

TANZANIA / JUDGMENT

# 1971051 TZHC Bukoba

COURT  
TZHCDECIDED  
1 January 1971

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IN THE HIGH COURT OF TANZANIA AT BUKOBA et al - Original Jurisdiction. CRIMINAL SESSIONS  
CASE NO.29 OF 1971, THE REPUBLIC. vs. . . . KPMUGIJIU d/o MPUMBUJE CHIRGE Mansi  
murderer contrary to section 195 of the Penal Code. JUDGMENT. EL-KINDY IgU The accused  
Kamagju d/o Mpumbuje, was charged with manslaughter contrary to section 195 of the Penal  
Code, Cap.16. The particulars alleged that he unlawfully killed one Emmanuel s/o Yakobo Petro  
Claver. She denied the charge. The prosecution was conducted by the learned State Attorney Mr.  
Ntahaye, and the defence was conducted by the learned counsel Mr. Buh, with the consent of the  
accused, Mr. Richard Ndyebora and Francis Kahabuka sat with me assessors. The accused was  
the first wife of Yakobo Petro (P.h.4). She had been living with him for 10 years, but they began  
living apart for the last two years. It would appear that she did not deliver any child with Yakobo.  
although they separated, the accused still occupied her matrimonial house, and used the  
bananas from the same plantation. according to Yakobo, the accused was allocated her own part,  
and Generosa (P.1J,2) his second wife had her own part as well. The two wives were in the same  
compound and their houses faced each other. Generosa has lived with Yakobo for five years, and  
she had children by him, one of them was the deceased Emmanuel s/o Yakobo Petro Claver.  
According to Generosa from the time she began to produce children she had been constantly  
quarrelling/fighting with the first wife, who appears to be considerably older than her. It was  
alleged that the accused took exception to her delivering children as they would inherit while she  
did not have any children. On the evening, the two wives fought, while their husband was  
in the house of the second wife, and in the course of that fight the accused aimed a stick blow at  
Generosa, but the stick blow missed Generosa and fell on the head of the months-old Emmanuel  
who was tied on the back of his mother. The baby was taken to dispensary at Minziro on the same  
evening, but he died at 10 p.m. on the following day. The body was brought to Bukoba  
Government Hospital where Dr. Othman (P. :i) examined it. This was on the 2nd of July, 1970. The  
doctor found that the baby had suffered compound fracture of the occipital bone, and on opening  
the skull, a cut wound of 2" x 1" deep was seen on the occipital bone. The occipital bone was also  
fractured, and there was half clotted blood in the brain. In his opinion death was due to  
intracranial haemorrhage caused by the wound on the head. It was clear, therefore, as to what  
was the cause of death of the baby Emmanuel. according to Generosa, she was outside her house  
peeling bananas 4-01 —2- when the accused went to her, armed with a stick, and struck her on  
her forehead. The scar on the forehead was still visible. After that, she said, she decided to run  
away to her elder relative, but, the accused followed her and assaulted her with the stick as she

ran along. She said that she was beaten 4 times. She alleged that as she turned her head back, she saw the accused ready to strike again, she avoided the blow, and the blow fell on her baby. She said she became angry and jumped at the accused, and bit her with her teeth on her lower lip. Then Joseph Kabuka appeared, and took away the stick the accused was holding. The accused on the other hand, gave a different story. She said that she heard Generosa and their husband quarrelling at their house and that she went to see what was happening. On her arrival, she said, Generosa turned to attack her and she ran towards her own house and that Generosa 'pursued' her. It was then that she picked up a stick and in striking at Generosa, she accidentally struck the baby who was on her back. Both Generosa and Yakobo denied that there had been any previous quarrel between them that evening. But Generosa told the Executive Officer (P.5), in the following morning, that she had been assaulted by her husband and that their child too was assaulted by her husband. As a result, the Executive Officer sent his messenger to arrest Yakobo, and Yakobo was in fact arrested and locked up. However, Yakobo told the Executive Officer that he was not the one who assaulted Generosa and the baby, and the Executive Officer followed Generosa at the dispensary and asked her again. This time she said that she had been assaulted by the accused. Hence the arrest of the accused. The issue, in this case, is simple. It is that of credibility of witnesses. When the fight began only the two women were present, and therefore I have to go by their evidence. Their husband was in the house of the second wife. It does not appear that he took any interest in keeping his wives from fighting until when he heard alarm that his son was dying. Then he came out of the house and picked the deceased from the ground where he had been laid. Kabuka said that he saw the accused strike at Generosa, and that the blow fell on the child. This does not appear to be credible in the light of what he said himself at the start of his evidence. He said that he went to the scene after he heard the alarm made by Yakobo that his son was dying. If so, then the deceased must have been assaulted already when he arrived at the scene. I cannot, therefore, say that I can safely rely on his evidence. Then I am left with the word of Generosa as against that of the accused as to what actually happened until the deceased was hit. The first assessor believed the evidence of Generosa, and found that the accused deliberately followed Generosa, provoked a fight, and struggled with the stick while well knowing that Generosa was carrying a baby on her back, as he held that the baby was visible. He rejected the version given by the accused and found her guilty as charged. However, the second assessor was of the view that the accused was not guilty and that the killing was accidental. This would indicate that he partly believed that the accused told this court. He seemed to put the whole blame of what happened, and the bad relationship which existed between the two wives, on the husband who, he said, had failed to satisfy his wives. For myself, I would say that the explanation given by the accused was not improbable, bearing in mind what Generosa herself said inadvertently. I am satisfied that if there had not been any quarrel between Generosa and her husband, she would not have told the Executive Officer that it was her husband who had assaulted her and the deceased. It could very well be true that Generosa and her husband had been quarrelling in their house and when the accused went to see what was going on she could have turned against the accused as the accused alleged. Whatever was the true position, I am not satisfied that the version given by Generosa was reliable in the circumstances. It is of course not in dispute that the blow the accused gave was the one which led to the death of the deceased. In

the circumstances, the death of Emmaniel could have been accidental as the accused and the second assessor believed, or he could have died when the accused was acting in self-defence to the attacks of GcnGroza6 These possibilities were not entirely ruled out. I give the accused the benefit of doubt, and I acquit her of the charge. Delivered in Court on 17th day, 1971- -7 7 (Z:1No EKI1Y.) PCTING JUDGL•. Mr. Ntabayc, State Attorney for the Republic. Mr. Buh Cornsal for the Defence.

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