

once a month a true belief or was it a false belief amounting to an insane delusion?

(B) Was the belief, arising out of (A), that he had been turned into a woman a true belief or was it a false belief amounting to an insane delusion?

5. Question A.

No evidence on this point was given in Court. The Court did not call for investigation of this essential point. Dr. Henderson had taken a smear for gonorrhoea - possible but very unusual cause of blood in the urine. He had not investigated other and more likely causes. He had not even looked for blood in the urine. The recent laboratory examination of the urine is no help without essential information not supplied in the report.

It is therefore quite impossible for me to be sure on this question.

6. Question B.

Assuming the answer to A. to be that the belief was a true belief founded on fact, the belief B. might very well appear to a native to be founded on fact, having regard to the alleged periodicity of the bloody discharge.

Questioned on this point he was unable to advance any other reason for considering himself a woman as he says he does; with one exception, viz., that his matutinal (5 a.m. he said) genital tumescence is now quite inadequate for coitus. This may be a psychological effect of fear in prison. He was firmly of opinion that/

- 7 -

that a man can be turned into a woman by witchcraft. It would be interesting to learn why the Judge said such a conversion would be a "miracle". Something may depend on how His Lordship defines a miracle - perhaps he does not agree with Bernard Shaw's admirable definition. However the facts are against the Judge. There are well-authenticated cases of conversion and biology sees no miracle in it; indeed a great authority describes the male (biologically) as only an improved female and intersexuality is a well established condition.

As the answer to (B) depends upon the answer to (A) I can say no more on the subject.

#### 7. Second Discussion.

Nevertheless the great interest of the case demands more. On the evidence before me there appears to be only one conclusion possible - viz., that the man was quite sane. Why then did he commit the murder? There are, I think, two possible reasons - the first, that he had a genuine belief, but an erroneous one, on which he acted - in fact the reason broadly attributed to him by the judgment in Court; the second, a reason not considered by the Court nor raised in the file and which I propose to put before you.

In regard to the first reason it is regrettable no proof of pathological blood in the urine has been provided, but assuming - as the Court did - that it was, and is so present periodically (thus justifying a native belief of sex-conversion), it is clear that the man had

no/

no justification by tribal customs for the murder and none in the eyes of British Law. He was therefore properly sentenced to death and should suffer the penalty.

My second hypothesis arose as follows:-  
I was struck by his statement to me that he drank the tea containing the dawa although made aware by the woman of its nature and its expected result; and that he - an intelligent man - could offer no reason for this stupid compliance.

On consideration I questioned him most carefully concerning the existence of this type of witchcraft. He answered at once that he had never heard of a case before except one. He then poured out without any questions the full story of the case mentioned by Dr. Henderson. It happened, he said, in 1938, and the man, a hospital dresser, committed suicide by swallowing "Jeyen". The woman who did the witchcraft in this case - he volunteered - was a sister of Wabera. This seemed a fact of crucial importance. I asked if he was interested in the case and had thought about it, and he answered very much and a great deal. Did he not feel inclined to commit suicide? He - it was better to kill her. Did he think her death would cure him? He thought so. Had it cured him? He, not yet.

My hypothesis is this. According to his own story he was tired of the woman, wanted his money back and to get rid of her. He could not get his money. He thought of the case of the dresser and determined to repeat/

repeat the performance on an improved method. This he did, producing blood which he took care to show to Wabera but only on his shorts. If this blood was an artifex there is nothing to show that the blood cells found in his urine by the laboratory was not also an artifex.

I need not point out the many facts in the case which might very well be taken to support this theory. Clearly the theory stands or falls by (1) proof that he had bloody urine at the times alleged this proof is entirely lacking -, (2) proof that he is now suffering from genuine haematuria due to a definite physical cause - this proof may yet be obtained.

Should these proofs be possible the man might possibly be a case for His Excellency's sympathy. In their absence I feel my theory is a good one and makes the man thoroughly worthy of the death penalty.

9. Opinion.

In my opinion Hyarugombe is sane and was sane at the time of the crime. I favour the theory that the crime was premeditated and was the result of a cunning plan involving production of blood by artifex. The only alternative is the theory held by the Judge which equally contains, in my opinion, no justification for "mercy".

(signed) H.L. Gordon.

15.8.36.

THE NATIVE HOSPITAL, NAIROBI.

P.O. Box 128,  
Nairobi,  
21st August 1936.

Medical Report on Prisoner No. 562/Q.

Nyarugembe s/o Nyarano, I.P. No. 3981/36.

I have carried out a full investigation into the lower genito-urinary system of the above-named prisoner.

I find a marked inflammatory condition of the mucous membrane of the distal inch of the urethra, which is producing a catarrhal discharge. There is no other abnormality.

I am informed that blood was found in the urine on 15th instant and pus on later examinations.

The present condition and the history is consistent with self-inflicted injury of the urethra.



**SURGICAL SPECIALIST.**

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

CRIMINAL CASE NO. 37 OF 1956.

R E A . . . . . PROSECUTOR.

VERSUS

JUMA BIN ABDULLA . . . . . ACCUSED.

-----oOo:-----

JUDGMENT:-

I am in complete agreement with the opinions expressed by the Assessors. No defence has been put forward and it is difficult to see how that could have been done. We have the two confessions of the accused one to Suliman and the other to the Magistrate. I have no shadow or a doubt that Juma bin Abdulla willfully murdered Mirabu binti Awni and I find him guilty of murder under Section 186 of the Penal Code.

ALLOCUTUS:-

I have nothing to say. I have not done it.

SENTENCE:-

The sentence of this Court is that you be hanged by the neck until you are dead.

Sentence subject to confirmation by His Excellency the Governor.

You have 30 days in which to appeal to the Court of Appeal for Eastern Africa.

So. J. Lucie-Smith.

15. 5. 56.

I certify that this is a true copy of the Original.

*For Abdulla*  
DISTRICT REGISTRAR,  
22. 5. 56. H.M. SUPREME COURT OF KENYA.

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

SESSIONS HOLDEN AT KOMBASA.

CRIMINAL APPEAL NO. 67 OF 1936.

(From Criminal Case No. 37 of 1936 of H.M. Supreme Court of Kenya at Mombasa).

R E X... .. RESPONDENT.  
(Original Prosecutor).

VERSUS

JUMA BIN ABDULLA... .. APPELLANT.  
(Original Accused).

J U D G M E N T.

Although the conduct of the appellant in killing one person and wounding two others one of whom subsequently died of pneumonia would appear to be somewhat abnormal, it is to be noted that in his statutory statement before the Magistrate, he gave a reason for killing the woman Mirabu binti Awni. There is corroborative evidence of his statement that he killed her and there was neither a retraction nor a denial of the admission of guilt contained in his statement. The appeal is dismissed.

Sd. Joseph Sheridan.

Sd. R. E. Hall.

Sd. C. E. Iaw.

14. 7. 36.

I certify this is a true copy of the original.

*W. H. Hill*  
DEPUTY REGISTRAR,  
H.M. COURT OF APPEAL FOR E.A.  
MOMBASA.

IN REPLY PLEASE QUOTE  
NO. 591 / 36.  
AND DATE.

LAW COURTS.

199  
MOMBASA.

P.O. Box No. 140

Date 22nd May, 192136.

Your Excellency,

SUPREME COURT CRIMINAL CASE NO. 57 OF 1936.

REX VERSUS JUMA BIN ABDULLA.

I have the honour to inform you that at a Sessions of the Supreme Court holden at Mombasa on the 4th day of May 1936 Juma bin Abdulla alias mganga wa Chapolingi stood charged with the offence of Murder in that he on or about the 5th March 1936 in the Coast Province murdered Mirabu binti Awni.

The case came on for hearing on the 13th May and I presided over the Court being assisted by three Assessors.

The accused, who was defended by Mr. Anderson an Advocate of the Supreme Court pleaded not guilty.

The case for the Crown was that the accused used to live with one Johari who left him on the morning of the crime and went into Lamu. The accused followed her and found her at the house of one Salim who with his wife Mirathi was in the house with Johari.

The accused sent Salim on a fictitious errand and was left alone with the two women. He immediately attacked both the women with a spear wounding them both and then ran away. The accused was not seen again until Suliman Sakari found him hiding in the roof of the hut which he shared with the accused. During this time Abdul Aheri and his wife (the deceased) were working in their shamba. Abdul Aheri left his wife for about an hour and on his return found her dead and bearing several wounds.

Sakari stated that accused told him that he (the

accused) had speared two women and killed an old woman. The Doctor's evidence was that the deceased was a woman of about 65 years of age. There was police evidence as to the accused being found hiding in the roof - and that on arrest he had a blood-stained knife in his possession and that a blood-stained "panga" was found in his hiding place.

The accused's statement in the lower court was produced.

In my Court the accused made no statement nor did he give evidence or call witnesses.

I summed up to the Assessors who were unanimously agreed as to the guilt of the accused. I enclose copy of summing-up and Assessors' findings.

I found the accused guilty of murder as charged and passed sentence of Death upon him. I informed the accused that such sentence was subject to confirmation by Your Excellency in Council and of his right of appeal to The Court of Appeal for Eastern Africa. I have no doubt in this case that the accused was seized with a blood lust and ran amok.

I have no recommendations to make.

I have the honour to be,  
Sir,  
Your Excellency's obedient servant,

JUDGE,  
H.M. SUPREME COURT OF KENYA.

His Excellency The Governor,  
Colony and Protectorate of Kenya,  
Nairobi.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI  
CRIMINAL CASE NO. 58 OF 1936.

Original Criminal Case No. 886 of 1936 of the  
Resident Magistrate's Court  
at Nakuru.

REX.....PROSECUTOR

versus

MACHARIA wa MBUTHIA.....ACCUSED.

JUDGMENT:-

The accused is charged with the murder of Wairimu by attacking and wounding her in a most savage and cruel manner with a panga. She was pregnant. The crime took place on Mr. Greig's farm at Sabukia on March 2nd 1936. The accused has admitted the act: he pleads provocation. The defence of insanity has also been put forward on his behalf.

The accused has entirely failed to prove insanity: the only evidence on this point, that of Dr. Henderson, is that accused was not insane, and in my opinion that defence cannot succeed.

As regards provocation, the accused's own statement, unsupported by any other evidence, is that the deceased woman used an insulting expression to him when he asked for food, which caused him to lose his self-control entirely and that he consequently picked up a panga, attacked her and caused the injuries which caused her death.

On this point, as to what caused the accused to attack deceased, there is the evidence as to the deceased's dying statement, given by the old woman Njoki, Kamau wa Karithi, and Kamau wa Githenji; that dying statement was to the effect that the accused had expressed a desire to lie with deceased and that she had refused, and that this had annoyed accused and caused him..

him to attack deceased. This is borne out by the child Njoki who says that she heard accused make the request to deceased. I agree with the assessors in believing this evidence, and not the statement of accused with regard to the insulting words alleged to have been spoken by deceased. In any event I do not consider that even if the insulting remark attributed to the deceased by the accused, had been uttered it would have constituted sufficient provocation to reduce the defence to manslaughter. Such remarks are common among natives and do not normally cause the person addressed to lose his self-control in this way. Although it is no part of the offence with which the accused is charged in this case, it is established and admitted that accused killed a child at the same time and place as his killing of the deceased, and that he attacked and wounded another harmless woman at a farm about 5 or 6 miles away shortly afterwards. These facts help to show that accused was actuated by what was apparently frustrated passion and anger and not by loss of self-control due to insulting words spoken by the deceased to him. The defence of provocation therefore falls. The accused's offence was a revoltingly cruel and brutal one. I find him guilty of murder.

I call on the accused to say anything that he wishes why sentence should not be passed upon him according to law - he states "I killed the woman because she abused me. I now depend on whatever you tell me".

I sentence the accused to be hanged by the neck until he be dead.

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

C.A.G. Lane.  
10.6.36.  
C.A.G.L.

Accused states that he does not wish to appeal.

COPY.

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

Sessions holden at Mombasa.

Criminal Appeal No. 85 of 1936.

(From Criminal Case No. 58 of 1936 of H.M. Supreme Court of Kenya at Nakuru).

R e x.....Respondent.  
m (Original Prosecutor).

versus

Macharia wa Mbuthia.....Appellant.  
(Original Accused).

JUDGMENT:-

The killing is not denied in this case and is supported by the evidence. The learned Judge addressed his mind to the defences of provocation and insanity and rejected both. Even if we were to hold that the deceased had used the insulting expression attributed to her by the appellant, which we do not find to be the case, its use would not in our opinion constitute provocation in law for the savage attack the appellant made on her. There would exist no such proportion between the provocation and the mode of resentment to which the appellant had recourse as would reduce the offence from murder to manslaughter. The appeal is dismissed.

(sgd) Joseph Sheridan.

(sgd) C.E. Law.

(sgd) J. Lucie-Smith.

15.7.36.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 58 OF 1966

Original Criminal Case No. 806 of 1966 of the Resident  
Magistrate's Court at Nakuru.

at the Sittings holden at Nakuru on the 8th day of  
June, 1966.

REX..... PROSECUTOR

versus

MACHARIA wa MBUTHIA..... ACCUSED.

R E P O R T : -

Your Excellency,

I convicted of murder and sentenced to death at the Nakuru Sessions on 10th June, Macharia wa Mbuthia, a Kikuyu of about 30 years of age who admitted attacking and wounding in a most brutal manner a Kikuyu woman named Wairim, on March 2nd at Mr. Greig's farm at Subakia. The woman died of her wounds a few hours after being attacked. She was pregnant; the prisoner attacked her with a panga with the utmost violence; she was found to have received in all nine wounds in various parts of the body, the most serious of which were a large cut across the abdomen which disembowelled her, and a cut near the shoulder which severed her upper arm entirely. Wairim's husband left the village early in the morning to go to work, Wairim and 2 children remaining at home. The prisoner appeared and asked Wairim to have sexual intercourse with him. She refused and he flew into a passion and attacked and wounded her, also attacking and killing one of the children at the same time. This is the subject of a separate charge against the prisoner. He departed and at a place 5 or 6 miles away he met another woman who was carrying a load; he attacked her without reason or warning and cut off two of her fingers and wounded her upon the head. He then went to the police station at Nakuru, and reported what he had done and

gave himself up.

It was suggested for the prisoner that he was insane. This was not established. The only evidence on this point, that of Dr. Henderson, District Surgeon, who has had considerable experience in lunacy matters, and who had had the prisoner under observation while on remand, was to the effect that he was sane and that it was impossible for him to have been temporarily insane at the time of the offence and to have reverted to sanity afterwards.


Provocation was also pleaded for the prisoner; his story was that he asked Wairimu for food and that she made a very insulting remark in reply, to the effect that he could eat her sexual organs, and that this caused him to lose his self-control and to attack her with a panga which was lying near. There was convincing evidence given by three witnesses, that Wairimu in her dying statement, alleged that the prisoner had demanded to have sexual intercourse with her and upon her refusal attacked her. I and the assessors believed this evidence as against the prisoner's version of what occurred. And I further held, in agreement with two of the assessors (the third expressed no opinion on this point) that even if the woman had made the insulting remark referred to, it was not sufficient provocation to deprive an ordinary person of his self-control. I could find no ground therefore for finding that the offence was reduced from murder to manslaughter.

*Completely*

The prisoner's behaviour in attacking three persons, two of whom he killed, was clearly extraordinary. He acted in my opinion under the influence of frustrated passion and anger. Since he was not insane, I can see no extenuating circumstances in his killing of Wairimu

and I have no recommendation to make to your  
Excellency.

I have the honour to be,  
Your Excellency's obedient Servant,



AG: JUDGE,  
SUPREME COURT OF KENYA.

BNK.

To,

His Excellency the Governor,

t h r o u g h

The Honourable,

The Colonial Secretary,

NAIROBI.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 63 OF 1936

(Original Criminal Case No. 1462  
of 1936 of the Resident  
Magistrate's Court at Nakuru)

at the sittings holden at Nakuru on the 6th day of  
June, 1936.

HEX ..... PROSECUTOR

versus

NYARUGEMBE NYARANGA ..... ACCUSED.

-----oOo:-----

JUDGMENT:-

The accused admits stabbing the deceased and killing her on April 23rd near Maivasha Township. He is charged with murder. The wounds inflicted by accused were numerous; he clearly inflicted them in a state of excitement and passion.

In his defence it is urged that he was so unbalanced mentally as to be insane, and alternatively that he had provocation for his act which would reduce it from murder to manslaughter.

He had a bloody discharge from his penis which caused him much worry. The medical evidence was that accused was not suffering from gonorrhoea and the cause of his ailment was not established. It seems to be established that he considered the deceased responsible for this ailment since he had lived with her and cohabited with her for a period of months. He had the idea in his mind that deceased had somehow turned him into a woman and that the discharge was similar to a woman's menstrual periods. Accepting accused's own statement of what happened, he warned deceased that if the discharge recurred he would come and kill her. It recurred in April and he came from Limuru to Maivasha and killed. Accused was actuated partly by this mistaken idea that he was being turned into a woman and partly by the fact that he had paid money to deceased of which he had demanded

demanding the return and which had been refused by the deceased. Thus he was actuated partly by a mistaken idea and partly by anger.

Accused has in my opinion failed to prove that he was insane: he has not shown that he was through a disease of the mind incapable of understanding what he was doing or of knowing that he ought not to do the act. The defence of insanity must therefore fail.

As regards provocation, this defence could avail the accused to reduce the offence to manslaughter only if it were shown that when he killed deceased he did so under an honest and reasonable but mistaken belief that the deceased had caused him to become a woman, or like a woman in certain respects: and that this act of the deceased, which he, the accused, honestly and reasonably but mistakenly believed to be a wrongful act, was of such a nature as to deprive him of his power of self-control suddenly.

Accepting as I have said the accused believed that something that deceased had done, had caused him to turn into a woman, or to become like a woman in certain respects, and that it was a genuine and mistaken belief, I cannot regard it as a reasonable belief, since it would be a miracle for a man to be turned into a woman. Moreover the accused could not be said to be suddenly deprived of his self-control by this belief, since on his own showing he had decided some time before that if the discharge recurred in April he would kill the deceased. It cannot be said therefore that the act was done in the heat of passion caused by sudden provocation. The defence of provocation also fails. Moreover as I have

said

said I accept the fact as stated by the accused that he was partly actuated by the woman's refusal to return the money which he had paid her. This was one of the factors which caused his resentment against her and induced him to kill her. There could be no legal provocation in this.

The assessors who belong to a tribe contiguous to the accused's tribe in Tanganyika stated that by their local custom a man who had been caused to have a discharge of this kind by living with a woman would be entitled to kill her.

I hesitate to accept this as an authoritative statement of native law and custom but it throws some light upon the processes of accused's mind in this peculiar and sordid crime and gives rise to some degree of sympathy with him.

I have no alternative but to find accused guilty of murder.

I call upon the accused to say anything that he may wish why sentence should not be passed upon him according to law. Accused says "I have nothing further to show to you".

I sentence the accused to be hanged by the neck until he is dead.

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

C.A.G. Lane.

10.6.36.

I certify this is a true copy  
of the original.

Edward O'Farrell.  
REGISTRAR,  
SUPREME COURT OF KENYA.

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

SESSIONS HOLDEN AT MOMBASA.

CRIMINAL APPEAL NO. 86 OF 1936.

(From Criminal Case No. 83 of 1936 of H.M. Supreme Court of Kenya at Nakuru).

Rex ..... Respondent.  
(Original Prosecutor.)

versus

Nyarugembe Nyaranga ..... Appellant.  
(Original Accused.)

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JUDGMENT:-

This is a most unusual case. The appellant is clearly proved to have killed the woman with whom he had previously lived. From her he would seem to have contracted a disease, the symptoms of which caused him to believe that he was being turned into a woman. That this belief was honest the learned Judge and the assessors found to be the case and we agree with that finding. Judging the appellant's act of killing in the light of that belief the question is whether the appellant acted under such provocation as would reduce the crime from murder to manslaughter. Even if we were to accept that the provocation was grave, there remains the difficulty that it lacked suddenness. The appellant on the re-appearance of the symptoms made preparation for the murder of the woman, purchasing a knife for the purpose on the day of the crime. In our opinion the appellant in his mistaken but honest belief and the fatal consequences that followed is, as the learned Judge found, deserving of some sympathy and we commend this aspect of the case to the Governor in Council. It is of importance that the Assessors accepted the genuineness of the belief and Dr. Henderson who has had a wide experience of native mentality testified to a native

within

within his knowledge having committed suicide because he was obsessed by a belief similar to that held by the appellant in this case. The appeal will be dismissed.

SD. JOSEPH SHERIDAN.

SD. C. E. LAW.

SD. J. LUCIE-SMITH.

16.7.36.

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

J.O.D.Kelly.

CLY. REGISTRAR,  
H.C. COURT OF APPEAL FOR E.A.,  
MOMBASA, 16.7.36.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 65 OF 1936

(Original Criminal Case No. 1462  
of 1936 of the Resident  
Magistrate's Court at Nakuru).

at the Sittings holden at Nakuru on the 8th day of  
June, 1936.

REX..... PROSECUTOR

versus

NYARUGEMBE NYARANGA..... ACCUSED.

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R E P O R T

Your Excellency,

Nyarugembe, a Mchachi native belonging to one of the tribes of Musoma District in Tanganyika, was found guilty of murdering a Kikuyu woman named Wabera by stabbing her with a knife at Naivasha on 23rd April, 1936. He admitted the offence. The prisoner had lived with Wabera for several months; he found that he was suffering from a bloody discharge of the penis; for this he considered Wabera was responsible. This weighed upon his mind and he conceived the idea that he was being turned into a woman, as he believed that his discharge was similar in nature to a woman's menstrual periods. He had also paid a sum of money to Wabera and her relatives as a kind of marriage-price; this he had demanded back when the discharge made itself evident. It was refused. The prisoner, annoyed at this and worried by his condition, told the woman that if the discharge recurred in April he would come and kill her. He had meanwhile gone to Limuru to work. When the discharge recurred he returned to Naivasha finding her at the market <sup>and</sup> told her that she must somehow cure him. She apparently treated this suggestion with scorn. The prisoner and Wabera were on their way to Wabera's house

from the market when the prisoner, who had purchased a knife that day in Naivasha with the intention of killing Webera, inflicted on the latter a series of severe stab wounds which caused her death. He then gave himself up to the police. The murder was deliberate and brutal. The prisoner was sane and it could not be said that he had received any provocation in the legal sense.

The medical evidence showed that neither the woman nor the prisoner was suffering from gonorrhoea, and there was nothing to show what was the cause of his ailment.

The prisoner undoubtedly had a mistaken belief that somehow he was being turned into a woman and that this was the reason for the discharge. The Watende assessors, belonging to a tribe whose home is near that of the accused, stated that by their custom a man in the prisoner's condition was entitled to kill the woman concerned. Without accepting this as an authoritative statement of native custom or as one which could receive official approval, I consider that there are grounds for treating this case with leniency and I would recommend that Your Excellency may see fit to commute the sentence of death to one of imprisonment with hard labour.

I have the honour to be  
Your Excellency's obedient Servant,

*C. G. M. M.*  
AG: JUDGE,  
SUPREME COURT OF KENYA.

To,  
His Excellency the Governor,  
t h r o u g h  
The Honourable,  
The Colonial Secretary,  
NAIROBI.

## PETITION FORM

Name and number of Petitioner Convict No. 494/Q Juma bin Abdulla  
 European or Asiatic—Nationality African  
 Native—Tribe Muyawosi Native Regn. No. NBI.036346.  
 District Lawu Chief Muringa  
 Location Mukanjaga  
 Age 45 Years  
 Court Supreme Court of Kenya Magistrate's name Mr. Justice Lucie  
sittings held at Mombasa. Smith  
 Offence Murder Sec. 186 P.O. Case file No. 7 of 1936.  
 Number of previous Convictions Nil  
 Sentence To suffer death.  
 Date of sentence 13.5.1936.

## To be filled in by Superintendent :-

Character in Prison Exemplary  
 No. of offences against Prison discipline Nil  
 Subject of Petition Plea for mercy.

Superintendent's remarks :-

Nil.

SENIOR Supt. OF PRISONS.  
 Nairobi, 22nd, July, 1936.

Place Nairobi.

Date 22nd, July, 1936.

## Instructions to Prisoner for filling in Petition :-

1. No writing on front page or on margins.
2. Petition to be confined to the three following pages only. No extra paper will be allowed.
3. Write on the lines only.
4. Petitioners are warned that any unsubstantiated accusations against Prison officials may be dealt with as breaches of discipline.
5. A Petition once written may not be withdrawn.
6. Petition must be couched in respectful language.

Your Excellency,

I was convicted of murder by the Supreme Court of Kenya, at its sessions held in Mombasa, in Criminal Case No. 7 of 1936 and sentenced to suffer death.

My appeal has failed and I now pray for mercy at your hands on the following grounds:-

At the time that I was supposed to have killed these women, I was abnormal and could not be held responsible for my actions.

I had no reason for wanting to kill three women; my mind must have been unhinged at the time of crime.

I still maintain that I have no recollection of having attacked any of the women.

I did not know the three women whom I am alleged to have attacked; I had no grudge against them in any way.

I have been told that on one occasion when I was a child looking after cattle for my father, I was lost for three days. I have no recollection of this, but it may have been that I had a recurrence of some old complaint during which I attacked these women.

I most humbly beg Your Excellency that you will show me mercy and reduce my sentence.

I have the honour to be,

Sir,

Your Excellency's most humble  
servant,

Left Thumb mark of  
Juma bin Abdulla



KENYA.

N<sup>o</sup>. 485



G. O. REGD

GOVERNMENT HOUSE

NAIROBI

KENYA

15 September, 1936

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 69 of 1936 -- Rex versus Wesonga s/o Moya and Adiwa s/o Kimaget.

2. The accused were sentenced to death on the 30th June, 1936. They appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 8th of August, 1936. I enclose a copy of the Judgment.

3. The case was reviewed in Executive Council on the 4th September, 1936, when I concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed on each accused was imprisonment with hard labour for seven years.

I have the honour to be,

Sir,

Your obedient servant,

*Adrian ...*

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE  
W. CRMSBY GORE, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI  
CRIMINAL CASE NO. 69 OF 1986

Original Criminal Case No. 890 of 1986 of the First  
Class Magistrate's Court at Kitale

at the Sittings helden at Kitale on the 26th day of June,  
1986.

REX..... PROS TUITO

versus

(1) WESONGA s/o MOYA (2) NDIWA s/o KIAGET..... ACCUSED.

**R E P O R T :-**

Your Excellency,

Wesonga and Ndiwa were convicted by me of murder at  
the Kitale Sessions on 30th June. The circumstances of the  
crime were as follows:

Kamenju, a Kikuyu employed as headman on the farm of  
Messrs. Burnier & Philpotts where the offence was committed,  
died as a result of injuries inflicted upon him by the two  
accused on the night of May 11th 1986. It was part of  
Kamenju's duties to see that the two accused did their work  
properly at night; they were employed as guards to look after  
the farm nurseries at night and protect the nurseries from  
buck and wild animals. Kamenju had been employed on the  
farm only a short time, during which he had been very zealous  
in supervising the two accused at night. He had on several  
occasions reported them for neglect of duty and had caused  
their working days to be docked on their work-tickets on  
this account, and had also taken, no doubt illegally,  
chickens and other things belonging to them by way of penalty.  
The accused therefore disliked Kamenju and made up their  
minds to avenge themselves upon him. When he went round on  
the night of May 11th to visit them at their work, they set  
upon him, having made up their minds to do this previously.  
They threw him down, kicked him and stamped upon him; he

sustained several broken ribs and internal haemorrhage, the latter, coupled with shock, being the cause of death.

In law this amounted to murder. I found that there was no provocation in a legal sense; the accused stated at the trial that before they set upon him Kamenju had hit each of them with a stick, but this I did not believe because they had made no such statement in the lower Court when they admitted attacking the deceased, and because they had not suggested it to the witnesses who arrived on the scene very soon after the assault.

It was shown that in pursuance of a common intent to cause grievous harm to the deceased, they inflicted injuries from which he died.

At the same time I do not believe that the accused set out to kill the deceased; rather that they set out to beat him in revenge for his previous treatment of them which I believe to have been to some extent unlawful and unfair. In beating him I think that their feelings of resentment carried them away and caused them to inflict very severe injuries, possibly more severe than they had at first intended. In the circumstances Your Excellency may see fit to commute the sentence of death to one of imprisonment.

I have the honour to be  
Your Excellency's obedient servant,

*C. J. N. O.*  
Acting Judge,  
Supreme Court of Kenya.

To,  
His Excellency the Governor,  
t h r o u g h  
The Honourable,  
The Colonial Secretary,  
NAIROBI.

NK.

CRIMINAL CASE NO. 89 OF 1936

Original Criminal Case No. 890 of 1936 of the First Class  
Magistrate's Court at Kitale.

at the Sittings holden at Kitale on the 26th day of June, 1936

VERSUS..... INSPECTOR

VERSUS

(1) WENGO, s/o NY),..... ACCUSED.  
(2) NDIVA s/o KIMAGET)FACTS:-

The two accused are charged with the murder of one Masenju at Messrs. Burnier & Philpott's farm in Kitale District on the night of 11th May. Masenju was a Kikuyu employed as a headman on the farm; he had, according to his registration certificate, only been so employed there for a short time; the 2 accused were employed there as night-guards to protect the farm nursery from wild animals and it was part of the deceased's duties to see that they did their work properly at night. It was shown that deceased had been assiduous in his duties and had caused resentment in the minds of the accused because of his zeal in regard to them; and further that he had had their work tickets cut for non-attention to their duties and had also taken 2 chickens of theirs and other things. The accused were therefore annoyed with him and disliked him. They had a motive for injuring him.

The Crown case is that in pursuance of a common intent which they had definitely formed, they set upon him on May 11th when he visited them on duty at night, threw him down and caused him injuries from which he died that night.

There was only one eye witness to any portion of the assault upon deceased, one Idi alias Wanja. This man's hut was near where the accused worked. He was awakened at night to hear deceased's voice crying "they are killing me" several times. When he ran to the scene he saw deceased bonding down

with his hands touching the ground and accused 1 hitting him on the small of his back with a small stick while accused 2 held his right ankle. Idi stopped the accused from doing further damage and deceased ran a short distance and lay down groaning. He was clearly badly injured at this time and the beating by accused 1 and the holding of his ankle by accused 2 could not have been the sole cause of his injuries. The medical evidence is that several of his ribs were broken; he had internal haemorrhage and the cause of death was haemorrhage and shock. Deceased was apparently quite healthy prior to the assault. The injuries were caused by deceased being stamped on and kicked. The fact that Idi had heard him calling out that he was being killed, from a distance, and that he had been so crying out for some time before Idi arrived at the actual scene, combined with the nature of the injuries and the fact that deceased was badly injured by the time that Idi arrived and could only move away a short distance shows that the accused must have knocked down the deceased, stamped on him and <sup>beaten</sup> kicked him before Idi arrived.

This is borne out by the oral evidence both as to what the accused said immediately after Idi's arrival and also as to what the deceased said then.

There are certain discrepancies as regards this oral evidence, that is as to the actual words used by the deceased and by the accused at this occasion.

Idi went to call another headman Bulaman who lived near the site of the murder and the 1st manager.

Bulaman, Mr. Muzumarez and Idi went to the scene. Idi's evidence is that when Mr. Muzumarez questioned the 2 accused who were at the scene, accused 1 said "Yes we beat him because he had cut our days and every day he abuses us and calls us shenzals and sweepers" and that Ndawa accused 2 came up and said "Yes we beat him". And that when they went to where deceased was lying the latter said "they have killed me,

they have killed me, Wesonga and Ndima".

Mr. Ruyssenaars' evidence is that he arrived with Idi at the scene and saw accused 1 who at first, when asked where deceased was, said he had seen nobody, and afterwards pointed to where deceased was; that he went to deceased who said, "The askaris (i.e. the Night-guards) have knocked me down, I am going to die". He was not sure whether the names of the accuseds were mentioned but he was sure that deceased was referring to them.

Suleman's evidence is that when Mr. Ruyssenaars arrived and questioned accused 1 he said "we beat Kereaju because he had annoyed us".

Kipoi, who is the general farm watchman, said that he was present at the scene, with Mr. Ruyssenaars, Suleman and Idi, and that he questioned the 3 accused who answered that they had beaten deceased because he had taken their money, their chicken and had their tickets out.

These discrepancies in the opinions are not sufficient to raise a doubt that the accused did say that he had been beaten by the 3 men or that the 3 men admitted beating the deceased. It would be unlikely that the witnesses would each remember the exact words used either by the deceased or the accuseds.

The accuseds in the lower court stated that they had beaten the deceased, because of that he came to them. They made no suggestion of being hit first by the deceased. Nor did they suggest this when they spoke to the witnesses Idi, Suleman, Kipoi or Mr. Ruyssenaars.

They elected to give evidence in this Court and they each stated that before either or them attacked deceased, he had hit each of them first. In cross-examination however they asserted that what they had said in the lower Court was correct.

I consider therefore that it is established without

doubt that the 2 accused set upon and attacked the deceased without provocation and that as a result of the injuries which they inflicted, he died.

It is the Crown case that they are guilty of murder, on the ground that in pursuance of a common intent to prosecute an unlawful purpose, namely to beat the deceased, they did this, and that malice aforethought is established as provided by Sec. 189 P.C. because although they may not have set out to kill deceased, they did intend to cause him grievous harm.

The assessors agree that the accused had formed a common intention to cause severe injury to deceased. The common intention is established by the accused's own evidence that they told Kipsol that they intended to beat the deceased. This is denied by Kipsol ~~that they intended to beat the deceased~~ but the accused's own evidence proves it and it appeared to be that Kipsol only denied it because he thought that he would be blamed for not reporting to his employer what the accuseds had said to him.

It has been argued in defence that no intention to cause grievous harm or death has been established.

Under Sec. 190 P.C. the accuseds having been shown to have caused deceased's death, are presumed to have wilfully murdered him, and it is for the accused to establish to the contrary. The evidence shows that they throw him down, stamped on him and kicked him, thus causing the injuries from which he died. It cannot be said therefore that they have established that they had no intention of causing grievous harm, since these injuries clearly amount to grievous harm. In my opinion it is established that the accused had the intention of causing grievous harm and that malice aforethought is therefore established. Death was a natural and probable cause of a violent stamping on and kicking of the deceased when on the ground.

The suggestion in defence that the fatal injuries were caused after the deceased had been taken to his hut, and after the various witnesses had left him, is to my mind quite impossible.

See minute  
under No. 5  
of also No. 6  
H. J.

42

The injuries were received before Idi and the other witnesses saw the deceased.

The accuseds had the common intention of causing the deceased grievous harm and they carried it out: he died as a result. They are therefore guilty of murder and I so convict them.

I call on accused 1 to say anything he may wish why sentence should not be passed upon him according to law.

Accused 1. Kamenju beat me and I ran into the hut. He asked where Ndiwa was: when he saw Ndiwa coming he asked where he had come from; he said "I have come from the shamba": he ran at Ndiwa and beat him. Ndiwa hit his lamp with his stick. Kamenju then beat him again. He and Ndiwa grappled: he did not fall down: while he was bending down I beat him on the back with my stick. If we had intended to kill we would have had a spear.

I call on the accused 2 also: he states:

Kamenju was bad and he was always going to trouble us during the night. We told him it was not his duty to look after us during the night: "your duty is in the day".

I sentence the accused 1 & 2 to be hanged by the neck until they are dead.

I inform them that they have 30 days in which to appeal.

C.A.G. Lano.

SO. 6. 36.

22. 7. 36.

Certified as a fit case for appeal on any ground.

C.A.G. Lano.

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

SESSIONS HOLDEN AT MOMBASA.

CRIMINAL APPEAL NO.105 OF 1936.

CRIMINAL APPEAL NO.106 OF 1936.

(From Criminal Case No.89 of 1936 of H.E. Supreme Court of Kenya at Kitale.)

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

versus

(1) Waconga v/o Mohn. } ..... Appellants.  
(2) Ndawa v/o Kimagot. } (Original Accused Nos.1 & 2)

-----:000:-----

JUDGMENT:-

These appeals Nos.105 and 106 have been consolidated. The deceased met his death as a result of injuries amounting to grievous harm. The learned Judge found that this grievous harm was caused by the appellants and the evidence and probabilities support this finding. Whichever of the two appellants caused the different injuries neither disassociated himself from the acts of the other. The evidence points clearly to both appellants being present and acting in concert when the injuries were received. The case is supported by the evidence and admissions of the appellants that they attacked the deceased because they considered they had been wronged by him over a period of time in regard to their pay and their property. It would seem that the deceased was a person who had conducted himself towards the appellants on several occasions in an overbearing way. No doubt this feature of the case will be considered in the proper quarter as also that no weapon which could be classed as a lethal weapon was used and that the learned Judge found and we agree with him - that the intention was not more than to cause grievous harm. The appeals are dismissed.

Sd. Joseph Sheridan.  
Sd. C.E.Law.  
Sd. J.Lucio-Smith.

8.8.36.

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

*John Miller*  
BY REGISTRAR  
H.M.COURT OF APPEAL FOR E.A.,  
MOMBASA, 8.8.36.

KENYA.

No. 484



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA

RECEIVED

12 OCT 1936

C. O. 177 X

15 September, 1936

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 56 of 1936 -- Rex Versus M'Kiambati s/o M'Witari.

2. The accused was sentenced to death on the 2nd July, 1936. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 30th July, 1936. I enclose a copy of the Judgment.

3. The Case was reviewed in Executive Council on the 4th September, 1936, when I concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for ten years.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*(Signature)*

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE  
W. ORSMBY GORE, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W.1.

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

CRIMINAL CASE NO. 56 of 1936  
(Original Cr. C. No. 39/36 of the 2nd Class Court at Meru)

REX ... .. Prosecutor

versus

M'Kiambathi s/o M'Awituri ... .. Accused

R E P O R T :-

Your Excellency,

I have the honour to report that the abovenamed was tried by me at Meru on the 1st July 1936 for the murder of his wife, and was convicted and sentenced to death. He was defended by Mr. Hazareth.

The deceased woman had received a single wound, a stab-wound such as would be caused by a spear, about 2 1/2 inches long and about 4 inches deep in the right side of the back between the spine and the shoulder-blade penetrating the lung. Of this wound Dr. Esler said that there "certainly must have been a definite blow - considerable impact" and in cross-examination he said that he thought it improbable that the wound was inflicted except by a definite thrust, though it was conceivable that the impact might have been supplied by the woman starting back from a small prick.

According to the evidence the deceased had left her husband to whom she had been married for about 2 years not because of any quarrel, but because he had not got her with child. This would appear to be a Meru custom. He had been trying to persuade her to return to him, and on the evening in question, her father and mother, with whom he had been talking, went into their hut leaving him to discuss the matter with her alone, because he had suggested that they were influencing her not to return to him. Almost

Almost .....

immediately they heard her give a cry, and when they came out they found her dead and the accused had disappeared. He had had a spear with him which was found when he was arrested and it was produced in evidence. The size of the blade, which was not particularly sharp, was such as would have produced the wound.

The story told by the accused was that there were two other men there, and that, while he was in one of the huts, he heard some one say " let us catch him and beat him so that he may not return here again". Then when he was about to leave, his wife caught hold of him and started to call out for the others. In order to make her release him, as he was afraid, of being beaten, he " out her on the shoulder ", and she in starting back from the pain herself caused the wound which killed her.

The assessors all disbelieved this story, and I agreed with them. Both the parents of the girl, who seemed to me to give their evidence very fairly, denied that there was anyone else on the scene, or that there was any suggestion of beating the accused, and I believe that he stabbed her deliberately in anger because she had finally refused to return to him.

The accused appealed to the Court of Appeal for Eastern Africa and his appeal was dismissed on the 30th July 1936.

In the Circumstances I am unable to make any recommendation to Your Excellency.

I have the honour to be,

Your Excellency's most obedient  
servant,

*Arthur*  
J U D G E,

H.M.SUPREME COURT OF KENYA.

His Excellency the Governor,  
through The Hon. Colonial Secretary,  
Nairobi.

24.8.36

IN HIS MAJESTY'S SUPREME COURT OF KENYA SITTING AT NAIROBI.  
CRIMINAL CASE NO.56 OF 1936.

REX. . . . . Prosecutor.  
versus  
M'Kiambati s/o M'Witari. . . . . Accused.

(Criminal Appeal No.103 of 1936)

INDEX OF REFERENCE.

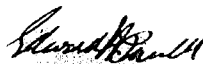
No.	Description of Document.	Date.	Page.
	Information filed by the Attorney General.	26.5.36.	1.
	Notice of date of hearing .	8.6.36	1A.
	Accused's Plea.	1.7.36.	2.
<u>Witnesses for prosecution.</u>			
1.	Mthangatha s/o Hunga.	1.7.36.	2.
2.	Alexander Bentoni Esler. (H.O.)	"	2- 3.
3.	Chionabea w/o M'Kiico.	"	3- 4.
4.	M'Kiico s/o Kiico.	"	4- 5.
5.	M'Raikuru s/o M'Nkongu.	2.7.36.	5.
6.	MThambu s/o M'Witari.	"	5.
	Accused's statement.	"	5 - 7.
	Addresses of Counsel.	"	7 - 8.
	Summing up by the trial Judge.	"	8.
	Assessors' Verdict.	"	8.
	Judgment and sentence.	"	8 - 9.
	Accused's statement in Lower Court.	"	10- 11.

EXHIBITS.

1. Spear.

Lower Court proceedings.

I hereby certify that this is the record as made up  
by me.

  
Registrar,

Nairobi,  
21st July, 1936.

Supreme Court of Kenya.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT MERU

The 29th day of June, 1936.

Criminal Case No. 56 of 1936.

At the Sessions holden at Meru on the 29th day of June, 1936, the Court is informed by the Attorney General on behalf of our Lord the King that M'Kiambathi s/o M'Witari is charged with the following offence:-

STATEMENT OF OFFENCE

Murder, contrary to section 186 of the Penal Code.

PARTICULARS OF OFFENCE

M'Kiambathi s/o M'Witari on or about the 1st day of April, 1936, in the location of Kianjai, Meru District, Central Province, murdered Mirots w/o M'Kiambathi.

Dated at Nairobi this 28th day of May, 1936.

sd. W. Farragin  
Attorney General.

To:  
M'Kiambathi s/o M'Witari,  
c/o H.M. Prisons, Meru

Take Notice that you will be tried on the information whereof this is a true copy at the Sessions of the Supreme Court to be held at Meru on the 29th day of June, 1936.

Date: at Nairobi this 29th day of May, 1936.

sd. Edward J.O'Farrell  
Registrar,  
Supreme Court of Kenya.

Endorsement on reverse

Left thumb mark of M'Kiambathi  
Served by me upon M'Kiambathi s/o M'Witari on 3.6.36 in  
D.O's office at 9.50 a.m.

sd. L. Fernandez  
Court Clerk  
Meru, 3.6.36

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

Sessions to be held at Meru  
on the 3rd day of July 1936.

Criminal Case No. 56 of 1936

(Original Cr. Case No. 39 of 1936 of the 2nd Class  
Magistrate's Court at Meru.)

Re:.....Prosecutor.

versus

M'Kiambathi s/o M'Mutari.....Accused.

To, M'Kiambathi s/o M'Mutari,  
c/o H.M. Prisons,  
Meru

TAKE NOTICE that you will be tried on the Information  
already served upon you at the Sessions of the Supreme  
Court to be held at Meru on the 3rd day of July 1936  
and not on the 29th day of June 1936 as already notified  
to you.

Given under my hand and the Seal of the Court this  
8th day of June 1936.

Edward J.O'Farrell  
Registrar,  
H.M. Supreme Court of Kenya.

Mem 1.7.1936

Accused M'Kiambati s/o M'Mitari.

Charge - Murder.

Plea - Not guilty.

Assessors:- 1. M'Imathio s/o Mugiyo.

2. M'Araka s/o Muguako

3. M'Roira s/o Ngondo.

J.G. for Crown.

~~Narrative for accused.~~

P.O. Mithangatha s/o Munga, affirmed P.P.

Sent by D.C. to arrest accused, have body of deceased buried. Sent to Kianjai - April - I think 2nd. Found accuse at his hut. Arrested him for murdering his wife. Accused told me where spear was in his banana Shamba I found it there. Brought accused and spear to Meru. Would know spear - shaft had a burnt mark on it. This is the spear woman buried.

Ex. 1.

XX. Hii

T.A.R.

A.H. Webb.

P.W. E Alexander Rentoul Esler - Sworn, M.O. Meru.

E/4 was at Kianjai. About 4.30 received information from P.P. No. 40, M'Igwathu. Went to manyatta about 300 yards from road. Found body of young woman about 22. Identified as Hkirete by father M'Kico and mother Ohionaba lying on left side outside hut. Blood had flowed from nose & mouth. Right side back between spine and shoulder-blade wound 2 1/2" long which had gone between ribs and entered lung. Death due to shock and haemorrhage from wound of lung. Dead about 10 hours or up to 24 hours. Probed wound - about 4" deep. <sup>knife</sup> ~~knife~~ and spear. Could imagine a wider blade than this. (Ex. 1 has round blade a spike about thickness of a fountain pen, and quite blunt. A.H.W.)

Ex. 1.

Certainly must have been a definite blow - considerable impact.

XX. I think improbable that wound inflicted except by definite thrust. Woman might have been lying facing assailant and holding him. Conceivable that the impact might have been supplied by the woman starting back from a small quick. No sign of body having been moved.

To Court:- Would have lived only a few seconds. Might have called out - given a cry.

P.O.C.  
A.H. Webb.

P.N. 1 - (Recalled)

Ex. 1 had spear blade on it when I brought it. (Shaft is now freshly swan off. A.H.?)

Ex. 1. P.N. 2 :- Blade like this might have caused wound.

A.H. Webb

P.N. 3. Chionaba w/o M'Kioo, Mother of M'Kiroto

She was married to M'Kiambathi. She had been living with us for 3 months. She because she had no children. M'Kiambathi came and asked what do you think about my affair.

I said take your wife - if she agrees to accompany you well and good.

My husband and I went inside to let them talk the matter over. Heard her cry "Oh, he had killed me". I rushed out and held up where she had clipped down dead. I cried out and my husband came out. Did not see accused. It was 7 a.m. When accused came he was carrying a spear. This is the spear - know it by burnt mark on shaft. Next day Doctor examined body. Husband and I were present. I told him it was M'Kiroto.

Ex. 1.

To Court:- She had been married 5 harvests - 2 1/2 years. If woman has no children she tries another husband. The dowry is returned. Daughter was there when I was talking to accused - she said nothing. She said cried out immediately when I went into hut. I don't know if she was willing

to return to accused. She said she would not.  
to return to him

4.

XX. He lives far away from us. He had already returned dowry - 1 heifer. If she returned to him he would give back heifer. Only self husband and deceased present when he came. Fire about 6-8 feet outside door of hut. I went to my hut and husband to his - about as far as from fire as mine. Husband has another wife - her hut near - Did not hear accused and deceased speaking. <sup>Deed</sup> Accused called out faintly. Did not hear anyone running after accused. Husband not willing that she should return. We did not want to interfere or stop her if she wanted to return. Were not expecting accused that night. Accused used to come every day for his wife but had not come for 2 days. She always refused and said 'leave me alone, let me marry'. Re Previous visit husband not at home. I had been unwilling for her <sup>to</sup> return, but as he said that I was preventing her I said to him to speak to her himself, and that she could return to him if she wanted. Two days before we had told him that he would not get his wife - we had even told his father.

P.A.R.

A.H. Webb.

P.W.4. M'Kico s/a Kico, father of NKiroto - husband of Chionaba. NKiroto married to accused 4 harvests - 2 years. She had been living with us about 3 months. Remember evening he came - he had spear, Ex. 1 - identified by mark of burning. He said "You are hating me: my wife wants me and her mother wants me". I told him to speak to his wife and that if she agreed they could either go at once or wait till morning. I went to hut to sleep - before I went to bed heard wife crying out. Went out of hut - saw wife holding <sup>her</sup> ~~the~~ <sup>deceased</sup>. She said "She is killed". Did not see accused. I went and called head of Kiama - M'Railwa. Next day Doctor came - identified body to him as NKiroto's. Accused had had 2 previous wives and no children- NKiroto said she must leave him.

Her custom for woman to leave husband if he cannot give her children.

XX. It was 10 p.m. when we left accused and deceased together. He came when flocks coming in - about 8 p.m. I was at another village and had to be fetched. Accused had been to Chionsben and then went to a neighbour's. No one but the 3 of us when he came back. Not willing for her to return because I knew that if she did she would not get children. Cry at once after I left them. Did not hear them talking. Had returned dowry - cow & calf to accused. Wanted ~~Wiroto~~ to let him see that it was her own desire not to ~~return~~ return. Would have preferred her to marry another. When I came accused was in my hut. My hut about 30' from fire. I was not there when accused came - I was sent for - did not come with others. Did not tell accused to go into my hut. Was not expecting him that evening - had not seen him come previously during the 3 months - not told that he came.

<sup>T.A.R.</sup>  
<sup>A.H. Cobb</sup>  
B.7.35 M'indabwa s/o M'ikongu, affirmed  
P.W. 6, M'ushawa s/o  
Headman. Know Wiroto - remember when she died. Saw her body - reported the chief.

XX. Nil.

<sup>T.A.R.</sup>  
<sup>A.H. Cobb</sup>  
P.W. 6, M'Thamba s/o M'Asitari, affirmed.

Half brother of accused. Know Wiroto. Went with S.R. Found spear in accused's banana chamba. T.R. took it.

XX. 1.1A. This is it.

XX. Nil

<sup>T.A.R.</sup>  
<sup>A.H. Cobb,</sup>

Statement of accused.

Prosecution closed.

Accused elects to give evidence.

Accused affidavit affirmed.

My wife had left me and <sup>sons</sup> to her parents some time before she died. Had gone to her village 3 days before.

On that day on way met M'Kiruki who asked me where  
 I was going. I said I was going to bring back wife.  
 Met wife, her mother and another woman and her father  
 and 2 men. Her father asked me to go into his hut while  
 they were discussing whether she would return to me. This  
 was the day she died. On previous occasion her mother had  
 told me to go home while she discussed matter with her  
 husband. Wife's father not present that day. Day of death  
 found there wife, her father & mother and another woman -  
 later 2 men came. Spoke to her father and told him I had  
 come to take her back. He asked me to go into his hut.  
 I arrived just before sunset. I went into her father's hut.  
 While sitting there overheard him saying "Let us catch him  
 and beat him so that he may not return here again again".  
 One of the men came to call me out, but I refused to go  
 out of hut, because I was afraid of being beaten. It is  
 against custom to shed blood in hut. Some time later Kiro  
 went into hut of one of his wives. I saw the others leaving  
 and I came out. Found wife outside. She was walking away.  
 She said "why do you go without speaking to me?", I stood  
 and spoke to her. As I stood she caught hold of me and  
 started calling out <sup>for the</sup> others. She caught me round body. I  
 had spear in right hand stretched out. She caught my left  
 arm ~~in~~ I thought to cut her on shoulder to make her  
 release me before others came. Before I cut her she started  
 to make back and the spear went into her. I ran away and  
 was chased by the others. A rungu was thrown at me and I  
 was ~~started~~ struck on right <sup>shoulder</sup> ~~shoulder~~. I spent night in bush  
 and another night in a youngman's hut. When arrested told  
 where spear was. Brother took askari to place. I did not  
 intend to kill NKirete because she was my wife, and also  
 I did not want her to be ~~wanted~~ married to another man.  
 I intended to cut her on shoulder to make her release me  
 I had no intention of stabbing her.

XX. When she caught me Kibo had gone into hut - wife's mother had also gone into her hut. She caught me in order that others would beat me so that I should not return. The others had not gone far - to neighbour's huts. Wife had been away 3 months, but we had no quarrels. I was not angry. I went into her place several times. I know it was custom for woman to return to their parents and I knew I would succeed in getting her back. She did not say she would not return: she said "it is my father's wish". I was not afraid of her being married to another. Afraid to drop spear and free myself lest someone should pick it up and stab me. She had strong grief of me. Knew it was dangerous to out her, but I wanted her to let me go before the others came. If I had stayed when the others came and found her dead they would have killed me at once. She had her arms right round me. I could not release myself. Did not think she would start back on to the spear. Had no intention of giving her serious wound.

A.C.G.

A.H.Hobb.

Haggreth:-

Evidence of father, mother, Doctor and accused. Accused says it is possible that wound caused as alleged by accused. Father and mother biased - not telling truth - time of accused/arrival: Mother says 7 - that he left at once - says nothing about father being away and being sent for. Father says accused came about 8, went away and returned, that he found accused in his hut. Mother says nothing about this. They say they heard no talk between accused and deceased. Unlikely that he would have killed her without some quarrel. Nature of wound confirms story/accused - <sup>of</sup> back not front. Justified in using force reasonably necessary to avoid injury to himself. No reason to anticipate that deceased would start

back on to spear. No motive - hoping to persuade her to come back. If he did not intend to wound seriously it was accident.

Solicitor General:-

Practically whole case turns on medical evidence - must have been definite blow - 4 in. deep. If not murder at least manslaughter; he knew it was dangerous.

Summing up:-

How was the wound inflicted? Is it possible that such a wound could be caused as accused says? Motive - evidence is that wife would not return to him. "I did not want her to be married to another man".

Assessor 1:- Accused is telling lies. By our custom if a woman goes back to her parents and says she will not return to him he is not entitled to follow her. If she caught hold of him he ought to have dropped spear and ~~fixed~~ himself. I think he deliberately stabbed her, wound not caused by ~~starting~~ back.

Assessor 2:- I don't think spear would have gone into her back if it was held as described by accused - stabbing took place after she had refused to return to accused and ~~wanted~~ <sup>traced</sup> to go away. If inflicted as described by accused ~~wound~~ <sup>wound</sup> would have been slight. Woman who leaves husband should be left alone.

Assessor 3:- If he had not gone to kill he would have taken a companion - he was intending to do some bad act when he went alone.

Judgment:- The accused does not dispute the fact that he killed his wife, HKiroto; the only question is whether he stabbed her with the intention of killing her, or, at least, of inflicting grievous harm upon her, or whether as he alleges, the injury which caused her death was really an accident unforeseen by him. The deceased had left the

accused, in accordance with the tribal custom, because he had not got her with child; he had gone to her parents' hut, where she was, to try to persuade her to return to him, and he says that there, as she was about to depart unsuccessful, she caught hold of him in order that her father and two other men, who were near by, might beat him, he then "cut her on the shoulder" to make her release him and she started back and so drove the spear into her body. There is no evidence other than that of the accused himself, that anyone besides the deceased and her parents was present <sup>or near</sup> ~~could hear~~, and I do not believe the accused on this point. Nor do I believe him when he says that a threat to beat him was made by someone: on the contrary, I am satisfied from the evidence of the father and mother of the deceased that they were prepared to leave <sup>it</sup> to her to decide whether or not she would return to him. The wound which killed the deceased was a stab four inches deep, the spear is not particularly sharp, and, though Mr. Miller says that it is 'Conceivable' that it might have been caused in the manner suggested by the accused. I have no hesitation in holding that it was caused by a deliberate thrust. No doubt she finally refused to return to him, and in his anger he stabbed her: as he says himself, he did not want her to be married to another man.

Accordingly I agree with the assessors and find the accused guilty of murder contrary to sec. 186 of the Penal Code.

A.H. Webb,  
2.7.1936.

Allegation:- Nil

Sentence:- In accordance with sec. 187 of the Penal Code the accused, M'Kiambati s/o M'hwitari, is sentenced to be hanged by the neck until he is dead.

A.H. Webb, 2.7.36

The accused is informed of his right of appeal within  
30 days.

A.E. WEBB, 2.7.1936

COLONY AND PROTECTORATE OF KENYA

3

REX Versus

M'Kiambati s/o M'Wairari

STATEMENT OF THE ACCUSED

M'Kiambati s/o M'Wairari

(hereinafter called the Accused) stands charged before the undersigned

( )

Henry Hamilton Low

this day of 193 for that he, the accused did on

the night of April 1st, 1936 commit murder by killing his wife

M'Kiroti, with a spear, contra Sec. 186 P.C.

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 promise 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 now says may be given in evidence on his trial notwithstanding the promise or threat, the accused is now addressed by me, the undersigned as follows:

This is not your trial. You are not being tried now. You will be tried later on in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to examine them and ask them questions. You will then be able to make any statement you may wish. If, understanding this, you want to make a statement to me, I will take it down, and it may be used as evidence at your trial.

\*Whereupon the Accused says as follows:—

Magistrate  
H. R. Low

It is true. I did kill her. She was my lawful wife so that I had paid the customary dowry for her. She was married and I paid one large sheep being expenses for her burial. The evening I was there at her father's village and we were alone she seized me and held me and called out to her father to come and beat me. I tried to cut her shoulder with the spear so as to free myself but she suddenly moved backwards and the spear entered her back. I swear I did not mean to kill her but to kill her and kill her. I only meant to cut her skin so as to make her let go of me. It was an accident.

R. I, of the accused.

H. R. Low, Mag. II

COPIES

COLONY AND PROTECTORATE OF KENYA

REX, Kenya

STATEMENT OF THE ACCUSED

(hereinafter called the Accused) stands charged before the undersigned

this \_\_\_\_\_ day of \_\_\_\_\_ 193\_\_\_\_\_ for that he, the accused, did on

the \_\_\_\_\_

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 promise 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 whatever he now says may be given in evidence on his trial notwithstanding the promise of threat, 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.

Magistrate

\*Whereupon the Accused says as follows:—

I certify that the above statement was taken in my presence and hearing and contains accurately the whole statement made by the accused person.

H.H.Low  
Mag. II

This statement was interpreted by M'Utiga s/o Marita from the Kery language into swahili and I have interpreted the same into English to the best of my skill, knowledge and belief.

H.H.Low Mag. II

I certify this is a true copy of the original.

Registrar  
Supreme Court of Kenya

11.

I certify that the above statement was taken in my presence and hearing and contains accurately the whole statement made by the accused person.

H.H.Low  
Mag. II

This statement was interpreted by M'Intaga s/o Murita from the Kory language into swahili and I have interpreted the same into English to the best of my skill, knowledge and belief.

H.H.Low Mag. II

I certify this is a true copy of the original.

Registrar  
Supreme Court of Kenya

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.  
SESSIONS HELDEN AT MOMBASA,  
ORIGINAL APPEAL NO. 103 OF 1936.

(From Criminal Case No. 56 of 1936 of H.M. Supreme Court  
of Kenya at Momb.)

ROX ..... Respondent.  
(Original Prosecutor.

versus

M'Kiambati o/o M'Kwitari ..... Appellant.  
(Original Accused.)

-----:000:-----

JUDGMENT:-

There is no reason why we should admit this appeal.  
The applicant told a story which the learned Judge in  
our opinion correctly rejected. The application is  
refused.

Sd. Joseph Sharian.

Sd. G. H. Law.

Sd. J. Lucie-Smith.

30. 7. 36.



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

*M. J. Gillman*  
for DY. REGISTRAR,  
H.M. COURT OF APPEAL FOR E.A.,  
MOMBASA, 31. 7. 36.

KENYA.

No. 469



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA

6 September, 1936

RECEIVED

S-C

C. O.

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 63 of 1936 - Rex versus Nyarugembe wa Nyaranga.

2. The accused was sentenced to death on the 10th June, 1936. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 16th July, 1936. I enclose a copy of the Judgment.

3. The case was reviewed in Executive Council on the 21st August, 1936, when I concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for life.

I have the honour to be,

Sir,

Your most obedient, humble servant,

BRIGADIER-GENERAL,  
GOVERNOR.

THE RIGHT HONOURABLE  
W. ORMSBY GORE, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI  
CRIMINAL CASE NO. 68 OF 1986

(Original Criminal Case No. 1462  
of 1986 of the Resident  
Magistrate's Court at Nakuru).

at the sittings helden at Nakuru on the 8th day of  
June, 1986.

REX..... PROSECUTOR

versus

NYARUGEMBE NYARANGA..... ACCUSED.

R E P O R T

Your Excellency,

Nyarugembe, a Mohachi native belonging to one of the tribes of Musoma District in Tanganyika, was found guilty of murdering a Kikuyu woman named Wabera by stabbing her with a knife at Naivasha on 23rd April, 1986. He admitted the offence. The prisoner had lived with Wabera for several months; he found that he was suffering from a bloody discharge of the penis; for this he considered Wabera was responsible. This weighed upon his mind and he conceived the idea that he was being turned into a woman, as he believed that his discharge was similar in nature to a woman's menstrual periods. He had also paid a sum of money to Wabera and her relatives as a kind of marriage-price; this he had demanded back when the discharge made itself evident. It was refused. The prisoner, annoyed at this and worried by his condition, told the woman that if the discharge recurred in April he would come and kill her. He had meanwhile gone to Limuru to work. When the discharge recurred he returned to Naivasha finding her at the market told her that she must somehow cure him. She apparently treated this suggestion with scorn. The prisoner and Wabera were on their way to Wabera's house

-2-

from the market when the prisoner, who had purchased a knife that day in Naivasha with the intention of killing Wabera, inflicted on the latter a series of severe stab wounds which caused her death. He then gave himself up to the police. This murder was deliberate and brutal. The prisoner was sane and it could not be said that he had received any provocation in the legal sense.

The medical evidence showed that neither the woman nor the prisoner was suffering from gonorrhoea, and there was nothing to show what was the cause of his ailment.

The prisoner undoubtedly had a mistaken belief that somehow he was being turned into a woman and that this was the reason for the discharge. The Watende assessors, belonging to a tribe whose home is near that of the accused, stated that by their custom a man in the prisoner's condition was entitled to kill the woman concerned. Without accepting this as an authoritative statement of native custom or as one which would receive official approval, I consider that there are grounds for treating this case with leniency and I would recommend that Your Excellency may see fit to commute the sentence of death to one of imprisonment with hard labour.

I have the honour to be

Your Excellency's obedient Servant,

*Callaghan*  
AG: JUDGE,  
SUPREME COURT OF KENYA.

To,  
His Excellency the Governor,  
Throug  
The Honourable,  
The Colonial Secretary,  
NAIROBI.

Criminal Case No. 63 of 1936.

Defendant: Nyarugenge s/o Nyaranga  
Prosecutor: [Name]  
versus  
Accused: [Name]

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*[Handwritten signature]*

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

THE 8TH DAY OF JUNE, 1936.

Criminal Case No. 63 of 1936.

At the Sessions holden at Nakuru on the 8th day of June, 1936, this Court is informed by the Attorney General on behalf of our Lord the King that Nyarugembe wa Nyaranga is charged with the following offence -

STATEMENT OF OFFENCE

Murder, contrary to section 186 of the Penal Code.

PARTICULARS OF OFFENCE

Nyarugembe wa Nyaranga on or about the 23rd day of April, 1936, in the Rift Valley Province, murdered Wabera d/o Mangara.

DATED at Nairobi this 2nd day of June, 1936.

Sd. W. Harragin

SEAL OF THE SUPREME COURT.

ATTORNEY GENERAL.

To  
Nyarugembe Nyaranga,  
c/o H.M. Prisons, Nakuru.

TAKE NOTICE that you will be tried on the information whereof this is a true copy at the Sessions of the Supreme Court to be held at Nakuru on the 8th day of June 1936.

DATED at Nairobi this 3rd day of June 1936.

Sd. Edward J. O'Farrell

REGISTRAR,  
SUPREME COURT OF KENYA.

Supt. Prison, On the reverse.  
Nakuru.

For favour of service and return to this Court, please.

Sd. S. W. Shah  
for Resident Magistrate, Nakuru.  
4. 6. 36.

Served on the accused Nyarugembe wa Nyaranga at 10.5 a.m. on the 4. 6. 1936.

4. 6. 36. Sd. A. Harris Marshall  
S. P.

H.M.  
of Nyarugembe wa Nyaranga

Witness A. Francis Marshall. 4. 6. 36

9. 6. 36.

Session at Nakuru.

Accused present.

Dunnison for Crown.

Lean for accused.

Accused is a Kichachi from Musoma District, T.T. and understands Swahili.

Accused is charged; the charge is read to accused and explained.

He pleads: I did not kill her by intention I was angry.

Taken as a plea of Not guilty.

3 assessors chosen: (Utende by tribe)

1. Warema wa Mwita.
2. Nyangora wa Kisiri.
3. Wamburu wa Kihongo.

and warned as to their duties.

Dunnison opens case.

ness.

FREDERICK LOUIS HENDERSON sworn christian:-

Dist. Surgeon Nakuru, M.R.C.S., L.R.C.P. On 24th April I held a p.m. on body of a native woman; in the A.M. the body was handed over to me by A.I. Lancaster of Police on 23rd he identified the body as that of Wabera d/o Mangara. When it was handed over to me on 23rd. it was fresh and there was rigor mortis. I made note of the p.m. at the time from which I read -

On back of neck there were 4 deep stab wounds severing muscles: a deep stab wound through left sterno mastoid, on left side of neck, the big vessels of neck were cut; a stab wound in chest, above left clavicle; 8 stab wounds in back; one perforated lung between 8th and 9th ribs; one stab wound outside top of left thigh; first finger of right hand was nearly cut off at 1st joint; Slides from

3.  
the woman's vagina were negative for gonorrhoea: I also examined the accused, 2 or 3 days after, for that disease; the result was negative: Cause of death of the woman, was the wound into lung and severing of arteries of neck; also the multi multiple injuries: the above were the chief wounds. Some sharp weapon similar to the bushman's friend knives produced in Court would have caused the injuries. I couldn't say if it would be the larger type of knife or the smaller type.

(X).

I asked to see accused. He seemed troubled about the alleged discharge of blood from his penis. He was very worried about it and he complained to me that he had been turned into a woman and had had menstrual periods like a woman. It is difficult to say what this would mean to a native. Some years ago one of my dressers in hospital committed suicide because he had a blood discharge from his penis and thought he had been turned into a woman, and had periods like a woman. I think this did upset the accused. I examined him these discharges but I found nothing. The stabs I saw on the woman were plentiful: it does not follow that a person who does a thing like this in passion is insane. The person who inflicted these wounds must have been under great mental stress.

R. J. P. O.

G. A. G. Lane,  
Md. ~~London~~ ~~London~~

Witness.

KENNETH CLELAND sworn, christian:-

Asst. Superintendent of Police i/c Naivasha. I was there last April. On 23rd April about 11/40 a.m. I received a report in consequence of which I went to a track which leads from a main road towards the Somali village Naivasha. A. I. Lancaster accompanied me. About 200 yds. along the track I found body of a woman. I made a sketch of the vicinity subsequently. This is it, Ex. 1. The approx. scale is 1" to 100 yds. The track on which

Ex. 1.

I found the body, I point out, (it is marked "X"); the track leads to Somali village, the other leads to farms: the point marked "A" is the native market: about 700-800 yds. from where I found the body. Woman was dead: lying almost face downwards, body slightly inclined to right: right arm across her face: left arm bent under her breast. The sketch shown me (to be proved) describes her position. There was a lot of blood where she was lying: I noticed a number of cuts in back of her frock; I didn't examine the body. One pace from the woman I found a hat: I identify it Ex. 2. among a number of felt hats produced in Court. A. L. Lancaster took charge of it.

Ex. 2.

Body was identified to me by deceased's mother (I don't remember her name) as Nabera.

It was identified by a number of bystanders. Following on that I returned to P.S. Accused was in the Police cell. I went to see him: in consequence of what he told me I took him in front of Mr. McKay at Naivasha, the P.S.

P.C. Ochiambo was in charge of the P.S. Naivasha at that time: he showed me a new knife and scabbard: Of the number of knives (Bushman's friend) shown in Court I find it out Ex. 3.

Ex. 3.

I made inquiries and as a result I received certain information from an Indian Kusal Chand.

There was also a native bag full of vegetables near the body. Exhibit 4. which I identify.

Ex. 4.

The woman was a Kikuyu as far as I remember.

The body was lying in middle of path used by a number of people; leading to Somali village. Difficult to say if many people would be using the path at the time. The deed ~~deed~~ must have been done in the open without any concealment. Accused was in a very excited state when I saw him. His eyes were very wild at the time. He wasn't

XXD.

frothing at the mouth or anything like that.

H. J. F. C. Sd. B. A. G. LANE.

Witness.

DENIS MCKAY sworn christian:-

District Commissioner Nakuru and Naivasha.

I remember 23rd April that day a prisoner was brought before me by P.P. Cleland at Naivasha. I identify him as the accused. He made a confession to me in Kiswahili. I used no interpreter. No one else was present when accused made the statement to me. I asked him if he wished to make a statement; I cautioned him as laid down in circular to Magistrates No. 1 of 1936: this blue form is the form I actually used that day. The wording is "Nyarugembe wa Nyarungu being given already to understand to (as in printed form Criminal No. 119A) ----- to trial". I formed the opinion that accused fully understood it. He then made a statement to me: I took it down in my own handwriting: this is the statement Ex. 5; (it is read):

This was the full and entire statement.

KON HILL. H. J. F. C. Sd. B. A. G. LANE.

JOHN HENRY LANCASTER sworn christian:-

Asst. Inspector Police at Naivasha. I was stationed there on 23rd April last. That day at 11/30 I received a report in consequence I went to P.P. I had received the report from the Police clerk. At P.P. I saw the accused and P.P.C. Othmanbo. The latter as far as I remember gave me certain information as a result I went to the scene with Mr. Cleland; about 2 miles North of Police Station near the Somali Village. I found body of woman lying surrounded by pools of blood and I made a sketch of the body as I found it. Exhibit 6. It is a true representation of what I found there. Woman was dead. I found a hat and a basket of vegetables on the

Form 119A  
attached to  
Ex. 5.

Ex. 5.

Witness.

Ex. 6.

scene. I pick out the hat Ex. 2 from among those in Court.

The body was identified by a person claiming to be deceased's mother, as Wabera d/o Mangara. This is the person (produced in Court) who identified deceased as her daughter.

I took body later to Makuru to mortuary at N.C. hospital and handed it to Dr. Henderson and told him the name of deceased.

This knife Exhibit 3 was given me by P.O. Adhiambo on 23rd April. I kept it; I showed it to Dr. Henderson and handed it in the Magistrate's Court.

On 24th April I held an identification parade at Naivasha gaol: 12 people as far as I can remember were in the parade, accused is thought to be the 13th in the parade. They were all dressed in prison blankets.

An Indian witness Chand was brought in by me to the parade; he identified accused. He touched him. He picked him out in no time at all. He didn't hesitate at all. The parade wasn't quite satisfactory because the 12 men were stood up in a row, each at approx. the same intervals from each other. I turned round to open the door to let in the Indian witness who came in; and when I looked again at the people immediately on either side of accused had edged away slightly.

On Monday 4th May I went to Muru to Col. Franklin's farm: I saw amongst other Mwithukia whom I identify (produced in Court). I showed him 8 felt hats. He picked out Ex. 2. and said it belonged to accused.

The bag of vegetables Ex. 4. I found near the scene of murder.

XN. nil.

P.O.

D. . . . Lane.

Witness.

MWITUKIA WA GETAI affirmed pagan:-

I work for Col. Franklin at Limuru; I was working there last April and am still there. Accused worked for Col. Franklin while I was there. He left work, he deserted I don't remember exactly when. The last witness A.I. Lancaster came to the farm and showed me <sup>second</sup> felt hats, eight; accused had left the farm only the day before this crime. I picked out the hat Ex. 2. as accused's hat. I identify it now in Court from among the number of hats shown in Court. I had seen him wearing it once:

XIX. Nil.

R. J. F. C. Sd. C.A.S. Lane.

Witness.

KUSHAL CHAND S/O RAGHAVJI sworn, Hindu:-

(The Indian Court Interpreter Mr. Shah interprets).

I work at Naivasha at a shop, V.H.Mehta, he sells native trade goods and provisions. I remember a day when a native woman was killed at Naivasha. The day before I had been working in the shop and also on the day of the murder. I sold a knife to a customer that day on 23rd April; only one knife I sold that day. I know who I sold it to. The day after the murder I was called to an identification parade at the gaol and I picked out the man; the accused is as the man who had bought the knife; the knife had a No. "20" written on the back of sheath. Of the array of knives shown in Court I pick out the one which I sold to accused (Ex. 3).

XIX.

I know the knife because it has the No. "20" written on the sheath in my own handwriting. I did not write the "XX" Ex. 6" on it. I saw accused the day he came to buy knife. He appeared quite normal.

R. J. F. C.

Sd. C. A. S. Lane.

Witness.

WANJITU WA GETHATU affirmed pagan Kikuyu old woman about 60 years of age. I live in Somali village Naivasha.

I had a daughter Wabera who is dead. The day she died was a market day. I was fetched and saw body of Wabera. 2 European Police officers came to scene: (Mr. Cleland and Mr. Lancaster identified by witness). I told them Wabira's name. I know accused I had seen him with Wabera for 2 months and I think they were friendly. Accused did not ask me for money just before my daughter's death. He never asked me for any money. He never left any money in my charge.

XXD.

Deceased lived with me. Accused did not live with Deceased. If anyone says accused was living and sleeping with deceased I would not know. I was living in the house. I have not seen them sharing the house or a hut. I don't know their house. Accused never complained that Wabera made him ill. How would I know if accused discharges blood now? He was not living in my house: He left nothing with us. Not even empty boxes: he left an empty box with Wabera: she brought it to the house. I thought it was her box.

R. O. F. C. Sd. C.A.F. Lane.

Witness.

HANJOGU WA MBANGI offered for X'm. affirmed, Kikuyu woman, pagan;-

I knew accused and the deceased, Wabera. I saw them together for 2 months: they were living in the same house; in the Somali village where I live.

R. O. F. C. Sd. C.A.F. Lane.

Witness

YUSUF KHAN, Mahomedan, Indian, sworn:-

Living in Somali village Naivasha. On 23rd April I was in the town and I cycled back towards the Somali village with Mehardin, each on his own cycle. I saw a man killing a woman with a knife, on the path leading from main road to Somali village. Just in front of us we saw the man killing the woman, at distance of 165 paces: this

distance

distance was paced by me in presence of the P.S. later. I saw the knife and stopped; it looked like an ordinary sheath knife: I can say it was a small knife, but not the exact size. I couldn't identify it. It was about the size of the sheath knives shown me in Court. I did not notice the man particularly. I did not try to help the woman. When I saw he had a knife I went back in a hurry to the Police Station. I had a watch that day. The stabbing took place at 11/25 a.m.

(11).

I could not say at that distance if the man was using much force in stabbing. I saw him stab 3 or 4 times and then she fell. I don't know if the man could see us. The man stabbed her and she fell; she tried to get up; the man turned back and stabbed her again 2 or 3 times on her back. We were easily in view; there was no bush or trees in the way; I can't say if he saw us.

R. O. P. O.

Sd. J.A.G. Lane.

Witness.

MEHER DIN S/O CHAMU, Mahomedan, sworn, Inam:-

In 23rd April I was cycling towards Gomali villiage from Naivasha with last witness. On the way we saw a man hitting a woman, on a footpath leading to the Gomali villiage from the main road. He was strikingly with a knife. I could see this in the distance; 160 to 170 paces. I could not see the knife. I saw his hand moving in a stabbing movement. I went nearer and the woman fell down. I could not recognise the man.

R. O. P. O.

XCN. Nil.

Sd. J.A.G. Lane.

Witness.

JOHANNES S/O MUMHALLA, 1225 2<sup>nd</sup> Div. Kenya Police affirmed again:-

In 23rd April I was in Naivasha P.S. at about noon: a native came and made a report to me: the accused. His face had changed & was like that of a man who had killed a man; he was wild and his face looked bad. He had a

a knife in his hand and I took it from him: it was in the sheath. Of the collection of knives here, I can say it was like these bushman's friend knife: I identify Ex. 3. I gave it to A. I. Lancaster when I made a report to him, without taking it out of its sheath. I searched accused and put him in a cell.

Ex. 6.

I identify the knife because I saw it that day. That day there was no writing on it. I know the colour of the sheath. Accused's eyes were fierce and his face was wrinkled; he was excited.

R. J. F. G.

Sd. C. A. G. Lane.

Ex. 7.

Accused's statement in Lower Court is put in Ex. 7. and read.

Crown Case.

Accused informed of his rights under section 239 (2) G.P.C.

Accused states: I want to call my witnesses first: I do I want first.

Sd. C.A.G. Lane.

Witness.

DETE NA KARARIA affirmed pagan:-

Headman to D. C. Malvaana. I know the accused I have known accused for over a year. Quite a long time. I know deceased Wabera. Accused lived at Mr. Fearnside's place. Wabera lived there with accused.

Xn. Nil.

R. J. F. C. Sd. A.G. Lane.

Witness.

NYENDA NA KAROLI affirmed pagan:-

Police askari Naivasha. I know accused and deceased. They lived together at place of a European who owns a Garage: accused worked there.

Xn. Nil.

R. J. F. C. Sd. C.A.G. Lane.

Witness.

MBOGO WA MUTWI affirmed pagan:-

I have worked for Mr. Fearnside for sometime. I know accused. I know deceased. She was living with accused at

Mr. Fearnside's place for 6 months.

Mr. Nil. . . . Ed. C.A.F. Lane.

Accused makes a statement:-

This woman Kabera, I lived with her for 10 months. I gave her sh.360/-; I asked her to give me the money; she and her mother and her sister said that I could not have it. On 11th January I saw that I had a discharge of blood from the penis; I asked her where this had come from, she being my wife. She said the blood had come because of my money; because she was a prostitute and I had given her money; she said she would not return the money. I said if I saw this blood on April 23rd I would kill her. From the day I asked her why I had this discharge she was only laughing. I was angry because she made me to become a woman. I came from Mbari on 23rd April and found her in the market and I showed her my shorts (exhibited by accused) with blood upon them. She could not make me right. I called her and asked her to come to the house. On the way I told her if she did not make me right I would kill her. I killed her and went before the Government. That is all I want to say.

Ed. C.A.F. Lane.

Henderson addresses:

Only defence open to accused is provocation. He has not retracted confession. Tells that he thought he was turned into a woman by deceased's man<sup>a</sup>travention. Very difficult to believe. Dr. Henderson knew of similar case. Even if deceased had in fact succeeded in turning accused into a woman it would not justify accused taking law into own hands. Provocation must be very grave and sudden. Not sufficient to reduce to manslaughter.

R.A.C.A. Reports 1935 P. 91 Rex v. Masomi - provocation and mistake of fact - held evidence that honest mistake belief etc. p. 92 bottom - provocation: Sec. 11 & 191 P.C.

together. If we believe accused's story that he thought he was turned into a woman is it enough to bring into Sec. 191? No. Purely a question of fact. Wrongful act or insult if it were true is not one which would amount to wrongful act or insult within section 191.

Lean addresses:

insanity. Dr's evidence - accused must have been very excited - number of wounds; place where crime took place - path much used; 2 people present - no attempt at concealment. A great mental upheaval if not insanity in accused's mind.

Alternatively Secs. 11 and 191: Provocation. His story to be believed. Native mind more easily affected than European - more subject to uncontrollable impulses. Much provocation existing in accused's mind. It may have been result of illness; in his mind he was turned into a woman. So affected that he could not control himself.

Alternatively Court to make a recommendation to mercy.

Court sums up.

Accused admits killing deceased. Circumstances are that he lived with her discovered bloody discharge disease was worried about it and asked for his money to be paid back was taunted by deceased - but idea that he was turned into a woman (did he believe this or not) and threatened to kill deceased if it recurred. This he did. <sup>Deed</sup> ~~Deceased~~ was therefore premeditated not a sudden impulse. Insanity? proved? I do not think so, what do you think? Onus on accused.

Provocation; was there grave and sudden provocation sufficient to deprive accused of self-control, suddenly? It would seem that he had premeditated the killing of deceased.

Law does not allow a person to be except from consequences unless he is really insane vide Sec.13 P.C. (quoted).

Equally provocation has to be grave enough suddenly to deprive person of self-control.

Are either of these established here?

Did he believe that person being turned into a woman? or was his motive that he had this disease and that he wanted his money back?

Do you believe he was insane?

Do you believe he had provocation?

Verdict of Assessors -

1. Warema: He was perhaps angry because the woman had done wrong things to him and that is why he got angry. He may have been angry if he was turned into a woman. It is a very bad thing in our country if a man is made to become a woman. It is a bad thing for a man to discharge blood like a woman. If this happened in our country by custom the woman must be killed.
2. Nyanjera: He was angry, when he had monthly discharge like a woman: that is why he got angry and killed her: she made him become a woman and she kept his money.
3. Nambura: He was very angry when he saw this discharge like a woman's. In our country nobody would allow him to allow her to live if she had made him discharge blood. This is what made him angry.

Judgment reserved.

JUDGMENT:-

The accused admits stabbing the deceased and killing her on April 23rd near Naivasha township. He is charged with murder. The wounds inflicted by accused were numerous; he clearly inflicted them in a state of excitement and

passion.

In his defence it is urged that he was so unbalanced mentally as to be insane, and alternatively that he had provocation for his act which would reduce it from murder to manslaughter.

He had a bloody discharge from his penis which caused him much worry. The medical evidence was that accused was not suffering from gonorrhoea and the cause of his ailment was not established. It seems to be established that he considered the deceased responsible for this ailment since he had lived with her and cohabited with her for a period of months; he had the idea in his mind that deceased had somehow turned him into a woman and that the discharge was similar to a woman's menstrual periods. Accepting accused's own statement of what happened, he warned deceased that if the discharge recurred he would come and kill her. It recurred in April and he came from Limuru to Naivasha and killed her. Accused was actuated partly by this mistaken idea that he was being turned into a woman and partly by the fact that he had paid money to deceased; of which he had demanded the return and which had been refused by the deceased. Thus he was actuated partly by a mistaken idea and partly by anger.

Accused has in my opinion failed to prove that he was insane: he has not shown that he was through a disease of the mind incapable of understanding what he was doing or of knowing that he ought not to do the act. The defence of insanity must therefore fail.

As regards provocation, this defence could avail the accused to reduce the offence to manslaughter only if it were shown that when he killed deceased - he did so under an honest and reasonable but mistaken belief that the deceased had caused him to become a woman, or like a woman in certain respects: and that this act of the deceased, which

which he, the accused, honestly and reasonably but mistakenly believed to be a wrongful act, was of such a nature as to deprive him of his power of self-control, suddenly.

Accepting as I have said that accused believed that something that deceased had done, had caused him to turn into a woman, or to become like a woman in certain respects, and that it was a genuine and mistaken belief, I cannot regard it as a reasonable belief, since it would be a miracle for a man to be turned into a woman. Moreover the accused could not be said to be suddenly deprived of his self-control by this belief, since on his own showing he had decided sometime before that if the discharge recurred in April he would kill the deceased. It cannot be said therefore that the act was done in the heat of passion caused by sudden provocation. The defence of provocation also fails. Moreover as I have said I accept the fact as stated by the accused that he was partly actuated by the woman's refusal to return the money which he had paid her. This was one of the factors which caused his resentment against her and induced him to kill her. There could be no legal provocation in this.

The assessors who belong to a tribe contiguous to the accused's tribe in Tanganyika stated that by their local custom a man who had been caused to have a discharge of this kind by living with a woman would be entitled to kill her.

I hesitate to accept this as an authoritative statement of native law and custom but it throws some light upon the processes of accused's mind in this particular peculiar and sordid crime and gives rise to some degree of sympathy with him.

I have no alternative but to find accused guilty of

murder.

I call upon the accused to say anything that he may wish why sentence should not be passed upon him according to law.

Accused says - I have nothing further to show to you .

I sentence the accused to be hanged by the neck until he is dead.

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

Sd. C.A.J.Jane.

10. 6. 36.

Exhibit 5.

(Confession)

Nyarugembe s/o Nyaranga being given clearly to understand that he has nothing to hope from any promise 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 whatever he now says may be given in evidence on his trial notwithstanding the promise or threat; Nyarugembe s/o Nyaranga is now addressed by me, the undersigned as follows:-

"This is not your trial. You are not being tried here on in another Court and before another Judge. You will then be able to make any statement you may wish. If understanding this, you want to make statement to me, I will take it down, and it may be used as evidence at your trial."

D. Denis McKay,  
Magistrate.

Whereupon the accused says as follows -

I gave the woman Shs36/-, she is a prostitute. She gave me sickness so that I discharge blood my penis every 15th of the month - like a woman periods. He said if I asked her for the money "utaona matata" her mother and her sister said the same. I thought of the money and how she had made me like a woman and I killed her. The Govt. can hang me. I have no hope in life.

This statement was made direct to me in Kihili and I have interpreted the same into English to the best of my skill knowledge and belief.

D. Denis McKay  
Magistrate.

I hereby certify that the above statement was taken in my presence and hearing and contains accurately the whole statement made by the accused.

D. Denis McKay,  
Magistrate

23. 4. 36.

COLONY AND PROTECTORATE OF KENYA

REX Versus Nyarugombe wa Nyaranga

STATEMENT OF THE ACCUSED

Nyarugombe wa Nyaranga

(hereinafter called the Accused) stands charged before the undersigned

( H. P. Pulethorpe, J. J. )

this 3th day of MAY, 1936 for that he the accused did on

the commit murder contrary to sec. 136 of the Penal Code

Nyarugombe wa Nyaranga on the 23rd day of April 1936 in the Rift Valley Province murdered Wabera i/o Mungara

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 promise 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 now says may be given in evidence on his trial notwithstanding the promise or threat; the accused is now addressed by me the undersigned as follows:—

"This is not your trial. You are not being tried now. You will be tried later on in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to examine them and ask them questions. You will then be able to make any statement you may wish. If understanding this, you want to make a statement to me, I will take it down, and it may be used as evidence at your trial."

Sd/- H. P. Pulethorpe  
Magistrate

\*Whereupon the Accused says as follows:—  
Accused states I wish to give evidence.  
Accused affirmed states:—

.21.

I live with the woman Wabera for 17 months. 6 months at the Fearnside and 4 months at Macray's Sigal. While at Longot I got ill. I discharged blood from my penis every 15th or so of the month, like a woman. Jan. 15th the first discharge and every month since. I asked her why it was. She said you have got what you bought from a prostitute. I then asked her for the money I had given her. She then said and her mother and her sister were there and said the same. If you ask for your money you will get something worse still. I told her if I found I had the blood discharge again I would kill her. I had the discharge again on April 15th and deserted from Limuru on 22nd April same year at night.

COLONY AND PROTECTORATE OF KENYA

REX: Versus

STATEMENT OF THE ACCUSED.

(Hereinafter called the Accused stands charged before the undersigned

this \_\_\_\_\_ day of \_\_\_\_\_ 193\_\_\_\_\_ for that he, the accused, did or  
the \_\_\_\_\_

**CANCELLED**

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 promise of reward 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 now says may be given in evidence on his trial notwithstanding the promise or threat; 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."

Magistrate

\*Whereupon the Accused says as follows

Exs. V & VI. I bought this knife at 10.30 a.m. and met her at the market and took her away on the truck and killed her.

( ) I then went and reported to the Government as I had no use (hope?) in this world.

Ex. A. This is my kipando.

No Xln. R.O.C. T.M. of Accused.

Sd. R.F. Palethorpe.

I certify the above statement was taken in my presence and hearing and contains accurately the whole statement made by the accused.

Sd. S. P. Palethorpe.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.  
SESSIONS HELDEN AT MOMBASA.

CRIMINAL APPEAL NO.86 OF 1936.

(From Criminal Case No.65 of 1936 of H.M.Supreme Court of  
Kenya at Nakuru.)

R e x ..... Respondent.  
(Original Prosecutor.)

versus

Nyarugembe Nyaranga ..... Appellant.  
(Original Accused.)

-----:000:-----

JUDGMENT:-

This is a most unusual case. The appellant is clearly proved to have killed the woman with whom he had previously lived, from whom he would seem to have contracted a disease, the symptoms of which caused him to believe that he was being turned into a woman. That this belief was honest the learned Judge and the assessors found to be the case and we agree with that finding. Judging the appellant's act of killing in the light of that belief the question is whether the appellant acted under such provocation as would reduce the crime from murder to manslaughter. Even if we were to accept that the provocation was grave, there remains the difficulty that it lacked suddenness. The appellant on the re-appearance of the symptoms made preparation for the murder of the woman, purchasing a knife for the purpose on the day of the crime. In our opinion the appellant in his mistaken but honest belief and the fatal consequences that followed is, as the learned Judge, found, deserving of some sympathy and we commend this aspect of the case to the Governor in Council. It is of importance that the Assessors accepted the

genuineness of the belief and Dr. Henderson who has had a wide experience of native mentality testified to a native within his knowledge having committed suicide because he was obsessed by a belief similar to that held by the appellant in this case. The appeal will be dismissed.

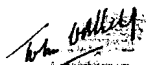
Sd. Joseph Sheridan.

Sd. C.E.Law.

Sd. J. Lucie-Smith.

16. 7. 36.

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



BY REGISTRAR,  
H.M.COURT OF APPEAL FOR E.A.,  
MOMBASA, 16. 7. 36.

DRJ.

38110

KENYA

No. 433



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

RECEIVED  
112 SEP 1936  
C. C. ...

21 AUGUST, 1936.

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 52 of 1936 -- Rex versus Mangangi wa Nzuki.

2. The accused was sentenced to death on the 4th May, 1936. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 14th July, 1936. I enclose a copy of the Judgment.

3. The case was reviewed in Executive Council on the 7th August, 1936, when my deputy concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for seven years.

I have the honour to be,

Sir,

Your most obedient,  
humble servant,

Brigadier General,  
GOVERNOR.

THE RIGHT HONOURABLE

W. ORMSBY GORE, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.1.

IN HIS MAJESTY'S SUPREME COURT OF EAST AFRICA  
CRIMINAL CASE NO. 61 OF 1956

Original Criminal Case No. 101, 102, 103 of the Second  
Class Magistrate's Court at Machakos

at the Sittings holden at Nairobi on the 4th day of  
May, 1956.

REX..... PROSECUTOR

versus

MANGANGI wa NZUKI..... ACCUSED.

REPORT : - -

Your Excellency,

I have the honour to report that the above-named was tried before me on the 4th May 1956 on a charge of murder and was convicted and sentenced to death. He was defended by Mr. Khanna. On the 14th July his appeal against the conviction was dismissed by the Court of Appeal for Eastern Africa.

The facts proved before me were that three men, Katiko, his brother Musyoki (the deceased), and Kirani were building a grain store at Musyoki's place. While working they started to drink tembo. When the tembo was almost finished and they were about to drink the accused, who is married to the sister of Katiko and Musyoki, arrived. He would appear to have been very drunk. He asked for tembo and was given a cup-full by Musyoki. Then he seized the calabash, and Musyoki said to him "Don't hold the calabash, there is nothing in it. Go away, we don't want trouble, you are very drunk". Both stood up, the deceased said "I will hit you", and struck him under the left arm-pit. At once blood was seen coming from him and he died shortly afterwards from a stab wound about 3 inches deep penetrating the left lung. The weapon was a large folding pocket-knife.

The accused made a statement to the committing Magistrate, in which he said that, after drinking with Katiiko and Musyoki, he was sitting apart with one Lwaka when Musyoki came over to him; and after saying "why do you come and ask for tembo as though it belongs to you", and we have to give it you", struck him twice. The accused said if Musyoki struck him again he would strike him with his knife. He then struck me again with his fist on the left shoulder. I got up, took the knife out of my pocket and struck at Musyoki with it. I did not want to wound him but merely to teach him not to hit me. I thought he would ward off the blow with his arm and then run away. The knife, however, went under his arm and entered his side."

The prosecution witnesses denied that Musyoki had ever struck the accused, and Lwaka, who was called by the defence, denied that he had been present at all.

I was of opinion that the defence of provocation entirely failed and that it was not proved that the accused was so drunk as to have been incapable of forming an intention to kill or to do grievous harm; and, accordingly, I convicted him of murder.

Having regard, however, to the relationship of the parties and to the fact that this was a sudden blow struck under the influence of drink and, I feel sure, without any real intention to kill, I would respectfully suggest that the sentence of death might be commuted and one of seven years imprisonment with hard labour substituted.

I have the honour to be,  
Your Excellency's obedient servant

*Amur*  
JUDGE, \

HNK.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA

SESSIONS HOLDEN AT MOMBASA

CRIMINAL APPEAL NO. 65 OF 1936

REX..... RESPONDENT  
(ORIGINAL PROSECUTOR)

versus

MANGANGI WA NZUKI..... APPELLANT  
(ORIGINAL ACCUSED)

-----oOo-----

JUDGMENT:-

The learned judge considered the questions of provocation and drunkenness and came to the conclusion that the appellant was guilty of murder. We agree with him. Doubtless the suddenness of the affair and the drunken condition of the appellant will receive such consideration as they deserve from the proper quarters. The appeal is dismissed.

Sd. Joseph Sheridan

Sd. R. E. Hall

Sd. C.E. Law.

14. 7. 36.

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



REGISTRAR,

H.M. Court of Appeal for E.A.

KENYA

No. 294



RECEIVED

6 JUL 1936

GOVERNMENT HOUSE  
NAIROBI

KENYA

6 JUNE, 1936.

Sir,

38007 (C/A. Ominier)

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 51 of 1935 - Rex versus Olual s/o Kongo.

2. The accused was sentenced to death on the 21st March, 1936. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 5th May, 1936. I enclose a copy of the Judgment.

3. The case was reviewed in Executive Council on the 29th May, 1936, when I concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for life.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

*Adm. Wade*

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE

W. ORMSBY-GORE, P.C., M.P.

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.1.

R E P O R T -

192

Your Excellency

At the Sessions at Kisumu on 21st March 1936 I convicted of murder and sentenced to death one Olual s/o Kongo. I found that Olual caused the death of one Kipkoger Arap Tabler at the Muhoroni Sugar Estate by stabbing him with a spear in circumstances amounting to murder on 20th March 1936.

The long delay in the trial of this man was due to the fact that when on 28th May 1936 he was brought up for trial before the Supreme Court at Kisumu, he was found incapable of pleading and was detained during Your Excellency's pleasure. He was recently declared to be sane and was again brought up for trial.

The evidence I found established that on the night of 19th March 1936 Olual, who was a labourer on this estate, was arrested by the deceased Kipkoger, who was a watchman employed by the estate, on suspicion of having stolen some sugar from the estate factory. Olual was arrested with a basket in his possession containing some sugar suspected of being stolen. Kipkoger released Olual that night because he had nowhere to lock him up, but he kept the basket and the sugar as evidence. The next morning Kipkoger re-arrested Olual and was taking him to the estate Manager at the factory. Kipkoger was carrying the basket. As they passed over a bridge over a stream Olual threw the basket into the river. Kipkoger placed on the ground a spear which he had been carrying, also his cap and shoes, and went into the water to recover the basket. Olual struck him on the head with a club as he came out of the water with the basket, then he picked up the spear and Kipkoger tried to get it away from him unsuccessfully. The spear was broken in the struggle and Olual retained possession of it. Kipkoger turned and ran towards some huts which were near and Olual run after him and stabbed him in the right side near the loin.

Kipkoger was taken by train to Elumu that day and died as a result of the spear wound in hospital.

The defence was that the stabbing was done after provocation on the part of Kipkoger; in that Kipkoger had arrested Olual without cause, had handled him roughly in taking him to the office and had attacked him first. It was argued for the defence that <sup>it was</sup> a case of manslaughter and not of murder.

I found that this defence was not established.

Kipkoger was legally entitled to arrest Olual, and he did not cause provocation to Olual. Olual I found was the aggressor and stabbed Kipkoger without provocation.

I have no recommendation to make in this case.

I have the honour to be,  
Your Excellency's most obedient  
servant,

*C. Stone*

ACTING JUDGE,

H.M. SUPREME COURT OF KENYA.

His Excellency the Governor,  
through The Honourable,  
The Colonial Secretary,  
Nairobi.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 51 OF 1935

at the Sittings holden at Kisumu on the 16th day of March 1935  
Original Criminal Case No. 512 of 1935 of the Resident  
Magistrate's Court at Kisumu.

REX..... Prosecutor

versus

OLUAL s/o KONGO..... Accused.

J U D G M E N T : -

The accused is a Jaluo who is charged for the murder of the deceased, a Lumbwa, Kipkoger arap Tables.

On 20th March 1935 the deceased, who was an estate askari employed on the Muhoroni Sugar Estate, was severely wounded. He was seen at the office of the estate at about 8 a.m. with a severe stab wound in the right loin. He was sent to Kisumu Hospital by train and examined by Dr. Carrothers who found that he was suffering from the wound in the loin and a wound on the head. He died on 22nd March (of peritonitis), the result of the stab wound.

The accused was arrested the same day, when brought up for trial on 23rd May 1935 he was found to be insane and incapable of pleading and was detained. He has recently been found to be of sound mind and fit to plead and has been placed on trial.

At the preliminary inquiry the accused admitted killing the deceased but stated that he had received provocation. In his statement to this Court he stated that he and deceased had a fight, the deceased having arrested him without cause, handled him roughly and attacked him first and that he did not know that deceased had the wound in his back, at all.

It is I think clear that the accused killed the deceased by spearing him. The only point at issue is whether it is a case of murder or of manslaughter,

as has been contended for the defence.

15

It is I think established in evidence, particularly by the accused's own statement, and that of Kipsol Arap Mungim that on the night of the 19th March the deceased, who was employed as a farm askari or watchman, arrested the accused on suspicion of having stolen some sugar from the factory. He caught him with some sugar in a basket and placed him under arrest. The hut where he had intended to lock him up had no lock to the door and he released him intending to rearrest him the next day, and deceased kept the basket of sugar as evidence. The next morning he saw the accused at work and proceeded to take him to the office of the estate where Mr. Campbell the Manager was. To get there they walked along a trolley-line and over a bridge. As they passed over the bridge the accused threw the basket of sugar into the river below. The deceased had been carrying a spear and the accused had a club or stick

It would appear from the dying statement of the deceased, coupled with the evidence of several natives who say what occurred from a short distance away, namely Obonyo, Janga, & Githogo, that the deceased had placed his cap, shoes and spear on the ground and had entered the river to recover the basket. When he emerged from the water the accused who was standing on the bridge, hit him on the head with his club; the accused then somehow gained possession of the spear; the deceased would have appeared to have tried to prevent him and there was some kind of a struggle; the accused received a small cut on his chest which was in all probability caused by the spear in the course of the struggle; the accused having gained possession of the spear, the deceased ran towards the huts of some Lumbwa which were near by; the accused ran after him and speared him in the small of the back causing the wound from which he died.

The deceased's own story, taken shortly before his death, differs slightly from the story told by the eye-

witness Obonyo. The deceased said that as he came out of the water the accused hit him on the head with the club; this knocked him into the water and as he came out a second time the accused was waiting for him and speared him. Obonyo, Denga & Othogo are definite in their evidence that the spear wound was inflicted when deceased was being chased by the accused, as deceased was running towards the huts. Moreover there is evidence that deceased had a minor wound on his chest, and the spear appears to have broken in a struggle. I think therefore that the deceased's story does not explain the facts quite as they occurred. I think it is established as stated by Obonyo that having hit the deceased on the head and dazed him, the accused seized the spear from deceased and that there was a struggle for it; and that it was broken in the struggle; that deceased who was probably dazed, was worsted in the struggle, and that accused obtained possession of the spear, chased deceased, and stabbed him.

Obonyo appeared to give his evidence sensibly and reliably. He Denga and Othogo are all of the same tribe as the accused and of a different tribe to the deceased and are therefore the less likely to be purposely blackening the case against the accused. I am therefore all the more ready to accept their evidence.

It appears moreover that the accused having been legitimately arrested by the deceased on suspicion of having committed theft, first assaulted the deceased with the club, then grabbed the spear and stabbed deceased; and his statement that he had been arrested without reason, roughly handled by the deceased and assaulted in the first instance by the latter cannot be accepted. His story of provocation therefore falls to ground and he is shown to have been the aggressor.

He is therefore guilty of murder and I convict him.

197

Two of the assessors expressed no verdict and the third considered that the wound was caused accidentally. As I have explained I cannot accept this view, indeed it is not suggested by the accused himself.

I call upon the accused to state anything that he wishes to as <sup>to</sup> why sentence should not be passed upon him according to law.

The accused: "I have nothing to say".

I sentence the accused to be hanged by the neck until he be dead.

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

C. A. G. Lane

21. 5. 56.

I certify this is a true copy  
of the original.

  
REGISTRAR,  
SUPREME COURT OF KENYA.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA  
Sessions holden at Kampala. 108  
Criminal Appeal No. 52 of 1936.

(From Criminal Case No. 51 of 1935 of H.M. Supreme  
Court of Kenya at Kisumu)

Olual s/o Kongo ..... Appellant;  
(Original Accused)

versus

Hex ..... Respondent.  
(Original Prosecutor)

JUDGMENT:-

In this case the accused had been found incapable of making his defence by reason of unsoundness of mind in May 1935. In March 1936 the trial was resumed, there having been produced a medical certificate receivable in evidence under Section 161 Criminal Procedure Code that the accused was of sound mind and capable of making his defence. Thereupon the accused was charged and a plea of not guilty entered on his saying "I killed him, but he attacked me first". Next the learned trial Judge allowed the trial to proceed recording that "Accused is before the Court under Section 161 C.P.C., it having been ordered that he be tried as he is now of sound mind". Section 160 makes it clear that the responsibility for deciding that an accused person whose trial is resumed as in this case is once more of sound mind and capable of making his defence is that of the trial Judge. The production of the certificate referred to is not conclusive of sanity; it is but material on which the Judge can act in arriving at his decision. In the present case there should, as section 160 indicates, have been an affirmative finding by the Judge on the question. Considering, however, the reasons, the answer to the charge was by the accused.

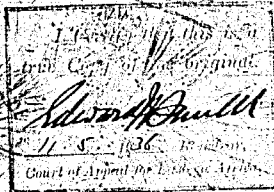
to the medical certificate we are of the opinion that  
the accused must be presumed to have been capable of <sup>199</sup>  
making his defence and that the learned Judge so thought.  
On the facts of the case, the evidence supports the  
conviction and the appeal is dismissed. This case is  
one in which no doubt the mental history of the accused  
will receive consideration by His Excellency the Governor  
in Council. He said in his memorandum of appeal that  
he was <sup>an</sup> inmate of Mathari Mental Hospital as late as  
1931.

Sd. Joseph Sheridan.

" B.S. Abrahams.

" F.C. Gamble.

5th May, 1936.



58007/36

C. O.

Mr. [unclear] 22/7/36  
Mr. [unclear] (to [unclear]) 22/7/36  
Mr. [unclear]

RECEIVED  
25 JUL  
1936

Sir C. Parkinson.  
Sir G. Tomlinson.  
Sir C. Bottomley.  
Sir J. Shuckburgh.  
Permt. U.S. of S.  
Parly. U.S. of S.  
Secretary of State.

pp. 25/7/36

30 July 1936

Sir

I have etc to acknowledge the receipt of your despatch (5) No 285 of the 3rd of June regarding Supreme Court Criminal Case No 6 of 1936 - Rex versus [unclear] WA [unclear]

2. My attention has been drawn to the Judge's observations with regard to the difference in the law of Kenya and English Law in cases involving a charge of murder in the conviction I desire to ~~draw attention to~~ my predecessor's Circular despatch of the 2nd of December last

I have etc

(Signed) W. ORMSBY GORE

DRAFT.

Kenya  
No 572  
Sir

These observations serve to emphasize the importance of an early amendment of the law on the lines indicated in the comm. ending with Mr. J. H. Thomas's Rep. No 333 of 1934

FURTHER ACTION.

As to the terms of the judgment of the Appellate Court is applied.

35087

701

5



KENYA

No. 285

GOVERNMENT HOUSE  
NAIROBI  
KENYA

RECEIVED  
22 JUN 1936  
O. O. REGY

June, 1936.

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No.6 of 1936 - Rex versus Ndune wa Mruu.

2. The accused was sentenced to death on the 18th February, 1936. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 22nd April, 1936. I enclose a copy of the Judgment.

3. The case was reviewed in Executive Council on the 15th May, 1936, when His Excellency the Governor concurred in the advice of the Executive Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for life.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Ad. Wood*

GOVERNOR'S DEPUTY.

THE RT. HON. W. ORLESBY-GORE, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.1.

Answered (6)

762  
IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA  
At the Session held at Kampala.

Criminal Appeal No.40 of 1936.  
(Original Criminal Case No.6 of 1936 of H.M. Supreme Court  
of Kenya.)

Ndume wa Mruu

Appellant  
(Original Accused)

VERSUS

Rox

Respondent  
(Original Prosecutor)

J U D G M E N T.

The accused killed his wife - this raising in law a  
presumption of murder. The presumption was not rebutted.  
The appeal is dismissed.

22/4/36.

Sgd. Joseph Sheridan.

" B.S. Abrahams.  
" Fred. C. Gamble.  
" ~~XXXXXXXXXX~~

*Joseph Sheridan*  
4.5.36

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

Criminal Case No. 6 of 1936.

Rex .....Prosecutor.

versus

Héne wa Mruu .....Accused.

-----:00:-----

Resumed.

Appearances as before - Accused present.

JUDGMENT:-

Accused stands charged with the murder of Mwenda wa Barisa his wife.

The offence is alleged to have been committed on or about the 23rd November of last year.

The case for the Crown is that the accused returning to his hut in the afternoon of that day attacked his wife and stabbed her two or three times from the effect of which stabbing she died. This story is borne out by two eye-witnesses and corroborated by the accused's own statement which statement also provides a motive.

Both the Crown witnesses impressed me as witnesses of truth and I accept their evidence. No evidence was given and no witnesses were called by the accused but I have carefully considered as to whether there is anything before the Court to justify some verdict other than that of guilty of murder. I have been unable so to do. I therefore find the accused guilty of murder contrary to Section 186 of the Penal Code.

ALLOUTRES:-

My brother-in-law used to come every day to take my wife away - to take her to Mombasa. I followed her and took her back home but he would come and take her again. I thought there was no one to prepare food except her. I wanted to keep her in my house. Then my

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

Criminal Case No.6 of 1936.

Rex .....Prosecutor.

versus

Hanus wa Mruu .....Accused.

-----:000:-----

Resumed.

Appearances as before - Accused present.

JUDGMENT:-

Accused stands charged with the murder of Mwanda wa Barisa his wife.

The offence is alleged to have been committed on or about the 23rd November of last year.

The case for the Crown is that the accused returning to his hut in the afternoon of that day attacked his wife and stabbed her two or three times from the effect of which stabbing she died. This story is borne out by two eye-witnesses and corroborated by the accused's own statement which statement also provides a motive.

Both the Crown witnesses impressed me as witnesses of truth and I accept their evidence. No evidence was given and no witnesses were called by the accused but I have carefully considered as to whether there is anything before the Court to justify some verdict other than that of guilty of murder. I have been unable to do. I therefore find the accused guilty of murder contrary to Section 186 of the Penal Code.

ALLOUTED:-

My brother-in-law used to come every day to take my wife away - to take her to Mombasa. I followed her and took her back home but he would come and take her again. I thought there was no one to prepare food except her. I wanted to keep her in my house. Then my

brother-in-law came again and said he must take her to Mombasa on account of Ramadan. I told him she could not go. He said he must take her. He abused me. He assaulted me. My knee was cut. I wanted to wrestle with him and his uncle came. We wrestled and I fell and my brother-in-law hit me over the left eye with a light piece of wood. I chased him. I was bleeding. I told him it was better for me to go and kill my wife as he was always taking her away. Then I went to my house. My wife was grinding maize I caught her by the throat with my right hand - I wanted to remove her clothes - she attacked me and I stabbed her with the knife I had in my hand. I just put the knife and it happened to stab her in the stomach when she turned round. There was no one else in the house. When I saw her entrails had come out I ran out of the house. I saw my son in the shamba. I told him I had killed his mother. I told him to call his uncle and I went to Kilifi to report the matter. I went to Chief Paul - he was away and I went to Mweri - There I saw Paul and told him what had happened. I said I wanted to go to the District Commissioner to report. I went before the District Commissioner and handed over the knife. I was handcuffed. That's all.

SENTENCE:-

Kuone wa Mruu the sentence of the Court is that you be hanged by the neck until you are dead. This sentence is subject to confirmation by the Governor in Council.

You have thirty days from to-day in which to appeal to the Court of Appeal for Eastern Africa.

Sd. J. Lucie-Smith.

18. 8. 56.

I Certify that this is a true copy of the Original.

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

Criminal Case No. 6 of 1936.

Rex .....Prosecutor.

versus

Mduns wa Mruu .....Accused.

SUMMING-UP:-

Accused is charged with the offence of Murder.

Murder is the unlawful killing of any person with malice aforethought.

Malice aforethought shall be deemed to be established by evidence proving an intention to cause the death or to do grievous harm to any person.

As regards the "intention to cause death etc." you will appreciate that intention being a state of mind it can seldom or never be proved by direct evidence the law therefore lays it down that a person shall be presumed to intend the natural and probable consequences of his act. In other words if a person uses lethal weapons such as a gun, a sword or a knife then the law will presume that his intention in so using such a weapon was to cause death or to do grievous harm that being the natural and probable result of the use of such types of weapons.

Under our law all persons charged with any offence are presumed to be innocent until they are proved by the Crown's evidence to be guilty. In other words there is a burden on the Crown to prove the alleged offender guilty and no burden on the accused until after a certain point is reached to prove himself innocent.

We must however remember that our law as it stands to-day is not on all fours with the English law as regards murder in so far as our law definitely lays it down that any

person who is shown to have caused the death of another is presumed to have wilfully murdered him unless the circumstances are such as to raise a contrary presumption and that the burden of proving circumstances of excuse, justification or extenuation is upon the person who is shown to have caused the death of another (Section 190) In other words - speaking strictly - once the Crown have satisfied you beyond all reasonable doubts that the accused killed the deceased then unless it appears from the evidence of the Crown itself - the burden shifts to the accused to satisfy you that such killing was justifiable or excusable.

There is no duty on the Crown to prove motive though it is of course of great assistance if some reasonable motive can be assigned to the act. In this case you may perhaps be satisfied that the accused's own statement to the Magistrate discloses the true motive - that is jealousy and anger against deceased's brother.

The accused has given no evidence and called no witnesses in his defence - in fact it would appear that what he relies on is the alleged failure of the Crown to prove his guilt. Although the defence of manslaughter has not been specifically raised yet it is my duty to point out to you that if the accused has satisfied you that he was so goaded by his wife's behaviour that acting under some violent and sudden provocation he assaulted her and so caused her death then that might be manslaughter. But though I must put that side of the case to you you must ask yourselves is there the slightest evidence of any such sudden and violent provocation? Even on his own story any quarrel he had with his brother-in-law and he returned home after such quarrel to find his wife peacefully grinding maize. Anything he did after sudden

person who is shown to have caused the death of another is presumed to have wilfully murdered him unless the circumstances are such as to raise a contrary presumption and that the burden of proving circumstances of excuse, justification or extenuation is upon the person who is shown to have caused the death of another (Section 190). In other words - speaking strictly - once the Crown have satisfied you beyond all reasonable doubts that the accused killed the deceased then unless it appears from the evidence of the Crown itself - the burden shifts to the accused to satisfy you that such killing was justifiable or excusable.

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- 2. Are you satisfied beyond all reasonable doubt that the death if accepted of Mwenda wa Barisa was caused by the knife wounds described by Mtoa and Kuehacha?
- 3. Are you satisfied beyond all reasonable doubt that those wounds were inflicted by the accused Ngunu wa Mruu?
- 4. Do you think that there is anything in the evidence to satisfy you that there was any excuse or extenuating circumstances which might to no matter how small a degree justify or excuse the accused in acting as he did? If so what.

If in the course of your deliberations you have any genuine doubts you will always resolve such doubts in favour of the accused.

I do not think there is anything I can usefully add and shall be glad to hear your remarks on the case always following the evidence you have heard in this Court.

1ST ASSESSOR:-

Whatever opinion you have is the right one I have nothing more to say.

2ND ASSESSOR:-

I depend upon your advice.

3RD ASSESSOR:-

We have no advice - the advice is yours.

Judgment reserved.

Adjourned to 10 A.M. 18.2.36. Accused remanded in custody.

Sd. J. Lucie-Smith.

17. 2. 36.

I Certify that this is a true copy of the Original.

Date 20. 2. 1936. J. M. D. Registrar, Supreme Court, Mombasa.

IN REPLY PLEASE QUOTE

NO. 9 / 86

AND DATE

LAW COURTS

MOBASA

P.O. Box No. 140

Date 17th February, 1986

Your Excellency,

Supreme Court Criminal Case No.6 of 1986.

Rex versus Nauno wa Mruu.

I have the honour to report that at a Sessions of the Supreme Court holden at Mombasa on the 17th February one Nauno Mruu stood before the Court charged with the offence of murder.

I presided over the Court and three Assessors were present.

Accused was defended by Mr. A. C. Ross an Advocate of this Court.

Accused pleaded not guilty to the charge.

The case for the Crown was that accused on or about 23rd November 1985 returned to his hut about 4 p.m. and there found his wife Kwenda wa Barisa grinding maize. Accused immediately attacked her with a knife inflicting two or three wounds on her body from which wounds she shortly afterwards died.

The son of the accused and the deceased one Mtoa was an eyewitness to this attack and his story was corroborated by a neighbour one Kuchacha who hearing the alarm raised by Mtoa proceeded to the accused's hut.

The statement of the accused in the lower Court was put in in evidence. In that statement he admitted stabbing his wife and revealed a motive of jealousy.

In my Court the accused did not give evidence or make a statement in his defence nor did he call any witnesses. I summed up to the Assessors and tried to get an opinion from them. I would particularly call your Excellency's

attention/-

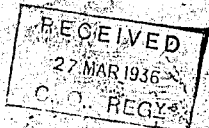


KENYA.

No. 117



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.



MARCH, 1936.

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 131 of 1935 - Rex versus Mwango s/o Manna.

2. The accused was sentenced to death on the 15th November, 1935. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 4th February, 1936. I enclose a copy of the Judgment.

3. The case was reviewed in Executive Council on the 21st February, 1936, when I concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for ten years.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Brigadier General,  
GOVERNOR.

THE RIGHT HONOURABLE  
J. H. THOMAS, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1.

Date 21st November, 192 1935

Your Excellency,

Supreme Court Criminal Case No. 131 of 1935.Rex versus Mwango s/o Manaa.

I have the honour to inform you that at a Sittings of the Supreme Court holden at Mombasa on the 14th and 15th November 1935 one Mwango s/o Manaa appeared before me charged with the offence of murder. The accused who pleaded Not Guilty was defended by Mr. Doshi an Advocate of this Court.

The Court sat with three Assessors. The evidence for the Crown was that on the 10th September one Musili Kitutu (the deceased) had remonstrated with accused and some others for kicking a dust bin. He had then been attacked by these people, and was thrown on the ground and held there by the others while accused taking the knife, which deceased was carrying in a sheath, stabbed deceased in the head. Deceased subsequently died from this injury.

This story was borne out by the statement of the deceased to the Police and by the identification of the accused by the deceased at the Native Civil Hospital. It was to some extent corroborated by the evidence of one Musili wa Malonza who saw part of the affray. During the trial there was some confusion as regards the name of the accused and the name given by the deceased to the Police, but to my mind this was completely cleared up by the definite identification of the accused by the deceased.

The defence was an alibi but the accused did not

give evidence on oath nor did he call any witnesses in support of his statement although it would appear that such witnesses should, if his story were true, be easily obtainable. I summed up to the Assessors whose opinions as Your Excellency will note were of no assistance whatever.

I was satisfied that the case for the Crown had been proved and found the accused guilty of the offence of Murder as laid in the Information. I passed sentence of death according to law and informed the accused that such sentence was subject to confirmation by Your Excellency. I also informed him that he had thirty days in which to appeal to The Court of Appeal for Eastern Africa.

I enclose copies of my summing-up, the Assessors' remarks and my judgment.

I have no recommendation to make in this case.

I have the honour to be,  
Sir,  
Your Excellency's  
Most obedient humble servant,

*John Smith*

J U D G E,  
H.M.SUPREME COURT OF KENYA.

His Excellency The Governor,  
Colony and Protectorate of Kenya,  
N a i r o b i.

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

Criminal Case No. 131 of 1965.

R. O. X .....Prosecutor.

versus

Mwango s/o Manaa .....Accused.

-----:000:-----

ASSESSORS' REMARKS.

1st Assessor.

I don't accept the evidence as all this happened at night. There was no light.

2nd Assessor.

I find it is just all right and the Government can do what it likes. The Elders in the Government service can see to this matter.

3rd Assessor.

I find the evidence which has been given to be just. The accused being in this case could have spoken to others who were outside. If he was in the fight he would have called his companions who were with him. In my opinion the accused was not there. No one would commit an offence with others and not mention his companions.

JUDGMENT:-

The Accused is charged with murder of one Musili Kitutu by stabbing him in the head on the night of 10th September this year. The case for the Crown is based on statements made by the deceased and on his identification of the accused before his death. These statements are corroborated to a certain extent by Musili Malonta who impressed me as a witness of truth.

The defence put forward is an alibi. As I pointed out to the Assessors this particular alibi would appear to be easily proved or at any rate corroborated to such an extent as to raise a reasonable doubt in the mind of the

Court. The accused has made no attempt to establish his alibi by witnesses, or otherwise. To my mind on the evidence the question of manslaughter cannot be seriously considered. I find the accused guilty of murder contrary to Section 186 of The Penal Code.

ALLOUTUS.

I did not kill but this is a Government Shauri.

SENTENCE.

The sentence of the Court is that you be hanged by the neck until you are dead.

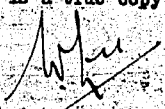
The accused is informed that this sentence is subject to confirmation by the Governor in Council and that he has 30 days in which to appeal to the Court of Appeal for Eastern Africa should he so desire.

J. Lucie-Smith.

16.XI.35.

DRJ.

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



Ag. District Registrar,  
H.M. Supreme Court of Kenya.

22.11.35.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA,  
SESSIONS HELD AT NAIROBI.

CRIMINAL APPEAL NO. 131 OF 1935.

(From Criminal Case No. 131 of 1935 of H.M. Supreme Court  
of Kenya at Mombasa).

H.M.

Respondent.  
(Original Prosecutor).

v e r s u s

MWANGO s/o MANAA

Appellant.  
(Original Accused).

**J U D G M E N T :-**

In this case, the learned trial Judge said in the course of his judgment:-

"The case for the Crown is based on statements made by the deceased and on his identification of the accused before his death. These statements are corroborated to a certain extent by Musili Malonga who impressed me as a witness of truth", and he then went on to point out that the defence put forward was an alibi which was not supported, as it possibly might have been, by any other witness.

In our view, there was undoubtedly sufficient evidence before the Court below on which to convict and we see no ground for interference. There are, however, two points arising out of this case which call for criticism.

In the first place, at the so-called identification parade which took place at the hospital, it seems that only three men (including the accused) were actually paraded. It is true that, in addition, two askaris in plain clothes were in the ward at the same time, but it is not at all clear from the record that they were actually paraded with the other three men. Further, according to the evidence of one of the plain clothes askaris already referred to, the officer in charge of the parade asked deceased "Amongst these three men who assaulted you?"

-2-

17

This method of identification was very unsatisfactory, to say the least of it, and we think it well, in this connection, to set out in extenso Kenya Police Order No. 15/26 dealing with identification parades and which received the approval of the then Chief Justice prior to issue. It reads as follows:-

INSTRUCTION FOR IDENTIFICATION PARADES -

1. That the accused person is always informed that he may have a solicitor or friend present when the parade takes place.
2. That the officer in charge of the case, although he may be present, does not carry out the identification.
3. That the witnesses do not see the accused before the parade.
4. That the accused is placed among at least eight persons, as far as possible of similar age, height, general appearance and class of life as himself or herself.
5. That the accused is allowed to take any position he chooses, and that he is allowed to change his position after each identifying witness has left, if he so desires.
6. Care to be exercised that the witnesses are not allowed to communicate with each other after they have been to the parade.
7. Exclude every person who has no business there.
8. Make a careful note after each witness leaves the parade, recording whether the witness identifies or other circumstance.
9. If the witness desires to see the accused walk, hear him speak, see him with his hat on or off, see that this is done. As a precautionary measure it is suggested the whole parade be asked to do this.
10. See that the witness touches the person he identifies.
11. At the termination of the parade or during the parade ask the accused if he is satisfied that the parade is being conducted in a fair manner and make a note of his reply.
12. In introducing the witness tell him that he will see a group of people who may or may not contain the suspected person. Don't say, "pick out somebody", or influence him in any way whatever.
13. Act with scrupulous fairness, otherwise the value of the identification as evidence will depreciate considerably.

The other point in the case to which we wish to refer is the putting in of the deposition of Juma Matambo at the

the Trial. In this connection, the record reads: "Juma Katambo called - no appearance - summons returned into Court unserved. It is proposed to put in the deposition under Sec. 287 (a) (ii) O.P.C. .... Deposition of Juma Katambo put in evidence and read".

We are of opinion that, before a deposition can be put in evidence at a Trial, on the ground that a witness cannot be found, it is essential that evidence should be given by the person or persons concerned that diligent and adequate search has been made for the missing witness. When the Trial Judge is satisfied that such search has been made, then and then only should he allow the deposition to be read. We consider that the deposition in question was wrongly admitted in this case, there being no proper foundation for its reception; but, at the same time, we are satisfied from a perusal of the record that its misreception had no effect on the result of the case. The appeal is dismissed.

4. 2. 36.

Joseph Sheridan.

S. S. Abrahams.

R. E. Hall.

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



Registrar,  
H.M. Court of Appeal for E.A.  
5. 2. 36.

KENYA

NO. 116



GOVERNMENT HOUSE

NAIROBI

KENYA

RECEIVED  
27 MAR 1936  
C. O. REGY.

MARCH, 1936.

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 143 of 1935 - Rex versus Mathatwa wa Kiriungi.

2. The accused was sentenced to death on the 8th January, 1936. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 8th February, 1936. I enclose a copy of the Judgment.

5. The case was reviewed in Executive Council on the 21st February, 1936, when I concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for ten years.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*A. B. ...*  
Brigadier General,

G O V E R N O R .

THE RIGHT HONOURABLE

J. H. THOMAS, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W. 1.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI

Sittings held at Nyeri on the  
7th day of January 1986

CRIMINAL CASE NO. 145 of 1985

(Original Criminal Case No. 801/85  
of the 2nd Class Court at South  
Nyeri)

Rex

Prosecutor

versus

Mathatwa wa Keriungi

Accused.

R E P O R T

The accused killed his relative by fracturing his skull with a blow of a simi. There was no motive, so far as appeared at the trial, for his act, except that drink had made him aggressive. He would appear to have behaved in an annoying fashion towards the deceased, Mutua, plucking grass and throwing it on his face which the latter resented, telling the accused "Go to Masai and kill there, as there is no body to be killed here". Thereupon the accused, no doubt looking for trouble in his drunken state struck the blow which caused death. The accused is a tall strongly built native of about 30 years of age. The case is one in which owing to the absence of premeditation and the fact that the strong sugar cane beer taken by the accused played a part in the tragedy Your Excellency may be disposed to commute the sentence. If so, a sentence of 7 years would in my opinion meet the crime.

*[Signature]*  
CHIEF JUSTICE,  
SUPREME COURT OF KENYA  
22nd Jan: 1986

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

CRIMINAL CASE No.143 of 1935

Rex

Prosecutor

versus

Mathatwa wa Kerlungi

accused.

JUDGMENT.

It has been proved and admitted by the accused himself that the deceased was struck on the head with a Simi the result of which was to cause death. The only inference I am able to draw from the evidence is that the accused intended or must be deemed to have intended grievous harm at least. The reason for his act would appear to have been due to the drink which he had taken that day which made him aggressive. I am unable to find anything in the case to dislodge the presumption of murder that flows from the act of killing. The story of his having been attacked or threatened with a panga by the deceased I reject. I find the accused guilty of murder and call upon him to show cause why he should not be sentenced to death. Accused says:→ "I am sorry to have killed my cousin and I have been sorry while I have been in custody." I sentence the accused to be hanged by the neck until he is dead, notify him that he has 30 days within which to appeal. May the Lord have mercy on your soul.

Joseph Sheridan.

8-1-38

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

SESSIONS HELD AT NAIROBI.

CRIMINAL APPEAL NO. 23 OF 1936.

(From Criminal Case No. 143 of 1935 of H.M. Supreme Court  
of Kenya at Nyeri).

REX

Respondent.  
(Original Prosecutor).

versus

MATHATWA s/o KERIONGI

Appellant.  
(Original Accused).

J U D G M E N T :-

The contention of the appellant that deceased attacked him with a panga was considered and rejected by the learned Chief Justice. We see no reason to differ from him. The appellant appears to have been drinking but there seems to be no reason to believe that he was not perfectly capable of forming an intent to kill or inflict a dangerous wound. The liquor in all probability made him quarrelsome, but the evidence discloses nothing more than that.

We dismiss the appeal.

8. 2. 36.

S. S. Abrahams.

W. K. Horne.

A. H. Webb.

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

  
Registrar.

H.M. Court of Appeal for E.A.

8. 2. 36.

KENYA

No. 115



GOVERNMENT HOUSE  
NAIROBI

KENYA

RECEIVED  
27 MAR 1936  
C. O. REGY

11 MARCH, 1936.

Sir,

I have the honour to transmit a copy of the Judge's Report and a copy of the Judgment in the Supreme Court Criminal Case No. 138 of 1935 - Rex versus Lokaigut wero Churale.

2. The accused was sentenced to death on the 19th November, 1935. He appealed to His Majesty's Court of Appeal for Eastern Africa, and the appeal was dismissed on the 22nd January, 1936. I enclose a copy of the Judgment.

3. The case was reviewed in Executive Council on the 21st February, 1936, when I concurred in the advice of the Council that the sentence of death should be commuted. The punishment subsequently imposed was imprisonment with hard labour for seven years.

I have the honour to be,

Sir,

Your most obedient, humble servant,

Brigadier General,

GOVERNOR.

THE RIGHT HONOURABLE  
J. H. THOMAS, P.O. M.P.  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1.

IN REPLY, PLEASE QUOTE NUMBER  
OF CASE Cr. No. 64/35

LAW COURTS  
NAIROBI  
P. O. Box No. 41

Date 2nd January 1936

Your Excellency,

Supreme Court Cr. Case No. 138/35  
Rax versus Lakaigut wero Gburala.

I have the honour to report that the above-named was tried by me at Nakuru on the 18th November and was convicted of murder and sentenced to death. He was defended by Mr. Gautama.

The facts of the case were not in dispute. The accused and two others came one night to a hut occupied by Sangeli and Sangole (the deceased). They set upon Sangole and beat him to such an extent that he died on the following day.

Before the Committing Magistrate the accused made a long statement admitting the fact of the killing and giving as his reason the facts that two of his brothers and the son of one of them had been bewitched by the accused and had died. He stated that of two other brothers, his companions one took no part in the killing and the other is since dead. The accused is about 17 or 18 years of age.

One of the assessors stated that their custom was to kill a witch-doctor. All the people concerned in the case are Suks and of an obviously primitive type.

The accused had to be convicted of murder, but the case is submitted for such action by Your Excellency in Council as the circumstances seem to justify.

I have the honour to be,  
Your Excellency's most  
obedient servant,

*(Signature)*  
JUDGE  
Supreme Court of Kenya.

His Excellency the Governor,  
thru  
The Honourable the Colonial Secretary,  
Nairobi.

LC.

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

Sittings held at Nakuru  
on the 18th November 1955.

Original Case No. 150 of 1955.  
(Original Criminal Case No. 215 of 1955 of the Second  
Class Magistrate's Court at Kabaraet).

Rex

Prosecutor

versus

Loknigut wero Churale

Accused.

J U D G M E N T:-

I find the accused guilty of murder. The evidence is clear and the accused admitted his act.

A.H.Webb.

19.11.55.

Frederick Louis Henderson:- Sworn:-

M.O. Nakuru. Examined accused this morning as to age. I think he is 17-18. General appearance, formation and size. It is difficult to be definite, but that is my opinion.

X.

I should not say he is under 16- it is possible. Can't be more definite.

A.H.Webb.

SENTENCES:-

Having regard to Dr. Henderson's evidence Section 25 of the Penal Code does not apply. The accused is accordingly sentenced to death.

A.H.Webb.

Accused is informed of his right of appeal.

A.H.Webb.

19.11.1955.

I certify this is a true copy  
of the original.

*John M. Bell*

Registrar,

Supreme Court of Kenya.

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

SESSIONS HELD AT NAIROBI.

CRIMINAL APPEAL NO. 139 OF 1935.

(From Criminal Case No. 138 of 1935 of H.M. Supreme Court of Kenya at Nakuru).

HBX

Respondent  
(Original Prosecutor)

v e r s u s

LOKOIKUT wero CHURIALE

Appellant.  
(Original Accused).

J U D G M E N T:-

The applicant admits he killed a person named Sangole under a belief that he was a wizard who was responsible for other deaths and because he with others feared that Sangole would kill them unless they killed him first. This is doubtless a matter proper for consideration by the Governor in Council but does not avail in reducing the crime from murder to manslaughter. The application is refused.

22. 1. 36.

Joseph Sheridan.

S.S. Abrahams.

R.E. Hall.

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

  
Registrar  
H.M. Court of Appeal for E.A.

24. 1. 36.

KENYA.

No. 121



GOVERNMENT HOUSE  
NAIROBI  
KENYA

RECEIVED  
27 MAR 1936  
C. O. REGY

MARCH, 1936

Sir,

6 on 1935 file I have the honour to refer to my despatch No. 53 of the 22nd January, 1935, and to forward a return of death sentences and executions in this Colony and Protectorate during the year 1935, together with the relative medical certificates.

2. This return shows that appeals were lodged in each case and that in cases Nos. 162/34, 163/34, 168/34, 175/34, 14/35, 80/35 and 92/35 the sentences of death were commuted. In case No. 165/34 the conviction was quashed.

3. Of the cases shown as pending at the end of 1935, the appeals have since been allowed and the accused acquitted in cases Nos. 100/35 and 159/35; while the sentences of death have been commuted in cases Nos. 181/35 and 158/35.

I have the honour to be,

Sir,

Your most obedient,  
humble servant,

Brigadier General,  
GOVERNOR.

THE RIGHT HONOURABLE  
J. H. THOMAS, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET,  
LONDON, S.W. 1.

RETURN OF CAPITAL SENTENCES AND EXECUTION FOR THE YEAR 1935.

Serial No. of cases.	Name of Accused.	Nationality and Sex.	Date of Death Sentence.	If appeal filed result of appeal of the Ct. of Appeal for E. A.	Date of confirmation by H. E. The Governor.	Manner and date of execution.	Remarks.
128/34	1. Kibet arap Boregi 2. Kipruto " Komullong 3. Kiplangat" Komullong 4. Kiplangat" Chepkanyi 5. Kiproach " Mngerichi 6. Kiproco " Seni 7. Kiplangat" Cherio.	Native Male	22.9.34	Dismissed	4.12.34. 17.12.34	Hanged 12.1.35.	228
162/34	Keruge Ole Lamelaji	Native Male	27.11.34	Dismissed	15.2.35.	H. E. The Governor commuted the sentence to one of imprisonment for life on 7.3.35.	
163/34	Wanjiru wa Murigt	Do Female	10.12.34	"	14.1.35	H. E. The Governor commuted the sentence to one of imprisonment for life on 5.2.35.	
165/34	Mutwiwa s/o Maingi	Native Male	13.12.34	Court of Appeal quashed the conviction on	15.2.35.	Accused ordered to be released.	
168/34	Oreiya s/o Dido	Native Male	23.11.34	Dismissed	14.1.35.	H. E. The Governor commuted the sentence to one of imprisonment for life on 7.3.35.	
173/34	M' Imagana wa M' Raria	Native Male	12.3.35	Dismissed	15.4.35.	H. E. The Governor commuted the sentence to one of 7 years H.L. on 21.5.35.	
14/35	Ibuto s/o Ndolo.	Native Male	5.2.35	Dismissed	15.4.35.	H. E. The Governor commuted the sentence to one of imprisonment for 7 years H.L. on 20.5.35.	
26/35	M' Riburu s/o Mwithiga	Native Male	13.3.35	Application for leave to appeal refused on	11.6.35	Hanged 1.6.35.	
27/35	Lisekhe s/o Rokosa alias Angcho	Native Male	27 15.5.35	Dismissed	15.7.35 9.8.35	Hanged 21.8.35.	

RETURN OF CAPITAL SENTENCES AND EXECUTION FOR THE YEAR 1955.

Serial No. of Cases.	Name of Accused.	Nationality and Sex.	Date of Death Sentence.	If appeal filed result of appeal of Ct. of Appeal for E. A.	Date of Confirmation by H.E. The Governor.	Manner and date of Execution.	Remarks.
45/55	Lolomara Laladagum	Native Male	15.5.55	Dismissed	15.7.55.9.8.55	Hanged	17.8.55.
80/55	Ngilu wa Makale	Native Male	6.8.55	"	22.10.55	H.E. The Governor commuted the sentence to 2 years imprisonment with H.L.	15.11.55.
92/55	Mevaura s/o Wanganga	" "	17.9.55	Dismissed	23.10.55	H.E. The Governor commuted the sentence to ten years imprisonment with H.L.	15.11.55.
100/55	1. Mohamed bin Ali 2. Mwara Madi bin Kheri.	" "	9.10.55 9.10.55	Pending			
151/55	Mwango s/o Mwanaa	" "	15.11.55	"			
188/55	Lokaigut wero Churale	" "	19.11.55	"			
144/55	Nguru s/o Ngachora	" "	18.11.55	"			
157/55	Onyango alias Achola	" "	5.12.55	"			
159/55	1. Muhori s/o Ouma 2. Wepukhuru s/o Mumaras	" "	2.12.55 2.12.55	"			
Special District Court N. E. D. (Male) Cr. C. 5/54 Conf. C. 881/54	Ia Bake Gubbra	" "	31.8.54	80.11.54	17.12.54	Hanged	12.1.55.

229



REGISTRAR,  
SUPREME COURT OF KENYA.

N.P. No. 19/8/2/36.

His Majesty's Prison  
NAIROBI.

12th January 1935.

230

DEATH CERTIFICATE

This is to certify that convict No. 1427/N Kibet Arap Boregi, died of fracture of cervical vertebrae and compression of the spinal cord consequent on judicial hanging on the 12th day of January 1935, at His Majesty's Prison, Nairobi.

W. Wilkinson  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true  
copy of the original.

  
REGISTRAR,  
SUPREME COURT OF KENYA.

COLONY AND PROTECTORATE OF KENYA

B.P. No. 19/3/55

KENYA PRISONS



REPORT OF EXECUTION

(Carried out at His Majesty's Prison NAIROBI.

Prison No. 1487/N.

Name and Registration No. Kibet Arap Boregi R/W "A" LBW. 1547289.

Nationality or Tribe Milmbwa.

Village Cheborge

District Kericho.

Supreme Court Case No. and Name of Judge 125 of 1934 Mr. Justice A.H. Webb,  
Judge, Supreme Court of Kenya.

Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1934.

Date and time of execution 12th January 1955 at 8.25 A.M.

Names of Officers present Montague Dards Esq. Senior Superintendent of  
Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W.  
Wilkinson, Medical Officer.

CERTIFIED TRUE COPY

Sd/- M. Dards

for COMMISSIONER OF PRISONS

Superintendent of Prisons

NOTE - In the case of natives the Chief Registrar of Natives and the District Commissioner of culprit's district should be informed.

H.P.No.19/1/2/38

HIS MAJESTY'S PRISON 232

NAIROBI.

12th JANUARY 1935.

DEATH CERTIFICATE

This is to certify that convict No.1426/N Kipruto  
Arap Komoilong, died of fracture of cervical vertebrae  
and compression of the spinal Cord consequent on judicial  
day of  
hanging on the 12th/January 1935, at His Majesty's Prison,  
Nairobi.

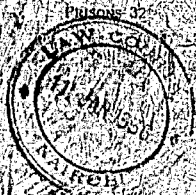
W.Wilkinson  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true  
copy of the original.

  
REGISTRAR  
SUPREME COURT OF KENYA.

N.P. No. 19/7/5/55

KENYA PRISONS



REPORT OF EXECUTION

Carried out at His Majesty's Prison NAIROBI.

Prison No. 1426/N.

Name and Registration No. Kipruto Arap Komollong LBW. 1547503.

Nationality or Tribe Mlumbwa.

Village Mombwo. District Kericho.

Supreme Court Case No. and Name of Judge 125 of 1954. Mr. Justice A.H. Webb,  
Judge, Supreme Court of Kenya.

Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1954.

Date and time of execution 12th January 1955 at 7.45 A.M.

Names of Officers present Montague Dards Esq. Senior Superintendent of  
Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W.  
Wilkinson. Medical Officer.

CERTIFIED TRUE COPY,

J. H. [Signature]

DEPUTY COMMISSIONER OF PRISONS.  
10.1.1955

M. Dards.

Senior Superintendent of Prisons

Note - In the case of males the Chief Registrar of Prisons and the District Commissioner of the District should be informed.

M.P.No.19/5/2/35

HIS MAJESTY'S PRISON  
NAIROBI  
12th JANUARY 1935. 734

DEATH CERTIFICATE

This is to certify that convict No.1425/N Kiplangat Arap Komoilong, died of fracture of cervical vertebrae and compression of the spinal cord consequent on judicial hanging on the 12th day January 1935 at His Majesty's Prison, Nairobi.

W.Wilkinson  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true copy  
of the original.

*Edward H. Stowell*  
REGISTRAR

SUPREME COURT OF KENYA.

CLO.

COLONY AND PROTECTORATE OF KENYA

F.P. No. 19/6/35

KENYA PRISONS



REPORT OF EXECUTION

Carried out at His Majesty's Prison NAIROBI.

Prison No. 1485/N.

Name and Registration No. Kiplangat Arap Kamoi long - LEW. 1345068.

Nationality or Tribe Mlumbwa.

Village Kapsimotwa District Kericho

Supreme Court Case No. and Name of Judge 123 of 1934 Mr. Justice A.H. Webb, Judge, Supreme Court of Kenya.

Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1934.

Date and time of execution 12th January 1935 at 6.44 A.M.

Names of Officers present Montague Dards Esq. Senior Superintendent of Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W. Wilkinson, Medical Officer.

CERTIFIED TRUE COPY

Sd/- M. Dards.

Senior Superintendent of Prisons

J. W. Danks  
for COMMISSIONER OF PRISONS  
10/1/36.

NOTE: In the case of natives the Chief Registrar of Natives and the District Commissioner of the District should be informed.

H.F.No.19/6/2/35

HIS MAJESTY'S PRISON

NAIROBI 136

12th JANUARY 1935.

DEATH CERTIFICATE

This is to certify that Convict No.1424/N Kiplangat Arap Chepkonyi, died of fracture of cervical vertebrae and compression of the spinal cord consequent on judicial hanging on the 12th day of January 1935 at His Majesty's Prison, Nairobi.

W.Wilkinson  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true  
copy of the original.

  
REGISTRAR  
SUPREME COURT OF KENYA.

OLC

COLONY AND PROTECTORATE OF KENYA

N.P. No. 19/5/55

KENYA PRISONS



REPORT OF EXECUTION

Carried out at His Majesty's Prison NAIROBI

Prison No. 4424/N

Name and Registration No. Kiplangat Arap Chepkonyi, NKU. N.4415522.

Nationality or Tribe Mlumbwa.

Village Tilyamsoni. District Kericho.

Supreme Court Case No. and Name of Judge 123 of 1954, Mr. Justice A.H. Webb,  
Judge, Supreme Court of Kenya.

Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1954.

Date and time of execution 12th January 1955 at 7:5 A.M.

Names of Officers present Montague Dards Esq, Senior Superintendent of  
Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W.  
Wilkinson Medical Officer.

CERTIFIED TRUE COPY,

*J. W. Landrock*  
Sd/- M. Dards.  
Senior Superintendent of Prisons  
for COMMISSIONER OF PRISONS.  
10.1.1956.

NOTE - In the case of natives the Chief Registrar of Natives and the District Commissioner of culprit's district should be informed.

ANK.

H.P.No.19/4/2/35

HIS MAJESTY'S PRISON  
NAIROBI

138

12th JANUARY 1935.

DEATH CERTIFICATE

This is to certify that Convict No.1423/H Kiprosch Arap Magerichi, died of fracture of cervical vertebrae and compression of the spinal cord consequent on judicial hanging on the 12th day of January 1935 at His Majesty's Prison, Nairobi.

W. Wilkinson  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true  
copy of the original.

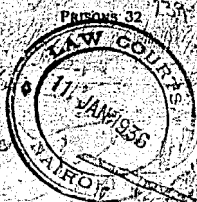


REGISTRAR  
SUPREME COURT OF KENYA.

GLO.

H.P. No. 19/4/3/55

KENYA PRISONS



**REPORT OF EXECUTION**

Carried out at His Majesty's Prison NAIROBI

Prison No. 1425/N.  
 Name and Registration No. Kiproach Arap Mugerichi LEW. 154649.  
 Nationality or Tribe klumbwa.  
 Village Kipsnoi. District Kericho.  
 Supreme Court Case No. and Name of Judge 128 of 1954. Mr. Justice A.H. Webb.  
**Judge, Supreme Court of Kenya.**  
 Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1954.

Date and time of execution 18th January 1955 at 7.25 A.M.

Names of Officers present Montague Dards Esq. Senior Superintendent of Prisons  
J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W. Wilkinson,  
Medical Officer.

**CERTIFIED TRUE COPY.**

J. H. Sandbank  
**FOR COMMISSIONER OF PRISONS.**  
 10.1.1955.

SA/- M. Dards.  
 Senior Superintendent of Prisons

NOTE:—In the case of natives the Chief Magistrate of Nairobi and the District Commissioner of culprit's district should be informed.

AMC.

H. P. No. 19/3/36

His Majesty's Prison,  
Nairobi.  
12th January, 1935. 140

DEATH CERTIFICATE

*NA*  
This is to certify that convict/1422/N Kiprono Arap Seni, died of fracture of cervical vertebrae and compression of the spinal cord consequent on judicial hanging on the 12th January 1935 at His Majesty's Prison, Nairobi.

W. Wilkinson  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true copy  
of the original.

*Edward G. Smith*  
REGISTRAR  
SUPREME COURT OF KENYA.

GLC.

COLONY AND PROTECTORATE OF KENYA

N.P. No. 19/3/35

KENYA PRISONS



## REPORT OF EXECUTION

Carried out at His Majesty's Prison, NAIROBI

Prison No. 1428/N

Name and Registration No. Kiprono Arap Seni LEW. 1547209

Nationality or Tribe Mlumbwa

Village Monga District Kericho

Supreme Court Case No. and Name of Judge 125 of 1934. Mr. Justice A.H. Webb,

Judge Supreme Court of Kenya

Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1934

Date and time of execution 12th January 1935 at 8.5 A.M.

Names of Officers present Montague Dards Esq. Senior Superintendent of  
Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W.  
Wilkinson

CERTIFIED TRUE COPY,

J. H. Landstrom

Sd/- Mr. Dards,

for COMMISSIONER OF PRISONS:  
10.1.1935.

Senior Superintendent of Prisons

N.P.No.19/2/2/35

HIS MAJESTY'S PRISON

NAIROBI. 242

12th JANUARY 1935

DEATH CERTIFICATE.

This is to certify that Convict No.1421/N Kiplangat  
Arap Cherio, died of fracture of cervical vertebrae and  
compression of the spinal cord consequent on judicial  
hanging on the 12th January 1935 at His Majesty's Prison,  
Nairobi.

W.Wilkinson  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true copy of  
the original.

*Shirley A. Swell*  
REGISTRAR

SUPREME COURT OF KENYA.

COLONY AND PROTECTORATE OF KENYA

N.P. No. 19/3/5/35

KENYA PRISONS



REPORT OF EXECUTION CARRIED OUT  
AT HIS MAJESTY'S PRISON NAIROBI.

Prison No. 1421/NName and Registration No. Kiplangat Arap Cherio NKU 4406811Nationality or Tribe MumbwaVillage LalohmotiDistrict KerichoSupreme Court Case No. and Name of Judge 128 of 1934. Mr. Justice A.H. Webb,  
Judge Supreme Court of Kenya.Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1934Date and time of execution 12th January 1935 at 6.24 A.M.

Names of Officers present Montague Dards Esq., Senior Superintendent of  
Prisons, J.A. Foot Esq., Asst. Superintendent of Prisons, Dr. W.W.  
Wilkinson, Medical Officer.

CERTIFIED TRUE COPY.

S. H. Landsack  
for COMMISSIONER OF PRISONS.  
10.1.1935.

Ed/- M. Dards.

Senior Superintendent of Prisons

NOTE:—In the case of natives the Chief Registrar of Natives and the District Commissioner of the District should be informed.

ANK.

N.P.No.19/11/4/35.

His Majesty's  
Prison, Nairobi.  
1st June 1935. 244

DEATH CERTIFICATE.

This is to certify that Convict No.246/P  
M'Riburu s/o Mwithiga, died of fracture of cervical  
vertebrae and compression of the spinal Cord consequent  
on judicial hanging on the 1st June, 1935, at His  
Majesty's Prison, Nairobi.

H.C.Trowell  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true  
copy of the original.

  
REGISTRAR.

SUPREME COURT OF KENYA.

GLO.



COLONY AND PROTECTORATE OF KENYA

N.P. No. 19/11/5/55

KENYA PRISONS

REPORT OF EXECUTION CARRIED OUT  
AT HIS MAJESTY'S PRISON NAIROBI.

Prison No. 246/P.

Name and Registration No. M'Riburu Mwithiga MRU. 858525

Nationality or Tribe African, Meru.

Village Kangotua District Meru

Supreme Court Case No. and Name of Judge Supreme Court Cr. Case No. 28/55.

Mr. Justice F.C. Gamble, His Majesty's Supreme Court of Kenya, sitting held at Nyeri.

Date and No. (if any) of His Excellency's Warrant confirming sentence

11th day of May, 1955.

Date and time of execution 1st. Day of June, 1955, at 6 a.m.

Names of Officers present Montague Dards Esq, Senior Superintendent of Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. H.C. Trowell, Medical Officer.

CERTIFIED TRUE COPY,

J. H. Sandbank

Sd/- M. Dards.

Senior Superintendent of Prisons

for COMMISSIONER OF PRISONS.  
10.1.1956.

Note:—In the case of natives the Chief Registrar of Natives and the District Commissioner of culprit's district should be informed.

N.P.No.18/1/6/35

His Majesty's Prison,

Kisumu.

246  
21st August 1935.

DEATH CERTIFICATE.

I hereby certify that Convict No.P.333 Lisakhe alias  
Angochi s/o Rokosa, in Supreme Court Criminal Case No.37  
of 1935, was this day the 21st August, 1935 hanged at Kisumu  
Prison.

Cause of Death:- Dislocation of the neck.

J.C. Carothers.  
MEDICAL OFFICER.

I certify this is a true  
copy of the original.

*Richard Powell*  
REGISTER  
SUPREME COURT OF KENYA.

COLONY AND PROTECTORATE OF KENYA

K.P. NO. 18/1/35.

KENYA PRISONS

## REPORT OF EXECUTION

Carried out at His Majesty's Prison KISUMU.

Prison No. P. 358.

Name and Registration No. Lisekha alias Angoko s/o Rokoga. KSU. 4966.Nationality or Tribe Tiriki.Village Mongawo. District N.K. Kakamega.Supreme Court Case No. and Name of Judge 37 of 1935. Fred C. Gamble Esq.Ag. Judge, Supreme Court of Kenya.Date and No. (if any) of His Excellency's Warrant confirming sentence 9th August, 1935.Date and time of execution 21st August, 1935 at 6.0s A.M.Names of Officers present Mr. J.A. Foot, Ag. Superintendent of Prisons." P.H.H. Bayly, Chief Officer.Dr. J.C.D. Carothers, Medical Officer.Rev. Father A. Rowlands.

CERTIFIED TRUE COPY,

J. H. Landmanfor COMMISSIONER OF PRISONS.  
10.1.1936.

Sd/- J. A. Foot.

Ag. Superintendent of Prisons

N.P.No.19/12/6/35

His Majesty's Prison,  
Nairobi

17th August 1935.

DEATH CERTIFICATE.

This is to certify that Convict No.428/P  
Lolomara Laladagum, died of fracture of cervical  
vertebrae and compression of the spinal Cord conse-  
quent on judicial hanging on the 17th day of August 1935  
at His Majesty's Prison, Nairobi.

O.W.Pitchford,  
MEDICAL OFFICER  
NAIROBI PRISON.

I certify this is a true copy of the original.

  
REGISTRAR,  
Supreme Court of Kenya.

COLONY AND PROTECTORATE OF KENYA

N.P. NO. 19/18/5/55

KENYA PRISONS



## REPORT OF EXECUTION

Carried out at His Majesty's Prison NAIROBI.Prison No. 98/PName and Registration No. NEI. 6456173 Lolomara Lalaldagum.Nationality or Tribe African, Samburu.Village Marali. District Rumuruti.Supreme Court Case No. and Name of Judge 45 of 1955, F.O. Gamble Esq.Ag. Judge Supreme Court of Kenya, Sittings held at Nakuru.Date and No. (if any) of His Excellency's Warrant confirming sentence 6th August 1955.Date and time of execution 6.05 A.M. 17th August 1955.Names of Officers present J.H. Rogers Esq. Ag. Superintendent of Prisons.W.M. Alcock, Ag. Asst. Superintendent of Prisons.Dr. O.W. Pitchford, Medical Officer, Nairobi Prison.**ORIGINAL TRUE COPY.**J. H. RogersFor COMMISSIONER OF PRISONS.  
10.1.1956.

Sd/- J.H. Rogers.

Ag. Superintendent of Prisons

NOTE: In the case of natives the Chief Registrar of Natives and the District Commissioner of native's district should be informed.

ANK.

N.P.No.19/1/2/35

HIS MAJESTY'S PRISON

NAIROBI

12th January 1935.


250

DEATH CERTIFICATE.

This is to certify that Convict No.1605/N  
Ia Bake Gabbera died of fracture of cervical  
vertebrae and compression of the spinal cord  
consequent on judicial hanging on the 12th  
January 1935 at His Majesty's Prison Nairobi.

sd. W. Wilkinson  
MEDICAL OFFICER,  
Nairobi Prison.

I certify this is a true copy  
of the original.

  
Registrar,  
Supreme Court of Kenya.

POLICE AND PROTECTORATE OF KENYA

N.P. No. 19/1/3/35.

KENYA PRISONS

## REPORT OF EXECUTION

Carried out at His Majesty's Prison NAIROBI.

Prison No. 1605/N.

Name and Registration No. Ia Bake. Gabbera.

Nationality or Tribe Boran (Ngabra)

Village (Darto) Ngandek District Moyale

Supreme Court Case No. and Name of Judge 681 of 1934, Tried by Mr. V.G. Glenday

O.B.E. Officer in Charge, Northern Frontier District, Isiolo, Sitting Held at Moyale. Criminal Case No. 5 of 1934.

Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1934.

Date and time of execution 12th January 1955 at 6.3 A.M.

Names of Officers present Montague Dards Esq. Senior Superintendent of Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W. Wilkinson.

Medical Officer:

CERTIFIED TRUE COPY,

(SD) M. Dards.

for COMMISSIONER OF PRISONS

10.1.1955.

Senior Superintendent of Prisons

CORONY AND PROCTOR &amp; CO. KENYA

N.P. No. 19/1/3/55

## KENYA PRISONS

## REPORT OF EXECUTION

Carried out at His Majesty's Prison NAIROBI.Prison No. 1605/N.Name and Registration No. Ia Bake. Gabbera.Nationality or Tribe Boran (Ngabra)Village (Darto) Ngandek District MoyaleSupreme Court Case No. and Name of Judge 681 of 1934, Tried by Mr. V.G. GlendayO.B.E. Officer in Charge, Northern Frontier District, Isiolo, Sitting Held at Moyale. Criminal Case No. 5 of 1934.Date and No. (if any) of His Excellency's Warrant confirming sentence 17th December 1934.Date and time of execution 12th January 1955 at 6.3 A.M.Names of Officers present Montague Dards Esq. Senior Superintendent of Prisons, J.A. Foot Esq. Asst. Superintendent of Prisons, Dr. W.W. Wilkinson. Medical Officer.

CERTIFIED TRUE COPY,

(SD) M. Dards.Hadanaarak  
for COMMISSIONER OF PRISONS.

10.1.1956.

Senior Superintendent of Prisons.

PUBLIC RECORD OFFICE

END

TOTAL EXPOSURES →