

**IN THE HIGH COURT OF TANZANIA**  
**AT DODOMA**

**(DC) CRIMINAL APPEAL NO. 32 OF 2010**

**(Originating from Dodoma District Court Criminal Case No. 71/2004)**

**SHABANI JUMA ..... APPELLANT**

**VERSUS**

**THE REPUBLIC ..... RESPONDENT**

**JUDGMENT**

11/8/2010 & 18/8/2010.

**KWARIKO, J:**

The appellant herein had been arraigned before the trial court for the offence of Armed Robbery contrary to section 285 and 286 of the Penal Code Cap. 16 Vol. 1 of the Laws, Revised Edition 2002. He had denied the charge and at the end of the trial he was found guilty, was convicted and accordingly sentenced to thirty (30) years imprisonment. The appellant has now appealed against both conviction and sentence.

The facts of the case which led to this appeal are not complicated. They are as follows: One CASTORY MPONDA, PW2 who was the complainant in this case had a house at Nkuhungu area within Dodoma Municipality where he had employed a watchman one

ANTONY MLAZA, PW3 to guard his premises. On the material day ie 9/3/2004 at about 01. 30 am PW2 was sleeping in his home and PW3 was guarding outside. While asleep, PW2 was awoken by PW3's shoutings and when he got outside he was informed that there were robbers there but had run away. In his account PW3 testified that while on guard some people jumped over the fence and one of them approached him while armed with a machete. Then in self-defence he stabbed that thug with an arrow in the eye and he ran away with the arrow stuck in his eye. That, the one he stabbed was the appellant herein and had left his machete at the scene. The thugs stole a thermos, an umbrella, hotpot and a knife.

When PW2 was reporting the incident at the police the following morning and while waiting for his statement to be ready, another person also reported at the same counter with information that he had been stabbed by an arrow at Nkuhungu area. He was none other than the appellant. The police officer at the counter, PW1 No. E 4195 DC CHARLES related the two reports and deduced that the appellant must have been one of the thugs who had invaded PW2's home hence he was booked but was given a PF3 and sent to hospital for treatment where an arrow was removed from his eye. An arrow and a machete were admitted in court as exhibit P1 collectively.

In his defence the appellant testified that on 9/3/2004 at about 22.00 hours he was coming from Kizota area to his home at Mbwanga when he passed through the complainant's home. That to his surprise he was stabbed with an arrow in the eye and was taken

to the road and abandoned there until one good samaritan took him to hospital through Police Station where after few minutes the complainant reported the allegations of robbery. The appellant lost his sight following the stab in the right eye.

The foregoing evidence convinced the trial court that the offence of Armed Robbery had been proved and accordingly the appellant was convicted and sentenced as stated earlier.

In his petition of appeal the appellant raised about seven (7) grounds of appeal where he essentially complained that the charge of Armed Robbery was not proved against him.

Before me the appellant implored the court to allow his appeal upon consideration of the grounds thereof. On his part Mr Katuli learned State Attorney appeared and argued the appeal on behalf of the respondent, Republic. He did not support the trial court's conviction and sentence against the appellant. Mr Katuli heavily attacked the alleged identification of the appellant at the scene by the watchman, PW3. He submitted that PW3 did not state what source of light was there at the scene which helped him to identify the appellant among the robbers. Also, that, if PW3 had identified the thug to be the appellant he ought to have mentioned him before his employer, PW2 and the police. Further, that the machete was not proved to be the one which was obtained at the scene of crime. And the said arrow from appellant's eye was not proved to be the one used by PF3 to stab one of the thugs. Finally Mr Katuli contended that the

prosecution case lacked corroborative evidence for instance; if the stolen property was found in the appellant's possession could be enough corroborative evidence in this case, but it was not the case here.

I think Mr Katuli learned State Attorney unnecessarily used a lot of energy in defending his decision about not supporting the conviction. It is clear that identification of the appellant was and is not an issue in this case since the appellant clearly testified in his defence that he passed through the complainant's home on his way home when he was stabbed by an arrow in the eye and was abandoned on the road by his assailant.

Thus, what was and is a point of discussion is whether the appellant committed the offence of Armed Robbery. This also is the appellant's main complaint in his grounds of appeal. PW2 testified that he was awoken by PW3's shoutings after the alleged thugs had invaded the home-stead. But surprisingly no any independent witness came to corroborate that they heard any alarms at the residence of PW2. No neighbours were said to have gone to see what was happening there or no local area leaders were informed that there had occurred robbery incident at PW2's home during those early hours of 9/3/2004.

But then PW3 did not tell the court that he shouted when he saw the thugs had jumped over the fence. Thus by this contradiction it is obvious that there was no any robbery incident at PW2's home.

As rightly complained in the appellant's grounds of appeal the prosecution evidence did not prove that there was any robbery at the scene. It was not explained at what point the thugs were able to access the alleged stolen items which are mentioned to be some kitchen utensils; hot pots, thermos, knife and there was an umbrella. Had the thugs broke in the house? Definitely not since PW2 and PW3 did not testify to that effect. Where were these items taken from it was not explained. Usually these items are kept inside the house.

There was no any explanation offered by the police in relation to the scene of crime since definitely they did not visit the same. They ought to have gone there to prove if there had occurred any robbery. If the appellant had admitted the allegations why didn't they take his confession in writing?. The answer to this question lies in the fact that the appellant did not confess but only explained that he was attacked by the complainants when he passed near their home.

For the foregone observations it is the finding of this court that the charge of Armed Robbery was not proved against the appellant. If the complainants had way-laid the appellant definitely it was not that he was found committing robbery but could be for some quite different explanation which was not revealed.

Finally, the appellant's appeal is allowed, conviction quashed and the sentence set aside. The appellant is ordered to be released from custody unless his continued incarceration is related to other lawful cause.

I so hold.



(M. A. KWARIKO)

JUDGE

18/8/2010

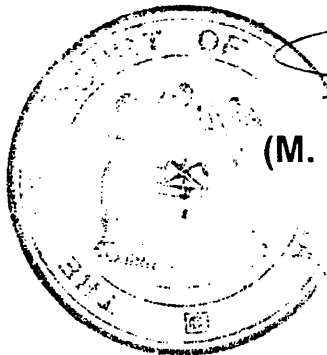
**AT DODOMA**

18/8/2010.

**Appellant:** Present.

**For Respondent:** Ms Nsana State Attorney.

**C/c:** Ms Komba.



(M. A. KWARIKO)

JUDGE

18/8/2010