**Chali v Republic**

**Division:** Court of Appeal of Tanzania at Mwanza

**Date of judgment:** 8 June 2006

**Case Number:** 56/95

**Before:** Makame, Kisanga and Lugakingira JJA

**Sourced by:** LawAfrica

**Summarised by:** R Rogo

*[1] Criminal procedure – Effect of death of judge before signing judgment.*

**Editor’s Summary**

The appellant was convicted and sentenced to death. He appealed on the grounds that the evidence was circumstantial and that it was of a quality that would not reasonably lead to the appellant’s conviction.

**Held** – The learned trial Judge meticulously looked at such evidence and based on the supporting evidence he was fully entitled to hold the same view as that of his assessors that the appellant’s guilt had been established. He also correctly warned himself that although he was satisfied that the appellant had told lies and that lies can be told for a variety of reasons, in this particular case it was because the appellant was trying to hide his guilt.(*Kiperumi Arap Koske and another* (1949) 16 EACA 135 followed). State counsel should not always resist appeals against the Republic, no matter the merit or lack of it. If after serious consideration and in keeping with professional ethics the state attorney is of the view that he is not in a position to support a conviction, he should feel free and indeed feel obliged to inform the court bearing in mind that he is an officer of the court. This appeal was heard with a panel of three justices, including the late Lugakingira JA, the third among equals in the panel. Following the inevitable conference there emerged complete consensus that the appeal had no merit and should be dismissed. This was after complete ventilation and the identification of reasons. After that, Lugakingira JA died before the composition and signing of the judgment. Because all three judges had agreed on the destination of the appeal and on the reasoning steps to get there, the other two judges felt that they could deliver the unanimous judgment of the court, which naturally cannot now be signed by the late judge. Even if Lugakingira JA had dissented and was still alive, or, as is now the case, he is dead, the other two judges would still be in the majority.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Kiperumi Arap Koske and another* (1949) 16 EACA 135 – **F**