

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

CRIMINAL APPEAL NO. 112 OF 2020

(Arising from District Court of Karagwe at Karagwe in Criminal Case No. 353/2017)

GOZBERT FRENK..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of Judgment: 30/07/2021

Mwenda, J

The appellant who stood as the 4th accused person was dissatisfied with the judgment of the District Court of Karagwe dated 25/10/2017. In criminal case no. 353/2017 the said court convicted the appellant together with his co accused as charged for the offence of cattle theft. They were sentenced to serve a term of seven years imprisonment. He is thus appealing against conviction and sentence.

When this appeal came up for hearing, the appellant appeared in person while the respondent Republic was represented by Mr. Mahona, learned State Attorney.

When the appellant was reminded of his six grounds of appeal, he opted to add nothing in elaboration but craved for this court to consider his grounds of appeal in reaching its findings.

When invited to address the court in response to the grounds of appeal advanced by the appellant, the learned State Attorney informed this court that the Republic is not opposing this appeal. To begin with, the learned state attorney submitted that they have gone through the grounds of appeal and found that the 6th ground of the appeal is capable of finalizing this matter and as such they are only confining their submissions to this ground.

The learned State Attorney further submitted that the prosecution's side failed to prove its case to the standard required in criminal jurisprudence, that is beyond any reasonable doubts. The learned State Attorney asserted that the appellant and his co accused persons were charged for stealing six cows. During trial before the District Court the public prosecutor (P.P) prayed to tender two important exhibits, i.e. certificate of handing over cows to the victim "**exhibit P1**" and the six

impounded cows marked "BADO", **exhibit P2**. According to the learned State Attorney this act by the public prosecutor was improper as he assumed the role of a public prosecutor and that of a witness at the same time and the effect of which is to expunge exhibit P1 and P2. In support of his assertion the learned State Attorney cited a case of ***SAID S/O SALUM V. REPUBLIC, CRIMINAL APPEAL NO. 499 OF 2016 (unreported)***.

The learned State Attorney concluded by praying for this court to allow this appeal and quash a conviction entered against the appellant.

In this appeal the issue is whether the prosecution's side proved its case beyond any reasonable doubt.

Having gone through the trial Court's records, this court noted that the evidence of PW1 and PW2 (the owner and the cowboy respectively) is to the effect that following theft of their cows (six), they launched search and at a place of auction accused persons, including the appellant were found selling them. The suspects were then arrested and investigation ensued and later on arraigned in court for cattle theft. In their testimony they neither identified the said cows nor tendered them as exhibits in Court.

To link the accused persons and the stolen cows, the prosecution side ought to have tendered the said cows as exhibits. As rightly pointed out by the learned State Attorney, the procedure adopted by the public

prosecutor in tendering the said exhibits by himself is fatal and against the law.

In the case of ***SAID S/O SALUM V. THE REPUBLIC, CRIMINAL APPEAL, NO. 499 OF 2016 (unreported)*** the Court of Appeal, at page 14 citing with approval the case of ***Thomas Ernest Msungu @ Nyoka Mkuya V. The Republic, criminal Appeal No. 78 of 2012 (unreported)*** held that:

“A prosecutor cannot assume the role of a prosecutor and a witness at the same time. In tendering the report the prosecutor was actually assuming the role of a witness. With respect, that was wrong because in the process, the prosecutor was not the sort of witness who could be capable of examination upon oath or affirmation in terms of section 198 (1) of the Act”


From the foregoing reasoning, the effect of the Public prosecutor’s act of tendering exhibit is to expunge exhibit P1 and P2. Since these exhibits are fundamental evidence connecting the appellants to the alleged theft, as was rightly submitted by the learned State Attorney the chain

linking the appellant and the offence breaks . As this issue is capable of disposing this appeal, this court finds no reason to determine the remaining grounds of appeal.

I accordingly allow this appeal, quash the conviction and set aside the sentence imposed against the appellant. The appellant is to be released forthwith from custody unless otherwise lawful held.


Dated at Bukoba this 30th day of July, 2021.




A.Y. Mwenda
Judge
30.07.2021

This Judgment was delivered in chambers under the seal of this court in the presence of Mr. Juma Mahona for the Republic and in the presence of the Appellant.




A.Y. Mwenda
Judge
30.07.2021