

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

(PC) CRIMINAL APPEAL NO 39 OF 2020

(Arising from Criminal Appeal No. 52 of 2020 of the District Court of Tarime, originating from Criminal Case No 317/2020 at Shirati Primary Court)

FREDY NYANG'WAROAPPELLANT

VERSUS

SAIRE JOSEPHRESPONDENT

JUDGMENT

2nd August, 2021

Kahyoza, J

This is a second appeal. Fredy Nyangwaro was charged before the primary court with the offence of stealing contrary to section 265 of Penal Code. He was convicted and sentenced the appellant to pay a fine of Tzs. 200,000/= or serve 7 months imprisonment. He paid the fine. He appealed to the District Court, which upheld his conviction and sentence. Still aggrieved, Fredy has appealed to this Court. Saire Joseph the respondent testified before the trial court and resisted the appeal before the district court and before this Court.

The appellant lost the appeal before the district court, hence he can only appear to this Court on issues of law issues of fact are considered established. Both courts below found the respondent credible witness. As the record bears testimony, each side did not call any witness. The

respondent was the only witness who testified against the appellant. The defence was made up of the appellant and his co-accused defended themselves leading to the trial court to acquit the appellant's co-accused. The trial court and the first appellate court found the respondent's account credible. Having reviewed the evidence on record, I have no reason to find that the respondent was not a credible witness. It is trite law that the second appellate court should not interfere with the concurrent findings of fact of two courts below unless there is a misdirection or a misapprehension of evidence, as stated in the case of **Salum Mhando V. R** [1993] TLR 170 at 1777 that-

"... As it will be noticed, we have taken the unusual step in this appeal of interring with the concurrent findings of fact made by two courts below. On a second appeal to this Court we are only supposed to deal with the questions of law. But this approach rests on the premise that the findings of fact are based on a correct appreciation of the evidence. It as in this case both courts completely misapprehend the substance, nature and quality evidence, resulting in unfair conviction this Court must in the interest of justice intervene."

I examined the evidence as pointed out it is based on credibility of witnesses. The appellant and the respondent knew each other very well. The respondent thought the appellant was sent to collect batteries so that they may go fishing. He gave him 14 batteries, he left and he came back a total 35 batteries missing and the appellant had vanished. The respondent

contacted the appellant's employee who dined to send the appellant to collect batteries. I have considered the evidence on record and found that there is evidence that this appellant stole batteries. As to the number, I am not convinced that the appellant stole 35 batteries. I find him guilty of stealing 14 batteries; it is conversion amounting to theft.

I find the appeal without merit. I uphold the conviction and sentence. Consequently I dismiss the appeal in its entirety.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

2/8/2021

Court: Judgment delivered in the presence of the appellant and respondent B/C Makunja present.



J. R. Kahyoza

JUDGE

2/8/2021

Court: Right of appeal explained.



J. R. Kahyoza

JUDGE

2/8/2021