

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 148 OF 2018

*(Originating from Criminal Case no. 264 of 2015 in the District Court of Kilosa
at Kiiosa)*

MANUMBA S/O JILUGU APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

Date of last Order: 2/9/2019

Date of Judgement: 7/10/2019

J U D G M E N T

MGONYA, J.

The District Court of Kilosa convicted the Appellant **MANUMBA S/O JILUGU** of cattle theft contrary to sections **258 (1) and 268 of the Penal Code (Cap. 16 R.E. 2002)**, and sentenced him to serve fifteen (15) years' imprisonment. The appellant is aggrieved with the conviction and sentence, hence this appeal.

The appellant basically had **four** reasons of appeal as follows:

- 1. That your Honor, I did not commit the purported crime as alleged by the complainant, as what was testified by the prosecution side was formulated evidence against me.***

- 2. That the learned trial Magistrate erred in law and fact by not recording, assessing and evaluate well the evidence given by the Appellant here in as the result unfair sentence.***

- 3. That the learned trial Magistrate erred in law and fact in convicting the Appellant when there was a lot of contradictions in the evidence of the prosecution witnesses your honourable Judge those are doubts that lead to unfair conviction.***

- 4. That the learned Magistrate erred in law and fact by considering only the evidence of the prosecution side only without giving weight the evidence and mitigation of the Appellant.***

During the hearing, the Appellant pleaded this court to adopt his grounds of Appeal and consider them so as he can be set free as he claims that he is innocent and that he didn't commit the offence alleged which he was finally convicted and sentenced with.

The Republic was represented by Ms. Faraja George the learned State Attorney who in a course of hearing submitted that

After they have gone through the records and from the outset, Republic supports conviction and sentence. Submitting further, Ms. George told the court that, they have noted from the 1st ground that all other grounds relates to one major ground that Republic have failed to prove the case beyond reasonable doubt of which Ms. George the State Attorney strongly object to this point.

Submitting further, Ms. George said, from PW1's evidence it was clear that he knows the Appellant since he is the Appellant's employer whom the Appellant was working to him as the caretaker to his cattle. Further, Ms; George said that PW1 out of the said relationship declared that on **19/02/2015**, the Appellant took away 17 cows/cattle for feeding. However, neither the Appellant not the cattle returned and that there were no any

notice to that effect, until **22/12/2015** when the Appellant was apprehended in the guest house at Morogoro with another person who was not sued. In that event, Ms. George told the court that the Appellant admitted to steal those cows and proceeded to show them where the cattle was; where two of them were slaughtered while 15 of them were still alive. PW1 identified those cattle since they had 'M' mark as his mark to his cattle.

The learned State Attorney averred further that, the PW1's testimony was corroborated with PW2's testimony of ABDALLA MAUJI the Police Officer; who testified to apprehend the Appellant who said that the Appellant confessed before him to have stolen the cows and brought them where the same were.

Further, in proving their case, Ms. George submitted that, Republic was able to tender **CETRIFICATE OF SEISURE** and **INVENTORY REPORT** to show that the search was conducted in that respect and to support PW1 and PW2's testimony.

It is from the above evidence, it was said that the Republic had reasonably proved its case beyond reasonable doubt; hence this ground **meritless**.

In addition, on the on the documentary exhibit to prove that the Appellant was PW1 employee, admitted the fact that Republic failed to prove the said fact, and no evidence that was tendered

in that respect. However, the State Attorney averred that, it has to be noted that the Appellant was a domestic servant who normally don't have any formal identity. However, the said concern was expected this to emerge during his Cross-Examination during trial but the Appellant asked only one question not relevant to his employment. The matter was termed as an after thought; hence Republic I still on the view that the ground of appeal is meritless.

On the 2nd ground that the Court directed it's self on convicting the Appellant by relying that he was apprehended in guest house where there was no any Guest Book/Register to prove his present at that place. In this point Ms. George submitted that the ground is hopeless as that issue is not important and that the court should focus on his apprehension of which is the important issue under the circumstances as the Appellant upon apprehension, he admitted that he stole cattle and also brought the Police to the place where those cows were kept to prove the case against him.

On the 3rd ground that there was a failure to call a Market leader. On this point, it was said that, since Republic had right and duty to prove the case, it was their choice on witnesses to prove their case, in terms of the kind of witness and the number

thereto as per **section 143 of Evidence Act** who indeed were able to prove the case. Hence this ground too is meritless.

On the last ground that the court erred by relying exhibit P1 and 2 certificates of seizure and Inventory Report; since there is a contradiction of number. Ms. George said, even though, the important issue is that the cattle were stolen by him and he showed the same. That anomaly if any, does not go to the root of the matter, hence this ground too has been declared meritless by the Respondent's Counsel.

From the above submission, the learned State Attorney prayed the court to deny the Appellant's Appeal and upheld the District court decision on conviction and sentence.

After I have gone through the record of the lower court, the judgment inclusive and the parties' respective submissions to this Appeal, at this juncture, I have with profound attention carefully considered the evidence adduced by parties herein and to a great extent the contents of the lower court judgment. Now the task before me, of course is to analyze the evidence adduced before the trial court and make decision with the reasons thereto for purpose of determination.

However, before I venture to determine the merits of this Appeal, I feel duty bound to register the position of law regarding to the burden of proof in the case of the nature at hand.

It is a cherished principle of law that, generally in civil cases, the burden of proof lies on the party who alleges anything in his favor. I am fortified my view by the provision of **Section 110** and **111** of the **Law of Evidence Act Cap. 6 [R. E. 2002]** which among other features states:

"110. Whoever desires any court to give Judgment as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exists,

111. The suit burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side".

The position was also celebrated and emphasized by our Highest Court of Land in the case of ***ATTORNEY GENERAL AND 2 OTHERS VS. ELIGI EDWARD MASSAWE AND OTHERS, Civil Appeal no. 86 of 2002 (Unreported).***

Of course, indeed it is common knowledge that the party with legal burden also bears the evidential burden and the standard in every case. In criminal matters beyond reasonable doubt. The decisions by the Court of Appeal of Tanzania in which this principle of law has been enunciated are now legendary.

I am constrained to recap and maintain the principle of burden of proof as celebrated by Rajabu J. A. (Singapore Justice) in the case of ***BRITESTONE PTG LTD VERSUS SMITH AND ASSOCIATES FAR EAST LTD (2007) 45 LR (R) 858***, where it was observed that:

"The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him".

Reading the trial court records and submissions of the appeal at hand, I am constrained to believe that the relationship between the Appellant and the PW1 who alleged to be the Appellant's employer was of utmost importance, hence there was a want of proof to that effect. It is in the record that Ms. George admitted that, before the trial court there was nothing that was produced to show that the PW1 employed the Appellant herein to establish their relationship. This anomaly goes to the root of the

matter as these two must have to prove their relationship regardless the Appellant was just a mere cattle care taker. It is a known fact that, documentary proof in the cause of every employer/ employee there must have a formal document to make the relationship good and enforceable.

The failure to have such an important document was just to take the Appellant for a ride since that was his right of which since he is layman he cannot demand.

It is from the said anomaly, I tend to declare that there was no any legal relationship in terms of the employer/ employee for the PW1 and the Appellant herein. In that event therefore, I take that the Pw1 can name anyone to be his Employee under the circumstances without any proof. For me this point alone regardless of the apprehension of the Appellant wherever he was and the cattle, is not enough to prove the case against the Appellant herein.

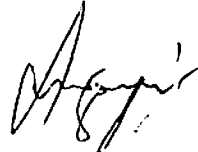
In the vent therefore, I take that the anomaly should be taken at the benefit of the Appellant herein.

In the event and from the above explanation, I see that the major ground that the Republic have failed to prove their case has merit. In that event, I hereby allow the Appeal accordingly.

In the upshot, having considered the matter as above, I found merit in the appeal, which we hereby allow. Meanwhile, I order that the Appellant to be forthwith released from prison unless otherwise lawfully held.

It is so ordered.

Right of Appeal Explained.



**L. E. MGONYA
JUDGE
21/10/2019**

Court: Judgment delivered in chamber in the presence of Ms. Faraja George, State Attorney for the Respondent, the Appellant and Ms. Emma RMA this 21st day of October, 2019.



**L. E. MGONYA
JUDGE
21/10/2019**