

IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM

(CORAM: MUSSA, J. A., MUGASHA, J. A. And LILA, J. A.)

CRIMINAL APPEAL NO. 208 OF 2017

MAWAZO JUMA ..... APPELLANT

VERSUS

THE REPUBLIC .....RESPONDENT

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

(Ihema, J.)

dated the 16<sup>th</sup> day of August, 2004  
in  
Criminal Appeal No. 17/2004

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JUDGMENT OF THE COURT

3<sup>rd</sup> April & 3<sup>rd</sup> June, 2019

**MUSSA, J.A.:**

In the District Court of Morogoro, the appellant was arraigned, tried and convicted on the following charge sheet.

*"Offence section and law: Armed robbery C/S  
285 and 286 of the Penal Code Cap: 16 of the law  
as read together with written miscellaneous*

*amendment Act No. 10 of 1990 and Act. No. 27 of 1991.*

***Particulars of offence:*** *That Mawazo Juma is charged on 31<sup>st</sup> day of May 2003 at about 21:30 hrs at Hembeti Village within the District and Morogoro Regio, did steal one mattress 4x6 valued at Tshs. 40,000/= one bicycle valued at Tshs. 65,000/=, one solo pump at Tshs. 70,000/= All total valued at Tshs. 175,000/= the property of one Zamoyoni Iddi and immediately before such stealing, did use actual violence by shooting three bullets in the air in order to obtain the stolen property of the said Zamoyoni Iddi."*

The appellant denied the charge, whereupon the prosecution featured three witnesses, a PF3 as well as a machete and a bullet shell.

In a nutshell, the case for the prosecution was to the effect that, on the fateful day, around 9:30 p.m. or so, Zamoyoni Iddi (PW1) and his wife, namely, Asha Shabani (PW2) were at their single roomed residence which

is situate at Hambeti Village, Morogoro District. It was said that the room was lit by a hurricane lamp, then, all of a sudden, the room's entrance door was forced open and three unwelcome visitors stormed into the room. The trio who were holding machetes and torches immediately demanded to be given money which PW1 realised from the sale of rice grain. In response, PW1 started to wail about, apparently, to attract help from neighbours, following which the intruders descended on him in a frenzy of machete slashing. The bandits then took away the items which are mentioned in the charge sheet and as they cleared themselves from the scene, they fired three gun shots outside the besieged room. As regards the identity of the bandits, both PW1 and PW2 told the trial court that they visually recognized the appellant who was well known to them with the aid of the hurricane lamp as well as light from a torch which was held by the appellant. Furthermore, both witnesses claimed to have recognized the appellant's voice. More particularly, PW2 informed the trial court that she lived with the appellant as husband and wife for four years effective from 1994 up to 1999 when they divorced.

The last witness, namely, No. D1709 detective corporal Athumani (PW3) is a police officer who attended the scene on the 1<sup>st</sup> June, 2003. His

testimony was to the effect that both PW1 and PW2 named the appellant as being amongst the intruders who perpetrated the robbery. At the scene, PW3 retrieved a bullet shell and a machete which he collectively adduced into evidence as exhibit P2. With this detail, so much for the version told by the prosecution witnesses on the occurrence.

In reply, the appellant reiterated his complete disassociation from the prosecution accusation. He did not quite refute the detail about being the ex-husband of PW2 whom he divorced. The appellant asserted that on account of the divorce, PW2 developed a grudge against him. His account was to the effect that, on the fateful day, he and his wife were at their residence which is situate at Magole village, Morogoro District. Around 8:00 p.m. or so, his (appellant's) sister called at the residence and informed him that their father was seriously ill. Soon after, the appellant left his residence in the company of his sister and, moments later, he took his father to Magole dispensary. Unfortunately, the medical officer who received them could not attend the patient as he simply advised them to go back home, which they did. According to the appellant, by that time, it was already 12:00 midnight. Thereafter, he spent an uneventful night at his residence.

To fortify his account, the appellant featured into testimony his wife, namely, Siwa Hamisi (DW2). As it were, DW2's telling on the chronology of events which took place on the fateful day, dovetailed with the appellant's tale, save for the detail that the appellant arrived back home around 11:00 p.m. not after midnight as suggested by the appellant.

On the whole of the evidence, the trial court accepted as truthful the claims by PW1 and PW2 to the effect that they recognized the appellant, who was well known to them, to be amongst the intruders who perpetrated the robbery. The appellant's defence of *alibi* was considered but rejected as an afterthought. In the upshot, the appellant was found guilty, convicted and sentenced to thirty (30) years imprisonment. In addition, he was handed down a corporal punishment of twelve (12) strokes of the cane and ordered to compensate PW1 a sum of shs. 175,000/=.

On the first appeal, the High Court (Ihema, J) found no valid cause to fault the findings of the trial court and the appeal was, accordingly, dismissed in its entirety. Dissatisfied, he presently appeals upon a memorandum which is comprised of seven (7) points of grievance.

At the hearing before us, the appellant was fending for himself, unrepresented, whereas the respondent Republic had the services of Ms. Christine Joas, learned Senior State Attorney who was being assisted by Ms. Jenipher Masue, learned State Attorney.

The appellant fully adopted the memorandum of appeal but he deferred its elaboration to a later stage, if need be, and impressed on us to permit the respondent Republic to submit first. Speaking of the memorandum of appeal, for reasons that will shortly come to light, we need not recite its details, save for the observation that, in the first ground of complaint, the appellant faults the first appellate court for upholding the conviction which was based on an incurably defective charge sheet.

On her part, Ms. Masue supported the appeal, incidentally, on account that the charge sheet with which the appellant stood charged is incurably defective. Expounding the defect, the learned State Attorney submitted that the particulars of the offence did not indicate whoever was the victim of the violence or threat to whom the firearm was directed. Elaborating further, Ms. Masue contended that whereas one may gather from the particulars of the offence that the stolen items were belongings of

Zamoyoni Iddi, it cannot be told therefrom that the gun shot which is mentioned therein as the instrument of violence was directed against the said Iddi or whomsoever. The defect, she concluded, is fatal and cannot be cured under the provisions of section 388(1) of the Criminal Procedure Act, Chapter 20 of the Laws (the CPA). To fortify her submissions, the learned State Attorney referred us to the unreported Criminal Appeal No. 115 of 2011- **Oldonyo Mnegero V. The Republic**. Having heard the submissions of the learned State Attorney, the appellant had nothing to say in rejoinder, save for urging the Court to allow his appeal and set him free.

In the light of the foregoing submissions, the vexing issue which stands for our determination is whether or not the charge sheet laid at the appellant's door sufficiently disclosed the offence of armed robbery. In this regard, time and again this Court has emphasized the necessity of indicating the person on whom the actual violence or threat was directed in the particulars of the offence of armed robbery. In, for instance, the unreported Criminal Appeal No. 78 of 2011 **Kashima Mnadi V. The Republic**, it was observed:-

*"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 directed. 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 thereat was directed.**"* [Emphasis supplied.]

Corresponding observations were made in the referred case of **Oldonyo Mnegero** ( supra) as well as the unreported Criminal Appeal No. 60 of 2013 **Tayai Mhseyeki V. The Republic**; Criminal Appeal No. 250 of 2011 – **Zefania Siame V. The Republic**; and Criminal Appeal No. 34 of 2015- **Robert Mneney V. The Republic**.

To this end, we entirely subscribe to the views of the learned State Attorney to the effect that the defect on the charge sheet is fatal and that the same cannot be cured by section 388(1) of the CPA. This finding



suffices to dispose of the appeal and, for that matter, we need not belabor on the other grounds of appeal. Thus, we allow the appeal and, in the result, the conviction and sentence are hereby, respectively, quashed and set aside with an order that the appellant be released from prison custody forthwith unless he is otherwise held for another lawful cause. Order accordingly.

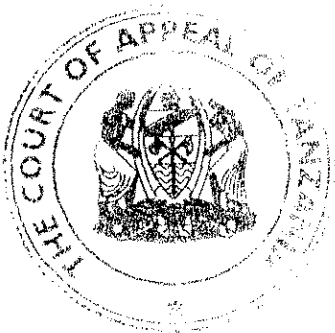
**DATED at DAR ES SALAAM this 27<sup>th</sup> day of May, 2019.**

K. M. MUSSA  
**JUSTICE OF APPEAL**

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

S. A. LILA  
**JUSTICE OF APPEAL**

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



  
B. A. MPEPO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**