

IN THE HIGH COURT OF TANZANIA  
AT SUMBAWANGA

**APPELLATE JURISDICTION**

**DC CRIMINAL APPEALS NO. 64, 65 & 66 OF 2013**  
**(From Original Criminal Case No. 93 of 2012 in the District Court**  
**of Sumbawanga)**

**EMMANUEL MWANANDENJE**  
**JASTINE MWANAUTA**  
**FLORENCE ATHANAS** } ..... **APPELLANTS**

**Versus**

**THE REPUBLIC ..... RESPONDENT**

14<sup>th</sup> August & 8<sup>th</sup> October, 2014

**JUDGMENT**

**MWAMBEGELE, J.:**

In the District Court of Sumbawanga at Sumbawanga, the appellants Emmanuel Mwanandenje, Jastine Mwanauta and Florence Athanas were jointly charged with and convicted of two counts of the offence of armed robbery c/s 287A of the Penal Code, Cap. 16 of the Revised Edition, 2002. There was an additional count in respect of the third appellant of the offence of unlawful possession of a firearm and rounds of ammunition c/s

4 (1) and (2) and 30 (1) and (2) of the Firearms and Ammunition Act, Cap. 223 of the Revised Edition, 2002 read together with section 11 of the Written Laws (Miscellaneous Amendments) Act, 2010. The first, second and third appellants were sentenced to thirty years in jail in respect of the first and second counts and fifteen years in jail were meted out on the third appellant, who was first accused at the trial, in respect of the third count. Aggrieved, they proffered their respective appeals to this court. The appeals were christened Criminal Appeal No. 64, 65 and 66 in respect of, respectively, the first, second and third appellants.

At the hearing of these appeals, which were consolidated, the appellants, in their oral submissions in chief, the appellants opted to rely on and adopt what they stated in their respective memoranda of appeal. On the other hand, Mr. Mwashubila, the learned State Attorney who represented the respondent Republic, refrained to support the conviction and sentence in respect of the second appellant Jastine Mwanauta. The learned State Attorney was, however, of the view that the convictions and sentences in respect of the first and first and the third appellants were well founded. Arguing the appeal in respect of the second appellant, the learned State Attorney submitted that his conviction was based on his being named by a co-accused. He submitted that an accused cannot be convicted on the evidence of a co-accused without such evidence being corroborated. He relied on the provisions of section 33 (2) of the Evidence Act, Cap. 6 of the Revised Edition, 2002 to buttress this argument.

As for the appeals in respect of the first and third appellants which the learned State Attorney did not support, he submitted that there was ample evidence to found their convictions. These were convicted on their admissions as appearing in their respective cautioned statements which were appositely admitted in evidence. On top of that, the testimony of No. D 5286 Detective SSgt PW3 lent support to the admissions in the cautioned statements, he submitted.

The complaints by the appellants seem to be threefold; first, that they were not properly identified at the scene of crime or, if identified, they were identified in unfavourable condition, secondly, that the cautioned statements were not voluntarily given and thirdly, that the prosecution failed to prove the case beyond reasonable doubt against the second appellant. The sum total of the foregoing grounds, the appellants seem to allege that the case against the appellants was not proved to the required standard; beyond reasonable doubt.

I will start with the complaint in respect of the 2<sup>nd</sup> accused person whose conviction and sentence the learned State Attorney did not wish to support. As rightly submitted by the learned State Attorney and there is no direct evidence to incriminate the second appellant. Neither did the second appellant confess to have committed the offence or make any statement which incriminated him with the charged offence. The strength on which the second appellant was convicted was his being named by a co-accused. As rightly pointed out by the learned State Attorney, such evidence needed corroboration, for, much as the law under subsection (1)

of section 30 of the Evidence Act allows the court to take into consideration a confession of an accused person incriminating himself and a co-accused against that co-accused, a conviction of an accused person, within the meaning of subsection (2) of the section, shall not be based solely on such confession by a co-accused. The second appellant was convicted on the strength of the cautioned statements of the first and third accused persons. There is no independent evidence adduced by the prosecution to corroborate the confessions. It is settled law in this jurisdiction that a conviction cannot be based solely on a confession by a co-accused. For such a conviction to have legs on which to stand, there must be other independent testimony to corroborate it – see ***Seleman Rashid & Others Vs R*** [1981] TLR 252 and ***Asia Iddi Vs Republic*** [1989] TLR 174. The confessions of the first and third appellants in the instant case were therefore not sufficient to ground a case against the second appellant. There ought to have been independent evidence to corroborate it. In the absence of any corroborative evidence, the second appellant was not properly convicted. His appeal has merit and I, consequently, allow it.

As for the appeals in respect of the first and third appellants which the learned State Attorney did not support, I think I am in agreement with him. Admittedly, the offence was committed at night and, as the first and third appellant seemed to argue, evidence respecting identification was of importance – see ***Siraji Kocho Vs R*** [1994] TLR 206. However, the first and third having been confessed to have committed the offence, the evidence of visual identification was not of paramount importance. The

legal position on this kind of evidence is as was stated by the Court of Appeal for East Africa in the case of *Tuwamoi Vs Uganda* [1967] 1 EA 84 in which it was stated at 91 as follows:

"We would summarize the position thus - a trial court should accept any confession which had been retracted or repudiated or both retracted and repudiated with caution and must before founding a conviction on such a confession be fully satisfied in all the circumstance of the case that the confession is true. The same standard of proof is required in all cases and usually a court will only act on the confession if corroborated in some material particular by independent evidence accepted by the court. But corroboration is not necessary in law and the court may act on a confession alone if it is fully satisfied after considering all the material points and surrounding circumstances that the confession cannot but be true".

Regarding their cautioned statements, as rightly submitted by the learned State Attorney, PW1 and PW2 took the cautioned statements of the first and third appellants respectively , both admitted to have committed the offence they stood charged through their cautioned statements. The first

appellant's cautioned statement was admitted in evidence and he did not object to its being tendered. His complaint to the effect that the cautioned statement; exhibit P4, was improperly admitted is therefore baseless; the same is an afterthought as the appellant did not raise an alarm during the hearing of the case. The time to raise an objection in respect of an exhibit to be tendered in Court should be the time when the exhibit is been tendered and not any other time - See ***the Director of Public Prosecutions Vs Nuru Mohamed Gulamrasul*** [1988] TLR 82.

As for the third appellant, his cautioned statement was admitted in evidence after the court, quite correctly, conducted an inquiry. As was held by the Court of Appeal in ***Steven s/o Jason and 2 others Vs R***, Criminal Appeal No. 79 of 1999 (unreported), once an accused person objects to a cautioned statement being tendered in evidence on the ground that such evidence was obtained involuntarily, the trial court orders an Inquiry in order to enquire into its voluntariness or otherwise. In the instant case, after the third appellant made an objection to his cautioned statement, the trial court conducted an Inquiry after which it ruled that the same was voluntarily made and consequently admitted it in evidence as exhibit.

And, just for the sake of argument, even if the cautioned statement was illegally obtained, the position of the law is that as far as the court believes the contents thereof to speak nothing but the truth, the said cautioned

statement will be good pieces of evidence. This position was stated in the case of *Hemed Abdallah Vs R* [1995] TLR 172 in which the Court of Appeal of Tanzania, quoting from the headnote, held:

“Once the trial court warns itself of the danger of basing a conviction on uncorroborated retracted confession and having regard to all the circumstances of the case it is satisfied that the confession is true, it may convict on such evidence without any further ado”

That position is also dictated by the provisions of section 29 of the Evidence Act, [CAP. 6 R.E, 2002] in the following terms:

“No confession which is tendered in evidence shall be rejected on the ground that a promise or a threat has been held out to the person confessing unless the court is of the opinion that the inducement was made in such circumstances and was of such a nature as was likely to cause an untrue admission of guilt to be made”.

In the instant case, the trial court made heavy reliance on the cautioned statements. I would have done the same. The cautioned statements tell it

ail. They both had no history as to how the plan was hatched and ultimately the offences committed. Having warned myself on the dangers of convicting the first and third appellants, I am satisfied that the trial court was right to found convictions on the first and third appellants without any corroborating evidence.

In fine, as already stated above, I find the second appellant's appeal to be meritorious and accordingly allow it. His convictions are quashed and the sentences imposed upon him are set aside. The second appellant Jastine Mwanauta should forthwith be released from prison unless still confined there for some other lawful cause. The first and third appellants' appeals are without merit and are therefore dismissed in their entirety.

DATED at SUMBAWANGA this 8<sup>th</sup> day of October, 2014.

**J. C. M. MWAMBEGELE**  
**JUDGE**