

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

**IN THE DISTRICT REGISTRY OF KIGOMA**

**AT KIGOMA**

**APPELLATE JURISDICTION**

**(DC) CRIMINAL APPEAL NO. 41 OF 2020**

(Arising from Criminal Case No. 114 of 2020 of Kasulu District Court Before K.V.  
Mwakitalu, RM)

**BARAKA S/O AMOS..... APPELLANT**

**VERSUS**

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

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

16<sup>th</sup> & 16<sup>th</sup> March, 2021

**A. MATUMA, J.**

The appellant stood charged in the District Court of Kasulu at Kasulu for Armed Robbery contrary to section 287A of the Penal Code, Cap. 16 R.E. 2019.

He was alleged to have stolen one Television make star X, one Subwoofer make aborder, one Azam decoder, two extension cables, two chargers and cash money Tshs 6,500/= the properties of one Christer d/o Emmanuel whose total value was Tshs. 686,500/=. It was further alleged that the offence was committed on the 19<sup>th</sup> day of April, 2020 at the dead night and that the appellant used an iron bar and machete (panga) to threaten the said Christer (the victim) in order to obtain such properties.

The trial court was satisfied with the prosecution case to have been proved beyond reasonable doubts, consequently convicted the appellant and sentenced him to suffer a custodial sentence of 30 years.

The appellant became aggrieved with the conviction and sentence hence this appeal with a total of five grounds of appeal.

At the hearing of this appeal the appellant appeared in person while the respondent/Republic was represented by Mr. Clement Masua learned State Attorney.

Both parties were not at issue and were in consensus that the prosecution case was not proved beyond reasonable doubt for want of proper identification of both the appellant and the stolen properties.

The brief facts of the matter are that; the victim after she was robbed, she reported the matter to police. She did not identify the assailants at the crime scene as they switched off the light at the veranda and locked her in the bedroom. She thus only peeped by the door hole and managed to see the number of the thugs that they were three.

None of the prosecution witnesses testified on how and when exactly the appellant was arrested but PW4 A/Insp. Dominic testified that on 20/4/2020 in the morning they were on patrol to combat crimes and that the appellant was already in the lockup. They interviewed him and he confessed to have been participating in ~~in~~ various crimes including the

current one. He thus led the police to various places where they sold the stolen properties and a TV and Subwoofer which are subject to this matter were recovered. The victim was summoned to police and identified her stolen TV and Subwoofer Radio.

The trial court convicted the appellant on account that he confessed and led the discovery of the said stolen properties.

The learned State Attorney was of the argument that the alleged recovered exhibits were tendered in evidence as exhibits P2 and P1 respectively by PW4 but PW1 the victim was not led to identify them in court whether they were the exact properties she claimed to have been stolen from her. I agree with the learned State Attorney. It cannot be adjudged with certainty that the tendered exhibits herein were the exact properties allegedly stolen from PW1 by the appellant during the alleged crime.

In fact, PW1 when gave her evidence at page 11 of the proceedings, she stated that her stolen TV in the incident was **Star X, 22 inches** but in court the one tendered was **Star sat, 20 inches**. The discrepancies between the alleged stolen TV and that which was eventually tendered in court as exhibit could have been cleared by the victim herself. She ought to have been led to identify the properties in court, failure of which left

doubts as to whether the tendered properties were real stolen properties from the victim PW1.

Generally speaking there was no property identification in court of the alleged recovered properties. That goes contrary to the guiding procedures in **Nassor Mahamed v. R**, (1967) HCD 446 that there should be property identification in court in which the complainant should describe the property before it is shown to him so that when it is eventually tendered and the description confirmed it can be clear to the court that the identification was impeccable or not.

In the instant matter the learned trial magistrate did not bother to satisfy himself as to whether the alleged recovered properties were really identified by the victim to have been among the properties stolen in the armed robbery incidence which is the subject matter of this case. He therefore wrongly applied the principle of ***confession leading to discovery*** as such principle can only be invoked when the discovered goods are properly identified as the fruits of the relevant crime at hand.

In the case of **Janta Joseph Komba and others v. Republic**, Criminal Appeal No. 95 of 2006, the Court of appeal held that when the accused gives information that helps in the discovery of hidden items, it must be proved that such found items were exactly relating to the offence charged and are subject matter of the charge.

In the circumstances, it is not all about mentioning that there was a confession leading to discovery but furthermore that the found items were properly and adequately identified to have been the subject matter of the charge.

I further agree with the learned State Attorney that the alleged confession of the accused was illegally procured and wrongly relied upon to convict.

Although it is not clear when exactly the appellant was arrested but at least it is on record through PW4 and PW6 D/PC Amos that on 20/04/2020 the appellant was already under Police restraint. His Caution Statement in which he was alleged to have confessed was recorded on 27/4/2020 at 09.16 hours. The statement was thus taken beyond the prescribed time under section 50(1)(a) of the Criminal Procedure Act Cap. 20 R.E. 2019. The Caution Statement of the Appellant exhibit P8 ought not to have been admitted in evidence and even after its admission the same is liable to be expunged on this appeal in terms of section 169 of the Criminal Procedure Act and Janta Joseph Komba's case *supra*.

The anomalies are many but these few suffices to dispose off the entire appeal.

I therefore allow this appeal, quash the conviction of the appellant and set aside the sentence of 30 years meted to him.

I order his immediate release from prison unless held for some other lawful cause. Right of further appeal explained.

It is so ordered.



  
**A. Matuma**

**Judge**

**16/03/2021**

**Court:** Judgment delivered today 16<sup>th</sup> day of March, 2021 in the presence of the Appellant in person and Mr. clement Masua learned State Attorney for the Respondent/Republic.

**Sgd. A. MATUMA**

**JUDGE**

**16/03/2021**