

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: MSOFFE, J.A., KILEO, J.A., And ORIYO, J.A.)

CRIMINAL APPEAL NO. 308 OF 2007

ROLAND THOMAS @ MWANGAMBA.....THE APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Sheikh, J.)

dated the 3rd day of August, 2007

in

HC. Criminal Appeal No. 35 of 2003

JUDGMENT OF THE COURT

27 & 31 August, 2010

KILEO, J.A.:

The appellant, Roland s/o Thomas @ Mwangamba along with four others were arraigned before the District Court of Arusha for the offence of armed robbery contrary to sections 285 and 86 of the Penal Code. While the appellant's co-accused were found not guilty and acquitted, the appellant was convicted and sentenced to the mandatory term of 30 years imprisonment. He was unsuccessful in his appeal to the High Court, hence this second appeal.

The undisputed facts in this case show that sometimes on the evening of 11/7/1999 the appellant had visited for drinks, a certain 'grocery' attended by one Esther Isaka Msigiti (PW3). PW1, Mohamed s/o Mohamed also visited the grocery. The appellant consumed a number of drinks but some misunderstandings arose over the bill that was raised. Before the misunderstandings had been resolved the grocery was invaded by a group of 7 or 8 people who made away with a number of items from the grocery.

The appellant was convicted on the basis of a confession in the form of a cautioned statement which he repudiated. The trial magistrate found corroboration for the repudiated confession in the evidence of PW1 and PW3.

Upholding the decision of the trial court, the High Court judge who sat on first appeal found that the cautioned statement had been properly admitted. The learned judge also found that the repudiated confession provided corroboration for the evidence of identification given by PW1 and PW3.

The appellant's memorandum of appeal contains two main grounds: -

(a) That the lower courts erred by relying on a confession which was obtained illegally.

(b) That the lower courts misapprehended the evidence that was adduced at the trial, thereby arriving at a wrong decision.

The appellant appeared in person at the hearing of the appeal. The respondent Republic was represented by Mrs .Neema Joseph Ringo learned Principal State Attorney.

The appellant raised two major points in his oral submission before us. **First**, that the circumstances of the case as were brought out from the evidence did not link him to the offence of robbery but rather explained his presence at the scene as a mere customer. **Secondly**, that his cautioned statement was wrongly admitted and acted upon as it had been illegally obtained, it having been taken outside the time prescribed by law.

Mrs. Ringo did not support conviction. She conceded that the cautioned statement which was relied upon by the trial court was taken in contravention of section 50 of the Criminal Procedure Act (CPA). She pointed out that the appellant was arrested on 12/7/1999 and he was in police custody until 14/7/1999 at 8.30pm when Detective Sergeant Joseph (PW2) was instructed to record his statement. The learned Principal State Attorney referring to **Salim Petro Ngalawa v Republic** Criminal Appeal No. 85 of 2004 (unreported) submitted that the cautioned statement should not have been admitted. Without the cautioned statement the trial court was left only with the testimony of PW3 which was unreliable, Mrs. Ringo argued.

Starting with the cautioned statement, we agree with both the appellant and the learned Principal State Attorney that it should not have been admitted in evidence in the first place as it was taken outside the time prescribed by law. The record shows that PW2 was instructed to take down the appellant's statement at 8.30pm on 14/7/1999 while the appellant was arrested on 12/7/1999. The basic period available for

interviewing a person who is in police custody is provided for under sections 50 and 51 of the CPA. Section 50 provides: -

"50. Periods available for interviewing persons

(1) For the purpose of this Act, the period available for interviewing a person who is in restraint in respect of an offence is—

(a) subject to paragraph (b), the basic period available for interviewing the person, that is to say, the period of four hours commencing at the time when he was taken under restraint in respect of the offence;

(b) if the basic period available for interviewing the person is extended under section 51, the basic period as so extended.

(2) (a).....

(b).....

(c).....

Section 51 states:-

51 (1) Where a person is in lawful custody in respect of an offence during the basic period available for interviewing a person, but has not been charged with the offence, and it appears to the police officer in charge of investigating the offence, for reasonable cause, that it is necessary that the person be further interviewed, he may—

(a) extend the interview for a period not exceeding eight hours and inform the person concerned accordingly; or

(b) either before the expiration of the original period or that of the extended period, make application to a magistrate for a further extension of that period.

(2) A police officer shall not frivolously or vexatiously extend the basic period available for interviewing a person, but any person in respect of whose interview the basic period is extended pursuant to paragraph (a) of subsection (1), may petition for damages or compensation against frivolous or vexatious extension of the basic period, the burden of proof of which shall lie upon him.

(3) Where a magistrate to whom application has been made by a police officer under subsection (1), after having afforded the person, or a lawyer acting on his behalf, an opportunity to make submissions in relation to the application, is satisfied—

(a) that the person is in lawful custody;

(b) that the investigation of the offence by the police officer has been, and is being carried out as expeditiously as possible; and

(c) that it would be proper, in all circumstances to extend the relevant period,

the magistrate may extend that period for such further period as he may deem reasonable”.

As already indicated above, the evidence on record shows that the appellant was arrested on 12/07/1999 and remained in police custody until 8.30 pm on 14/07/1999 when his statement was taken.

There is no proof in the present case that the period available for interviewing the appellant beyond the period provided under section 50 was ever lawfully extended as by law provided.

This Court has stated in a number of decisions that a statement recorded in contravention of section 50 of the CPA is inadmissible – See for example, **Junta Joseph Komba and 3 Others v Republic** Criminal Appeal No. 95 of 2006 (unreported) and **Salim Petro Ngalawa** (*supra*).

Now, without the cautioned statement, there remains only the evidence of PW3 who was at the scene at the time the crime is alleged to have been committed. Both the appellant and Mrs. Ringo submitted that the evidence of this witness was suspect and the trial court should not have found it

reliable. The appellant insisted that the circumstances of the case did not connect him to the robbery.

We agree with him. A careful look at the circumstances will show that there was no link between the appellant's presence at the scene of crime and the actual commission of the crime. Evidence showed that the appellant went to the grocery as an ordinary customer for a drink. He consumed a number of drinks and a misunderstanding arose over the bill that was presented to him.

We are satisfied; in the light of the above considerations that conviction for armed robbery was wrongly entered against the appellant. We, in the event allow the appeal. Conviction entered against appellant is quashed and sentence passed is set aside. We order that the appellant be released from custody forthwith unless he is held for some other lawful cause.

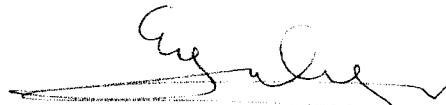
J.H. MSOFFE
JUSTICE OF APPEAL



E.A. KILEO
JUSTICE OF APPEAL

K.K. ORIYO
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL