

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: RAMADHANI, J.A., MFALILA, J.A., And SAMATTA, J.A.)

CRIMINAL APPEAL NO. 188 OF 1994

BETWEEN

ANTHONY MASHENENE. . . . . APPELLANT

AND

THE REPUBLIC. . . . . RESPONDENT

(Appeal from the decision of the High  
Court of Tanzania at Dar es Salaam)

(Kyando, J.)

dated the 15th day of June, 1992

in

High Court Criminal Appeal No. 149 of 1991

SUMMARY REJECTION OF APPEAL

SAMATTA, J.A.:

On the evening of December 17, 1989, at about 9.00 p.m., one Sharifu Ahmed and his children were seated in the sitting room of their house at Kibamba in Kinondoni district. They were watching a TV programme. As they were so relaxing, suddenly two men, one of whom had a khangha hanging on his shoulder, entered the room. They forcibly led the family's watchman into the room. The man with a khangha took out a sub-machine gun from it and pointed it towards Sharifu. He cocked the firearm and disclosed the purpose of their visit - they wanted money. He threatened to kill Sharifu if he refused to comply with their demand. The other intruder stood by the door, he was wielding a pistol. Realising how dangerous the situation was, Sharifu's wife volunteered to give the two men money rather than lose her husband. The man who was armed with a pistol accompanied her to the master bedroom. There, out of fear, she handed over to the man Shs. 140,000/=-, gold earrings and necklaces. From there she was escorted to the

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The appellant has now appealed against the decision of the High Court to this Court.

Dismissing the appeal before him, Maina, J. said, among other things:

"There was bright electric light at the scene of the crime, that is the sitting room and in the bedroom. The witness

children's room where the man took away some clothes. The man hit Mrs. Ahmed on the stomach as a result of which she sustained an injury. All this time the second man stood guard over the rest of the family members, who were covered with curtains. The two men then got out of the house and took away a cassette from the family motor vehicle which was parked there. Carrying their loot with them, the men disappeared into the darkness of the night. On the same night Sharifu Ahmed made a report about the robbery at the nearest police station. On the following day a policeman who visited the complainant's house picked up from the ground near the house a TPDF identity card. Ahmed Sharifu and his wife were shown the photograph on the card and immediately recognised it as that of the robber who entered the bedroom. Following this arrest in connection with the robbery, about a week later, the appellant, Anthony Mashenene, was identified at an identification parade by Ahmed Sharifu and his (Sharifu's) wife as being one of the two men who robbed them of their property. The appellant, together with two other men, was tried by the District Court of Ilala on a charge of robbery with violence, contrary to S. 286 and 285 of the Penal Code. He and one of his co-accused persons were convicted as charged and sentenced to thirty (30) years' imprisonment. The appellant's appeal against that decision was dismissed by the High Court (Maina, J.). The appellant has now appealed against the decision of the High Court to this Court.

Dismissing the appeal before him, Maina, J. said, among other things:

"There was bright electric light at the scene of the crime, that is the sitting room and in the bedroom. The witness had ample opportunity to identify the

appellant. There is no room for reasonable doubt on the Appellant's identification. I agree with Miss Mkwizu, the learned State Attorney, that the prosecution proved the charge against the appellant beyond all reasonable doubt. As for sentence, it is the ... statutory minimum for armed robbery."

In our opinion, there is no arguable point in the appeal before this Court. As rightly remarked by Maina, J., the identification of the appellant by the witnesses as one of the participants in the robbery cannot possibly be faulted. The case against the appellant was watertight and the trial court was in the circumstances bound to find him guilty as charged as it did. As for the appeal against sentence, we are of the opinion that nothing useful can possibly be said in the appellant's favour in that appeal. We accordingly dismiss the appeal summarily under S. 4 (4) of the Appellate Jurisdiction Act, 1979, as amended.


DATED at DAR ES SALAAM this 23rd day of April, 1998.

A.S.L. RAMADHANI  
JUSTICE OF APPEAL

L.M. MFALILA  
JUSTICE OF APPEAL

B.A. SAMATTA  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

  
( A.G. MWARIJA )  
DEPUTY REGISTRAR