

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: KISANGA, J.A., LUBUVA, J.A., And LUGAKINGIRA, J.A.)

CRIMINAL APPEAL NO. 49 OF 1996

BETWEEN

MWITA S/O SIBORA APPELLANT

AND

THE REPUBLIC RESPONDENT

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

(Chipeta, J.)

dated the 26th July, 1996

in

Criminal Appeal No. 22 of 1996

JUDGMENT OF THE COURT

LUGAKINGIRA, J.A.:

This is the second appeal from conviction and sentence for robbery with violence c/ss 285 and 286 of the Penal Code (Cap. 16) read with the Minimum Sentences Act, 1972, as amended from time to time.

There is no substance in the appeal. There was evidence to the effect that on the evening of 26 May, 1994, the complainant, PW3 Hussein Mtongori, was robbed of a blue colour 'Rolly' sports bicycle by a person he did not know. In the course of the robbery, the complainant was battered to unconsciousness with an iron bar. Under the bicycle seat was a mark 'HM', being the initials of the complainant's name. Ten days later, on 6 June, the appellant was apprehended with a bicycle of similar description and which the complainant identified as his stolen property. The appellant was accordingly charged. The trial court, after observing the bicycle, Exh. P2, and assessing the prosecution witnesses against the

appellant's claim that Exh. P2 was not the bicycle he was arrested with, found that the appellant was the robber and convicted him accordingly. The conviction was affirmed by the High Court on first appeal. We can find nothing in the record of evidence or the grounds of appeal upon which to fault the concurrent findings of the courts below. We think the conviction was merited on the basis of recent possession.

The aspect of sentencing, however, attracts comment, though not in the appellant's favour. The trial court sentenced the appellant to 30 years' imprisonment with 12 strokes of corporal punishment but the High Court took a different view of the appropriate sentence. It observed that the appellant was convicted of robbery with violence, rather than armed robbery, and stated that the minimum sentence for the former was imprisonment for 15 years. But the court was not minded to be lenient in view of the serious nature of the attack upon the complainant. According to the medical report, Exh. P1, the complainant was unconscious for four days and when he regained consciousness, he remained confused for a week. For this reason, the High Court reduced the sentence to 20 years instead of substituting 15 years.

We think the reduction was per incuriam. The position stated by the High Court was correct to the extent of the amendment of the Minimum Sentences Act by Act No. 10 of 1989. Following that amendment, paragraph (b) of section 5 of the Act provided for a term of 15 years for robbery while paragraph (bb) provided for a term of 30 years for armed robbery. That was the position until 1994 when the Act was further amended by Act No. 6 of that year. The latter amendment deleted paragraphs (b)

and (bb) and substituted a new paragraph (b) with two subparagraphs as follows:

(b) Subject to subparagraph (ii) of this paragraph -

(i) any person who is convicted of robbery shall be sentenced to imprisonment for a term of not less than fifteen years;

(ii) if the offender is armed with any dangerous or offensive weapon or instrument or is in company with one or more persons, or if at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to imprisonment for a term of not less than thirty years.

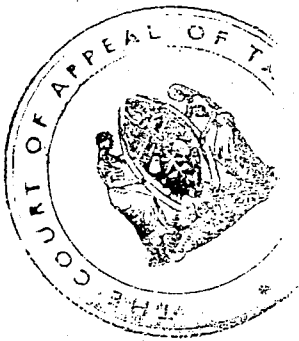
This amendment came into effect on 18 March, 1994. As can be seen, the sentence of 30 years is no longer confined to armed robbery but applies to all robberies in which the offender is armed with a dangerous weapon or instrument, is in company with one or more persons, or where in the course of committing the robbery, the offender wounds, beats, strikes or uses any other personal violence to any person. In other words, all the ingredients of robbery with violence as set out in the second paragraph of section 286 of the Penal Code are now punishable with a minimum of 30 years. The term of 15 years remains reserved for what one might call "simple robbery."

As just stated, Act No. 6 of 1994 came into effect on 18 March of that year. The offence in this case was committed on 26 May, 1994; it was therefore within the ambit of the amendment.

Since there was use of personal violence to the complainant, and serious violence at that, the trial court correctly sentenced the appellant to 30 years' imprisonment. We believe the High Court would not have interfered with the sentence had the existence of Act No. 6 of 1994 been brought to its attention. It is proposed to rectify the position here.

Accordingly, the appeal against conviction fails and it is dismissed; the sentence is, on the other hand, rectified by reinstating the original term of 30 years and 12 strokes.

DATED at MWANZA this 1st day of December, 2000.

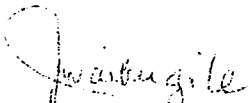


R. H. KISANGA
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

K.S.K. LUGAKINGIRA
JUSTICE OF APPEAL

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


N.M. MWAIKUGILE
SENIOR DEPUTY REGISTRAR