

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 18 OF 2020

*(Original Criminal Case No. 636 of 2018, in the District Court of Ilala at
Kinyerezi)*

DANIEL MAGOKO ----- 1ST APPELLANT

WANGWE MONIKO ----- 2ND APPELLANT

MASIAGA MARU ----- 3RD APPELLANT

VERSUS

THE REPUBLIC ----- RESPONDENT

JUDGMENT

L. M. MLACHA, J.

The appellants, Daniel Magoko, Wangwe Moniko and Masiaga Maru (herein after referred to as the first, second and third appellants respectively), were sent with two others to the District Court of Ilala charged of Armed Robbery c/s 287A of the Penal Code, Cap. 16 R.E 2002 (now R.E 2019). They were found guilty, convicted and sentenced to the mandatory sentence of 30 years in jail. They were also

ordered to compensate TZS 1,013,000/= to the complainant being the value of the stolen properties. Aggrieved, they have come to this court with 16 grounds of appeal. The grounds of appeal were later reduced to two grounds namely identification and credibility of witnesses in the course of hearing.

Before considering the grounds of appeal and the submissions, some background may be useful. PW1 Khalfani Ramadhani, the victim of crime was in need of land. He and his brother, PW2 Adamu Ramadhani moved to an area called Mbande in Chanika, Ilala District, Dar es Salaam where they met the first and second appellants. They bought the land but it was soon discovered that the sellers had no title to pass. They then proceeded to Chanika Police Station to file charges of obtaining money by false pretence. They were received and given two police men (Hussein and Lazaro) to effect the arrest. They moved to the place. They found them seated in an area, the usual place where they get customers. The Police moved to arrest the appellants. They managed to arrest the second appellant while others run away, but soon they returned in a group of about 13 people armed with machetes, sticks and clubs.

There was a fracas. The police and the brother of the complainant, PW2 managed to escape while PW1 was put under arrest and beaten heavily. They robbed his mobile phones (2) and cash Tshs. 430,000/= as they were moving. They left him unconscious on the ground. Someone assisted him later and took him to the Police Station. He was later sent to hospital where he was admitted for some days. His PF3, Exhibit P1 shows that he sustained a wound on the front part of the head described as a **deep rough wound**. The doctor suggested that it was caused by panga/rungu/stone. PW1 could identify the appellants at the dock. He could also identify the first and second appellants in the identification parade which was conducted by PW5 Inspector Fortunatus Masasi. He could also show the court various **scars** which he sustained following the wounds which he got in the course of the commission of the crime.

In defence, each of the appellants denied being involved in the commission of the crime. The first appellant said that he was arrested and joined in the case for no cause at all. The second appellant said that he had sold land to PW2 and sent to police on charges of obtaining money by false

pretence only to be implicated in the present charges. He denied the charges. The third appellant told the court that he had a boundary dispute with his neighbour who planned to fix him. He was later arrested and joined in the present case.

The appellants being laymen, opted for the State Attorney to start to submit while reserving their right of reply. Ms. Imelda Mushi, State Attorney prayed to reduce the grounds of appeal to the two aspects as pointed out, identification and credibility of witnesses. She said that, there is no dispute that the crime was committed during the day but PW1 and PW2 do not appear to be reliable. She said that if at all PW1 and PW2 were with policemen who run away after the attack, why is it that none of them came to testify in court? She said that the police were key witnesses in this case. Their absence brought doubts. Further to that, the doctor who examined PW1 was not called as a witness to clarify issues in the PF3 as required by section 24 (3) of the CPA. She submitted that there was no good evidence to convict on those basis.


The appellants had nothing to say other than thanking the Republic for being on their side. They argued the court to set them free.

I had time to examine the evidence on record closely. I have also considered the submission of the learned State Attorney which is supported by the appellants. Having done so, with respect to the learned State Attorney, I am not in agreement with her. Credibility of witness is a matter of the lower court. It is the lower court which had opportunity to see the witnesses and examine them. They are better placed than us. Credibility can only be questioned on appeal where the evidence is contradictory or lack logical sequence. I could not see such a thing here. Further, failure to call the police or any other witness has nothing to do with the weight of the evidence of PW1 and PW2 who were eye witnesses. I think it did not affect the quality of the evidence of PW1 and PW2 which was to be examined independently. The prosecution had discretion to call some people to testify and leave others. The crime was witnessed by 4 people. Calling 2 and leaving others aside did not reduce the quality of the evidence given. Again, the circumstances show that the victim of crime knew the first and second

appellants well in advance. He came earlier to buy land something which is agreed by the second appellant. The date of crime was not the first day to see them. It was a second time. Yet he had time to stay closely and see them during the commission of the crime which was done during the day, in a broad day light. PW1 and PW2 were involved in the fracas and fight. They had enough time to see them. I have no doubt that PW1 and PW2 could see them clearly. The first and second appellants were also identified in the identification parade.

In all, in my view, there was good evidence showing that the appellants invaded PW1 whom they robbed his mobile phones and money. They were thus properly found guilty and convicted. The sentence imposed was the minimum under the law. The appeal is found to be baseless. It is dismissed. Order accordingly.

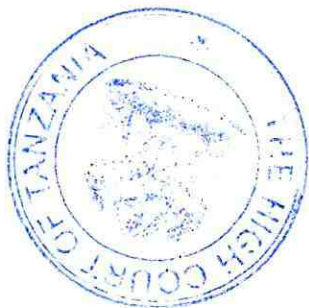



L. M. Mlacha

JUDGE

29/07/2020

Court: Judgment delivered through the visual court services in presence of the appellants who are in prison (Keko) and Ms. Imelda Mushi in chambers.




L. M. Mlacha

JUDGE

29/07/2020