

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LUBUVA, J.A., KAJI, J.A., And KILEO, J.A.)

CRIMINAL APPEAL NO. 112 OF 2003

1. MAJALIWA s/o MUSSA]
2. JOSEPH s/o ROBERT] APPELLANTS

VERSUS

THE REPUBLIC RESPONDENT

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

(Chipeta, J.)

dated the 29th day of June, 1998
in
HC Criminal Appeal No. 24 of 1997

JUDGMENT OF THE COURT

5 December 2006 & 31 Jan, 2007

LUBUVA, J.A.:

In the District Court of Ilala at Dar es Salaam, the appellants were charged with the offence of armed robbery contrary to sections 286 and 285 of the Penal Code. They were sentenced to thirty (30) years term of imprisonment. Unsuccessfully, they appealed to the High Court and hence this appeal has preferred.

The facts as found at the trial were that on 17th December, 1995 at about 12 midnight, a group of bandits forced open the house of Jonas Kairuki (PW2) at Mikocheni within the outskirts of Dar-es-Salaam. PW2 was awoken from sleep, he switched on the lights and bandits armed with bush knives, iron bars and pieces of bricks. Among the bandits, PW2 identified the appellants one of whom, namely, the second appellant, Joseph Robert cut PW2 with a bush knife on the forehead and right thumb. The appellants guarded PW2 while the other bandits ransacked the house and stole an assortment of personal properties including a wall clock, the property of PW2. In this appeal, the appellants appeared in person while the respondent Republic was represented by Mrs. Kabisa, learned Principal State Attorney.

The appellants have lodged a joint lengthy five-point memorandum of appeal the effect of which amount to the complaint that they were not properly identified and that there was no evidence to show that they were armed. Further complaint is that there was no evidence showing that the wall clock found in the house of the

first appellant belonged to PW2. At the hearing of the appeal, the appellants, understandably, being lay persons, did not have anything useful to add to what is stated in their memorandum of appeal. However, the second appellant said that the strength of the light which enabled PW2 to identify them was not shown. He also wondered why the wife of PW2 was not called as a witness. He also admitted that he is known to PW2 who is his neighbour.

Mrs. Kabisa, learned State Attorney, did not support the conviction against the 2nd appellant. Essentially, she said the determination of the appeal is based on the identification of the 2nd appellant which, in this case it was of doubtful nature. This is so because, the incident took place at night, the Attorney asserted.

With regard to the 1st appellant, Majaliwa Mussa, Mrs. Kabisa supported the conviction and sentence. She submitted that the 1st appellant was found in possession of a wall clock belong to the complainant, PW2. The clock had the initials "BK" in respect of which

no explanation had been given how the 1st appellant had come in possession of it.

In addressing the issue whether the appellants were linked with the offence, the starting point is the scene of the crime. This relates to the house of the complainant, Jonas Kairuki (PW2). From the evidence of PW2 which was believed by the trial court as credible, the position is that when the group of bandits forced their way into the house, PW2, the complainant, woke up and switched on the lights in the room. These are the lights which are usually used for the illumination of the house and day to day domestic use. By aid of such lights, PW2 is categorical that he identified the appellants. What is more, with regard to the second appellant, it is to be noted that PW2 was known to him (2nd appellant) as they were neighbours. Additionally, according to the evidence of PW2, the appellants stayed with him at close range for a considerable time as they guarded him while the other bandits ransacked the house. In the circumstances, like the trial magistrate and the learned judge on first appeal, we are settled in our minds that the appellants were satisfactorily identified

by PW2 at the house when they stormed in together with the other bandits.

With regard to the first appellant, there is also the evidence that upon information and direction of the second appellant, the house of the first appellant was searched. Consequently, a wall clock with the initials "BK" was found in the house of the first appellant. The clock was identified by Jonas Kairuki (PW2), the complainant. The first appellant apart from claiming that PW2 did not give any description of the wall clock, otherwise he advanced no plausible explanation for the possession of the clock. The wall clock was one of the items which were stolen from the house of PW2 when the house was raided.

On the evidence as a whole, we are satisfied that the conviction against the appellants was well founded.

The appeal is without merit, it is accordingly dismissed in its entirety.

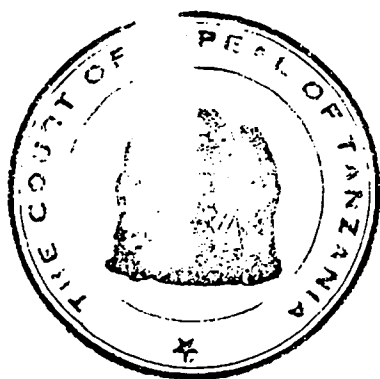
DATED at DAR ES SALAAM this 31st day of January, 2007.

D.Z. LUBUVA
JUSTICE OF APPEAL

S N. KAJI
JUSTICE OF APPEAL

E.A. KILEO
JUSTICE OF APPEAL

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




(S.M. RUMANYIKA)
DEPUTY REGISTRAR