

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: Mistafa, J.A., Mwakasendo, J.A. and Makame, J.A.

CRIMINAL APPEAL NO. 6 OF 1979

B E T W E E N

MOHAMED SEIF APPELLANT

A N D

THE REPUBLIC RESPONDENT

(Appeal from the Judgment of
The High Court of Tanzania
at Dar es Salaam) (Patel, J.)
dated the 27th day of August, 1975

I N

Criminal Appeal No. 54 of 1975

JUDGMENT OF THE COURT

MAKAME, J.A.:

The appellant MOHAMED SEIF and another person were charged in the District Court at Kisarawe on two counts of Robbery. They were alleged to have used violence in stealing shs. 18,000/- cash and rounds of ammunition worth shs. 302/-. They were each convicted, apparently on both counts, although this was not made very clear in the learned District Magistrate's judgment, it becoming evident that the conviction of each accused was on both counts only when one reads the compensation order, which was for shs. 18,302/-. On appeal to the High Court the appeal of the other accused was allowed but the present appellant's was dismissed.

P.W.2 MOHAMED MNOLELA, who was the driver of the vehicle ordered to stop by some robbers, gave evidence that before he was forced to stop the vehicle which he was driving along Kilwa Road in the evening of 28th June, 1973, he heard the loud report of a gun and he switched off the main lights before he got down

the vehicle. He said that with the help of the parking lights he clearly saw the appellant who was armed with a pistol before he, Mnolela, was struck with a panga by a companion of the appellant. The shs. 18,000/- which was in the driver's cabin was stolen, and about three weeks later Mnolela was able to identify the appellant at an identification parade held at the Police Station, Chang'ombe.

The first appellate court rightly appreciated that the appellant's conviction rested entirely on his identification by P.W.2. We feel that the particular circumstances were not quite favourable for identification and we note that the trial court failed to caution itself of the danger of convicting on the sole evidence of one identifying witness. In cases of identification by a single witness in unfavourable circumstances very great care has to be exercised. (See ILANGO KIMWILI AND FOUR OTHERS v. R. Court of Appeal for East Africa Criminal Appeal No. 80 of 1976). In the present case the witness was seeing the robber for the first time, at dusk, with the help of only parking lights, and the alleged encounter lasted no more than five minutes. The witness said he was frightened, as we believe he must have been, and being slashed with a panga must have been a traumatic experience. None of the four passengers was able to pick out the appellant at the identification parade and there is no other evidence to dispel our fear that although the identification might have been honest it could well have been inaccurate and mistaken in the circumstances. Mr. Sekule, for the Republic, did not seek to support the convictions and, for reasons we have explained, we are unable to support the convictions. We wish to add that there was in any event no evidence in support of the second count relating to the rounds of ammunition.

We allow this appeal, quash the convictions and set aside the sentence, and order that the appellant be released forthwith, unless otherwise lawfully detained.

Dated at Dar es Salaam this 7th day of November, 1979.

A. MUSTAFA
JUSTICE OF APPEAL

Y. M. M. MWAKASEHDO
JUSTICE OF APPEAL

L. M. MAKAME
JUSTICE OF APPEAL