

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

(CORAM: OTHMAN, C.J., LUANDA, J.A., And MMILLA, J.A.)

CRIMINAL APPEAL NO. 268 OF 2011

ABDALLAH BAKARI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

**(Appeal from the Conviction of the High Court of Tanzania
at Arusha)**

(Msoffe, J.)

dated the 17th day of April, 2002

in

Criminal Appeal No. 3 of 1999

JUDGMENT OF THE COURT

21st November, & 2nd December, 2013

LUANDA, J.A.:

This is a second appeal. The appellant Abdala ^{s/o} Bakari and Mwinjuma ^{D/o} Omari, who was acquitted, were charged in the District Court of Kiteto sitting of Kibaya with Armed Robbery c/s 285 and 286 of the Penal code, Cap. 16. The appellant was convicted as charged and sentenced to 30 years imprisonment together with corporal punishment.

The appellant was dissatisfied with the finding of the trial District Court, he unsuccessfully appealed to the High Court of Tanzania (Arusha Registry). Aggrieved, he has come to this Court.

The evidence against the appellant was given by Adamu ^{S/o} Athumani (PW1), Yahaya s/o Athumani (PW2) and Yonas s/o Myoyi (PW3).

According to PW1 and PW2, on the material day i.e 23/2/1998 about 2.00 hrs when they were asleep, they were ambushed by a group of three people who were armed with a home made gun (Gobore). The appellant was the one who had the said gun. The bandits demanded money from them. PW1 gave Tsh. 150,000/= to Juma s/o Mburunge who is one of those three thugs and who is at large to date. Juma Mburunge and another one whom they could not identify, left the place leaving behind the appellant. However, the appellant could not leave the place as he was overpowered and arrested there and then. It was PW1 who picked courage and jumped on the appellant and caught hold of him. An alarm was raised, some villagers including PW3

responded. The appellant was taken to Police Station and eventually charged with the aforesaid offence.

The appellant in his defence denied to have committed the offence. His defence that he went to the place to take his wife was rejected by both lower Courts.

In this appeal, the appellant who was unrepresented, raised six grounds of appeal in his memorandum of appeal. Essentially the six ground can be condensed into one of his ground of appeal in that whether the prosecution had proved its case beyond reasonable doubt.

Both courts below based their conviction on the credibility of witnesses. This being a second appeal, the Court can only interfere with the concurrent findings of facts unless it is shown there is a misdirection or non direction. (See **DPP v Jaffari Mfaume Kawawa** [1981] TLR 149)

In the instant case we have carefully travelled through the evidence. We are unable to fault the concurrent findings of the lower courts. The evidence on record of PW1 and PW2 which was corroborated by PW3 who responded to the alarm raised leaves no doubt that the appellant, who was arrested at the scene of crime, was among the three bandits who stormed in the house of PW1 and demanded money by threatening PW1 with a gun. And PW1 surrendered the money for fear of his dear life. In terms of S. 285 of the Penal Code, that is armed robbery. The evidence on record is water tight. The appellant defence was properly rejected.

The appellant grounds of appeal that he was not arrested at the scene of crime; failure to evaluate evidence; failure to call the investigator of the case; that his defence was not considered and that the courts below improperly acted on the exhibit tendered are devoid of any merits.

The appeal is dismissed in its entirety.

Order accordingly.

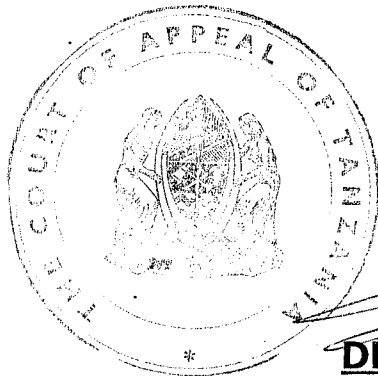
DATED at **ARUSHA** this 29th day of November, 2013.

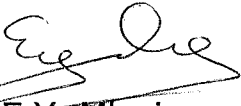
M.C. OTHMAN
CHIEF JUSTICE

B.M. LUANDA
JUSTICE OF APPEAL

B.M. MMILLA
JUSTICE OF APPEAL

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




E.Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL