

IN THE HIGH COURT OF TANZANIA
AT TABORA.

APPELLATE JURISDICTION
(Tabora Registry)

(DC) CRIMINAL APPEAL NO. 117 OF 2008
ORIGINAL CRIMINAL CASE NO. 62 OF 2004
OF THE DISTRICT COURT OF IGUNGA

AT IGUNGA.

BEFORE: D.D. MALAMSHA, Esq; SENIOR DISTRICT MAGISTRATE

NGELELA S/O MACHIYA APPELLANT
(Original Accused)

VERSUS

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

JUDGMENT

Date of last order 11th Nov. 2009

Date of Judgment 7th Dec, 2009

WAMBALI, J.

Three accused persons namely Ngelela s/o Machiya (appellant), Seme Ntiyangiwapi and Mfunya s/o Makuya who appeared in the District Court of Igunga at Igunga as first, second and third accused respectively were jointly charged

with robbery with violence contrary to section 285 and 286 of the Penal Code Cap. 16 R.E. 2002. It was alleged in the charge that accused persons jointly and together on 12/9/2004 at about 01.00 hrs at Usoya village within Igunga District in Tabora Region stole twelve heads of cattle valued at Tshs. 2,700,000/= and cash Shs. 470,000/= all total valued at 3,170,000/= the property of Hidaya d/o Ramadhani and that immediately before such stealing did harm one Osca s/o Henry. After the close of the prosecution case the court acquitted the second accused as he had no case to answer. The third accused had escaped during the trial while on bail and his case proceeded under section 226 of the Criminal Procedure Act, Cap. 20 R.E. 2002. At the end of the trial both first and third accused were convicted as charged and sentenced to 30 years imprisonment plus 12 strokes corporal punishment. The third accused was convicted and sentenced in absentia.

The appellant was aggrieved by both conviction and sentence and has come to this court with five grounds in his petition of appeal. He appeared in person and essentially he adopted what he had stated in his petition of appeal although he also replied to the response by the State Attorney. The Respondent/Republic was represented at the hearing by Miss. Tumaini Stephen, learned State Attorney who supported both conviction and sentence. She submitted on ground 2

separately, grounds 3 and 4 together and ground 5 separately. It is noted that ground 1 was a mere statement that he (appellant) did not plead guilty to the charge.

In ground 2 the appellant complains that the trial magistrate was wrong to believe the evidence of the prosecution while there was no eye witness to the robbery of heads of cattle and that there was no evidence to corroborate the same. The learned State Attorney in his response stated that the evidence of PW.2 Osea Henry was the eye witness and did identify the appellant whom he had accompanied in the journey to send cattle to Dodoma as agreed. She stated that his evidence (PW.2) was clear how the incidence occurred at 1.00 am after they had stopped on the way for rest. She stated that PW.2 knew well the appellant before and on that they were together the whole day and there was moonlight and thus the question of mistaken identify could not arise at all. She further submitted that PW.2 was also able to identify other accused persons. On the issue of corroboration the learned State Attorney stated that the evidence of PW.1, PW.3 PW.4 and PW.5 are clear that the accused was involved in the robbery. She stated that PW.1 described how he gave the appellant 12 heads of cattle and payment for the job to take them to Dodoma and was accompanied by PW.2. PW.1 also stated how she knew the appellant before the incidence. The evidence of PW.3, she submitted, pointed how the appellant came back

home with 12 heads of cattle and left one for him to sell which was sold to PW.4 who was later interrogated. PW.3 is the young brother of the appellant. Indeed the evidence of PW.5 indicated clearly how the appellant sold the herds of cattle he had at Ndala Auction and bought others and returned home and that it was PW.5 who was paid to assist him in the said job. The learned State Attorney therefore stated that even though during the robbery PW.2 was alone with attackers there is ample evidence of other prosecution witnesses how the appellant conducted himself after the incidence as he was found with the herds of cattle that were robbed and he later sold them and bought others. I agree with the learned State Attorney that this ground is baseless. I have gone through the evidence of the witnesses and there is no doubt that their evidence were credible. Almost all witnesses were stable both in examination in chief and in cross examination by the accused.

It must be stated that witnesses in my view demonstrated that the chain of events were not broken from when the appellant was handled the heard of cattle together with PW.2 who they spent the whole day together up to the time of incidence and until he was arrested in connection of the offence. It is noted that although the appellant denied to have known PW.1 and PW.2 before, but there were ample evidence that the appellant was known to them before and he was even

better known to PW.3, PW.4, PW.5 and PW.6 who stated categorically that the appellant did not own herds of cattle before the incidence and that he was taking cattle from Igunga to other places he was sent by businessmen. Some of these witnesses are relatives of the appellant and neighbours and there is no indication that he had grudges with them to the extent of testifying against him. I am therefore convinced that the complaint is baseless and is dismissed accordingly.

In grounds 3 and 4 the appellant complains that the prosecution did not prove its case beyond reasonable doubt. In reply the learned State Attorney stated that there is enough evidence on record to ground conviction of the accused of armed robbery as PW.2 was invaded and injured after he was beaten by sticks and clubs and PF.3 was tendered in court to substantiate what happened. I agree with the learned State Attorney in her submission and in view of what I have stated above concerning witnesses who testified during the trial. It can be said without hesitation that the appellant was involved in the robbery.

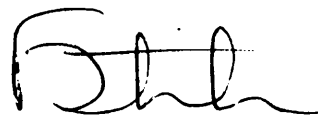
The appellant also complained that there was no description of the colour and marks of the cattle that were robbed and that he was not found with the stolen cattle. The learned State Attorney in her reply stated that the complaint was baseless as the said cattle were bought for the purpose of

selling and therefore it was not easy for the complainant to remember the marks. I also agree that the complaint is baseless as the most important issue was that he was handled herds of cattle and there was no way he could not be responsible to explain the whereabouts of the said cattle and the evidence on record is clear that he returned with cattle after the incidence and later sold them and bought others. The complaints in grounds 3 and 4 have no bases. The appellant in ground 5 complains that the trial magistrate wrongly refused his defence that he was a cattle businessman. The learned State Attorney submitted in her reply that the matter that he was a businessman dealing in cattle was not on issue before the trial as prosecution witnesses proved that he robbery cattle of PW.1. I also agree that the issue that the appellant was a cattle businessman was not the main issue at the trial. Indeed PW.3 and PW.6 who are relatives of the appellant testified that he did not own cattle before the incidence and that he was involved in taking cattle from one point to another after he was engaged to do so by businessman. The complaint that he was dispossessed of his cattle which he raised in ground five and during the hearing of the appeal is not tenable as the order was based on the fact that the said cattle were obtained from the robbery that occurred and there were ample evidence that he was involved in the robbery. The ground is therefore dismissed.

On the other hand, I am satisfied as submitted by the learned State Attorney that although he was charged with robbery with violence, what was proved was armed robbery. He was therefore properly convicted and sentenced of the offence although the trial magistrate did not say so in clear terms.

In the final analysis, I am satisfied that the prosecution proved its case beyond reasonable doubt. The appeal against conviction and sentence is therefore dismissed in its entirety

It is according ordered.

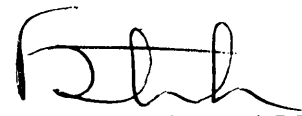


F.L.K. WAMBALI

JUDGE

7/12/2009

Judgment delivered today 7/12/2009 in the presence of the appellant and Miss. Janeth Sekule State Attorney for the Respondent.

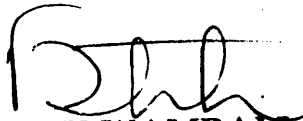


F.L.K. WAMBALI

JUDGE

7/12/2009

Right of Appeal explained.



F.L.K WAMBALI

JUDGE

7/12/2009