

IN THE HIGH COURT OF TANZANIA

AT TANGA

CRIMINAL CASE APPEAL NO. 32 OF 2012

*(Originating from Handeni District Court  
Criminal Case No. 28 of 2009)*

HUSSEIN BARIKIA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

U. MSUYA, J.

The Appellant having been aggrieved by the decision of the District Court of Handeni at Handeni, preferred an appeal. He was convicted for the offence of Armed Robbery C/S 287 of the Penal Code Cap 16 R. E. 2002 as amended by Act No. 04/2004. He was sentenced to 30 years imprisonment.

He presented three grounds of appeal but the main issue was on identification. That there was no cogent evidence tendered by the only identification witness PW 2 Matata Juma to prove how the appellant was identified.

On the other hand the learned State Attorney Mr. Iboru supported the appeal. He said the evidence tendered did not pass the test of the principle laid in the case of WAZIRI AMANI V R (1980) T L R 250 on the issue of identification. This is because the only eye witness PW 2 Matata Juma could not explain in the evidence how he identified the accused person apart from just saying that he identified his voice in cross – examination.

He as well pointed out that the other prosecution evidence given was hearsay evidence, which cannot be accepted by the court.

Mindful of the fact that it is the duty of the prosecution to prove their case beyond reasonable doubt he submitted, the duty was not discharged and the accused has to be given the benefit of doubt.

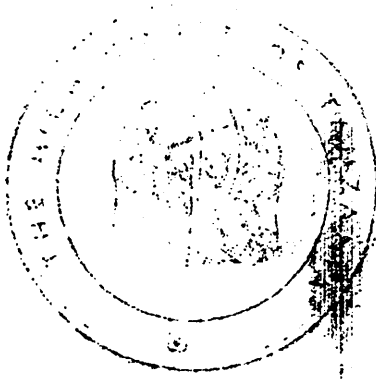
The issue here now is whether the accused was properly identified or not.

I have had an opportunity to thoroughly go through the evidence tendered by the prosecution. I totally agree with both the appellant and the learned State Attorney that following the principles laid down in the case of WAZIRI AMANI (supra) the appellant was not properly identified.

This is to say the case was not proved by the prosecution beyond all reasonable doubt. So it was not proper for the appellant to be convicted based on such a weak evidence of visual identification.

The conviction against the appellant is thus quashed and the sentence imposed against him is set aside.

The accused should be released immediately unless held for another lawful cause.



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**U. MSUYA, J.**  
**2/10/2013**