

**IN THE HIGH COURT OF TANZANIA**  
**AT ARUSHA**  
**CRIMINAL APPEAL NO. 190 OF 2007**  
**SALEHE OMARY ... .. APPELLANT**  
**- Versus -**  
**THE REPUBLIC ... .. RESPONDENT**  
**(Appeal from the decision of the District Court of Babati)**  
**(U. S. SWALLO - RM))**

Dated the 5<sup>th</sup> day of June, 2007

In

**Criminal Case No. 448 of 2006**

**6<sup>th</sup> & 26<sup>th</sup> August, 2008**

**JUDGMENT OF THE COURT**

**Before: B. M. Mmilla, J.:**

The appellant in this case one Salehe s/o Omary was charged with and convicted of robbery with violence. He was sentenced to serve a term of fifteen (15) years' imprisonment. He felt aggrieved, hence this appeal which is against conviction and sentence.

On 19.11.2006 around 19.30hrs. which was already dark in the night, PW1 No.D.8113 Detective Constable John was allegedly attacked by five bandits at Ngarenaro area in Babati Township on his way home from Aldergate. It was alleged that his assailants hit him with a bush knife and managed to get control of him, searched him and robbed from his person a mobile phone make Nokia with serial No.1110 valued at shs.

The appellant's memorandum of appeal has raised three grounds which commonly allege two things; firstly that the prosecution side did not prove the case against him beyond reasonable doubt, and secondly, that the trial court did not give deserving weight to the defence he gave. The appellant is appearing in person while the Republic is being represented by Mr. Tesha, learned state attorney who declined to support conviction and sentence on account that he shares appellant's view that the case was not proven against him beyond reasonable doubt.

Having carefully gone through the proceedings and judgment of the trial court, the appellant's memorandum of appeal and the oral submissions of both the appellant and the learned state attorney Mr. Tesha, this court is of the same view that the conviction in this regard was not well grounded for reasons about to be assigned.

While I note that there were contradictions in respect of the testimonies of PW1 and PW2 who were the only witnesses called to testify for the prosecution in this case, I am quick to say that they were minor, thus not material. I note one glaring thing however, that the learned trial magistrate did not give due weight to the evidence of the appellant. As already pointed out, the appellant said in his evidence that the complainant was infuriated following his failure to accomplish the assignment he was given by him for which he reprimanded him by slapping him in the face, demanding return of shs.1, 000/= he had given him as consideration for the assignment to call for him the woman whom

**Date:** 26<sup>th</sup> August, 2008

**Coram:** B. M. K. Mmilla, J.

**For the Appellant:** Present.

**For the Respondent:** Mr. Tesha, State Attorney.

B/c: S. M.

**Court:** Judgment delivered this 26<sup>th</sup> day of August, 2008 in the presence of Mr. Tesha, learned state attorney for the Republic and the appellant in person.

**AT ARUSHA**

(Sgd)  
Mmilla, B.M.  
Judge  
26.8.2008

Right of further appeal explained.

(Sgd)  
Mmilla, B.M.  
Judge  
26.8.2008

I certify that this is a true copy of the original.

  
**F. S. K. MUTUNGI**  
**DISTRICT REGISTRAR**  
**ARUSHA**

**BMM/jn.**

*29/8/08*