



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(Coram: Madan, Law & Potter JJ A)**

**CRIMINAL APPEAL NO. 26 OF 1979**

**BETWEEN**

**JOSEPH MALOWA.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Appeal against conviction by Cotran J in the High Court, Kisumu, on 2nd May 1979 in Criminal Case No 3 of 1979)*

**JUDGMENT OF THE COURT**

The appellant, James Malowa, was charged together with one William Atinga with the murder of Blazio Kasaja. He was convicted in the High Court at Kisumu (Cotran J); Atinga was acquitted. The appellant (to whom we will refer as “Malowa”) now appeals against his conviction.

The house of Blazio was attacked by a gang of robbers on 5th December 1977. Blazio, who was sleeping in the kitchen, was dragged outside. He was attacked and severely injured, and died from his injuries on 27th December. Before he died, he named Malowa and Atinga as having been his assailants, to a number of witnesses. Blazio’s wife Paulina, alerted by the noise, looked out of a window. She deposed that, by moonlight, she saw four men, two of whom she knew well. They were Malowa and Atinga.

She saw them enter the kitchen, and heard the sound of blows. She saw Malowa and Atinga remove a bicycle, a bed, and other property from the kitchen, after which they dragged Blazio out of the kitchen and Malowa beat him with an iron bar, and they then flung him back into the kitchen. The judge held that Paulina was a truthful witness; but he was not prepared to convict on Paulina’s evidence alone, being that of a single eyewitness in circumstances unfavourable to accurate identification; nor was he disposed to convict on the strength of Blazio’s dying declarations alone, which also required corroboration especially as the circumstances were unfavourable to accurate identification. As there was no other evidence against Atinga, he was acquitted. The case against Malowa, however, went further. A group of youth wingers went to Malowa’s house on the night of the crime, at 3.00 am, and found him sitting on his bed. They told him he was wanted by the Government. Malowa asked to speak to his father, called him, and ran away. He then disappeared from his home, and although assiduously sought by the police was not found until May 1978, when he was arrested in a bar at Bondo, near the Uganda border. In a charge and caution statement made to Ins Tole on 10th May, he denied all knowledge of the murder of Blazio, and said that he had been in Uganda from April 1977 to May 1978. At the trial he changed this story, and said that he had been at home on the night of the murder. He said that he had run away because the people who came to his house had walking sticks and he was afraid they would injure him. The judge held, on the authority

of *Terikabi v Uganda* [1975] EA 60, that corroboration of the evidence of Paulina and of the dying declarations of Blazio was provided by the conduct of Malowa, in disappearing from his home immediately after the murder to avoid arrest, and in remaining absent for six months; and he was left with no reasonable doubt that Malowa was guilty of the murder of Blazio. We see no reason to differ; the evidence in this case leaves us with no reasonable doubt that the appellant was properly convicted. We are satisfied that malice aforethought was fully established under section 206(c) of the Penal Code. We order that this appeal be dismissed.

*Appeal dismissed.*

**Dated and delivered at Kisumu this 9th day of June 1980.**

**C.B MADAN**

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**JUDGE OF APPEAL**

**E.J.E LAW**

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**JUDGE OF APPEAL**

**K.D POTTER**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**