

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: NYALALI, C.J., MAKAME, J.A., And KISANGA, J.A.)

CRIMINAL APPEAL NO. 47 OF 1995

BETWEEN

CHACHA MGENI KEREMA APPELLANT

AND

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the
High Court of Tanzania at Mwanza)

(Chipeta, J.)

Dated the 11th June, 1995

in

Criminal Appeal Case No. 311 of 1991

JUDGEMENT OF THE COURT

NYALALI, C.J.:

This is a second appeal by CHACHA MGENI KEREMA, hereinafter called the appellant. In the Court of first instance, that is, the District Court of Tarime District, the appellant was charged and convicted with two others for the offence of robbery with violence contrary to sections 286 and 285 of the Penal Code and each was sentenced to thirty years imprisonment together with corporal punishment. The appellant and another convict were aggrieved by the conviction and sentence imposed upon each of them, and they appealed to the High Court but the appeals were dismissed in their entirety. The appellant was further aggrieved, hence this second appeal to this Court. Before us, the appellant was represented by Mr. Bilaro, learned advocate, whereas Mr. Kabonde, learned state attorney appeared for the respondent Republic.

As a matter of law, a second appeal is required to be based only on points of law or points of mixed law and fact. In the present appeal, only one point of law has been raised and it

concerns the legality of the sentence of thirty years imprisonment imposed upon the appellant. The two courts below were of the view that the sentence thus imposed is the minimum prescribed under the Minimum Sentences Act, 1972. Mr. Bilaro for the appellant contends to the effect that the prescribed statutory minimum for the offence of robbery with violence is fifteen years and not thirty years. It is part of Mr. Bilaro's contention that the minimum sentence of 30 years is applicable to armed robbery which involves the use of firearms.

The position in this case is very similar to that considered by this Court in Criminal Appeal No. 199 of 1994 JOSEPH MICHAEL vs REPUBLIC (not yet reported). In that case a sentence of thirty years imprisonment was imposed upon conviction for the offence of robbery with violence contrary to sections 235 and 286 of the Penal Code by the District Court of Ilala District. The offence involved the use of a knife. On appeal to the High Court on the legality of the sentence, the appeal was dismissed. On further appeal to this Court, the appeal met the same fate. In its judgement, this Court stated inter alia:

It is common knowledge that the object behind the enactment of the Written Laws (Miscellaneous Amendments) Act No. 10 of 1989 which amends the Minimum Sentences Act 1972, was inter alia, to raise the penalties for offences of robbery, robbery with violence or attempt to commit such offences and the use of arms or dangerous or offensive weapons. Otherwise the basic definition of robbery still remains as provided for under the Penal Code. Under section 286 of the Penal Code which prescribes the penalties for robbery the circumstances under which if robbery takes place, a sentence of life imprisonment

with or without corporal punishment could be imposed are set out. In that section, in part, it is provided "... If the offender is armed with any dangerous or offensive weapon or instrument ...". From this, and as correctly held by the learned judge, though there is no express and specific definition of what constitutes "armed robbery" it is clear to us that if a dangerous or offensive weapon or instrument is used in the course of a robbery, such constitutes "armed robbery" in terms of the law as amended by Act No. 10 of 1989. In this context, the weapons are, in our view, not confined to firearms only, other types of weapons such as knives are also included.

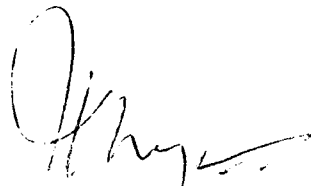
In the instant case, the weapon used was a knife which as already indicated is a dangerous or offensive weapon. With respect, we are in agreement with the learned judge that the offence involving the appellant was armed robbery. We are therefore satisfied that the sentence of 30 years imprisonment and 5 strokes of the cane imposed on the appellant was properly founded in law ..."

It is thus obvious that, since the offence of robbery with violence for which the appellant was charged and convicted was committed on 5th January 1990, that is, after Act No. 10 of 1989 had come into force, we are bound under the doctrine of STARE DECISIS to apply the principle and rule in JOSEPH MICHAEL's case to the present case. In so doing we need however to emphasize a number of points for purposes of clarity. Firstly, there is no separate or distinct offence of armed robbery apart from the offence of robbery as defined under the Penal Code. Secondly, the 'offences' described as robbery with violence or armed robbery

are nothing but aggravations of the offence of robbery. Thirdly, an offender who is armed with a dangerous or offensive weapon in the course of robbery may be charged with robbery with violence or armed robbery according to the circumstances of the case. Fourthly, the statutory minimum sentence for simple robbery is 15 years as per section 5 of the Minimum Sentences Act, 1972 as amended by Act No. 10 of 1989 and No. 6 of 1994. Fifthly, the statutory minimum sentence for robbery with violence or armed robbery is 30 years.

In conclusion, and for the reasons we have stated above, this appeal cannot succeed and is hereby dismissed in its entirety.

DATED at DAR ES SALAAM this day of 1997.



CHIEF JUSTICE

JUSTICE OF APPEAL

JUSTICE OF APPEAL