IN THE COURT OF APPEAL OF TANZANIA
AT TABORA

(CORAM: MUNUO, J.A., KIMARO, J.A. And MJASIRI, J.A)

CRIMINAL APPEAL NO. 252 OF 2007

CHIGANGA MAPESA ..... APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Tabora)

(Mziray, J)

dated 11th day of June, 2002
in
Criminal Appeal No. 160 of 2006

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JUDGMENT OF THE COURT

28 & 31 May, 2012

MJASIRI, J.A:

At the District of Bariadi in Shinyanga Region at Sima Area, an incident of robbery occurred at the premises of one Mabula Ngabi, PW1. The incident took place at around 01:00 hours. Various items were stolen valued at TZS 176,500/= including one motor vehicle ignition key and eight other keys.

It was the prosecution case that the appellant and three other persons were responsible for the said robbery and they used violence in committing the crime leading to the serious injury of Pw1, causing him to lose consciousness and resulting in his admission in hospital. The appellant was alleged to have visited PW1's shop on August 5, 2001 to warn him of an impending robbery. He found PW1 at his shop with his son in law and requested to talk to PW1 in private, and when given that opportunity he warned him that he was going to be robbed. He asked for TZS one thousand (1,000) for the information provided.

With the said warning in mind, PW1 reinforced security in his house by calling his relatives. However when the day passed without any incident, they went back to their homes. The house of PW1 was broken into on August 7, 2001.

The appellant and three others were charged with the offence of robbery with violence contrary to section 285 and 286 of the Penal Code. The appellant was convicted of the offence and was sentenced to thirty (30) years imprisonment and twelve (12) strokes. Charges were

withdrawn by the prosecution in respect of the three other persons charged with the appellant.

Being aggrieved by the decision of the District Court, he appealed to the High Court against both conviction and sentence. His appeal to the High Court was unsuccessful hence this second appeal to this Court.

The appellant appeared in person and was unrepresented at the hearing of the appeal. The respondent Republic had the services of Mr. Hashim Ngole, learned Senior State Attorney. The appellant filed six (6) lengthy grounds of appeal. However, the main complaint advanced by the appellant is that the doctrine of recent possession was wrongly invoked. His conviction was therefore not proper.

In his address to the Court the appellant denied that he was found with the ignition key which was stolen from PW1's house. He submitted that PW2, PW3 and PW6 did not tell the truth when they testified that he was arrested at the house of PW1, where he had taken the car key and tried to start the motor vehicle which parked outside PW1's house.

He also argued that so many items were stolen from the house of PW1, and none of the items were found with him. He claimed that he was going out with PW1 and PW2's daughter, and they did not approve of it, hence they trumped up this charge against him.

Mr. Ngole, learned State Attorney submitted that he supported the conviction and sentence meted out to the appellant. He stated that there was sufficient evidence to prove that Appellant was found in possession of one of the items stolen from PW1's house, namely the car key, almost immediately after the robbery had taken place. It was PW2, PW3 and PW6 who were present when the key was brought. PW6 a ten cell leader, gave the same account given by PW2.

He argued that the appellant was found in possession of recently stolen property and he gave no explanation for it, the court may legitimately infer that he is a thief, a breaker or a guilty receiver. He relied on the case of **DPP v Joachim Kamba** (1984) TLR 214. Mr. Ngole also relied on the case of **Magendo Paul & Another v Republic** (1993) TLR

219, which referred to the case of **Miller V Minister of Pensions [1947] 2 ALL ER 372** where Lord Denning held as follows:-

> *" The law would fail to protect the community if it admitted fanciful possibilities to deflect the Court of Justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible but not in the least probable", the case is proved beyond reasonable doubt."*

In responding to the allegations made by the appellant that the charge against him was framed, Mr. Ngole submitted that there was no evidence on record that any of the prosecution witnesses had a grudge against the appellant. This complaint was not raised in cross-examination. He made reference to the case of **Charles Barnabas v Republic,** Criminal Appeal No. 145 of 2003 CAT (unreported).

The issue for determination is, what is the legal significance to be attributed to possession of recently stolen property? Is the possession of

the stolen car keys by the appellant on August 7, 2001 at 8.00 p.m. sufficient to reach a conclusion that the appellant participated in the robbery. In **Rv Kowlyk** [1988] 2 SC R. 59.

The supreme Court of Canada held thus:-

> *"The doctrine of recent possession may be succinctly stated. Upon proof of the unexplained possession of recently stolen property, the trier of fact may – but not must draw an inference of guilt of theft or of offences incidental thereto. This inference can be drawn even if there is no other evidence connecting the accused to the more serious offence. When the circumstances are such that a question could arise as to whether the accused was a thief or merely a possessor, it will be for the trier of fact upon consideration of all the circumstances to decide which if ether, inference should be drawn. The doctrine will not apply when an explanation is offered which might reasonably be true even if the trier of fact is not satisfied of the truth."*

In **Rex v Bakari s/o Abdulla** (1949) 16 EACA it was stated as under:-

> *"That cases often arise in which possession by an accused person of property proved to have been very recently stolen has been held not only to support a presumption of burglary or of breaking and entering but for murder as well, and if all the circumstances of a case point to no other reasonable conclusion the presumption can extend to any charge however penal."*

See also **Manazo Mandundu and Another v R** (1990) TLR 92; **Kulwa Athumani @ Mapunguti and three others v Republic** Criminal Appeal No. 29 of 2005, CAT, (unreported).

As the possession was very recent, we are satisfied that this is a fit case for invoking the doctrine of recent possession to support robbery.
It is also on record that the appellant went to see PW1 before the robbery took place. PW1 in his testimony stated that on the night of the incident he recognized the appellant, as one of the people who broke into his house. PW4 also testified that the appellant went to see PW1 before the

robbery and he demanded to speak to PW1 in private. We therefore agree with the findings of the courts below and find that the appeal has no merit. In the result, we dismiss the appeal.

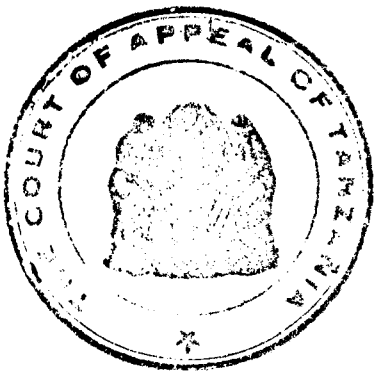
DATED at **TABORA** this 28th day of May, 2012.

E. N. MUNUO
JUSTICE OF APPEAL

N. P. KIMARO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

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



(Z. A. Maruma)
DEPUTY REGISTRAR
COURT OF APPEAL