

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CRIMINAL APPEAL NO. 3 OF 2005

MTENDEJE MRISHO.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

A.Shangwa,J.

The Appellant Mtendeje s/o Mrisho was charged in the District Court of Kisarawe at Kisarawe with the offence of theft c/s 265 of the Penal Code. He was convicted and sentenced to five years in prison. He was not satisfied with both conviction and sentence. He then decided to appeal to this Court .

Before the District Court, the prosecution alleged that on 24/2/2002 at Chamalale village, Vihingo ward, Kisarawe District , Coast Region, the Appellant and one Abbasi Lamba who was jointly tried with the Appellant but acquitted stole fourty water pipes valued at Tshs 3,681,600/= the property of Ministry of Water.

In order to prove its case, the prosecution called four witnesses namely P.w.1 C 6893 D/CP Charles, P.w.2 ASP Kilimo, P.w.3 Alphonse Mayugana and P.w.4 Mohamed Nundu. The majority of these witnesses i.e. P.w.1, P.w.2 and P.w.4 told the trial Court that after arresting the Appellant in connection to this charge, he led them to the forest where he had hidden the fourty water pipes, the property of the Ministry of water and that those water pipes were seized from there. During the Appellant's trial, those pipes were tendered in Court as exhibit P1.

The Appellant denied to have committed the offence charged. He said that he did not lead the police to the place from where the stolen water pipes were recovered. The trial Court disbelieved his defence and believed the testimonies of P.w.1, P.w.2 and P.w.4 and convicted him saying that there was no reason why those witnesses should tell lies against him by saying that after arresting him, he led them to the forest where he had hidden the water pipes in issue which were recovered from there.

Before this Court, the Appellant submitted that he was convicted by the trial Court and sentenced on insufficient evidence. He requested this Court to quash the trial Court's conviction and set aside the sentence which was imposed on him. The learned state Attorney **Miss Mrema Jacqueline** supported the trial Court's conviction and sentence. She

submitted that the prosecution proved its case beyond reasonable doubt and that the trial Court based its conviction on sufficient evidence.

In my opinion, I think that the Appellant's appeal against conviction and sentence which was imposed on him by the trial Court for the offence with which he was charged has no merit. The evidence which was led by the prosecution witnesses namely P.w.1, P.w.2, P.w.3 and P.w.4 is quite sufficient to base a conviction against him.

Indeed, as there was no reason why those witnesses should tell lies against him that he led them to the forest from where the stolen water pipes were recovered, he can not avoid to be convicted of the offence charged. As I have already stated, the trial Court believed P.w.1, P.w.2 and P.w.4 whom it found to be truthful witness before convicting

the Appellant of the offence charged. For that matter, this Court cannot interfere with the finding of that Court on the credibility of those witnesses.

As it was well pointed out in the case of **PIA JOSEPH VS REPUBLIC (1984) TLR 161**; an appellate Court is not supposed to interfere in the trial Court's finding on credibility unless the evidence is vitiated by factors which the trial Court did not address itself or address itself properly.

In this case, the evidence which was led by the prosecution is not vitiated by any factors such as hatred or hearsay so as to justify this Court's interference in the trial Court's finding on the credibility of P.w.1, P.w.2 and P.w.4.

As regards the prison term of five years which was imposed on the Appellant for the offence charged, I do not

find it excessive so as to justify this Court's interference with it. Moreover, it has a deterrent effect to others. That being the position, I dismiss this appeal in its entirety.


A. Shangwa

JUDGE

23/11/2005

Delivered in Court this 23rd day of November, 2005.


A. Shangwa

JUDGE

23/11/2005