) whether he killed under provocation.

The appellant had stated in his unsworn statement that he was mentally sick and that his sister P.W.4 Nyago and P.W.5 Tommy his brother-in-law both knew of his sickness. However both P.W.4 and P.W.5 categorically denied that the appellant had any mental illness at any time. After the killing the appellant immediately disappeared from that place, and returned to his own home at Dodoma, and went into hiding. That attitude and conduct clearly indicated that he was fully aware of what he had done and was wholly inconsistent with his allegation that he was insane.

As to the issue of provocation, according to the appellant himself, the deceased was alleged to have abused him by calling him "your mother's vagina". He did not say why she abused him. In any event, even if she did utter those words, they could not possibly amount to provocation to cause the appellant to cut

the deceased a number of times to death with a sime. In fact the trial judge disbelieved the appellant, and was of the view that this allegation was an afterthought.

We are satisfied that the conviction was justified, and dismiss the appeal.

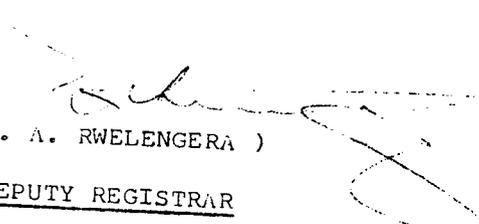
DATED at DAR ES SALAAM this 11th day of June, 1980.

A. MUSTAFA
Ag. 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.


(G. A. RWELENGERA)
DEPUTY REGISTRAR