

TANZANIA / JUDGMENT

19771221 TZHC Mwanza

COURT
TZHCDECIDED
21 December 1977

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IN HIGH COURT OF TANZANIA AT JILANZA. Appellants: LATE JURISDICTION HIGH COURT. Respondents: IN THE MATTER OF PS. NO. 276 (1977 (Original Criminal Case, No. 0064 of 1977 of the District Court of Ngara District at Nsanga before P.Z. Kagame, Esq., D.L.) versus 2 U D G E M E N T. FALILA, J. These two appeals were consolidated. The appellants were charged with the offence of assault causing actual bodily harm contrary to section 241 of the Penal Code. They were found guilty, convicted and sentenced to two years imprisonment subject to confirmation. The main issue in this appeal as was at the trial, is the identification of the appellants, for they denied the allegation that on the day in question, they assaulted the complainant. Both of them told the trial court that as the incident narrated by the complainant was taking place, they were elsewhere; the 1st accused saying that he was mourning; his wife's death. The 2nd accused that he was in Mwanza. But in the evidence of the complainant is accepted. They were, then the identification of the appellant's names. For according to the complainant, he walked with both appellants for some time before they turned around demanding money from him and later assaulted him in the manner and to the extent described. The complainant and the appellants are well known to each other, in fact the complainant is the appellant's cousin. I cannot therefore, see how in those circumstances the complainant could have mistaken the appellants, unless he was prompted by malice to revive an existing grudge. Both appellants tried to suggest some sort of grudges between them and the complainant but I thought that these were too far fetched. Their alibi is here not supported by anyone except themselves. For all these reasons, both appeals are dismissed. As regards the sentences, these were appropriate in view of the seriousness and nature of the attack as they were demanding money from the complainant; they could have been charged with, more serious offence. Accordingly, the sentence of two years imprisonment on each appellant is confirmed. Delivered in Court at Mwanza this 21st day of December, 1977. MWANZA 1ST DECEMBER, 1977

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Prepared on 26 October 2026 · Esheria