

1934.

Kenya

No. 23090.

SUBJECT

C0533/445

Appeal against death sentence by

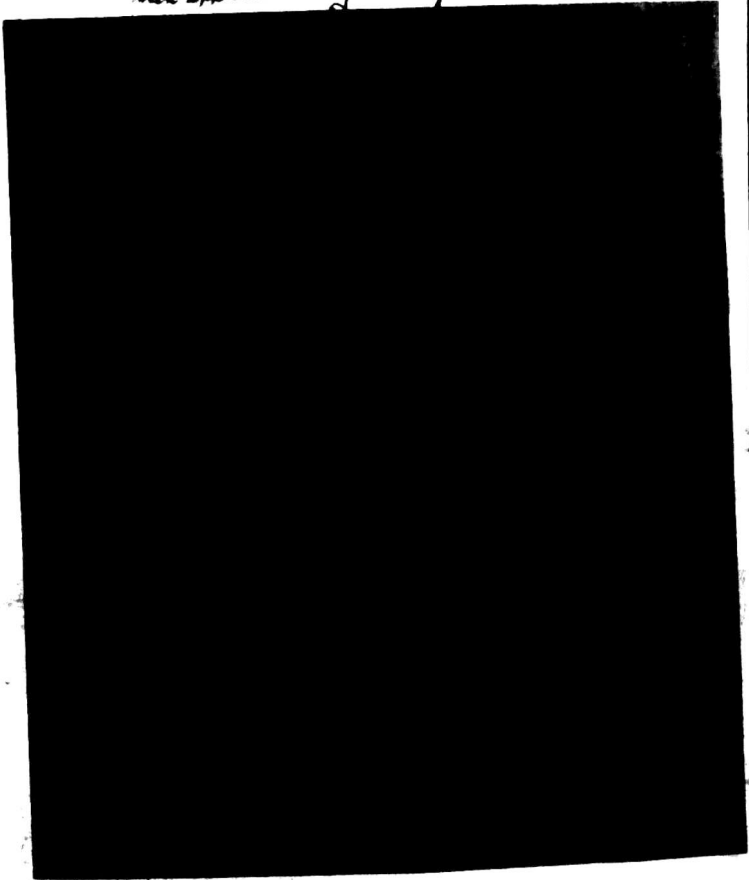
Thomas bin Abdullah Hapid.

Previous

Subsequent

2
1 W. R. Wallace (s.c.) (P. 6 Office) - _____

States have received a petition for special leave to appeal against death sentence from Ahmed bin Abdul Hafid & suggest it be sent to Kenya enquiring whether solicitor has been appointed to bring matter before the Board.



This is not the Tarlton murder case about which we have already heard from another source, but is a case where the death sentence was passed last November.

Draft code telegram herewith.

J. L. O. 76

*State has received a petition... and
agreed with evidence... and...
... and... and... and...
... and... and... and...*

Sir (Gottlieb) ...

Mr. Flood.

I suggest a telegram on the following lines. Say that this petition has been presented to the Privy Council, but that it cannot be brought before the Board unless a solicitor in London is appointed to instruct Counsel to appear. Ask them to ascertain from the local lawyer whether this is going to be done. If it is not, ask them whether there is anything in the case which they think would make it desirable that Burchells should be instructed by the Kenya Government to have the case put for both sides, in which case we should want full instructions by air mail.

If nothing is done by anybody, I presume that the man will have to be hanged notwithstanding his petition, but don't let them do this until they hear from us again!

H.B. 26.2.34.

2 To Gov. Tel. no 50 ————— 26 Feb. 1934

Letter 6180
made note in draft of No 2

3 Governor Byrne Tel 50 —————
States of Utah represents petitioner a pauper. It is advised that there is nothing on the case which would warrant instructing Burchelle as suggested, & in the circumstances further enquiry whether appeal can be obtained to one of Council whose names are on list of those appointed for pauper appellants in London.

3A

My letter to Mr. Reeve Wallace was deliberately pitched high in order to bring the matter to a head. I rang him up, however, and suggested that before he replied he should consult Lord Atkin. This he has done, and here is the result. All we need do now is to telegraph as suggested in the final paragraph.

3B

[Signature]
3.8.34.

* That is its proper name not County

I don't like it one bit. The Howard League is a kind of well intentioned but very mischievous body and this is a kind of their making this a regular term or rather of people in distress working the name of the League. Has anyone for instance ever deluged of letters? I don't think.

4 Gov. Tel. no 50

5 Gov. Tel. No 56 ————— 2 March 1934
Cause suggested for appeal to Privy Council is agreed to. Also that Burchelle is instructed. Copy of records sent to the mail on 2nd March. Four more copies will follow.

Mr. Bache

- 1 suggest what we should do
- 2 Get on news broadcast to
- 3 Get the Howard League to the point of appeal
- 4 Say we presume they will now withdraw because
- 5 Don't want to present the application
- 6 and tell Burchelle sending a copy of the
- 7 enclosure

Mr. Bache

Monday

R 297: Then ring up on 12/3/34 with the 44 case
the same
12/3/34
9.5

6 you 109
Indo. certified copy of Record of Case
2 March 1934

Mr. Bache has done all that can be done.

I don't quite know what para 3 of the slip means because the S.C. Appeal Court could not refuse leave to appeal to the Judicial Committee. Probably they said they had no jurisdiction which would be correct. But we shall see in due course.

Wait.

[Signature]

As to para 4 it may be undesirable to encourage appeals or applications for leave to appeal to the Judicial Committee. But it is illegal to stop them.
I don't think, so I think we should be well advised to

As regards the first paragraph of this Bill, I would agree with the second, but I think it is important to the East African Appeal to the Privy Council in Council to which the East African Appeal and give some support to the appeal from any grounds in the Bill. The question involves the law, the power of the great general or public importance, which was admitted to His Majesty in Council. An appeal was made under that Section, and the Court refused it on the ground that there was no question of general or public importance. I have always been doubtful whether that Section applies to criminal appeals, but so far as I know, the point has never been decided, and I do not think we had better make any pronouncement about it. You will appreciate that if the Court out there gave leave under that Section, there would be no need to apply to the Privy Council, since the appeal would come to them automatically.

As regards the third paragraph, what the Governor said was that he did not think we should do anything to encourage these appeals in forma pauperis. So put, I agree with it. Mr. Reeve Wallace ^{Subsequent to No 3} pressed me very hard in this case to agree to Burchett being instructed to represent the applicant, and I flatly refused even to pass on the suggestion, because once we start that game there would be no end to it. I am a little concerned at the precedent which we have created, but

we

By the Court

20/11/1913

DEPT. OF JUSTICE

A. B. C.

12 Jan 1914
 this do four more certified copies of Record of base
 to the Secretary of State
 I have also a copy of the
 prescription in the
 will not be wanted
 to the Secretary of State
 shall be returned to the
 its letter shall be sent to
 to Mr. Burchett
 I have Mr. Burchett's
 19/13

As regards the first paragraph of this draft, I of course agree. As regards the second, the position is this. There is a provision in the East Africa Appeals to the Privy Council Order in Council by which the East African Court of Appeal can give leave to appeal to the Privy Council from any judgment if in the opinion of the Court the question involved is one which, by reason of its great general or public importance, ought to be submitted to His Majesty in Council. Application was made under that Section, and the Court refused it on the ground that there was no question of general or public importance. I have always been doubtful whether that Section applies to criminal appeals, but so far as I know, the point has never been decided, and I do not think we had better make any pronouncement about it. You will appreciate that if the Court ~~but there~~ gave leave under that Section, there would be no need to apply to the Privy Council, since the appeal would come to them automatically.

As regards the third paragraph, what the Governor said was that he did not think we should do anything to encourage these appeals in forma pauperis. So put, I agree with it. Mr. Reeve Wallace ^{subsequent to No. 3} pressed me very hard in this case to agree to Burchells being instructed to represent the appellant, and I flatly refused even to pass on the suggestion, because once we start that game there would be no end to it. As a little concerned at the precedent which we have created, but

we could not help it, and I think that the reply to the Governor is that we agree that nothing should be done to encourage such appeals and that we do not intend to do it, but he will appreciate that if some one in this country is prepared to take them up, we cannot prevent it. Indeed, it is difficult for us even to appear to try to prevent it.

C.G.D.

4/B 13.3.34.

By air mail 12/4/34

To Kenya 145 (6 answered) 15

8 To Burchells } 12 Mch 34

9 To W Reeve Wallace } 12 Mch 34

note sent to Mr. Burchells

~~DESTROYED UNDER STATUTE~~

W. W. Reeve Wallace } 12 Mch 34
Act no 9

~~DESTROYED UNDER STATUTE~~

Mr. Burchells' presumption in No. 10 is correct that was put by

17/3

P. Burchells
19

12 Nov 124

these four were certified copies of Report of Base

At Mr. Freshfield's request I have spoken to Mr. Buske. The presumption in No. 10 is correct and need not be answered.

Of the copies with No. 12 one should be retained with the file & the other sent as early as possible to Mr. Burchells. D. H. W. with Mr. Buske's message
17/3

Handwritten notes at top left of page 13.

13 To L. Burchells w/3 copies encl: an
(12) - 20 - 20 MAR 1934

Mr. Gault
to note memo
above No 27

Burchells _____ 21 Mch 34.
Act No 12 will notify
the Privy Council Office of arrival
of these papers.

DESTROYED UNDER STATUTE ? Put by
M. Davis : 27/3

Burchells _____ 23 Mch 34
Incl. copy of Petition for special leave
to appeal to be heard on Tues. 27 Mch.

DESTROYED UNDER STATUTE

Mr. Budge
? Nothing more to be done till the
appeal has been heard.

J.P. [Signature]

No Burchells _____ 27 Mch 34.
Report petition dismissed

Mr. Budge
Can we properly act on this or should
we wait for a proper record?

If we can, I think a telegram should be
sent in per draft, though the phrase should perhaps be
"petition for special leave to appeal dismissed"

W. Davis

For the [unclear]

17 To Gov. Tel 72 - 28. 3. 34

(M)

18. Governor Bygone Tel 49 _____ 5 May 34
Requests copies of Judgment of Privy Council may be despatched
by air mail as it is undesirable to create concern until judgment
has been rendered.

I have telephoned L. Burchells, and
am informed that there is no question of
a judgment; the Board of Appeal after
hearing arguments, merely announced that
they are unable to advise H.M. to
grant leave to appeal. In the case
of Abdul Hafid, there were no
later dates of any kind from the
Committee - if there had been Burchells
have said so in No 16.
? As in draft [unclear]

19 Tel. No 117 to Gov. Kenya (18 and) 7 May 34

(A)

20 Burchells

29th May 34

Encls Am-6 apporoving account of petition together with note of charges & disbursements.

(See Mr Duncan's minutes of 24/33 & 27/4/33 on 14227/1/33 regarding copies of the King's Order.)

If Mr Duncan agrees that these Burchells' charges are reasonable

& send the bill in original, to C.A. & request them to pay the amount of US. 17.11 from Kenya funds.

Inform Messrs Burchells accordingly. Send to the Treasurer the King's Order in original, [& a copy of the letter to the C.A. and of the Bill.]

C. P. ...
29/5/34.

4 one copy

99.0 before the
CA do this
H/B

Mr. Duncan

If you agree

A. ...
30 June

H/B
28/6

21 To B.A. (copy of account in 20)

22 - Burchells (20 and)

23 - To Kenya, 579 (copy of account in 20 in orig)

30 JUN 1934

H/B

C. O.

Mr. Grossmith *27/6/20*
 Mr. *Trusty of*
 Mr.
 Mr. Parkinson
 Sir G. Tomlinson
 Sir C. Bottomley
 Sir J. Shuckburgh
 Permt. U.S. of S.
 Parly. U.S. of S.
 Secretary of State

DAVING STREET,

30. 1919. 134.

Sir,

I have, etc., to refer to my telegram No. 117 of the 7th of May, and to transmit to you, for your information, His Majesty's Order-in-Council approving of the dismissal of the Petition for Special Leave to Appeal to the Privy Council in the case of Ahmed bin Abdul Haid.

(9)

3 DRAFT.

KENYA

NO. 519

Gov.

I have, etc.,

Orig. C. in original
Encl. to No. 20.

P. CUNLIFF : ER.

FURTHER ACTION.

✓ C.A.
 Mr. Grossmith 27/6/34

Mr. *Freestone* 27/6

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh

Permi. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

29 June, 1934.

Gentlemen,

I am, etc., to acknowledge the receipt of your letter of the 29th of May transmitting His Majesty's Order-in-Council approving of the dismissal of the Petition for Special Leave to Appeal to the Privy Council in the case of Ahmed bin Abdul Hafid, and the note of your charges and disbursements in connection with the matter.

2. The Crown Agents for the Colonies are being requested to pay to you the sum of £48.12.1d. in settlement of your account.

I am, etc.,

(Signed) L. B. FREESTON

(20)

3 DRAFT

MESSRS. BURCHELLS.

FURTHER ACTION.

C.O.

Mr. Grossmith

Mr. *Freestone* 27/6/24

Mr.

Mr. Parkinson.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh

Permt. U.S. of S.

Privy. U.S. of S.

Secretary of State.

DOWNING STREET,

29 June, 1934.

Gentlemen,

I am, etc., to acknowledge the receipt of your letter of the 29th of May transmitting His Majesty's Order-in-Council approving of the dismissal of the Petition for Special Leave to Appeal to the Privy Council in the case of Ahmed bin Abdul Hafid, and the note of your charges and disbursements in connection with the matter.

2. The Crown Agents for the Colonies are being requested to pay to you the sum of £48.17.11d. in settlement of your account.

I am, etc.,

(Signed) L. B. FREESTON

3 **DRAFT,**

MESSRS. BURCHELLS.

FURTHER ACTION

21

C.O.

- Mr. Grossmith *27/6/34*
- Mr. *Franklin* *27/6/34*
- Mr.
- Mr. Parkinson.
- Sir G. Tomkinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh
- Perm. U.S. of S.
- Party. U.S. of S.
- Secretary of State.

C. D.
 R 27. JUN
 D

DOWNING STREET,

29 June, 1934.

Gentlemen,

I am, etc., to transmit to you

the accompanying account which has been received from Messrs. Burchells in respect of their charges and disbursements in connection with the ~~original~~ petition for Special Leave to Appeal to the Privy Council in the case of Ahmed bin Abdul Haid.

2. I am to request you to pay to Messrs. Burchells from Kenya

funds the sum of £46.17.11

Balance of the account

I am, etc.,

(Signed) L. B. FREESTON

3 DRAFTS

THE CROWN AGENTS
 FOR THE SOVEREIGNS.

(Part 5 20)
 one copy.

(copy of the account to be paid)

PAYMENT BY BANK
 TO THE ORDER OF
 THE CROWN AGENTS
 FOR THE SOVEREIGNS.
 PAY TO THE ORDER OF
 THE CROWN AGENTS
 FOR THE SOVEREIGNS.
 PAY TO THE ORDER OF
 THE CROWN AGENTS
 FOR THE SOVEREIGNS.

BURCHELLS

C. T. D. BURCHELL
A. M. BURCHELL

TELEGRAMS - VICTORIA CASE

PLEASE ADDRESS YOUR ORDER TO
THE FIRM AND AGREE TO PAY

G.



5 The Sanctuary
Westminster S.W. 1

29th May, 1934

RF
C. T. D.

Answer (22)

Sir,

Mafid v. The King - Government of Kenya.

We beg to enclose herewith His Majesty's Order in Council approving of the dismissal of the Petition for Special Leave to Appeal in forma pauperis in the above matter.

2. We also beg to enclose herewith a note of our charges and disbursements in triplicate in connection with the matter.

We are,

Sir,

Your obedient Servants,

Burchells.

The Under Secretary of State,
Colonial Office,
Whitehall, London, W.C. 1.

Orig. Com. orig. to Kenya (23)
Orig. + 14 papers to G.A. (21)

5. The Sanctuary
Westminster S.W. 1

16th April, 1934

THE GOVERNMENT OF KENYA.

Dr. to

Purchells

Ahmed bin Abdul Hafid v. The King.

1934
Feb.

Professional Charges in relation to instructions to appear Petition for Special Leave to Appeal to His Majesty in Council.

Apl.

Preparing and lodging Counsel, perusing Petition and papers; Brief to Counsel and copy Petition to accompany. Summons for Hearing; attendance on Counsel with papers, to assist, and of conference and attending in Council Chamber when Petition heard and leave to Appeal refused.

Including all incidental work :-

Privy Council Fees.

Fees paid to Mr. Ennals Freedy, of Counsel

Shortland Writers Charges.

Travels, postages &c.

25 6 11

5 - -

15 14 -

1 8 -

10 -

25 11 -

25 6 11

25 11 -

25 17 11

check to returned value of
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Miss Burchells
Charges

5. The Secretary.
Westminster, 1802

C. O.

23090/34

Kenny

(Encl) 2 em

19

Mr. Friedman 7/5
 Mr. Bush 7/5
 Mr. Ford 7-5 atmel
 Mr. Tominson.
 Sir C. Bottomley.
 Sir J. Stuckburgh.
 Sir G. Brindle.
 Perm. U.S. of S.
 Parly. U.S. of S.
 Secretary of State.



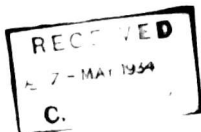
No 117

DRAFT. Tel.

Gov. Nauru

You tel 5 May 99 a Judicial
 Committee after hearing argument
 merely announced inability to
 advise H.F. to grant leave
 to appeal. No judgement
 has been made and the
 handed down, and Committee
 made no observations.

SECRET



Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 5th May, 1934.

Received 3.55.p.m.5th May.

anso g m 19

No.99.

17 Your telegram No 72. Grateful if copies of Judgment of Privy Council could be despatched by air mail. Am advised that Privy Council frequently make recommendations for consideration by me and by my Executive Council concerning exercise of prerogative of mercy and that it is therefore undesirable to execute convict until judgment of Privy Council received and considered.

C. O.

23010 34

13

- Mr. Houston 29/3
- Mr. Hood 28/3
- Mr. Tolson
- Mr. Belmont
- Mr. Shubert
- Mr. ...
- Permit ...
- Part. U.S. of S.
- Secretary of State

Key-

Coded
sent

~~15/3~~ 9/28/39

Abdul
Hafid

N^o 72 Your dep of March 30
 Petition
 -124 to ~~Approval~~ dismissed
 by judicial Committee

DRAFT. Tel.

Gousser Maandi

SECR.

BURCHELLS

C. W. BURCHELL.

A. W. BURCHELL.

PLEASE ADDRESS YOUR ORDER TO

THE FIRM AND REFER TO INITIAL

4 16
5. The Sanctuary
Westminster, S W 1

27th March, 19 34



Sir,

re Ahmed Bin Abdul Hafid.

The above Petition for Special Leave to Appeal came before the Judicial Committee of the Privy Council this morning, when after hearing arguments by Counsel their Lordships decided to dismiss the Petition.

We are,

Sir,

Your obedient Servants,

The Under Secretary of State,
Colonial Office,
Downing Street,
S.W.1.

THE SECRETARY OF STATE
WASHINGTON, D. C.

RECEIVED
U. S. DEPARTMENT OF STATE
JAN 10 1951

Sir,

Re: [Illegible]

The above petition for special leave to appear before the Judicial Committee of the Privy Council was heard when after hearing arguments by counsel their lordships decided to dismiss the petition.

Yours faithfully,

Your obedient servant,

Under Secretary of State,
Colonial Office,
Downing Street,
S.W.1.

IN THE PRIVY COUNCIL

ON APPEAL FROM HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

B E T W E E N

AHMED BIN ABDUL HAFID

Petitioner

- and -

THE KING

Respondent

THE HUMBLE PETITION of the above-named Ahmed bin Abdul Hafid

S H E W E T H that

1. Your Petitioner desires to obtain special leave to appeal in forma pauperis from the judgment of Your Majesty's Court of Appeal for Eastern Africa given on the 2nd January 1934 confirming the conviction of Your Petitioner of murder and the sentence of death passed upon him by Mr. Justice Lane of the Supreme Court of Kenya on the 17th December 1933.

2. Your Petitioner is not worth £25 in the world excepting Your petitioner's wearing apparel and is unable to provide sureties.

3. Your Petitioner was tried by Mr. Justice Lane and three Assessors upon an Information by the Attorney General of the Colony of Kenya wherein Your Petitioner was charged with the murder of Mohamed s/o Kiriungi contrary to Section 187 of the Penal Code No. 10 of 1930.

4. Three independent Arabs were chosen by the Court as Assessors. They were asked for and gave their reasoned opinions which were received in accordance with the Ordinance and each concluded with a statement that Your Petitioner was not guilty.

5. By the Criminal Procedure Code No. XI of 1930, S.304 it is provided

(1) When in a case tried with Assessors the case on both sides is closed the Judge may sum up the evidence for the prosecution and the defence and shall then require each of the Assessors to state his opinion orally and shall record such opinion.

(2) The Judge shall then give Judgment but in doing so shall not be bound to conform to the opinion of the Assessors.

6. The widow of the deceased stated that she knew of no reason why Your Petitioner should stab the deceased and that as far as she knew there was no enmity between Your Petitioner and the deceased.

7. The deceased with his family lived at Pangani in one of the dwellings of an oblong compound to which there were two entrances one about 12 feet from the dwelling of the deceased. the latter entrance was described as a door or gate and near it it was alleged that Your Petitioner stabbed the deceased at about 7.30 p.m. on the 11th of August 1933. The position of the gate or door and the spot where the deceased died were indicated on a blue print of a plan proved by the Prosecutor. The plan is part of the Certified Record.

8. The motive alleged for the crime was given by one Alma who lived as a lodger in the house of the deceased: she stated that Your Petitioner had asked her to act as a "go-between"

between Your Petitioner and a young girl below the age of puberty a daughter of the deceased so that Your Petitioner might seduce the girl and that Alima refused. The conversation was alleged to have been held about a month before the murder and she said she told one Idi the next day. Idi was called and said that Alima spoke to him on the 9th August 1933 (two days before the murder) and that he then merely told Your Petitioner not to call on Alima again.

9. No information as to Your Petitioner's alleged proposals to Alima was communicated to the deceased or his wife and they were ignorant thereof. The young girl in question lived with a teacher some 250 yards from the compound and Alima stated that she, the girl, used to go and have food at the house of the deceased.

10. The evidence to which Your Petitioner desires to draw especial attention as proving that your Petitioner did not stab the deceased and was not guilty of the murder is that of Nyambura the widow of the deceased, Dr. Vint, Policeman Ithara, and Superintendent Pugh. The evidence your Petitioner submits proves that Nyambura, put forward as the only eye witness, was not an eye-witness. All of the evidence is summarised below.

11. Nyambura stated that on the 11th August 1933 at 7.30 p.m., time given by the deceased's watch, he left home for the Mosque and soon after a man (whom she could not see) knocked at the door of the compound and cried out "Alima" The time of going to prayer (Ishar) she put at 7.30 its duration and return home half an hour. That the man then left, and afterwards met the deceased who asked "what have you come here for" that the man answered "I did not come to take anything I came to see Alima"; that the deceased then said "Get out of my way I want to pass: next time don't come and ask for Alima here" that Your Petitioner was then inside the door of the compound and the deceased outside: that Nyambura had a lamp (it being a dark night) that she saw the man stab the deceased, and recognised your Petitioner by the light of this lamp when he turned to pick up his cap: that after being stabbed the deceased staggered backward and round and fell down outside the compound between the two houses on the right hand side of the gate going out of the door: that she knew your Petitioner as having a shop to which she used to go: that at the time Your Petitioner was wearing white trousers and that after your Petitioner had run away a lot of people came up.

12. The other evidence for the prosecution was: Policeman Ithara, who went from the station to the compound and by his wrist-watch arrived at 8 p.m. and two minutes afterwards went to your Petitioner's house, arriving there about two minutes after reaching the compound. His reason for going to your Petitioner's house he said was that he said Nyambura had mentioned the name of the accused; that he found the house locked and the shop open, that he broke the door of the house and found no one but found a small mto in the shop. Nyambura did not in her evidence make any mention of such communication.

13. One Hassan said that he saw Your Petitioner running very fast three houses from the compound holding a knife in his right hand and in his left a pair of shoes. That it was very dark but that Your Petitioner and he were two to three feet apart and that he called out "Ahmed, why are you running" Hassan said that he had left the Mosque at 7.50 p.m. when he saw Your Petitioner.

14. Two witnesses who had worked for Your Petitioner said that they saw Your Petitioner leave his shop at 7.50 p.m. and that a pair of white trousers and a pullover (produced, belonged to Your Petitioner.

15. A policeman Garbux Singh searched Your Petitioner's house some time after 9.45 p.m. on the 11th August and found in a store intercepted by a passage the trousers and pullover: Harold Tonking a Bacteriologist examined the trousers and found a stain of human blood in front of right leg roughly oval about 2" - 1"

16. Native Inspector Kiwanuka arrested your Petitioners on the 14th August in the evening hiding above the ceiling at Eastleigh in the house of Sheikh Hersi whose front door was bolted that he was told Hersi was not at home that he forced upon the door and found Hersi there. (Eastleigh apparently includes Pangani)

17. Assistant Superintendent of Police Pugh proved the plan of the compound and explained that the dwelling "B" of the deceased was about 12 feet from the gate of door "A" of the compound at about the spot where Nyambura said that your Petitioner had stabbed the deceased: that he arrived there on the 11th August 1938 at 9.30 p.m. and was shown the spot where the deceased died at a point marked X on the plan: that spot being distant from the gate 75 to 80 feet one way and 100 feet another according to the direction taken: that he was told the direction in which the deceased had gone: that at spot X he found a sign of water but no definite sign of blood: that the spot was outside the compound in the roadway behind room H: that he saw no sign of blood except on the bed and body of the deceased. Sub-Inspector Singh proved that there was no rain on the night of the 11th of August and that he saw no water except at point X.

18. Francis Vint M.B., B.Sc., described the wound as $\frac{1}{4}$ " below left clavicle and $\frac{1}{4}$ " from mid line of the body, a gaping vertical wound 2" long and $1\frac{1}{4}$ " wide, that it passed in a downward and inward direction through the third left costal cartilage and finally through the heart: that there was a wound in the heart $1\frac{1}{4}$ " long and no other injury on the body: the cause of death was haemorrhage following the wound to the heart: that there would not necessarily be a lot of blood from such a wound: it all depended on position in which deceased was lying how soon blood would flow: deceased would not remain standing after the wound was inflicted: in his opinion he would fall immediately on the spot where it was inflicted: he would stagger back and fall: that he could not say if he would stagger 1 or two steps, in his opinion not more than a pace or so: when he fell, after staggering there would not necessarily be a lot of blood: if he was lying on his face blood would come very soon: he regarded it as impossible that a person wounded in that way would stagger more than a few steps: he thought that probably his heart stopped when wound was inflicted.

19. In dealing with the evidence of Nyambura and Dr. Vint the learned Judge then stated :-

"Dr. Vint testified to having carried out the post-mortem examination on deceased's body and finding only one wound, which penetrated the heart, he thought that the deceased after receiving this wound would not move more than a pace or two. There appears however to be definite evidence that the deceased did stagger more than a space or two, in fact a distance of from 70 to 100 feet before finally falling; it appears to have been established that deceased was stabbed at the doorway of the yard and did actually stagger to the point shown as X on the plan, at the back of the house. On the point as to whether there would be an effusion of blood from the wound immediately after the stabbing Dr. Vint thought this would depend entirely upon the position in which they body fell. It seems clear from Nyambura's evidence that the deceased fell on being stabbed, and from Dr. Vint's evidence that blood could quite likely flow then, the deceased must then have got up and staggered till he finally fell at point X"

p.17.

p.20

p.20

p.21

p.7 of Judgment.

18

20. At the preliminary inquiry Your Petitioner reserved his statement for his trial in the Supreme Court and called no evidence. At the trial Your Petitioner pleaded not guilty and called evidence to establish an alibi making his statement from the dock. Your Petitioner's case was that he left Pangani at 6 p.m. on the 11th August to go via Hamud to collect a debt at Nairobi - (the distance was not stated in evidence but the Judge said several miles from Pangani) - that he was accompanied by Salim bin Said; that Said stayed one night and that Your Petitioner returned to Pangani on the 14th August, that when Your Petitioner was bearing Sheik Ahmed's house Your Petitioner saw five or six men in black running towards Your Petitioner, that Your Petitioner was afraid they might kill Your Petitioner and ran to Sheik Ahmed's house found the door locked jumped on a table or box caught hold of the ceiling and jumped on it, that Your Petitioner then heard whistles blowing and realised that the people were police tried to get down and was then arrested, that the trousers and pullover found in his house on the 11th August did not belong to Your Petitioner and that on the day of the murder Your Petitioner was wearing a khaki suit and a turban and that Your Petitioner lost it in running from the police. Three witnesses were called on Your Petitioner's behalf; Hamud Warsama with whom Your Petitioner stayed at Nairobi and from whom Your Petitioner collected part of a debt of 70/- Salim bin Said who accompanied Your Petitioner to Nairobi and Sheik Ahmed Kawai a blind man on the ceiling of whose house Your Petitioner was arrested, who states that he knew Your Petitioner well that he and Your Petitioner were friends; that he heard a noise outside his house and shut his door, and that he was unaware that Your Petitioner was on the ceiling.

21. In giving judgment the learned Judge concluded :-

"After weighing the evidence carefully I held that the charge against the Accused has been made out; the discrepancies in the Crown evidence to which I have referred are not such as to cause me to disbelieve the evidence in support of the charge. I consider the defence of the alibi has not been proved and therefore I find the Accused guilty."

22. By Sub-section 2 of S.25 of the Code of Criminal Law No. 10 of 1930 (Kenya Colony) it is provided :-

(2) Sentences of death shall not be pronounced or recorded against any person who in the opinion of the Court is under sixteen years of age but in lieu thereof the Court shall sentence such person to be detained during the Governor's pleasure, and if so detained he shall be liable to be detained in such place and under such conditions as the Governor may direct and whilst so detained shall be deemed to be in legal custody.

23. The learned Judge, after conviction and before any evidence was called as to age, stated that "On the point of age I should estimate his age at from 18 to 20"; and it is recorded that Your Petitioner stated "I was born in 1337 and I am 15½ years old by Arab reckoning" and the note of the Judge proceeds: "(The present Moslem year is 1352, making him 15½ by that reckoning) In my opinion the Accused is over 16 years but I remand him until tomorrow for medical examination and evidence of the Medical Officer of prison as to his age and Mr. Malik" (Your Petitioner's Counsel) "desires to call evidence of age"

24. On the 17th of December the Medical Officer of the Prison, Mr. Thompson and another medical man, Mr. Carman, medical officer attached to the Native Hospital gave evidence as to age. Mr. Thompson was of the opinion that Your Petitioner's age was over 17, as the result of

his examination; his opinion was based on the physical examination of Your Petitioner and certain indications amongst which was one wisdom tooth which he said in European races was definitely consistent with a greater age than 17 and that there was a certain amount of wear of incisor teeth which he would expect to see at such an age or greater age but there were not sufficient records of Asiatic races to judge on point of teeth alone, without other indications; that he could only offer an opinion that Your Petitioner was 17 or over, very improbable that Your Petitioner was sixteen or less but not impossible. Mr. Carman estimated that Your Petitioner was certainly more than 17, anything up to 21 or 22, based on his general appearance which is that of a youth of 17. Moustache, well grown hair in armpits and pubic area, one wisdom tooth out on upper right hand jaw, and in his opinion for about two years; that Your Petitioner was at least 17 years of age; as to cutting of teeth in Asiatic races he had not paid particular attention to the point; that his opinion was not based so much on the fact that Your Petitioner had a wisdom tooth as that it had been there for some time. As far as he knew there was no difference between Asiatic and other races, and wisdom teeth generally appear between 17 and 21.

25. Ahmed Bin Jan uncle of Your Petitioner stated that Your Petitioner's Father was dead; that Your Petitioner was born in Arabia in 1337 Mahomedan reckoning and that Your Petitioner was 15 years less 5 months; that he had fed and brought up Your Petitioner since he was three years old and that Your Petitioner had lived with him until the 10th month in 1932, when he left, after a quarrel; that there were two sisters of Your Petitioner one 22 and the other 17, and that Your Petitioner was the third child.

26. The learned Judge then ordered as follows :-

"As to Accused's age I had already formed the opinion that he was more than 16 years of age and this is strengthened by the evidence of the two medical men who have been called today; I am unaware of the exact meaning in European reckoning of the Mahomedan calculation of years but it is my definite opinion that the Accused is more than 16, so that it is unnecessary to consider that point;"

and Your Petitioner was then sentenced to death.

27. Your Petitioner submits that under Sub-section 2 of S.25 the opinion of the Judge is to be formed judicially on the evidence; that, assuming Your Petitioner's guilt, both the presumption in favour of life, in view of a capital sentence, and the whole of the direct evidence were to the effect that Your Petitioner was under sixteen years of age, and that the learned Judge should have acted thereon and sentenced Your Petitioner accordingly, with the alternative sentence.

28. Your Petitioner appealed to the Court of Appeal for Eastern Africa, which on the 2nd January 1934, dismissed the appeal, agreeing with the finding of the learned trial Judge as to the guilt of Your Petitioner, adding on the question of age, "the learned.....judge..... used his discretion judicially, which is all that can be required of him"

29. On the 2nd February 1934, the said Court of Appeal dismissed the application of Your Petitioner for leave to appeal to Your Majesty in Council, pointing out "that the remedies set out in Article 2 of the Judicial Committee Rules, 1925, are alternative"

30. Your Petitioner submits herewith a copy of the answers of the Assessors and of the judgments of the trial Judge and Court of Appeal.

31. Your Petitioner humbly submits that in all the circumstances special leave to appeal should be granted to him.

AND PRAYING Your Majesty in Council to grant Your Petitioner special leave to appeal in forma pauperis from the said Judgment of Your Majesty's Court of Appeal for Eastern Africa given on the 2nd day of January 1934 and the conviction of murder and sentence of death passed by Mr. Justice Lane on the 17th of December 1933 and to remit the payment of the fees in relation to Your Petitioner's Petition, or for such other Order as to Your Majesty in Council seems fit.

AND YOUR PETITIONER will ever pray &c.

HORACE DOUGLAS.

IN THE PRIVY COUNCIL

ON APPEAL FROM HIS MAJESTY'S
COURT OF APPEAL FOR EASTERN
AFRICA

AHMED BIN ABDUL HAFID
Petitioner

- and -

THE KING
Respondent

P E T I T I O N

for Special Leave to Appeal in forma
pauperis.

Burchells,

5, The Sanctuary,

Westminster, S.W.1.

C. O.

23 000 134

Mr. Dawes 19/3 65.

Mr. ~~Reynolds~~

Mr.

Mr. Parkinson.

Mr. Tomlinson.

Sir C. Bottomley

Sir J. Shuckburgh.

Permt. U.S. of S

Parly. U.S. of S.

Secretary of State.

64, or in 2 weeks

27 MAR 1964

24 - 12

C.D.
P 9 MAR

DRAFT. *cmr*

C. Burchell, Esq

3 out of the 4 copies
in the envelope Lhs.

Dear Mr. Burchell
Buske has asked
me to write to you
in confirmation of his
letter of the 12th of March
about Ahmed bin
Abdoul Hafid's appeal,
and to send you the
accompanying three further
copies of the proceedings
which have been just been
received from Libya. Will
you please let the Paris
Council Office know when
they have arrived?

Yours sincerely
faithfull
(Sgt) J. Walker

FURTHER ACTION.

AIR MAIL

KENYA

No. 124



GOVERNMENT HOUSE
NAIROBI
KENYA

below in envelope 12 13

9th March, 1934.

RECEIVED
19 MAR 1934
GOVERNMENT HOUSE

Sir,

I have the honour to refer to Sir Joseph
Byrne's Air Mail despatch No. 109 of 2nd March, and
to my telegram No. 56 of today's date, and to transmit
four more certified copies of the Record of the case
of Rex vs. Ahmed bin Abdul Hafid.

2. I am advised that it is unnecessary to
forward any other documents.

I have the honour to be,

Sir,

Your most obedient, humble servant,

GOVERNOR'S DEPUTY.

*3 copies of encl. to Buschells (13)
Amul. tel. (15)*

THE RT. HON.
MAJOR SIR PHILIP CUNLIFFE LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

12th March, 1934.

Dear Reeve Wallace,

With reference to your letter of the 2nd of March about the application for leave to appeal in forma pauperis from one Ahmed-bin Abdul Hafid, I now send you the papers received this morning from Kenya. We shall receive further copies of these by the air mail next Monday. Would you now get in touch with Lawrence Jones and Company and Burchells as promised? The Court accounts

to be prepared by Lawrence Jones & Co.
LJ & B

W. REEVE WALLACE, ESQ., C.B.E.

Amud (10)

15 8

12th March, 1934.

My dear Burchell,

There is an application before the Privy Council for leave to appeal against a conviction of murder in Kenya by one Ahmed bin Abdul Hafid. He has applied for leave to appeal in *loco parentis* and the Board League are taking up his case and have instructed their solicitors, Lawrence Jones and Company. I have to-day sent to Reeve Wallace the only copy of the proceedings which we possess, and asked him to get in touch with you and Lawrence Jones. We shall get some more copies next Monday. Will you enter a caveat and instruct Council to appear in due course?

H.P.

C. O.

23040/14 Kenya

Mr. Flood 11.5

Mr. Bandy 13.3

Mr.

Mr. Parkinson

Mr. Lumsden

Sir J. Riddell

Sir J. Shackburgh

Perms. U.S. U.S.

Party U.S. U.S.

Secretary of State

AIR MAIL

Dear Sir, I am sorry that it would have been
possible to get your letter before the
Committee. I am sure I should

DRAFT.

Kenya

40 193

Gov. Sec. Kenya 01/1/36

Dear Sir, I am sorry that the rest of
your despatch of the 10th of March
has not reached me. I am sorry that
I have not had time to reply to the
Hon. Member's petition for leave to appeal
to the Judicial Committee of the Privy
Council. The necessary steps have
been taken to arrange for the presentation
of the petition to the Hon. Member.
I have been advised to enter a
 caveat in the Judicial Council in due
course.

FURTHER ACTION.

~~The Hon. Member from the third page
of your despatch that you say that the
East African Court of Appeal
dismissed an application made to them
for leave to appeal to the Privy Council
I presume that this means that the
Court stated that they had not~~

~~jurisdiction to entertain such an application
because ~~it is not a matter~~ it would
not be competent for the Court either to
accept or refuse an application for leave
to petition the Privy Council.~~

~~3. As a general rule the Judicial Committee
is not disposed to consider applications for
leave to appeal in criminal cases unless it
is satisfied that there has been a substantial
denial of justice to the convicted person, but,
as things stand at present, it is not possible
to prevent the presentation of appeals in
such cases.~~

2. I agree with your view that it is not desirable
to encourage the filing of applications for leave to
appeal in forma pauperis, and I think it undesirable
of doing so, but you will recall that in cases,
as in the present case, the matter is taken up
by parties as of right, and it is not possible
to prevent the presentation of such applications to
the Judicial Committee.

AIR MAIL

KENYA

No. 109



GOVERNMENT HOUSE
NAIROBI
KENYA

6
17

21st March, 1934.

RECEIVED
12 MAR 1934
C. O. HLGY

Sir,

3

Answered

With reference to my telegram No. 50 of the 1st March, regarding a Petition presented to the Privy Council on behalf of Ahmed bin Abdul Hafid, I have the honour to enclose, for your information, a certified copy of the Record of the case.

2. It will be observed that the petitioner was found guilty of murder and sentenced to death. In his report on the case, the trial judge wrote, "In spite of his (i.e. the accused's) youth, in view of the brutal and unprovoked nature of the assault, I have no recommendation to make". The petitioner appealed to His Majesty's Court of Appeal for Eastern Africa, but his appeal was dismissed on January 2nd, 1934.

3. The case was reviewed by my Executive Council on 12th January, 1934, when I concurred in the advice of the majority that the law should take its course. The petitioner then applied for leave to appeal to the Privy Council in forma pauperis, but the application was dismissed by His Majesty's Court of Appeal for Eastern Africa on the 2nd February.

He/

THE RT. HON.
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.1.

He has now taken the course of submitting a Petition for leave to appeal direct to the Privy Council.

4. I enclose a copy of a letter received from Mr. Malik regarding the appeal, together with his copy of the Record in case it is desired to engage one of the Counsel referred to in paragraph 2 of his letter. I am, however, advised that it is undesirable that any encouragement should be given to the filing of appeals of this nature, on the ground that it would tend to induce every person sentenced to death to take his case to the Privy Council in forma pauperis in order to delay execution of the sentence.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRITISH LEGATION - GENERAL.
C. B. R.

COPY FOR REGISTRATION

23070/47
5

REC
C. C.

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 9th March. Received 9-20 am 9th March, 1934.

No. 56.

Your telegram No. 48 Appeal to Privy Council. Convict and Counsel agree to course suggested. Please instruct Bureau Certified copy of records was sent home by air mail on 2nd March. Four more copies follow.

No. 6

23090/34

430

- Mr. Budge
- Mr.
- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Parlm. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

3-3

3/3

J

3.3 above

Coded + sent 3/3/34
1157
W.H.

TH

Amex (1)

770 48

Your telegram 770 50 case of

DRAFT. code
wl

Governor
Nairobi

Harold
~~Harold~~ will be presented to
Privy Council by solicitors
instructed by Howard League for
Penal Reform if convict
consents to that course. If
case as presented it will be
necessary to enter appearance
on behalf of convict and propose
to convict James Bussell.

Telegraph whether approach
convict and his counsel agree
to case being presented as suggested
and if so send all necessary
documents by air mail.

ACTION

3 B²
Privy Council Office,
Downing Street,
London, S.W.1.
2nd March, 1934.

Bushe

Dear Bushe,

With reference to our talk on the telephone this morning, I have now arranged with the Howard Society for Penal Reform that they will take up the case of our Arab murderer. The solicitors are Messrs. Lawrence Jones & Co, a firm of high standing, who moreover are in practically every Canadian case in the list now being heard, and are in the Office every day. When the papers arrive I will get Burchells and Lawrence Jones & Co together and arrange for a speedy hearing of the petition. This is of course all subject to the Arab consenting to the case presented by the Howard Society, as to which I understand you will now telegraph to Leeds.

Yours sincerely,

H. Claude Walker



Bushe

Privy Council Office,

Downing Street,

London, S.W.1.

2nd March, 1934.

3 B⁴

Dear Bushe,

With reference to our talk on the telephone this morning, I have now arranged with the Howard Society for Penal Reform that they will take up the case of our Arab murderer. The solicitors are Messrs. Lawrence Jones & Co, a firm of high standing, who moreover are in practically every Canadian case in the list now being heard, and are in the Office every day. When the papers arrive I will get Burchells and Lawrence Jones & Co together and arrange for a speedy hearing of the petition. This is of course all subject to the Arab consenting to have his case presented by the Howard Society, as to which I understand you will now telegraph to Kenya.

Yours sincerely,

H. Bruce Walker

*Amir
36*

1st March, 1924.

Dear ~~Reese~~ Wallace,

With reference to your letter of the 26th of February with regard to a petition for special leave to appeal from one Ahmed bin Abdul Hafid, I sent you a copy of a telegram which we sent to the Governor, and I now enclose a copy of his reply. I know nothing about a list of Counsel for pauper appellants to Privy Council. If there is such a thing, perhaps you could give us information about it. If there is not, it seems to me that we can only now tell the Governor so to inform the petitioner's solicitors, and to say that unless this petition is presented in proper form within, say, two weeks, it will be regarded as inoperative, and the Governor would be at liberty to have the sentence carried out. Do you concur in that course? If not, what do you suggest?

HLB

23098/34
333
COPY REGISTRATION RECEIVED
1 - 1934
C

Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 1st March. Received 9-29a.m. 1st March, 1934.

No. 50.

No 2
Your telegram No. 45 Privy Council. Malik represents petitioner a pauper and unable to afford normal legal procedure to which you have (?group omitted).

I am advised that there is nothing in the case which would warrant instructing Burchells as you suggest.

In these circumstances Malik enquires whether appeal could be entrusted to one of Counsel whose name is on list of those appointed for pauper appellants in London. Attorney General is unaware if such a list exists. Proceeding with covering despatch to certified copies of records by this air mail and will await instructions.

C.O.

Mr. Flood 26/2/34.

Mr.

Mr.

Mr. Parkinson.

Mr. Tomlinson.

X Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Perly. U.S. of S.

Secretary of State.

coded & sent
4 00 PM
26/2/34
S/P

26

Answered by No 3

DRAFT.

CODE TELEGRAM.

GOVERNOR.

RAINCHI.

S.O. to Privy Sec. Office (No 30)

FORWARDS.

No 45 (for leave to appeal)

Petition on behalf of

Ahmed bin Abdul Hafid Arab

sentenced to death on 17th

November last has been presented

to Privy Council. Petition

cannot be brought before the

Board in due form unless

Solicitor in London is appointed

to instruct Counsel to appear.

Please

X Ascertain from local Lawyer,

apparently M.H. Malik, whether

this is going to be done.

If not please say whether there

is anything in the case which

would make it desirable to

instruct Messrs. Burchalls to

have

have the case put for both sides, in which
event full instructions should be sent
by air mail. Telegraph reply urgently and
in any case ^{await} ~~please permit~~ further communication
before deciding whether to confirm sentence.

081 -

Privy Council Office

35

Downing Street

London, S.W. 1

26th February, 1934.



Thompson

Chamberlain

Dear Bushe,

We have to-day received by post a petition for special leave to appeal in forma pauperis from one Ahmed bin Abdul Hafid Arab against a sentence of death that was passed upon him in Kenya Colony on the 17th November, 1933. A copy of this petition is enclosed and there is also enclosed a copy of the affidavit of service upon the Attorney-General of Kenya and certificate of counsel that there is a reasonable ground of appeal against the judgment.

So far the application is therefore technically in order, but as no solicitor in London seems to have been instructed there are no means of bringing the matter before the Board in a regular manner. As the petition involves a death sentence I send the papers to you at once so that you may consider whether a telegram should be sent to the Kenya Authorities with reference to the matter. You will remember that a few weeks ago the Indian Government got into trouble for having a man hanged while a petition for special leave to appeal to His Majesty in Council was pending, and it would be well to avoid any risk of a similar incident in the present case.

If you telegraph to the authorities in Kenya it might be well to make it clear that until someone is instructed in London to appear for the petitioner there is no method of bringing the matter before the Board in a regular manner.

Perhaps you would let me know what course you adopt and whether you wish us to take any steps in the matter ourselves.

Yours sincerely,

H. Charles Williams

H. G. Bushe, Esq., C.M.G.

Recd. S.O. (39)

(Petition for Special Leave to Appeal)

IN THE PRIVY COUNCIL.

ON Appeal from His Majesty's Supreme Court of
Kenya Criminal Case No. 110 of 1955, Between Ahmed
Bin Abdul Rafiq Arab, APPELLANT, and Rex, RESPONDENT.

TO the King's Most Excellent Majesty in Council.

The humble Petition of Ahmed bin Abdul Rafiq
sheweth,

1. That the Petitioner who is an Arab of less than 16 years of age is at present confined in His Majesty's Prison at Nairobi, in the Colony of Kenya.
2. That the Petitioner was sentenced to death by the said court on the 17th day of November 1955.
3. That the Petitioner is an extremely poor man and is not worth £5 in the world excepting his wearing apparel as stated in the affidavit annexed and prays to leave to appeal in forma pauperis, without being bound to lodge security for costs, or pay any Council Office fees. He further prays that his humble petition may be admitted under Rule 25. of Colonial Appeal Rules, page 25. Privy Council Practice by Bentwich, second edition.
4. That the Petitioner appealed to His Majesty's Court of Appeal for Eastern Africa, against the said sentence, but the appeal was dismissed on the 2nd day of January 1956.
5. That the Petitioner made an application in forma pauperis for leave to appeal to Privy Council, but such leave was refused by an order of the Court of Appeal dated the 2nd of February 1956, but the Honourable Judges pointed out that the remedies set out in Art. 2 of the Judicial Committee Rules 1955 were alternative.

MEMO

The benefit of doubt.

12. That the strong evidence adduced in support of the defence of alibi should have been believed being absolutely true and convincing.

14. That the learned trial judge's mind was prejudiced against the petitioner on account of his not entering the witness box to give evidence on oath, and the learned Judge has particularly mentioned this in his judgment. The Petitioner being a young boy of tender ^{age} was advised by his Counsel to make his statement from the dock on the ground that the defence of alibi was going to be supported by strong independent evidence.

15. That the learned trial Judge's mind was prejudiced against the chief defence witness Bhandi Warama, when he fined 50/- for being late by a few minutes, although the witness stated that owing to the congregational prayers of Friday at the Mosque he could not get away and was late by a few minutes. Instead of appearing at 2, he appeared at 2.15 p.m. The learned trial judge made a note about this witness "this witness was swearing purposely". The note was unqualified, and resulted in the learned trial judge disbelieving his evidence. The witness on account of the fine did not participate in the Court. The second defence witness Bhandi bin Said was also fined 50/- for being a few minutes late, and his evidence was not also believed and a note was made by the learned trial judge on the file "this witness gave evidence in a hung dog manner".

16. That the petitioner was seriously prejudiced in his trial owing to the learned trial Judge's mind having got prejudiced against his defence witnesses Bhandi bin Said and Andy Juma.

17. That the petitioner is the only son of a widowed mother, who is old and has got no body to support her except

the humble petitioner.

13. That the petitioner had no enmity or malice of any kind whatsoever against the deceased and did not kill him, and is completely innocent of the alleged crime.

14. That the petitioner is informed that one Sak Allam, an Indian who was ^{sentenced} to death in Kenya in or about 1937 or 1938, petitioned to Your Majesty in former personae and Your Majesty was graciously pleased to commute his death sentence. He was later released from Prison and is now a free man.

15. That the petitioner has been a victim of a great wrong on the part of his servant Salim bin Hamud, to whom he capitally states the wrongs belonged.

AND praying Your Majesty in Council to grant him special leave to appeal in former personae from the Judgment of 17th of November 1933, and that of 2nd of January 1934 sentencing him to death on the aforesaid grounds, or for such other order as to Your Majesty in Council may seem fit.

Dated at Nairobi this 14th day of February 1934.

Sd/- *Arabic S. P.*
Muhammad Abdul Hafid
PETITIONER

at present a convict in the Prison
of Nairobi - Kenya Colony.

*Two Stamps of
Sh. 11 each*

IN THE PRIVY COUNCIL. No. of 1904.

On appeal from His Majesty's Supreme Court of Kenya
BETWEEN Ahmed bin Abdul Hafid Arab, APPELLANT, and
JAMES HARRISON, RESPONDENT.

To His Majesty's most excellent Majesty in Council.

AFFIDAVIT

I, Ahmed bin Abdul Hafid Arab above named make
oath and state as follows:-

1. That I am making this affidavit in support of my
petition for special leave to appeal.
2. That the contents of the petition referred to in
para 1 above have been explained to me and I have under-
stood them.
3. That to the best of my knowledge information and
belief the allegations contained in the petition are
true.
4. That a notice of the intended application for
special leave to appeal has been duly served on the
Hon. Attorney General of Kenya.
5. That I am a pauper, and am not worth anything in the
world excepting my wearing apparel.
6. That owing to my poverty, I am unable to furnish
security.

Sworn by Ahmed bin Abdul Hafid
above named before me this 14th
day of February 1904 at Nairobi.

S. H. Newton

COMMISSIONER FOR OATHS

*Sd/- Arabic &c
Ahmed bin Abdul Hafid*

February 14th 4.

**Certificate under Rule 6 of the Judicial
Committee Rules, 1960**

I Mohammed Hussein Malik an Advocate of the High Court of Kenya hereby certify that I have been engaged for the defence of Ahmed Abadi Hafid petitioner herein from the commencement of the case and I consider that there is no reasonable ground of appeal in his petition.

M. H. Malik,
Counsel for Petitioner



IN HIS MAJESTY'S COURT OF APPEAL
IN CIVIL MATTERS

PRINTED

BY THE QUEEN'S PRINTERS, AND BY THE UNIVERSITY OF LONDON PRESS, LTD., BUNGAY, SUFFOLK.

APPEAL FROM THE DECISION OF THE

1933

1933

Respondents

1933
1933
Respondents
1933

Date of judgment appealed against	17th November	1933
Date of lodging appeal	23rd November,	1933
Date of hearing...	11th December,	1933.

Sessions held at Nairobi.

Criminal Appeal Case No. 144 of 1933

(From Criminal Case No. 11 of 1933 of H.M. Supreme Court of Kenya at Nairobi).

AHMED bin ABDUL HAFID.....Appellant.
Original accused)

versus

REX.....Respondent.
Original prosecutor.

JUDGMENT:-

In this case the Crown produced a very strong body of evidence against the appellant. The reason was adduced for his being outside the house of the victim of the crime; the victim's wife stated that she recognized him immediately after he had stabbed her husband, and that she thought she had identified him is borne out by a denunciation of him to a police officer very shortly after the crime, and an acquaintance of the appellant stated that he saw him running from the direction of the victim's house just about the time of the occurrence, and he recognized him sufficiently to call upon him by name as he ran past. These two witnesses were in agreement though incomplete as to the clothing that they said the appellant was wearing at the time they saw him, and the description they gave of the clothing agreed though not perfectly, with that given by two of the appellant's employees who testified that he left his shop at 7.3 p.m. a few minutes before the time when the murder was alleged to have been committed.

A search of the premises of the appellant about 8 p.m. the same night disclosed in a bedroom to which he had access a pair of trousers and a sweater identified by one of the appellant's employees as having been worn by the appellant and he left his shop that night. The trousers were stained

with human blood freshly shed.

The appellant could not be discovered for three days. He was seen in the open by the police some distance away from his place of abode, and on sighting the police belted and concealed himself in the loft of a house where he was eventually discovered by the police. The explanation for his long absence was that he had gone to collect a debt. The explanation of his conduct upon seeing the police was that he was afraid the people running towards him might kill him.

The appellant's defence was an alibi. He produced several witnesses to say that he was with them at a time which would have made it impossible for him to have been at the victim's house at the time alleged. The principal witnesses for the prosecution appear to have been so certain about the time when the events to which they testify took place, that, if the alibi is genuine, the appellant has been either the object of a wicked conspiracy or the victim of a most remarkable series of incriminating coincidences. The improbability of either alternative renders necessary a careful scrutiny of the alibi. This the learned Acting Judge has given. He does not regard the alibi witnesses as being so reliable as a question of time in the circumstances as the prosecution witnesses, and he has commented on their demeanour and on their evidence in a manner which indicates he is not satisfied with the alibi. It should be added that the alibi witnesses were not brought forward until the trial the appellant is the lower Court, though defended reserving his defence. It has been said in strong terms by the Court of Criminal Appeal in England that a defence of this nature should be disclosed at the earliest possible opportunity, the excuse given by counsel for the appellant for this neglect that

the appellant is young and inexperienced hardly applies the reserved defence in the lower Court by the advice of counsel himself.

We are not impressed by the submission that all three assessors were not satisfied with the prosecution evidence and preferred that of the defence. In view of the formidable body of evidence adduced by the Crown, not affected substantially by the few discrepancies and inconsistencies in detail, we are unable to see how the assessors could have come to the conclusion they did if they had weighed the evidence intelligently and fairly, unless of course their mentality is such as to unfit them to adjudicate in a Court where English procedure and evidence obtains.

We agree with the finding of guilty by the learned sitting Judge. We do not see how he could reasonably have come to any other conclusion.

As to the age of the appellant this is a matter which by statute is left to the opinion of the Judge. The learned Acting Judge thought the appellant was between eighteen and twenty. Two medical officers on a physical examination thought he was seventeen or over, one thought he was anything up to twenty one or twenty two. On the other side as one of the appellants said he was born in 1837 A. M. which would make him a little under fifteen. The learned sitting Judge held he was over sixteen, and in reaching this conclusion used his discretion judicially which is all that can be required of him.

We dismiss the appeal.

Ed. H. S. Abrahams.
Ed. J. Lucie-Smith.
Ed. W. K. Burns.

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We dismiss the appeal.

Ed. H. S. Abrahams.

Ed. J. Lacie-Smith.

Ed. W. K. Burns.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

Special session held at Nairobi.

Criminal appeal No.144 of 1953.

(From Criminal Case No.110 of 1953 of H.M. Supreme Court of Kenya at Nairobi).

REX.....Respondent.
(Original Prosecutor).

versus

Ahmed bin Abdul Hafid.....Appellant.
(Original Accused).

RULING:-

Following the decision of this Court in Criminal appeal No.23 of 1956 which set out the dictum of Lord Watson in *Re Dillet* 12 A.C.(1887) p.459 at p.467, we feel that this application not having disclosed that the question involved in the appeal is one which by reason of its great general or public importance or otherwise ought to be referred to H. M. IN Council for decision as is required by article 2 of the E. A. (Appeal to Privy Council) Order, 1952, we must dismiss the application. We would note that the remedies set out in article 2 of the Judicature (Criminal Rules) 1953 are alternative. Application dismissed.

Ed. J. ...

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2 2 54

I hereby certify that this is a true copy of the original

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Criminal Case No. 110 of 1933.

(Criminal appeal No. 144 of 1933.)

PROSECUTOR.....Prosecutor.
 versus
 Ahmed bin Abdul Rafiq (Arab).....Accused.

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Subscribed & sworn to by _____

LOWER COURT PROCEEDINGS FOLLOW:

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

THE 2ND DAY OF OCTOBER, 1933.

CRIMINAL CASE No. 110 of 1933.

At the sittings held at Nairobi on the 2nd day of October, 1933, the Court is informed by the Attorney General on behalf of His Majesty the King that Ahmed bin Abdul Hafid (Arab) is charged with the following offence -

STATEMENT OF OFFENCE

MURDER, contrary to section 187 of the Penal Code.

PARTICULARS OF OFFENCE

Ahmed bin Abdul Hafid (Arab) on or about the 15th day of August, 1933, in the Kiambu Province, murdered Mohamed s/o Kiriungi.

Dated at Nairobi this 21st day of September, 1933.

Sd. J. D. MacGregor.

ATTORNEY GENERAL.

Ahmed bin Abdul Hafid (Arab,
c/o H. M. Prison, NAIROBI.

TAKE NOTICE that you will be tried on the information whereof this is a true copy at the sittings of the Supreme Court to be held at Nairobi on the 2nd day of October, 1933.

Nairobi,
22nd September 1933.

Sd. Murray M. Jack.
REGISTRAR.
SUPREME COURT OF KENYA.

SEAL.

IN HIS MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI.

CRIMINAL CASE NO. 112 of 1953.

(From Original Criminal Case No. 2746 of 1953 of the
Resident Magistrate's Court at Nairobi).

THE PROSECUTOR.....Prosecutor.
VERSUS
Ahmed bin Abdul Hafid.....Accused.

9. 10. 53.

Accused present.

Born for Crown.

Born for Hafid for Accused.

~~THE COURT~~ - Hafid is very ill and I ask for an adjournment.
The clients have retained Hafid and wish to await his
resuming his practice. He will be away for 2 weeks. He
has been engaged privately and not with a Crown brief.

~~THE COURT~~ - not opposing.

~~THE COURT~~

Case to be taken out of the list for a fresh date to
be fixed for trial. Accused remanded in custody. Accused
released.

Sd. C. A. G. LAMU.
6.10.53.

9. 11. 53.

Accused present.

Born for Crown.

Hafid for Accused.

Information read to accused and explained. Accused states -
I don't admit the offence. Taken as plea of not guilty.

Sd. C. A. G. LAMU.

3 Accusers chosen:

1. Talib Ahmed.
2. Sheikh Umar bin Haji.
3. Salim Saleh Hassan.

Malik - I object to Nos. 2 & 3 who are not rabs. No provisions in G.P.C. but accused is entitled to be tried by members of his own tribe.

Sheikh Umar is a Barawa.
Salim is a Swahili.

2 rabs are here in Court and are available. They were summoned at the last hearing.

Court. Desirable to have rabs if available but preferable to call entirely independent persons and not those who have had any previous connection with the case.

Registrar asked to find 2 independent Arabs, as substitutes to be chosen by the Court.

Adjourned for this to be done.

3 independent assessors chosen.

1. Nulla Ali bin Tahir.
2. Himm Ali.
3. Ibrahim Ali.

Warned as to duties.

Sheikh Umar bin Haji sworn as Arabic interpreter.

Deems open case.

Malik. Witness for Prosecution - ALIMA BINTI MOYO, SUDAN, Mahli

Live in Pangani in house formerly of Mohamed Kiriungi. Accused came to my house before Mohd. Kiriungi was killed. He spoke to me and asked me to speak to one of the children in house, Nunnasha a girl, and asked me to act as go-between so that he could seduce the girl. I refused. I gave certain information to a man Idi on the same day. I did not see accused again until I saw him in lower Court. Nunnasha is daughter of deceased Mohamed and lives in house of Hualim Hamisi a teacher in Pangani. I lived in house of deceased. I used to see accused at his shop at Pangani.

Malik. Nunnasha is daughter of Mohamed deceased and of Nyambura. Don't know if she is about 8 years old. She is bigger than suggested by you (i.e. Malik suggests her height). I could not act as go-between when I have a husband. That was first

day I had spoken to accused. We did not know each other before that. The girl is produced in Court. I see her. House where she lives is about 250 yards from where deceased lived. she lived at the teacher's house and used to come and have food at deceased's house. Accused came to see me at my house about a month before deceased was killed. He came and sat on the bed. I was sitting on a box. I was surprised to see him; it was first day I had seen him. He sat and talked. I don't know how long as I can't count the time. It was night time. I was making a mat. I said Ahmed what have you come here for? He said Don't be afraid; I have not come for bad news. no thing has brought me here - I want you to do something for me. I want you to speak for me to this young girl. The girl was not there. He said he would give me whatever money I wanted if the matter was successful. Then he went away. My room is opposite to deceased's room. When accused was talking to me I don't know if deceased and his wife were in their room. Next day I thought it difficult to tell the parents about this and was afraid so I told Idi who is related to them. Matter was serious. I had refused to do it and I told someone else as a witness. I did not inform the parents. Idi is related; his son married Muhammad's elder daughter not Kuzmaisha. Idi lives in separate house. I told him about it the next day. I went to his house; he was there making sweetmeats. I did not tell Idi to go and tell the parents about accused. I don't know what happened after, I told him. I went home. When accused came to my house I was in doubt. I did not tell him to go away at once. It is true he came to me. He came to me to act as go-between. Don't know why he should come to me. I am not related to deceased or his wife; only their tenant.

Ed. G. S. Lane.

And NIA. For Prosecution - Idi bin Muhamad, known Naha.

Lives in Pangani and knew accused. I knew deceased Muhammad

Kiriungi who lived in our house at Mangani about 10 yards from my house. I know Alima last witness who lived in deceased's house. About beginning of August on 9th August I saw her result I went to accused's shop where I saw him at 5 p.m. on same day. I told him that I had been told by Alima that he was not to return to her. I did not tell him anything else. Accused did not reply.

R.S.A.R.

I went to Alima's house and Alima gave me this message at her house and she told me to go to accused. When I went to her room we had no other talk ^{except} the message concerning accused, no talk of any other subject. She came to my house and said "Come to my house I have something to tell you". There she gave me the message. The correct thing is that she came to my house and asked me to go to her house and gave me the message. When she came to my house I was at my house adjoining my shop. We had no conversation there. I was rolling cigarettes when she came to me. She saw me making cigarettes. I told her to go on and I would follow. I did not go with her. I followed her later. I was not making sweetmeats but cigarettes. I went to her house about 4 p.m. I did not see deceased or Nyambura. Room of deceased is next to Alima's. Deceased's room was closed. I did not see if people were inside.

Alima said "Go to Ahmed and tell him not to come back to my house", that is all. I went at once to accused's shop and saw accused there and delivered message exactly as told. Alima had not told me why she did not want accused to go to her house. She did not say anything about the deceased's daughter Kwamicha. She asked me to give the message because I am an old man. Accused said nothing in reply to my message. This was long time before deceased's death. I don't know how many days.

ed. C.A.C. Lang.

2nd Mt. for Proceedings - SALIM BIN HASNA, SWORN, Mohajir -

Arab living in Pangani I knew accused. I remember night of 11.8.33 I was at shop of accused. He has a shop for provisions, Rice, matches, Ac. Ac. At 7.3 p.m. accused left the shop I did not see him again that night; he was wearing white shirt, white trousers and white coat. I can recognize the clothes produced. The trousers A and pullover B are the accused's. He was wearing a red fez and brown leather shoes. I later shut the shop when Indian sub-inspector came with an askari and asked me to shut shop and go to the Police Station with them. The Indian I knew but not his name - he is stationed at Eastleigh P. Station. I recognize him (Gurbux Singh by name) in Court. He searched the shop and found the Exhibits A and B and asked me to go to Police Station the night of Friday, 11th. He searched at 9.45 p.m. and shop closed at 10 p.m. He found A and B in the store on top of the bed; they belong to accused. Store is separated by a wall from the shop. A and B were in store. I had not been in the store between 7.30 and 10 p.m. Had been all the time in shop. I was with Gurbux Singh when he searched. A and B were all he found. I had not been in the store all day. A white shirt was not there at 10 p.m. which had been there in the store. Have not seen Kikoi since; prior to that I used to see Kikoi in store. Had been working for accused in July and August 1933. Also a wife called Buda, he was with me in the shop. I don't know Mohamed Kirilingi.

Adjourned till 2 p.m.

Examination.

ACCUSED SWORN, and ACCUSED.

I had worked for 1 month and 11 days for accused.

Often he wore those clothes and other days khaki clothes. Don't know all his clothes, properly. The Exhibits A and B are his; he always wore the trousers and I was working there. therefore I knew them. When he left the shop he was wearing the

Mt.
Mt.

sweater B; had been wearing it since a.m. A and B were found in the store where I slept. Accused sometimes slept there, sometimes not; he had a bed in another room in a house where he used to sleep. He used to sleep there and then went to another house; on the day of the offence he was not sleeping in the store. I was. His clothes he had left some in the store and some in the room where he slept. I am sure the trousers are accused's. I merely recognise them as his which he wore but cannot point to any mark. I don't know all his clothes. This pair I had seen with accused for many days - all the time that I was employed by him - he came to Mombasa and fetched me to work for him. I have nothing to say except that the trousers are accused's. I was present when S.I.P. found and took the trousers. He asked whose they were - I said accused's. All day I was at the shop. You can't see from shop into store. The store and shop adjoin; there is a passage between them. One can go from shop to store without going out of house. Person sitting in shop can't see a person going to the store. If he looked down the passage he could see person going to store. On the previous night he was also wearing white suit. I know time as I had a wrist watch. I saw the time when he left; when he left a woman who was there asked the time and I looked. I didn't see on that day an Indian shopkeeper whom I don't remember his threatening to sue accused for debt. Him for debt. Accused had gone out before this to get a bag of flour and returned at 7.30; then he went away again; he had gone out to get the bag of flour about 7 o'clock. Accused had gone out for a walk in the a.m. about 4 p.m. he left for Nairobi town and he returned. I told him about the flour; he returned from Nairobi about 7 p.m. and came back and I told him about the flour. At 7.30 he did not say where he was going. I had never worn the sweater B; B.

I had got worked for accused at Mombasa - he fetched me from Mombasa. I had got to know accused on 3 occasions when he came

to Nombasa. I had known him for less than a year. I had know him for a few days he stayed in Nombasa on each occasion. The shop and store each have doors on a passage they are generally open and so the house door.

I don't remember who the woman was. The shop door and the store are not of opposite each other. From the shop door one can see passage going to store.

Witness does not want evidence read.

1982

34. C.A.G. Lane.

4th Wit. FOR PROSECUTION - MUHAMMAD A/S M. MAHMOUD, SUWA, KAHKI

Youth age about 13. Live in Pangani. I know accused and worked for him. I know Mahamed Kirimngi - deceased and remember day he died. I was at accused's shop that day and so was last witness. At 7 p.m. accused had brought some flour to the shop at 7.30 he left. I did not see him again until the hearing in lower Court accused has a shop; he generally wanders about a good deal and spends a little time at the shop. He is often away sometimes he is absent from shop. When he left the shop that day he was wearing white clothes; SH; A & B are the clothes he was wearing. I can recognize the trousers he was wearing a white shirt with the sweater B and a fox cap and shoes, worn leather. I knew nothing of the accused's relations with deceased.

He was wearing the sweater over his shirt. Nothing over the sweater. I knew the trousers ^{because} they are white and I saw him wearing them. The day before this he was wearing white clothes; the same clothes; he used to wear Khaki clothes but that day he was wearing white clothes. He came to shop wearing white clothes. Accused was not at the shop at 4 p.m. I was then at the shop making tea for last witness. Don't know where accused was then. I was at the shop when accused left; it was at 7 p.m. not 7.30 p.m. after he had brought bag of flour, which I cut open, then he went away.

I am sure about the trousers being the accused's. I had worked for him for 1/2 month before that I had done odd jobs for him. Accused I had often seen wearing the trousers. He brought the flour at 7 p.m. I don't know whether it was 7.30 or 8 p.m. when he went away.

R. G.

B4. C. A. G. Lane.

5th WIT FOR PROSECUTION - NYAMURA G/S KARIGONI, MOHBI AYOUB.

Live at Pangani. I used to live with my husband Mohamed bin Akida (or wa Kiriumgi) until 11th August; at 7.30 p.m. on 11th he left home to go to Mosque. I was alone in house. Soon after he had gone a Mahihiri came and knocked at door and called hedi - I did not reply at first. Then he called "Alima" I said Alima is not here. Alima is the previous witness. I spoke to him from inside the house. We couldn't see each other. I didn't know the voice. The man left; he walked away from where he had been talking to me and he met Mohamed Kiriumgi at the door of the compound. I heard Mohamed ask him "What have you come here for?" "There are some of your relatives living here". I recognize Mohamed's voice. The man answered "I did not come to take anything I came to see Alima". My husband said why did you not wait for Alima outside? I heard Mohamed say "Get out of my way I want to pass; next time don't come and ask for Alima here". I had gone out when my husband asked other man what he wanted. Accused was inside the door of the compound and peeped out outside. I was near accused. I saw accused. I could not see accused she was outside; it was dark. I could not see anything. but when my husband told accused to get out I fetched a lamp - (corrected by wit; - when I heard the conversation I came out with a lamp - is reading ATG. S.A.S.L.) and saw the accused. Accused was inside the door and they met at the door way facing each other; accused had his back to me. I could, ^{see} I saw his face when I had the lamp and after he had stabbed my husband and he went down to pick up his cap and I raised my lamp. I know

accused as he had a shop to which I used to go. That day he was wearing white trousers. I can't remember what kind of shirt he had or the rest of his clothes as I was so distressed. He had a shirt pushed into his trousers and a cap with a peak. My husband told him to get out of the way. "Next time don't come here no one of your people lives here" "What do you want in my house?" Then he said "He has stabbed me with a knife" and he said no more. I saw accused with a knife, stabbing him with a knife. After the stabbing I called out. After being stabbed, my husband staggered backwards and round and fell down. I was about 8 ft. from accused at the time of the stabbing. Accused stepped down to pick up his cap. I then lifted my lamp and I saw his face; he turned towards me. He walked away. I am sure that it was accused because he was the man who had a shop in Pangani and often went there to buy oil, matches, etc. He picked up his cap and went away. I did not notice the kind of knife. Accused went out of the door running. I shouted and people came. My husband fell outside the compound between the houses; on right side of gate going out of the door.

Accused and deceased were the only people that I saw there I had never seen accused there before. I knew of no reason why he should stab my husband. Have 2 daughters, Anima and Kwanisha. The younger. Anima is married and Kwanisha is younger. Don't know her age, I am told she is 14. She stays at the teacher's house where she is at school. I have been to the meeting accused in Haiyobi, it is about a year since I first knew accused. Many people came to the compound in response to my calling out. People took the road. Don't know where. I was distraught. He could not speak. Don't know what happened to him. I saw Mr. Pugh, A.S.P., that night.

p.12.

I did not see my husband again.

Adjourned till 9.30 tomorrow.

Ed. G.A.C. Lane.

P. 11. 22.

ACCUSED PRISONER.

General as before.

ADDRESSER.

5th Wit: NYAMBURA recalled:-

112.

I did not see the Mshihiri when he knocked at the door. I did not go out. It was he who knocked at the door. There are many Arabs, why did I not mention another one? Many Arabs live at Pangani. He did not knock at my room door but at the door of the compound. I did not come out till I heard my husband's voice. Then I did I went out. It was a dark night. My house is on outside of village; open place to one side of it. Mwanaiha's age I do not know. I can't count the years. She is not here to-day. (She is produced and appears to be 15 or 16). She was living at the teacher's house since she was a child. she is my child; deceased. Shamed was her father. It was the 11th prayer that my husband had been to (the Isher prayer at sunset. I don't agree that this prayer is just before going to sleep; it is at 7.30. He was away a short time; he returned quickly. I don't know how long exactly. I say 7.30 because he had a watch. I don't know how long he was away. The prayer is a long prayer. As the stranger was going out after being told that Alime was not there, he and my husband set out. The stranger came a little time after my husband left. I repeat what I said yesterday. I have nothing else to say. When my husband cried out "He has stabbed me with a knife before that I had not seen anything. He cried out after he had been stabbed; there was a fight; why should he cry out before that? I was then at the door with a lamp; outside the rear door. I went out of the room when I heard my husband ask the stranger "What have you come to do at my house?" I said yesterday that I came out and stood at the door when I heard my husband say "What are doing at my house? There is no one of your tribe here". I saw the stranger then.

113.

came out of the door. I saw the man stab my husband. then my husband said "He has stabbed me with a knife. I did not say in the lower Court that I had seen nothing before my husband cried out. (H.B. witness has shown signs of breaking down several times and has frequently stated in reply to questions is XEB: "What I said before is my evidence. I have no more to say"). I was standing behind the stranger, the accused, who was in the doorway and my husband was outside. When my husband cried out I lifted my lamp to see. By light of lamp I saw accused pick up his cap and he then dusted it by striking it against his person. I looked at him and he looked at me, then he ran away. It was his cap not a shoe. In lower Court I don't know whether I said cap or shoe as I was feeling so upset. It was a cap after picking up the cap he turned his head and looked at me. Accused was about 7 to 1 ft. (witness demonstrates from me. He then went off at once. Accused was wearing white trousers; I can't say if they were dirty or clean. They were white. I know Alima; she lived in a room in the house. I don't know why accused came to house that night. I had not told me anything about ~~Alima~~ Kwanaisha. Idi had not told me either I had not heard about her from anybody. I saw accused holding knife as he ran away. I had seen it before when accused stabbed my husband. There was no enmity between accused and my husband as far as I know. I had gone out of house before my husband cried "He has stabbed me" I was inside the house when I know what happened. After accused had stabbed my husband and he had run away I saw him go out of house again. I can't say who the man was but I saw him and was unable to speak.

My house is in a row of houses but by itself. The older daughter was born during the 1911-12 and daughter was 2 years old during the HARRY WARE PROBLEMS IN BURUNDI. She is not yet marryngable; not yet attained puberty; after she has attained puberty I might consider her marryng. They go for labor power

at 7.30; my husband had a pocket watch, we have no other clock. Iaker prayer lasts till 8 p.m., it lasts 1/2 hour; it takes 1/2 hour to go, say the prayer and return home; I don't know how many minutes it takes really. When my husband cried out I was there and the accused. I saw no one else.

I was at the door of my room, at the threshold of main door when accused was asked what have you come to do at the house? then I went to the threshold. I saw the man pick up his cap, then he ran away. Accused leant down picked up cap in right hand dusted it and looked at me over left shoulder and was holding knife in left hand; he had changed his knife from right hand to left after stabbing. I was then holding up the lamp; he ran holding cap in hand.

R.O.F.C.

Sd. C. V. C. Lane.

5th Wit: for Prosecution: HASSAN s/o KARATHI, SWAIN, Mohai;

Live in Mangani and know accused; have known him for about 7 years. On 11.8.33 I had been at Mosque of Sakamba in Mangani. I went there at 7.15 p.m. and we started up prayer at 7.30 and we finished at about 7.50. I left Mosque then I went home on way I met accused running. I spoke to him and asked why he was running; he did not reply. He was wearing white trousers; I did not notice the rest of his clothes as he was running and it was dark; he went past me; I knew that witness's house; the place where I met accused was 5 houses away from his house. After I had gone a distance of about 30 yards I heard a whistle blow and a woman's voice calling out; it sounded like a Police whistle. I saw the place which was at house of deceased Mohamed Kirtungi. I saw the woman had fallen down outside the house, Nyambura, she had fallen down and was saying, inside the yard near door of the yard. Some children also were saying there.

I shouted out what is the matter? There were some other people there. I did not notice who they were. I did not see Mohamed then. In consequence of certain information I ran to the Police Post but found nobody there. I telephoned to Nairobi Police. I went to Eastleigh Police Station where I found an Indian Inspector, a Sikh. (agreed it was Gurbux Singh). I reported to him. (S.I. Gurbux Singh identified). He returned with me to Mohamed's house and went into house and found Mr. Pugh A.S.P. there. We saw Mohamed there dead lying on the bed; later I saw body placed in ambulance in presence of Gurbux Singh. After passing accused running I did not see anyone else till I reached Mohamed's house - he was running towards his shop, coming from the direction where I heard the noise, i.e., ~~accused's~~ accused's house.

3 Mosques in Pangani: the one from which I had come is on the Nairobi side of the village. Many people present at prayers that night; it was Friday, i.e., the Mohammedan Holy Day. On a Friday in Pangani there are a lot of people going about. After the prayers all the people came out. Mosque is some distance from accused's house. To get to my house from Mosque I have to go across several roads. Many people came out of Mosque with me and went in different directions. No street lights in Pangani. On Friday a lot of people go about ambling themselves during the day, not in the evening, unless it is a festival or holiday. On Fridays I don't agree that Mohammedans all go to the mosque; they don't walk about more than ordinary days except on ~~Friday~~ Friday. Pangani is a big village. That evening after attending the prayer in the Mosque and on way home I did not count the people on the road whom I met. Not because they were very many or very few but because one does not usually count people on road; some were at their doors, some walking. I saw no one running except accused. My house is beyond accused's on leaving Mosque I have

21.12.

21.12.

21.12.

to pass accused's house. I met accused not near his house. There are two paths or small roads between deceased's house and accused's shop. Accused was running very fast. There was about 3 ft. between us when we passed; going in opposite directions. He was holding a knife in right hand and in left a pair of shoes. (wit: hesitates). I noticed his white trousers; on his head a short red fez. I did not see a white coat or any coat. I did not notice sweater. It was dark. We were only 2 or 3 ft. apart when we passed each other. I said then "Ahmed why are you running?" as he passed. Many Ahmeds in Pangani. I went towards deceased's house and spoke to Nyambura. I asked what was the matter. She gave no certain information.

HALIKI: I am allowed to elicit this information in xnx: I can put any leading questions.

GOVER: I am not allowed to admit hearsay evidence in xnx:

ORNERI: What the woman said to the witness not allowed as question does not affect credibility of this witness.

HALIKI: question now is - Did the witness mention Ahmed's name?

A. Yes, she did. Deceased had 1 wife of the same name.

That day was not a Mohammedan festival.

I am definite that I recognized accused. After the hearing Ahmed's name mentioned by Nyambura I recognized accused before that.

Witness agrees that evidence be not over.

~~ASSIGNMENT 111 2/30~~

~~2. 11. 22.~~

~~CHARGE 22 2/30. [unclear]~~

~~THE HALL FOR [unclear] [unclear] [unclear] [unclear]~~

native sub-inspector S.I.D. On evening of 14th August on information received I went to a house in Gwaili camp at Maitigh of Gwaili camp. There I arrested accused who was hiding above the ceiling, in one corner; part of the ceiling was missing and a

to pass accused's house. I met accused not near his house. There are two paths or small roads between deceased's house and accused's shop. Accused was running very fast. There was about 3 ft. between us when we passed; going in opposite directions. He was holding a knife in right hand and in left, a pair of shoes. (wit; hesitates). I noticed his white trousers; on his head a short red fez. I did not see a white coat or any coat. I did not notice sweater. It was dark. We were only 2 or 3 ft. apart when we passed each other. I said then "Ahmed why are you running?" as he passed. Many Ahmeds in Bangani. I went towards deceased's house and spoke to Nyambura. I asked what was the matter. She gave me certain information.

MARK: I am allowed to elicit this information in XN; I can put any leading questions.

CHIEF: I am not allowed to admit hearsay evidence in XN;

CHIEF: what the woman said to the witness not allowed as question does not affect credibility of this witness.

54. C.A.6 Inno.

MARK: Question now is - Did the woman mention accused's name?
A. Yes, she did. Deceased and I are of the same tribe.

CHIEF: That day was not a Mohammedan festival.

MARK: I am definite that I recognized accused. ~~part from hearing~~
Ahmed's name mentioned by Nyambura I recognized accused before that.
Witness agrees that evidence be set aside.

55. C.A.6 Inno.

~~CHIEF'S BILL 2/20.~~

~~2. 11. 22.~~

~~CHIEF'S BILL 2/20. CHIEF'S BILL 2/20.~~

~~THE HON. CHIEF JUSTICE. THE HON. CHIEF JUSTICE. THE HON. CHIEF JUSTICE.~~

Native sub-inspector G.E.B. On evening of 14th August on information received I went to a house in Small Camp at Maitigh of ~~Small Camp~~. There I arrested accused who was hiding above the ceiling, in one corner; part of the ceiling was missing and a

person could have got through that place. I had made a search of the house, a thorough search of house and compound and eventually I found him hiding above the ceiling. There was not a room or place to sleep there, it was a dirty place, he was alone, had no blankets. I think he was wearing a khaki suit. He was searched at Police Station. I was present when he was searched, he had some money and tobacco on him. I had taken him to Police Station.

12/1

I think he had 7/- in notes. I did not count the money myself. The money was entered in the prisoners' property book. The ceiling is not very low; one can't touch it from the ground unless one stands on a chair. There was a table in the room. I moved it to near the wall to climb up to ceiling. After standing on the table one has to pull oneself up to get above ceiling. I heard the house was searched before but I was not present. I can't say when. I heard Police searched but I don't know who it was. I heard it had been searched once. I don't know the date. I was accompanied by one constable in uniform and 2 constables in plain clothes. We all went together. I put one constable at back and one at side and another one to call Sheikh Harsi, who I was told was at the Mosque, by his wife. We could not go into house because wife of Sheikh Harsi objected to our entering till husband came. Askaris were hiding outside. When I was at front door of house I heard askari who was posted at back of house call out and in consequence of what he told me and the noise from the back I forced my way into house. I found front door was bolted from inside and the woman refused to open it and then forced it and entered. I then found Sheikh Harsi sitting on his bed. I had been told that he was at the mosque. I asked Harsi if the names of anyone else were there, he said no. I went round and searched house and compound and returned to house. I took lamp from Harsi and lifted it, climbed on the table and now searched

lying flat on his face on ceiling in a corner. I told him to put his hands up as he lay and sent a man up to put handcuffs on him. I told him I was arresting him for killing Hassan.

11/11/55

When I searched there were present in the house itself 1/P.O. Hassan, Herai, his wife and the accused and 2 other Somalis who appeared when a noise was made. The alarm was sounded at the back of the house; I then received certain information from an askari.

R.O.F.O.

Sd. C.A.S.Lane.

Site Map for Prosecution:

WILLIAM ROBERT BERNARD PEAR, Supt. Christian, British -

Acting Asst. Supt. of Police. On night of 11/8/55 in consequence of information received I went to Pangani at 9.30, to house of Nyumbura. I made a plan of the house the following a.m. which I produce EX; G. In room marked B. on the left of the doorway was a bed, on which was a body. One Hassan Karethi (ditto No. 6) identified it to me as that of Mohamed Hiriungi. Body was found there was a wound on left shoulder in front. On my inspection the body was sent to mortuary in ambulance in charge of 1st Sikh. 3 other constables were detailed to accompany it. B. is plan in room where I found body. G. is another room. H. is washing place and latrine, half open. E. is common kitchen. F. an occupied room; ditto G; K K is passage leading from compound to road; L, J are unoccupied rooms; A. ditto. A. is the compound leading to road; 3 sides of compound are enclosed by house; wall abutting on to road in which the door A is situate is made of petrol tins; the roads on left and right of plan are roads separating it from other rows of houses and the roadways on top and bottom of plan are alleyways separating it from other houses in row. They are without names. Car can get along most of them. From deceased's house to Mosque is about 5 minutes walk.

11/11/55

Distance from door in room B to doorway A is about 12 ft. I was shown a place at back of room H where deceased said to have died. One could go either way out of door A to get there right-handed or left-handed. Distance to the point from going right-handed out of door - about 1 ft. ditto left-handed, about 75 to 80 ft. I was told which way the deceased was said to have gone. There was sign of water having been thrown at the place. No definite sign of blood. I saw no blood except on deceased's body and the bed. I took charge of investigation of case. The whole of Sec: 3 of Eastleigh was searched. I went one way and S.I. Garbux Singh another. This was the day accused was arrested. No search was made of Hersi's house on 14th or 15th by my orders. First search of houses in Sec: 3 was between 10 or 12. Hogg's house is in Sec: 8. I have no personal knowledge of the house being searched. I searched at 15 section houses myself and S.I. Garbux Singh went another way; one or two houses may have been missed.

18th

The place behind room H is outside on roadway.
Witness does not wish evidence read over.

Sd. C.A.G. Lane.

19th

19th. W.I. for Prosecution.

19th. W.I. for Prosecution. Affirmed. PUGH. 1st S.W. P. G.

Ambulance Driver. In evening of 11.6.55 I took ambulance to Pungani. On instructions of Mr. Pugh I removed body to ~~roadside~~ and left it there in charge of 2 askaris, one a Mushi. I do not remember their names.

19th. W.I.

R.O.P.G.

Sd. C.A.G. Lane.

19th. W.I. for Prosecution.

(Notice has been given to-day that this witness is to be called - Sec: 204 C.P.C.).

19th. 1st S.W. P. G. 1/2. S. Affirmed. Mushi

In August 1955 on 11th, I was in charge of Pungani Police Post; in consequence of certain information received I went to

house of Mohamed Kiriungi; at 8 p.m. I fix the time by the fact that I had my wrist watch and I looked at it when I got to the deceased's house. On arrival I saw Mohamed Kiriungi lying on bed already dead. I went to look for accused at his house; his house where he slept was locked with a padlock; he has a house and a shop. I went first to the shop then to house; shop was open. I found a small note there; then I went to the house where he slept & found it locked.

I broke the door to look inside; I entered and found no one.

Q.11.

At shop I found only the note. I knew accused's house.

Q.12.

I left Police Post at 8 p.m. and reached deceased's house at 8 p.m. as it quite close. I went to look for hmed because of information received. Information given me by deceased's wife, she was crying. I asked why she was crying she answered me and mentioned accused's name hmed. I knew she meant accused. There are many Ahmeds in Pangani. I knew it was accused who was meant as he was spoken of as Ahmed Mubihiri. I only know of accused who is known by that name. I at once ran to accused's shop. About 2 minutes after reaching deceased's house from there I ran at once to the house

Ed. P.O.

Ed. P.O. Lane.

Q.13.

Q.14. A.L. SMITH presented for xxx.

Ed. P.O.

Adjourned till 9.30 to-morrow.

Ed. C.A.C. Lane.

Q.15.

Q.16.

Q.17.

Q.18.

Q.19. asks to have Mubihiri's evidence translated to accused in Arabic as he did not understand. Court proceeds to read the woman's evidence Mubihiri accused states that he cannot

understand the interpreter.

RAHMA, sworn as interpreter.

Kyambura's evidence is translated in rable

11th Vist for Presentation. GUNDEVI BINWA s/o MUTA BINWA, sworn.
Bin. Sub-inspector of Police at Hastings.

RAH

a night of 11/8/33 in consequence of information received I went to Pangani to house of deceased Mohamed Kiriangi. I arrived at about 9.45 and found Mohamed lying on bed in room stone dead. Body was identified to me by wife of deceased and Hassan. It was removed in Police ambulance driven by askari Finbo. Later on in night I made inquiries as to death of Mohamed. I went straight to shop of accused then to house of accused. I searched shop of accused there I found nothing. I searched in house where I found one pair of trousers and a sweater. EX: A and B these I found in a store where accused's shop assistant Salim sleeps. Both were found on bed. I examined the white trousers EX: A. There were marks of what appeared to be blood on them (these were where the trousers have since been cut) it appeared to be fresh as blood was not quite dry and not very wet. It was slightly red.

On 12th I took the trousers to medical laboratory and gave them to Dr. Vint; they were in a large sealed envelope. Some day I attended p.m. examination of body of Mohamed conducted by Dr. Vint, the same body which I had seen the previous night at house of Mohamed. On 15th August I went to the Medical Laboratory and received the trousers from Dr. Venking.

RAH

The trousers and sweater were found in the store in which Salim says he slept, it adjoins shop; there is a small passage in between. Shop has two doors one opening on front and one on to passage; doors of shop and store are not opposite each other. I don't think person standing in shop could see into store.

RAH

Under Mr. Pugh's instructions I was in charge of search in Sec: 3 Hastings. We searched nearly all the houses, in 2 search parties. I don't say how many houses were searched and how many

not searched. Search started on morning of 12th or 13th. I am not sure, it was carried out for one day only. To best of my knowledge I did not search house of Hamed Hersi. We searched nearly every place, it might have been overlooked by us as this is a scattered area. I can't say if other party might have searched it. At house of Mohamed Kiriumgi I saw body on bed. I saw where water had been poured on ground at a spot but not marks of blood. It was dark. There was blood on clothing of deceased. I saw none on ground. At accused's shop Salim was there and many customers also. I took the trousers and sweater and sealed them at the Police Station.

XXXX As to place where I saw water on the ground, there had been no rain that night. Referring to plan, I say the water was at the spot indicated. Shows at X on plan. I saw no water at any other place. Rest of ground was dry. There was one bed in store, not two.

R.O.F.C.

Sd. CA.G.Lane.

P.34. 12th Via: The Prosecution.

FRANCIS W. VINT, Sworn Christian, Dr. of Medicine, Bachelor of Science. On 12/8/35 I received a sealed packet from last witness. I handed sealed envelope direct, with seals unbroken, to Dr. Franking. I received it at Medical Research Laboratory. On 12/8/35 at noon I conducted a p.m. examination on body of an adult male native at town mortuary at Nairobi. Body identified by S.I.Gurban Singh as body of Mohamed Kiriumgi. It was that of well nourished male native; 5/6" below left clavicle and 4 1/2" from mid line of the body there was a gaping vertical wound 8" long and 1 1/2" wide; it passed in a downward and inward direction through third left costal cartilage and finally through the heart. There was wound in heart 1 1/2" long; no other injury found on body; the other organs of body were normal; cause of death was hemorrhage following wound of heart.

(11/10/35)
Sd. at
the time
G.A.G.L.

Q. 1.

A very severe wound: there would not necessarily be a lot of blood from such a wound: it all depends on position in which deceased was lying, how soon blood would flow: deceased would remain standing after wound was inflicted: he would in my opinion fall immediately on spot where it was inflicted: he would stagger back and fall in my opinion. I can't say if he would stagger one or two steps: not more than a pace or so in my opinion: when he fell after staggering there would not necessarily be a lot of blood: it would depend entirely on position in which he was lying: whether blood flowed at once: if he were lying on his face blood would come very soon.

Q. 2.

I regard it as impossible that person wounded in this way would stagger more than a few steps. I think probably his heart stopped beating when wound was inflicted.

Witness does not wish his evidence read over.

Sd. G.A.S. Lane.

Exh. Vii: For Prosecution.

HAROLD HENRY JONES. Sworn, Christian, British.

Asst. Bacteriologist at Medical Research Laboratory. I received a sealed envelope from Dr. Vist on I think 22/8/38 containing a pair of white trousers which I recognise Ex: A. I examined them. Where the cuts now are, there was a stain of human blood in front of right leg, 2" x 1" roughly oval in shape: stain had been deposited on the outside and soaked through to the inside: there were numerous small stains which were also visible. I tested some of them and found them to be human blood - not all. Some are still visible on the trousers.

Q. 1.

Witness does not wish evidence read over.

Sd. G.A.S. Lane.

Exh. Viii: HASSAN BIN AHMED, I/P.C. presented for exam.

Q. 1.

Sd. G.A.S. Lane.

Case for Crown closed.

The accused made no statement in lower Court.

R.22.

I call upon the accused to say whether he wishes to give evidence or make a statement.

HAIRI asks for adjournment for instructions.

Adjourned for 1/2 hour.

84. G. A. G. Jams.

Resumed at 12/10.

Accused elects to make a statement and not to give evidence:-

I only wish to say I know nothing about the case. That day I was not at that place. That night at 6 p.m. myself and Salim met outside Pangani village and walked together to Hairoti. He asked where I was going. I said to the Hill. He and I went alone. There was a Somali¹⁰ Hamud s/o Warsuma from whom I wanted 180/- . Salim and I went to that Somali. I had no watch but I guessed that it was about 7 or past 7 o'clock. I asked Hamud Warsuma to pay me the money; he said I have only 5/- . I said I wanted all the money. I stayed with him that night until morning both Salim and I. In the morning Salim came back and stayed there. I was there with him for 3 nights and 3 days; from the night of 11th I stayed 3 nights with him on 14th. Monday, in morning, about 5/30 or 6 o'clock, I left there. I came along the main road and from the Railways to Mafjugo. I crossed Mafjugo. I was going to Sheikh Ahmed's house to ask for tobacco in the Somali camp; when I was 15 to 20 yards from Sheikh Ahmed's house I saw several people, black people, 6, 4 or 6, running towards me, dressed in black. I was afraid and ran into Sheikh Ahmed's house. I shouted to Sheikh Ahmed 3 or 4 times; I thought the people dressed in black might kill me; I first went into the compound, door of which was open; I went on and found the house door open; I pushed the door of the room inside and found it was fastened. I saw something, I don't know if it was a table or a bench; I jumped on to it, caught hold of

R.22.

the ceiling and jumped up on to it (accused adds: - I meant to go into the house when I found the room was locked I got on to the ceiling and wanted to get into the room from the ceiling but when I got there I found I could not - C.A.G.L.). I heard whistles blowing and realized that the people who were chasing me must be police; I tried to come down and I saw one called Laka and another askari holding a rifle; one was holding a light; I said I would come down, don't do any harm to me. I came down, they handcuffed me and told me I had killed a man and took me to the Police Station. I told them I don't know anything about murdering a man. I say the trousers and sweater do not belong to me. That day I was wearing a khaki suit and a turban of the same colour as the one worn by a man in Court (indicated by accused). (This is an embroidered red blue and white turban). I lost my turban when I was running away from the police. I don't know if I lost it inside or outside the house. When Sheikh Ahmed and I were being taken to the Police Station I told him I had lost my turban. I don't know if he has found it or not. About the deceased I don't know anything about him. I had no quarrel with him and don't know anything about the case. I don't even know his house.

Red over and found correct.

Sd. C.A.G.Lane.

I call on Malik to open the defence. He is calling witnesses. Adjourn till 2 p.m.

Resumed at 2 p.m.

Malik opens case for defence.

Accused says he was in ^{with} Pangani on night in question and knows nothing about murder: was at Hamud's house on night 11th to 14th where he went via Railway landies to Mastigh. then was going to Hamud's house when he saw people in black clothes; frightened, rushed to Hamud's house; arrested in house.

Will now bring evidence to support this.

1st WIT: FOR DEFENSE.

SALIM SAID called; not here.

2nd WIT:

MAHMOU HARRAMA - called, not here.

A.S. These have been summoned for to-day: it is 4/1 p.m.

He appears at 2/15: I ask him why he is late: he replies that he has just come from the Mosque and agrees that he was duly summoned.

ORDER -

I fine this witness 50/- under Sec. 144 C.P.C.

Allowed till 11th to pay.

Sd. C.A.G.IANE.

P.S. MAHMOU HARRAMA, Sworn, Mohammedan.

I live near the road leading to Mbagathi; have been 20 years in this country. I was until lately in Government Service, in the K.A.R. I ended up as Sergeant. I know accused because he is a relative of Ahmed who is married to a girl of my sub-section; Ahmed bin Yasin. I mean accused is Ahmed bin Yasin's brother's son. I remember 11th August - Friday I saw accused and another that day at my place; at 7.30 p.m. they came to my place because I owe some money to accused and he came to ask me for his money. They greeted me. I greeted them. I asked them to come in. Accused said he wanted his money. I said I had 70/- only. I owed him 150/- he said I want all my money not part of it. I said let us come in. They came in; I said "Let us sleep now and I will pay what I can do to-morrow morning. Next day after having had tea, the other man returned to Nairobi. They had both slept there that night. Accused remained at my place for 3 days. I did not give him the rest of the money, I had not got the balance. I gave him 70/- on Monday; he left my place and said he was going to Nairobi. I did not accompany him to Nairobi. I live alone at my house, with my wife and children. Accused was wearing khaki clothes; and a turban, similar to turbans worn by the passengers sitting in the middle but not the same colour.

Q: Accused is my friend. I have known him about 6 years. He is a great friend; I know house of Sheikh Ahmed, I have not been there for a year, when I last visited it. I have not seen accused since he became involved in the case. I have not discussed it with him. Mr. Malik has asked me about it; 10 or 11 days after accused left me I came to Nairobi. I met Ahmed bin Fain, who gave me certain information. After that I did nothing. Ahmed spoke to me. No one came to my place about this case in August, September or October. I answered the lawyer when he asked me questions. I saw him as a result of what Ahmed had told me. I have been to his office many times, I can't remember the dates - 3 or 4 times he called me; I answered questions he asked me. His clerk was also there; also Ali Hassan, a Somali; he acted as interpreter. I don't know Arabic; he may know Arabic; he doesn't understand Somali. I went there different days, I can't remember dates. He told me the case was near. Even to-day I have been to his office; I was there on 4th Inst. He had questioned me in the previous month but I don't know the date. I don't know the time; there was no clock there and I had no watch. Accused and the other man arrived at 7.30 p.m. at my place; the time I happened to remember; one does remember some things and other things one forgets; I am sure it was 7.30 because I had been herding my cattle and at that time I had brought my cattle into the boma and I always bring my cattle in at that time and I had a watch. It was a Friday; the date was 11th; I said my prayer in the bush where I was herding my cattle.

Q: What prayer was it?

A: (After great hesitation) I prayed at 1 o'clock. He came late in the evening. In the day when I was herding my cattle I prayed at midday. ^{My brothers} ~~Shahwan~~ generally pray wherever they are at the prayer times. We always pray in the evening at 6/30.

There is a Mosque 2 miles from my house: the N.A.R. reserve Mosque. There is not a Mosque 4 - 5 yards from my house. I say it is not true that there is one 4 - 5 yards from house. It is 1 1/2 to 2 miles distance. I was not working for anyone then. I was only herding my cattle. Mr. Pugh A.S.F. got me a job in April; I was discharged in July; I live in the N.A.R. Reserve. I did not see by which way accused came, whether he went past the Golf Club or which road. The man who accompanied him was an Arab, named Saifu. I have known him for a year. I still owe money to accused 7/- I paid out of 150/-; I owe 80/-. I had 70/- when he came to me. He waited till the following morning. I gave him the 7/- on the Monday. First he had said he wanted all the money and I was trying to find the balance. I had the 70/- on Friday and I offered it him. He said he would not take 70/-. I said "You had better wait and I will see if I can find the rest". He refused to take the 70/- because he wanted all the money. I failed to get the rest of the money and he went away without it. He waited at his own wish for the money. He has a shop in Bangasi. I don't know about the shop. Accused's turban was red (Shakhan turban in Somali). I have not been told what to say. I am not a child to be told what to say. No one visited my house when accused was there. I know the time that he arrived. Sometimes one remembers a thing and sometimes one forgets. Accused never visited my house before. I had a watch into my pocket that day. I have no clock in the house. I always have a watch. I had a watch the day I visited Mr. Malik's office. I gave accused the money in notes.

The sun had set when the people arrived. According to my watch it was long after sunset, it was 7.00. It was not quite the time for Isha prayer. Mohammedans can say their prayers anywhere where they are, if the Mosque is not near. I pray 4 times a day - Early I p.m., 3 p.m., and Maghrib at sunset - also

Isher 5th prayer. I got a certificate of discharge in July from my employer. Put in Ex.I. The accused's turban was of the kind produced Ex; II. I saw Mr. Malik at his office.

I was taking my cattle into my boma when accused arrived. It was late because it was dry weather and there was a shortage of grass.

for Malik at his request. The paper enclosed is another certificate of service from Sir G. Northey.

R. P.C.

Ed. C.A.G.Lane.

H.E. This witness was sweating profusely.

Ed. C.A.G.Lane.

2nd WIT FOR DEFENSE:

SALIM BIN SAID.

Asked why he was not present when called. He says I was summoned. I was late. I was working for Rosenblum, that was why I was late".

ORDER:

Fined 50/- - allowed till to-morrow to pay.

Ed. C.A.G.Lane.

(He is sworn) SALIM bin SAID - Mohammedan, Sworn, -Subj-

I knew accused. I don't remember the date when Mohamed Hirangi was supposed to have been killed. Three days after it I heard about it. I remember 11th August a Friday. I saw accused that day at 5 p.m. I left work at 6 p.m. and went to Pangani and met the accused near the latrine; he was coming towards Nairobi. I accompanied him on the main road, to the K.A.N., to the aharia houses down below to the house of Hamud Warsama, the last witness. It was near 7 p.m. accused told me he wanted money from this man. We stayed there. Hamud said he had not got all the money and asked us to sleep there; so we slept there; when I left the following a.m. to go back to my work accused was still there waiting for his money. I left Hamud's house at 7 a.m.

I have known accused for long about 5 years. I am a friend and of the same tribe; not related to him, not blood relation. I am only saying what I know. I work at skins store near Railway godown; the other side of the Railway landies; for Hafud bin Salih, an Arab. Hafud is the skins man working for Ressemblum & Co., and I am under him. That day I left work at 5 p.m. I went to work at 8 a.m. that day. I am headman in charge of the boys. I stand about a lot there. I work always from 8 a.m. to 5 p.m. I mean to say that I left Nairobi at 5 p.m. not that I left work at 5 p.m. Then I went to Pangani direct; actually to Pangani. I reached Pangani at 5/30, not 6 p.m. It was about 6; he was coming out and I was going towards the village; not exactly 6 o'clock. I say it was 5/30. We left Pangani together at 6; in the interval we were walking about; at 6 p.m. we started together and went to Hamud Varnama. I don't know the distance from his house to K.A.R. Mosque. I had been on my feet and walking about all day from 8 a.m. I took the long walk as there was no one sitting down. What I said in cross-examination in chief is accurate. We got to Hamud's house at near 7 o'clock. I had no watch to say the exact time, perhaps 5 minutes before 7. I don't know if it were 7 o'clock or earlier or after. I know the time a little not very much. Accused was told to remain till morning and then would get his money. I left at 7 a.m. and accused was still in bed. I don't know how much money he was asking for. I don't know if he could have been given 7/- by Hamud. Hamud said "Wait here till the morning I will give you the money". He didn't offer accused 7/-.

Accused has a shop at Pangani. He has a boy there. No one has suggested I should give evidence in this case. Accused's step-father asked me "The other day you left with accused - where did you go?". The brother of accused's father asked me to give evidence to say what I had seen. I am not telling a story which had been told me. I am telling the truth. I have not received

**With
the
accused**

any money for coming here. I remember a case in which the accused was Ibrahim bin Ahmed; the accused was charged there with having stabbed a person called Saleh. I was called as a witness in that case for the defence. I say I accompanied the accused to Hamud's house. The advocate for defence in case of Ibrahim was I think Mr. Malik (after hesitating), I am sure it was his. I went to Mr. Malik's office once or twice over this case. I can't remember the dates; or the times; it was day time. I have no idea as to the time during the day. I can remember the date and time I went to Hamud's house. I can't remember the times and dates of visits to Mr. Malik's.

I appeared twice in the case of Ibrahim bin Ahmed; twice in Supreme Court and once in the lower Court.

With

In that case I was witness for the Crown. I was called by Government. I can't remember what evidence I gave in that case. I gave evidence in favour of the Crown.

On the day in question I was walking about alone at Pangani from 8/30 to 6 p.m. I met accused outside the village near the latrine, as I was coming out of the village and as he was coming away from the village in a different direction when we met. I don't know how many miles it is from Pangani to Hamud's house. I don't know how long it takes to get there. I don't know where Kibira is (K.A.R.Reserve). We got there after sunset.

R.O.F.C. 24. G.A.S.LAW.

This witness gave evidence in a hang dog manner.

24. G.A.S.LAW.

With

With

11. 11. 22.

ACCUSED PERSON.

ADVOCATE ON BEHALF.

WITNESS.

3rd WIT FOR DEFENSE.

ABDUL KADIR, Swora, Mohammedan, Isak Somali.

Living in No. 3 Eastleigh near Najengo. (Witness asked if he can recognize accused, he says he is blind and cannot say if he knows him. I know an Arab Ahmed Abdul Hafid; he has a shop in Pangasi; I used to buy tobacco from him. 25/- I owed him for it; the rest I paid; I know the day he was arrested; one day a year ago he came to my house, i.e., once before he was arrested; he came to my place and was arrested at that hour. The Police searched my house and all the camp before he was arrested; in the day time before he came to my house. I don't know the time as I can't see the time; before the midday prayer. (N.B:- Not admitted as witness says he had no personal knowledge of this). I was in house when he was arrested. I had just offered Magharib prayer, in room and I was still sitting there after prayer. I heard noise, talk and people running. The house and compound doors were open; when I heard noise I shut room door and stood against it to hold it shut; someone tried to push it; I heard Police whistle; someone said "I am an askari; open the door". I opened door and people came in; there was a noise and people upsetting things; an askari spoke to me in Somali. The people went out of the room to the front room; the inside room has a ceiling; the front room has none; ceiling of inside room is not very high. I can touch it by holding my hand up. (Witness is short, about 5 ft; (5" or 6"). There is a partition wall between the two. I am Sheikh of the small Camp.

Accused had come only once before to my house - year before. I know him well, I used to buy things from him but he did not come to my house. We are friends; not related. We are both Arabs. I am a Somali but my generation is from Arabia. I am totally blind, for last 2 years. I heard people running and

shouting; at that time I did not know who was there. I know
 Lala is in the Police. Afterwards when he took us both to the
 Police Station, I knew he was there. I did not try to stop his
 finding the accused. I was in the house and did not know
 accused was there. I went to the Mosque in the afternoon; at
 4/30 p.m. I was at the Mosque and was led home afterwards.
 My house doors were open; except for the room door which I held
 shut. No one stopped the police entering. I know my wife was
 not there before the noise but I don't know if she was there
 afterwards. She did not tell the police that I was at the
 Mosque and that they could not enter until I came back. I
 knew nothing of the accused being in my house before the noise
 of people chasing each other. I had met him a few days before
 in town and he had demanded 25/-. I had told him to come to my
 house to get the money. I saw the house before I lost my sight.
 I built it. There is nothing above the ceiling. There is a
 space; not used for anything except for storing wood. I had
 not known of anyone going to sit there. If I had been asked to
Ex. 10 explain the accused's presence I would have said he came to get
 his 25/- but he did not ask me to explain why he was there.
 I did not speak to him.

Ex. 11

We had no time to speak. There was a disturbance. I
 offered my magharib prayer in the Mosque. I was sitting and
 reading Koran at my house after prayer - Ex. 12 but
 reading but reciting.

R. I. F. G.

Ed. G.A.S. Lane.

Adjourned till 2/3

Wahib asks to be excused.

Court makes no order.

Ed. G.A.S. Lane.

2/30. 1944.

ACCUSED PERSON:

ADDRESS:

4th VILLAGE FOR RESERVE:

ABDO JAMA, Sworn, Mohammedan, Somali woman, wife of Hamud Warsama. I live with him in Na Robi in K.A.R. Reserve. I know accused. He has been to our house, he came about 4 months ago including this month. I can't remember the date; it was Friday I think. Another Arab came with him; they came at night after sunset. They slept there. The next morning the other man returned to Nairobi; the accused stayed there, for 8 nights. I can't say if he left on Sunday.

Q:

I know accused and have known him for about 4 years I think, including this year. He does not come often to my house. This was the first time he came to our house but I knew him in town. He is a friend of my husband and myself, a great friend of both of us. No blood relationship between us. I don't know the name of the other man. He was of middle size. I don't know why he came. He slept there. Both slept there the first night. The second man had no reason at all to come to the house. He left house in a.m. while we were milking the cattle. I can't say what time it was. My husband has a pocket watch. We have no clock or watch in the house. That night he prayed in the house, there is no mosque near. He might have prayed in the day in the bush, but I am speaking of the night. The men arrived before he said his prayer, i.e., the Isha, or 5th prayer. The cattle were in the house. People say the Isha prayer a little time after Magharib prayer. I can't say how long after sunset people say the Isha prayer. When the two men arrived he was still inside milking cattle and had not said his prayer. I could not tell you anything about time. I don't know the date and I say it was the 4th month including this one. I don't know myself if husband went away to accused. I saw him give something to accused. I can't hear how much it was. He handed him something with his hand closed and accused took it

in his hand. Afterwards I came to know it was money. Accused put it in his pocket. I could not say if accused counted it. My husband's back was towards me. I could not see what accused was doing with his hand. They were standing talking to each other for a long time. I could see accused's hand take the thing and put it in his pocket. I did not see him count it. I don't know how my husband became indebted to accused. Accused stayed 3 days. Sometimes he walked about, sometimes he stayed in the house for 2 nights and 2 days. I did not see him doing anything. I heard he had a shop at Pangani. I don't know how he left the duka. No one has spoken to me about the case. I was called and brought by my husband to Mr. Malik's office. No one spoke to me about case before that. My husband told me "we are wanted as witnesses for defence of man who came here". Twice I went to Mr. Malik's office. He called me and asked me something. Malik took statement from me the first time; not full statement. I gave part of my statement and some remained; he took part of it and told me I should be wanted again and second time he took rest of statement. The first time I told him all that I remembered; he asked me questions; he asked if anybody else came with accused to our house. I had said the other man came with accused. I think he was referring to other people who might be there. I don't know what time it was. The first time I went to his office was in some month when accused was arrested and other visit was this month. No one else was at home except husband and myself and our children when the two men came. Two small children.

I might recognize the man. I identify him (the witness Salim Said) in Court. (Note: the witness was asked if she could identify him and she turned round in the box; the man came forward to a prominent position, standing by himself, at the back of the Court where a number of spectators were - but he was by himself and the witness saw the man and looked at him before the Court could

arrange for him to be placed in a row with a number of other spectators and then identified. This was afterwards done and she pointed to Salim but in my opinion she had already seen the man come forward and stand by himself).

The Israh prayer is generally after dark.

R.G.F.C.

Sd. C. G. Lane.

CASE FOR THE DEFENCE.

HALIK asks for adjournment on account of illness for summing up.

ROHAN opposes.

SOHAI - to proceed.

HALIK -

Serious charge. Woman says husband killed on particular night. Must be satisfied that accused killed him. Consider verdict in light of evidence; Assessors not to act on any gossip heard on road.

Grown to satisfy that it was accused beyond reasonable doubt. Duty of Crown to prove case beyond doubt; if any doubt accused to be given benefit of doubt.

See if any motive for accused to commit crime. ALIMA lived in house; accused had come to see her but was stranger to her before; she did not object to his sitting on her bed. Accused wanted witness to be go-between. Nwanaisha possibly 2/3; 7 born two years before Thuku trouble; ? not attained puberty. Girls in these parts attain puberty at 12. Can you believe Alima's story? Went next day to Idi; did not tell parents. Normally person would inform parents; serious matter. She did not tell Idi? Idi says he went to her house.

Idi. Discrepancy - she says he was making sweetmeats and he says cigarettes. Discrepancy - she says she went to his house, he says she went there and called him and gave him the message at his house.

Story concocted by Alima and Idi - to find a motive i.e.

that accused came after the girl. If Alima told accused not to come again to her house, would accused go there again?

HALIK asks to adjourn as he cannot go on owing to illness.

Adjourned till 9 a.m. on 13th.

Sd. C. A. G. Lane.

15. 11. 33.

Resumed.

ACCUSED PRESENT. Assessors also.

HALIK FORSWER.

ALIMA said ^{it} was about a month before the murder that she told Idi; at another stage she said it was the day before -
(7) SALIN BIN NASUR - Saw accused go away from shop and did not see him again, accused wearing white coat and trousers, red feet and shoes; kept shop open till 1 p.m. when S.I. Gurbux Singh shut shop.

MR
shut and

DUDU was there; said accused was wearing white trousers and sweater (nothing over sweater) feet cap and (DISCREPANCY) shoes.

DISCREPANCY as to coat.

SALIN says when S.I. came they went together to store where accused sometimes slept; accused generally slept in another room in another house; trousers and sweater were found on Salin's bed. He said nothing about seeing bloodstains on trousers, only said S.I. found trousers and sweater on bed. Ordinarily the witness would be shown the blood when S.I. picked them up; unless latter hastily wrapped them up. SALIN says he did not go into store between 10 a.m. and 10 p.m. - shop and store are near, separated ^{by} a small passage; doors open; SALIN says accused went to store to change clothes without being seen by Salin. He could not point to any mark by which he could identify trousers.

HALI.

WANSURA - Mubihiri knocked at door she did not go out; did not know voice; man asked for Alima; she could not see him; he turned away and met accused at door; heard deceased say "Why are you here? - no one of your tribe here" - Answered "I did not come to take anything I came for Alima". Deceased said

"Get out of the way"; then Nyambura came out. She came out after hearing all the conversation; it was dark; she had a lamp; she saw accused and deceased facing each other in doorway; she was at back of accused; she heard her husband cry out "He has stabbed me with a knife"; she lifted lamp and saw; distance about 6-7-8 ft; distance from room to door according to police plan is 12 ft. In lower Court she said she saw nothing till her husband cried out.

DISCREPANCY: In this Court she said she saw accused looking over his shoulder and picking up cap; she did not say this in lower Court. Would murderer look round at an ~~eye~~ ^{eye} looker, to be recognised? She says this because she had not seen accused up to stabbing; and to show she recognised him, she says this. Women would be blinded by light and would not be able to recognise man at distance. Description of seeing knife and accused exchange knife from right to left hand and pick up cap.

Deceased staggered back and fell - body found at X behind room X.

Dr. Vint said deceased's heart would have stopped beating at once and deceased would have staggered only a pace or so; the flow of blood would depend on position of body.

How could mark of blood come on to accused's trousers?

Deceased fell either 100 ft. or 80 ft. from doorway on his face; blood came out then; if blood came out then how could blood get on to accused's trousers at the gate?

(N.B: Woman said "I don't know what happened after stabbing to my husband").

Medical evidence very important; man could stagger only 4 or 5 paces and then fall. How could deceased get to X? I say deceased was not stabbed at A but near X. Give further weight to evidence of expert witness (Dr) than to Nyambura. Disbelieve Nyambura's evidence as regards place of stabbing and blood on trousers.

Generally expert motive to appear; Nyambura important for

purpose: if accused wanted to seduce her why should he come there when she did not live there? If it is said he came to look for Alima go between, why should he go back when he had been told that to go back?

After accused had been told to get out of way by deceased do you believe he would go to extent of murdering him: was being told to get out of way enough reason to cause accused to stab deceased?

Question of time: husband left at 7.3 p.m., man came soon after he had left: prayer takes till 7.50.

HASSAN says he was at the Mosque and left at 7.5 and met accused running, 3 houses away from deceased's house: according to his evidence he met accused at 7.55: i.e., 45 minutes occupied in conversation between Nyambura, accused and deceased and stabbing: woman could not be telling the truth over this: it could not take 45 minutes.

(N.B: Woman meant that accused did not arrive till some little time after husband had left).

Consider carefully her evidence.

R-47.

In lower Court she said she had seen accused bend down and pick up shoes, not cap: No X.M. there: here she says he picked up peaked cap.

~~Witness-
Hassan~~

HASSAN Dark night: no street lights passed accused running wearing fur cap and shoes in right hand and knife in left hand. How could cap turn into shoes? Would a murderer hold knife in hand so that anyone could see it? First thing he would do would be to do away with it: if person running fast could person with nothing in his mind about it recognise person running fast? No lights. Thickly populated place: could people recognise each other in these circumstances? Impossible. Disbelieve Hassan's evidence.

He heard whistles: and went to house: P.O.M'Ithara says he arrived at 8 p.m. exactly and 2 minutes after arrived at accused's shop.

How could accused go there and change clothes if P.C. were there at 8/2 p.m.? Say accused got there at 7.56 or 7.57. Ashari arrived at 8/2 - how could he change and disappear within time?

The accused was not the man whom Nyambura saw and not the man wearing the blood-stained trousers. Believe P.C. M'ithara's evidence.

NYAMURA House searched twice that day accused not found first time because he was not there. Accused found on ceiling wearing khaki suit and had some money on him when searched.

YUSUF ADALI-

YUSUF ADALI, S.I.; Found trousers and sweater in Salim's room. Saw blood on ground; no rain. Searched Somali Camp on 12th and 15th he was not sure if Hersi's house was searched before or not.

YUSUF Already referred to.

Prosecuting to prove without any doubt that accused committed crime, cannot hold accused guilty.onus on Prosecution to prove guilt. The more serious the crime, the more strong the case to be. Evidence not strong enough.

YUSUF is Alibi.

Accused says he knows nothing of it; went to Hamed Warsama's house with Salim Said. Had to stay there 3 days for money. Why stay away from shop for 3 days? He had assistant Salim bin Isaur at shop.

Leaving Hamed's he went to Hamed's to claim 25/- and seeing black people wearing black clothes; some people are afraid of people looking for Humiani; Accused is young and may have been afraid of that and ran into house; he was arrested there.

Even if that story does not appeal to you, see whether it is true whether he was not at Pangani at all these days.

HAMED Long service in K.A.R. retired at Sergeant. Accused and Salim came to his house at 7.30 on 11th; very long and searching

MEM;

(KORAN objects to copy of certificate of character being referred to) Reference dropped by Malik.

Supported by his wife; Her depositions in witness box did not know other man's name; and identified him in Court.

SALIM Left work at 3 and went to Pangani at 8 met him and went to Hamud's.

SALIM was a witness in former case of Ibrahim Ahmed also an Arab; Salim was a prosecution witness, not defence.

AMER MURRI Blind; accused came to his house that particular evening; Disturbance when he was eliciting Koran.

Malik After hearing all prosecution and defence, does evidence bear out allegation against accused? Or that there is such reasonable doubt? Are defence witnesses lying? If doubt to be given to accused.

KORAN-

Not for Prosecution to prove motive; Crown may do so or suggest motive. Not necessary. There is a guilt that accused wanted to obtain kind of relationship with Muzunicha. Argument of defence that she was too young for accused to want to have relationship; she appeared to be on verge of womanhood. Consider attractions; Extent of question of attraction to be judged by accused. Can't say exactly what accused's relations with Alina. Seemed to have known each other well.

Suggested by defence that Alina and Idi concocted story. Nothing adduced in MEM; to show why they should conspire against accused in bringing false charge.

Even excluding Alina and Idi still enough evidence otherwise to convict accused.

Evidence of accused's movements by

(1) Salim bin Hamud; (2) Dadu. No reason why they should conspire against accused; as accused's own assistant would expect them to be accused's friends. If lying, a conspiracy?

Conspiracy of Alima, Idi, Salim and Dudu? Could it arise and if so how?

If believe Salim and Dudu, accused went out wearing the trousers, very definite. Trousers had marks of human blood, definitely proved.

Suggested that absurd that accused should go to room and leave bloodstained trousers behind. ? Blood came from deceased, accused came back to store; changed trousers, and did not know there was blood on them because he changed in dark, changed surreptitiously and in dark.

P.S.O.

NYAMBURA Witnesses may tell story incorrectly because they are dishonest or because they have forgotten. Nyambura not dishonest. If any mistakes, they are honest ones. Tragic figure; weeping; not twisting evidence against accused; she knew accused by dealing with him at shop. She had a good look at him. Had a lamp and held it up; he turned towards her. Absurd to say she was blinded by lamp. She heard voices and knew where to look.

She saw accused and recognized him. Very severe man; witness may be asked questions to trap him; leading questions. She was not diverted from her story but was very consistent. She stuck to story that she heard conversation and then came out.

Four months ago police might not be able to account minutely for actions or exact moments when things happened.

Statements that accused stabbed deceased.

VINE'S statement as to blood did not amount to fact that blood ^{could} not flow at once. Blood might have come after stabbing.

HASSAN saw accused running from deceased's house towards own shop. As to time described by Hassan and NYAMBURA: people don't survey watches and look at them constantly. Estimation of time. 4 months elapsed. Time difficult to remember exactly. Hassan's evidence to be taken as time when accused left deceased's house.

Accused disappeared from scene.

Prosecution story that accused was hiding in Hamud's house. He says that for some reason he went off Friday night-Monday evening. Unlikely that he was away all this time, collecting money. Neglecting his shop. Why got 7/- which he could have got on Friday night.

Salim

Born out by Salim Said. Appearance in witness box. Quick answers in MM; but very slow in XMM: After a long day's work, he walked to Pangani and thence to K.A.R. Reserve. No mention of having food. Stayed with strangers. No sense in his walking all that day.

Accused then found in Hamud's house hiding: Explanation that as he approached some people in black came towards him. ? Accused ^{such} a simpleton as not to know asharis when he saw them. He rushed into house and hid. Why did he hide? Does it not show that Nyumbura had given statement that accused was the man to the Police and that is why they wanted to catch him? Suggest the statement of accused was untrue and he had been hiding there in house.

Why did not accused ask Hamud to explain why he had come to the house? Only to say it was to collect money.

? Story of alibi true.

Identification of Salim Said by Somali woman very convincing. factory as unfortunately the man was looking round when Malik pointed to the man. ? Tomas went to Malik's office twice. Why? Why not give full statement first time?

Can't doubt Nyumbura's evidence. substantial truth. Hassan, Salim, Salim Hassan, all true. accused murdered deceased with whatever motive.

STATE'S CASE

question of fact, whether you believe prosecution story or defence which is an alibi.

Prosecution story that accused was seen by Nyumbura at compound door, that he stabbed deceased and ran away and was

Q. 112. seen by Hassan running. That his bloodstained trousers found in store attached to shop; that he changed his clothes there hastily and disappeared; next found hiding over ceiling in Hamed Hersi's house 3 days later.

DISCREPANCIES: AS to what clothes exactly accused was wearing; but trousers identified.

AS to his exact actions after stabbing, i.e., as to exactly what Nyambura saw.

Remember her husband had just been stabbed in front of her eyes and she was of course greatly agitated. She herself says she does not know exactly what happened after stabbing.

Question of where deceased fell. Doctors evidence not that of eye witness. One cannot doubt that deceased was stabbed in heart, and staggered some distance. He may have fallen more than once.

Accused did not enter box and give evidence. Alibi depends on his word, Salim Hamud and wife. Salim's demeanour. Do you believe them?

Accused found hiding in Hamed's house. Do you believe accused's story as to how or why he was hiding above ceiling.

Motive need not be proved by Crown. Sufficient to show that a thing happened. Impossible to doubt that deceased was stabbed that night. Questions of time. Witnesses speak with absolute accuracy as to time?

If you have any doubt as to the accused's guilt he must be given the benefit of the doubt.

If you believe he murdered Mohamed - you must find him guilty.

Q. 113. Witnesses asked to give their opinions:-

1. MR. J. H. H. H. H. H. - We are 3 assessors. We have come to give our full attention to the case. We heard the Crown witnesses and the woman and all the others; for both sides; As far as we understood from the evidence there was great

difference between the statements of the prosecution witnesses. We are more nearly satisfied with the 3 witnesses for the defence. In our opinion accused is not guilty of murder.

2. MIRAN ALI- After hearing the witnesses, we think the woman's evidence is mixed; we are satisfied that the evidence of the defence is proved. The woman is the important witness and she has not satisfied us. We think accused not guilty.

3. IBRAHIM ALI- We heard both sides and understood them. We are not quite clear that accused murdered deceased from the Crown evidence. He showed that he was at another place when he is said to have committed the murder. According to the defence witnesses we understood he did not commit the murder.

JUDGMENT RESERVED:

34. G.A.S.Lane.

80.

13. 11. 33.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

SESSIONS HELD AT NAIROBI.

CRIMINAL CASE NO. 110 of 1953.

(From Original Criminal Case No. 2746 of 1933 of the
First Class Magistrate's Court at Nairobi).

HEK,

VERSUS

PROSECUTOR.

ABDUL BAKI ABUL HAFID

ACCUSED.

J U D G M E N T.

The accused, a young Arab, is charged with the murder of one Mohamed Kirimji by stabbing him with a knife at about 8 p.m. on the night of 11th August 1953 at Pangani village, Nairobi.

Mohamed was undoubtedly stabbed at that time and date, at his house at Pangani and died almost immediately from the wound, which penetrated the heart.

Accused had a shop at Pangani, quite near deceased's house; he occasionally slept in a store adjoining the shop but often slept in a separate house near by.

The facts alleged by the prosecution connecting the accused with the murder are shortly these: That a few weeks before the deceased's death, accused asked a woman Alima, a lodger in deceased's house, to act as go-between to enable him to seduce a girl Wwasaiha, deceased's young daughter; Alima did not tell deceased or his wife of this but asked one Idi, a relative, to tell accused not to come back to the house, i.e. not to pursue the matter further; that Idi conveyed the message that on the night of the murder, when deceased was away at the mosque, accused came to the house and asked for Alima; that Alima was told by deceased's wife Nyambura that Alima was not there and turned to leave; that in the doorway of the yard of the house, accused met deceased who asked what he was doing and told him to go away; that accused then stabbed deceased with a

13
2.

knife, and ran away; that accused was seen running away from the house towards his shop a few minutes later by one Hassan Karthi; that accused ran to his shop which he entered unknown to the assistant Salim, changed his clothes in the store and disappeared; accused was next found hiding above the ceiling in the house of one Sheikh Ahmed Harsi in Eastleigh village, on 14th August in the evening.

In the meantime deceased had died at once after being stabbed, the alarm had been given, the widow Nyambara (the only eye-witness of the alleged murder) had given the accused's name, as being the murderer, to the first people who arrived on the scene, who included a Police askari Muntu 'Ithara, and the latter had gone at once to look for accused at the shop and the house where he slept, but had failed to find him.

These latter facts cannot be held in doubt nor is it disputed that accused was found hiding as described, and arrested on 14th.

When accused changed his clothes prior to his disappearance on 11th, he is said to have taken off a purple sweater and also a pair of white trousers on which were found stains of fresh human blood; the sweater and trousers he is said to have left in the store; these were alleged to have been found by the Police at about 9.45 that night in the store.

The defence is a denial of the prosecution story, a denial of any acquaintance with accused; an alibi on the night in question and an explanation of the fact that accused was found hiding in Sheikh Ahmed's house. Accused stated that he knew nothing of the deceased and on the evening of 11th dined with one Salim Said to claim a debt from one Hamud Yaruska at a place on the other side of Nairobi several miles from Pangani, arriving there about 7.30 p.m.; that he and Salim spent the night there; that Salim left next morning and that accused spent the night next 2 days and nights at Hamud's, returning to Nairobi on 14th; that he arrived at Eastleigh village towards evening on 14th and when approaching Sheikh Ahmed's house, he saw some people running

towards him which alarmed him, whereupon he ran into the house and climbed up on to the ceiling to hide.

I will now endeavour to analyse the evidence for the prosecution and for the defence. Questions of time are of great importance in this case. The same degree of accuracy as to time cannot however be expected from native and Arab witnesses as from Europeans.

The first prosecution witness was Alima whose evidence both in this Court and in the lower Court was to the effect that accused approached her to act as go-between to establish relationship with Kwanaisha, about a month before the murder; that she refused and told Idi as she did not wish to get into trouble with Kwanaisha's parents. This witness was not shaken in cross-examination and appeared to be reliable.

Idi the 2nd witness corroborated her evidence, a discrepancy being that whereas Alima said she told him about this matter about a month before the murder, Idi stated that she did so on 9th August, 2 days before. Idi also said that he was rolling cigarettes when Alima called at his shop, while she said he was making sweetmeats.

The 3rd witness Salim bin Nasur, an employee of the accused, gave evidence of importance, to the effect that on 11th accused went to the town at 4 p.m., came back from the town about 7 p.m., then went out to get a bag of flour for the shop, and returned to the shop and left again at 7.30 wearing a white coat, the purple sweater which has been referred to, the white trousers, a red fox cap and brown shoes. This witness positively identified the sweater and trousers as accused's and as having been worn by accused that day. He stated that at 9.45 when the S.I.P. searched the place, the trousers were found with the sweater, they not having been there during the day and that a kikoi or white lein cloth which had been there all day had disappeared. Accused was

not seen again at his shop after that evening.

There appears to be no reason to suspect the genuineness of this witness's evidence which he gave in a truthful manner. He is an Arab of the same tribe as the accused, and his employee, and if anything one would expect him to favour the accused in evidence rather than to seek to damage his case.

The 4th witness was a native youth Eudu also employed by accused who testified that accused was away at 6 o'clock, that at 7 o'clock or after 7, accused brought a bag of flour, which was opened in the shop, and then departed wearing the white trousers and purple sweater, with a white shirt under the sweater, brown shoes and a red fez. He differed from Salim in that he said that accused wore nothing over the sweater, i.e., no coat. Accused, according to Eudu, left the shop after 7.30, but he was not very clear as to the exact time. The witness did not see him again until the trial began.

Ryambura, the 5th witness, was the most important being the only eye-witness of the murder. She is an elderly native woman whose husband was killed before her eyes. Not unnaturally she was not absolutely clear as to every detail; the events which took place having greatly agitated her both at the time and in the course of evidence. On the main facts she was, however, definite, and not to be shaken and in her evidence there was the ring of truth. She said that she knew accused as a shopkeeper with whom she dealt; on the night in question her husband went out at 7.30 to the mosque; shortly afterwards from her room in the house she heard a voice calling "Medi" and a knock at the door - the voice called Alim and the witness replied that Alim was not there, without going out. She next heard her husband's voice from the doorway of the yard (the visitor was in the yard speaking to the latter; the men were facing each other in the doorway of the yard; the man said he had come for Alim and the husband told him to get

out and not come back; the witness had meantime gone out with a lamp and she says that she was standing at accused's back, 8 or 10 feet away; then she says the man the accused stabbed her husband with a knife; the husband said "He has stabbed me and fell. She says that the accused bent down to pick up his cap and that she lifted her lamp and saw his face, as he turned towards her over his shoulder. Then he ran away.

She describes his clothes as white trousers, a shirt pushed into the trousers and a peaked cap, differing thus from Salim and Dudu.

It is to be noted that in the lower Court she said she saw nothing until the deceased cried out "He has stabbed me" and that she altered this in this Court to say that she saw accused stab deceased and then heard the cry of deceased. She is ~~not~~ contradicted herself on this point in evidence in this Court.

In the lower Court she had said she saw accused pick up a shoe, not a cap.

This witness as I have said showed a good deal of natural agitation on the box but I hardly think it surprising that in the circumstances she should be uncertain on some points. Four months have elapsed since the deceased's death and the scene as she describes it must have been partly in the dark and the events have taken her by surprise and have happened very rapidly. The discrepancies are not such as to lead me to disbelieve her evidence. It is significant that when the person who struck her husband had run away and she gave the alarm though much upset, she had sufficient presence of mind to disclose to those who came the identity of the murderer, for the constable M'ithara immediately searched for accused at his shop.

The 8th witness was Hassan Karathi a neighbour of the deceased and accused. His evidence is that he also was at the

6.

mosque and left about 7.5 o'clock that evening and was returning home when he met accused running from the direction of deceased's house and going towards his shop. They passed within a few feet of each other and the witness asked accused why he was running. Accused was described by witness as wearing white trousers, and a red fez. The witness did not see a coat or notice the sweater; he spoke to seeing accused carrying a knife in one hand and shoes in the other. In these points, i.e. of the case and the shirt the witness differs from Nyanbura, he was however definite about having identified accused even before his name mentioned by Nyanbura, as he says he did when he got to the deceased's house on hearing the alarm raised a few moments after meeting accused.

Luka, the 7th witness, is important on the circumstances surrounding the finding and arrest of accused. It appears that the police had been searching for accused for 3 days and had already on 14th searched all or at any rate most of the houses in Sec. 3 Eastleigh where Sheikh Ahmed's house is. Luka shows that in the evening of 14th in consequence of information received - the police decided to hold a further search; Luka, 2 constables in plain clothes and one in uniform were the search party; he shows that one man was put at the back of the house, one on one side and one sent to call the owner who was thought to be away. Luka sought to go in and was told he could not enter by the woman of the house; he heard an alarm raised by the constable at the back of the house in consequence of which he forced his way in, the door being bolted. Luka had been told that Sheikh Ahmed Hersi was at the mosque yet when he entered the shop was empty and he searched the house and accounted how they were able to get in through a gap in the wall. Luka says that they were able to get in through a gap in the wall and pull oneself up to the ceiling so that the ceiling

must have been fairly high. It appears from Luka's description of the search that Sheikh Ahmed knew that accused was there hiding and that the police were looking for him. That accused must have realized that he was being looked for by the police and by no one else; and that neither he nor Sheikh Ahmed made any attempt to give a reasonable explanation of why accused was there.

Mr. Pugh, Agt. A.S.P., was the 4th witness and showed that deceased had apparently tottered a distance of some 8 ft. after being wounded and fallen finally at a place where when he arrived he saw signs of water having been thrown, but no signs of blood.

The ambulance driver, constable Fimbo was the 5th witness, who testified to having been needed the body to take to the mortuary.

Const. KUNDU 'ITHARA the next witness showed that he received information at Mangani Police Post which is near deceased's house, and arrived there at 8 p.m., very soon after the offence was committed. He went at once to look for accused at his shop in consequence of what he heard, and arrived a few minutes after 8 but did not find accused there or at his house.

S.I. SURBAX SINGH showed that when he searched the accused's shop and store he found the trousers with fresh blood-stains on them on the bed and the sweater also; he also saw signs of water having been thrown on the ground at the place near deceased's house where deceased was believed to have fallen and died.

Dr. VINT testified to having carried out the p.m. examination on deceased's body and finding only one wound which penetrated the heart; he thought that the deceased after receiving this wound would not move more than a pace or two. There appears however to be definite evidence that the deceased did stagger more than a pace or two, in fact a distance of from 7 to 100 ft. before finally falling; it appears to have been established that deceased was stabbed at the doorway of the yard

and did actually stagger to the point shown as X on the plan, at the back of the house. On the point as to whether there would be an effusion of blood from the wound immediately after the stabbing. Dr. Vint thought this would depend entirely upon the position in which the body fell. It seems clear from Nyambura's evidence that the deceased fell on being stabbed, and from Dr. Vint's evidence that blood could quite likely have flowed then; the deceased must then have got up and staggered till he finally fell at the point X.

The 13th witness, Dr. Tenking, showed that he examined the trousers at the Laboratory and found the stains to be human blood. This closed the evidence for the prosecution.

The accused made a statement from the dock and did not elect to give evidence; it was to the effect that he met Salim Said outside Pangani village that evening at 6 p.m. and that they walked to Hamud's house on the other side of Nairobi; this would be a distance of 4-5 miles. That Salim went away next day and accused stayed until Monday 14th when towards evening he made his way to Sheikh Ahmed's house at Eastleigh where he met the police and took refuge in the house and hid. He says he had nothing to do with the murder and pleads an alibi.

The really important points are the times at which he is said to have met Salim Said and arrived at Hamud's house. If his story is accepted, he could obviously not have stabbed the deceased at 8 p.m. at Pangani. He says that he met Salim Said at 6 p.m., and arrived at Hamud's at 7.30., whereas Salim bin Wasur and Yudu say that he was at the shop at Pangani at 7 p.m. and again until 7.30, while Nyambura further says that he was at deceased's house at or just before 8 p.m., and Hassan Khrothi says that accused was seen coming from deceased's house a few minutes later.

It is of course possible that supposing that he was at deceased's house and committed the murder at 8 p.m. or a few

minutes before, he might have gone to Hamud's and stayed there until 14th when he returned to Nairobi, when he was arrested at Eastleigh. In that case he could not have reached Hamud's at 7.30., but a good deal later. But I do not think it necessary to consider this aspect of the matter.

Hamud, his wife, Salim and the accused, all say that the 2 men reached Hamud's at or near 7.30.

While one would expect Nyambura and other prosecution witnesses who were present either at or immediately after the murder to recollect the date and the hour accurately, on account of the excitement which it naturally created in the locality, it is not so easy to believe that the date of 11th August and the hour of 7.30 would so easily impress themselves upon the memory of Salim Said, Hamud or even accused himself, if as they say they were all engaged in everyday occupations of no particular moment and having no connection of any kind with the crime.

The accused's reason for staying 3 nights at Hamud's was that he wanted to collect 15/- due to him: he states that Hamud was ready to pay him 7/- of it on the spot and that he stayed on hoping to get the whole sum as he did not want to take a part of the debt. He saw fit to neglect his shop for practically 3 days and 3 whole nights to do this; yet at the end he says he only received 7/- which he could have taken on Friday and departed homeward. This does not seem entirely reasonable. Accused's description of why he took refuge in Sheikh Ahmed's house is not convincing: he says he was seized with panic when he saw from 4 to 5 black people dressed in black clothes running towards him and not only ran into the house but took refuge above the ceiling. He gives no reason for being so panic-stricken at seeing a few Africans running towards him: it seems clear that they must have been the Police and he must surely have recognized them as such.

He has not explained why, as an innocent man, he should have been so panic-stricken at seeing a few native askaris running towards him as to behave as he did; nor why when he realized they were searching for him, if he was innocent of any crime, he should not come out of hiding and reveal himself to them.

Hamud Warsama's evidence went to support accused in saying the two men arrived on 11/2/33 at 7.30 p.m. His demeanour in the box did not impress me favourably and I have difficulty in believing his evidence.

Salim bin Said also supported the accused as to the date and time of their going to Hamud's. This witness seemed very vague as to where the house was or how far from Pangani. This man's demeanour in the box did not convey at all a favourable impression and I regard his evidence with a considerable amount of doubt.

Arde Jama wife of Hamud supported generally the statements of accused as to their going to the house. I have no comments to make on this witness except that her identification of the witness Salim Said in Court was not satisfactory. When asked if she could point to him in Court she turned her head at once and the man stepped forward from among the spectators and she looked at him before it could be arranged that he should be placed among other spectators. The fact of her afterwards pointing to him among a row of spectators did not help to establish the genuineness of her evidence; she having said she did not know his name but might recognise him just before this.

Sheikh Ahmed Harsi's explanation as to the circumstances of accused coming to his house and being found there hiding and arrested, I regard frankly as unconvincing in view of what Lulu has shown to have occurred. This man is blind and one must give him credit for not having the same opportunities of knowing what was happening as persons with all their faculties, but in view

view of the house having been searched before and of what Lulu has described, this man's description of how he was innocently visiting the Kagan and was ignorant of the reasons for all the trouble, must surely be untrue. He is therefore an unreliable witness and I cannot believe his evidence.

The Accused all hold the charge not proved and that the alibi was established.

As Mr. Doran has said, if the defence is to be believed, not only Alina but Idi, but also Salin and Dada, must have conspired to conceal the evidence which they have given. It is difficult to see how or why they should so conspire together. The girl Munsuina is certainly from 14 to 15 years of age and not a mere child as suggested for the defence and the story as to the accused's wish to establish relationship of some kind with her is in no way improbable. The witnesses bear each other out as to this and I see no reason to disbelieve them. As I have said, one would expect Salin and Dada to attempt to shield accused rather than the reverse.

The main fact that Nyumbura saw accused and definitely identified him as the person who stabbed her husband is I think proved.

After weighing the evidence carefully I hold that the charge against the accused has been made out; the discrepancies in the Crown evidence to which I have referred are not such as to enable me to disbelieve the evidence in support of the charge. I consider that the defence of the alibi has not been established.

I therefore find the accused guilty of murder contrary Section 290.

The Magistrate calls upon the accused to say whether he has anything to say why sentence should not be passed upon him according to law.

None - says "the man is very young; I tell the Court to recommend him to mercy".

~~WILLIAM~~ says "I did not kill; if the Government wants to do anything against me it is their affair".

(N.B. On the point of age I should estimate his age at from 18 to 20).

~~WILLIAM~~ ~~WILLIAM~~ states "I was born in 1887 and I am 18½ years old, by Arab reckoning" (The present Muslim year is 1356, making him 18½ by that reckoning).

In my opinion the accused is over 16 years. But I remand him until to-morrow for medical examination, and evidence of the H.O./O Prisons as to his age. Malik wishes to call other evidence as to age.

Sd. G.A.G.Lane.

17. 11. 22.

~~WILLIAM~~

~~WILLIAM~~ called by Court.

~~WILLIAM~~ ~~WILLIAM~~ Sworn, Christian, British.

Medical Officer H. M's Prison, Nairobi. I see the accused. I examined him in the Court Buildings yesterday. He is at least 17 years of age and probably more; on grounds that he is very well developed muscularly; has considerable amount of subcutaneous fat; consistent with his being 17 years or more; has considerable amount of facial hair, hair in armpits, on pubis and on thighs and legs, consistent with his being 17 or more; has one wisdom tooth, which in European races is definitely consistent with greater age than 17; there is certain amount of wear on incisor teeth which one would expect to see at such an age or greater age. There are not sufficient records of Asiatic races to judge on point of teeth alone, without other indications.

I can't possibly definitely swear that he is only 16 years of age. I can only offer opinion that he is 17 or over. Very improbable that he is sixteen or less; not impossible.

Sd. G.A.G.Lane.

Sd. G.A.G.Lane.

YUSUF AHMED AHMED, Swere Christian, British.

Doctor of Medicine. Medical Officer attached to Native Hospital Nairobi. I examined accused yesterday at Court Buildings and came to the conclusion that he is certainly more than 17.

Anything up to 21 or 22. Based on his general appearance which is that of youth of about 17; moustache, well grown hair in axilla and pubic area; one wisdom tooth out; on upper right hand jaw this has been out in my opinion for about two years; it is darkly stained and surface is worn, not newly out; tooth in front of it (2nd molar) is worn so flat that it is almost the teeth of an old man. All the other teeth are darkly stained. There is evidence that left lower wisdom tooth will soon be through.

It is my considered opinion that he is at least 17 years of age. I can swear that it is my opinion. I have been a qualified doctor for 9 years and during that time occasionally one has to decide on aged. As to my experience of the cutting of wisdom teeth in Asiatic races, I have not paid particular attention to this point. Not based so much on the fact that he has a wisdom tooth as fact that it has been there some time. As far as I know no difference between Asiatic and other races. Wisdom teeth generally appear between 17 and 21.

Teeth which is worn I should say could not be in that condition unless he was between 17 and 21; it must have been there from 2 to 10 years.

R.O.F.C. Ed. C.A.C. 1000.

Was called by State for defence as to age.

ABDUL KADIR, Swere Mohammedan, Arab.

Accused is my brother's son. Son of my full brother. My brother, Abdul Kadir the father. He is dead. Accused was 2 years old when his father died. He was born in Arabia at Meccah, in 1897, in Mohammedan calendar. He is now about 15 years old.

6 months. I fed and brought him up after his father's death. I am about 40 years old.

I lived in Nairobi for 6 years, before that in Arabia. No relatives in Nairobi except accused. I live in Langani. We lived in same house but in 10th month 1932 he left my house after quarrelling with me; after fitima between us.

He is not yet 15; 5 months less; not less than that. I know exactly when he was born. My brother had elder children; their years are entered in a book which is not here. I can't remember their ages.

There are 2 sisters of accused, one is elder, of 22 years. The other is 17. Accused was the third child.

R.O.F.S. 3d. G.A.S.Lane.

NAIK: Vindes to address: opinion of R.M.D.'s based on symptoms; medical opinion not always correct; uncle has sworn that accused was born in 1337; by this he would be near 15. Here opinion against this. In serious case Court to attach greater weight to guardian's evidence.

OPINION:-

As to accused's age I had already formed the opinion that he was more than 16 years of age and this is strengthened by the evidence of the 2 medical men who have been called to-day.

I am unaware of the exact meaning in European reckoning of the Mohammedan calculation of years but it is my definite opinion that accused is more than 16, so that it is unnecessary to consider that point.

I therefore having found accused guilty of murder sentence him to be hanged by the neck until he is dead.

I inform the accused that he has 30 days in which to appeal.

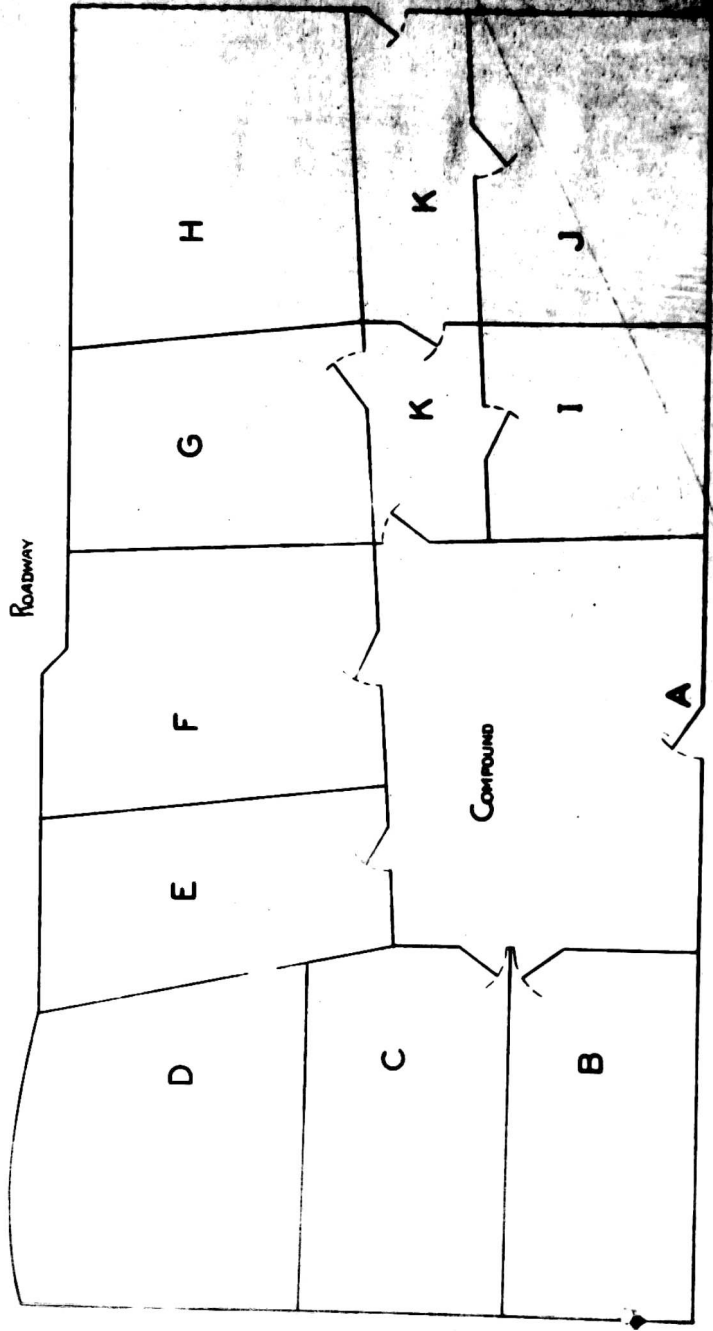
3d. G.A.S.Lane.

17. 11. 33.

20.

SKETCH PLAN OF SCENE OF THE PANGANI MURDER EASTLEIGH C.R. 86/33

SCALE 1" = 5 FT
1 Small Square = 6 in



Roadway

Compound

Road

Roadway

Criminal No. 81.

COLONY AND PROTECTORATE OF KENYA.

IN THE RESIDENT MAGISTRATE'S COURT, NAIB BI.

SUPREME COURT CRIMINAL CASE No. 111/33.

CRIMINAL CASE No. 2746 of 1933.

Prosecutor

GROVE.

Accused

AMMED bin ABDUL HAFID (Arah)

Date of Issue

15. 8. 33.

Date of Hearing

26. 8. 33.

Charge

Section 187 Penal Code.

Remarks

charged of murder under Section 187
and committed to Supreme Court for trial.

15-8-55

Griffin.

Accused.

R. Accused till 25-8-55 for hearing.

A. Phillips.
12/8.

22-8-55

Griffin for Grows.

Accused.

Malik for Accused.

R.H.L.

Mohamed bin Karimangi (Mohammedan).

Swear:-

I live at Mangani. Until 11-8-55 I lived with my husband, Mohamed bin Karimangi. I remember 11-8-55, a Friday. About 7.30 pm. on that day my husband left home to go to the Mosque. A few minutes after he had gone, a man came to my house, and knocked, but I did not reply. Then he called "Alima", and I said that ALIMA was not there. I talked to him from inside my room. He was in the yard outside the house. I did not see him and did not then know who it was. There is a woman called Alima who lives in the same house as myself. The man who had spoken to me then went away. As he was leaving the compound, I heard a conversation take place between him and my husband, Mohamed, whose voice I recognised. I went outside on hearing my husband's voice. When I didn't hear my husband's voice he said "Why have you not told me that a man of your tribe lives here." I told him that I had not seen him but that I had not taken anything. I came to see accused. When I went to the door, I saw accused and my husband. I had a long conversation with him. I knew accused before that night. He was wearing white trousers and a white shirt. When accused came to the door, I heard my husband say to the accused, "Get out of the way and let me pass". He then said to accused, "He has stabbed me with a knife", and I saw him stagger backwards. Accused and my husband were then in front of me. I did not see anything happen before my husband went out. When I came to the door next, accused and my husband were facing each other, standing in the gateway of the

compound. I was standing a little to the right of the door of the house. My room is the first on the left on entering the compound. After my husband staggered back, accused stooped down to pick up his shoes, and as he did so I saw a knife in his hand. I do not remember exactly what sort of knife it was. Accused then went out of the compound. As soon as my husband cried out, I had started to scream. My husband had fallen down on his face between our house and the next building, outside our compound. After crying out he had staggered backwards outside the compound, and gone round the side of our house. Accused walked away among the houses. I did not see anyone else except my husband and the accused when I came out of the house. No one else arrived before accused left. I had not seen accused at our house previously. I do not know of any reason why he should stab my husband. I have two daughters - Amina, who is married, and Nwaaicha, aged about 14. I have seen accused in Nairobi since the Ramadhan before last. Some other people arrived and brought my husband into the house. He was not able to speak then. I did not examine him. I do not know what happened to him. I saw this Police Officer (A.S.P. Pugh. A.P.) and this Sub-Inspector (S/I Gurbux Singh I.P.) there that same night. I saw S/I Gurbux Singh inside the house. I cannot remember what they did. I did not see my husband's body after that night.

Wm. Pugh

R.O.C.

A. Phillips.

L. T. P. H. E.

A. Phillips.

~~CONFIDENTIAL - SECURITY INFORMATION~~

On night of 11-8-55 on information received I went to Nairobi about 9.30 p.m. I went to the home of P.W.1 I produce a plan (M.I) drawn by me to scale on 12-8-55 showing a building, said to be property of P.W.1. In the room marked B on the plan I found the body of a native man lying on a bed. He was identified to me as one Mohamed, husband of P.W.2.

This is the man who identified him to me. (Nasran Karaiti, A.P.)
I examined the man Mohamed. He was dead. He had stab wound
just in front of his left shoulder just below the collar bone.
On my instructions the body was removed in the ambulance, under
charge of I/P.C. Fimbo. I detailed 2 constables to go with the
body to the mortuary and remain on guard there.

KIM reserved.

R.O.C. A. Phillips.

L.R.B. PHILLIPS.
Ag-A.S.P.

P.V.3. FIMBO S/O DAGUA affirmed:-

I/P.C. Ambulance Driver. On 11-8-55 I took the ambulance
to Pangani in the evening. On instructions of P.V.2 I removed
a body in the ambulance to the mortuary. I left it at the
mortuary in charge of 2 askaris.

KIM reserved.

L.T. of P.V.3. R.O.C. A. Phillips

P.V.4. LENA KINARAKA sworn:-

Sub-Inspector Police G.I.D. On evening of 14-8-55 on
information received I went to the house of a woman named
Shahida Mwanji Mwanji, and there arrested accused. I found
him hiding above the ceiling. I took him to Police Station.

KIM reserved.

A. Phillips.

R. Accused.

A. Phillips.

Lena Mwanji
Sworn.
Mwanji, Griffiths.
Accused.
Mwanji.

P.V.5. NASRAN S/O KARAITI sworn:-

Lived in Pangani. Know accused. I have known him

Was about 4 years. I remember 11-8-35. About 8 p.m. on that day I left the Mosque to go home. On the way I met accused. He passed me running. I asked why he was running. He did not reply. He was wearing a pair of white trousers. After passing accused, I continued past 2 houses, and then I heard a whistle, like a Police whistle. I ran towards the place from which it came. I found a group of people at the house of Mohamed Kiriumgi. I did not see Mohamed at first, but I saw a woman lying on the ground. It was Mohamed's wife (P.W.1) Nyambura. She was crying out. I then ran to the Police Post. Not finding an ~~accused~~, I telephoned to Nairobi. I then went to Eastleigh Police Station and reported this Sub-Inspector (Garbux Singh A.P.) He came back with me to Mohamed's house. We went into the house, and saw Mohamed lying on a bed. He was dead. I later saw his body put in the ambulance in the presence of S/I Garbux Singh. Accused had a shop in Pangani. When I saw him running on the night in question he was about 80 yards from Mohamed's house. I did not see anyone else after passing him until I reached Mohamed's house. Accused was running in the direction of his shop, and coming from the direction of Mohamed's house.

THE FOLLOWING

S.O.S.

A. Phillips.

Left of page

A. Phillips.

~~REDACTED~~ PH:-
 I am a village in house formerly owned by
 Mohamed Kiriumgi. I do not know accused, but I saw him as one
 coming to my house about a month ago. He told me
 he wanted me to act as go-between for him to seduce a girl
 called Mwanicha. I refused. I later gave certain information
 to a man called Idi - on the Wednesday before Mohamed's death.
 I did not see accused again after the occasion which I have
 described, which was about a month ago. I know the girl
 Mwanicha. She is daughter of deceased, Mohamed. She lives in

The house of a teacher in Pangani. I live in deceased's house. On Wednesday 9-8-33, when I spoke to Idi, I asked him to go to accused and give him certain information. Accused was living in a shop in Pangani.

KM reserved.

A. Phillips

R.O.C.

A. Phillips.

L.T. of P.W.6.

A. Phillips.

P.V.V. DAI s/o MBOGC sworn:-

I live in Pangani. I know accused. I know one Mohamed Kiriungi; he lives in his own house in Pangani, about 80 yards from the house where I live. I know P.W.6. She lives in the house where Mohamed lived. About the beginning of this month I saw P.W.6 in Mohamed's house - it was Wednesday 9-8-33. She asked me to do something, as a result of which I went and saw accused at his shop about 5 p.m. the same day, I told him not to go again to lim's house. I did not say anything else. Accused did not make any reply.

KM reserved.

R.O.C.

A. Phillips

L.T.

A. Phillips.

9.3.33 p.m. A. Phillips.

KUNDA SINGH s/o BUNTA SINGH sworn:-

Sub-inspector of Police, Maitleigh Police Station. On night of 11-8-33 as result of information received I went to house of one Mohamed Kiriungi. I arrived there at about 9-45 p.m. and found the dead body of Mohamed Kiriungi lying on a bed, in a small room. The body was identified to

me by P.V.S. It was removed in the ambulance driven by S.S.S. Later on same night I made inquiries about death of Mohamed. I went to the house of one Salim in Pangani, and searched it. Ex. II. I found this pair of white trousers (Exhibit II) and this Ex. III. Sweater (Exhibit III) in Salim's house. I examined Ex. II. and found what appeared to be bloodstains on the trousers. On 12-8-33 I took Ex. II to Medical Research Laboratory and handed it to Dr. Vint. On 12-8-33 I also attended a post-mortem examination on body of Mohamed conducted by Dr. Vint. The body was the same one which I had seen the previous night at Pangani. On 22-8-33 I went to Medical Research Laboratory and received Exhibit II from Dr. Tomking.

Exm reserved.

Garbur Singh.
S.I.

R.O.G.

A. Phillips.

Ex. IV and V EDWARD JOSEPH GRIFFIN, Sworn:-

I produce 2 Medical Reports (Exhibit IV and V) signed by Dr. J.V. Vint. I am familiar with his signature. I have seen it many times. I also produce a report signed by Dr. Tomking (Exhibit VI.) I am familiar with his signature.

Exm reserved.

R.O.G.

A. Phillips.

F.J. Griffin.

Ex. VI SALEM, Sworn:-

I am an Arab, living in Pangani. I know accused. I remember night of 11-8-33. I was at the shop which belongs to the accused. Accused left the shop at 7.30 p.m. I did not see him again that night. When he went out he was wearing a white coat and white trousers and a red fan, and a pair of shoes. I shut up the shop at 10 p.m. and went to Police Station with sub-inspector Garbur Singh (P.V.S) who came and told me to close the shop. He searched the store and house and shop and the whole of the premises. P.V.S found this pair of trousers Ex. II & III (Ex. II) and this sweater (Ex. III). Both belong to the accused.

He had been wearing them when he left the shop at 7.30 p.m. P.V.S found them in the store in which I sleep. I had not been in the store between 7.30 and 10.00 p.m. Exhibits II and III were found on a bed in the store. I was present when P.V.S searched the store. I did not discover anything else in the store. I had not been in it after the morning of that day until 10 p.m. One white "kikai" had been left in the store on a line that morning. It was missing when I went to the store with P.V.S at 10 p.m. I have not seen it since. I had been working for accused at his shop for 1-2 months. A native boy called Dada was in the shop with me when accused left at 7.30 p.m. I did not know a man called Mahamed Kirimugi.

Exn reserved.

R.O.C.

A.Phillips.

E.F. of P.V.10.

A.Phillips.

L.Hall. JOHN A/S MOKANED sworn:-

I live in Pangani. I knew accused. He is my employer. I remember 11-8-55. About 7.30 p.m. I was in accused's shop. P.V.S was also there. He also was there. Accused left the shop at 7.30 p.m. I did not see him again until today. When accused came to the shop at 7.30 p.m. on 11-8-55 he was wearing a white shirt, and a red fez, and this was the number (Ex.II) and this number (Ex.III). I knew Mahamed Kirimugi. He lived at Pangani. I do not know anything of his relation with accused.

Exn reserved.

R.O.C.

A.Phillips.

E.F. of P.V.11.

A.Phillips.

JOHN A/S MOKANED.

accused changed = see Page 7.

A.Phillips.

COLONY AND PROTECT-RATE OF KENYA.

REK

versus

ARMED MAN ABDUL HAFID (Arab).

STATEMENT OF THE ACCUSED.

ARMED MAN ABDUL HAFID (hereinafter called the Accused) stands charged before the undersigned A. Phillips, Acting Resident Magistrate, Nairobi, this 25th day of August, 1933, for that he, the accused, did on the 11th day of August 1933 at Pangani, Nairobi, murder Mohamed s/o Kiringi (Section 107 Penal Code).

and the witnesses for the prosecution having been severally examined in the presence of the accused, and the said charge being read and its nature explained in ordinary language to the accused; and the accused being informed of his right to call witnesses, and, if he desires, to give evidence on his own behalf; and the accused being given clearly to understand that he has nothing to hope from any source of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he may say may be given in evidence on his trial notwithstanding the giving of threats; the accused is now addressed by me, the undersigned, as follows:-

"Do you wish to say anything in answer to the charge? You are not obliged to say anything, unless you desire to do so. But whatever you say will be taken down in writing and may be given in evidence upon your trial."

A. PHILLIPS.
Signature of
Magistrate.

Whereupon the accused says as follows:-

I repeat my statement for my trial in the Supreme Court.

R.O.C.

A. Phillips.

I CERTIFY that the above statement was taken in my presence and hearing and contains accurately the substance of the statement made by accused.

A. Phillips.
M.A.S.

Signed by accused in my presence.

A. Phillips.

Ed. Abdul Hafid.

ORDER: I commit accused for trial by the Supreme Court.

A. Phillips.
25.8.33.

All prosecution witnesses to be bound over in
SAs. 130/3 ~~and~~ in Supreme Court when called upon.

A. Phillips.
25.8.33.

Accused informed of right to have copy of deposition
free of charge, and of right to have witnesses summoned for
trial.

A. Phillips.

I order accused to be remanded in prison until his
trial by the Supreme Court.

A. Phillips.
25.8.33.

CRIMINAL CASE NO. 2746/33.

EXHIBIT No. IV.

Medical Research Laboratory.

P. O. Box 141,

Nairobi.

I CERTIFY that I received a sealed packet stated to contain one pair of trousers, on the 12th August, 1933, from S.I. Gurteen Singh.

Later I handed over this packet to Mr. H. D. Tensing with the seals unbroken.

Sd. P.W.Vint.

12th August, 1933.

CRIMINAL CASE NO. 1146/22.

MURDER No. V.

POST-MORTEM NO. 1182.

Report of a post-mortem examination held on the body of an adult male native said to be Mohamed bin Kariongi, in the Town Mortuary, Nairobi, at 12 noon, 12th August, 1933, in the presence of Sub-Inspector [redacted].

The body identified to me was that of a well nourished adult male native. $\frac{1}{2}$ " below the left clavicle and $4\frac{1}{2}$ " from the middle line of the body there was a vertical gaping wound 2" long and $1\frac{1}{2}$ " wide. It penetrated downwards and towards the middle line of the body, after passing through the muscles of the chest wall it cut through the 3rd left costal cartilage and partially covered the 4th left costal cartilage. When it passed through the left pleura, and the pericardial sac to enter the right auricle of the heart. In the heart the wound was $1\frac{1}{2}$ " long. The wound then passed through the septum of the heart into the upper portion of the left ventricle just below the aortic valve. No other injury was found on the body.

Heart. The pericardial sac was full of blood, and there was slight enlargement of the aorta.

Lungs. [redacted] normal. The left pleural cavity was full of blood, but the lung had not been injured by the above mentioned wound, and [redacted].

Liver. [redacted] no abnormality detected.

Spleen. [redacted] by adhesions, very fibrous and dark in colour.

Stomach. [redacted] No abnormality detected.

Intestines. [redacted] Tachia present.

Brain. [redacted] At the request of the relatives not examined.

CAUSE OF DEATH. [redacted] Haemorrhage following a wound of the heart.

By: F.S. Vint.
M.D.

119
64D

CRIMINAL CASE No. 8744/22.

EXHIBIT No. VI.

Medical Research Laboratory,
P.O.Box 141,
Nairobi.
Kenya.

The Sub-Inspt. of Police,
Nastleigh,
Nairobi.

Re: Accused Ahmed bin Abdul Hafid.

Ref: Your Nastleigh C.R. of 12-2-22.

I received a sealed parcel from Dr. Vint, the parcel contained a pair of white trousers.

There was a stain of human blood on the front of the right leg, the stain was two inches long by one inch broad and had been deposited on the outside of the cloth and had soaked through to the inside, adjacent to the main stain were numerous small stains, also of human blood.

cc. H.D.Tonking.

Asst. Bacteriologist.