

IN THE HIGH COURT OF TANZANIA

AT TANGA

(PC) CRIMINAL APPEAL NO.8 OF 2008

[ORIGINATING FROM Dochi Primary Court, Criminal

Case No.125/2007 Lushoto District Court, criminal appeal

no.13/2008]

BUSHIRI PETER.....APPELLANT

VERSUS

BIDANI MESHACK.....RESPONDENT

Date of last order:- 18/1/2010

Date of Judgment: 15/12/2010

JUDGMENT

Mussa, J;

This appeal originates from Dochi Primary Court , Criminal Case No.125 of 2007. In those proceedings, the appellant was arraigned for robbery with violence contrary to s.285 and 286 of the penal code cap.16 (R.E. 2002) He was sentenced to five years imprisonment and ordered to pay compensation of Tshs.450,000/= to the respondent. On the particulars, the allegation was that on the 27th day of June 2007; at Magamba Kibohelo, Lushoto District; the appellant robbed a sum Tshs.450,000/= as well as a key from the person of a certain Bidani Meshack. The appellant refuted the accusation and; so the matter was gone into upon full enquiry.

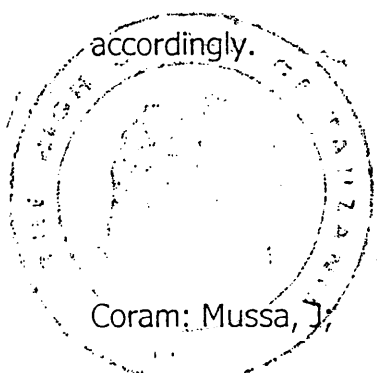
It is pertinent to note that the appellant was subjected to two separate trials in a row, that is, after the first was nullified by the District Court.

Throughout the conduct of the two trials, the complainant, afore named, was at the helm of the prosecution and; actually, testified as first witness in both. For reasons that will later become apparent, I need only cull from the verdict and aftermath of the first trial. To say the least, upon full enquiry, the trial court found insufficient evidence, whereupon, the appellant was acquitted. The respondent was dissatisfied but; on appeal, I am afraid to say, the District Court strayed into wilderness. To begin with, the learned first appellate Magistrate criticized the trial court for not venturing upon the subject of visual identification. Rather than itself address the subject and arrive at its own conclusions as was expected of a first appellate court, the District Court ventured upon the rare:-

. . . Under the circumstances, justice was not done to SM.1, appellant. From all the weakness, I am of the view that the Decision of the trial court was not proper. So that justice is done to both parties and the weaknesses shown supra are rectified, I order retrial before another competent Magistrate and set of assessors.

With respect, an order for retrial does not issue that easily. For all I know, for a proceeding to be nullified with an order for a new trial; it must result from a defective trial. That is to say, where there is, for instance, some jurisdictional incompetence or, as the case may be, a departure truding on a fundamental rule pertaining to the conduct of trials. Looking at the situation at hand, it seems as if, in the eyes of the first appellate court; justice would have only been done if there was a conviction. Indeed, if such was a wish, it was, gratuitously, granted in the second trial. As it turned out, upon resumption, the appellant was

convicted and sentenced to five years imprisonment. His appeal to the District Court was to no avail; much as the court did no more than endorse the findings of the court below it. It is to these verdicts that the appellant is all arms against. That aside, I ask myself: Were the earlier trial proceedings, legitimately, nullified in the first place? Quite obviously, the answer is a resolute No; more so as the nullification did not result from a defective trial. The question that immediately drops out is: What needs doing? Rather unfortunately, I am left with no option than to nullify the entire proceedings of the two courts below; that is, subsequent to the first trial. The result will be to resurrect the earlier decision of the trial court through which the appellant was set at liberty. To put it differently, he should resume liberty forthwith unless he is otherwise lawfully held. Order



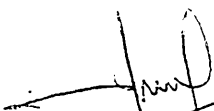
accordingly.


Coram: Mussa, J.

Appellant: Present

Respondent: Mr. Mfinanga

Judgment delivered in the presence of the parties.


K.M. MUSSA, J.
13/12/2010


K.M. MUSSA, J.
15/12/2010