

IN THE HIGH COURT OF TANZANIA
AT TABORA
APPELLANT JURISDICTION
(Tabora Registry)
(DC CRIMINAL APPEAL NO. 2 OF 2013
CRIMINAL CASE NO 168 OF 2010
OF THE DISTRICT COURT OF SHINYANGA
BEFORE G. G. MWAKIHABA - RESIDENT MAGISTRATE
CLARA D/O JOHN @ MASANJA APPELLANT
VERSUS
THE REPUBLIC RESPONDENT

10TH June, 2013 - 1st July, 2013.

J U D G E M E N T

HON. S. B. LUKELWA, J.

The appellant Clara d/o John @ Masanja and Talange s/o Kafula on 10th day of June 2010 appeared before Shinyanga District Court charged with the offence of Stealing Contrary to section 265 of the Penal Code [Cap. 16 R.E. 2002]

It was alleged in the particulars of offence that; “Talange s/o Kafula and Clara Masanja on 2nd day of June 2010 at about 11.00 hours at Government Hospital area within the Municipality and Region of Shinyanga did jointly and together steal Gauze BP Serial No. 20130901 from MSD Normal Sarine Service A, 1985, 2 pieces of Canula G18-20, 2 Gaize roll, one Normal Salina and one walking clauches all Property valued at Tshs. 2,000,000/= the property of Government Hospital in Shinyanga.

On 25.01.2011 the charge was substituted, to a new charge of STEALING BY SERVANT Contrary to section 271 of the Penal Code. (1st **COUNT**).

It was alleged in the Particulars of offence that, “Clara d/o John @ Masanja at unknown date and time in Shinyanga Region being employed by Regional Administrative Secretary as a Pharmacist grade II stole Gauze BP normal Saline two (2) roles of Gauze and a pair of walking crutches, the property of Shinyanga Regional Hospital **2ND COUNT**.

STEALING BY SERVANT Contrary to section 265 of the Penal Code

Stealing Contrary to section 265 of the Penal Code [Cap. 16 R.E 2002]. It was alleged in the Particulars of offence that: **CLARA JOHN @ MASANJA and TALANGE S/O KAFULA** on

The chamber summons is supported by affidavit of the applicant in which it is averred in relevant paragraphs that the applicant was charged and convicted of the offence of armed robbery c/s 285 of the Penal Code, in the District Court of Kahama at Kahama Criminal Case No. 32 of 1997 but the District Court has failed to issue him with a copy of judgment.

The applicant averred further that the trial District Court had convicted him while there was no water-tight evidence. Further more, there was no person or any witness who had identified the applicant or seen him during the incident.

I have gone through the proceedings at the trial Court and noted the following PW1 Machibya Mayala lived at Ubilimbi village, and is a peasant growing paddy. PW2 Juliana Mayala is the sister of PW1, she lives at Mpunze village Kahama PW2 testified that on 18/01/1997, she was his brother at Ubilimbi village PW1 testified that on 18/01/1997 he decided to sell 70 bags of rice.

A person called Bukani negotiated the purchase of the seventy bags of paddy; at shs. 870.000/=.

Then the said Bukani turned up in company of seven porters in a motor-vehicle. They lodged the seventy bags in the motor-

vehicle. The appellant and the accused person at the trial was among the seven porters who had lodged the bags into the lorry.

PW1 went to bed at 9.00 p.m. At midnight PW1 heard his dogs barking. He woke up and opened the door. He went to bed again, then he heard a huge bang on the door. It was hit by a big stone known in criminal parlance as "*fatuma*". The door gave in to the blow. A second door was hit but it showed resistance. PW1 went on to state that the bandits got inside the house, after firing a gun shot in the air. The commanded his visitor, PW2 Juliana Mayala to give money she told them that she had no money. PW1 was in one of the rooms. The bandits forced open the window of the room. He climbed over the walls of the house, and saw the applicant who was the third accused at the trial also climbing the wall. It was the applicant who managed to force open the door leading to the room of PW1. He ha a torch and a kerosene lamp was growing in the room. He surrendered shs. 800.000/= to them. The second accused at the trial took the money. The whole incident took about ten minutes

PW2 testified that the applicant was the first person to enter her room followed by the second accused.

PW2 went on to state that it was the applicant who demanded money from her PW2 told the court that she managed

to leave her room when the applicant was breaking the window of the her brother.

PW4 Abdallah Mugabicho was the Chief of vigilantes known as Wasalama.

The applicant and others were sent to his office following a complaint by PW1 that he had been robbed of shs. 800,000/= and that he had suspected the people who had come to purchase paddy the previous day.

The applicant told the trial court that on 19/1/97 in the morning he went to purchase paddy in company of the first accused at the trial. They purchased 70 bags of paddy and went back to Kahama. However he had to remain at the machine to de husk the paddy. On the following day they were called at the office of sungusungu.

DW7 Charles Mayunga works on a grinding mill. He testified that on 19/01/1997 the applicant and others arrived at the machine at 8.00 p.m. and they stayed at the machine for the whole night.

In convicting the applicant the learned trial Senior District Magistrate held that PW1 was familiar with the applicant and in addition he had spent the day with the applicant weighing and re-

weighing rice which they purchased. PW1 had identified the appellant who was the one who opened the door leading to his bedroom.

Further he had identified the appellant by aid of light from a torch which PW1 had and the light from a burning kerosene lantern. The evidence of PW2 also stated that it was the applicant who first entered her room. She had identified him by help of a light from a burning kerosene lamp.

Having gone through the transcripts of the evidence on record, I'm satisfied that the applicant who was very active in the incident as positively identified on the reasons stated by the learned trial Senior District Magistrate. It follows therefore that the need of revising the proceedings and judgment of the trial court does not arise at all.

I therefore dismiss this application in its entirety.

Order accordingly.


S. B. LUKELELWA,
JUDGE.

11th June, 2013

Date: 11/06/2013

Coram: Hon. S. B. Lukelelwa, J.

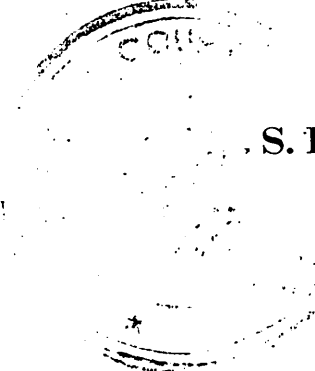
Applicant: Present

Respondent: M. Idephonce Mukandala State Attorney who is
present.

B/c: Mary Mpululu

Order: Ruling delivered in Court this 11th June, 2013.

Right of appeal explained.



S. B. LUKELELWA,
JUDGE.
11th June 2013