

**IN THE HIGH COURT OF TANZANIA
AT SUMBAWANGA
DC CRIMINAL APPEAL NO. 28/2019**

(Original criminal case NO. 190/2018 from Mpanda District court)

MBOKA ALFAYO @ KAGOMA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

W.R. MASHAURI – J

13/05/2020 & 27/05/2020

The District court of Mpanda at Mpanda meted out a sentence of three years imprisonment to the appellant consequent upon a conviction for the offence of stealing C/S. 258 (1) 2 (a) and 269 (a) of the Penal Code Cap. 16 RE. 2002.

Feeling aggrieved by both the conviction and the sentence, the appellant has now come to this court for appeal.

He has fielded 4 grounds of appeal in his petition of appeal thus:-

1. That, the trial court erred both at law and fact by believing that, the evidence testified by PW5 the owner of the house where the motorcycle was recovered was not the real owner of the house. So the prosecution side cheated the court.

2. That, the trial court erred at law by convicting the appellant on the case which was not proved beyond reasonable doubt.
3. That, the trial court erred at law by convicting the appellant without taking into consideration acts to the police officers of entering the appellant's room conducting search without being accompanied with an independent witness like a ten cell leader as required by law.
4. That. The trial court erred at law by admitting the cautioned statement which was procured contrary to the law.

When this appeal was set for hearing on 13/05/2020, by his letter dated 04/04/2020 via the officer incharge Mpanda Remand prison to the Deputy Registrar Sumbawanga High Court, the appellant informed the court of his desire of not to attend in court on the date of hearing but prayed the court to proceed hearing his appeal in absentia.

On the hearing day, only Mr. Saraji Iboru Senior State Attorney appeared in court for the Republic/Respondent.

In his submission to the court, the learned Senior State Attorney supported the conviction and sentence imposed on the appellant.

That, according to the evidence of PW2 Inspt. Godfrey Rwizegera, the appellant was arrested on 27/11/2018 and found with the stolen motorcycle with Reg. No. MC 678 BXQ which he had hid in the house of PW5 called Sharif Yasin, who also said in his testimony that, upon being arrested, the appellant did led the police officers up to the place where the stolen motorcycle had been hidden.

His evidence was supported by Athumani Lumbwe (PW3) who is chairman of Makanyagio street where the stolen motorcycle was found hidden.

The motorcycle was tendered in evidence and marked exhibit PW3 and its Registration details resemble that on the registration card (exhibit P1) Registration Card No. 7728733 for motorcycle with Reg. No. MC 678 BXQ Make Sanlg which was tendered in court and marked exhibit P1 by the owner of the motorcycle Ismail Seleman (PW1).

Mr. Saraji Iboru Senior State Attorney for the respondent further submitted that, there was a cautioned statement of the appellant (exhibit P5) which was taken by PW4 H. 75, D/C Kennedy who said the appellant's cautioned statement was properly taken. The appellant objected the tendering of his cautioned statement in court but an inquiry (trial within trial) was conducted and admitted by the trial court in evidence.

On that regard, the prosecution's evidence against the appellant was cogent.

Having so submitted the learned Senior State Attorney besought the court to dismiss the appellant's appeal for want of merits.

The issue is whether the appellant did or not steal the said motorcycle of the complainant (PW1).

It is not disputed in this appeal that, the motorcycle with Reg. No. MC 678 BXQ with chassis No. LBRSPJB5XJ9012955 Engine capacity 125 red in colour the property of Ismail Seleman (PW1) was stolen on 27/11/2018.

He reported the incident at Mpanda police station.

On 27/11/2018 was informed that there was a motorcycle which had been recovered and was at police station. He recognized it to be his stolen motorcycle with Reg. No. MC 678 BXQ.

PW2 Inspt Rwezebila a police officer working with Mpanda police station said on 26/11/2018 while at police station was informed of a theft of a motorcycle Make sanlg red in colour which was stolen on 27/11/2018.

On same 27/11.2018 he nabbed the appellant and took him to police station where upon interrogated him he admitted to have stolen the said motorcycle and hid it at his house located at Makanyagio area. They went there and found Athuman (PW5) who is chairman of Makanyagio Street. The appellant agreed before the chairman of the street to have stolen the motorcycle and hide it in his house and when opened the door, they found in the house a new red motorcycle with Reg. No. MC 678 BXQ Make Sanlg. The certificate of seizure was tendered in evidence and admitted as exhibit P2.

Athuman Lumbwe (PW3) said is resident of Makanyagio Street and on 27/11/2018 was phoned by Inspector Mdagala and requested him to meet him at his house.

He went there with a police motorcar and the accused was on board the police car. The appellant led the police officers together with him to the house occupied by Sharifu and upon reached there, the appellant set down from the police motorcar and he led them to a house with a sitting room

whereby they found a motorcycle with Reg. No. MC 678 BXQ Sanlg red in colour.

PW4 H. 751 D/C Kennedy is a police officer who interrogated the appellant and recorded his cautioned statement which at the tendering it in court he objected. It was admitted upon conducting a trial within trial and the court overruled the objection.

In his evidence the last prosecution witness Sharif Yasin (PW5) is that, appellant is his fiend. That on 27/11/2018 when reached home at 19.00hrs he saw police officers being led by the appellant to the room where he had hid the stolen motorcycle and handed it over to the police officers. The motorcycle was sanlg and red in colour.

In his defence, the appellant Mboka Alfayo (DW1) said on 27/11/2018 was on safari from Mpanda area at Kashaulili primary school, and along the way he met with a police officer Abdalah driving a motorcycle. He stopped him and take him to police station where he was interrogated in respect of three motorcycles which were alleged to have been stolen. He denied to have had been known anything in respect of the said stolen motorcycles. He was tortured. He was put in a lock up where again was tortured on 28/11/2018. He was later taken into the police investigation room where his statement was taken by force.

That in his evidence PW1 the owner of the motorcycle said had parked his motorcycle outside but he did not say to have seen the appellant stealing his motorcycle.

That, the evidence of PW2 is hearsay because he said he was informed that the appellant had stolen the motorcycle. That, the evidence of PW5 is contradictory with the evidence of PW1 and PW4. PW4 said he recorded the appellant's cautioned statement contrary to law. He did not give his statement voluntarily. The evidence of PW5 saw him pointing the room he had hid in the stolen motorcycle is not correct. He prayed the court to disregard his evidence which it is unreliable.

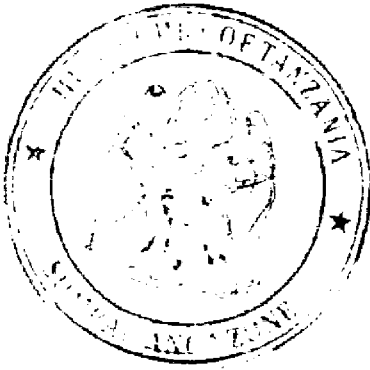
I have carefully heard the submission by the Senior State Attorney in support of the appellant's conviction and sentence. I have also carefully gone through the evidence in the trial court record and I have gathered that, the prosecution evidence given by witnesses against the appellant is cogent.

PW2 said he arrested the appellant with the stolen motorcycle on 27/11/2018 and had hid it in the house of sharif Yasin (PW5) where police officers were led there by the appellant. The certificate of seizure upon found the motorcycle in the appellant's house was prepared (exhibit 2) and signed by the appellant.

The appellant's allegation that his cautioned statement was taken involuntary is nothing else but a mere technic with is an attempt to lay clogs and filters on the door of justice. It cannot be entertained by from this court.

I have also perused all the appellant's grounds of appeal and I am sorry to call them a mere rambling with no head or tail. They deserve no treatment by from this court.

In the event, I do hereby dismiss the appellant's appeal in its entirety.




W.R. MASHAURI

JUDGE

27/05/2020

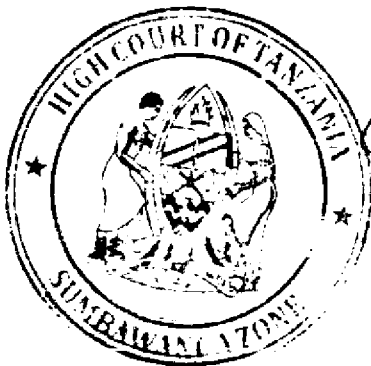
Mr. kabengula - State attorney

The matter comes for judgment in absence of the appellant according to his wish. We are ready.

Court:

Judgment read in absent of appellant and in presence of Mr. John Kabengula State Attorney for the republic this 27/05/2020.

Right of appeal to be explained to the appellant.




W.R. MASHAURI

JUDGE

27/05/2020