

TANZANIA / JUDGMENT

19771013 TZHC Dar es Salaam

COURT
TZHCDECIDED
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- IN THE HIGH COURT OF TANZANIA AT DR ES SALAAM LL / , A.42 ORIGINAL JURISDICTION (DAR ES SALAAM REGISTRY) CRIMINAL SESSIONS CASE NO.31 OF 1977 THE REPUBLIC Versus HAJI RASHIDI MAICUNYILA Charge:. Att'mpted Murder c/s 211 of the Penal Code. J U D G EM E N T KISANGA, J. - The 3ccused. Haji Rashidi Makunyila is charged with attempted murder contrary to section 211 of the Penal Code, the particulars being that he attempted to murder one Jøseph Mgandila. The facts of the case may be summarized as follows:- The accused and the complainant Joseph were neighbours and their houses were only about ten paces apart. On the day of the incident the complainant returned home in the evening and found the accused sweeping the compound. The accuSed asked him what he was carrying and he replied that he was carrying food which he got from his mother who was staying in the shamba. The accused refused to accept that answer and alleged that the complainant was a thug who was stealing food from the villagers and that he (the accused) would teach him a lesson. This WS followed by an exchange of angry words and then a fight. Ibrahim Nyalusi (P.W.3) and Stephano Mkongwe (P.W.2) put down the fight and the accused and the complainant each went to his own house. Ibrahim and Stephano also went away after that. While the complainant was at the door of his house trying to get in, however, the appellant fired a bullet at him injuring him in the upper left arm. The accused went away after that carrying his gun and bed sheets. After that he completely disappeared from the village and was never seen again except on one occasion when he was seen passing at the foot- ball pitch. On the following day there was recovered from the compound of his house an empty bullet shell of the same type as that which is used in rifles. The accused was a game scout who was provided with a rifle for use in connection with his official duties and he was the only person with a rifle in the village. In his defence the accused vehemently denied the charge, putting up an alibi. He claimed that on the day of the incident he was not in the village; he was in his sharnba which is far awsy from the village. He stated that he did not quarrel or fight with the complainant, nor did he see him anywhere, on the day of the incident. He said that the complainant told tIes against him but he could not suggest the reasons for so doing. Again he said that Ibrahim Nyalusi told lies when he said that he saw the accused and the I c/el pue pexqo s PGsnooe eq. puj i q.Tnsej ei ui pesqse SM japinw pecJwe4e JO &OU8JJO eq. LflU9flbOSUOO Pu e I!PIU SM t pet;t.snCtm edwoo sM ut.00tTs ei.

eotrr •uipaeq 4OfIS Jo nsqa v se petp qAeq PPOM eq upeeq eq.xn; Lu ueAeIcr o. Lpdwod ue .ou ereM sde.e j tfl. xeto S 'ç pue .91esrtjoJd peq q.ueuTeTdwoo aqj. eowieqnj eouo .e pp eAeq PInOM ueuTIduio 3 eq. qowoqs 941 UT JO . 8 e4 3 87qq. tjo pepus T pq UUTeIdWoo eq. Jo wie xeddn eq1 uo PaPuuT qeTTnq eq. eqq. Aowt IsOw ST ;i UO TII uot.noeso.zd eq. qd9ooe.pu eouejep spesnoo e e .oeCea I eJo;eleqq. sjossesse ueweq.ue eqq. e' esodxnd etq. .ioj LtIoT;oeds PeIIeo eq woqm sesseup Ut40 siq cq pe..xoddnsun ssi t estoeq LTIToedse puiw Lw ui qqnop aIqucsee.z Sue Iseo .ou seop TqTt .eL 'qe stq eioid o. eiqs q.OU soop eq \$M OR paJsp.s .8tt I PUV sseuqtM eq; U' pesnooe eq. peqo.sM i pusq Je'r.fl.o eq. u •uoT2eUe qons Ut eotxsqsqns .io qqn.i. ou putj prtoo I wtq BuTe2u s9t s9ss9ul.Tm aseq. uO e RaITe s,P 9 snOOv aq. c'i - re.iso lc.IOA peJep'çSUoo eAq i -oueqdaq,S pue wTquaaj eJet4 os -te o q,ni go sseutM 2 SSM eq qeqq. PaTjsTqes see. I pue qdeso2 q,ueute - dwoo 814q. JO JnoUeOwep eq. Lnje.reo L.1eA peqo.eM I peddo s se ;qtj eq pue qqj e tfl peeue peq OM. etfl. a8 l .je ewt. ewos e'Ji U qtM wçq .oqs pesnoos eqq. J.UOPTOUT eq; go Lep et. uo eq pu'tg pus qdesop ,ueu - recrwoo et go eoueptfte eq. .deooe i oq ed Lw JO pesnoos eq. Jo eouejep eq. upoeCex pus s 9 ss 9 ul.Tm uop.noesod eT.q. 2upeeq ut ITe e Ltnot;g -rp ou peq s.zossess5 ueweT.ua eq, pestioos Btfl. IO sesseu.p.t uo'p.noeso.xT eq. eItteeq o. .1eqeqrt uo OuTpuadap XqpeJo go euo Ltexnd St esso s - q UT peproep eq o. uotqsenb eqq •pesnoos eq. go JnoIsg UT .qnop qons eose qsnw j 'qnop equeusee.r Lue ue..1aue I 1 8550 Jo seoU5.swnojto pus s,oeg eq; us 9UTaGPTSUOO UO 6 31 sqgqs .18A8U j pus 1 5 LI. etfl. .noqnosq. uOfI.tLOOSoJd eq. uo sut5weJ pesnoos eq. JO . - n2 eq. eAo.1d o. uep.znq eqj, peAo.rd ST L.1e.1uoo eqq. I'p,un ueoouut pewnsecr st pesnoos etfl. pus 'eoueouut spq eAoJd.oq pesnoos 8t. rio qseo st L.np o •pesnoos et su's2e eseo st eod o. uonoeso.zd alqq. uo st uep.znq eq. .5tfl. putw Ut .reeq I OS PuTop uj •peAo.1d uaeq seq e.ieqo eq. qou .10 Jetfl.eqM epoep oq. pus eoqit 5 55 eseo etfl. .1epsu00 O. UJTL. MOU pexsqo ss LI!n 2 pesnoos eq. 2vipuTj Ut Snouiu5uri eJam Leq; pus ew qpt .5s oqt't sxossess5 oMq. erfl. o 8SSO eqq. dn pewwns i seps qoq JOJ eouepTfte eq. go esolo alfl. .V •Lep ;eqq. uo ssqweqs .xteq. nt ;uese.id Iou e.I\$t4 Leq. r.sq; pe.e.s 'oej UT 'weq. Jo OM uees eq o. pepiep 1 5 Leqq. .nq .Ueptout •uip 8 41. go Lp eq uo equieqs ST14 UT Sum eq 1.41. sesseul.TM 88.141. peeo pesnoos eqj, uop ç 1.nd pus 1.uuTe1dwoo 8 41. pus pesnoos eq; ueeeq 1.4tJ eq; pesseu.'çM eq 1.q1. pTeS os5 eq U84M set -1 eq pnoqs 8MU03 oueqda L4M uosSej on sens pnoo '18A8M04 'pesnoos eqj, 8U8A9J o. qnos wTlqeaaj eJoJeJeqi,. pus wttj o. Lpped 'tI 8 S ol. pesngai pesnooS eqq. esnoeq se'ç - qons po. wtqeq q.sqq. pTes 8H • 1.qtg e4; uMop .nd eq pus u'r1.q'tJ 1.usuteIdwoo

- .-' -3- I convict him accordingly. (R. H. KISANGA) JUDGE Mr. Singh: Accused is a first offender. Middle aged with a family Of seven children. I ask that he be treated leniently. Accused: I did not crnmit the offence. But if the court finds me guilty I ask the court to give me such sentence as would enable me to look after n ehi3.dren. Sentence: Accused behaved very irresponsibly. He was given a rifle with which to defend the lives and property of the villagers from destructive anima.e but he used that very 4edly weapon against' a villager. Thi',was a serious breach of the great' trust which was put on him. Such cod'ct cannot attract any'sympathy of this.court. Accused' shall go to jalt for nine, (9) years. ' 14 (R. H. ICISANGA) c JUDGE Right of appeal explained.. Assessors thanked and discharged. (R. H.

KISANGA) JUDGE Morogoro, 13th October, 1977.

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