IN THE HIGH COURT OF TANZANIA
AT TABORA.

APPELLANT JURISDICTION
(Tabora Registry)

(EC) CRIMINAL APPEAL NO. 27 OF 2004
ORIGINAL CRIMINAL CASE NO. 13 OF 2003
OF THE DISTRICT COURT OF TABORA DISTRICT
AT TABORA.

Before: A.K. RWIZILE Esq.; RESIDENT MAGISTRATE

GREYSON s/o MTONI ..... APPLICANT
(Original Accused)

Versus

THE REPUBLIC .....RESPONDENT
(Original Prosecutor)

JUDGMENT

5th June, 2007

MZIRAY, J.

The appellant was convicted and sentenced to five years imprisonment by the Resident Magistrates Court of Tabora in RM. Criminal Case No. 13 of 2003 in an offence of receiving stolen property c/s 311 of the Penal Code. He is appealing against conviction and sentence. He is represented by Mr. Mtaki, learned Counsel. Mr. Mkoba, learned State Attorney appeared for the Republic and he is not supporting the conviction.

At the material time the appellant was a teacher at Imalakaseko Primary School in Uyui District. The incident happened on 22/11/2002 at around 5.30 pm at the village dispensary of Imalakaseko. Two other people were implicated and charged with the appellant. They were Katala Saidi Jumbe and Shadrack Chagoha who were the watchman and Clinical Officer respectively of the dispensary where the theft occurred. The theft involved three solar batteries the property of the dispensary.

The evidence which tend to connect the appellant with the charged offence is that of PW.3 Ramadhani Athumani and PW.5 PC Ndwanko which state that one of the batteries stolen was recovered dug in a farm belonging to the appellant which was near to his house. The trial Court believed that it was the appellant who had taken the solar battery to his farm. The appellant has seriously disputed this allegation.

The appellant through the legal services of Mr. Mtaki has basically submitted three grounds of appeal to challenge the findings of the trial Court. He is arguing in his submissions that the evidence of Pw.3 and PW.5 was not corroborated with independent evidence. Two, the entire evidence is purely circumstantial which is not strong enough to warrant a conviction.

Three, the sentence of five years imprisonment is excessive in the circumstances of the case.

As correctly submitted, the Prosecution case depends on the evidence of PW.3 and Pw.5 to the effect that the alleged stolen solar battery was retrieved in the farm of the appellant near his house. There is no evidence adduced to show that it was the appellant who took the said solar battery to his farm. The mere fact that he is the owner of the farm is not sufficient evidence to implicate the appellant with the charged offence. Any person could have taken the stolen item there.

Coming to the store broken, it is not in dispute that the appellant was not the custodian of the store of the dispensary where the theft occurred. The appellant was a teacher in a nearby Primary School and had no access to the store of the dispensary hence he could not be responsible to anything which would have occurred in that store. In addition, there was no iota of evidence to prove that the solar battery recovered was actually the one stolen from the store of the dispensary as it did not have special marks or descriptions which were explained in evidence.

As a whole I find that the trial Court convicted the appellant on circumstantial evidence but with respect, this evidence was not strong enough to connect the appellant with the offence charged. In a case depending on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than the guilty of the accused. This test is not met in this case.

In the end, I quash the conviction and set aside the sentence imposed on the appellant. I order for the immediate release of the appellant.

R.E.S MZIRAY

JUDGE

4/6/2007

Right of appeal explained.

R.E.S. MZIRAY

JUDGE

4/6/2007