

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(Kigoma District Registry)**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**(DC) CRIMINAL APPEAL NO. 67 OF 2019**

*(Original Criminal Case No. 8 of 2019 of the District Court of Kasulu at Kasulu before Hon. I.D. Batenzi - RM)*

**PHILBERT S/O NDELEKA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

20/02/2020 & 26/02/2020

**I.C. MUGETA, J.**

The appellant was convicted of the offence of stealing by servant. He was sentenced to three year jail imprisonment which he is serving. Being assisted by Daniel Rumenyela, learned advocate, he has appealed to this court to assert his innocence. The Memorandum of appeal has five grounds of appeal. When the appeal came for hearing the Republic supported the appeal for a single reason that the offence was not proved. Clement Masua, learned State Attorney, begged and he was granted leave to submit first to which Mr. Rumenyela conceded. The learned State Attorney was very brief in his argument. He submitted that there is no evidence at all

which associate the appellant with the alleged offence. He went through the evidence of the four prosecution witnesses and concluded that no one mentioned the appellant as the thief. In rejoinder, Rumenyela, supported the submission by the learned State Attorney.

The brief facts of the case are that the appellant worked for NIDA to register citizenry for National Identity Cards in Kasulu. The exercise leading to this case was carried out at Nyansha Primary School, Kasulu Town. The appellant was one of twenty five (25) BVR Machines operators working on contract. On the fateful day, the computer (laptop) used by the appellant went missing from its BVR Machine tool kit. At the time when it went missing, the appellant was attending a meeting. One Jackson Robert (PW1) was a watchman who was present to take guard of the equipments. He testified that while all operators were outside the registration room, he saw a person whom he never identified to be the appellant entering the room storing the equipment. It was thereafter when the appellant returned, he found the computer missing. He reported the incident immediately to his supervisors including Ally Hassan Ally (PW2). It would seem efforts to trace the culprit proved futile. The investigator, E7844 Detective Sergeant Abdul could not be useful either. Upon observation of the scene of crime he concluded that since the computer could not be detached from the tool box without first tempering with the screws thereon, then the holder of the tool box who happens to be the appellant is responsible. In his defence the appellant said, and PW2 testified to that effect too, that he had reported that his tool box computer screws had been loosened. Due to failure to establish with certainty who the thief is, PW2 told the court, the NIDA headquarters instruct the user of

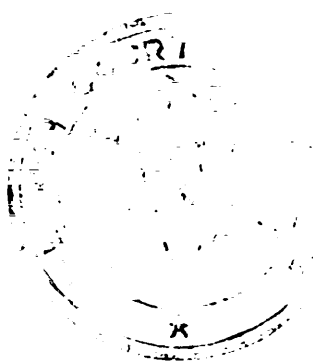
the computer to be held accountable. The appellant was, therefore, charged, tried, convicted, sentence, hence, this appeal.

In his judgment, the learned trial magistrate rejected the defence case that the appellant did not steal the computer as casting no doubt in the prosecution's case. I have reviewed the evidence, it is my view that no case was made out by the prosecution upon which the defence could have cast a doubt. The fact that the appellant was custodian of the computer attached with screws to the tool box does not necessarily mean that no one else other than the appellant could have stolen it. The prosecution case was self defeating in that while the incident took place in broad daylight, no one saw the appellant stealing the computer. The question of identification was at issue but the trial court failed to address it. The possibility is that the person who PW1 saw entering the room might have been the thief. There is no evidence that person was the appellant.

Further, it is on record from the prosecution's witness (PW2) that the appellant had complained of the screws stabilizing the computer to the tool box being loosened. This means anybody else could, since then, have been able to dislodge the computer from its compartment.

It follows that the evidence marshaled against the appellant was typical circumstantial. It is a settled law that circumstantial evidence cannot ground a conviction unless it irresistibly points to the guilty of the accused person. For reasons I hereinabove stated, the evidence does not prove or even implicate the appellant as the culprit. Under the circumstances, I hold that the offence was not proved to the hilt. I accordingly quash the

conviction and set aside the sentence. Appellant to be freed from custody unless otherwise lawfully held for another cause.



*I.C. Mugeta*  
**I.C. Mugeta**  
**Judge**  
**26/02/2020**

**Court:** Judgment delivered in chambers this the 26<sup>th</sup> February 2020 before the appellant in person and Clement Masua State Attorney, for the Republic.

**Sgd: I.C. Mugeta**  
**Judge**  
**26/02/2020**