ABDURAHAMANI OMARI JUMBE & MOHAMED SEIF LIKAMBA v THE REPUBLIC

IN THE HIGH COURT OF TANZANIA
AT MTWARA

CONS. CRIMINAL APPEALS NO. 87 & 88/2007

Original Kilwa Masoko District Court
Criminal Case No. 125/2005 Before:
S.G. Cleophas, Esq., DM

1. ABDURAHAMANI OMARI JUMBE)
2. MOHAMED SEIF LIKAMBA) …… APPELLANTS
VERSUS
REPUBLIC …… RESPONDENT

1.07.2008 & 1.08.2008
RWEYEMAMU, J.,

JUDGMENT

This is a consolidated appeal 87 & 88/2006 by two appellants **Abdurahamani Omari Jumbe** And **Mohamed Self Likamba** (1st & 2nd) appellant respective. The two were jointly charged in Criminal Case 125/2005 Kilwa district Court (DC) Criminal Case 125/2005 with the offence of Neglect to prevent a felony **c/s 383 & 35** of Penal Code. The charge particulars stated that on 30.10.2005 about 9.00 am. At Kilwa Secondary School, the two failed to take reasonable means to prevent theft of 20 bags of cement worth 3,781,000/= property of that School. Initially the charge read on 1.11.2005 was against the 1st appellant but the same was amended on 20.03.2006 adding the 2nd appellant. The appellants were convicted and sentenced to 2 years imprisonment.

Dissatisfied, they appealed the decision to this court, wherein the 1st appellant did not wish to appear at the hearing. The 2nd appellant was represented by Mr. Mlanzi Advocate while the respondent was represented by Hyera State Attorney. Mr. Mlanzi informed the court at the hearing that the appeal was now against conviction since appellant was already released following a Presidential Amnesty.

I should state at the outset that the appeal which was conceded by the republic/respondent has merit.

The facts at trial were in brief as follows. Both appellants were watchman at the secondary school in question. There were construction work going on at the school and some building materials were being kept in the school store. There was an allegation that on 30.10.2005, the store was found open and bags of cement and tins of coral paint missing. The finding was made by. In the following circumstances; PW1 the supervisor of building works (probably from the firm responsible for the building work), testified that on 30.10.2005 he got the key for store so as to start work but on reaching the store, he found it already open. The appellants were called in and on being questioned allegedly pleaded to have caused loss. The evidence of the complainant as told to the court by the headmaster PW2 was that the appellants were employed as watchmen who used to guard together at night on weekends. On weekdays, officer attendants guard the premises during the day. They appellants were supposed to be on duty on 29th but on 29th, the 1st appellant was on duty alone and the theft was discovered on 30th, after he got the information from learned of theft from PW1. The other witness PW3 was a teacher at the school, he returned from a funeral on 30th and heard that the store was broken into and cement stolen.

I should state at the outset that the appeal which was conceded by the republic/respondent has merit. Key ingredients of the offence were not proved. There was no evidence to prove that the alleged property was in store at the material time; and therefore no evidence that the property was stolen on material date; or that the appellant knew or were reasonable expected to know that the offence was committed but failed to prevent its commission or report the mishap after the event.

I agree with Mr. Mlanzi counsel for the second appellant that, there was no evidence to prove that such alleged stolen articles were in the store at any point in time, or at the time the appellants were guarding the store. No inventory of items in the store or stock taking report was produced or testified on by any witness, so as to show that such properties were indeed in the store and went mission on the state date.

Then, there is a second issue, submitted by the learned attorney for the respondent that there was no evidence to prove that the appellants knew or had knowledge of someone committing the offence, so as to prove the offence as per requirement of section 383 which imputes element of knowledge. I agree.

In conclusion, I quash the appellants' conviction, set aside the sentence and order their immediate release unless they are otherwise lawfully held.

R.M. RWEYEMAMU
JUDGE

1.08.2008