IN THE COURT OF APPEAL OF TANZANIA
AT TABORA

(CORAM: MBAROUK, J.A., LUANDA, J.A. And MZIRAY, J.A.)

CRIMINAL APPEAL NO. 190 OF 2015

IDD RIGANYA..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

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

(Kaduri, J.)

Dated 26th day of November, 2008
in
DC Criminal Appeal Case No. 154 of 2006

JUDGMENT OF THE COURT

11th & 17th October, 2016

MBAROUK, J.A.:

The appellant, Idd Riganya and another not subject to this appeal were charged with armed robbery contrary to sections 285 and 286 of the Penal Code, Cap. 16 R.E. 2002 at the District Court of Kahama at Kahama. Following the trial, it was the appellant alone who was convicted and sentenced to

a term of thirty (30) years imprisonment. Aggrieved, he appealed to the High Court of Tanzania at Tabora (Kaduri, J.) and his appeal was dismissed. Undaunted, he has preferred this second appeal.

At the hearing of the appeal on 11-10-2016, the appellant appeared in person, unrepresented. Whereas the respondent/Republic was represented by Mr. Miraji Kajiru, learned State Attorney.

In this appeal it is our respective view that the 1st ground alone among the five grounds of appeal preferred by the appellant in his memorandum of appeal is sufficient to determine this appeal. As expressed by the appellant, this ground is to the following effect:

> *"That the trial court and the first appellant court wrongly convicted the appellant relying on a defective charge sheet."*

In his written elaboration, the appellant contended that, the evidence contradicted with the particulars of the offence

in the charge sheet. The appellant added that, the particulars of the charge sheet shows that the threat of a gun was directed to GOZA JAPHET (PW1), the owner of filing station. However, he said, the evidence shows that PW1 was at home and not at the scene of crime when the filling station was invaded. He further pointed out that, the record shows that PW1 got information of the robbery from Rajabu Abdallah (PW2) and Amran Bakari (PW3) who were watchmen at the filling station at the time was invaded and they were the ones who were threatened by gun at the scene of crime and not PW1. The appellant further stated in his written elaboration on that ground of appeal that, the prosecution side failed to amend the charge sheet as required by the law and that rendered the charge sheet defective.

On his part, the learned State Attorney readily conceded to the defect and supported the appeal. He added that, the record of proceedings clearly shows that there is a variance between what is stated in the particulars of the offence in the charge sheet and what appears in the evidence adduced by

PW2 and PW3. He therefore urged us to quash the conviction and set aside the sentence and order the release of the appellant from prison as he had already served ten years and the evidence is very weak to prove the offence against the appellant.

According to various decisions of this Court, it is now settled that the particulars of the charge shall disclose the essential elements or ingredients of the offence charged. For example see: **Mussa Mwaikunda V. Republic** [2006] TLR 387 and **Isidori Patrice v. Republic**, Criminal Appeal No. 224 of 2007 (unreported).

In the instant case, the charge sheet shows that, the appellant was charged with the offence of armed robbery contrary to sections 285 and 286 of the Penal Code. To appreciate what is contained in those provisions of the law, we have found it prudent to reproduce section 285(1) of the Penal Code which reads as follows:-

"285 (1) Any person who steals anything, and, at or immediately after the time of stealing it, ***uses or threatens to use actual violence to any person*** *or property* ***in order to*** *obtain or* ***retain the thing stolen or to prevent to overcome resistance to its being stolen or retained,*** *is guilty of robbery".* [Emphasis added].

The decision of this Court in the case of **Kashima Mnadi v. Republic,** Criminal Appeal No. 78 of 2011 (unreported), the Court stated as follows in relation to section 285 of the Penal Code.

"Strictly speaking for a charge of any kind of robbery to be proper, it must contain or indicate actual personal violence or threat to a person on whom robbery was committed. Robbery as an offence, therefore, cannot be committed without the use of actual violence or threat to the person targeted to be robbed. So, the particulars of the

offence of robbery must not only contain the violence or threat but also the person on whom the actual violence or threat was directed".

The particulars of the charge in this case reads as follows:-

"PARTICULARS OF THE OFFENCE: That Idd s/o Riganya and Jackob s/o Chanzu are jointly and together charged on 31st the day of December, 2005 at about 01:00 hours at Ushirombo town ship within Bukombe District in Shinyanga Region did steal cash 200,000/- the property of ***Gozza s/o Japhet and immediately before at or after such stealing did use a gun SMG/SAR to threaten the property owner in order to effect the stealing.****" [Emphasis added].*

As shown earlier PW2 and PW3 testified that they were the ones who were at the filling station and the threat of a gun was directed to them. Surely, this was a variance

between what appeared in the charge sheet and the testimonies of PW2 and PW3 in their evidence.

For that variance, it cannot be said that the elements of the offence of robbery were proved beyond reasonable doubt. This is because, the element of a person on whom the actual violence or threat was directed to, differ/varies. Such variance remained without being taken care of by amending the charge. As far as such an essential ingredient of armed robbery was violated/omitted, that renders the charge sheet fatally defective, and hence we find that there was no fair trial.

We have considered the circumstances in this case and thought whether to order a retrial after the amendment of the charge sheet. However, we have arrived at a conclusion that it will not be in the interest of justice to take such a course of action. This is because, as pointed out by the learned State Attorney, the appellant has already served ten years of his

imprisonment term and the evidence is so weak to sustain his conviction.

For those reasons, we allow the appeal, quash the conviction and set aside the sentence. We order the appellant to be released from prison forthwith unless otherwise lawfully held.

DATED at **TABORA** this 12th day of October, 2016.

M. S. MBAROUK
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSITCE OF APPEAL

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

E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL