

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA AT TAEU

- ORIGINAL JURISDICTION (Taocra Peistiy) CRIMINAL SESSIONS CASE NO 12 OF 1979 The Republic versus"

(i) ISILLO I LE TLS.JA

(2) ZOLJISI OGE- ITurder c/ 196 of the Penal Code JUGNT ' : . TTTTtwfl , T

- . J • , . - The to accused person Siloi' & /o: anja and Lazaro s/o also, tan Ciiitlj cro ita the offence of murder c/s 196 of the Penal Code. . . . The prosecution hhc alfof c-I that en or about the 9th day of, Septeaber, 1977, in Shinyana Roion, the two accused persons jointly and to(ether Lthderad one Kalwa I/o Mbinda. The accused persons deniec the ohard ..":i....., • !... .. •• : • •
- , The proscution's evidencie ro: a total of eight witne- sses is a follows tc- Ieccased Kuflva I/o Linda, was a res- ident of Ihungula villade in Uaha aDietrict. Living in the sae hcase ac- the d000abcd werL. ir c ronaughters, naioly, vary PaJc (p /,l)and Reina Paulo (P w 2). Her son, Paulo Lwala (P.w.3) had his own hodse about 50 paces away from the doceasedts hose. - Sonetiioe in or about 1967, the deceased' and her relative, .onoGunadi'Lujula, had a dispute ovr iiTheritice Sometino in dumdus:t 1977, he first accused went to P.W.3's hcaio- and requested PIJ.3, who was then a cell leader there, t J afluca h 1 lct in the via-. But as the first aocsed had no identity ar.dP.'7.3 ;turnCd .'dbv the fi.t.,:a.ccsed s eaest., the.dirst accused left. Abot a - week later, the firti accused __,ain went to -P.,d3 hand reheed his recue.st..±onia ieflot"aylng that he had been referred. tc, P. 7,7. 3 by (-ur_acti, a relative of P. again t ixrned du tne first accudcs reucst. On .orabe'at 8th S e1e.1977, that is, the eve of the deceasodts death, the soend accused Lazaro Halisi, called at P;T1.3' s home arid., as ked fcr a alaco to sleep. But as the sec- ond accod had, no idemtiy card., 2.W.3 refused to give him a pjace t OL ocec then left. r et i 8ta t 9t SLptcher, 1977, at about L. 00 a , te aeo L.f me a ii in tviliage caught fire and and. an clara v:as raisod ho J3coaood/her grandchildren went out and diii P'3. -P.i73, however, told the women to go back 'to bed end 10 end ct:r non proceeded to Patunat s house. The coeaso Pr 1 n 1' 2 ±Lo lf WenuGa into the huse to slf ut f 2eii asleep, and before P.W. 3 had rctuTI.o, T' I 2 hor feot-stepa of people walkind rox.ri the ii sc Ifter that, the door was hit and it floy,, cpn The ecnsed thc'l askcd, I J 'Who are thoso? SL. ilao peolo ntsid.e

aiisWereI it is ourselves., C The dece25ed insisted, r \ ' hoa re ycu9 Jest thon, shot ru:1 ut. Apparently in confusion, the. d .ece-ised stood up naked and went to the door just as two band- -1 } its walked into the hc,use. Without fu.rtherado, one of the two bandits cut the 1cuctscJ on the lice with a panga. The doceaseo. t en c r i o cut to hor rand.children that she was dying arm thet ould ivu her clothes. As she went iOj near the room in wnc: P T 1 was, toe two bandits, one of who: iat torch, pulled her iy and pashQ-d her against a wall. Teen they pullocL her uicsiae There one of the bandits picked uli a etone and nit the ccco:soe at it on the leg, where upon ehe fl1 n. The t nm uiCLit picked up a pestle frcn ncartj one pornded the occcascdshcad with it. Ieanhil., oaring for 11lr life, 1 Elpped out and went to hire herself. P J 2 nd ctao cinlron then started to raise . • r T:: r 4:

- -)Et :l • a1ai, • n j) Qrj-n);:c? en tt; alaTLi, .-i:. 3
- ! to the house. ç1)9- ho us c -3tt b t 1C tii ilePit ' the .ioi:o i i_ ea ted J S C Ui- . 3f1(A k;1 eatter. Stations and —1:E r j- .. , . • . . . i r f j j -Lo n3 lTb pJc v isi'bd to cci, tat Li.. : u osjL' ç1 (1 At ke cnc the cio oqt-pri± ,people winch lea frcL soç tc 'Ce tij rct 'i ie rton of Guna- cr)ç IL 40 dvi1l hwtla' j 1llate. The c.cl rf Ioct-pri its, h' cvor,' cuiz c-nl t tred o' ashort distance r nht t2cr s if the sets of IL rL .. fopt -pr1 nr j.'ii nta, vo aecby ipai of shoes or boo- £t 0; tW1thliI:3c ruiifl L; aQrosc • .0 0 0;F t 00•1_ • 0.0•0• 0•• 7hon a:cu 1 tc dlic.. if tioro vsanyone he suspected, P 3 said ti - t he suspented 'is rol'tirc Giadi of Ngogwe viii- g& bocaizo the sail Gudi afl the deeadsc d a dispute over 1_ LIJ.eritancc .fl 1967 Aoin cm th t itin, Sv b - Insrect3rHwakabage (P.w.4) nd. bv.o other plicu of±'icers; n, whou ws çrporal Abdui- • H• ,t hussoin (2 1v.5), irccccc/t Ia:wo villac. On arrival at : Nowa vllo, the polico officers ont to th ward office anatock to ward secretary, cne Ta"eo (T v.6) to lead them . / tc the hcas&o-f thc supect Gunadi r) On arrivl 't isct 30 a.n., they foildGuad; lith cix othr pop1o, whom was the iSt 4 w csed, u rinki4n pobc 9 Then one f t'h throc. ipc officurs, who had a gun, told those people nct, t ovo. -P V1.i. thcr told then that each one of thou w' uli he searched whorc he w Jtst then, the 1st accused started trcithli andvotin profuscly. P.W.4 then searched two ieopld,bt n'thin was found on then. On sQarcinnL tho first accs.d inhis right trcuserts
- 0 poqkot was found a small tin ttl thih'•as half-full of gun- pcwdor. 'icn 2. 4 askc3a. thL let accsec4. v1r't the sun-powder was4 for, the 1st 'ccLscd i2not answt - On f,urthur search, in tne left pecket Cr th e 1ot ouseds trcusrs was found a : p]_oce of cloth which ha b1oc stains In the saue pocket was fcun c tiry 'ath stri rcLn tho On Opefl1flg It ws fia t CCTii : o11cts an iiatdhes. P ?4 then sIc:i the 1t ccsoi horo he had coi frori. Tho 1 s t "ccu.sc seld tivi, ho c frc: thv1 va llaCe.L w16, 1 .- ' 11 - hcwvoc, rcfuta. th 1t accuscs cli. PI.4 next asked ..- ' .- : : •.. - S. - ••• . 0 •• - . . . : - Gun:di 'bcut The Lt ccs Guri id that he did not ..- -.. ;-• . . : : : -••• . - :• knc. -t.tic Jz ir tit t 1st ccaseo hd jt±st come thcro 'L rL bo T1n nc L)f n i tt cup c.iic Tatata, said that the 1st ocse ws a lir, tie 1st acqued had cone frn Nzeo o'ac ±t hO('frAttL har OC'i the 1t accused that r Lrn1n c in ff01 h co 31ta311, which was about 50 paces aw frc Gadis hoe I si uld - c mt oat th the said Matata, whon presoutin itc tc call as thoir tñesdd ±St JCLi0 h ho. dd:. . On hc -trmn -t tota LC sid J 4, i'W., P w.6,Guna- EU1C 'lst cooJ rccoc tc that hcas i ëhy fcid hc fo .., Bitanali ne Ro Kul P. 8); Acordmngo . . : -- ¼.t' pf4 -

7,5, TiO .tcltd thethit:th 1t dcüsd ariahis Lwho hJ ast loft, h c'oo tcr'at 5.00 a.n at rorning an
thot silo h: sho tho thot c u to leep. ut I' J 8 't1 io c.rL tot i lot ccusc was the guest o T f Gu di9i
thit 1t ccusd hd 1c t .tdi'-s ho.. Shc oed//the only person \qho slopt in that house vas Iatata,
ws thoir uost anLYthat tho sid peaed. he

- - - - - - (, ... A.. wa oiiphatic. tbit no --other.ios± slet..iui tht p 1J • 4 an the rcst
tno onto-rc' tao house and started sea- chan it La tao a a:mn n the all was a blue shirt wiich
nad blcoJ stamns. Under bc ,as found fair of rub- br bct hmch also had blod staio, nd the
sole of those - boots w.-rt iLaLir tc the foot- -- rmnts observed at the ho.se of. tho Jecosei i In
the sauc room, bricd unor hop of cobsof maize . . . ,•.- .: .:, was found a hcoo—m.c un an2 a
thi: ir - h ru used. for fill- in un—podcr in fl oi c :as Under tnat same heap was - found a ba6
in v:hich there wr two rphes, one of which was functioni0 According to r.W.4 and .7.6, when
they cane o.ut .pf that house., P.8 handed to P..7.4 apanga which she said had been entrusted
to horb.y the ls accused's conpaion. But according t. 73it. is the plico officers thens- elves who
f, an the pnga in the h: use in which they.,found the gu4..ami. otho articles. B.implicatic'n
P.W.8.deried having hand oc'L the p5 - na, to I 7..4 P.W.4 then c ed::1m1 the articles and
resCd thbo the Jst accused aad Gibadi. • On arrivul at Kabana rolico Stotion, just as they
were djsonbark±n from the mtr vcbc1e, the grandchilen of , the doccascd innodiate1r
ppinted to the let accusdi. and said This one was one of then
- ' . and they also tOld taat the sc.pOn. bandit *ās at the bus stnd Sc' I "oir with thc to the bus
stand where they, :: intod. cut tue 2nd aqcsod to hin The nd accused was then arrostod .• On
the sane aj iat ie on 99.77 1 o post-mortem exam- nation as con o.cto' a tho lc'dy of the
doccasec1. The doctor who conducted the examination hborvod that the deceased had
nuplecut wounds on the head and a compound fracture of the sku.11 The doctor t :pined
that the death of the deceased was due to the multiple cut wounds cn the head and
compound fracture of the skull.. Subc-quent1y, the 1310cc of cloth fcond on the person of
the 1st accused, the boots and a sarpI f tho ased's
- blood were sent to the- Government Chcmist 9 Dar es Salaan for examination. On
exam±iaation, the piece of cloth was found to
- . contiri group human blood. The- deceased's blood was also found to be group O"O Th'o
hoots were. f.ounu to contain human blooa, but its go 4 p could notbe identified. unadi, who
was charged. jointly with the two accused per- • . . chs, later passed away. S.. In his sworn
statement in his doence, the 1st accused. said — 6 - that he was born and brec. at Tmnk
village in Nzega District. On 8.9 77, he 1efi fcr- Khaa to a c and loo±c for honey, and he aent t
Cbailu vU1ac hero h senL the night at Gwna- dies h3vso a rai vh: h Ice a LaJi married from
the 1st accscJts Vii3C Ut C)flifl On 9 9.77, he went about 1001:n for hcn3 anc in course of
doing so he raet P w 8Ho, 1 or fa1oo. tc ot aay honey and so re- turnol t Guii s ianso wiaieie
aL. aa so four other people starto crintil?g c. e 3I1LYuLJ afr tat, two police off- icers arvod
tacro a tolo thou, I Hanas aa one of the poicc cfficers pointed a gun at te lot accscd Thc 1st
'ccusc gent on to say he that beausc/ha. nec cfor anon a un r a police officer, he startc trc lin
Thon they scarc±iod him, but nothing as fund on hind Tc 1st acc also dencd having gone to

Bitanzalito 11 o ita nn, scarce He and Gumaai than arrstod On arrival at the pcico station, the 1st accused wont on. -uhc olico oifcois int him cut to P i.1, P.W.2 and P 1 saylnf that tno 1st accusu s their man who had. Içilled th6 doceascu anf that thai ust identify him. On : lO10 78, thosc witnesses agaln saw IUL in court during a prelimina anquir ha n:re gain 11 pointed him out to them The 1st accused concluled by ssying that he did not know, the 2nd accuoJ till they were jointly charged, and denied killang tlac. docoeed In his sworn sttcuent, the 2nd accused' said that he was horn and bred at one village in Tzf a District. On or abcut 8 9 77, ho loft fo r Kabaa 'n fo.t fOr the purpose of lookin for a jo 1 He arrovc at Mhengula village at about 5 00 p., and os ho vris uird he went to a ten—cell leader, wha hapenod to ha F 3 an askdc or a place to sleep. BL.t P.V 3 toic. him hcre lee :I oIacc for him to sloop Sc ho grococce to Ianaa tcn there he slept at the

- bus stano. Next any ho traoa to lok or a job but could. not -7- n one As he had only Shs0 17/= he decided to return to his hore Sc nextdaJ 1fo wont to the bus stand to catch bus and there he vias rrestcJ 'r a police Qfficer. At the pclice stat on, a police cfficcr said to those present there, "L okat thisuan Ho has killed soL1oone. Lik0•thE st accused, the 2nd accused also denied killing the dooc-isecc. L aLth2 thafl ho c.id nct ka w the 1st accused t before they c:e cnar:eu t tins Juctufe, I S - uld J .C,411 ut that in the course of the t'ial to first sLoscr could xi... L be available and his where&uts \C2O not knoin0 So the triel had to proceed
- tc the orLd.'j.tj1 the aid of thc romainin, lady. assessor. As I tel the lady assessor inay sui.mi - i-up, on the evidence on record, thrc ±9 xie dispute that woman by the name of Jwi hi:da that she died aviolent death;
- • and that the killin ihth ci:'cunstancos aounted to nurer. What is ioi sericusl in dioputo is as..tswhc.ui.deed the dcc easod • • • •
- The prccohton here relied c.n hqtd±ct.'d circums- tantial eviCencu.. Tlitn rccarc' tc earcct evidence, there was the evidence of F.W 1 n di , I' 2 whc claimed to have identified both ac'cused porsns th - t flihtG
- Itis well stt1led that evidenhq of.-identification often caLses 50xe decree of uneacinos, c.nd cc before basing a con- _vition on eviöence f idcmficati ii, such ev1e-nce must be ' wrbertight It is, t...ac..refrc 3 usuall advpable to carefully weiph such evi.once and - S loo1 for corroborative cvidc.nce so as to rçmove any doubt that to witness(s) may have iac.e a Lastakc, partic4arly where the áumcs fvoujia borrCct idt1fcatjon were dlffi- (utrLt in th prLsont csc tLc circiast.xces fouring a corre- t itificstin by th t\o yen ir1s cr0 undoubtedly dfjdu1t Thoj wcrc dfic because thL incident occurred - . • , ... - • i• - r • • - . at niht in poor kur bi' lihL. the culprits fired a gun andthus f ri_ht'c-nt- 6 the twC much that as P W.1 said, ,-" ••4c , - - . , - "" ... ':4• , , . . : I: I o tthey 'OrQd tiat 1)) I tr- WO .- tLIU o_oLiIwq -O -1 u • - ' - . ri- j3r-)) -c\Tj
- r . F);cyitc _ 4 i 1 r •.'3 v oi.r- J- 1LjI 0 OJ .ie2hoz'ç± i(T1 \n: JOJOi3 ' J1)i)JV C[/ r\ 311 2[is) J j1TJ)({ Goth I±C c c1jj0)c two witnesses 11)fi cj I i —s1 It1fOr aCCas persons. Al't o i T- attr4yhcn tto Wëen the sbti: jJ I Vf1CCtCs to ' ' '1 r] —3CO ll - O1iO Off9ers went to j J) dirW 1

CfllC th± .Ld'i I' yItJ5 ti: Jaw, liino w v9 a dscr1pt1on of tp1t c r fJosJUO) :-) Jj j _ - Icè - I was ony aQrthey had seen CIL frJ p1 J r L r j 3 1J; jjJ J (J J rest tt said he was t I 4I 711 3- Ecea, I Conducted. I -.;';'L' . : I•3 .O1Tc'sanCos, t1Qrefore, I respect to the d " 'ady assescr in this vory diffict trial, lia of the view that CV1CCflC LfP / 1flL fL2 cumct be said to have I WtcrtiCht 0 I

- f : T çq tnt bho I- CSoCuipn!s C1rcustantial evidence. that fr cr?un antialJvidce to form a r'J Jd ft,r a ccnvc t iust . incapable of aplanation other asonale hypthcss tantjae uilt of the a uedp To ut i II dirforonui, th c1rcunstani I evidence st- irresistibly int tc th3ba1t f tho aaued. II It is n ot ch at I — c71r cce rais I SUPicipn against i LY 3 1_LJM the1accusa;rnhC v1Onc :1t fr n unkeclin :n the I e 1dence resa OQbC, thc Pr ecic's/stht foot-prints frH1tho scno ont a t10 wee rnreco 1wl1a is the dir-
- ectc - ?VyC \ifla - q I hero th 1st csed was arrested the next or_nc(thesc fotrints we not traced to anh- ore near Grad 1 s h'usc - -
- Then there iS tho V1cOnCC of P.W4 and P WG6 wch I acct to I tra±iuj 2 th - b lthO 1s 4cc1sea was fQfld in POsoion fl er; lflCrl1Itng articlessuch a a handkerch J ief which had stain of h an blood and a in"Corit-aining gun- 1 1 -
- .1 -- - ,-- po wder,swoll as pellets of a hone-made gun.But there the Incrifiatl\n cnde. F ' 1- and P h 6 tricc to prolong the chaj of incininatiri lirJs by saying that Iatht: o1d then that the lot accus had spent the niht in the hcse of Bitanzali, where the gun CLtS mae a ± ana wore funC. Unhappily, Matata has nct ien ovluenoo. Clearly, therefore, the evidence of P 77.4 nc F. w. 6 ust now be censdered to be worthless hearsa _,vidlence. P I 4Ts ovidence. that p w.8 nad told hire that the 1st accused and his colleague had cone. at 5.0.0 a.u. and had slept in that. house has been ref by no lesser a witness than P718 herself - the owner of that house. On the condrary P.78 appears to implicate Ikatata. In other wrds there is nc evidence to connect the gun; pangaandbcots . ith the let accused The evieneof P.W.8 is that the 1st accused slept in Gumadi's house. P.w.8 was not treated as a hostile witness. It must, therefOre; follow that she was being aut by the prosecution as a witness of truth a There ic yet another reaJrness in the prosecution's circumstmatia. ohe.i.a Iaiin established by documentary ev- idence that the 1st accused was found. in p.ossession of a piece of cloth which had human blood in group "0 11 which was the decesodts blood orowe, they failed to produce evidence of the 1st accusodts blood droup so asto eliminate thepossibility that the blood en the piece of cloth was that of the 1st acc- used himself And it is common laowlodge that group "0" is one of the commonost of blood groups The Government Chemists report therefore, rensins: inconclusive. Since none of the incriminating facts complete a chain against of the two accused persons, all that one can say with smme degree of confidence is that the circumstantial
- 10 evidence raises grave suspicin particularly vis—a—vis the st accused. But uoDe suspici., per se, and however grave, oimot forn the basis cf a conviction iAa crininal trial. Pr thoso res us, aa 1 with gre3t respect to the lady assessor, I e' of thc view tht the pr s o c Lit ic n has failed to prove its case beyon rocscnabie dqubt,oainst any of the accus.A 1ersns. The accuso ersc'as, in rr view, must be gilT- en the benefit of do ut I acçordinli find both the accused

persons not guilty of nurc' er, and I accordingly ..hereby duly acquit thou forthwith They shall be relascd from custody forthwith unless othe . wfully detained.. B.D.O. I,TA ... TTDtT1 tjUJLT.J1 Deliverd in cpen CLt L Shinyang this 21st day of April,

1983. . I. B.D.CHIETA, JUDGE - JI Lady assesscr thed and dischar - ed.. B B IPiJTJ. 21/4/i83

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