

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

**(CORAM: MSOFFE, J.A., KIMARO, J.A., And MANDIA, J.A.)**

**CRIMINAL APPEAL NO. 21 OF 2008**

**NGOBEKO KASESA .....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

**(Appeal from the Judgment of the Resident Magistrate's Court  
Extended Jurisdiction at Tabora)**

**(Mbuya, PRM (EXT.Jur.))**

**in**

**Criminal Appeal No. 60 of 2005**

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**JUDGMENT OF THE COURT**

**20 & 23 June, 2011**

**KIMARO, J.A.:**

The appellant was convicted of the offence of armed robbery contrary to sections 285 and 286 of the Penal Code, [CAP. 16 R.E.2002]. He was sentenced to thirty years imprisonment. Aggrieved by the conviction and the sentence, the appellant appealed to the High Court, which transferred the appeal to Mbuya PRM, who in exercising extended jurisdiction of the High Court under section 45 (A) of the Magistrates Courts' Act [CAP 11 R.E.2002] sustained the conviction.

Still aggrieved, the appellant has filed three grounds of appeal challenging the decision of the first appellate court for sustaining his conviction. First, on evidence of his identification at the scene of crime where he says he was not at the scene of crime at the time the offence was committed. Second, his defence was not considered. Third, exhibits alleged to have been used in the commission of the offence were not tendered in court and the police who investigated the case did not even appear in court to testify on the investigation of the case and his arrest.

At the hearing of the appeal, the appellant appeared in person. Mr. Mgisha Kasano Mboneka learned State Attorney, represented the respondent Republic.

Briefly, the evidence led in the trial court was as follows: On the night of 18<sup>th</sup> March 2005, at about 10.00 p.m., Daniel Fideli (PW1) and Belenadeta John (PW2), a husband and wife respectively, were in their house sleeping. The door of their house was forced open by a huge stone and a group of six people entered therein with a gun and demanded money from PW1. In fear of losing his life, PW1 gave the culprits T.shs.

240,000/=. When they left, they also took his two shirts valued at T.shs.20,000/=. As the culprits were in the process of leaving, PW1 managed to hold the appellant by his shirt while at the same time PW2 cried for help. In the meantime, people from the neighbourhood, namely Samwel Ngoroka (PW3) the village chairman, and Charles Petro (PW4) responded to the alarm raised by PW2 and went to the scene of crime. They found PW1 holding the appellant.

Upon the complainant (PW1) explaining to the neighbours about the robbery, the appellant was queried about the same and he admitted involvement in the commission of the offence. The appellant was taken to the village authorities and he was subsequently charged with the offence of armed robbery together with others whom he mentioned. The other culprits were acquitted but he was convicted as charged.

In his defence the appellant said he was not at the scene of crime when the offence was committed. He said in March he went to Ingembensambo village to see his ailing uncle where he stayed for a week. After his health had improved, the appellant decided to go back home. The appellant said he was arrested on the way to his home after being

stopped by sungusungu who refused to hear about his explanation, but instead chose to arrest him and beat him on an allegation of being involved in the commission of the offence.

On the evidence from the prosecution witnesses, the trial court ignored the defence of the appellant and convicted him as charged. The first appellate court sustained the conviction and the sentence.

At the hearing of the appeal the appellant adopted his grounds of appeal. He also opted to respond to his grounds of appeal after hearing what the respondent Republic had to say about the appeal.

On his part, the learned State Attorney supported the conviction and the sentence. His submission to oppose the appeal on the first ground of appeal was that the evidence of PW1 showed that the appellant was arrested at the scene of crime. In seeking assistance, PW2 raised an alarm which was responded to by PW3 and PW4 who went to the scene of crime where they found the appellant already arrested by PW1. It was the further submission of the learned State Attorney that a panga and a bicycle were recovered at the scene of crime, and the appellant admitted orally

that he was involved in the commission of the offence. Thus, on the issue of the identification of the appellant, the learned State Attorney said, the evidence was watertight as the appellant was arrested at the scene of crime. In this respect, said the learned State Attorney, the first ground of appeal had no substance.

As for the second ground, Mr. Mgisha said it is true that the record of appeal does not show that in convicting the appellant, the trial magistrate considered the defence of the appellant. But the omission, argued the learned State Attorney, did not affect the evidence upon which the conviction of the appellant was based.

On the third ground the learned State Attorney said it had no substance as the panga and the bicycle which were recovered at the scene of crime were tendered in court as exhibits. On the issue of the prosecution not summoning any police investigator to give evidence, Mr. Mgisha said even if he had been summoned, there was no way in which the appellant could avoid criminal responsibility under the circumstances, because he was arrested at the scene of crime. He prayed that the appeal be dismissed as it has no merit.

In his reply the appellant had nothing of substance to say. He reiterated that he was not arrested at the scene of crime, nor were the panga and the bicycle found at the scene of crime. He insisted that he was innocent and that the case was framed against him. He prayed that his appeal be allowed and he be acquitted.

The evidence adduced to support the prosecution case shows that the offence of armed robbery was committed. PW1 and PW2 confirmed in their evidence that their house was invaded by armed bandits who had a gun. Using that weapon, PW1 was forced to surrender cash T.shs. 240,000/= to the armed bandits. While the other bandits managed to run away from the scene of crime, the appellant was not lucky as he was caught by PW1 and he did not let him go away. Following an alarm raised by PW2, both PW3 and PW4 went to the scene of crime and found the appellant there, already arrested by PW1. The prosecution evidence shows further that the appellant admitted orally being involved in the commission of the offence.

Under such circumstances, where there is evidence from eye witnesses to the arrest of an accused person at the scene of crime, as it

happened to the appellant in this case, we agree, and with respect to the learned State Attorney, that the question of the mistaken identity of the appellant cannot be an issue. He was arrested on the spot, at the scene of crime. This evidence alone was sufficient to convict the appellant. We have no reason to fault the decision of the first appellate court. The crucial issue having being determined against the appellant, the other grounds of appeal raised by the appellant are of no help to him. The appeal lacks merit. It is dismissed in its entirety.

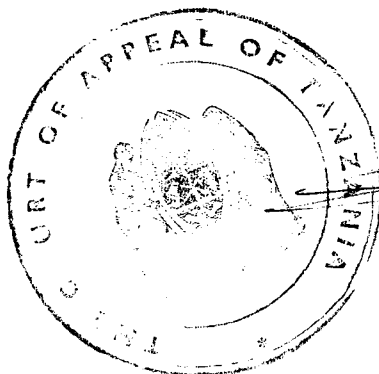
**DATED** at **TABORA** this 22<sup>nd</sup> day of June, 2011.

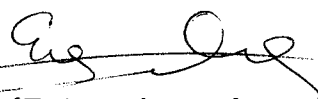
J. H. MSOFFE  
**JUSTICE OF APPEAL**

N. P. KIMARO  
**JUSTICE OF APPEAL**

W. S. MANDIA  
**JUSTICE OF APPEAL**

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



  
(E. Y. Mkwizu)  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**