**Haule v Republic**

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

**Date of Judgment:** 2 May 2004

**Case Number:** 44/04

**Before:** Ramadhani, Nsekela and Msoffe JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Murder – Provocation – Whether quarrelling and abuse constitute provocation – Whether person*

*provoked to be convicted of murder or manslaughter.*

**Editor’s Summary**

The appellant engaged in an argument with the wife and, according to the daughter, they quarrelled and were abusing each other. It was after the altercation that the appellant picked up a piece of wood and struck the wife on the head killing her. The appellant was charged and convicted of murder. He appealed to the Court of Appeal on the sole ground that “in the circumstances of this case, the appellant should have been convicted of manslaughter and not murder. It was the appellant’s contention that he was provoked by the deceased.

**Held** – There was a greater probability that the appellant was provoked from the evidence of the daughter that her parents had quarrelled and abused each other. Although malice aforethought can be inferred from the amount of force which an offender employs in inflicting fatal injury and also from the weapon used and the vulnerability of the part of body attacked, those factors do not negate the defence of provocation. *Michael alias Tall v R* [1994] TLR 195 and *Nyingo v R* [1995] TLR 178 considered. The appellant killed on provocation and was therefore convicted of manslaughter and sentenced to imprisonment for five years.

**Cases 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)

*Gandhi and others v R* [1996] TLR 12

*Michael alias Tall v R* [1994] TLR 195 – **C**

*Nyingo v R* [1995] TLR 178 – **C**

*Tarimo v R* [1993] TLR 142