



IN THE HIGH COURT OF TANZANIA
AT BUKOBA

APPELLATE JURISDICTION

(Bukoba Registry)

CRIMINAL APPEAL NO. 46 OF 2004

*(Originating from Karagwe District Court Criminal Case No. 212/2000)(Before:
D.D. Komba, Esq. DM)*

DAMIANI ANORD =====APPELLANT

VERSUS

THE REPUBLIC =====RESPONDENT

JUDGMENT

LUANDA, J.

In the district court of Karagwe sitting at Kayanga the appellant was charged with store breaking C/SS 296(1) and 265 of the Penal Code. He was convicted as charged and sentenced to 5 years imprisonment.

Aggrieved by the finding of the trial district court, the appellant is appealing in this court.

The appellant raised eight grounds of appeal in his memorandum of appeal. All grounds boil down to evidence.

Mr. Vitalis learned state attorney for the Republic, supported the finding of the trial court. He said the evidence is watertight.

As regards to wrong citation of law, he said the error is curable under S. 388 of the CPA, Cap 20. Mr. Vitalis was referring to S. 265 of the Penal Code.

S. 296(1) of the Penal Code is a composite offence. There is no need of citing S. 265. The inclusion of that section did not in any way prejudiced the accused. The accused knew the nature of the charge. The error is curable.

The evidence on the prosecution case is to the following effect. On 26/6/1999 around morning hours the complainant one Andrew Tibandebage (PW1) discovered his store was broken and five – bags of coffee were stolen. He went to report to Kitongoji Chairman. As luck would have it while reporting, one Dioniz Rutawaile arrived and told him that at night time he saw the appellant “emptying” the coffee from the bags. No sooner had he be told about the story, Gaspary Manyionyio also arrived and told the complainant the same story.

Rudovick Kiiza (PW2) on the otherhand told the trial court that he met the appellant with four other persons carrying coffee on their bicycles. He managed to identify the appellant and one Novath Thadeo. Each of the five carried a bag of coffee.

In the morning he heard about theft of the complainant’s coffee. PW2 told him how he met the appellant and four others with bags of coffee.

Armed with that information, the complainant reported to the Village Executive Officer of the appellant's village. With the said officer and sungusungu they went to the appellant's homestead. There the complainant saw coffee been dried and five empty bags inscribed thereon AT – a short for Andrea Tibandebage.

The appellant was queried. The appellant claimed the coffee was his. He said he bought. But when he was queried about the empty bags he did not give a satisfactory answer. The appellant was arrested.

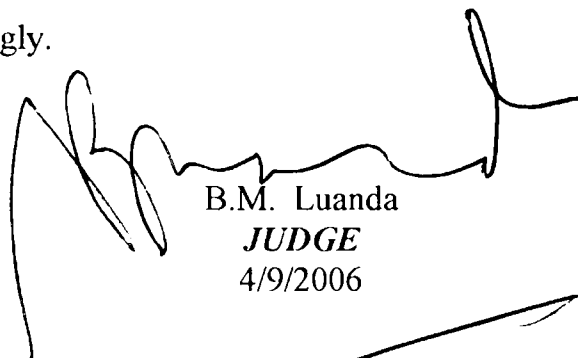
On 29/6/1999 the appellant went to the complainant's homestead to apologize. The appellant went with a cow in accompany with Rupia. The complainant demanded the apology be reduced into writing. The appellant complied. He wrote and the same was tendered in court without objection.

The prosecution evidence is loud and clear. The appellant did not attempt to challenge the evidence adduced during cross examination. In the defence the appellant merely denied.

In view of the strong evidence adduced, the appellant's conviction was proper.

The appeal is dismissed.

Order accordingly.


B.M. Luanda
JUDGE
4/9/2006

Judgment delivered to day 18th September, *October*
2006.

Appellant – Absent/~~Present~~

Republic – ~~Absent~~/Present (Mr. *Kneha*)

18. 10. 2006
Date