

SwahiliWeb

ELECTRONIC DEPOSITORY AND RESOURCE ARCHIVE

www.swahiliweb.net

Archive: Pat Caplan

Document: Court case Amina Bakari

File reference: SW/PC/I 3002

This document has been downloaded from the SwahiliWeb archive on the understanding that it is copyright under the laws of the United Kingdom and the Berne Convention, and that no further copying, storage or distribution, in any form or by any means, including electronically, is permitted except under the provisions of fair dealing.

Copyright of all materials deposited with SwahiliWeb remains with the copyright holder. Those seeking copyright and associated permissions will be referred to the copyright holder.

File - Mafia 1965-7. Primary Court Cases, Kilindoni.

In 1965, MM divorced his wife for alleged adultery with a local shop-keeper and she sought revenge. She sued her ex-husband for the maximum amount of property, and village meeting after meeting heard disputes about ownership of their bed, their coconut fields, and so on. The wife also tried in vain to persuade the shopkeeper to marry her, but he refused, although he did divorce his own wife. She then tried to persuade one of her cross-cousins, the Diwan of the village, to marry her. Cross-cousins are not only preferential marriage partners but also have a joking relationship, and therefore sexual banter is common between them. She took this man's hat, and refused to return it. He finally lost his temper and struck her, whereupon she went to accuse him of assault before the Village Development Committee, which referred it to the District Court in Kilindoni. Amina eventually won her case, although she was still husbandless.

Criminal file case no. 225. 1966.

1. Amina Bt. Faki accuses Jabiri Ali Jabiri.

Accusation: Affray and grievous bodily harm

Date of deposit of complaint: 29/7/66

Date of Judgement: ditto

Summary of judgement: The accused is found guilty, with sufficient evidence

Sentence. Fine of 10/- or 14 days in jail.

2. Response of accused: I agree that I hit Mwanima bt. Faki and hurt her.

3. Receipt for fine, paid on spot.

4. Report of Medical Officer, hospital. "At present no marks of injuries detected."

5. Letter from Kanga clinic dresser: This beating was by five blows and each of these blows was painful but the beating was not sufficient to break the skin or cause any marks such as swelling from the sum of these five blows."

6. Evidence from the plaintiff Amina Bt. Faki, aged 20, Shirazi, Muslim:

On the 16th of July 1966 in the evening the accused came to my house, and when he arrived I teased him saying that he should marry me. The accused replied that he did not want to marry me. I said that he should do so, since we were related. The accused did not agree to marry me. At that point I took off his hat and said to him that I would keep it at home until he married me. The hat remained with me for 4 days, and the accused did not come to fetch it. On the 5th day, the accused came to my house. He asked me 'who taught you the sort of manners to steal a hat?' I replied that I had taught myself. At that point the accused hit me with a stick about half a dozen times. When I saw that the accused might hurt me, I ran and hid myself. The accused did not go away, he remained on the veranda. Not long afterwards, my older brother Makame Faki arrived. The accused explained to my brother everything that had happened. When I saw that my brother had arrived, I came out from the bushes (mwituni) where I had hidden myself. The accused left without taking his hat. When I realised that what the accused had done was not lawful (halali) I went to the elders of the village to make a report, and also to the clinic to get some medicine, and afterwards I went to the police.

The accused:

The plaintiff is my sibling, my binamu, and between us we have the habit of teasing each other.

Here at the court regarding the accused: At that time I had no husband.

7. The accused admitted guilt. His evidence was as follows:

Between him and the plaintiff there was a joking relationship (*utani*). On the 16th July 1966 he went to her house and she asked him to marry her. The accused did not agree to marry Amina. At that point, Amina took off the accused's hat and said that she would not give it back to him until he married her. On the fifth day the accused went to Amina's house and there and then he hit her. At the same time he informed her older brother Makame Faki. After this, the accused went away and went home.

8. I have followed the evidence which has been given by the accused... And I agree with the evidence of the plaintiff, together with her remark that the accused has done wrong. The reason for saying this is that the accused himself says that Amina Bt. Faki is his cousin, the child of his father's older brother. If this is indeed the case, it shows that the accused and Amina Bt. Faki are cross-cousins, and that according to the custom (*mila*) of cross-cousinhood (*ubinamu*), there is the law (*sheria*) of joking. The deed which Amina did to the accused in jest is not a serious case, it was only to take his hat. Now if Amina is his *binamu* she had the right (*haki*) to take his hat. Furthermore, that which was said to the accused by the plaintiff Amina - that he should marry her - was not wrong. Because there is a law (*sheria*) (which allows it), and it is not a bad thing for a person to marry their cross-cousin. Here however, the accused entered into wrongdoing by hitting Amina and injuring her. But after seeing the report of the doctor and receiving evidence that the accused only hit her in an ordinary way (*kwa kawaida tu*), for this reason I am not going to put him in jail.

The punishment of the accused is for a first offence. Furthermore, the accused, after committing the offence, did not try to deny it. Because this is a first offence of the accused, I give him a sentence of a fine of 10/- or else 14 days in prison. The period for payment of fine is only 2 days. There is no appeal, since the accused confessed his guilt, and because sentences of under 30/- (do not have a right of appeal).