

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KILEO, J.A., MUSSA, J.A. And JUMA, J.A.)

CRIMINAL APPEAL NO. 42 OF 2006

RAJABU NASSORO @ RASTA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Dar es Salaam)

(Mlay, J.)

dated the 30th day of November, 2005

in

HC. Criminal Appeal No. 116 of 2005

JUDGMENT OF THE COURT

6th & 13th July, 2015

KILEO, J.A.:

On 05/06/1996 the appellant appeared before the District Court of Morogoro at Morogoro being charged with armed robbery contrary to sections 285 and 286 of the Penal Code, cap 16 of the Laws. He was convicted and sentenced to 30 years imprisonment. Initially he had been charged alongside two other persons (who were subsequently acquitted) whose charge against them was that of receiving stolen property contrary to section 311 (1) of the Penal Code. His appeal to the High Court was

unsuccessful hence this second and last appeal. The appellant preferred nine grounds of appeal, however, in the circumstances of this matter it is only the ground on the application of the doctrine of recent possession which is in issue. We say so because the appellant's conviction was not based on identification as he claimed in his first ground of appeal but mainly on the doctrine of recent possession.

The appellant was allegedly arrested in a toilet within the premises where the stolen properties were found. A shotgun was said to have been found in the same toilet he was allegedly hiding. The appellant denied involvement in the crime claiming that he was shot as he was on his way to his place of work.

The appellant appeared in person and was unrepresented at the hearing of the appeal. The respondent Republic was represented by Mr. Mutalemwa Kishenyi, learned Senior State Attorney.

When called upon to address us the appellant did not have much to say. He indicated to us that he would rather leave it to the respondent to address us first.

Mr. Kishenyi did not support the conviction and sentence meted out against the appellant. He was of the opinion that the doctrine of recent

possession could not be applicable in the circumstances of the case as there was no proof that the appellant was found in possession of the stolen property. Moreover the complainant did not sufficiently identify the property that was found in the premises of the appellant's co accused. The learned Senior State Attorney was justified to hold that opinion.

In order to get a proper grasp of the matter we find it instructive, at this point, albeit briefly to recount a background of the matter before us.

According to the complainant Abasalia Justin who testified as PW3, on 31/05/1995 at around 1.00 am she was invaded by a group of armed bandits who made away with a number of items from her shop. She was not able to identify any of the invaders. Subsequently several items were found at the premises of the appellant's co-accused (who also owned a shop) some of which the complainant purportedly identified as belonging to her. As earlier stated the appellant was connected to the crime allegedly because he was found hiding in a toilet within the premises at which some of the stolen items were found.

This Court in Criminal Appeal no. 29 of 2005 between **Kulwa Athumani and Others and the Republic**, (unreported) cited the case of

R v Loughlin 35 Cr App. R 69, where the Lord Chief Justice of England

had this to say in relation to the doctrine of recent possession:

"If it is proved that premises have been broken into, and that certain property has been stolen from the premises, and that very shortly afterwards, a man is found in possession of that property, that is certainly evidence from which the jury can infer that he is the housebreaker or shop-breaker and; if he is, it is inconsistent to find him guilty of receiving, because a man cannot receive from himself."

This means therefore that before a court can rely on the doctrine of recent possession as a basis of conviction in a criminal case, the possession must be positively proved, that is, there must be positive proof, first that the property was found with the suspect. Secondly, that the property is positively identified as the property of the complainant, thirdly the property was stolen from the complainant and lastly the property was recently stolen from the complainant.

This matter need not detain us. Suffice it to say that there was no proof whatsoever that the stolen property was found in the possession of the appellant. There was no evidence that the appellant was either the owner

There was also no evidence that he was the one who took the property to those premises. Our consideration as above is sufficient to dispose of the appeal, which we find to have been filed with sufficient cause for complaint. In the event we allow the appeal by Rajabu Nassoro@ Rasta. Conviction entered against him is quashed and sentence is set aside. We order his immediate release from custody unless he is otherwise held for some lawful cause.

Dated at Dar es Salaam this 08th day of July 2015.

E. A. KILEO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

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


E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL