

IN THE HIGH COURT OF TANZANIA

AT DODOMA

(DC) CRIMINAL APPEAL NO. 88 OF 2008

**(Original from Criminal Appeal No. 49/2005 of
Kondoa District Court at Kondoa)**

1. MUSSA ABDALLAH IDOA.....}
2. KASSIM ABDALLAH IDOA.....} **APPELLANTS**
VERSUS
THE REPUBLIC.....RESPONDENT

Date of last order: 25.9.2008

Date of Judgment: 16.10.2008

J U D G M E N T

Hon. G. J. K. Mjemmas, Judge:

The appellants, namely, Mussa Abdallah Idoa and Kassim Abdallah Idoa together with another person who is not part of this appeal were charged and convicted of the offence of armed robbery contrary to sections 285 and 286 of the Penal code. The two appellants were aggrieved hence the present appeal.

The facts giving rise to this matter are that on 22.12.2004 at around 9.00 p.m PW1 was attacked by a group of people. According to PW1, she was driving her car on her way home when she was suddenly ordered to stop. They took her to her home where she was forced to give them Tshs. 1,000,000/= and other properties. The bandits had a gun which they fired and ordered all the people inside the house to lie down. PW1 and PW2 were seriously injured and were taken to hospital. The incident was reported to Police who arrived at the scene of incident but the bandits had already left.

Each appellant has filed about four grounds of appeal. At the hearing of the appeal they appeared in person and unrepresented. The first appellant asked for leave to add three more grounds of appeal. The respondent – Republic which was represented by Mr. Kirumbi, learned State Attorney did not object so I granted the prayer.

Mr. Kirumbi, learned State Attorney for the respondent Republic did not support the conviction of the appellants. He gave his reasons as follows. First, he said, the identification of the appellants was not watertight as required by law. He referred this court to the case of Waziri Amani [1980] TLR 250. In elaborating his point Mr. Kirumbi stated that PW1 did not show how she managed to identify the first appellant. Besides, she did not mention or identified the second appellant. According to the learned State Attorney, none of the prosecution witnesses identified the appellants at the scene of incident.

Another reason which he gave for not supporting the conviction is that the incident happened on 22.12.2004 and the appellants were arrested on 25.4.2005 and taken to court on 27.4.2005. The learned State Attorney questioned the delay in arresting the appellants if they were properly identified at the scene of incident and there is no evidence that they ran away from the village after the incident. It is from those reasons that

the respondent – Republic did not support the conviction of the appellants.

After going through the proceedings and judgment of the trial court I have no reason to differ with the observations made by Mr. Kirumbi, learned State Attorney. In convicting the appellants, the trial Magistrate relied on the evidence of PW1 and PW2. According to the trial Magistrate, PW1 managed to identify the appellants because of light from electric tube light and that she had ample time to identify them. From the record of the case, PW1 stated that on the material day she was driving her car and many people appeared and told her, “Mama simama”. She stopped and according to her, she identified one Omari Hassani Kipara, Mussa Hassani Idoa, Kassim Idoa and Mode. She said that there was light of a lit tube light. I have seriously considered this piece of evidence by PW1 and I am of the opinion that it raises more questions than answers. For instance, she claimed to identify the appellants but she did not say exactly how. She did not say

that she had seen the appellants before or not. During cross examination by the first appellant she said, I quote her;

“I know you as Mussa Idoa and a resident of Kondoa town”

When she was cross examined by the second appellant who was third accused person she said, I quote;

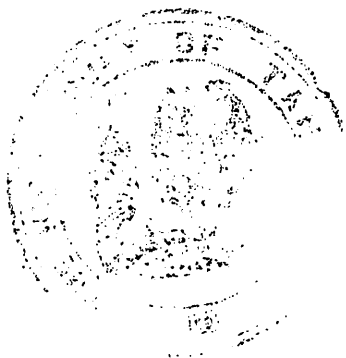
“ I identified you and 2nd accused”

Another thing is that PW1 was invaded by a group of people while driving her car, it is not clear how she managed to identify the culprits at that time of the night (9.00 p.m). She stated that the culprits including the appellants led her to her house where they demanded money and beat her. According to the witness the culprits fired gun shots while demanding money. That means the situation was charged. PW1 stated further that the Police arrived at the scene of incident at 3.55 p.m (I hope it should read 9.55 p.m.) With regard to the evidence of PW2, he did not say anything

concerning the appellants. In actual fact during cross examination by the appellants he admitted that he did not see the appellants during the incident of robbery. PW3 also admitted during cross examination that she did not see the appellants.

PW4 No. F 1925 D/C Kandoro stated that he was one of the Policemen who went to the scene of incident on the material day. According to this witness the appellants were mentioned by Mama Beti (PW1) as among the people/culprits who invaded her house. The witness (PW4) stated that they looked for the suspects that same night but they did not find them. According to his evidence the appellants were arrested at their homes five months later – on 25.4.2005. He however did not say whether the appellants were not around the town during that period or they ran away from the town. In other words the witness did not say whether they were looking for the appellants all that time until when they were arrested on 25.4.2004 (It should read 2005):

From the reasons shown above I join hands with the learned State Attorney that it is doubtful if the appellants were correctly identified by PW1. I therefore uphold the appeal, quash the conviction and set aside the sentence imposed on the appellants. I order that the appellants be set free forthwith unless held for some other lawful cause. Order accordingly.

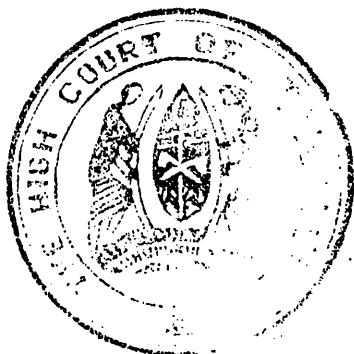



(G. J. K. MJEMMAS)

JUDGE

16.10.2008

GIVEN IN DODOMA THIS 16 DAY OF OCTOBER, 2008.




(G. J. K. MJEMMAS)

JUDGE

16.10.2008