

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

(CORAM: MSOFFE, J.A., LUANDA, J.A., And MANDIA, J.A.)

CRIMINAL APPEAL NO. 340 OF 2009

**1. MUSSA RASHIDI
2. ATHUMANI OMARI** } **APPELLANTS**

VERSUS

THE REPUBLIC **RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania
at Tanga)**

(Shayo, J.)

**dated the 1st day of August, 2008
in
Criminal Appeal No. 57 of 2006**

JUDGMENT OF THE COURT

23 & 29 March, 2011

LUANDA, J.A.:

In the District Court of Lushoto at Lushoto Musa s/o Rashidi and Athumani s/o Omari (hereinafter referred to as the 1st and 2nd appellant respectively) were charged with armed robbery contrary to sections 285 and 287A of the Penal Code, Cap.16 and convicted. Each appellant was sentenced to thirty (30) year imprisonment.

The appellants were aggrieved by the finding of the trial court, they unsuccessfully appealed to the High Court. Still dissatisfied, hence this second appeal.

In their joint memorandum of appeal, the appellants have raised five grounds. Mr. Faraja Nchimbi learned State Attorney who represented the respondent Republic submitted, and correctly in our view, that the five grounds can be condensed into grounds. One, whether the appellants were identified at the scene of crime. Two, whether the doctrine of recent possession was properly invoked. Mr. Nchimbi went further to tell us that according to the record, both lower courts did not base their conviction on the basis of the evidence of identification rather their conviction proceeded on the basis of the doctrine of recent possession. Mr. Nchimbi urged us not to consider that ground.

We have gone through the record. We entirely agree with Mr. Nchimbi. At page 37 of the record, the trial court after summarizing the prosecution case in respect of the question of identification, the trial magistrate observed, we quote:-

*"I concur with the accused defence that they
were not properly identified that day."*

However, basing on the doctrine of recent possession, the appellants were convicted and sentenced as aforesaid. Indeed the High Court sustained their conviction on the basis of the doctrine of recent possession. So the question in this appeal is whether the doctrine of recent was properly invoked.

Mr. Nchimbi submitted that the doctrine was properly invoked and urged the Court to dismiss the appeal. Elaborating, he said that the item stolen by force was a motorcycle and the appellants were found in possession of the same after a period of 1 month and 2 weeks. Taking the nature of the article stolen, which does not change hands easily, and the period of recovery, the doctrine of recent possession applies. He urged us to dismiss the appeal.

Briefly the prosecution case was that on the fateful day of the incident, that is on 25/8/2005 around 1.00 hours, while the complainant one Lewis Juma Shunda (PW1) was at his residence, he heard the door to his bed room being broken. He claimed to have seen the appellants holding

a torch and a "*sime*". He was attacked by the two whereby his four right hand fingers were cut. He was ordered to surrender the ignition key of the motorcycle which he did. However, he remained with a spare one and a card. The assailants took both the key and the motorcycle and vanished. The incident was reported to the police and the wheels of investigation were set in motion.

According to D/SSGT Kedmond (PW4) on 6/10/2005 they received information from informers that the stolen motorcycle was at Dochi in possession of the appellants. A trap was prepared and that the informers were to act as buyers of the said motorcycle. Indeed the informers and the 1st appellants struck a deal and they then secured transport to take the motorcycle to Korogwe. Then on 10/10/2005 the 1st appellant went to a house and collected the motorcycle. The 1st appellant came out with the motorcycle which was pushed by the 2nd appellant. The motorcycle was loaded in the Hiace and a journey to Korogwe started. However, upon reaching Soni the Hiace was stopped by police officers including PW4. The appellants were arrested. PW1 was summoned by police. He duly identified the motorcycle.

10/10/2005. They denied to be found in possession of the stolen motorcycle. Applying the doctrine of recent possession, both lower courts were satisfied that the appellants were the ones who robbed the motorcycle.

The doctrine recent possession goes thus; If a person is found in possession of recently stolen property in absence of any explanation to show how he came about to possess it he is taken to have been either the actual thief or a guilty receiver. The doctrine is applicable even in serious offences like murder. **(See R V Bakari s/o Abdallah [1949] 16 EACA 84).**

In the instant case, there is no doubt that the motorcycle of the complainant was stolen by force and the thieves were not seen. Further, the motorcycle was recovered after a period of $1\frac{1}{2}$ months under the possession of the appellant who failed to offer any explanation leave alone a reasonable one as to how they came to possess which motorcycle was duly identified by the complainant (PW1). And as the nature of the stolen article could not change hands easily because it involves a process of

change of ownership through registration, the period of ½ months was not a long period; it was recent.

Like the two lower courts we are satisfied that the doctrine of recent possession was properly invoked.

We dismiss the appeal in its entirety.

DATED at TANGA this 28th day of March, 2011


J. H. MSOFFE
JUSTICE OF APPEAL

B. M. LUANDA
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