

IN THE HIGH COURT OF TANZANIA
AT MBEYA
DC. CRIMINAL APPEAL NO.10 OF 2009
(Original from Mbarali District Court
Criminal Case No.33/2006)
ALFA MTEWELE.....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT

JUDGEMENT

16/6/2009 & 29/6/2009

HON. LUKELELWA, J.

The appellant **Alfa Mtewe** was on 19.02.2007 convicted by Mbarali District Court at Rujewa on a charge of Robbery with Violence Contrary to sections 285 and 286 of the Penal Code and sentenced to eight years imprisonment term.

The appellant was aggrieved with the conviction and sentence and has preferred an appeal to this Court.

It was the Prosecution case at the trial that on 22/2/2006 PW1 **Asha Amani**, left for her shamba at around 8.00 a.m. PW1 was riding a bicycle, and saw the appellant who was in front of her, and she was level with the appellant, the latter asked for a lift on the bicycle and pushed PW1 aside and took the bicycle. The appellant rode the bicycle leaving PW1 shouting for assistance, and one Msigwa turned up to assist her.

They traced the appellant whom they found at a place of his in laws. The appellant refused to have stolen the bicycle. It was when he appeared

before the village chairman when he admitted having stolen the bicycle and led them to the place where he had hidden it submerged in water.

PW2 Nathan Mpinga is the Igawa village chairman. PW2 told the Court that on 22/2/2006 at 8.30 a.m. he was in his office when PW1 and another person turned in the office complaining that the appellant who was under arrest had stolen PW1's bicycle. The appellant denied the allegations, and they took him to the scene of incident, then the appellant moved ahead straight to Imogene farm area where he showed the bicycle which was blue in colour. PW1 identified the bicycle as belonging to her.

Testifying for his defence the appellant told the trial Court that on 21/2/2006 he went to work in his shamba at Igomelo village.

While at his tomato garden he noticed that water was not flowing into his garden. He traced the canal and found out that PW1, who is the wife of the village executive officer had blocked the canal. A dispute arose with her when the appellant was asked to deblock the canal. PW1 angrily left the scene and on the following day on 22/2/2006 the husband of PW1 came early in the morning and informed the appellant that he was needed by the village chairman at the village office. The appellant found PW1 at the village office. The matter was discussed at the office in vain. The dispute was reported to Rujewa Police station, and the appellant was arrested and later charged with this offence. In convicting the appellant the learned trial Senior District Magistrate held that the victim (PW1) informed the Court that on the material date when she met the appellant, he pushed her aside and took her bicycle she rode while going to her shamba. The appellant was taken to the village office by the help of one Msigala, and he denied taking the victim's bicycle.

PW1 and PW2's evidence corroborately informed the court that when going to the scene of crime the appellant had shown where he had hidden the bicycle.

The appellant is challenging the above finding made by the learned trial Senior District Magistrate. In a lengthy petition of appeal the appellant has raised several grounds of appeal including that the prosecution failed to call one Msigala who was said to have answered the alarm raised by PW1 when the bicycle was robbed from her.

Further that PW1 stated that the bicycle was recovered submerged in water while PW2 contended that the bicycle was hidden in a bush nearby a river.

Ms Catherine learned State Attorney who appeared for the respondent Republic declined to support both conviction and sentence. The learned State Attorney submitted that the appellant was charged under sections 285 and 265 of the Penal Code and convicted under section 285 and 286 of the Penal Code. This had occasioned a miscarriage of Justice. Further that the evidence of PW1 was weak. The learned State Attorney further submitted that the appellant had told the trial Court that he had grudges with PW1.

I agree with the learned State Attorney that the learned trial Senior District Magistrate failed to properly analyse the evidence on record, and appear to have not fully considered the defence case. In particular the evidence of PW1 and PW2 regarding the place where the stolen bicycle was recovered.


I go along with the appellant and the learned State Attorney that the prosecution case was not proved to the required standard. I therefore quash the conviction and set aside the sentence imposed on the appellant.

It is ordered that the appellant be released forthwith from Prison unless held therein on other lawful charges.

Appeal allowed.

Order accordingly.




S.B. LUKELELWA
JUDGE
29/6/2009.