

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**(APPELLATE JURISDICTION)**

**PC CRIMINAL APPEAL NO. 11 OF 2019**

(Arising from Criminal Appeal No. 16 of 2018 of the District of Bahi at Bahi  
Original Criminal Case No 86 of 2018 of Bahi Primary Court)

**MOMBO CHIBAIISI .....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

*12/3/2020 & 1/4/2020*

**JUDGMENT**

**MASAJU, J.**

The Appellant, Mombo Chibaisi was prosecuted by the Respondent Mjelwa Nzije, in the Primary court of Bahi at Bahi District, Dodoma for Cattle Theft contrary to sections 265 and 268 of the Penal Code [cap 16]. The Appellant was convicted and sentenced to five (5) years imprisonment. Aggrieved with the decision, the Appellant unsuccessfully appealed to the District Court of Bahi where his conviction and sentence was upheld and he was ordered to compensate the Respondent a sum of TZS 400,000/=.

Aggrieved by the said judgment of the District Court of Bahi, the 1<sup>st</sup> appellate Court, the Appellant came to the Court appealing against the decision by the District Court. His Petition of Appeal bears five (5) grounds of appeal, thus;

- "1. That, your honour judge the trial Court and the 1<sup>st</sup> appellate Court erred in law and fact when acted on strong suspicious evidence tendered by the three (3) prosecution witness.*
- 2. That, your honour Judge the trial Court and the 1<sup>st</sup> appellate Court erred in law and fact when acted on the evidence of poor identification.*
- 3. That, your honour Judge the trial Court and the 1<sup>st</sup> appellate court erred in law and fact when acted on uncorroborated evidence.*
- 4. That, your honour Judge the trial Court and the 1<sup>st</sup> appellate Court erred in law and fact when convicted the Appellant without any exhibits which tendered in Court connecting the Appellant with the alleged offence.*
- 5. That, your honour Judge the trial Court and the 1<sup>st</sup> appellate Court erred in law and fact when did not put in the mind of the Court that the prosecution side did not prove their case beyond all reasonable doubts."*

The appeal was heard *exparte* in the court on the 12<sup>th</sup> day of March, 2020.

The layman Appellant appeared in person and prayed the Court to adopt his grounds of appeal and the prayers thereof to form his submissions in support of the appeal in the Court.

The Court is of the considered position that the appeal is meritorious because the prosecution did fail to prove its case beyond reasonable doubt. The reasons thereof are thus;

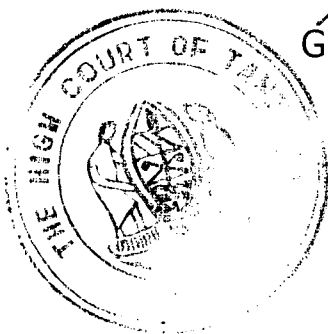
The offence was allegedly committed on the 10<sup>th</sup> day of August, 2018 at 6:00 am. The testimony by Mjelwa Nzije (PW1) was that, his father called him and asked where the bull was, he stated "*mzee aliniita na kuniuliza ng'ombe ya gengeri dume iko wapi? ...*" PW1 did not describe the clear description of the cattle in question. The Appellant was allegedly caught with other men skinning the cattle ought to have been stolen. The question remains was the cattle ought to have been stolen, the one found at the scene being skinned? The prosecution failed to prove if it was the one since they did not describe the cattle being skinned to connect the description with the one ought to have been stolen.

The village Executive Officer (VEO) was said to have witnessed the cattle found but the prosecution did not inform the trial Court if the said VEO knew the description of the stolen cattle before finding the one being skinned.

PW1 and Paskali Felis (PW2)'s evidence is contradictory, PW1 alleged that the meat was divided amongst them after the VEO witnessed the stolen cattle, but PW2 when cross examined by the Appellant he stated that the skin and meat were taken to the police. The prosecution case was thus fraught with gaps that affect the credibility of its evidence.

The Prosecution (PW1) tendered the stolen Cattle's ears alleged to have marks put by PW1 but there was no any other witness to corroborate PW1's evidence on that. The Court is left with doubt as to whether the ears tendered in the trial Court really relates to the cattle allegedly stolen.

That said, the prosecution case in the trial Court was not proved beyond reasonable doubt. The appeal is hereby allowed. The Appellant's conviction is quashed, the sentence and the compensation order thereof are hereby set aside. The Appellant shall be released from the prison forthwith unless otherwise there is another lawful cause for him to remain therein.



GEORGE M. MASAJU

**JUDGE**

1/4/2020