

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

**CRIMINAL APPEAL NO. 141 OF 2005.
(originating from Cr. Case No. 216/2004
District Court of Kibaha at Kibaha)**

OMARY LAMINI @ KAPER A ... APPELLANT.

VERSUS

REPUBLIC RESPONDENT/ APPLICANT.

Date of Last Order: 16/10/2006

Date of Judgment: 18/10/2006

JUDGMENT

MLAY, J.

The appellant was convicted of the offence of Armed Robbery contrary to sections 285 and 286 of the Penal Code and was sentenced to thirty (30) years imprisonment by the District Court of Kibaha. Being aggrieved by the conviction and sentence, he has now appealed to this court on four grounds, which are as follows:

1. That the Resident Magistrate erred in law and misdirected himself in grounding conviction based on the evidence of a single witness without corroboration.
2. That the trial Magistrate erred in law and fact when he believed the complainants story without making analysis about the weapon (Panga) which alleged to have effect the said robbery....
3. That the trial Magistrate erred in law and fact when he convicted the appellant based on the evidence of PW2 and PW3 without taking into account that, the Witnesses, their evidence was taken from closed family, so the testimony.. needed confirmation... before it could be relied upon as a basis of conviction.
4. That the learned trial Magistrate erred in law and fact when he failed to consider the defence adduced in cause by the appellant.

The grounds of appeal in the memorandum of appeal are accompanied by submissions and legal authorities in support of each ground of appeal. For the 1st ground of appeal, the appellant cited TINGA KELELE VS REPUBLIC 1974 LRT 6 and the holding that:

"The trial Magistrate must warn himself of the danger of convicting the accused on the evidence of a single witness without corroboration".

He also cited HASSANI s/o HARBI Vs. Republic 1973 LRT N.37 in which it was stated:

"It is a danger to convict the accused on the evidence of a single witness without corroboration".

On the 2nd ground of appeal the appellant argued that:

"It is not fair for the trial Magistrate to believe simply that the appellant had a panga and used it in the robbery without any evidential material to prove that, the appellant had caring the alleged panga when the appellant was accompanied by another man... and started off to Ruvu traveled by Bus from Dar es salaam if true. That means the said weapon could have been seen due to the fact that a panga is than knife....."

He further contended that the Magistrate did not appraise the charge that section 285 and 286 of the Penal Code refer to robbery with violence and not armed robbery. He referred to the case of IBRAHIM HASSANI AND ANOTHER VS REPUBLIC [1991] TLR 89.

As for the 3rd ground of appeal, the appellant cited the case of RAMADHANI JAMSIGA VS REPUBLIC Criminal Appeal No. 113 of 1991 (unreported) in which allegedly, it was held that the trial was a

nullity on grounds that the witnesses were of one family whose evidence must be corroborated as they could have fabricated the evidence against the accused person for therein benefit.

In support of the last ground of appeal, the appellant contended that *"The defence of appellant was sufficient to be acquitted from this matter but the trial Magistrate erred in conviction on appellant based on weakness of the appellant defence"*. He cited the case of Republic Vs CHEMUCHIMU WERO OLONGO 91957) 4 EACA.

At the hearing of this appeal the appellant prayed to adopt the contents of his memorandum of appeal which include the above submissions. Mr. Mapinduzi, learned State Attorney supported the conviction of the appellant. On the 1st ground Mr. Mapinduzi submitted that there was also circumstantial evidence to show that it was the appellant who committed the offence.

He referred to the evidence of PW2 and PW3 that it was the appellant who persuaded PW2 that there were bags to be found at Ruvu NAFCO for purchase and PW1 saw PW2 was wounded soon after the robbery. On the 2nd ground Mr. Mapinduzi submitted that the failure to find the panga with which the robbery was committed is irrelevant because there was the evidence of PF.3 to prove that PW2 was wounded.

On the 3rd ground that PW2 and PW3 are members of the same family, Mr. Mapinduzi submitted that there is no law preventing members of the same family from testifying and there was nothing in the proceedings to suggest that PW2 and PW3 had any reasons to implicate the appellant. On the 4th ground that the trial Magistrate convicted the appellant on the weakness of the defence or that the magistrate did not consider the defence, Mr. Mapinduzi submitted that the trial magistrate did consider the appellants defence of alibi and rejected it. He submitted that the appellant was properly convicted on the strength of the prosecutions evidence.

During trial it was the prosecution's case that the appellant and one JAMAL who was not apprehended and charged, went to the shop of PW2 and found PW2 with his brother PW3. It was in evidence by PW2 and PW3 that the appellant who is the in-law of PW2 and PW3, told PW2 that there were empty bags (viroba) at Ruvu NAFCO. It was in evidence that PW2 dealt with the business of selling empty bags. It was in evidence that the appellant informed PW2 that Tshs.470,000 was required for the bags and according to PW2, he took cash. 470,000/= for the purpose, which according to PW3, the money was supplied by him. PW2 told the court that he left with the appellant accompanied by the appellant's companion by bus and got off at Ruvu Darajani and as they were walking, the appellant pulled out a sword (sime) and ordered PW2 to give him

the money or he would kill PW2. PW2 then give the money Tshs.470,000 to the appellant and the appellant told PW2 to leave but as he was leaving, the appellant and his companion attacked PW2 cutting him with the sword and they ran away. PW2 was unconscious and later taken to hospital by a passerby, after reporting to the police and obtaining a PF 3 which was produced as Exh. P3. The PF 3 shows that PW2 sustained "CUT WOUNDS 3 cm", "swellings and bruises" and had to be given blood transfusion. According to the PF 3 the cut wounds were caused by a sharp object. In his defence the appellant denied to have committed the offence and alleged that he had been at Makakunyini - Korogwe when the offence was committed.

The trial Magistrate rejected the appellants alibi as he had not given notice under section 194 (4) of the Criminal Procedure Act 1985 and that he did not call any witness to prove that he was at Makakunyini at the time of the offence. The Magistrate did however find that:-

*"The complainant ALLY IBRAHIM
grappled by robbers who robbed from him money
Tshs. 470,000/= and during the said robbery
ALLY s/o IBRAHIM was wounded by a Panga
and that the person who robbed his money and
wounded him on the material date and time were*

none other than the accused in this case Omari s/o Lamin @ Kapea and his friend called Jamal who has not been arrested.....".

Having given due consideration to the judgment of the trial court and the appellants grounds of appeal including the arguments contained in the memorandum of appeal, I agree with the learned State Attorney Mr. Mapinduzi that the appellant was properly convicted. He was convicted not only on the evidence of one witness PW2 but also on the evidence of PW3 who was present when the appellant and his companion came to the shop of PW2 and told him about the availability of empty bags at Ruvu NAFCO at the price of Shs.470, 000/=. As the trial Magistrate correctly found, there was evidence to prove that robbery did take place and in the course of it, PW2 was wounded by being cut with a sharp instrument and was admitted in hospital. The fact that the sime or Panga was not produced in evidence is of no effect, as going by the PF 3, there is no doubt that PW2 was cut with a sharp instrument like a panga or sime. I do not find any reasons why the evidence of PW2 and PW3 needed corroboration. The appellant has not suggested any reason at the hearing of this appeal or during trial why PW2 and PW3 should want to implicate him in the robbery. This court is satisfied that this appeal has no merit.

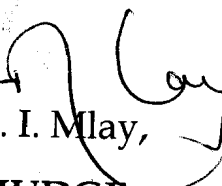
As the appeal has no merit it is dismissed in its entirety.



J. I. Mlay,
JUDGE.

Delivered in the presence of Ms. Lushagara and the appellant
this 18th day of October, 2006.

The right of appeal is explained.



J. I. Mlay,
JUDGE,
18/10/2006.