

TANZANIA / JUDGMENT

19770823 TZHC Iringa

COURT
TZHCDECIDED
23 August 1977

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

- t -1- !H OOtT OF TANZANT A AT IRINGA rM ORIGINAL JURISDICTION (DoDoI'IA REGISThY)
- CRIIUNAL SESSIONS CASE NO. 104 OF 1976 THE pr)pj Versus GABRIEL s/o I:UIWALE CHARGD fITD c/s 196 of the Penal Code. 0000000000000000 JUD GTI~ iTIKIBETE, J., - The accused GABRIEL NULWALE stands charged with murder it being alleged that on or about 11/5/1975 at Ihowanza Village in the District of Mufindi Iringa Region he murdered one Leonard Vakuka. It was the prosecution case, that the accused and the deceased including PW. 5 and 6 visited PW.4 1 s house on' 11/5/1975 for pombe. The accused was the first to arrive. He arrived round about 11.00 a.m. He was followed by the deceased, Thereafter P4.5 and 6 also arrived. Accused was carrying a bill hook.'which he deposited with his hoet when he sat to drink pombe. It was customary for everyone with a weapon at a pombe place to deposit it with the owner of the premises and to collect it on his departure. The bill hook produced as exhibit in court was adequately identified by \T,4 as the one accused was carrying on arrival at his house on the material date. The same bill hook was identified by accused wife who was called as a defence witness as being similar to the bill hook she saw in their home for 41 , orne three days before accused left saying ;hat he was going to look .f or some casual work some where.
- . By around 4.00 p.m. the pombe was all ov,er and the four who •, _ •. I' apparently cane fr om the same village left. Although they left together P.1.5 and 6 walked ahead leaving accused and deceased behind.
- At some point - at the home of P14.7, PW.5 and 6 had stopped to exchange eetings and for a brief talk. The two were preparing to leave \$
- when accused and deceased arried. They too stoped to great PW,7. Deceased entered the house whi:Le accused waited outside - carrying the bill' hook. PW5 and 6 depaited - as hefoe leaving accused and deceased behind. The sun had ilisappeared although it was not yet dark. The four had not yet reached their village. After a while accused and deceased bade farewell to PW.7and left, Next morning the deceased body was found iyi the bush by the foot path with a bill hoo1ç..be it. -2- It was the bill hook accused was carrying to and from Ft1.4's home the previous day. Accused was no where to be seen. He disappeared for son e two months before his arrest in connection with the killing.. The cause of death was given as shock following external haemorrhage and damage to the spinal cord. Other observations -

the result of post-mortem examination were as follows:- "Cut wound on neck almost amputating the whole neck leaving only a 'bit of flesh and skin on right side. Cut wound on right shoulder 5" x 3" x 1". Fracture of clavicle. Right fracture of cervical vertebrae (spinal bones) 4" x 5". Damage to spinal cord." The prosecution maintain that accused was the last person to be in company of the deceased before the deceased met his death. Accused was carrying a bill hook similar to the one found by the side of the deceased body. Accused was undoubtedly the one who inflicted the fatal blows with the weapon he was carrying. He was therefore the deceased killer. Accused denied having visited W;4's home on the day in question.. He denied knowing either the deceased or PW.4 or 7. He occasionally used to see PW.5 and 6 but he would not say 9 they were from the same village with him. He denied he carried a bill hook on 11/5/1975 and required his wife to bear him out that he had never possessed such a weapon and that on the material date he bade her farewell saying he was going to look for employment somewhere. She folded a blanket and gave it to him. It was the only luggage for his safari. He was away for some 59 days. When he returned to the village he was arrested on an allegation that he had killed one Leonard Vakuka, - a person he had never known before. He was surprised to hear from PW.3 that she was the deceased wife and that accused and deceased were neighbours as well as friends. He claimed to have never known her before and denied \$ - kh6l were neighbours. He denied having visited PW.7's home on 10/5/1975 and insisted that Messrs Upuli and Matao appeared as defence witnesses to show that he arrived at their home on 10/5/1975 and remained there working for almost two months. He further wanted his wife to bear him out on the issue of a bill hook that he had never been in possession of such weapon - and on the question of a blanket. Upule and Natao came but accused changed his mind and dropped them as witnesses. When his wife took the witness box she denied they had ever possessed a blanket but testified as to her having seen a bill hook in the home for some three days before accused left. She later saw a similar 'bill hook beside the deceased's body on 11/5/1975. On the evidence I believe the story of PW.4, 5 and 6 that accused visited PW.4's home for the first time on 10/5/1975. He carried a bill hook as alleged. I believe also that accused was left behind with deceased when PW.5 and 6 left PW.7's home. 1

- 3- I am quite satisfied that PW.5 and 6 are from the same village with accused and that deceased was accused neighbour. That accused and deceased were neighbours is clear from the evidence of PW.3 and accused's wife. I am fully satisfied that like PW.5 and 6, PW.4 and 7 knew accused very well. As already indicated I am quite satisfied with PW.4's identification of the bill hook found beside the deceased's body.. It was undoubtedly the same bill hook accused carried the previous day on arrival at PW.4's home and on his departure with the deceased. The identification is also strengthened by evidence of accused's wife who claimed to have seen a similar bill hook at their home. I am satisfied accused left PW.7's home in company of the deceased. He was the last person, seen with the deceased, The body of the deceased was found along the same foot path the two took on their way home from PW.7's home. A bill hook accused was carrying was also found beside the deceased's body. Accused gave no explanation as to where and under what circumstances he parted with the deceased.

after leaving PW.7's home. Accused disappeared for two months from the material night. The circumstances are such that it is irresistible that accused was the one who inflicted the fatal wounds. He was the one who killed the deceased - Leonard Vakuka. No motive is apparent for the vicious attack. But it is clear that accused had been drinking from 11.00 a.m. to 4.00 p.m. And the prosecution has led no reliable evidence to show that accused was

- sober when he unleashed the attack. I am inclined to feel that the attack, was a result of intoxication. Accused dumped the weapon he used to attack deceased - beside the deceased's body. Such is not the behaviour of a sober person-. There is also the evidence that he had been walking slowly with the deceased when others hurried home, another indication of drunkenness. In view of the circumstances I would give the accused the benefit of doubt and find him not guilty, of murder but guilty of manslaughter and convict him accordingly. I (I. J. T. JPJCIBPTE) JUDGE 23/8/1977, OUS CONVICTIONS Clan rec'd. Circumstances call for heavy sentence. Very bad type of manslaughter. Injury - very serious. Deceased slaughtered like a chicken. /Deterrent sentence required. Drunkenness must be discouraged. Accused is not to be proud of it. (i. J. Ili:IBT) I JUDGE OF U PLAIN INVESTIGATION, No criminal offence for the last 30 years. Has never been to a court of law. Drunkenness the cause of the whole drama. 10 years in remand. Has a wife and children. Pray for leniency. ALLOCUTUS2 I have parents who depend on me. I have two children, J. NXITHTE) JUDGE 23/8/1977 SJDNTNC, It was a very brutal act by accused. And during the hearing accused showed no sign of repentance. He enjoyed telling lies and enjoyed asking for adjournments so the police could go to search for people he required as defence witnesses - knowing full well that the people had never been his employees, It was in addition a border line case - requiring a very severe sentence. Accused is sentenced to 14 years imprisonment. - 'Q0 (ii. J. I'TvAKIBTE) JUDGE 23/8/1977 Right of appeal obtained. 000 J. NPAKIB.:2TE) JUDGE 23/8/1977 \$

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/350115/source_file/84aa4345e418403e/19770823_TZHC_Iringa.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/murder-tzhc-1977>

Prepared on 23 October 2026 · Esheria