

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

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 144 OF 2019**

*(Arising from Criminal Case No.20 of 2019 of the District Court of Kahama at Kahama)*

**VICENT JUSTINE.....1<sup>ST</sup> APPELLANT**

**AMAN RICHARD.....2<sup>ND</sup> APPELLANT**

**THOMAS MABULA.....3<sup>RD</sup> APPELLANT**

**VERSUS**

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

*Date of Last Order: 23/04/2020*

*Date of Judgment: 08/05/2020*

**JUDGMENT**

**C. P. MKEHA, J**

The appellants were arraigned before the District Court of Kahama in connection with an offence of armed robbery contrary to section 287A of the Penal Code. It was alleged by the prosecution that, on the 1<sup>st</sup> day of January,

2019 at about 23:00hours at Nyihogo Area within Kahama District in Shinyanga Region, the appellants, did steal one Television valued at TZS. 700,000/= and cash money amounting to TZS. 475,000/= all properties valued at TZS. 1,175,000/= the property of MANG'ALA s/o JOSEPH and that, immediately before and after the time of such stealing the appellants threatened to cut the complainant by using a machete in order to obtain and retain the said property.

When the charges were read over to the accused persons, they all protested their innocence. However, at the end of trial, all accused persons were found guilty, convicted and sentenced to be imprisoned for thirty years each. The appellants were aggrieved. They preferred the present appeal consisting of seven grounds of appeal.

Of all the grounds of appeal, the seventh ground appears to be determinative. It is to the effect that, the trial Magistrate did not consider the appellant's defence cases. As such, in this appeal, only this ground will be determined.

According to the third appellant, the trial Magistrate failed to consider the evidence given by his witness, one. Keflen Thomas who testified that on the

day of the event, the third appellant was sick at home. The first and second appellants' complaint was that the trial Magistrate denied them an opportunity of calling their defence witnesses.

Mr. Kigoryo learned State Attorney had no hesitation in supporting the appeal. The learned State submitted briefly that, it is true that the learned trial Magistrate did not seriously consider the defence case. The learned State Attorney added that whereas the testimony of PW1 indicates that the invasion was done in the presence of eye witnesses, the said eye witnesses were not summoned to testify. In view of the learned State Attorney, the Republic deserved not to be declared victorious.

The parties are in agreement that the defence case was not considered. The trial Magistrate might have taken a view that, the third appellant's defence which was some how in the nature of alibi did not deserve consideration since the same was made without there being prior notice pursuant to section 194(4) of the Criminal Procedure Act. With respect, the said view was wrong. The trial court was not authorized to treat the defence of alibi like it was never made. It only had discretion to accord no weight to it after considering the same. **See: Mwita s/o Mhere and Ibrahim Mhere Vs**


**Republic (2003) TLR 107 and Alfeo Valention Vs Republic, Criminal Appeal No.92 of 2006, CAT (Unreported).**

Again, denial of an opportunity to the first and second appellants to bring their defence witnesses was contravention of the dictates of the law under section 231(1) of the Criminal Procedure Act.

As it appeared to be the learned State Attorney's view failure of the prosecution to examine the eye witnesses as earlier referred to by PW1 was another blow to the prosecution's case. To say the least, the prosecution's case was not proved to the required standard.

For the foregoing reasons, the appellants' conviction is quashed. The sentences imposed to the appellants and orders made against them are set aside. The court orders immediate release of the appellants from custody unless they are held therein for other lawful cause.

Dated at **SHINYANGA** this **08<sup>th</sup> day of May, 2020.**

  
**C. P. MKEHA**  
**JUDGE**  
**08/05/2020**

**Court:** Judgment is delivered in the presence of Ms. Mbughuni learned Senior State Attorney.

