

**IN THE HIGH COURT OF TANZANIA
AT ARUSHA**

**CRIMINAL APPEAL NO. 159 OF 2006
(ORIGINATING FROM ARUSHA DISTRICT COURT
CR.CASE No. 959 of 2005).**

**1. GOODLUCK JACOB @ MAFUE
2. RAMADHANI ADAM @ IKINGU APPELLANTS**

- Versus -

THE REPUBLIC... .. RESPONDENT

Counsel: Mr. H. Kitambwa for Respondent

J U D G M E N T

BWANA, J.

1. The two Appellants were charged with Armed Robbery contrary to Section 287 of the Penal Code as amended by Act 4 of 2004. It was the prosecution case supported by three witnesses that on 4th August, 2005 at about 00.00hrs., the two Appellants together with three others who were

not before the trial court, at Mita 200 Ngarenaro area of Arusha Municipality, did steal cash shs.450,000/= and an assortment of items all valued at shs. 1,080,800/=, the property of one Saidi Ally and immediately before the time of such stealing did use a bush knife, and stone to threaten the said Saidi Ally in order to obtain the said property.

2. At the end of trial, the magistrate convicted them of a lesser offence of stealing as the prosecution had "failed to prove the offence of armed robbery". Both were sentenced to prison sentence of 30 years each.
3. In their appeals the Appellants did raise several grounds of appeal claiming that the case against them was framed. They also claim that there was no sufficient visual identification at the scene of

crime as it was so late at night. The Respondent on its part, supports both conviction and sentence.

4. The only ground in support of the case having been framed is that both Appellants and Saidi Ally – PW1 – were businessmen. So there was a kind of jealousy by the latter against the former. I must state here that having perused through the record of the trial court, I see no trace of evidence in support of such claims. Nothing in the Appellants' defence does (even attempt to) show that the case is framed up because of misunderstandings or jealousy emanating from their business deals. Therefore, this ground of appeal has no merit. It fails.
5. On the issue of visual identification, all the three PWs who were in that room at the time of the break in and the stealing, did testify that they could identify the Appellants due to two things.

First, both Appellants were known to the three PWs as they were neighbours. The second Appellant was a friend of first Appellant. He was popularly known by the nick name of "Rama".

Second, there was sufficient tube light from outside which helped the PWs to identify their assailants. Likewise, PW3 had a torch which helped to identify the Appellants.

6. Before a Court of law convicts a person basing its decision on visual identification, it must satisfy itself of the absence of and eliminate all likely mistake of identity (Waziri Amini vs. R 1980 TLR 250). The presence of a tube light and the fact that both Appellants were known to the PWs prior to this incident, leave no doubt that they were reasonably identified by the PWs as they stayed for a considerable time inside the room during the commission of the offence. The PWs' evidence on

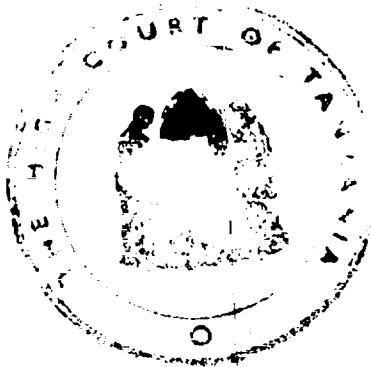
this fact of identification leaves no doubt in my mind that the trial magistrate's findings were correct.

The trial court found the Appellants guilty of a lesser serious offence ostensibly because there was no proof of armed robbery. However, the evidence of PW1 points out clearly how the bush knives were used to threaten him, his wife and child, leading to the surrender of money and other items. This act of threatening their victims, using those weapons to create a state of fear for their lives and/or property, constituted the offence of, in my view, robbery. Second it is on record that the assailants broke into the house and stole an assortment of items. It was at night. That constituted the offence of burglary.

8. The foregoing considered, finding the Appellants guilty of mere stealing was a misdirection on the

part of the trial magistrate. That misdirection should be corrected, as I do now. Therefore the conviction of stealing is substituted with one of Robbery contrary to Section 285 of the Penal Code.

9. The trial magistrate sentenced the Appellants to a thirty year prison sentence for stealing. That was excessive. However, I have substituted that conviction to one of Robbery. That offence carries a maximum prison sentence of thirty years. However, having considered all the circumstances surrounding the commission of that offence, I impose a sentence of fifteen years imprisonment to each of the Appellants.



S. J. BWANA

JUDGE

19/10/2007

Date: 19/10/2007.

Coram: M.P. Mrio- Ag. DR

For the Appellants: Present in person.

For the Respondent: Ms Immaculata

Court: Judgment delivered in open court before the convicts, and Ms Immaculata for Republic this 19/10/2007.

Right of further appeal explained.

M.P. MRIO

AG. DISTRICT REGISTRAR

ARUSHA

19/10/2007

SJB/jn.

SJB/jn.