IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CORAM: MUSTAFA, J.A.; KISANGA, J.A. And OMAR, J.A.

CRIMINAL APPEAL NO. 36 OF 1986

KANISIUS MTOWELA. . . . . APPELLANT

VERSUS

THE REPUBLIC. . . . . .RESPONDENT

(Appeal from the conviction of the High Court of Tanzania at Mtwara) (Samatta, J.) dated the 12th day of September, 1983

in

Criminal Sessions Case No. 7 of 1982

JUDGMENT OF THE COURT

MUSTAFA, J.A.:

The appellant was charged with and convicted of murder. He is appealing against his conviction.

The deceased was a cousin or relative of the appellant. There was evidence that the appellant and the deceased had not been on friendly terms; in fact there was credible evidence that the appellant had, on several occasions threatened the life of the deceased. Those threats arose because of disputes as the appellant had suspected the deceased to have been responsible for the death of the appellant's dog, and the appellant also suspected that the deceased had some affair with one of the appellant's wives.

In any event, on the material day, the deceased was drinking in the house of P.W.9, with other people. The appellant entered the compound, and with a bill hook split open the skull of the deceased. The deceased died shortly thereafter. According to the

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medical evidence, the cause of death was the fracture of the skull, which resulted in the brains coming out. No word was spoken by the appellant when he struck the deceased that fatal blow. P.W.3 who was drinking with the deceased, saw the appellant hitting the deceased with the bill hook. P.W.5 saw the appellant retrieving the bill hook from the skull of the deceased.

The appellant made an extra judicial statement to a Justice of the Peace admitting that he had killed the deceased. At the trial the appellant elected to remain silent and called no witnesses.

Mr. Rweyemamu appeared for the appellant. He submitted that there was insufficient evidence of malice aforethought. He stated only one blow was delivered by the appellant and that would indicate the lack of malice. He said that the appellant had harboured anger against the deceased because of the appellant's suspicion that the appellant's wife had an affair with the deceased, and that provided provocation.

We have carefully reviewed the evidence adduced at the trial. There was some suggestion that the appellant had suspected an affair between the deceased and the appellant's wife, but that happened several months before the attack. In fact that suspicion would appear to have been groundless. That suspicion could not possibly amount to provocation.

There was also uncontradicted evidence that after the killing, the appellant told P.W.3 "Naua kabisa". This clearly indicated that the appellant had intended to kill. Apart from that statement the weapon used, a bill hook, and the nature and suddenness of the attack clearly established that the killing was done with malice aforethought.

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There was some evidence that the appellant had partaken of liquor on the material day, but no evidence at all that he was drunk.

We are satisfied that the trial judge came to the right conclusion in convicting the appellant of murder as charged. We find no merit in the appeal which is dismissed.

DATED at DAR ES SALAAM this 7th day of October, 1986

A. MUSTAFA
JUSTICE OF APPEAL

R. H. KISANGA
JUSTICE OF APPEAL

A. M. A. OMAR
JUSTICE OF APPEAL

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

(J. H. MSOFFE)
DEPUTY REGISTRAR