

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

APPELLATE JURISDICTION

HC. CR. APP. NO. 125 OF 2008

*(Original Cr. Case No. 996 of 2005 of the District Court of Nyamagana
District at Mwanza. Before K. D. Mhina, RM)*

IDFONCE s/o MELIKIOR APPELLANT
(Original Accused)

Versus

THE REPUBLIC RESPONDENT
(Original Prosecutor)

11.10.2010 – 13.10.2010

JUDGMENT

G. K. RWAKIBARILA, J

Appellant **Idfonce Melikior** was convicted of armed robbery c/s 287A of **The Penal Code, Cap.16 (Vol.1, R. E. 2002)** in Nyamagana District Court Criminal Case No. 996 of 2005 and sentenced to the statutory minimum thirty (30) years imprisonment. He felt aggrieved by both his conviction and sentence in that criminal case and lodged this appeal.

The summary of evidence which led to his conviction and sentence is that by 14.09.2005, PW¹ Agness Kitanda and his son PW² Gabaseki Charles used to sleep at night together in a room

within a house situated at Igogo-Kakiro suburb within Mwanza City. At around 03:30 am of that day, a group of thugs invaded their room and picked from there numerous household items whose value was estimated at Shs 450,000/=. Thereafter, PW¹ reported this incident at Igogo police station. In course of their investigations on this matter, detectives at that police station arrested appellant Idforce Melikior and Jonas Bartazar who were accused No.2 and accused No.1 respectively in that criminal case.

On the next day which was 15.09.22005, PW⁴ Assistant Inspector Adam conducted an identification parade at that police station whose participants were appellant, PW³ Emmanuel Kaneno, accused No.1 Jonas Bartazar and about six other men. During that parade, PW¹ failed to identify both appellant and accused No.1 Jonas Bartazar. But in course of that endeavour, PW² identified appellant alone.


At the end of the trial, Jonas Bartazar was acquitted. But appellant was convicted on the strength of his identification at the **locus in quo** and during an identification parade.

In his memorandum of appeal which had four grounds, appellant's main contention was that he was not at the **locus in quo** on 14.09.2005 at around 03:30 am, when PW1's room was invaded by thugs. And Mr. Ndamugoba, learned State Attorney

who represented the Republic **cum** respondent in this appeal did not support the conviction. This learned State Attorney pointed out at that stage that conditions for identification of appellant were not adequate.

In their evidence PW¹ and PW² narrated that there was light which was illuminating in their room when the thugs invaded there on 14.09.2005. But PW¹ and PW⁵ did not disclose how was the intensity of that light or whether it was of a kerosene lamp, electricity, fire or others. Then the likelihood of a faint or shallow light can not be ruled out because during an identification parade PW¹ singled out ~~the~~ appellant alone but PW² did not trace any culprit.

It follows that Mr. Ndamugoba, SA correctly supported appellant's grounds of appeal to wit, evidence which was adduced against appellant during his trial did not fulfil to prove the prosecution's case against him beyond reasonable doubt. This appeal is therefore allowed to wit, appellant's conviction is quashed and his sentence of thirty (30) years imprisonment is set aside. Then appellant should be released immediately from jail unless still confined there due to other lawful grounds.



G. K. Rwakibarila
JUDGE
12.10.2010

Date: 13.10.2010

Coram: G. K. Rwakibarila, J

Appellant: Present in person

Respondent: Mr. Ndamugoba, SA for Republic

B/C: Ihuya

Court:

Judgment delivered at Mwanza this 13th day of October, 2010 at presence of Mr. Ndamugoba, SA for Republic **cum** respondent and appellant who is present in person.



G. K. Rwakibarila
JUDGE

AT MWANZA
13.10.2010