THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

CRIMINAL APPEAL NO 94 OF 2020

(Original from judgment of the District Court of Lindi, in Criminal Case No.1 of 2020)

SHABAN SALVATORY MILANZI ..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Hearing date on: 01/3/2021
Judgement date on: 19/42021

NGWEMBE, J;

The appellant Shaban Salvatory Milanzi, being dissatisfied with the conviction and sentence by the trial court, issued notice of appeal within time and appealed to this court armed with seven (7) grounds of appeal. To recap just briefly, on the journey of the appellant to jail, according to the charge sheet, commenced at night of 4th November, 2019 at Mikumbi area within Municipality and region of Lindi when he did break and entered into the house of Rabison Mwaipopo. When was in the said house, he did steal various properties worth shillings 1,660,000/= properties of Rabson Mwaipopo. On 13th December, 2019, through the help of forensic exparts

from police headquarters, managed to arrest the appellant at Congo street within Lindi Municipality. Upon completion of investigation, the appellant was arraigned in court charged for two counts namely:- first, Burglary contrary to section 294 (1) (a), (2); and second, stealing contrary to section 265 of the Penal Code [Cap 16 R:E 2002].

The prosecution lined up four (4) witnesses, while the appellant defended himself without a help of another person. At the end of trial, the court found him liable to both counts, convicted and sentenced him to three years' imprisonment for the first count and three years and six months for the second count, both sentence to run concurrent, meaning he will only serve three years and six months' in prison.

However, the appellant was dissatisfied, hence is in this court armed with seven (7) grounds, which for convenient purposes may be summarized into two that; *the prosecution failed to prove the offence against the appellant to the standard required by law; second, the trial magistrate failed to consider the defence evidence in his judgement.*

On the hearing of this appeal, the appellant was advocated himself, while the Republic was represented by learned senior State Attorney Paul Kimweri. In the course, the appellant surrendered his right to begin arguing his appeal to the Republic, but reserved the right to respond thereafter. In arguing the appeal, the learned senior State Attorney, supported the conviction and sentence meted by the trial court. That the evidence was watertight against the appellant, that he was the one who was found with all stolen properties. That he was the one who led police to

where those properties were hidden, which was inside his room in a bag. That the found properties were properly identified by owners in court. Further, in the process of arresting the appellant he tried to run away but was found and arrested, which act signified guilty conscious.

Further, argued that when the appellant was recorded his caution statement, he admitted to have stolen those properties. Though the statement was objected by the appellant during trial, but the trial court rightly, made an inquiry and found the statement was made voluntarily and same was admitted as exhibit P6. The statement was rightly read its contents loudly in court as required by law. He referred this court to the case of **DPP Vs. Joachim Komba [1984] T.L.R 213.** Rested by introducing the doctrine of recent possession of stolen properties.

In turn the appellant argued that the properties were seized by police, while they had no seizure certificate. Also pointed to equally important point that the caution statement was admitted in court contrary to law, for it was recorded without being given his rights to call his relative or advocate. Thus, concluded by praying this court to consider his grounds of appeal and let him free.

Having summarized the arguments of both parties, I find two issues are relevant, that is, whether the prosecution had enough evidences to find the accused liable to both counts; and whether the trial magistrate in his judgement considered the defence case. The complainant (PW1) narrated the whole ordeal of stealing his properties, which were, money TZS. 740,000/=, wallet of one Nicholous having 350,000/=, flash stick and three

mobile phones. That upon reporting to police station, on 14th December, 2019 he was called by police to go to identify his stolen properties and properly identified his properties, likewise PW2 and PW3 did the same to their properties. The same evidence is repeated by PW2 and PW3.

The evidence of PW4, a police investigator told the trial court on how they managed to find the stolen properties. That they used forensic experts to identify who was using those mobile phones, and how they managed to arrest the appellant in Congo street within Lindi Municipality at Chips shop. The appellant was the one who led police to where the stolen properties were hidden. I think the evidence of PW4 was watertight against the appellant and police used investigative skills to find the stolen properties. Police deserve congratulation for the well work done.

Reading the contents of exhibit P6, which is a caution statement, together with the acts of the appellant to lead police to where the stolen properties were hidden, leaves no iota of doubt that the appellant was not only the one who did break the house at night, but also is the one who did steal those properties. Part of exhibit P6 read as follows:-

> *"Nina tabia ya wizi wa simu kwani nilikwisha wahi kukamatwa na kufikishwa mahakamani kwa kosa la wizi wa simu na fedha na nilihukumiwa kifungo cha nje na viboko vitano na bado tabia hii ninaendelea nayo. .....nikiwa kwenye harakati za wizi usiku nilikuta nyumba moja haijafungwa mlango nilisogea nikachungulia nilimwona mtu mmoja amelala na ....niliingia na kuiba simu tatu moja Tecno Camonx rangi nyeusi, infinix rangi nyeusi na simu aina ya bontel ndogo rangi nyekundu na nyeupe, frash yenye*

ukubwa wa GB 8 rangi nyeusi na nyeupe na niliiba fedha zilikuwa kwenye waleti ila sikumbuki ni kiasi gani"

This piece of testimony is a replica of what PW1, PW2 and PW3 complained against. In essence such evidences supported the prosecution, which always, admissibility of the offence by the accused is the best evidence. Though in his defence during trial, he denied to know anything, but in any event the caution statement revealed the whole process of how he stole those properties. During trial, the appellant objected admissibility of such caution statement, but upon making inquiry, it was proved that same was made willingly while knowing his basic rights. The contents there in supported the prosecution. In the case of **Ibrahim Ibrahim Dawa Vs. R, Criminal Appeal No. 260 of 2016** when made reference to the case of **Mohamed Haruna Mtupeni and Another Vs. R, Criminal Appeal No. 259 of 2007** held:-

"The very best of witnesses in any criminal trial is an accused person who freely confesses his guilty"

In the same vein the court in the case of **Mohamed Haruna @ Mtupeni Vs. R, Criminal Appeal No. 259 of 2007**, held:-

"If the accused person in the course of his defence gives evidence which carries the prosecution case further, the court will be entitled to take into account such evidence of the accused in deciding on the question of his guilty"

The caution statement was freely recorded and willingly confessed on what he did in the house of PW1. I would therefore, conclude the first issue in affirmative that the prosecution dutifully, performed their duty of

establishing a prima facie case against the appellant and proved it beyond reasonable doubt.

The second issue is whether the trial magistrate failed to consider the defence case in his judgement? Perusing inquisitively in the judgement of the trial magistrate at page 6 last paragraph, the trial magistrate took pain to consider all relevant defence case, but same did not shack the prosecution case. More so, I have reviewed the whole denfence case in the proceedings at 39 to 40, and find no relevant point, which was left unconsidered by the trial magistrate. I would therefore, answer this ground in negative.

I have gone further to consider on the viability of sentence meted by the trial court, if same was within the dictates of law. Yet the answer is in affirmative, that the trial magistrate was lenient enough to sentence the appellant to three years and six-month imprisonment. In essence there is no reasons to disturb such sentence.

All said and done, I find no reason to disturb the judgement of the trial court. Accordingly, I hereby uphold the decision of the trial court and proceed to dismiss this appeal forthwith for lack of merits.

I according Order.

Dated at Mtwara in Chambers on this 19th day of April, 2021

P.J. NGWEMBE
JUDGE
19/4/2021

Court: Delivered at Mtwara in chamber on this 19th day of April, 2021 in the presence of the Appellant and Ms. Caroline Matemu, State Attorney.

Right of Appeal to the Court of Appeal explained.

P.J. Ngwembe

Judge

19/4/2021