

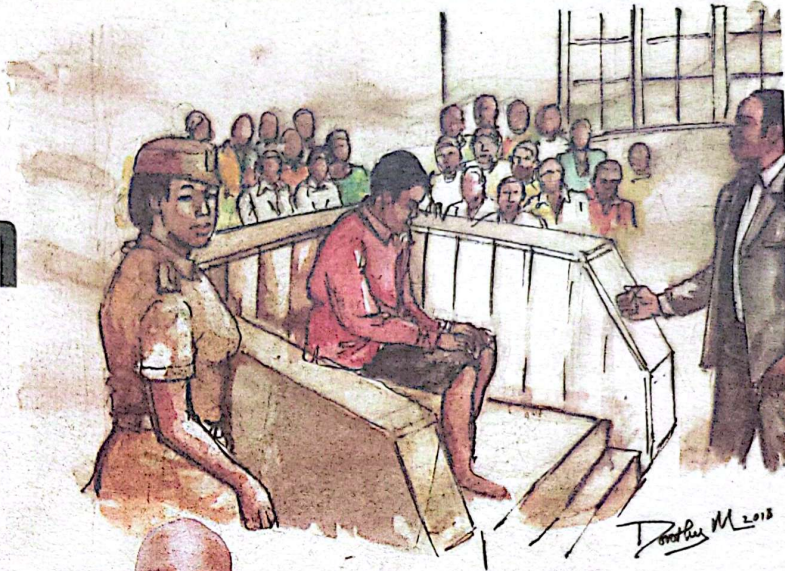
Last words

Facts. A dying declaration is testimony of a third party in respect of the purported last words of a dying person and may be admitted as evidence in court. Ordinarily this would be considered hearsay evidence and would normally not be admissible in court.

From the lips of a dying man

Justice or injustice.

Sometimes to the shock of experts, court rules contrarily to critical evidence.



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“NUJ admitted to running over her husband with the car she was driving, but she denied that it was intentional. She told court that the car simply jerked as the gate was being opened and that she ended up knocking the gate and running over her husband.”

On the September 22, 2014, a woman was found guilty of murder when court judged she had, with malice aforethought, caused the death of her husband when she knocked him down with a car. The man subsequently succumbed to his injuries shortly after the incidence. In arriving at this verdict court relied on what the deceased is reported to have uttered to his relatives shortly before he died. Court also looked at the circumstances surrounding the relationship between the two and concluded that the woman had deliberately caused the death of her husband.

Accident or intentional

Court rejected the account that the incident was an accident as well as the lady's version of events. Shortly after incident, the lady rushed with her husband to a nearby hospital and called her husband's relatives, who arrived at the hospital. The lady narrated to her in-laws that her husband had been hit by the gate.

However when the husband heard this version of events while in his hospital bed, his response, as narrated by his relatives was "No, my wife has killed me in my own home." The father of the deceased also told court that the deceased stated in his presence that his (the deceased's) wife had knocked him and not the gate. To a business partner the deceased stated "see what my wife has done to me."

To his brother the deceased said "It was my first time to open a gate for my wife and my wife has killed me from my own house."

A dying declaration is testimony

of a third party in respect of the purported last words of a dying person and may be admitted as evidence in court. Ordinarily this would be considered hearsay evidence and would normally not be admissible in court. The rationale of accepting such evidence is that somebody who is dying or believes death to be imminent would have no reason to lie. It is based on the maxim "a man will not meet his Maker with a lie in his mouth."

No one dies with a lie

Court reasoned that murders are committed in secrecy with no third party to be an eye-witness to the fact. Court, however, seemed to be conscious of the fact that dying declarations may not always be true and in some cases have been found to be contradictory and even unsafe to be relied upon on the ground of incompleteness. Dying declarations have, however, been admitted as evidence in the courts of law as an exception to the hearsay rule because of a historical belief in their reliability, and because of necessity. Every homicide (the act of one person causing

the death of another) is presumed to be unlawful unless it is accidental or excusable. This case, however, had all the hallmarks of an accident and the defense so said. It was most unfortunate that lawyers acting on behalf of the woman did not address themselves to the forensic evidence in this case.

Ignored evidence

The bonnet of the car and the windscreen were not damaged. The blood of the deceased was nowhere on the front parts of the car. Clearly the car did not knock the deceased. The car knocked the gate as demonstrated by the bend horizontal bolt and the striation marks on bumper that matched in colour with that of the gate. From the forensic evidence, there is no doubt that the deceased was knocked by the gate and then dragged on the ground by car. This independent and circumstantial evidence is in total contradiction of the purported dying declaration. Court even stated that "It is true to say that circumstantial evidence is often the very best evidence. It is evidence of surrounding circumstances which is capable of proving facts in issue quite accurately."

Prosecution also failed to prove beyond reasonable doubt that the driver of the car knew who was opening the gate and therefore left court to speculate on this vital fact. The deceased himself stated that this was the first time ever for him to open the gate for his wife. And the most obvious explanation of what could have happened, that is the lady accidentally stepping on the accelerator rather than the brake, to make a car bolt and the subsequent panic of the driver were not mentioned in court. And the lady did herself a great disservice when she told court that the car jerked.

KEY ISSUES

It has for long been believed that a man about to die and meet his Maker would be unwilling to die with the guilt of a lie on his conscious.

A dying declaration is not given on oath and is not subjected to cross-examination.

But as a piece of evidence, it stands on the same footing as other pieces of evidence. If a dying declaration is judged to be reliable it can then form the basis a conviction. In this particular case court was of the view that a dying declaration would require no corroboration as it has to be judged and appreciated in light of the surrounding circumstances and its own weight.

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