

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(BUKOKA DISTRICT REGISTRY)

AT BUKOKA

(PC) CRIMINAL APPEAL NO. 01 OF 2020

(Arising from Criminal Appeal No. 7 of 2019 of Bukoba District Court & Originating from Criminal Case No. 63 of 2018 of Bukoba Urban Court Primary Court)

FIDELIS YUSTAS ----- APPLICANT

VERSUS

NURU ADAMU ----- RESPONDENT

JUDGEMENT

Date of Last Order: 29/07/2021

Date of Judgment: 13/08/2021

Hon. A. E. Mwipopo, J.

This appeal originate from Bukoba Urban Primary Court in Criminal Case No. 63 of 2018 where the Appellant herein namely Fidelis Yustas was convicted by the trial Court for the offence of stealing a cart which belongs to Nuru Adam, the Respondent herein, contrary to section 265 of the Penal Code, Cap. 16 of the Law, R.E. 2002. The Primary Court convicted the Appellant for the offence of stealing and sentenced to pay fine of shillings 50,000/= and to pay shillings 500,000/= as compensation to the Respondent for the stolen cart. The Appellant

was aggrieved by the decision of the Primary Court and filed an appeal before the District Court which upheld conviction and fine of Shillings 50,000/= against the Appellant but reversed the compensation of shillings 500,000/= and reduced it to compensation of 100,000/= on ground that the Respondent has contributed to the loss of the Cart. The Appellant was once again not satisfied and filed the present appeal.

In the memorandum of appeal the Appellant has a total of three grounds of appeal. The respective grounds are as follows:-

1. The trial Magistrate erred in law when he consider that the cart (Mkokoteni) have no security on the site.
2. The trial Magistrate erred in law for failure to discover that the Cart at the site was under security of DW2. The PW1 testified that the money charged from the cart was handled to DW2 the act which prove that DW2 was the person responsible for the cart. The authority to rent the cart at the site was under DW2 and the Appellant could not allow anybody to take the cart without approval of DW2. Thus, it was DW2 who is responsible for the loss of the cart.
3. That, the case was not proved beyond reasonable doubt as there was no independent witness who was brought to show the truth as to who was responsible for the stolen cart.

On the hearing date both parties appeared in person as they have no legal representation. The parties being lay person have no much to say, the Appellant prayed for the Court to consider his grounds of appeal contained in the memorandum of appeal while the Respondent submitted that the appeal has no merits and the District Court reduced the compensation from shillings 500,000/= to shillings 100,000/-. The Respondent went on to argue that there is sufficient evidence to prove that it was the Appellant who rented the Cart to unknown person.

From the submissions, the issue for determination is whether or not the evidence adduced proved that it was the Appellant who did steal the cart belonging to the Respondent without any doubt.

The charge sheet which the Appellant was charged with at Primary Court shows that the Appellant and Abdu Kassim – DW2 were charged for the offence of stealing contrary to section 265 of the Penal Code, Cap. 16. The particulars of the offence shows that the Appellant and DW2 together on 06th June, 2018 at 07:00 hours in Zamzam area of Bukoba Municipal and Kagera Region intentionally they did steal cart (mkokoteni) valued at shillings 500,000/= owned by Respondent unlawfully. The testimony of Nuru Adam - SW1 who is the owner of the cart shows that the Appellant and DW2 were working at the site and the DW2 is responsible for receiving money when the cart is rented. On the date of

incident DW2 gave him 5,000/= shillings and told him that the cart was rented and will be returned in the evening of the same date. But the cart was never returned. The Appellant was the one responsible for renting the cart and he rented the cart to the people he do not know. The one who handled the cart to customer is responsible for its return. The cart is worth shillings 500,000/=.

The testimony from Mahamudu Mikidadi – SW2 shows that it was the Appellant who handled those customers and gave them the cart. SW2 stated that the Appellant received the money paid to hire the cart from the customer and the Appellant handled the same to the DW2 who has duty to receive the money. And, one hour later one of the customers who rented the cart came back, did talk to Appellant and left. Those customers never returned the cart.

This evidence from SW1 and SW2 proved that it was the Appellant who handled the issue of the client who hired the cart he did speak to them, received the money paid to rent a cart and he handled the money to DW2. Also, the evidence from SW1 proved that it was the practices in the site where the court are kept that the cart is rented to the known person. However, the Appellant rented it to unknown person. Both, the Primary Court and the District Court did find the Appellant guilty of the offence charged for the reason that it was the Appellant who rented the cart to unknown persons. The District Court reduced

the amount for compensation for the reason that the Respondent contributed to the loss as there was no proper or known procedure of hiring the cart.

Under section 258(1) and (2) (d) of the Penal Code, Cap. 16 R.E 2002, a person commits the offence of stealing when he/she fraudulently and without claim of right takes anything capable of being stolen or fraudulently converts it to the use of other person than the owner. The intention to steal is established when, among other things, a person takes or converts anything capable of being stolen with an intention to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion. In the present appeal the Appellant rented the cart to unknown person against the practice of renting the cart in the site. This means that the Appellant was supposed to know that there is possibility for a cart which is rented to unknown person or client not to be returned. Thus, I'm of the same opinion with the trial Magistrate and the first appellate Court that it was the Appellant who knew those person who rented the cart and as result he is responsible for the taking of the cart by unknown persons.

The Applicant allegation that it was the DW2 who rented the cart to those unknown person has no support and the testimony of SW2 is strong and prove that it was Appellant who rented and handled the cart to unknown persons who did take away the cart. One of the unknown persons (customer) even came back

to talk to the Appellant after one hour later. This evidence proved the offence against Appellant without any doubt

Therefore, I find the appeal has no merits and I dismiss it. The District Court decision is hereby upheld and the Appellant has to pay the compensation to the Respondent as it was ordered by the District Court. It is so ordered.





A.E. Mwipopo

Judge

13.08.2021

The Judgment was delivered today this 13.08.2021 in chamber under the seal of this court in the presence of Appellant and Respondent.




A. E. Mwipopo

Judge

13.08.2021