

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

**AT SUMBAWANGA**

**DC. CRIMINAL APPEAL NO. 18 OF 2020**

*(Originating from Criminal Case No. 4 of 2020 from Mpanda District Court at Mpanda)*

**MACHEMBA MALINGO .....1<sup>ST</sup> APPELLANT**

**MARODA MALINGO .....2<sup>ND</sup> APPELLANT**

**VERSUS**

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

*Date of last Order: 27/05/2021*

*Date of Judgment: 07/06/2021*

**JUDGMENT**

**C.P. MKEHA, J**

Before the District Court of Mpanda, the appellants were prosecuted for an offence of cattle theft contrary to section 258 (1) and 268 (1) and (3) of the Penal Code. It was alleged by the prosecution that on 31<sup>st</sup> day of December, 2019 at Kaboga village within Mpanda District in Katavi Region, the appellants, did jointly and together steal 7 cows valued at TZS. 3,500,000/= the properties of Malingo s/o Mchemba. When the charges were read over to the appellants, they both protested their innocence. However, on conducting full trial, both appellants were found guilty, convicted and sentenced to be imprisoned for five years. They were dissatisfied. They thus appealed to this

court challenging the trial court's decision mainly on the ground that, the trial court erred at law by convicting them (the appellants) on an offence which was not proved beyond reasonable doubt as the ingredients of the offence charged were not proved.

When on the hearing date the appellants were invited to argue their appeal, they asked the court to consider the said ground of appeal as it is.

Mr. Peres learned State Attorney who represented the Republic supported the appeal. The learned State Attorney submitted that, the purported stolen cattle were not properly identified. Reference was made to page 26 of the typed proceedings of the trial court.

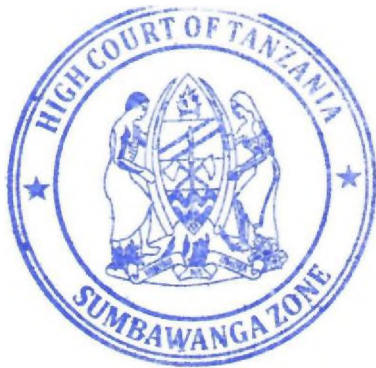
The only determinative issue is **whether the purported stolen cattle were properly identified**. Fortunately, the parties to this appeal are in agreement that the purported stolen cattle were not properly identified. As such, my task is to satisfy myself on whether the parties' agreement should be upheld.

Upon re-reading the testimonies of PW1 (Inspector Patrick) PW2 (the complainant) and PW6 (D/C Christopher) one finds that, at no time did the complainant record in his statement to the police any particular mark of how he would identify the stolen cattle. Therefore, the purported identification done to the found cattle was of no use. **See Mashaka Bashiri vs. The Republic, Criminal Appeal No. 242 of 2017.** I therefore agree with the

learned State Attorney that the purported stolen cattle were not properly identified. It follows therefore that, the charges against the appellants were not sufficiently proved before the trial court.

For the foregoing reasons, the appellants' conviction is quashed. The sentence imposed upon the appellants is set aside. Both appellants are to be released from custody unless they are held therein for other lawful causes.

Dated at **SUMBAWANGA** this 21<sup>st</sup> day of June, 2021.



  
**C.P. MKEHA**

**JUDGE**

**21/06/2021**

**Court:** Judgment is delivered in the presence of the parties.



  
**C.P. MKEHA**

**JUDGE**

**21/06/2021**