

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

PC. CRIMINAL APPEAL NO 10 OF 2020

(Originating from the decision of the District Court of Nyamagana at Mwanza in Criminal Appeal No 6 of 2019, Original Primary Court Nyamagana Criminal Case No. 783 of 2018)

DAMIAN GEORGEAPPELLANT

VERSUS

JAMALI ABDALLAHRESPONDENT

JUDGMENT

04 & 13/05/2020

RUMANYIKA, J.:

The appeal is against the 31/10/2019 conviction and a custodial sentence of ten (10) years for the offence of receiving a stolen property or unlawfully obtained Contrary Section 311 of the Penal Code Cap 16 RE. 2002 (a cognate offence to burglary and stealing of two hand sets of TECNO which initially Damian George (the appellant) was in the trial court unsuccessfully charged with and acquitted on 4/1/2019.

The six (6) grounds of appeal mainly revolve around 4 points as hereunder:-

- (i) That the 1st appeal court improperly invoked the doctrine of recent possession.
- (ii) that the complainant did not properly identify the hand set or show evidence of ownership.
- (iii) that the appellant's guilty was not proved.
- (iv) that the prosecution case was not beyond reasonable doubts proved.

When the appeal was called on 4/5/2020 for hearing, but following the global outbreak of Coronavirus pandemic and pursuant to my order of 29/4/2020 vide mobile numbers 0735 706 035 and 0626 955542) the appellant and Mr. Adam Robert learned counsel for Jamal Abdallah (the respondent) respectively were present online, I heard them by way of Audio Teleconferencing.

The appellant added nothing to his petition of appeal and therefore he made no useful submissions.

Mr. Adam Robert learned counsel argued it generally and submitted that the 1st appeal court properly convicted and sentenced the appellant for the cognate offence of being in possession of a stolen property with respect to the Sim Card given the latter's admission. We pray that the appeal be dismissed. The learned counsel contended.

The evidence on record reads:-

SM1 Jamali Abdallah stated that as he noticed that his house had just been burgled on 20/11/2018 and his two handsets make TECNO were

missing just in the proximity he saw a man and chased him unsuccessfully.

That shortly the appellant was found in possession of a SIM CARD and stated that together with it he had purchased a handset from a vendor whom he could not recall. That is all.

SM2 Hussein Juma apparently neighbor of SM1 stated that following the incident and the latter's alarms say at 2:00 am of the material date, but in darkness he assisted to chase the culprit whom he could not have identified under the circumstances. That is all.

SU1 Damian George stated that say seven (7) days previously herein town having purchased a hand set make TECNO with Tigo and Halotel SIM Cards from a needy youth for Shs. 10,000/=, two days later a person texted and requested him at least to surrender the sim card but he (the appellant) refused. That shortly the handset was blocked, then he was arrested and arraigned in court. That is it.

The issue is whether the cognate offence of being in possession of a stolen property or suspected unlawfully obtained it was proved beyond reasonable doubts.

In her findings, the learned trial resident magistrate is on record having said:- **"Mshtakiwa hana hatia ya kosa la wizi zaidi anatakiwa ashitakiwe kwa kosa la kupatikana na mali ya wizi hivyo mahakama inamuachia huru"**.

Literally, it meant that instead of the charges of stealing, the evidence adduced it had built and proved only a cognate offence of being

in possession of property suspected unlawfully obtained. This one it appears the appellant was happy with until the 1st appellate court, now rightly in my view it had done the needful.

Precisely so in my considered view the 1st appeal court learned senior resident magistrate in his own words he is on record having said:-

..... from that fact that the accused/respondent was found with the stolen phone and never gave substantial reasons as to how he got it but mere assertion that he bought it the trial court though no evidence that he stole it, ought to have found him guilty of the offence of receiving stolen property or unlawfully obtained Contrary Section 311 of the Penal Code Cap 16 (RE. 2002)...

It needs no over emphasis that essential ingredients of the offence of receiving stolen property or unlawfully obtained it included but not limited to accused's failure to give reasonable and sufficient explanation as how he possessed the property at issue now. Looking at the evidence on record, I entertain no doubts that the appellant gave no reasonable explanation. Leave alone sufficient. Reasons are **one**, given its nature, according to the appellant who, in his submissions admitted as having had stayed in town for 4 years reasonably he should not have purchased the hand set through such a gentleman's agreement and so lightly. **Two**, from a needy boy the appellant may have bought a handset for shs. 10,000/=only but not together with the SIM Cards, **three**, the moment only 2 days later he

received text messages which requested him to at least surrender the SIM Card the appellant shouldn't have simply ignored or refused it. It would have a different scenario if he responded positively but the sender of the text message was no longer there or no more cooperative. By so doing from the beginning therefore the appellant avoided consequences of his wrongs.

In the up short, I shall have no legal basis upon which to default the 1st appeal court learned resident magistrate. The devoid of merits appeal is dismissed in its entirety. It is ordered accordingly.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE
09.05.2020

It is delivered under my hand and seal of the court in chambers this 13/5/2020 in absence of the parties with notice (copies to be supplied immediately).



S. M. RUMANYIKA
JUDGE
14.05.2020