IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: MSOFFE, J.A., MBAROUK, J.A. And BWANA, J.A.)

CRIMINAL APPEAL NO. 26 OF 2006

PAULO MAKARANGA ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Mwanza)

(Rweyemamu, J.)

dated the 28th day of September, 2005
in
HC Criminal Appeal No. 164 of 2004

JUDGMENT OF THE COURT

6 & 7 May, 2010

MSOFFE, J.A.:

This appeal arises from the decision of the High Court (Rweyemamu, J.) upholding the decision of the District Court of Mwanza (Madebele, DM) in which the appellant was convicted of armed robbery contrary to Sections 285 and 286 of the Penal Code and sentenced to an imprisonment term of thirty years.

The appellant filed a four point memorandum of appeal in which the key issue is on the aspect of identification. In both the memorandum of appeal and in his oral submission before us he

maintained that the courts below erred in deciding that he was properly identified on the date and time of incident.

On the other hand Mr. Edwin Kakolaki, learned Senior State Attorney representing the respondent Republic, contended that there is nothing to fault the courts below in their assessment of the evidence on the crucial aspect of identification. The identifying witnesses (PW1 and PW2) knew the appellant before the date of incident. At the relevant time and place of incident there was a hurricane lamp illuminating the area. PW1 stated that the appellant was in company with other robbers but did not identify them – to suggest that this witness was honest and reliable in his identification of the appellant. As if all this was not enough, these witnesses mentioned the appellant to the police on the same night. In consequence thereof, the appellant was arrested on the same night. The cumulative effect of all the above pieces of evidence, Mr. Kakolaki went on to urge in conclusion, is that the appellant was identified on the fateful day and time.

PW1 Kija Mabula and PW2 Zuberi Balele testified and told the trial District Court that on 20/6/2003 at around midnight the house in

which they were living in was broken into by bandits. The bandits were wielding machetes and an iron bar. The bandits hit the two witnesses with the dangerous or offensive weapons and then stole and ran away with an assortment of articles including a radio cassette, clothes, a wrist watch, a radio and a pair of shoes. Both PW1 and PW2 saw and identified the appellant among the robbers because they knew him before that day, and also because of the fact that at the material time there was light coming from a hurricane lamp.

As stated above, the determination of the case depended on the crucial issue of identification. In other words, the prosecution case was to fall or rise on this crucial aspect of the case. The judge on first appeal addressed this issue thus:-

> *.... the appellant was properly identified by PW1 and PW2, they knew him before; conditions of identification were favourable as the room they were sleeping in-where the attack took place was lighted; that the two witnesses mentioned the appellant to PW4 a police officer immediately after the incident. The appellant was arrested immediately thereafter....*

Then she went on to say:-

> *.... Further, according to the appellant, the two witnesses were not his enemies. There was no suggestion that they had any reason to fabricate a case against him and if they were making a random mention, they would have implicated other people, since the attack was carried on by five people including the appellant ....*

With respect, we are in entire agreement with the appellate judge in her reasoning. We will only add that, as correctly submitted by Mr. Kakolaki, in the circumstances of this case there was no need for more evidence of description as the appellant appeared to suggest in the second ground of appeal. The appellant was known to both PW1 and PW2 prior to the date of incident. There was thus no need for further evidence of description from these witnesses. It is not always the case that evidence of description is necessary. If an accused person is known to the witness there is no need of evidence of description. In this regard, we associate ourselves with the view expressed by this Court in **Samwel Msinga v Republic**, Criminal Appeal No. 143 of 2005 (unreported) that:-

> *..... if a witness knows the suspect and mentions his name to third persons; that in itself is part of a description .....*

In this context, the fact that PW1 and PW2 mentioned the appellant to the police at the earliest possible opportunity was also significant in assuring that they were reliable witnesses. In **Marwa Wangiti Mwita and Another v Republic**, Criminal Appeal No. 6 of 1995 (unreported) this Court stated:-

> ***The ability of a witness to name a suspect at the earliest opportunity is an all important assurance of his reliability,*** *in the same way as unexplained delay or complete failure to do so should put a prudent court to inquiry.*
> (Emphasis supplied.)

As stated above, once PW1 and PW2 named the appellant to the police he was arrested almost immediately on the same night. This, as demonstrated above, was significant in lending further credence to the prosecution case against the appellant.

The appeal has no merit. We hereby dismiss it.

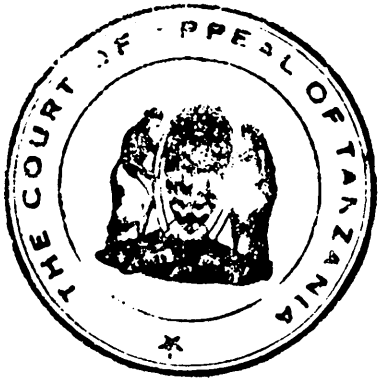
DATED at MWANZA this 7th day of May, 2010.

J. H. MSOFFE
JUSTICE OF APPEAL

M. S. MBAROUK
JUSTICE OF APPEAL

S. J. BWANA
JUSTICE OF APPEAL

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



(J. S. MGETTA)
DISTRICT REGISTRAR