

TANZANIA / JUDGMENT

19820917 TZHC Tabora

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- 113 - IN THE HIGH COURT OF TANZANIA AT TABORA ORIGINAL JURISDICTION (Tabora Registry) CRIMINAL SESSIONS CASE NO. 33 OF 1982 THE REPUBLIC versus

1. MARTIN JIMY KATERA 2 CHRISTOPHER URIC CHILILE: n;r'. rnTr'T OF id (' - 'uy o section 196 of the Penal Code. 10 J Ti 1) G M F N T RUBAMA, J. MARTIN JIMY KATERA, the first accused and CHRISTOPHER URIO, the second accused stand charged with two counts of murder. It has been alleged that they with malice aforethought jointly and together kill Lutz Klante and Alnoor Sumar on 6th May, 1982 The prosecution called twenty two witnesses to prove the following: that Lutz Ylanta and Alnoor Sljr3r were dead 20 and that they had died of violent deaths. that the two accused persons were the killers of the said Lutz Kiante and Alnoor Sumar and that the two accused persons had killed the two above mentioned deceased with malice aforethought. It is not in dispute that Lutz K;ante and Alnoor Sumar are dead and that they died on 6th May, 1982. There is plenty of evidence in this regard. past mortem examination on the body of Lutz Klante was performed by Dr. Amos Karumuna (P.W.20) on 7th May, 1982 after the body had been identified to him by one Kiens Dollack and Dr. Nkulila (P.W.14) as being, that of Lutz Klante Dr. Karumuna(P,W.20) opined that Lutz Kiante had died: due to severe blood loss. Dr. Karumuna had earlier on 6th May, 1982 performed a post mortem examination on the body of Alnoor Sumar after the body had been identified to him by one Al'kariia Sumar and Shaf5,k Waiji (P.W.18) being Lhat of Ainnar Sumar 7 Dr. Karumuna stated that Alnoor Sumar's death was due to a punctured wound resulting in a laceration of the arch aorta and haemorrhage bilateral leading to a severe blood loss Dr. Amos Karumuna 40 (P.W.20) produced in court post mortem examination reports on Alnoor Sumar (exhibit p 9) and Lutz Kiance (exhibit (8). -114 - I accept the evidence of Dr. Amos Karumuna (PW.20) that both Lutz Kiante and Alnoor Sumar are dead and that they had both died as a result of severe loss of blood. - I further accept as a fact that both Lutz Kiante and Alnoor Sumar had died violent deaths Dr. Karumuna (P.W.20) testified that the wounds that had caused the severe loss of blood in respect of the two deceased had been bilateral wounds. I accept his testimony of how he (Dr. Karumuna) had come to that opinion after examining the said wounds The narration of the story that led to the violent deaths of the two deceased is started by John Stephen (P.W.1),.. He is the Head Watchman at the Igmba water ram, Tabora.. On 6/5/2, he left his home at Igombi village to go to work at 6.45 a.m,

When passing the vicinity of the house of Lutz Kianté, he noticed a trail left behind by what he believed were motor cycle tyres. He noticed the trail coming from Lutz Kianté's house joining the main road suspecting that a motor cycle belonging to Lutz Kianté had been stolen, he checked the shed where Lutz Kianté used to park his motor cycles. Lutz Kianté had three motorcycles - 20 John Stephen (P.W.1) saw only two parked. - Satisfied that one of the motor cycles belonging to Lutz Kianté had been stolen, he first went to work and then returned to report to Lutz Kianté about his suspicion. John Stephen (P.W.1) stated that John was at this time accompanied by another watchman, one Saidi Mrisho and Maulid Shabani (PW4 - a son of a working colleague. Lutz Kianté was awakened by John Stephen and told of the suspicion that one of his motor cycles had been stolen. - He returned inside his house and soon after came out if 30 the house accompanied by his wife. He and his wife, John Stephen, (P.W.1), Saidi Mrisho and Maulid Shabani (PW4) got into the motor vehicle of Lutz Kianté and set out to trace the stolen motor cycle. The motor vehicle was of a Land Rover. The party in the Land Rover followed the trail left by the stolen motor cycle to Itaga. At this time the trail was the main road. Then the trail left the main road but could be traced on a foot path. The Land Rover could only manage to cover a short distance of the foot path, the party abandoned the Land Rover, leaving it under the care of Mrs... Lutz Kianté. - Saidi Mrisho remained behind with Mrs. Lutz Kianté.,

- ... S-115-- John Stephen (P.W.1) testified further that he, Maulid Shabani (PW4) and Lutz Kianté continued to follow the trail left by the stolen motor cycle on foot up to a certain sand quarry. They stopped to ask the people working at the quarry whether or not they had seen anybody dragging or pushing a motor cycle pass there. They received a negative reply. Just then a motor vehicle of Isuzu make coming from the direction of the Tabora town appeared. The driver of this motor vehicle was asked the same question that had earlier on been posed to the people working at the sand quarry. The driver of the Isuzu motor vehicle answered positively. He told them that he had seen two people just a short distance away drag a motor cycle going towards town. Just then another motor vehicle, a lorry, appeared, going towards town. It was a Mercedes Benz being driven by an Indian. Lutz Kianté asked for and was given a lift on the lorry. Maulid Shabani (PW4) joined him. He and Maulid Shabani (PW4) got on the front cabin - driver's cabin - and the motor vehicle was driven off leaving John Stephen (PW1) behind. John Stephen stated that he had been left behind because at the time Lutz Kianté had been offered a lift, he was still talking to the driver of the Isuzu motor vehicle that had come from town trying to get the description of the people seen dragging or pushing the motor cycle. He (PW1) did not, however, succeed getting this information. Maulid Shabani (PW4) stated that while driving to town, they saw ahead of them two people dragging the motor cycle belonging to Kianté. Lutz Kianté asked the driver of the lorry on which they were riding to stop and the driver soon complied with the request. Lutz Kianté got out of the lorry and went towards the two people in possession of the motor cycle, crying out "thief", "thief". According to Maulid Shabani (PW4), these two people waved to Lutz Kianté to return to the lorry but Lutz Kianté would not obey the command. He was there upon shot by them on the thigh - an act that made Lutz Kianté heed the commands of

the people with the motor cycle. Maulid Shabani (P.4) testified further that Lutz Kiante returned to the motor vehicle and the driver \ of the lorry drove off but only for a short distance as the 40 motor vehicle was shot at forcing it to come to a stand still. The people who had the motor cycle went to the lorry and twice shot at Lutz Kiante. The driver of the motor vehicle was also shot. Both these died on the spot. The dead body of driver of the motor vehicle was later identified as that of Alnoor Sumar. Maulid Shabani (Pw'4) stated further that he too was shot at the shoulder and had to be admitted in hospital for four days. -j

- 116 - Maulid Shabani (pW4) stated that he could not identify their assailants 0 John Stephen (p.w.1) having been left behind by Lutz Kiarite and Maulid Shabani (P.w.4) decided to follow the two on foot. However, he soon after got a lift in a motor vehicle going to town. He got to an area that he (John Stephen) called 'MasacTala He saw the lorry on which Lutz Kiante and Maulid Shabani (P.W.4) were given a lift atoner' just off the road, He observed that one of the hind tyres had no pressure and the lorry was lying on its side. He also saw the motor cycle belonging to Lutz Kiante parked beside a mango tree off the road. As he could not see Lutz Kiante around, he looked around in search of him. He soon found him lying down, face down wards, off the lorry, dead. The driver of the lorry was lying inside the driver's cabin, also dead. Maulid Shabani (p.W.4) was nowhere to be seen. John Stephen 4 (P.W,1) asked the driver of the motor vehicle who had given him a lift to kindly take him to the Police Station to report the matter. The driver obliged. on the way he (John Stephen) saw Maulid Shabani (P.W.4) dazed and with a 20 shoulder injury. He took him to the police station and later to the Kitete Government Hospital where, he (Maulid Shabani) was admitted for treatment for four days. John Stephen (p. 1 .1) stated that he did not see the assailants of Lutz Kiante, Alnoor Sumar and Maulid Shabani. He had, however, only heard five gun shots when he had just set out from the sand quarry to follow Lutz Kiante and Maulid Shabani (P,w.4) and before he had got a lift in a motor vehicle to the scene of crime. Francis Alphonse a peasant farmer living at No. 30 Kilolen, Tabora, testified that he had set out from his home at about 7 a.m. to go and cut some poles. He wanted the poles for making a stand "kichanja" on which to dry maize. Francis Alphonse (P.w.2) testified further that at Masagala area, he found two people push a motor cycle towards town. The front tyre of the motor cycle, according to Francis Alphonse, was not rotating and the steering was not straight. He recognized one of these two people as a former employer of his. He greeted his former employer. Francis Alphonse (P.W.2) stated that both, his former employer and the second 40 person in the company of his former employer answered his greetings. Francis Alphonse then helped push the motor cycle from behind for a distance of about seven hundred paces. During the pushing, he was nearer the colleague of his former employer; he noticed this person was carrying a gun strapped over his shoulder / I. --117.- He then left this party of two people to go on with his work of cutting poles. He cut three poles and started to walk to town. Francis Alphonse (p.w.62) testified further that while returning to town he could not see his former employer and his colleague push their motor cycle towards town. He then saw a motor vehicle driven by an Indian going towards Masagala, the direction from whence he was coming. Shortly thereafter

40 Regional Blocks He also stated that he had made bricks for the 1st accused at Kilolept near the Shell Petrol Tanks for two days e - 118 - ¶ t Franc: Ls Alphonse stated further that he had been working at these places only with Lucas Mvula (PW.00 He further stated that he had known the 1st accused by face and not by his name and that he had managed to note the face of the second accused at the time he had been helping 1st accused and the 2nd accused push the motorcycle. Lucas Mvula (P.W.) confirmed Francis Alphonse's story that Francis 'lphonse had worked under him making bricks at the 1st accused saw mill at Kiloleni for two days and that the 1st accused used, during this time; 't' e price. He further stated that the 10 1st accused had at one time made payment to Francis Alphonse stating that he was going to make an equivalent reduction when paying Lucas Mvula (P.w.15) for the work done. Ordinarily all payments for brick making by Lucas Mbula (P.W.15) were made by the 1st accused to Lucas Mvula (P.w.15) with whom he (1st accused) had entered a labour only contract and that it was Lucas Mvula who eventually made payments to the people he had engaged to help him make bricks. He (Lucas Mvula) stated that on this particular occasion, Francis Alphonse urgently wanted money and that he had advised him to wait for the 1st accused who when so approached by Lucas Mvula p.W.15) agreed to make the payment on the condition I have noted above. Lucas Mvula did, however, state that Francis Alphonse was only involved in the watering of bricks for the 1st accused brother at Cheyo for one day and not made bricks for three days as he (Francis Alphonse) had stated in court. Lucia Ngalawa

(p.W3) testified that she had seen and greeted the 2nd accused on the morning of 5th May, 1982 when she was on her way from Itaga where she lives to Tabora. She had left home very early in the morning - she stated during her examination in chief as 5 am. but changed it to 6.3 a.m., during re-examination - to come to Tabora Police Station in connection with a case the police were handling involving the theft of a sewing machine from theirs. She was with her brother called Sylevester when she saw the 2nd accused standing besides the road to Tabora. She 'et nu "Habari za asubuhi" and the 2nd accused had replied "safi". She passed by. Her attention was drawn shortly after by the crossing of the road to the other side by the 2nd accused. She turned back after a distance of about six hundred paces to look. She saw the 2nd accused with another person she could not identify push a motor cycle towards Tabora. She and her brother went to the Police Station where they remained up to 1130 n.m. At about 9.30 a.m. a report of the killing of a European was received at the police station. Lucia Ngalawa (p.W.3) stated further that on hearing of this report, she and her brother went outside the police station and started debating the possibility that the people they had seen dragging a motor cycle earlier on that morning might be involved. She made a report to the police there and then a short statement was taken from her on that day. She was on 10/5/82 taken to the police station to participate in an identification parade conducted by ASP Maneno Zavalla (P.W.6). She identified the 2nd accused as the person she had seen and greeted on the early morning of 6th May, 1982 when she was with her brother coming to Tabora police Station and shortly after seen cross the road to the other side and later seen drag a motor cycle with another person towards Tabora. The prosecution called Henry Mgogolo (p.W.5) to establish that the 2nd accused with another person had been to Igombi on the evening of 5th May, 1982. Henry Mgogolo (p.W.5), at the time a Resident Engineer at Igombi in the employment of H. P., Ghulf Consultants testified that he had seen the 2nd accused with another person coming from the direction of the house of Lutz Klante passing his house yard to join the main road. He testified further that he had not known the 2nd accused before this day and that the 2nd accused and his colleague looked to him strangers in the area. He had been at Igombi Water Dam area since 1977 and had come to know the faces of the employees at the Igombi Water Dam and those of the villagers nearby. He refuted the defence suggestion during cross-examination that he (Henry Mgogolo) had picked the 2nd accused at an identification parade organised by one Inspector Kikides - because he had known who the 2nd accused was before this day. As Francis Alphonse (P.W.2), Lucia Ngalawa (P.W.3) and Henry Mgogolo (p.W.5) have testified that they knew the accused people they had seen at various times on 6th May, 1982 in the case of P.W.2 and P.W.3 and on 5th May, 1982 in the case of p.W.5, the police organised various identification parades involving several identifying witnesses. ASP Maneno Zavalla (P.W.) organised two identification parades on 10th May, 1982. In each parade, twelve people, including two suspects, took part. ASP Maneno Zavalla (P.W.6) testified that he had assigned to Detective Constable Raymond (p.W.8) the duty of taking care of the identifying witnesses before they went to the identification parade. These were put in the office of the Officer Commanding the Police Station (OC) which faces the School Street, Tabora. The parade was being organised by ASP Maneno Zavalla (P.W.6) at the back yard of the Police Station and the

identifying witnesses oilU nc)L therefore see its preparation0 Detective tohstable Raymond (p0W08) was instructed to ensure that the 10 identifyihg witnesses did not communicate with oUtsiders ASP Naneno Zavalla (p.w.6) fur „Vier appointed Detective Constable Fred (PW,g) to take care of the identifying witnesses after they had been to the identification parade. He istructed Detective C'nstable Fred (p0W09) to stay in the Police Exhibit Room and to ensure that they communicated with no oitsiders. Both Detective Constable Raymond (pw8) and Detective Co- table Fred (PW.9) participated in tue two parades organised by ASP Maneno zavalla (p.w,6) in the same roles and using the same two offices and were instruted by ASP Maneno Zavalla 20 to observe the same guiding principles. on the first parade, five identifying witnesses tok part. The two suspects were the 1st and 2nd accused persons who had been told the purpose of the identification parade by the organising officer, ASP Maneno Zavalla and told to take any positions they chose Each one cook the positin of his choise. The first identifying witness on the parade was Lucia Ngalawa (P.,w.3). ASP Manenb Zavalla (p.w06) stated that Lucia Ngaiawa, without hasitation touched the shoulder of the 2nd accused indicating that he was the person sbe had seen and greeted on the road to 30 Tabora on the morning of 6/5/82 and had later seen with another person she could not identify drag a motor cycle towards Tabora0 ASP Naneno Zavalla (p 0 w.,6) testified further that he had told the two accused that they could change into different attires before taking part in the identification parades0 This fact is denied by both accused persons.. Both accused persons testified that they had asked to change into clean clothes to fit in a parade composed of ten other clean participants. This stand of the accused was supported by EraSto Biga 40 (D.W,3) and Kamara Katera (DW.4) both held as suspects in the same case up to July, 1982. / •- 121 L The two eccted f therdenLe t1:e stment by AST Maneno .availa nW, tht he ha bt been selecUrM the suspects fo: partici.padoh in each parde and that he had let the fbur suspects then under the police custody ptck themselves into iwe fo pUrpoes of partticipation in the tw parades ASh ianeno Zavaila (p.G) further testified that in both identtffideiion parades he had conducted, only the 2nd acc:sed .:as id.- ntifiad by Lucia iaae (p.03) and that netth tit Yusuf nor nmc°ucl was identified by ay 10 indentifying witness as had been put to him by the defence. ASP Mareno Zavaila (pWT.) stated that in selecting the participacts in the parades he had organised, he chose people thstphsically resembled the suspects he was puttifl •on the pssde: ASP Elliot Nkemwa (p,W7), the Officer Commanding the police Station. Tabora was the one who had conducted the identification parcde on 11/5/2 ASP alkemwa testified that there was only one iderifci.ng witness. He was Franc1 Alphonse (P.1i2) Betarc theparade he (Francis Alphnse) 20 was kept into the off i:e of the officer conducting the parade undec..Lhe evo ji letecttc S.ogent priskilla Franct. Alphonse ::p:.2) was takent the Exhibit Room after he had been to the idanti.fi cation parade and placed under the cane of etecc.tvc Constable Fred (P) Detective Set Prisilla and Detective Constable Fred were to see to it that Fra:.Cio Alphonse (p.2) cid not communicate with any carson while under their respective cares and the two above mentioned officials stated that Francis Alphonse did rt. commuri±c ate with any outsider while under their respective 30 caresQ ASP hAic; Mkernwa W.7) testified that when Francis Alphonse war aent to him to oart1cipate or the parade as an identifyino w:i:Lriess he warned him that he was to touch the shoulder of any porcon he had

seen on the morning of 6J 5/2 at Masagala area rgglng a motor cycle and whom he later helped to drac., ASI' Elliot jlkemws (p.,w.7) stated further that Francis Alphonse (P.w had no hesitation in picking out the 1st and 2nd accus. from the parade. The two accused had earlier on during the preparation of the parade when 40 Francis Alphonse was pl. away from the place to stop him fro)-n eeing its precaration, told to take any position In the parade they liked and had in fact done so. i t

- 122 The 1st and 2nd accused were arrested on 7th May, 1982. The 1st accused saw rutll and hoosa were searched for fire arms but none was found0 Th 2nd accused house was also for fire arms but nothing was founth The inVestigatin6 otcers in this case have stated that they had search warraht, a fact which is contested by the defence 0 I shall cOme back to this issue later on in the judgment. The accused have als. questioned the legality df their longer than twenty four hours stay in poifice custody following their arrests before they were taku t cour t I shall ayin cbme to this issue 10 in due course. The 1st and 2nd accused gave evidence and called witnesses They both raised alibii detailihg their movements on the 6th May, 1982, the day Lutz i.lante and Alnoor Sumar were killed Martin Jimy Katera, the 1st accused, is a businessman, owning a saw mill situated at the Kiloleni Industrial area. He statec that he had left his home at Cheyc area 1 Tab.ra, to go tP the office via the house of the 2nd accused. He had a day before accepted to give a lift to the 2nd accused.. The 1st acused owns a motor cycle. He got to the house Of 20 the 2nd accused about tY•. same time he had left his home
- i.e. 8 a.m. He lives near the 2nd accused. He and the 2rd aused were aoree d ::hat they first go to the Urasa Batteries to take the 2nd accused battery. The two accused, riding a motor cycle with the 1st accused In cntrol, got to Urasa Batteries between 8.15 am. and 8.30.. Urasg (p.W.16), the proprietor of the Urasa Batteries attended them, apparently promptly. They left Urasa Batteries at about 8.45 a.m, heading for the 1st accused office. The 1st te' .ified further that in accordance with 30 his acreem. at with the 2nd accused, he was left behind in his office leaving the rnoto. cycle under the care of the 2nd accused. The 2nd accused left to do his work. He, 1st accuse4 left his office for break—fast after which he returned to his office. He was loined by the 2nd accused between 10015 a.m. and 10.30 a n The 1st accused testified 1further that when the 2nd accu- sed returned, to hio off i , he (2nd accused) requested that he be cscrtrted home. The 1st accused obliged and set out on the motor cy:le to escort hisfriend. The two did 40 not, however, get to 'd.e house of the 2nd accused directly. They were stopped at a place near the General Tyre Offices by the driver of an Army motor vehicle. He, 1st accused knew the person. He was asked by this driver whether or not he had any information of a theft at Kaflyeflyera stone guarry and he (1st Accud) v'-ljed that he had no such information, y 12.3 — The driver of the Army motor vehicle left him and the 2nd accused on the road. te ad the 2nd accused debated whether r not they should go in search of mce inforrrr3tion about the theft. He was persuaded by the 2nd accused to go to Kanyenyera in search' of this information., He (1st accused) decided th' go and at the same tii're to take this opportunity of the visit to remind the stone guarry people to fulfil his orders tot sand and stone dust which he uses for making bricks. The 1st accused stated further that while on their way with the 2nd accused to Kanyenyera, they' stopped at a place 10 where

they had found a crowd. They recognised one person whom they called to ask about the reason for the crowding. This place was not far from Kanyenyera. The 1st accused stated that this person told them that a motor cycle had been stolen. 1st accused estimated the time that this information was passed to them as about 11 a.m. they were not satisfied with the accuracy of this information and hence set for Kanyenyera. The 1st accused stated that at Kanyenyera stone quarry, they found the head clerk of the quarry 1:10 is called Winchi. He asked Winchi about the Lhe*, the 2nd accused had been informed of by the Attorney General they had met near the General Tyre Offices. Winchi told them (he and the 2nd accused) that thieves had stolen a motor cycle of a certain European and that this European together with another person had been killed while trying to recover the stolen motor cycle. The 1st accused stated that that was the first time he had heard of the killing and that he had learned of this in the presence of the Chief Clerk of the Stone quarry. He did not know the place the killings had taken place nor did he go there. This information satisfied him and he decided to return home after he had reminded Winchi to satisfy his

orders.

The 1st accused went on to detail his movements of 6/5/82 by stating that he and the 2nd accused set for his home to put oil in the motor cycle and to collect his clothes to take to the laundry. Before getting to his house, however, he was requested by the 2nd accused that they pass via the White Fathers Mission so that he (2nd accused) may make payment to the White Fathers. The 2nd accused had purchased a motor cycle from the White Fathers. The 2nd accused had purchased a motor cycle from the White Fathers and the payment was to meet this obligation.

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- 124 - The 1st and 2nd accused agreed that they visit the White Fathers after depositing the 1st accused clothes at the laundry. Accordingly the two took the 1st accused clothes to the laundry and later went to the White Fathers Mission. The 1st accused estimated the time of their arrival as 11 a.m.. The 2nd accused made the payment and a receipt was issued to him. The 1st accused of... could not put oil in his motor cycle when he got to his house as he had hoped. He accordingly decided to go to a petrol station to put oil. He and the 2nd accused rode the 1st accused motor cycle to a petrol station; he remained at the petrol station to put oil while the 2nd accused went to the Immigration Offices. He (1st accused) put oil in his motor cycle and went to join the 2nd accused at the Immigration Offices. He found the 2nd accused talking to the Immigration Officers whom he greeted. He then waited for the 2nd accused to finish his business. After this visit, he 1st accused took the 2nd accused home and he then left for his house to for food. The 1st accused stated that he had left the 2nd accused at 1 p.m. His house girl prepared food for him. While eating, he was joined by Erasto Bigabo (D.w.3). This was 2.30 p.m. After food, he left for
- his office taking the School Street. He stopped at the Police Station to have a look at the motor vehicle on which Lutz Kianté had earlier in the morning ridden. The 1st accused stated that he knew the driver of this motor vehicle, Alnoor Sumar, now deceased and felt

very sorry at what had happened to him. He was found there by Detective Sergeant Andrew Makaza. After an exchange of some greetings he left to go to his place of work where he stayed up to 4.30 p.m. when he closed. He again passed via the police station from his place of work. He was stopped by Detective Sergeant Andrew Makaza who wanted to know from him (the 1st accused) about the registration of his company. He was asked to go to the Police Station on the next day to give the Police officer a photo copy of the registration

- on certificate. The 1st accused went on to testify- 40 that he then left for his home where he changed into sports wear and joined his young brother Erasto Bigabo
- 125 (D. 77.3) to go for Games at the Tabora Boys Secondary School. Martin Jimmy Katara, the 1st accused also gave an account of his movements on 5/5/82. He stated that he had got to his office at 8.30 a.m. passing via the TRIDEP Offices to collect a cheque which he stated he banked on 7/5/82. On his arrival at his office, he found some customers waiting for him. He talked to them and then returned to his house to collect some money. He then returned to his office to give 10 shs.1,000/= to his customers that he had found in his office earlier on the day. His customers left and he (1st accused) continued with his work at the office up to the afternoon when he left for food at his home. After lunch he returned to his office where he remained till the time he closed his office and set for home. The 1st accused further stated that he received two guests on the evening - one Mr. Willa and "a colleague of his. These were from the Ministry of Agriculture Training and Research Institute. The 1st accused 20 stated that he stayed with his guests up to 8 p.m. when they left. He did not go out. The 1st accused stated in his examination in chief that he could not remember whether or not he had seen the 2nd accused on this day (5/5/82). The 1st accused in his evidence further stated that he had employed Lucas Mvula (p.w.15) to make bricks for him at Cheyo and Kiloleni Industrial area. He was positive that Francis Alphonse (P.W.2)1 was not one of the labourers that used to help Lucas Mvula (P.w.15) 30 make bricks. He further stated that he never made payments directly to the labourers assisting Lucas Mvula (p.77.15); these were recruited and paid by Lucas Mvula (P. 17.15) himself; the contract to make bricks was between him (1st accused) and Lucas Mvula (P. 1,7.15). The 1st accused also testified on the conduct of identification parades which were held at the back yard of the police station. He stated that on 10/5/82, at about 1145 a.m., an identification parade in which he had taken part as one of the two suspects was held. He and the 2nd accused were called out by names to participate in the parade. In this parade, there were
- 126 five identifying witnesses - the first one was a woman. This Witness picked out the 2nd accused as the person she had seen on 5/5/82. I pose here to state that the 1st accused here refers to the parade that was conducted by ASP Zavalls (P.6). The identifying witness was Lucia Malawa (P.W3). The 1st accused further stated that at this parade, three other people were present - identifying witnesses and that Maulid Shabani (P. 11 04) had stated that the parade that he knew only one of the assailants and that that 10 assailant was not on the identification parade. The 1st accused stated further that notwithstanding hesitancy by Maulid Shabani (P77.4)9 ASP Maneno Zavalla urged him to look at the participants more -'

carefully. The 1st accused rather testified on the identification parade organised by Inspector Kikedes. We stated that the 2nd accused had complained to Inspector Kikedes that he could not take part on the parade because he was dirty while the other participants' pants were not but was told by Inspector Kikedes not to worry as the conduct of the parade was just a formality. The first identifying witness on this parade looked very closely at them on the parade and then told Inspector Kikedes that he could identify nobody. The identifying witness gave a reason that his failure to identify anybody may have been caused by the fact that the people he had seen at Igoinbe on 5/5/82 may have changed their attire. The witness hesitated to continue but after being urged by Inspector Kikedes picked the 2nd accused as the person he had seen at Igoinbe on 5/5/82 in company of another person at about 4.30 p.m. I again pose to point out that the 1st accused was here referring to Henry Mgogolo (P.v.5) as the identifying witness. The 1st accused stated further that he had as one of the two suspects participated in an identification parade organised by ASP Ibiliot flemwa (P.7). He stated that Detective Sergolt Priskilla (P. 71.10) escorted a person to the identification parade. This was the only identifying witness for that parade. The witness identified him (1st accused) and the 2nd 1st accused on this day up to 1 p.m. There exist some differences of times that the two accused have testified to regarding their movements. The 2nd accused stated that when his friend, 1st accused got to his house, he found him still in bed, in the wake of the two dependants of his

- a school girl called Bertha. He woke up and quickly prepared himself for what turned out to be a heavy schedule. He and the 1st accused went to Urusa Batteries getting there between 8.30 am. The 2nd accused then left to go to the accused's place of work while he left the 1st accused. The 1st accused motor cycle and went to see Julius Na'arcs (ciJ) at the offices of the Business Machines Tanzania Ltd the purpose of this visit was to take Julius Manyanga (D.W. 3.) to I/S Patel advocates to swear an affidavit for him to enable him get a passport. The 2nd accused stated that he found Julius Manyanga (w8) at his office and the two went on the motor cycle he (2nd accused) was riding to the
- offices of I/S Patel Advocates. They found Mr. Patel of N/S Patel Advocates. Julius Manyanga (DW) swore an affidavit after which exercise the two parted company. He (2nd accused) then went to the Immigration Office where he took his Temporary Pass application forms for processing. He left the application forms under the care of an Immigration Official, Raymond Tairo (D.W.7). Raymond Tairo (D.W.7) was to hand over the application forms to the cashier at the office, The 2nd accused gave the time that he had left his application forms with Raymond Tairo (D.W.7) as sometime before 10 a.m. He left to take his photograph for attestation. He, however, decided to visit the Tuijo Petrol station to fuel the motor cycle. While there, the Manager of the National Housing Corporation Tabora, called Asalile (D.W.1) requested the 1st accused for a lift to the Textile Godowns of the Regional Trading Corporation, Tabora. The 2nd accused accepted to give a lift to the Manager of the National Housing Corporation. The 2nd accused went on to testify that he took D.W.6 to the place. He (D.W.6) had wanted to go but D.W.6 did not stay there long the 2nd accused waited for him, at the TABODECO petrol station and then set for the

- ... - a.. i 1 -. 130 while evaluating the hol vidonce. In my. suing up address to the lady and gentleman assessors i I directed. the lady and gentleman assessors and I now remind myself that "...burden of proof omain on the prosecu- tion throughout; and no findings as to credibility, guilt, or fact èhall be errived at until the evidence on both sides has been nibmitted to scentiny. LTo do otherwiFel iinolies tha there is sorD sort c-f onus on the accused c-rson co put forward ca ecccitate version such as to rebut s :prc:ecuion case already 10 found tc be true. No such oius of,course exis'ts": Sulurnani_Oy v. Republic: of Ugda, EiuA Criminal Appeal No. "1 of 1971 (unreported). It is with such basic approach that I shall hereby shortly proceed to evaluate the evidence on reoord I also told the lady and gentleman assessors that there was no direct evidence on the alleged shooting of Lutz Kiante and Aln-or Sumar by the tv.'o acusc•dl The entire evidence before the court is circumstantial evidence. I directed the lady and gontciaan assessors that for the 20 " circumstantial evidence to be coi:.clusive must satisfy two pre requisities: it nust Ziot only be consistent with the guilt of the accused, but must equally be inconsisent with the guilt of anyone eice: Clifton Hoyte v. The_Queen (Crimiaal Appeal N:-. 12 of 1977 of St. Vi.ccnt) reportee in. the Common'ealth Law Bulletin Vol. 4, No. 4 c October, 178 at eB-66, or as was more elocuently put by the Lihicar Ocourt of Appeal in the case of Kipririrapske and Kimure Ar2p ivlutatu v. R (19 4 9) 16 1 'cA 135, 135: 30 "in order to justify the infe::ence of guilt, the inculatcry feats must b? iuoompatible with the innocence of the accused and incapable of expla- nation upon any other reasonable hypothesis than that of guilt0 .he hurde. of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hyothe- sis of innocence is on the p:'osecution, and always remain9 with the prosecution. It is a burden which never shifts to the party accused.It 40 I frtther warned the lady and entleman assessors and I bear it in mind that tthat an accused person is
- 13 - proved to have lied in h:c 'rLce in. his defence on a charge of murder does not 9 however, itself justify a conviction of murder or absolve the trial court from ascertaining from the whole eiJrnce whether the crime was murder or marLslat.ghter; H. Rv.Miologa 14 EACA at
- p. 121 and further that "jf am accused person in giving evidenco in his defere corrrits perjury he can be unishod. for -ft.at lence Iu his perjury can not be pre :i in tru murder where the evidence for the prosocution does not 10 justify that conviction.': Rv.C- M. -Ibrahim 13 EACA 106 - basic principles which have been .conied by the Tanzania Court of Appami in tie case of Zabron Msua v. The Republic Ciriinal Appeal No. 7 of 1979. I also va.rned the lady.and. gentleman assessors and I bear the fact in mind that no onus lies on the accused to prove an a libi Leonard Aniseth v. R (1963) EA 206. In evalt..ating th evidence I dircted the lady and gentleman assessors and I now warn mys:.If that an impression as to the demeanor of a witness ought not 20 to be adopted without testing it eainst the whole of the evidence of the witnese in qustion: I3yaniungu s/o Rusilibav, R (1951) 18 EACA 233 or indeed without testing the accuracy çf the formed impressions by the doctaéntrL-ry evidenc, by the contradictions and inconsistercics in the cjidence Rat ilLal Gordhuhai Patelv. La1ji.akan1i (1957) EA 314. Tith the above outlined basic princip cc in mind 9 I proceed to evalu- ate the evidence before

me. John Stephen (w,i) was a confident witness through out the giving of his 30 evidence. His answers to the questions put to him were straightforward and clear. At the end of his cross examination, it became clear that he had made a mistake on the correct colour of the nundguards of the motor cycle he had stated that they were red while - in fact they were white. He had also said while under examination in chief that the watchman at the Igombe Water Dam were responsible for the guarding of the entire water dam and not only the area around the pumping station, a position he adopted while under cross-examination. I consider the above errors minor and not sufficient to warrant the disregarding of John Stephen (P.T.1) evidence which is backed in many material details by other witnesses. His testimony up to the stage he, Taz Kilaite and Maulid Shabani (P.7.4) got to the sand quarry where he was left behind by Lutz Kianta and Msulid Shabani (P.T.4) is fully supported by the evidence of Maulid Shabani (P.1.4). Msulid Shabani (p.74) further supports John Stephen (P.i) evidence that he had been taken first to the Police Station and later to the Kitete Government Hospital for treatment by the said John Stephen (P.7.1). The description of the scene of crime by John Stephen is similar to that given by Detective Sergeant Jama (P. 17.12) and Sub Inspector

- Sakawa (P.19), Only that Detective Sergeant Jama (P.12) did not know why the lorry that Alnoor Sumar, the second accused in this case was leaning more on the one side. John Stephen (P.T.1) had given a reason for it in his evidence i.e that one of the tyres of the motor vehicle had no pressure on, a statement which is fully supported by the evidence of Detective Sergeant All (p.17,-1), the police photographer. In the light of this, I reject the defence submission that John Stephen's participation in the case was motivated to save his own skin or failure to guard the house of Lutz Kianto leading to the stealing of a motor cycle. John Stephen had indeed stated that he was not charged with this duty, a reply I accept as true. I find John Stephen an observant and truthful witness and like the other assessors, I
- accept his evidence as truthful. 30 Maulid Shabani (P.4), a quiet spoken youth testified slowly but without hesitation. His testimony remained unshaken during cross-examination. I, like the other assessors, accept this witness as a witness of truth. Francis Alphonse has been variously described in
- this case by the defence as the eye witness as well as a mysterious one. I have outlined his evidence. His testimony regarding his prior knowledge of the 1st accused has been fully supported by the evidence of Lucas Mwula (P.15). The differences in the testimonies of Francis Alphonse (P.7.2)
- 133 and Lucas Mwula lie in other areas to which I shall presently refer but not on the basic fact that Francis Alphonse did indeed work making bricks for the 1st accused at the Kiloleni Industrial area under the care of Lucas Mwula (p.T.15) who had entered into a labour only contract with the 1st accused. Lucas Mwula (P.15) was to employ his own labour to execute the contract. Lucas Mwula (P.15) was definite that the 1st accused had been visiting the Kiloleni Industrial area when Francis Alphonse (P.2) was under his employment and that

Francis Alphonse must have seen the let accused at the site. Lucas Mvula also supported rancio Alphonc' (F.w.2 testimony that on one occasion he Francis Alehonse) was paid by the 1st accused and that the 1st accused had told him (Lucas Mvula) that when final payeets were made to him (p..15) for the work done t:a: particular payment to Francis Alphonse would be taken into considerationo It is a fact that Francis Alphonse did not mention the same number of days ho had wrke I for the 1st accused 20 through Lucas Mvula (11 .!15) at Kilol?ni InJustriü area as that mentioned by Lucas Mvula, for while he had mentioned three days 9 Lucas Mvula mentioned two days. It is equally true that the testimony of Francis Alphonse (P. ". 2) on the ni'rnber of days and type of work he perfoxed for Lucas I\ffvula (P.7.15) at Cheyo area for the 1st acused differs that of Lucas Mvula. Francis Alpinnse (P.w.2) mentions two days of brick makin; work while Lucas Mila mentions that Francis Alphonse had only worked a Cheyo for one day 30 watering bricks that had alrcdy been made by him and other labourers. But the most crucial point as I see it isthe fact that Francis Alphonse allegation that he had worked for the 1st accused makina, bricks and knew him before 6/5/82. The statement is supported as I have said by Lucas Mvula (P.T,15). Lucas T!fvula (P..15) a mason and brick layer was closely examined by the defence. He was straight forward and remained unshaken by the questioning. I accept his explanation that in his police statement 40 which w.ns not produced in ciurt as an exhibit 9 he had not igaunticndd the names of all his labourers and that 134 -

- the 1st accused had directed him to his (1st accused) house when they first ir.at at the Redional Block Traffic Isiand because he had not •bee.n. specifically asked bouT; the fact and furth r that he hed been questioned by two different off Ic iajs seiarateiy and
- at different times and that he had been to the police station throetimes and that in between his firt and second visits, two weeks h el.osed His police statement was recorded on his thid visits to the police. 10 The let ocomeed does not diepute the fact that bT Lucas ila (P77.15) ae been employeim to make bricks for him at C.'aeyc area and Kiloleni Industrial area on the labour oaly basis He further does not dispute the fact that Lucas Mvula (P..15) had employed several labourers to help him execute his contrac -- . He admits that he could place on1r faces of some of those labouroes but was nonetheless firmi that Francis Alphonse (F..2) was not one of them. The 1st accusol coi... d net remember the number of 20 labourers Lucas Mvula (P,I5 had employed at Cheyo though otated thatF.1 had o:ployed only one person at Kiloleni, a statement that supports Francis Alphonse (F.12) assortio on the matter. But notwithstanding this fact, the 1st accused stood firm that Francis Llphonse wes not)nc of the people employed by Luc as Mvula (P. To 15) I find Locus i.vula (p..i5) a truthful witness and that he and not the 1st accued was bettor suited to .:now thse ha employed to work on bricks. Accordi- 30
- ngly I find that Francis Alphonse (P.7.2) had worked for the 1st accused in a work involving brick making prior to 6/5/82 and that Pxtncis Alphonse (F. 77.2) knew the let accused before 6/5/82. I now come to the quejtion of whether or a• Francis Alphonse (P..2) .ectually saw and helped the 1st and.2nd accused rush a motor cycle at Masugala area toards i'ab:ra for a

distance: of about seven hundred ac(-o. Francis Alphonse (P.2) had not correctly doccr* 40
bed the colour of the mud guards of the motor cycle that was taken from the house of Lutz
Klante on

- 135 6/5/82. However his description of the scene Of crime regarding the openness of the area and that the road at the place was straight and the grass was short is fully supported by the evidence of Iaulid Shahani (p07,4). The evidence of Francis Alphonse (F.02) on the visibility of the scene of crime is further supported by tat of Detective Sergeant AU (P;.21) plus the photoprns (ee.hibit P 11) of th scene. Indeed even the cLfenco in its closing lip scmiseione conceded that the land around the scene of crime was 10 open lanth
- Francis hiahonse had eta ted that a.tcr he had cut three poles and was on his way to town, he was passed first by a. motor vehicle going to Masogala - the direction prom whence he was coming and shortly after the same mOtor vehicle pass.d Lisi going to towns He stated further that this mobcr vehicle was being driven by an Indian. This evidence is substantially supported by the evidence of John Stephen (F;.1) and Maulid Shabani (LTT.LY ,. a o ,John Stopher. 20 (prtl) and Maulid Shabani (P. .4)., a motor vehicle appeared from the di:ection of the town and found them at the sand gurry. From tl•e driver of this iry they asked whither people. had been seen by him drag a motor cycle. They received a positive reply to this enquiry.. The two witnesses (F.h1 end, p0704) futher stated that soon after this, another motor vehicle goin to town appeared and on it Lutz Klante and Maulid Shabani (P7.4) climbed There is no evidenen on rabord contradicting Francis Alphonse 30 (P..2) concerning the nationality of the driver of the motor vehicle teat had given Lutz Kiante and his party information tet two people had been sighted by him dr.g a meter cycle some distance away towards towi. But both thosc motor vehicles wore lorries and had, acc9rdin to the evidence that I have already accepted, appaea the sand quarry within a short time of each ether going i .the ..pposite directions. There is an estimate of distenc made by John Stephen (P..1) which estimate I accept an an accurate one 40 that the distance between the sand quarry and Masagala was about one mile. I find it a fact that the one i I motor vehicle that Francis :lphonse is talking about which had passed him first while coming imoni tle direction of the town and soon after eeing to toi are these same motor vehicles that John Stephen (1 5 07i) and Maulid Shabani (I;hT, 4) testified to. These were the motor vehicles which Joan stephen (p.l) had described as of Isuzu and Morcedo8 Benz 1mske respecti- voly I do nc.t think tho motor vehicle that he had seen go to town and stop ahead of him is the one that John Stephen (r. hi) eventually got on to gel to the 10 scene of crime. Francis .iphonsa description of what happened subsequent to tho stopping of this motor vehicle i.e. shootings etc. rule out this possibility. Francis Alphonse could not have testified to this fact if he had not been within the ares. - it is too minute though a significant detail for one to dream about. shall presently cone to his testimony that he had soon two people disembark - a European and an Indian - from the lorry that had passed him going to town on this morning of 6/5/82. I find as a fact thn.t that Francis 20 Alphonse (F;.2).haa been st IViasagala are on the morning of 6/5/82 and did hole the two accussd push a motor cycle ae he (P. 17 .2) has testified in court. Lot me first consider the defence submission that the

evidence of Francis Alphonse (P.2) Inc taken with extreme caution because he (Francis Alphonse) had not reported what he testified in court to the authorities sooner than the evening of 6/5/82. I must therefore point out that I do not find Francis Alphonse (P.2) was that late in reporting the crime to his ten Cell 30 Leader to warrant the court to place him within the category of witnesses in sympathy with a crime committed or within a class of accomplices. I accept the explanation given by Francis Alphonse that what he had witnessed on the morning of 6/5/82 was shocking to him and that he needed time to ponder the matter before making any move. His reactions have to be considered in the context of his background - he appeared rural to me. To such people time lapse of the few hours did not affect the matter either way. Francis Alphonse (P.2) stated that when he saw the 1st and 2nd accused drag a motor cycle, it was already 1.7 - morning and there was plenty of light. I accept him, like the lady and gentleman assessors as a truthful witness. I accept that he saw the 1st and 2nd accused drag the motor cycle towards town at Masgals area and that he had helped them drag it for a distance of seven hundred paces and that he had offered this assistance which was accepted by the accused because the 1st accused had been his employer. I further find that in offering his assistance he (P.2) never suspected anything was a miss. He was thus in a calm state. I further accept that there was light at the time and that though that was his first time to have seen the 2nd accused that he was sufficiently near him and had good opportunity and time of observing, (him) the 2nd accused and noting his identity. I further accept Francis Alphonse's evidence that he had seen the 1st and 2nd accused drag the motor cycle ahead of him when he was on his way to town carrying three poles. The area we are talking about is already noted as an open land. I further accept the evidence of Francis Alphonse (P.2) that his view had been temporarily blocked by the motor vehicle going to town, which motor vehicle he said was the one that had dust passed him going in the opposite direction earlier on and that he had seen this motor vehicle stop. I accept his evidence that he soon after heard gun shots - whose sound had shocked him as if he was the one being shot at. The suggestion that Francis Alphonse (P.2) is a liar and could not have been shocked because he (P.2) lives near an army range and hears sounds caused by gun shots and further that he (P.2) being a resident of Kilcleni near the Iananyera stone quarry hears big such sounds has no merit. The gun shots he hears emanating from the army range are different from those he had thought were caused by bullets aimed at him. It is a fact that one does not hear the sound of a bullet fired at him - if that bullet has hit the mark but this fact does not reduce the impact on one who is under the impression that he was a target. Besides Francis Alphonse's shock was not only caused by the sound caused by the gun shots but also by the thought that he was being fired at. In neither the case of sound coming from the army Dángo nor the stone quarry at Kanyenyebu did one live at Kilcleni near the two places have the feeling that he was then a target. At the range or going to be blasted, with the stones. I further accept his evidence of Francis Alphonse that he had soon the 1st and 2nd accused run away from the scene of crime soon after he had heard the 10 gun shots. I have above stated that while Maulid Sha'oani (P.4) stated in his evidence that only Lutz Kante got off the motor vehicle at the scene of crime, Francis Alphonse (P.2) stated that he had seen two people. I prefer in this aspect the

testimony of Meulid Shabani (T..4) to that of Francis Alphonse (P..2). I further stated above that Francis Alphonse had made a mistake on the colour of the mud guards of the motor cycle. I find both these errors minor 20 taking into consideration the support he gets from other independent sources. These are not the sort of errors that should, ~6kb a court disregard all of F. 71 2 evidence. I wish to state further that he could not have manufactured his evidence just because Lutz Klante, an expatriate, had been killed out of sympathy as had been suggested by Mr. Kwikim.a, the learned defence Counsel. I had warned the lady and gentleman assessors of the danger of relying on the identification of an 30 accused by a single witness, I now bear it in mind that in such a situation I should consider not only the credibility of the identifying witness but also the possibility of the witness having made a mistake: see Mnzavas, J. (as he then was) in *Athumani s/c Sha'bani v. R* 1976 LRT n. 15. In the present case, Francis Alphonse (Pw2) had seen the things to which he has testified to when there was light and while in a cool atmosphere without any fears - except for the moment that followed the shootings. He further had 40 the opportunity and time to observe the two accused at close quarters for a distance of seven hundred paces when he was helping to push the motor cycle and later. when he was behind the accused after the cutting of the three poles - when he was returning to Tabora. The court was addressed on the need to look for watertight evidence of identification in a case such as this and R., ya Eria Sabwato (1960) EA 174 was quoted in Support of the submission. I remind the lady and gentleman assessors and now remind myself that where the evidence alleged to implicate accused person is entirely of identification, that evidence must be absolutely watertight to justify a conviction. Francis Alphonse (P.W.2) as already pointed out above knew the 1st accused before 6/5/82 when he saw him push a motor S. cycle.. His testimony has substantially been supported in all major respects. his observation was not made out of fear. He had for example stated that he had seen the 2nd accused carry a gun, Meulid Shabani (P.w.4) also talked of one gun.. His evidence is not of a person prone to exaggerations he only seems to testify on matters within his personal knowledge. . 20 Lucia Ngalawa (P.W.3) identified the 2nd accused as the person she had seen on the early morning of, 6/5/82 She was insistent that at the time she saw the 2nd accused on the way and greeted him, there was already enough light to facilitate correct identification of the 2nd accused I was very impressed by the composure in the witness box of Lucia Ngalawa (P.w.3). 'She was confident and straight forward and answered the questions put to her without difficulty. She refused to be dragged into issues she knew little about like whether she could 30 identify the area of origin of the person she said she had greeted on the road that early morning by the way the person spoke She was no phoneticist. If she had heard of the Professor Higgins and Miss Eliza Doolittle, characters in the play 'titled Pygmalion which has been screened' as "My Fair Lady" she (P.w3) may have suggested that she had never been a student of Professor Higgins. Taking into consideration the way she found herself involved in the giving of evidence in this case, I would not say that she was a witness who had come forward to testify 40 because of sympathy for Lutz Klante, an expatriate, but because of a noble sense of civic duty'

- 14C- to help in criminal investi-;rtioris where one can That her brother Sylevester did not :anage to identify any body on the parade is of ne moment - each peron has his ovth individual powers of obeorvation. I:find Lucia Ng'lawawa.(F.1.3) a witness: of truth0 In my summing up to the lady and geitloman assessors regar- ding thę c-Vidonco of identification by. Lucia i'Tgalawa (p0r03), I told them that sl'..-id they find. the conditions fevouring correct idontification of a person were unfavourablo at the time Lucia Ngalawa 10 (P..3) sow and greeted tho person she maintains is the 2nd accused and without prejudging thoi4' assesent of the evidence of Francis Aiphone (r.T.2)9 1 directed them on the relevant law relating to an identification of a person WnOII the prevailing conditcns do not favour correct identicst on. I now warn myself that the true test in the case of a single intifying witness whom the conditions 10 not favour •orroct identifiation in not wheeh-r t'-.!ae ovidonco of such a witness is reliable. i witnacs could bc truthful and 20 her evidence apparently reliable. .Notithstanding this the risk of an honest mistako, particularly in identification may still x±st. The true test in this case is 'abethor her evidence of identification can safely be accepted as free 4from the possibility of an error: Jbds,lleh bin We:-ido V 9 R (1953) 20 Ci 166 and Roria v. H (1967) E,.. 583. In the circumstances partaining in this case 9 as stated in Abdallah Wendos case, (supra) at page 168: "That is needed is other S evidence, whether it be 30 circumstantial or direct, pointing to guilt, from which a Judge or Jury can reasonably conclude that the evidence of identification, athowh based on the tstiiny of a single witness can safely be accepted n free from the possibility of error." The 1dy and gentleman assessors accepted the evidence of Lucia Ngalawa I also accept it as truthful and at the same tine find that at the time she sew the 2nd accused and greeted him, there was enough light to. facilitate correct.identification of 40, a person; 'Ghc conditions were not therefore unfavoura- ble for correct identification. Notwithstanding this
- 144 finding, one gets corroboration of the identification of the 2nd accused by lucia Uga.iawa (1 - .3) from the evidence of an.cis Alphonse (1P0 17.2) who had seen the 2nd accused and 1st accused push a motor cycle towards Taboro soriodistance. away and at different time on the same momma. Francis dlphone (P0 .2) and Lucia Nae.lawa (P.3) live st differ mt places and had reported of That they i::nsw of eha Oaso to different authorities and with differing pr9mptness. Henry Mgogoo P.h5) did notin my evaluation 10 of his evidence 9 fare well. He is, as noted above an engineer by profession; the learned defence counsel Mr. Kwik inn he s SU iittd that the witness has also 'engineered hie evidence. I would not go as far as that but Henry Mdomolo (P.7.5) evidence is full of o ontra dictions, errors and eve.sivonee s. The evidence of Detective Constable Raymond (1-1 .7.8) which I find truthful for example shows that Henry Mgogolo (P..5) 7-7 was wrong when h stated thot Detective Sergeant iVianiyama (P.T.13) see the person who hd taken care of 20 him before going to the identification parade.. Fhl3 evidence confirms that of Detective Constable Raymond Henry Mgogolo (F.h5) had been kept in the office of tho CCD bfore being taken to the identifi- cacion parade at the police backyard. The office faces the School Street and one could not thus have seen its preparation.. He nonetheless said that he had been put at a backyard office before going to the parade and that he could have seen the preparation of the par.de... I found Henry

Mgogolo (r.5) emotional and easy to lose his temper especially when his judgement was being questioned. He was evasive and his answers had the appearance of anticipating other questions. The court as I have already indicated would not go as far as libelling him a liar, I would hesitate to act on his evidence. In so holding, however, I do not thereby accept the defence submission that he (P.5) had identified the 2nd accused because of his prior knowledge of the 2nd accused. The accused had (F0T05) 40 themselves stated that Henry LTgoggelo was hesitant in identifying anybody on the parade; this statement does not go together with the assertion 11

- 14- that he (P0.5) had identified the 2nd accused because he had seen him (the 1st accused) at the Tabora Ind Office where he (11 .5) had occasions of asking the second accused to pass messages to one Hengolele 9 a former working colleague of the 2nd accused. I have above noted that Francis Ijiphonso (P.2) knew the 1st and 2nd accused by face e.n. not names. Lucia Ngalawa also knew the 2nd accused face. While Francis Ijiphonso had known the 1st accused for 10 sometime before 6/5/82 and had an opportunity of seeing the 2nd accused at close range; and for some distance, Lucia Ngalawe (T'77.3) had only seen the 2nd accused briefly and recognised him. As already mentioned 9 he is not a phoneticist and could only identify the second accused by face. It was thus imperative that identification parades be conducted. Several identification parades were held. Two were conducted by ISP Meneno Zevalla (p.06) and by JSP Elliot IVDemwa (p.7) and one by Inspector Kikkados. He was not called to testify as he was during this trial admitted at the ECMC 9 Mosh. Let me now address myself to the issue of whether or not the parades were conducted in accordance with the required procedure. The prosecution outlined the rules observed and what was expected to be achieved thereby. The defence had, suggested during cross-examination of various witnesses that the suspects had been put in police
- custody for longer than necessary so that identifying 30 witnesses could first see the suspects before they went to the parade. There is no direct evidence of this and indeed one of the two suspects who were released in July 9 1982 stated when he appeared as a defence witness that no such thing was done. I am satisfied that that police investigations did not sink to that level and that nobody was displayed to the identifying witnesses before the parade. I am further satisfied that the location of the police lock-up and its design could not have facilitated this as well. I am backed up by the various Identification Report Registers (ex.P.1, 12 and P3 and P 12) which show no complaints to that effect. I accept the evidence of F01T,6 and PpT,7 who conducted some of the identification parades as true. In this light I do not accept the suggestion that people other than the two accused had been identified, at these parades. While the 1st accused claimed that three such other people were identified, the 2nd accused deponentee that only two were and L.L.Ce who of the two was identified twice over by two identifying witnesses. All the witnesses that testified to the identification of the 2nd accused by Lucia Thalawa (P7.3 said that she did not have any hesitation in doing this. Even the accused admitted as much. All had stated that she was there to identify a person she had seen and, stated on the morning of 6/5/82 - only the 1st accused maintained that they were told on the 1st parade that she was there to identify the people she had seen

on 5/5/82. Indeed the 2nd accused said the same regarding the introduction of Francis Alphonse (r7.2) as an identifying witness I dismiss these 99 assertions as lies. I further dismiss the 2nd accused's claim that Maulid Shabani (7.4) had stated at the parade that he knew only one of his attackers on 6/3/82 and that he saw no such person on the parade and that Maneno Zavalla (P.76) had urged him to look at the participants more carefully. Only he (1st accused) has described this episode and it is not that small or insignificant to have escaped the notice of the 2nd accused. Inspector Zikkides was not called to testify for 30 reasons I have already stated. I have found it, for different reasons that I have outlined above, not safe to act on the evidence of Henry Mgogolo (P.w.5). The report on the conduct of the Parade was admitted as an exhibit. On it there is no mention that the 2nd accused had complained to Inspector Kikkides on the conduct of the parade and that he was told not to worry as the parade was just a formality rather than Inspector Kikkides had virtually pushed Henry Mgogolo (P.T.5) into identifying the 2nd accused. I have above referred to the incredulity of this assertion and I find that Inspector Kikkides had on 14 conducted the parade in accordance with the set procedures. I further find that the 2nd accused never complained to Detective Sergeant Priskilla (P.7.10) about his and the 2nd accused's identification by Francis Alphonse (P.w.2). For one thing she was not the correct person to whom to complain; she had only been responsible for the taking care of the witnesses for the parade and that ASP Mkemwa (P.7.75) would have been the correct person to make complaints to and secondly because his alleged 10 complaints do not match with the 2nd accused's assertion that ASP Mkemwa had informed them that Francis Alphonse had been to the identification parade to pick the people he (P.7.2) had seen on 5/5/82. On the examination of the evidence concerning

- the conduct of the identification parades I am satisfied that they were conducted basically in accordance with the procedure detailed in the case of *R.V. Mwangi v. Manaa* (1936) ECA 29. The fact that the two accused were not given an opportunity of getting into clean attire like the other participants in the parades was not of such a degree of irregularity as would warrant reducing the parades into a fuss and thus their disregard *Mwambi Makita v. The Republic* (1976) Kenya L. - 127 (EACA). Indeed the fact that the accused and indeed the other two suspects that were later discharged, were dirty on the parade did not lead to their being picked by the identifying witnesses. By 11/5/82 therefore, the police had for all intents and purposes fixed up their investigations on the identities of the two people they were looking for in this case. The police did, however, have in custody four suspects up to July, 1982. Two of these suspects, Erasto Bigabo (D.7.3) and Katera (D.W.4) were, according to Detective Sergeant Major Manyaa (P.13) in because they closely resembled the 1st accused, their elder brother. I saw no such close resemblance to warrant the causing of uncertainties in the minds of the investigators that they might release a wrong person. Again the four suspects were not sent to court within 24 hours of their arrests. Such actions by the police in these matters cannot pass without an adverse comment. I can do no better than to quote the words of the East African Court of Appeal in the case of *Ngumbao Choma alias Chubalo and Kata Kazungu v. R*, EACA Criminal Appeal No. 133 of 1975 (unreported) "7e

repeat what was said by this court in the case, of Shimebherov.R, Cr. App. No. 119 of 1974 9 (unreported) 9 that the practice of rounding-up all jild sundry who may be connected, 10 however remotely, with a criminal investigation and detaining tiem unlawfully in police custody for quostioning [strongly to be deprecated." The IJ'eètigating fice-hn1d work the law in their iiwos ations of &ases. There exist differences between the evidence of Martin Jimmy Katora - the 1st accused - and his statement to the police (exhibit DI). In hi evidence the 1st accused stted that then the 2nd accused returnd to his office on 6/5/82 between 20 10.15 a.m. and 10.30 a.m., ho (Jst accused) docidod to take the 2nd accused to the Land Ofico. He further stated that when ho and tho second accused set out only to stop on t.c way and t1k to the driver of the army motor vehicle, they were in fact going t the land office of the 2nd accused. In his evidence, the 1st accused stated that he had in fact been asked by the 2nd accused and not decided by him to take him home. The intended destination is thus also different. The first accused testimony is also difthrent 30 from his police statement regarding who botwon him and.the amy drivrr soppod whom 'hen they met on the wayh In his evidence, the 1st accused testified that he had bcn stopped by thi: driver while in the police statement, t- ho 1st accused seems to indicate that the army driver stopped only after seeing him.stop. Again, the details of the exchange between them differs from the ones ho had sintod in court and that he had recorded in the po.ice statement. In his statement, the 1t accused states that the driver had 40 told them that there were some Europeans who had been killed at Kanyonyora while in his testimony, he stated that the army driver had asked them (him and the 2nd accused) if they wore aware of the theft at El -146 Kanyenyera. In tho police statement, the 1st accused states that it was h.i who had told the 2nd accused to go to Ranyenyora to find more information about the killings because ho ws anxious to know more as his (17,t acoused) plce of work is rrbby - a niile away from Kanyonyora. In his evidence, however, the 1st accused stated that hc decided to go to Kanycnyera after he had been pursuadod to do so by the 1st accused and after ho had taken note of the fnct that he was going to seize the opportunity of the visit 10 there to remind the people at the Kanyenyora stone quarry to moot his orders for sand and stone dust quickly. The let accused was rare detailed on what he had been told by the person he idntified os the Kanyenyera stone guaray foreman. He states in the statement that the foromn - one Winchi had told thom of the identity by race and niece of work of one of the victim of the foul play and that Sumar was the person who had told the European where to find the 20 people who had the motor cycle he (the i)rbpean) was looking for and had offered a hit to hii to the place. These details miss in his testimony. He, that he however, states that it was libre/and the 2nd accused cane to know of the killing of two people. There is only a mention of one killing in the statement. In the police statement, the 1st accused mentioned that following their visit to Kanyonyera, they first passed via t1ho 2nd accused hone. The 2nd accused had wonted to check whether his children had 30 sent maize for grinding into flour. Thic visit is mentioned by the 2nd accuset in his testimony but not by the let accused. In the police statement 9 the 1st accused does not mention that he had given P. lift to the 2nd accused to go to the thite Fathers Mission Tabora to make payLlent, a fact to which he alluded to in court to having done. The 2nd accused left some details he had given in his police statement (exhibit P.5).

He does not 40 for oxampic mention that he had made a break fast visit to ITJ or his visi b to the Distrimt Magistrate Kimcnnya. Again the 2nd accused omits to mention in lets police st - mont his visi to his home to check Tot other or net his chiJmron h"d, taken maie,,to the grinding mill. In his sttcnct, the 2n accused mentions tht - 'ho had gone to see the Regional Land Officer at his otico on 6/5/82 at

2. n.m. after h. had been droeand at his home by the 1st accused in ermr in nk ton thnso:'i in take his lu;gnge to llzoga. lie, howdy :r, did not find the 10 official in his office. The 2nd accused does not talk of this visit in his idonc e; indeed ho stated that he hs.d stayed in doors from 1 p.m. after ho had br-c dropped. by the let accused., I have abomo wilc outlining the hoe of the 2nd accused p•ein'l;ed cot tho.t tho esti.emiien of times of the novoiTlents lone together by the ewe accused were different in all thoeasOs. They dii" :r from fifteen iinetcs to over hour and hil. In one instahce, the 1st scfuse:. montionh 11 a.m. nc the 20 time he had been to 'both near K"nycnyor and the Thite Fathers iTisien. Quit. aprt from thc fact tht the oboes ro distant eec, but the testimo- nies of the two eccusod shoe7 that thea had boon to place bsf ore getting to Kony eny cr and that following their Visit to Knnyenyera 9 they hanl,L been to several other places distances Dart beiLore icing to the aite Fathers Mission' It would not have been physically possible to be at two places at the seine tine- 1 30 I hove alrc dy pointed at some cbntrc, dictions existing in the ovid.ncc of the'lst accused and'that of the 2nd accused. Tho testimonies arc themselves contradicted by the evidence of their own witnesses. Lot no first with the evidence of the let accused. While the 1st and 2nd tceused persons are agreed thot often they hat. loft each other at I p.m., 6/5/82they did not see each other till 7/5/82 9 Kanera Katera (D.7.4) young brother of tho 1st accused state that the 2nd ecociced had cone to. the 40 lt accused hone between 6 p.m. nd 7 p.m. on 6/5/82. There is also the earaiesicn of Eresto Bigaho ('D..3) in court that his testimony in court was full of lies ant that his statement he token as dcscribine; the true state of events on the 5/5/82 and 6/5/82. Erasto Bigai' (D.77.3) admitted that he had not been to tho Tabora Boys Secondary School w±th the let accused on the evening of 5/5/82 to pla.y g2iies. Erasto Bigao (D.11.3) is an educatci maii and a young brother ef the let accused flo n.ust be knowing the gravity of the charge fcing his brother; indeed he had been for somotine alco one of the four suspects. The effect of his adeiiseion in cort is to discredit him as
- a witness. His sttem.nt to the police can not take theplac of his discredited evicienco Ro v. Ireri 10 aiiasShein.gos/o dwia 3 E'CA6l. In the fina
- analyois therefore I dismiss his cntire evidence, even
- that which ho maintained was true, as unreliable, It is dangerous to depend on any of it. Kenera Katere. (D,1c4) again contradicts the evidence of the let accused and that of the 2nd accused

- concerning events at the house of the 1st accused on the evening of 5/5/82. The 1st accused admitted under cross examination that he had met the 2nd accused on the evening of 5/5/82 but not at his house and the 2nd accused insisted that they (he and the 1st accused) had met outside the 1st accused's house between 4.30 p.m. and 5 p.m.,. Kanera Ka1-1era(D.W.4) indications that the 2nd accused bdbOen to inside of their house between 7.30 p.m. and 8 p.m. and had participated in the conversation they (including the 1st accused) had with his guests from Tunbi and that the 2nd accused had only left their home after their guests from Tumbi had departed. The 1st accused was prepared to lie without a moment's hesitation. Even when caught within his web of lies, he stuck to his lies. Considering his evidence together with his demeanor, I find it not safe to rely on his evidence. I reject it. I have while outlining the evidence of the 2nd accused also pointed out the area of contradictions in the evidence of Gabriel Justin (D.W.5). Let me now look at these contradictions and make findings on the evidence of Gabriel Justin (D.77.5). He had stated that on 5/5/82 he returned home at 3.30 p.m. and that the 2nd accused only went out at 6 p.m. - and this time to 40 a nearby bar Zuguulole Br
- He further stated that the 2nd accused returned home at 9.30 p.m. The 2nd accused contradicts this testimony stating in effect that he had been out of his home after 3.30 p.m. on 'this day twice - the first time when he went to the DDD's home and, the second time when he left his house for the nearby bar returning at 10 p.m. I am here concerned with the difference in the testimony of D.L2 and D07.5 regarding the number of the goings out by the 2nd accused and not with the destinations to which the 2nd accused had been. I do not find Gabriel..
- Justin (D..5) was in a position of being told by the
- 2nd accused. Such details He posed. in court as an observant of Gabriel Justin (D.. 5) 10 contradicts the 2nd accused by stating that he had seen the 2nd accused leave their home on 6/5/82 stating that he was going to the house of the 1st accused, the 2nd accused as I have several times above stated had maintained that he had not been out after his return from town on 6/5/82. Gabriel Justin (D.71.5) notwithstanding the 2nd accused. protestant to the contrary is a defendant of the 2nd accused. However, if admitted as much. He has been described by the learned State Attorney, . 20 Mr. Lomo as P. useless witness. I agree. His over-zealousness to state anything to help his benefactor was overflowing and apparent to all to see. I reject his evidence on the goings and coming of the 2nd accused on the days to which he had testified - 5/5/82 to 7/5/82, Raymond Tairo (D.7.7) is an Immigration Officer who testified to serving the 2nd accused on 6/5/82 at between 9 and 10 am. The 2nd accused made his first call at the Immigration Office. Raymond Tairo 30 stated that he had asked the 2nd accused to fill in clause 12 of the passport application forms. The 2nd accused left his office, to go and do what he had been told to do. The 2nd accused did not testify to such an easy and straightforward story, The 2nd accused stated that he sent to the Immigration offices his application forms and left it under the care of D.W.7 with a request that he, Raymond Tairo (D.7.7) hand over the forms to a revenue collecting official there to work on

then. The contradiction in the testimonies of 40 D.T2 - the seaOnr rrused and D. 17.7 - Raymond Tairo on such a basic issue covering the very purpose of the first visit is unsettling. It is more unsettling when one again considers a similar contradiction in the p 150-evidence of the 2nd accused and that of Julius Manynga (D..8) to whom the 2ndaccusod iad stated he had gone. straight fter leaving the .155 accused at Kiloleni on 6/5/82. Here again there is a contradiction between the two concerning the purpose of tho visit of the 2nd accused to Julius Man'anga (D..8).. I have above stated what the 2nd accused stated had taken him to the offices of Julius Manyenga. Julius Manyanga (D.7.8) ies a different reason i.e. that the 2nd accused h-'d been to his office in search of a loan to enable him nake a / 10 payment f:r a :iator cycle and, that he (D.71 .8) had agreCd to give the loan te the 2nd accused et their meeting on 5/5/82. Yetin the detailed testimony of the 2nd accused there is nowhere mentioned that he (2nd accused) had been to Julius Mar.yanga (D!.8) on 5/5/82 seeking a loan. I do not consider this an oversight considering the fAct that the 2nd accused had twice been to the Thito Fathers Mission for the purpose of making a payment on u motor bycle.. The payment must have been important.. Again considering the fact that 20 Julius Msnyaga (D.j.8) had requested to be given some ten minutes to look for funds to give to the 2nd accused and considering, the fact that the 2nd accused had indeed given that tine, it is unlikely that he (2nd accused) would have missed to .aienfion this fect Julius Manyanga (D..8) puts the visit to the M/s Patels Advocate to swear an affidavit as a thing thet thi cone as an Inc ide:ital when the two w involved in noth.er more pressing affair. They \vent to M/S Patel Advocates after they had ,:e. Lir.. Patci, ei h/s. Patel Advocates pass by 30 going to his office. But what is also intriguing is that by this time, the 2nd accused had not been to the Immigration offices whore accerdin.g to the evidence of Raymond Tairo (D..7) he was told, by him how to fill clause tele of the Pass port Application Porms. Besides the aff:.devit sworn before Mr. Patel in the possession of the Immigration cf -ficials was dated 22/4/82. If the 2nd accused had another one on 6/5/82 he would most likely have handed it to the Immigration officer on his second visit to tie offices when he also 40 took to them the attested photographs. I find Julius Manyanga (D.,8) a. her. No wonder he was, in the witness bi jumpy and incoherent, Edward . N. Asahile (D.,6), t},e Manager of the National Housing Corporation, Tabora, testif'iQd that -- I I -- the lift given to him by the 2nd eccused to the RTC 'Godown was not on 6/5/82 ao the 2nd accused had - earlier en testified to but on 5/5/82 This withess was fiii on this date even when cross-exinad by Mr. Lyimo. He was cool end deliberate 'md I see no possibility of his mixing up the dates. In nssosein the evidence of the two accused I bear in ,iinc thet they ar not rocuired to prove their alibis. I f.rthor her in mind t1hnt lies by one or both ef then does not emouni to en admission of guilt 10 by that accused or Lath of thor. The roscution case stands or falls On its own merit -. the case must be proved boy ond rssonable doubt. Both eccused have admitted to guessing most of the tines they gave in thei account ci their movements I state this as a - fact and do net wish to be underotood that I an looking for them to prove their alibi. The accused hove testified and this court is duty bound to evaluate this testimony together with the rest ci the evidence: Okale v. eublic (1965) E.C. 555 quoting with approval 20 Ndege Maragwa v. Republic EACA Criminal Appeal No. 156 of 1964 (1)nreported)0 Bothi accused have admitted to the

Existence of contradictions between their testimonies and their police statements (exhibit B. I - for the 1st accused and P.5 for the 2nd accused). The accused have stated that these statements which they had signed stating that what was contained therein was true, were signed blindly without the same having been read back to them. Further, I meet the defence with the purpose of establishing consistency between it and the let. accused testimony in court. I deduced the same reason was true in the case of exhibit P. 5. I do not believe that this course would have been adopted if the two accused, especially represented 'by a senior member of the Bar would have elected such a course if they had not read their statements or the contents of their statements read back to them before they had signed then. Taking into consideration the contradictions found when, the testimonies of the accused are compared with their police statements, contradictions existing within the 40 testimonies of each accused, the contradictions found in the two testimonies and the contradiction between the accused evidence and of their witnesses, I find the evidence of the two accused. unreliable. For Ijiku the lady and gentleman assessors I find P. 11, P.2, P.3 and P.4 truthful witnesses. I have found the conduct of the identification parades with the best procedures. I, like the lady and gentleman assessors find established that the two accused stole the motor cycle from the parking place of Lutz Klante. This motor cycle Registration No. TZ 5931 5 (exhibit 6) has been proved by production of its registration card (exhibit F13) to be that of Mrs. Mchthild Ilesin - 9 described by serious witnesses in court as the wife of Lutz Klante. The lady and gentleman assessors state that the two accused have not been shown by eye witnesses that they had killed Lutz Klante and Alnoor Sir tar. In my summing up address to the court, I pointed out that the evidence against the two accused was circumstantial. Both assessors have accepted the evidence of P.1, P. 17.2 P. 3 and P.4. Maulid Shaben stated that the people who had filed at them were the ones in possession of the motor cycle and Lutz Klante had been tracing and that those two 20 people had one gun and that Lutz Klante did indeed disembrace from the motor vehicle on which they (he and Lutz Klante) had been given a lift charging the two thief 'thief. This attack by the two people in possession of exhibit 13 led to the deaths of Lutz Klante and Alnoor Sense'. Francis Diphofole (P.2) testified that the let said 2nd accused were the ones in possession of the motor cycle found at the scene of crime the motor cycle later proved to be the one taken from the pahini; Ilesin hit him at Igonbe and 30 proved to be belonging to Mrs. Mecheild Lensing. Francis Alphonse (P.2) further stated that he saw the two accused run away from the scene of crime immediately following the shooting. Further there is the evidence of Francis Alphonso that he had seen the 2nd accused with a gun There is the evidence of Dr. Amos Kerununa (P.20) that the two deceased in this case had suffered gun shot wounds which wounds led to severe loss of blood causing their deaths. Added to this the court has the evidence of Lucia Ngslawa (P.3) that she had seen two people one of whom the 2nd accused push a motor cycle earlier on in the morning of 6/5/82. All this evidence taken together points to no other conclusion than that it was the accused who had killed the two deceased. There now remains the question whether the killing was with malice forethought. The two accused had stolen exhibit 13 - the property of the wife of Lutz Klante. Lutz Klante had been trying to recover this motor cycle when he was gunned down. Here is

no question that the killing is covered by s.200(c) of the Penal Code. The killing of Alnoor Sumar who was helping Tüütz Klante to recover his wife's stolen motor cycle is equally covered by, s.200(c) of the Penal Code.. See also Kcruga Ole Lelaji vR (193) 2 ACI. 75 (C.i). 10 There is no doubt that the two accused had set out to steal a motor cycle and. that this mission was accomplished. Further that they had made a good break

- dragging it towards Tabora. Although the 2nd accused was seen by Francis Alphonse (P.17.2) carrying a gun, there seems to have been no intention of using it at the time. There is no evidence of who had fired the gun at Lutz Klante and later Alnoor Sumar and Ifreulid Shabani (r.4). But the events as detailed by Maulid Shabani establish that in the course of the shooting both accused had acquired the necessary malice aforethought to establish a case of murder. They had common intention to murder. The evidence of Maulid Shabani which I have, accepted is that the two accused first fired at Lutz Klante at the time when Klante went to the house, shouting 'thief, thief'. Then thus fired at, Lutz Klante returned to the motor vehicle in order to leave the place. Alnoor Sumar drove off but the two accused would not let them get away. They fired at the motor vehicle causing it to stop. The two people then went to them and fired at Lutz Klante and Alnoor Sumar. No one had done anything to disassociate himself from this deliberate and cold blooded act. Both were in it together. The two accused were fired at vulnerable parts of their bodies: H v. Tabulayenko s/o Kioya and Others (1943) 10 EACA 51 and Thnjero a/c Wameno alias Yanjiro d/o Maric en. . imatha d/o Yakumhi v. Reg. (195) 22 EdC 52L On the comprehensive view of the case, the evidence on record has satisfied both prerequisites mentioned above and points irresistably to only one conclusion the guilt of each accused of the murder of Lutz Klante and Alnoor Sumar. I accordingly convict each of the accused of the murder of Lutz Klante and Alnoor Sumar. >, YtHYA 2 BhMJ. JUDGE 17/9/2 (1 17/9/82 .. Cor- m: RUBj'itT, J.
- Mr. Chaila, Solicitor for the Republic. Mr. Kwikima, Advocate, for the two accused. The two accused present. The two assessors present.
- Judgement delivered. -0.____. - - S Yah ya Rifbama, J. 17/9/82 Mr. Chaila 10. I have nothing to say. Mr. Kwikima The penalty is mandatory. I have nothing to say in mitigation. Yah ya Rifbama, J. 1st accused I am not involved in this case. I shall appeal. 2nd accused. I shall also appeal. I did not kill anybody. • Yah yabame., J. 17/9/82 Sentence, You, MLRII JThiy KAT..RA and CriRITCPHI Jij0, have been convicted of the murders of Lutz Klante and Alnoor Sumar. The only sentence for murder is death by hanging. Naturally this sentence can only be passed once. Accordingly I sentence you, Tartin Jimmy Iotara and Christopher Urio, for murdering Lutz Klante to suffer death by hanging. Yah ya Ibm, J. 17/9/82 Right of Appeal explained Yah ya Ibm, J. 17/9/82 Assessors thanked and discharged.
- 'S yah-ya uhama, J.
- 17/9,'82

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