

TANZANIA / JUDGMENT

19770928 TZHC Tabora

COURT
TZHCDECIDED
28 September 1977

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

/c7V. IN THE HIGH COURT CF TANZANIA

- AT TABCPJ S - ORIGINAL JUPISDICTON 1/ (Tabora Registry) CRIMINAL SESSNS CASE NO 18 OF 1978 THE REPUBLIC vers u s NDAHANCSE MJ.NUNGU ' CHARGE: Wounding with intent c/s 22 (1) of the Penal Code. JUDG1ENT MAP IGLNO J: N'AHCNOSE SIO MANUNGU, the accused in this case, stands charged with wcuncii n ' with intent,.contr'ry to section 222(1)
- of the Penal Code, neely that on 25/8/74 he unlawfully and
- with intent to maim, disigure or disable, wounded Ndabakenga Katabanya. He has denied the charge coplete1y. The prosecution has called threewitnesses, including Ndabkonga himself, to testify' that on the aforementioned day at about 4 p.m. at Maiagarasi in Kigoma district. the accused fired a loaded gun at Ndabakenga. They all said that he' shot from a distance of about tenor twelv paces and that the blow knocked Ndabakenga down. , Their evidence also shows that Ndabakenga bled massively and that he was sent to hospital for treatment after beinE. nttened by a first aider at the scene. Further, it shows that Ndabakenga stayed in the lo.spital for two' months and that' though he surived his left arm is now crippled. As to the events which led to the attack, there is only thin evidence and I see a d.ispai'ity in the prosecution case. According to Ndabakonoa (Pw.i), thi incident took place on a roac. He stated that he was just walking about in the village When he not with the accused and one Kalikunya. These two 'men were scuffling and he' an;cP..2 Shabeni entervened. In the course of separating them he, the itness,' pushed the accused who fell down. The accused quickly stood up and then quitoly left the place' but only to come back. within a few minutes. He came back with a mUzzle loader. The crowd apprehended digor and scuttled. The witness looked back and saw the accused' pursuing him and in another moment pointing the gun'and firing at him. The bullet caught him on the left •
- shoulder and'hu dropped down unconscious. But according to PW.5 Kisebe, this incident took place at a porthe shop. All of them - himself, the accused and Ndabakenga - had boon drinking Kangara from about 9 a.m.. He said that they /2 were all considerably drunk by the time this incident took Place. According to him, it Was the accused who precipitated it. h said that in the course of drinking he 'heard the accused challenging dabakenge to a fight. Ndabekenga replied, rather contemptuously, that the accused was too weak to fight him and at .that the accused stood up and went to :rab Ndaba- kenga. The latter rose up

quickly and they locked themselves in a tussle. The accused was overwhelmed and twice thrown to the ground. The other patrons then separated thorn and upon that the accused left the place and ran away in the direction of his house which was about half a kilometre from the police shop. He came back within a short while. The witness saw him hiding something at his back and when he arrived the witness realised that that something was actually a gun. He alerted Nc'labnkenga and in a state of panic all the patrons fled, however, almost at the same time he saw the accused levelling the gun and shooting at Ndabakenge and then fleeing with the weapon. The testimony, of another eye witness, P2 Shabani, is in substance, in accord with that of Kisoba except on one point. Like IT Cabakenga, Shebni declared that this incident took place at a police shop. . . . The accused; as observed on the outset, denied the charge. He denied that he was at the police shop and that he ever fought with anyone shooting him. He has adamantly clung, to that: story from first to last. - The assessor was of the opinion that it was the accused who shot Ndabalene in the circumstances as narrated by PW.50 With respect, I do not hesitate to say that she is right. I find so myself. I think P4.5 was a truthful witness and that what he told this court was what actually happened to the best of his recollection. There is no denying that Ndabakunga was shot with a bullet - and seriously wounded. In consequence his left arm is now useless. - The incident took place in a public place and in broad daylight. As we have seen, the accused denied that he was the assailant. In effect he was challenging the credibility of the three prosecution witnesses. I find that it is himself who lied to this court. For there is no suggestion, and there is no reason to think, that these witnesses stacked against him. . . And as I remember to the assessors in my summing up, it scarcely makes sense that rather than name his actual assailant the 'complainant Would' falsely implicate an innocent man, given those circumstances. - 3 .

- T - - - - . . . - 3 j. - As pointed out, the evidence is only sketchy - as to why the accused challenged the complainant to a fight. As it is, I see no lawful excuse for him to threaten the complainant with such a deadly weapon. Seeing in mind the weapon used and that he shot at close range, it is evidence that the accused intended to disable or disfigure the complainant, at the very least, unless he was so drunk as to be incapable of forming such intention. The assessor's view is that the accused was drunk and that his drunkenness was such as to prevent the formation of the intent. In line with my direction she found that the accused is guilty of the lesser offence of unlawful doing grievous harm, contrary to Section 225 of the Penal Code. With respect, I have to differ with the view expressed by the assessor. Any doubt I might have entertained about the accused's state of drunkenness is dispelled by three factors. First, he ran to his house - a distance of half a kilometre to fetch the gun. Secondly, he came back hiding it at his back until he approached his target. And thirdly, he fled from the shooting site immediately after shooting. This conduct, it seems to me, is not consistent with the bearing of a person who was so drunk as to be incapable of forming the intent. On the contrary, it is positive evidence that he was in his senses and that he foresaw and desired the consequences of his act. 7 Consequently, I am satisfied and find that he harboured the intent stated in the charge and very well knew that his act would

either disablu or disfigure the ccplainant, at the very least. I fine him guilty as charged anc
-ccorc:ingly convict him. Delivered in Court. Acivocc.tes present. Accused Present. -1 Cj D. P.
NAPIGANC'[28th September, 1977 JUDGE. Mr. Sengwaji: - Nil. Mr. Kauta: Ask for lenient
sentence. Accused is afarily man and has been in remand custody for considerable period -
since 26/8/74. ..•. •. .. ./4

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/350182/source_file/ae0bbc5f07c5e6f9/19770928_TZHC_Tabora.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/woundingwithintent-tzhc-1977--6a3ea5253b1caa912981b628>

Prepared on 23 October 2026 · Esheria