

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

CRIMINAL APPEAL NO. 119 OF 2020

(Originating from Criminal case No. 15 of 2020 of Mtwara District Court)

IDDI MUSSA UTAMBI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

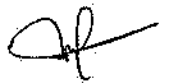
JUDGMENT

Hearing date on: 14/4/2021

Judgment date on: 18/6/2021

NGWEMBE, J:

This appeal has been preferred by Iddi Mussa Utambi (Appellant) against his conviction and sentence meted by the trial court in Criminal Case No. 15 of 2020. The journey to imprisonment, commenced on 8th January, 2020 at Mtwara Bus stand in Chikongola area within Municipality and Region of Mtwara. The appellant after being arraigned in court, was charged for one count of stealing Motorcycle make TVS bearing Reg. No. MC 364, Black in colour having value of TZS. 2,250,000/= property of Martin Raphael. Consequently, the prosecution dutifully, proved the offence against the appellant and the trial court proceeded to convict and sentence him to serve four (4) years imprisonment.



Being aggrieved with that conviction and sentence, the appellant came to this court armed with four (4) grounds, however, for convenient purposes, same may be summarized into two ground namely; *the admissibility of exhibits P1, P2, P3 & P5 were contrary to legal procedures; and the prosecution failed to prove the case beyond reasonable doubt.*

As such, on the hearing date of this appeal, the appellant advocated himself, while the Republic was represented by Mr. Gidion Magessa learned State Attorney. Being unrepresented, the appellant had limited contribution to assist this court in determining this appeal. He just argued that there was no proper evidence to convict him. He added that, PW1 did not find him with the stolen motorcycle, rather he was entrusted to take that motorcycle to refuel it at Petrol station and return to the owner.

In reply, the learned State Attorney opposed the appeal by arguing that, the appellant was properly found guilty on the charge of stealing motorcycle. Added that the evidence against the appellant was watertight.

Further submitted that PW1 was the one who took the stolen property to the bus stand at Mtwara. The purpose of going to that bus stand was to collect his luggage. When he packed that motorcycle and entered into the bus office, the appellant did steal it. The owner of the stolen motorcycle is PW4 who entrusted PW1 to go and collect his luggage from the bus stand. In the cause of looking for the stolen motorcycle, Police found it at Mnazi Mmoja with the accused person. Above all when the appellant was interrogated by police, he confessed to have stolen

the said motorcycle at Mtwara bus stand. PW6 testified clearly that the appellant was found with the stolen motorcycle when was preparing to refuel it and go with it to Masasi District.

Argued further that, exhibits P1 & P2 were not read in court after being admitted as exhibit, thus, offended the legal requirements. Hence same may be expunged from the court records. Added that even if same will be expunged, yet the contents were properly explained by witnesses as stated in the case of **Issa Assa Vs R, Criminal appeal No. 129 of 2017, he added.**

Arguing on the third ground, related to seizure certificate, that was not signed by the appellant. Argued that signature of the accused in a seizure certificate is not a legal requirement which may vitiate conviction and sentence. On the last ground related to caution statement, the learned State Attorney admitted that same may be expunged without affection the contents of evidences adduced in court by reliable witnesses.

While considering the parties' arguments, I find important to consider this appeal with guidance from some basic principles of criminal justice. Among them are: Conviction always is found on strength of prosecution evidences, which proves criminality of the accused person beyond reasonable doubt. Weak defense case is not fatal, rather strengthens the prosecution case. Always the prosecution has unshakable onus of proving criminality of the accused. On the other side, the duty of the accused person is to shack the prosecution case with a view to create reasonable doubts. Reasonable doubts if any, guide the court to decide



in favour of the accused. These principles have a backing from sections 3 (2) (a) and 110 of the Evidence Act [Cap 6 R.E 2019].

Likewise, Sarkar's Laws of Evidence (18th Edition) at page 1896 discussed in details when said:-

"The burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, for negative is usually incapable of proof. It is ancient rule founded on consideration of good sense and should not be departed from without reason.....until such burden is discharged the other party is not required to be called upon to prove his case".

In respect to this appeal, the evidences of the prosecution as appears in the trial court's proceedings indicates that, on 8/1/2020 around 8: 00 PM PW1 borrowed a motorcycle from Hamis (PW2) and went to the bus stand to pick his luggage from offices of Buti la Zungu. When packed the said motorcycle out of those offices, entered inside the office to collect his luggage, unfortunate when he came out of that offices, the motorcycle disappeared to unknown places.

The identity of the said motorcycle was black in colour registered as MC 364 CEF. He tried to find it, but in vain. The information reached PW2, who also assisted him to look for it, but in vain. At last, they reported the theft to police station. After some days, they were informed that, the motorcycle was found and the accused was arrested.

Such piece of evidence was corroborated by PW2, PW3, and PW4. G 7031 PC Gift Dominic Massawe (PW6) investigated the crime, at the end



he arrested the accused person (the appellant) on 9/1/2020 around 11:00 a.m. with the stolen motorcycle at Mnazi Mmoja check point. When the appellant was asked, he confessed that he was coming from Mtwara, heading to Masasi. Thus, the appellant was arrested and taken to police station. Upon interrogation, the appellant confessed to have stolen such Motorcycle from Mtwara bus station.

At trial, the appellant when was called to defend, briefly denied generally that he did not steal the said Motorcycle, rather was given by one person whom he did not know his name or place of domicile, rather was instructed to fuel it from neigh by petrol station.

The narrated evidences of PW1, PW2, and PW3 speaks louder on how the appellant was found with the stolen Motorcycle. PW 4 was the owner of the said Motorcycle, he identified his Motorcycle and he managed to tender during trial, all necessary documents related to ownership of the motorcycle. Similarly, PW 6 proved how he managed to arrest the appellant with the stolen Motorcycle.

Looking critically, on the prosecution witnesses and their testimonies, undoubtedly, all witnesses were credible and reliable, leaving only remote doubts, if any. The guidance of the Court of Appeal in the case of **Goodluck Kyando Vs. R, [2006] T.L.R 363** is useful in respect to this appeal as quoted hereunder:-

"It is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness"



There is no reason to doubt the testimonies of PW1, PW2, PW3, PW4 and PW6 as they narrated the whole ordeal of stealing the motorcycle were all quite clear like a day followed by night.

Moreover, the appellant failed to raise any reasonable questions in cross examination when those prosecution witnesses were testifying their evidences. Failure of the accused appellant to cross examine PW6 who was the key witness in this case, meant admission. This position is backed by the judgement in the case of **Hawadi Msilwa Vs. R, Criminal Appeal No. 59 of 2019** (unreported) HCT at Iringa when referring the decision in the case of **Fabian Dumila Vs. R, Criminal Appeal No. 136 of 2014** (unreported) CAT; it was held:-

"It is my opinion that if the appellant doubted on the victim's age, he was supposed to cross examine her on her age, failure to so cross examine her, implies that he accepted the truthfulness of testimony on the point."

The same position was repeated in the case of **R Vs. ACP Abdallah Zombe and 12 Others, H/Court Criminal Session Case No. 26 of 2006** (unreported) where the court held:-

"The object of cross- examination is twofold; to weaken, qualify or destroy the case of the opponent and to establish the party's own case by means of his opponent's witnesses. As a rule, a party should put each of his opponents witnesses in turn so much of his case as concerns that a particular witness of which he had a share, if he asks no question, he will generally be taken to accept the witness account"

In respect to this appeal, the appellant alleged to have been given the stolen motorcycle by someone whom he did not know him. I think a



reasonable person may ask, whether that unknown or undisclosed person was called in court to testify in his side I took time to peruse the whole proceedings, but there is no any witness who was invited by the appellant to testify on his favour.

In the circumstances of this appeal, there is only one conclusion which is coming up quite clearly that the appellant was found with the stolen motorcycle at Mnazimmoja area preparing to take it to Masasi. Since the appellant during trial failed to justify as to how he obtained that recently stolen motorcycle it means he was the thief. Also failure to mention the alleged person who gave him to fill petrol in petrol station is an indication that in fact such person never existed. Perusing some precedents, the same position was stated in the case of **Alexander Mgunda @ Checknoris Vs. R, Criminal Appeal No. 336 of 2017** (unreported) CAT at Iringa, where the court held:-

"Given the circumstances under which the cell phone was recovered, it was proper as rightly found by the trial court and confirmed by the High Court to invoke the doctrine of recent possession"

Similar conclusion was arrived in the case of **Ramadhani Ayubu Vs. R, Criminal Appeal No. 122 of 2004** (unreported) the court gave the ingredients constituting to the doctrine of Recent Possession to be; the property should be subject of stealing; it should be found with the accused; the suspect failure to give reasonable explanation; circumstances regarding the transfer of the property; and lastly circumstances on its recovery and the conduct of the possessor.

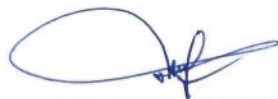


All these ingredients featured in the circumstances of this appeal and all incriminates the appellant who was found with the recently stolen Motorcycle. The appellant failed to give reasonable explanation on how he obtained the said motorcycle and also failed to call the alleged person who gave him that motorcycle.

In the circumstances of this appeal and for the foregoing reasons, I am certain, the appellant was rightly tried by the trial court, convicted and sentenced according to the dictates of penal laws. I therefore, uphold the conviction and sentence meted by the trial court. I proceed to dismiss this appeal forthwith for lack of merits.

I accordingly order.

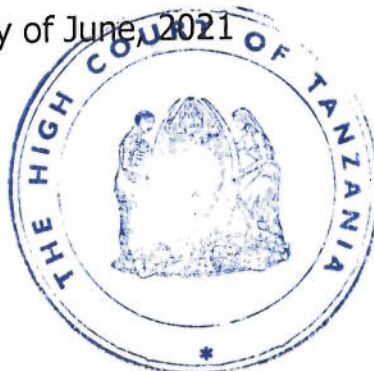
Dated at Mtwara in Chambers on this 18th day of June, 2021



P.J. NGWEMBE

JUDGE

18/6/2021



Court: This judgement is delivered at Mtwara in Chambers on this 18th day of June, 2021 in the presence of the appellant and Mr. Ndunguru, Senior State Attorney for the Republic.

Right of Appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

18/6/2021

