

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

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

**CRIMINAL APPEAL NO. 327 OF 2009**

**ABDALLAH HASSANI ..... APPELLANT**

**VERSUS**

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

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

**(Mussa, J.)**

**dated the 31<sup>st</sup> day of July, 2009**

**in**

**Criminal Appeal No. 59 of 2008**

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**JUDGMENT OF THE COURT**

8 & 8 April, 2011

**LUANDA, J.A.:**

On 8/7/2007 at about 4.00 a.m. the complainant Saidi s/o Juma (PW2) left his homeplace Kolang'a heading to Chogo market place by bicycle carrying a variety of home reared birds for sale. Alas! when he was approaching a certain place called Kwediyamba, he was attacked by two youths. They cut him with a knife and his bicycle and the birds were forcefully taken. One of the youths took the bicycle and left the place. PW1

picked courage and chased him and stabbed him on the back. The youth stabbed, threw the bicycle and took to his heels. PW1 reported to Mr. Mhina and later went to police not knowing the fate of the youth he stabbed. But the police officer to whom the matter or incident was reported did not testify. Be that as it may, PW2 was issued with a PF3 and went to hospital for treatment.

Meanwhile, at around 7.30 a.m. the village chairman of Kolang'a village one Ally Hemed (PW3) received information about a person who was found along the road and it was said that the person attempted to steal from a person who had chicken. He went to the place and found the appellant. He interrogated him, the appellant told him he was snatched of his bicycle which carried home reared chickens. He however did not know the one who robbed him. And when he was asked as to a person who was injured by a knife and had gone to hospital, there was no reply. Fortunately police arrived and they took him to Police Station.

PW3 went to hospital where he found Sadiki Juma. He did not say how he knew him. Be that as it may, Sadiki Juma (PW2) spoke with

difficulty as his mouth was injured. After two or three days PW2 was called by the village office bearers. PW2 told them the story about how he was attacked by unknown people at a forest area.

The appellant on the other hand gave a long defence case. In short he said he owed PW2 money in respect of chicken he had taken. However, PW2 was adamant to pay the same until when they fought whereby he was stabbed he lost consciousness and found himself in hospital. Then on 9/7/2007 he was interrogated by police and asked whether he had stabbed PW2. He denied.

After a full trial, the appellant who was charged with armed robbery contrary to section 287 A of the Penal Code, was convicted as charged and sentenced to thirty (30) years imprisonment.

Dissatisfied with the finding of the trial District Court, the appellant unsuccessfully appealed to the High Court. The appellant has come to this Court on second appeal.

Ms. Pendo Makondo learned State Attorney for the respondent/Republic supported the appeal and urged us to allow the appeal. Ms Makondo submitted that the evidence adduced was not strong. Elaborating she first said, PW2 did not identify his assailants as it was dark. In actual fact PW2 did not claim to have identified his assailants as suggested by both the trial court and the High Court, she charged. Second, the PF3 of PW2 was admitted in breach of section 240 (3) of the Criminal Procedure Act, Cap 20. Lastly it is on the record that the appellant was not given opportunity to cross examine PW2.

The main ground in this appeal which will dispose of the appeal is identification. As regards to identification, the evidence on the record is clear that the appellant was not known to PW2 before though he purported to say so at p.7 of the record. At p.7 PW2 said, we reproduce:-

*"I know the accused he stays at Kinkwemba-Matembo"*

PW3 when giving evidence he said, we quote:-

*"I went to Hospital where I found Sadiki Juma, he was speaking with difficulty as he was*

*Sadiki to the office, **he there told us of how**  
**he was attacked by unknown people at a**  
**forest area....”** [Emphasis supplied]*

We tend to agree with the evidence of PW3 because if he knew him he would have mentioned him when narrating the story to someone called Mhina, immediately after the incident. He did not do that. It shows clearly that he did not identify his assailants. And this was because the incident took place during dark hours without any kind of light. So the conditions were not favourable for correct identification. We entirely agree with Ms. Makondo.

Since this was the main ground in this appeal, we find no need of discussing the other grounds. In sum, the appeal is allowed. We quash the conviction and set aside the sentence. We order the appellant to be released from prison forthwith unless he is held for other lawful cause.

DATED at TANGA this 8<sup>th</sup> day of April, 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**