**Republic v Kihandika**

**Division:** High Court of Tanzania at Bukoba

**Date of judgment:** 22 October 1973

**Case Number:** 255/1972 (105/74)

**Before:** Onyiuke J

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*[1] Evidence – Wife – Polygamous marriage – One wife compellable witness against husband on charge of murder of other wife – Evidence Act* 1967*, s.* 130(*T.*)*.*

**JUDGMENT**

**Onyiuke J:** The accused stands charged with the murder of one of his wives. The accused returned from a pombe shop late one night and thought he heard a man’s voice in the house. On entering the house he saw no man and the only person in the house was his wife who was 7 months’ pregnant. This was the substance of what he told the ten cell leader of his area. In this court, in his unsworn statement he stated that when he entered the house he saw a man but he ran away. Be it as it may, his other wife gave evidence on behalf of the prosecution. I was of the view that she was not only a competent witness but also a compellable witness under proviso (*b*) to s. 130 of the Evidence Act which reads as follows: “Provided that the wife or husband shall be a competent and compellable witness for the prosecution in the following cases: (*a*) . . . (*b*) in any case where the person charged is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them.” I was of the view that in a society that recognises polygamous marriage the expression “the person or property of the wife” includes a co-wife. I see no reason why a wife is compellable to testify against her husband in respect of an act done against any of her children by that man but is not compellable to testify against her husband if the act happens to be done against any of the children of her co-wife. Where a husband commits an offence, e.g. an assault, against a member of his family such as one of his wives or any of their children I can see no reason in principle for not making any of his wives who witnessed the incident a compellable witness.

*Order accordingly.*