

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

**APPELLANT JURISDICTION  
(Tabora Registry)**

**(DC) CRIMINAL APPEAL NO. 94 OF 2012**  
CRIMINAL CASE NO. 345 OF 2011  
OF THE DISTRICT COURT OF KIBONDO

**BEFORE: E.R. MARLEY DISTRICT RESIDENT MAGISTRATE**

**SADIKI S/O CHIZA .....APPELLANT**  
(Original accused)

**VERSUS**

**THE REPUBLIC.....RESPONDENT**  
(Original Prosecutor)

1/7/2013-9/7/2013

**J U D G E M E N T**

**HON.S.B. LUKELELWA, J.**

**SADIKI S/O CHIZA .....**

The appellant (1) Sadick Chiza, (2) Maneno Gugu (3) Majaliwa Chiza and (4) Ismail Ibrahim @ Ras were on 29/6/2012 convicted by Kibondo District Court on a charge of Armed Robbery contrary to section 287 A of the Penal Code and each sentenced to thirty years imprisonment.

The appellants were aggrieved by both the conviction and sentence and each has preferred an appeal to this court. Their appeals have been consolidated.

Testifying for the prosecution the victim of the Armed Robbery, PW1 Kachira Bilandondo told the Court that he was a businessman at Busunzu village. On 27/5/2011 at around 01.30 hours he heard someone calling him loudly, he listened for sometime till he realised The person who was calling him that he went to open the door. He had torch and he saw the fourth appellant by aid of torch light.

First he identified Majaliwa, the third appellant who was knocking on the door.

Further that it was the first appellant who was also known as Ras who had pointed a gun at his chest and ordered him to lie down.

The bandits demanded money and PW1 had to call his wife PW1 had to call his wife PW2 Safina d/o Kadyadya and directed her to where he had kept the money.

Two bandits escorted her, and two bandits remained guarding him.

PW2 testified when she was called she found people armed with a gun, panga knife and stick and that she identified the men as they were her village mates. Her husband showed her a place under a chair where he kept Shs 60,000/= and asked her to give the money to the bandits. The bandits beat her husband till he asked her to give them more money which he had kept in a bag.

The bandits then went into the shop and took twelve torch batteries. Then the fourth appellant started shooting in the air.

PW5 Samson Ndabahe, was the Busunzu village Chairman was the first man to answer the alarm.

He arrived at the scene on 27/5/2011 at around 02.00 hour. At the scene of crime he saw five spent cartridges.

PW5 telephoned the Police and it was until 4/6/2011 when Police Officers turned up at the villager for investigating the crime. They went to the home of the appellants who ran away but were arrested.

PW5 told the court that PW1 had told him that there were about three robbers who had invaded him.

PW3 Enos Kagiye testified that he had heard gun shots in the air and when he went outside his house, he managed to see the appellant by aid of moonlight. One bandit had a gun, another had a panga and a another had a stick.

PW3 testified that he knew the appellants before as they lived at a neighbouring village.

PW4 Robbert Nchura was the Nyarugusu Village chairman. PW4 testified that he had heard the gun shots on 27/5/2011. On 4/6/2011 the OCS of Buzunzu Police post came and they went to the home of the appellants starting with the home of the first appellant and the second appellant where they got nothing of interest.

It was the mother of the third appellant who had promised the Police to look for the gun.

On 5/6/2011 PW4 received a gun from one Mzee Bukubilwa who is the father of the third appellant.

In defending themselves, each appellant gave an explanation of what happened on the date of his arrest.

In convicting the appellant the learned trial Resident Magistrate found that the appellants have been positively identified by the prosecution witnesses as they were people living in a neighbouring village.

Further that they were identified by aid of moonlight, and torch light.

Mr. Rwegira learned State Attorney for the Respondent declined to support both the conviction and sentence submitting that the appellants were not identified at the scene.

It was in a dead night, and the victim failed to mention the appellants at the earliest opportunity and it took eight days before the appellants were arrested.

Further that the gun alleged surrendered by the father of the third appellant was not tendered in court and the said Mzee Bukubilwa did not give evidence in court.

The appellants were charged after the elapse of four months  
~~it was in a dead night, and the victim failed to~~  
following the search at the appellants homes.

I entirely agree with the submission made by the learned State Attorney.


PW5 Samson Ndabahe, the 5 Busunzu village chairman who was the first person to reach the scene of crime but both PW1 and PW2 did not mention any name of a bandit which they had identified.

Indeed there was no sufficient evidence to support the charge leveled against the appellant,

I therefore quash the convictions and set aside the sentences of thirty years imprisonment imposed on the appellant.

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

Appeal allowed.

  
**S.B. LUKELELWA**  
**JUDGE**  
**09/7/2013**

• Date: 9/7/2013

Coram: Hon. S.B. Lukelelwa, Judge

Appellants: All Present

Respondent: M/S Grace Muwanga State Attorney for the Republic  
Present.

**Order**:- Judgment delivered in court this 9<sup>th</sup> July, 2013

Right of Appeal explained.

