

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 92 OF 2011

1. MANANYA BAISKELI

2. SAID OMARY

V

} **APPELLANTS**

REPUBLIC.....RESPONDENT

JUDGMENT

Shangwa, J

The Appellants Mananya Baiskeli and Said Omary were charged in the District Court of Bagamoyo with the offence of Armed Robbery C/S 287 A of the Penal Code Cap 16 R.E. 2002. After full trial, each of them was convicted and sentenced to 30 years imprisonment. The particulars of the offence with which they were charged are that on 28th September, 2009 at about 2. 00 hours at Ukuni Village within Bagamoyo District in Coast Region, they stole cash TZ Shs 300,000/= the property of Mwanaharusi Abubakar

and immediately before such stealing they threatened her by using a panga in order to obtain the same. Three witnesses were called by the prosecution to prove its case namely P.W. 1 Mwanaharusi Abubakar, P.W.2 Yohana Frank and P.W.3 E 3818 D/ CPL Augustine.

The Appellants filed a joint Petition of appeal in which they raised ten grounds of appeal. These grounds can only be reduced into one ground that the prosecution did not prove its case against the Appellants beyond reasonable doubt.

During the hearing of their appeal, they submitted that they were wrongly convicted of the offence charged as they did not commit the same. The learned State Attorney Amani Mramba did support the appeal against conviction and sentence imposed by the trial Court on the Appellants.

He did so with some reservations. He said that instead of convicting them of Armed Robbery, the trial Court was supposed to convict them of the offence of Burglary C/S 294 (1) (a) & (2) of the Penal Code. He submitted that the evidence on record merely shows that they broke into P.W1'S residential house during the night with intent to commit an offence therein and that after entering therein they demanded money from her which she said she does not have. Mr. Mramba said also that P.W.1 Identified the Appellants properly as she knew them before the date of the incident. He prayed that their conviction of Armed Robbery be substituted to that of Burglary and their sentence be reduced accordingly.

I have examined the evidence of the three witnesses who were called by the prosecution and I agree with the Learned State Attorney, Mr. Amani Mramba that the

Appellants ought to have been convicted of the offence of Burglary instead of being convicted of Armed Robbery. The key witness was P.W.1 who told the trial Court that the door of her house was broken by the Appellants and that after breaking it, they entered inside and demanded money and a mobile phone from her. That when she told them that she has no money and mobile phone they beat her. P.W.2 who is P.W.1 'S neighbour told the trial Court that on 28th September, 2009 during the night, he heard alarm by P.W.1 who was asking for assistance and that before going to P.W 1'S house, he went to the house of the ten cell leader with whom he left to P.W 1'S house in response to her alarm. That on the way, they met P. W. 1 who was bleeding in her mouth and nose and that she told them that she had been injured by some people who broke into her house including the Appellants. P.W. 3 who is a police investigator narrated the way how the suspects who

include the Appellants were arrested. He said that they were arrested by neighbours sometimes after the incident.

As a whole neither P.W.1 nor P.W.2 or P.W.3 told the trial Court that the Appellants were armed with a panga or any other weapon at the time of committing the offence. As already remarked, the Appellants ought to have been convicted of the offence of Burglary c/s 294 (1) (a) & (b) of the penal code and not armed Robbery as they broke into P.W.1'S dwelling house during the night with intent to commit an offence therein and without any arms. For this reason, I substitute their conviction of Armed Robbery to that of Burglary and I substitute their sentence of 30 years imprisonment to that of fifteen (15) years imprisonment as the offence of Burglary by its very nature is a serious and grave offence.



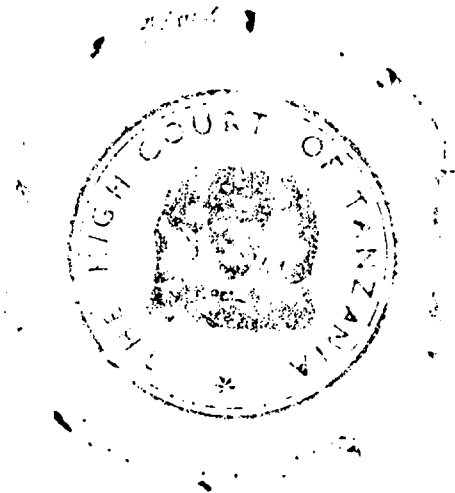
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A. Shangwa

JUDGE

18/11/2013

Delivered in open Court in the presence of the Appellants
and in the absence of the Respondent this 18th day of
November, 2013




A. Shangwa

JUDGE

18/11/2013