

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**CRIMINAL APPEAL NO. 200 OF 2014**

**(CORAM: RUTAKANGWA, J.A., MJASIRI, J.A., And KAIJAGE, J.A.)**

**1. AMOS SAMSONI  
2. KINGORI MARWA  
3. NYAMARONDA SESE ..... APPELLANTS  
4. SAMSON ARABITO**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT  
(Appeal from the Decision/Judgment of the High Court of Tanzania  
at Mwanza)**

**(Mwangesi, J.)**

**dated the 26<sup>th</sup> day of March, 2014**

**in**

**Criminal Appeal No. 39 of 2013**  
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**JUDGMENT OF THE COURT**

25<sup>th</sup> November & 2<sup>nd</sup> December, 2015

**KAIJAGE, J.A.:**

In the District Court of Serengeti District, at Mugumu, the appellants were jointly charged with armed robbery contrary to section 287A of the Penal Code. Following a trial, they were each convicted and sentenced to a term of thirty (30) years imprisonment. They were aggrieved. Their joint appeal to the High Court against such conviction and sentence was dismissed, hence this second appeal.

The particulars of the charge upon which the appellants were called upon to answer read thus:-

*"AMOS s/o SAMSON, KINGORI s/o MARWA, NYAMARONDA s/o SESE, SAMSON s/o ARABITO AND EZEKIEL s/o MIDAMBA @ OYOGA are jointly and together charged on 6<sup>th</sup> day of November, 2008 at 9.00 hrs at Masongo Village within Serengeti District in Mara Region did steal 57 heads of cattle valued at Tshs.17,100,000/= the property of one BARITORE s/o MATARO who was entrusted with the said heads of cattle as they were in dispute and at or immediately before or immediately after the time of the stealing did use machetes arrows, clubs and spears in order to obtain or retain the said stolen properties."*

Against the decision of the High Court, the appellants filed separate memoranda of appeal containing several grounds, but the following is the common determining grievance:-

*"That the appellants were convicted upon an incurably defective charge."*

Before us, the appellants appeared in person, unrepresented. The respondent Republic had the services of Hemedi Halidi Halifani, the learned State Attorney.

Submitting in support of the said appellants' ground of appeal, the learned State Attorney hastened to correctly point out that the particulars of the offence pertaining to the charge of armed robbery which the appellants were called upon to answer, do not indicate against whom the arrows, the clubs and spears were used in order to obtain or retain the allegedly stolen heads of cattle. Such procedural irregularity offended the provisions of section 132 of the Criminal Procedure Act, Cap. 20 R.E. 2002 (the CPA) and rendered the charge incurably defective, he contended.

On account of the said irregularity, the learned State Attorney whilst citing **BALTAZAR GUSTAF AND ANOTHER V. R;** Criminal Appeal No. 266 of 2014 (unreported), urged us to nullify the proceedings of the two courts below and proceed to allow the present appeal. In view of what he described as serious evidential contradictions, incredible and implausible evidence attending the case for the prosecution, he declined to press for a retrial.

On our part, we propose to begin by examining the provisions of section 287A of the Penal Code which reads:-

*"278A Any person who steals anything, and at or immediately after the time of stealing is armed with any dangerous or offensive weapon or instrument, or is in company of one or more persons, and at or immediately before or immediately after the time of the stealing **uses or threatens to use violence to any person**, commits an offence termed "armed robbery" and on conviction is liable to imprisonment for a minimum term of thirty years with or without corporal punishment."*

As already shown, the particulars of the charge in this case lack the basic attribute of a charge of **armed robbery** preferred under section 287A of the Penal Code. As matters stand, the appellants in this case were not reasonably informed about the nature of the case they had to face. When confronted with an identical shortcoming, this Court in **BALTAZAR GUSTAF** (supra) had this to say:-

*"Under section 287A of the Penal Code (Cap. 16 R.E. 2002) the **threat** "to use actual violence **to any person or property ...."** are very important*

*ingredients of the offence. As it is, this was a defective charge because important elements of the offence were not disclosed in order to allow the Appellants the opportunity to meaningfully understand it and be able to prepare their defences."*

As correctly submitted by the learned State Attorney, the particulars of the charge alluded to at the beginning of this judgement do not disclose against whom the arrows, clubs and spears were used in order to obtain or retain the allegedly stolen heads of cattle. A charge, such as the one in question, which does not disclose essential elements or ingredients of the offence offends section 132 of the CPA which provides:-

*"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."*

Among the hallmarks of minimum standards of a fair trial in a criminal case, are that the accused must be able to understand the nature of a charge and be able to make a defence. (See, for instance, **MUSSA**

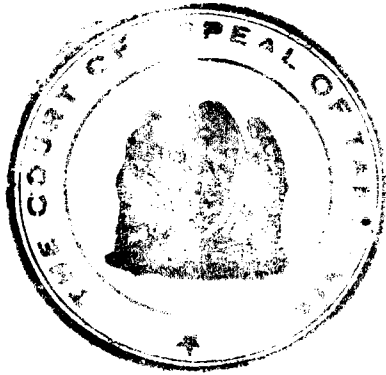
**MWAIKUNDA V.R;** [2006] T.L.R. 387 and **HASSAN MOSHI BORA V.R;**  
Criminal Appeal No. 160 of 2010 (unreported).

In the light of the foregoing brief discussion, we hold a firm view that the absence of an essential ingredient of the offence in respect of the charge upon which the appellants were called upon to answer rendered it (the charge) incurably defective. Thus, the proceedings of the trial court based on the incurably defective charge were a nullity. Similarly, the proceedings and the judgement of the first appellate court based on the null proceedings of the trial court were, by extension, also a nullity.

The foregoing considered, we are constrained to allow this appeal. We hereby quash and set aside the conviction and sentence imposed against the appellants by the trial court and affirmed by the first appellate court. In view of the misgivings expressed by the learned State Attorney on the lack of sufficient credible incriminating evidence available on record, we decline to give an order for a retrial. The appellants are to be released from prison forthwith unless otherwise lawfully held.

It is so ordered.

DATED at MWANZA this 30<sup>th</sup> day of November, 2015.



E. M. K. RUTAKANGWA  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

S. S. KAIJAGE  
**JUSTICE OF APPEAL**

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

  
E. F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**