

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

**APPELLANT JURISDICTION
(Tabora Registry)**

**(DC) CRIMINAL APPEAL NO. 7 OF 2013, 8/2013, 9/2013
CRIMINAL CASE NO. 32 OF 2012
OF THE DISTRICT COURT OF KAHAMA**

**BEFORE:- F.K. NYALADA Esq, RESIDENT MAGISTRATE
ISSA S/O SHASHAN @ MANFUVU.....APPELLANT
(Original accused)**

VERSUS

**THE REPUBLICRESPONDENT
(Original prosecutor)**

11/6/2013-25/6/2013

J U D G E M E N T

HON. S.B. LUKELELWA, J.

The appellants Issa Shashan @ Manfuvu rashidi Ramadhani @ Chidi, Bundala Masanja @ ~~Omari~~ and Mwita Chacha were on 4/1/2013 convicted by Kahama District Court on a charge of two counts namely House breaking contrary to section 294 of the Penal Code and stealing contrary to section 265 of the Penal Code.

The appellants were each sentenced to ten years imprisonment on a count of Burglary and a sentence of tree years imprisonment on the court of stealing.

The appellants were aggrieved by both the conviction and sentences imposed on them and each has preferred an appeal to this court.

Their appeal have been consolidated.

Mr. Mukandala learned State Attorney for the respondent Republic declined to support both the conviction and sentences imposed on the appellants.

The learned State Attorney submitted that the appellants were arrested after the elapse of six months following the commission of the alleged offence. They were arrested after they were mentioned by the third appellant, on Police interrogations. The appellants had been arrested by village vigilantes know as sungusungu who notaries in employing torture to extract confessions.

~~subject on the appellants~~

The learned trial Resident Magistrate failed to conduct an inquiry to establish the voluntaries of the caution statements.

I have re-examined the proceedings of the trial court.

~~in single breath. They were arrested in a hurry,~~

The charge sheet shows that the offence of House breaking occurred on 18th day of August 2011 at about 05.00 hours at Nyahanga village within Kahama District in Shinyanga region.

The appellants were charged on 20/1/2012. That is after the elapse of about six months.

The record does not show that there was any witness be the investigator of the case who could give an explanation for the delay of arresting the appellants. This shows that the appellants were not identified at the scene of incident.

PW1 Insp. Hatari Kisumo the victim of the incident had replied from a question posed by the second appellant on cross-examination that the appellants were arrested by sungusungu to whom they narrated criminal incidents.

PW5 Bundala Sengasenga testified that on 18/12/2011 at 6.00 a.m. was awakened by a knock on his door, and when he opened he found one Mzee Noel Mkisi and other and the 3rd Appellant Bundada Masanja @ Omari was under arrest Mzee Noel Mkisi had told him that the third appellant and three others were arrested when attempting to break.

The third appellant mentioned the appellants Issa Shashan @ Manfuvu, Mwita Chacha and Rashidi Ramadhabni @ Chidi.

They called the Police PW5 testified that the appellants were on 18/1/2012 attempting to steal from Afande Moses.

PW2 F 166 D/SSgt Peter wrote a caution statement of the third appellant which was admitted in court as exhibit "**P1**" although the learned trial Resident Magistrate wrote that it had been retracted.

PW4 E.5721 D/Cpl Pius testified that on 18/8/2011 they conducted a special patrol to search for burglars. At the premises known as Shunu, they arrested four suspects who had instruments for house breaking using fake keys PW4 recorded a caution statement of the second appellant Rashidi Ramadhani @ Chidi who admitted to participate in various crimes at Kahama with one Malifuvu. The caution statement was admitted in Court as exhibit "P2" despite the objection raised by the second appellant.

caution statement was admitted in court as exhibit "P2" although the learned trial Resident Magistrate wrote that it had been retracted.

From the above evidence, the submissions made by Mr. Mukandala learned state Attorney learned State Attorney cannot be faulted.


I agree that the appellants were convicted on insufficient evidence, and their conviction cannot be left to stand.

I therefore quash the conviction and set aside the sentences imposed on them.

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

Appeals allowed.

Order accordingly

conviction cannot be left to stand. 
S.B. LUKELELWA

JUDGE

25/6/2013

Date: 25/6/2013

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

1st Appellant
2nd Appellant
3rd Appellant

} Present.

Respondent: M/S Mercy Ngowi –State Attorney who is present

B/Clerk: Mary Mpululu

Order: Judgement delivered in Court this 25th day of June 2013.

Right of Appeal explained.




S.B. LUKELELWA

JUDGE

25/6/2013