

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

DC. CRIMINAL APPEAL NO. 49 OF 2019

(C/F Criminal case No. 112 of 2018 District Court of Rombo at Rombo)

PETER PAUL SILAYO APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT

13th July & 24th August, 2020

JUDGMENT

MKAPA, J:

In the District Court of Rombo at Rombo, the appellant, was charged with and convicted of the offence of armed robbery contrary to **section 287A of the Penal Code**, Cap 16, [R.E.2002] as amended by Act No. 3/2011.

Brief history leading up to the appeal is to the effect that on 20th May 2018 about 18:50 hours at Kibaoni-Najara within Rombo District in Kilimanjaro Region the appellant did steal a motor cycle with Reg No. MC 224 ADH make SKYGO red colour valued at shillings 2,000,000/= property of Santrumis John Shirima. It was alleged that before and after stealing the appellant threatened one Hugho Thomas Shirima with club a 'rungu' in order to obtain and

During the hearing of the appeal the court ordered the application be argued by written submissions. The appellant appeared in person unrepresented while the respondent/Republic was represented by Ms. Grace Kabu, learned State Attorney.

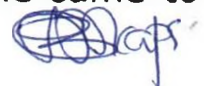
Submitting in support of the 1st ground of appeal, the appellant argued that the alleged offence occurred at 18:50 hours but the identifying witness (PW) did not testify the type of the light which aided him to identify the appellant. To support his argument the appellant cited the decisions in the case of **Calous Faustine Stanslaus V Republic**, Criminal Appeal No. 2 of 2009, CAT at Arusha, **Waziri Amani V The Republic**, [1980] TLR 250 and a **Kenyan case of Hibuya and Another V Republic** (1996) L.L.R 425 (CAK) which set principle of visual identification in unfavorable conditions such as during darkness. On the 2nd ground, the appellant argued that, the alleged stolen Motor cycle belonged to PW4 Santomin John Shirima as he bought the same from PW 7 Rigobet Paul Marandu. He went on explaining that on the date of the ordeal PW7 was yet to transfer the said motor cycle to PW4, as the registration card was still in his name thus his name should have appeared in the charge sheet instead of PW4. Submitting in support of the 3rd ground, the appellant averred that the chain of custody of the exhibits is guided by Police General Order No.229,

Opposing the appeal, Ms. Kabu submitted against the 1st ground the fact that, when the offence was committed at 18:50 hours it was still day light. Further that as the appellant and his accomplice blocked PW1 with their motorcycles and attacked him using a bush knife and a club it is evident that the appellant was close enough to have been properly identified by PW1. Also PW3 had known the appellant before as he was nicknamed 'Matonya' thus he was able to recognize him.

Furthering her argument Ms. Kabu argued that, after the incident PW1 and PW2 did raise alarm and the appellant was apprehended and beaten up by a mob thus he was properly identified.

Responding to the 2nd ground, Ms. Kabu argued that PW7 had sold the motor cycle to PW4 for a consideration of two million shillings (Tshs 2,000,000/=). However, PW4 had only paid shillings 1,600,000/= thus PW7 handed over the motorcycle to PW4 but he retained the registration card. It was Ms Kabu's view that PW4 was the right person to be mentioned in the charge sheet as he had already partly paid the purchase price.

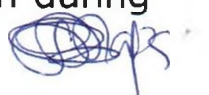
Regarding the 3rd ground, Ms. Kabu argued that, the stolen motorcycle was deserted at the office of the village executive office and PW5, the Village Executive Officer handed over the same to



It is trite principle as enunciated in the celebrated case of **Waziri Amani** (*supra*) that the evidence of visual identification during the darkness where condition for identification is unfavorable must be watertight in order to avoid any possible mistaken identity. At pages 251 to 252 the court had this to say:-

*"The evidence of visual identification is **easily susceptible to error**. The evidence of visual identification is of the weakest kind and unreliable. It follows therefore, that no Court should act on evidence of visual identification **unless all the possibilities of mistaken identity** are eliminated and the court is fully satisfied that the evidence before it is absolutely water tight."*

In the case of **Hussein Elisha Masunzu V. Republic Criminal Appeal No. 594 of 2015** (Unreported) CAT, the Court of Appeal illustrated categories of **unfavorable** conditions calling for caution namely, where the identification is conducted during the darkness as in the instant appeal as the offence was committed in darkness at 18:50 hours (after sun set). There has been a number of authorities in respect of visual identification but I subscribe to the decision in the case of **Waziri Amani V Republic** (*supra*) which has set principle to be adhered to for visual identification during



"...where there is any doubt, the settled law is to the effect that, in such a situation an accused person is entitled as a matter of right to the benefit of doubt or doubts"

From the foregoing, I am satisfied that the evidence was insufficient for the court to find the appellant guilty and convict him. In my view, the finding on this ground alone suffices to dispose of the appeal and I feel that it is not necessary to dwell on discussing the remaining grounds of appeal.

For the reasons discussed, I allow the appeal and hereby proceed to quash the conviction, set aside the sentence and order for the appellant' release from custody unless lawful held for other reasons.

Dated and Delivered at Moshi this 24th day August, 2020.




S.B. MKAPA
JUDGE
24/08/2020